

By Mr. BOW:

H.R. 11228. A bill to amend chapter 57 of title 39, United States Code, so as to authorize the free use of the mails in making reports required by law of certain payments to others; to the Committee on Post Office and Civil Service.

By Mr. BYRNE of Pennsylvania:

H.R. 11229. A bill to authorize the sale, without regard to the 6-month waiting period prescribed, of zinc proposed to be disposed of pursuant to the Strategic and Critical Materials Stock Piling Act; to the Committee on Armed Services.

By Mr. DUNCAN:

H.R. 11230. A bill authorizing construction of a navigation project at Port Orford, Oreg.; to the Committee on Public Works.

By Mr. FINDLEY:

H.R. 11231. A bill to amend section 175 of the Internal Revenue Code of 1954 to allow the deduction of expenditures for relocations and acquiring interests in land for soil and water conservation purposes where the need for such relocations and acquisition is primarily attributable to the control of or change in the water level of a river or other inland body of water; to the Committee on Ways and Means.

By Mr. HANNA:

H.R. 11232. A bill providing for a study of the legal problems of management, use, and control of the natural resources of the oceans and ocean beds; to the Committee on Science and Astronautics.

By Mr. MILLS:

H.R. 11233. A bill to amend the Tariff Schedules of the United States with respect to the dutiable status of watches, clocks, and timing apparatus from insular possessions of the United States; to the Committee on Ways and Means.

By Mr. OLSEN of Montana:

H.R. 11234. A bill to amend section 8 of the Soil Conservation and Domestic Allotment Act, as amended; to the Committee on Agriculture.

By Mr. PHILBIN:

H.R. 11235. A bill to authorize the disposal, without regard to the prescribed 6-months waiting period, of approximately 11 million pounds of molybdenum from the national stockpile; to the Committee on Armed Services.

By Mr. ROOSEVELT:

H.R. 11236. A bill to provide research, technical, and financial assistance with respect to the disposal of solid wastes to the several States and political subdivisions thereof; to the Committee on Interstate and Foreign Commerce.

By Mr. RYAN of New York:

H.R. 11237. A bill to amend the Fair Labor Standards Act of 1938 to increase the minimum wage rate to \$1.50; to the Committee on Education and Labor.

By Mr. THOMPSON of New Jersey:

H.R. 11238. A bill to exclude certain musical performances from the coverage of the National Labor Relations Act and the Labor Management Relations Act, 1947; to the Committee on Education and Labor.

By Mr. TUCK:

H.R. 11239. A bill to impose import limitations on certain meat and meat products; to the Committee on Ways and Means.

By Mr. TUPPER:

H.R. 11240. A bill to create a Joint Committee on Congressional Ethics, and for other purposes; to the Committee on Rules.

By Mr. ROBERTS of Alabama:

H.R. 11241. A bill to amend the Public Health Service Act to increase the opportunities for training professional nursing personnel, and for other purposes; to the Committee on Interstate and Foreign Commerce.

By Mr. MILLS:

H.R. 11242. A bill authorizing modification of the Greers Ferry Dam and Reservoir, White River Basin, Ark., in the interest of

recreational development, and for other purposes; to the Committee on Public Works.

By Mr. TOLLEFSON:

H.R. 11243. A bill to amend the Tariff Act of 1930 to provide that bagpipes and parts thereof shall be admitted free of duty; to the Committee on Ways and Means.

By Mr. PHILBIN:

H. Con. Res. 300. Concurrent resolution authorizing the disposal of approximately 98,000 long tons of pig tin from the national stockpile; to the Committee on Armed Services.

By Mr. WALLHAUSER:

H. Con. Res. 301. Concurrent resolution expressing the sense of the Congress with respect to public recognition of God; to the Committee on the Judiciary.

By Mr. OSMERS:

H. Res. 721. Resolution condemning persecution by the Soviet Union of persons because of their religion; to the Committee on Foreign Affairs.

By Mr. WHARTON:

H. Res. 722. Resolution expressing the sense of Congress in conjunction with the proposed closing of certain Federal Aviation Agency facilities; to the Committee on Interstate and Foreign Commerce.

MEMORIALS

Under clause 4 of rule XXII,

Mr. MARTIN of Massachusetts presented a memorial of the Senate of the Commonwealth of Massachusetts 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, which was referred to the Committee on Armed Services.

PRIVATE BILLS AND RESOLUTIONS

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

By Mr. GALLAGHER:

H.R. 11244. A bill for the relief of Wiktor Bogatko; to the Committee on the Judiciary.

By Mrs. KELLY:

H.R. 11245. A bill for the relief of Mrs. Lill Pavel and her children, Judith and Chala; to the Committee on the Judiciary.

By Mr. KEOGH:

H.R. 11246. A bill for the relief of Edward S. Corbin; to the Committee on the Judiciary.

By Mr. LINDSAY:

H.R. 11247. A bill for the relief of Dorothea Majzik Szillard; to the Committee on the Judiciary.

By Mr. LONG of Maryland:

H.R. 11248. A bill for the relief of Shirley Borkowf Levin; to the Committee on the Judiciary.

H.R. 11249. A bill for the relief of Sui Tsai Zee; to the Committee on the Judiciary.

H.R. 11250. A bill for the relief of Dr. John James Russell; to the Committee on the Judiciary.

By Mr. O'NEILL:

H.R. 11251. A bill for the relief of Mrs. Lily Ning Sheehan; to the Committee on the Judiciary.

By Mr. POWELL:

H.R. 11252. A bill for the relief of Brussel Folder; to the Committee on the Judiciary.

By Mr. REIFEL:

H.R. 11253. A bill for the relief of Joanne Irene Taylor; to the Committee on the Judiciary.

By Mr. STINSON:

H.R. 11254. A bill for the relief of Luisa Pono Parinas; to the Committee on the Judiciary.

PETITIONS, ETC.

Under clause 1 of rule XXII,

890. The SPEAKER presented a petition of Terutake Oyadomari, Nishihara-son, Okinawa, requesting that reversion of Okinawa be realized as soon as possible, which was referred to the Committee on Foreign Affairs.

SENATE

WEDNESDAY, MAY 13, 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:

O God, who—though all else fades—remainest the same, Thou who leavest us never, even when we leave Thee, and whose tender mercy is over all Thy works: We come at the beginning of yet another day, praying for strength for our burdens, wisdom for our responsibilities, insight for our time, and faith enough to remove mountains that loom frowningly before us.

We thank Thee for our America which still stands before the oppressed anywhere and everywhere as the symbol of the morning radiance of a joyous hope. For all afar off who sigh for liberty, for all lovers of the common people who strive to break their shackles, for all who dare to believe in democracy and the kingdom of God's love, make Thou our great commonwealth a flaming beacon light and a guide on the path which leads to the perfect union of law and liberty.

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

THE JOURNAL

On request by Mr. HUMPHREY, and by unanimous consent, the reading of the Journal of the proceedings of Tuesday, May 12, 1964, was dispensed with.

ORDER FOR TRANSACTION OF ROUTINE BUSINESS

Mr. HUMPHREY. Mr. President, I ask unanimous consent that, as on previous days and under previous orders, there be a morning hour, with statements therein limited to 3 minutes.

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

ORDER FOR RECESS TO 10 A.M., THURSDAY

Mr. HUMPHREY. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until 10 a.m., Thursday.

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

EXECUTIVE SESSION

Mr. HUMPHREY. Mr. President, I move that the Senate proceed to the consideration of executive business, to consider the nominations on the Executive Calendar.

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

EXECUTIVE REPORT OF A COMMITTEE

The following favorable report of a nomination was submitted:

By Mr. MAGNUSON, from the Committee on Commerce:

James D. O'Connell, of California, to be an Assistant Director of the Office of Emergency Planning.

The ACTING PRESIDENT pro tempore. If there be no further reports of committees, the nominations on the Executive Calendar will be stated.

U.S. COAST AND GEODETIC SURVEY

The Chief Clerk read the nomination of George M. Cole, Jr., to be lieutenant, junior grade.

The ACTING PRESIDENT pro tempore. Without objection, the nomination is confirmed.

U.S. COAST GUARD

The Chief Clerk proceeded to read sundry nominations in the Coast Guard.

Mr. HUMPHREY. Mr. President, I ask unanimous consent that these nominations be considered en bloc.

The ACTING PRESIDENT pro tempore. Without objection, the nominations will be considered en bloc; and, without objection, they are confirmed.

Mr. HUMPHREY. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of all these nominations.

The ACTING PRESIDENT pro tempore. Without objection, the President will be notified forthwith.

LEGISLATIVE SESSION

On motion by Mr. HUMPHREY, the Senate resumed the consideration of legislative business.

CALL OF THE ROLL

Mr. HUMPHREY. 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. 218 Leg.]

Aiken	Clark	Hickenlooper
Allott	Cooper	Holland
Bartlett	Cotton	Hruska
Bayh	Curtis	Humphrey
Beall	Dirksen	Inouye
Bennett	Dodd	Jackson
Bible	Dominick	Javits
Boggs	Douglas	Johnston
Brewster	Ervin	Jordan, Idaho
Burdick	Fong	Keating
Cannon	Gruening	Lausche
Carlson	Hart	Long, Mo.
Case	Hartke	McClellan
Church	Hayden	McGee

McGovern	Nelson	Smith
McIntyre	Neuberger	Sparkman
McNamara	Pearson	Stennis
Metcalf	Pell	Symington
Miller	Prouty	Talmadge
Monroney	Proxmire	Walters
Morse	Randolph	Williams, N.J.
Morton	Ribicoff	Williams, Del.
Moss	Russell	Yarborough
Mundt	Saltonstall	Young, N. Dak.
Muskie	Scott	Young, Ohio

Mr. HUMPHREY. I announce that the Senator from New Mexico [Mr. ANDERSON], the Senator from Virginia [Mr. BYRD], the Senator from Arkansas [Mr. FULBRIGHT], the Senator from North Carolina [Mr. JORDAN], the Senator from Massachusetts [Mr. KENNEDY], the Senator from Louisiana [Mr. LONG], and the Senator from Rhode Island [Mr. PASTORE] are absent on official business.

I also announce that the Senator from West Virginia [Mr. BYRD], the Senator from Mississippi [Mr. EASTLAND], the Senator from Oklahoma [Mr. EDMONDSON], the Senator from Louisiana [Mr. ELLENDER], the Senator from Tennessee [Mr. GORE], the Senator from Alabama [Mr. HILL], the Senator from Washington [Mr. MAGNUSON], the Senator from Montana [Mr. MANSFIELD], the Senator from Minnesota [Mr. MCCARTHY], the Senator from Virginia [Mr. ROBERTSON], the Senator from Florida [Mr. SMATHERS], 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. DIRKSEN. I announce that the Senator from Arizona [Mr. GOLDWATER], the Senator from New Mexico [Mr. MECHEM], the Senator from Wyoming [Mr. SIMPSON], and the Senator from Texas [Mr. TOWER] are necessarily absent.

The Senator from California [Mr. KUCHEL] is detained on official business.

The ACTING PRESIDENT pro tempore. A quorum is present.

AMENDMENT OF COMMODITY EXCHANGE ACT

The ACTING PRESIDENT pro tempore laid before the Senate a letter from the Secretary of Agriculture, transmitting a draft of proposed legislation to amend the Commodity Exchange Act, as amended, which (with the accompanying papers) was referred to the Committee on Agriculture and Forestry.

BILLS INTRODUCED

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

By Mr. BAYH:

S. 2832. A bill for the relief of Ioannis Metanias; to the Committee on the Judiciary.

By Mr. TALMADGE:

S. 2833. A bill for the relief of Vasilios Mavris; to the Committee on the Judiciary.

By Mr. HUMPHREY:

S. 2834. A bill for the relief of Lee Young Soon; to the Committee on the Judiciary.

By Mr. SYMINGTON (for himself and Mr. Long of Missouri):

S. 2835. A bill authorizing the change in name of the Joanna Dam and Reservoir, Salt River, Mo., to the Clarence Cannon Dam

and Reservoir; to the Committee on Public Works.

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

CONCURRENT RESOLUTION

RIGHT OF SELF-DETERMINATION BY THE PEOPLES OF LATVIA, LITHUANIA, AND ESTONIA

Mr. RIBICOFF submitted a concurrent resolution (S. Con. Res. 84) favoring action by the President to bring about the right of self-determination by the peoples of Latvia, Lithuania, and Estonia, which was referred to the Committee on Foreign Relations.

(See the remarks of Mr. RIBICOFF when he submitted the above concurrent resolution, which appear under a separate heading.)

RESOLUTIONS

TO PRINT AS A SENATE DOCUMENT THE REMARKS OF FORMER PRESIDENT HARRY S. TRUMAN TO THE SENATE ON MAY 8, 1964

Mr. PELL submitted a resolution (S. Res. 329) authorizing the printing as a Senate document of the remarks by former President Harry S. Truman to the U.S. Senate on May 8, 1964, being the first instance of the operation of a recent amendment to rule XIX authorizing former Presidents to address the Senate, which was referred to the Committee on Rules and Administration.

(See the remarks of Mr. PELL when he submitted the above resolution, which appear under a separate heading.)

INQUIRY INTO FINANCIAL OR BUSINESS INTERESTS OR ACTIVITIES, INCLUDING USE OF CAMPAIGN FUNDS, OF ANY MEMBER OR FORMER MEMBER OF THE SENATE, AND ANY OFFICER, EMPLOYEE, OR FORMER EMPLOYEE OF THE SENATE

Mr. WILLIAMS of Delaware (for himself and Mr. CASE) submitted a resolution (S. Res. 330) to inquire into the financial or business interests or activities, including use of campaign funds, of any Member or former Member of the Senate, officer, employee, or former employee of the Senate, which was ordered to lie on the table and to be printed.

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

RIGHT OF SELF-DETERMINATION BY THE PEOPLES OF LATVIA, LITHUANIA, AND ESTONIA

Mr. RIBICOFF. Mr. President, I submit, for appropriate reference, a concurrent resolution favoring action by the President to bring about the right of self-determination by the peoples of Estonia, Latvia, and Lithuania.

The history of the Baltic peoples is not a happy one. In recent times, independence and freedom have flourished in their

nations only for the brief span of 22 years—from the end of the First World War to 1940. In the latter year, the brutal force of Soviet troops overran, occupied, and sought to incorporate Estonia, Latvia, and Lithuania into the Soviet Union.

The Second World War brought another oppressor, as Nazi Germany invaded and took control of the Baltic countries. And the end of the war brought no release from bondage for Russian troops again occupied the Baltic lands and again instituted a harsh and oppressive rule.

This concurrent resolution calls upon the President to determine and promote economic and diplomatic policies which will best serve to encourage the growth of independent action in the Baltic States—the withdrawal of Soviet troops—and the development of conditions within Estonia, Latvia, and Lithuania which are the necessary forerunners to free elections and true self-determination.

This Nation is devoted to the principle that every man and every nation has a sacred inviolable right to determine its destiny and do all in its power to reach its goals.

The ACTING PRESIDENT pro tempore. The concurrent resolution will be received and appropriately referred; and, under the rule, the concurrent resolution will be printed in the RECORD.

The concurrent resolution (S. Con. Res. 84) was referred to the Committee on Foreign Relations, as follows:

Whereas the peoples of Estonia, Latvia, and Lithuania have been denied the right of self-determination since the occupation and incorporation of their Nations into the Soviet Union by force in 1940; and

Whereas the United States has consistently refused to recognize the abrogation of the rights of these Baltic peoples, and continues to maintain diplomatic relations with the representatives of free Estonia, Latvia, and Lithuania; and

Whereas it is the policy of the United States to uphold the right of peoples everywhere to determine their destinies through free participation in elected governments: Therefore be it

Resolved by the Senate (the House of Representatives concurring), That the President of the United States should determine and promote diplomatic and economic policies which will: (a) encourage the withdrawal of Soviet forces from Estonia, Latvia, and Lithuania; (b) develop the independence of those nations from the Soviet Union, and (c) bring about free elections in Estonia, Latvia, and Lithuania in order that Estonia, Latvia and Lithuania may regain their places in the councils of free nations as sovereign States representative of the desires and responsive to the will of their peoples.

**TO PRINT AS A SENATE DOCUMENT
THE REMARKS OF FORMER
PRESIDENT HARRY S. TRUMAN
TO THE SENATE ON MAY 8,
1964**

Mr. PELL. Mr. President, on the morning of May 8, the U.S. Senate was honored by the presence of former President Harry S. Truman. We all had the opportunity of extending best wishes to him on that day, the celebration of his 80th birthday.

But, something of even greater significance took place on that day. Once again our great former President, a historian himself, made a bit of history since on that day President Truman addressed the Senate while in session, pursuant to rule XIX, a historic first in the history of our body. In his remarks, Mr. Truman said that this recently amended rule XIX was "unique" and that it was a "good rule." As the author, together with Senators MAGNUSON, HUMPHREY, and COOPER, of the amendment entitling former Presidents to address the Senate, I was particularly pleased.

Therefore, Mr. President, because of the unusual historic nature of that occasion whereby President Truman—that distinguished citizen of the world—put into operation for the first time Senate rule XIX as amended, I now submit, for appropriate reference, a resolution which provides that the portion of the proceeding of the Senate that concerns this historic first be printed as a Senate document.

The PRESIDING OFFICER (Mr. RIBICOFF in the chair). The resolution will be received and appropriately referred; and, under the rule, the resolution will be printed in the RECORD.

The resolution (S. Res. 329) was referred to the Committee on Rules and Administration, as follows:

Whereas by the adoption of Senate Resolution 78, agreed to October 1, 1963, the Senate amended rule XIX of the Standing Rules of the Senate to provide that upon appropriate notice to the Presiding Officer, who shall thereupon make the necessary arrangements, former Presidents of the United States shall be entitled to address the Senate; and

Whereas on May 8, 1964, on the occasion of his eightieth birthday, former President Harry S. Truman came to the Senate floor and addressed the Senate while in session; and

Whereas this address by Mr. Truman constitutes an historic first instance of the operation of the recently amended rule: Now, therefore, be it

Resolved, That there be printed as a Senate document that portion of the proceedings of the United States Senate of May 8, 1964, which includes the remarks of former President Harry S. Truman and the responses by Members of the Senate thereto, together with an appropriate prefatory statement.

Sec. 2. There shall be printed, within the statutory limitation, such quantity of additional copies of said document for the use of the Senate as may be determined by the Committee on Rules and Administration.

AMENDMENT OF INTERSTATE COMMERCE ACT AND THE FEDERAL AVIATION ACT OF 1958—ADDITIONAL COSPONSOR OF BILL

Mr. MONRONEY. Mr. President, at its next printing, I ask unanimous consent that the name of the Senator from Indiana [Mr. BAYH] be added as a cosponsor of the bill (S. 1719) to amend the Interstate Commerce Act and the Federal Aviation Act of 1958 in order to exempt certain wages and salary of employees from withholding for tax purposes under the laws of States or subdivisions thereof other than the State or subdivision of the employee's residence, which I introduced on June 13, 1963.

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

TRANSPORTATION ACT OF 1964—ADDITIONAL COSPONSOR OF BILL

Mr. MONRONEY. Mr. President, I ask unanimous consent that my name be added as an additional cosponsor, at its next printing, of the bill (S. 2796) to provide for strengthening and improving the national transportation system, and for other purposes, introduced by Mr. MAGNUSON (for himself and other Senators) on May 2, 1964.

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

AMENDMENT OF SECTION 37 OF MINERAL LANDS LEASING ACT—ADDITIONAL COSPONSORS OF BILL

Under authority of the order of the Senate of May 5, 1964, the names of Mr. BENNETT, Mr. DOMINICK, and Mr. SIMPSON were added as additional cosponsors of the bill (S. 2809) to amend section 37 of the Mineral Lands Leasing Act of February 25, 1920, relating to disposition only as provided in such act of deposits of coal, phosphate, sodium, potassium, oil, oil shale, and gas in lands valuable for such minerals, except as to valid claims pursuant to laws under which initiated and existing at the date of the passage of such act, which claims may be perfected under such laws, introduced by Mr. ALLOTT on May 5, 1964.

ADDRESS BY SENATOR NELSON K. DOI, PRESIDENT, HAWAII STATE SENATE

Mr. INOUE. Mr. President, it gives me great pleasure to submit the text of a speech presented by the president of the Hawaii State Senate, Senator Nelson K. Doi, delivered at the 1964 meeting of the Western Governors' Conference in San Francisco, Calif.

I believe that this is an extremely noteworthy speech on the issue of civil rights, as it relates to the newest State of the Union—Hawaii. It is not only a forward-looking speech, but one which is also very realistic and cognizant of the practical problems facing a State which has been known as the melting pot of the Pacific.

I think the speech sheds the kind of light on a problem which requires more clarification than emotion.

I ask unanimous consent that the speech be printed in the RECORD at this point.

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

REMARKS OF NELSON K. DOI, PRESIDENT OF THE HAWAII SENATE, AT THE 1964 MEETING OF THE WESTERN GOVERNORS' CONFERENCE, MAY 6, 1964, SAN FRANCISCO, CALIF.

(Session on civil rights)

Governor Rosellini, fellow panel members, and distinguished participants, I am extremely honored to have been invited to participate in today's panel on civil rights. Hawaii has often been cited as the Mecca of racial relations. While the compliment is flattering, it does a disservice both to you and to us. It does a disservice to us because it tends to gloss over problems we still have and tends to make us complacent about their solution. It does a disservice to you because

It makes our experiences seem so remote and improbable as to have no application in your own States. Today, in the time allotted to me, I hope to be able to provide you with an adequate distillation of Hawaii's experiences so that you may have a realistic picture of where we are today and may have some understanding of how we reached our present relatively desirable situation, for Hawaii's history bears more than a few pockmarks left by racial prejudice. Finally, I would like to take advantage of this opportunity to share with you Hawaii's message, a message directed not only to those who reside on the mainland of the United States but especially to those of us who live in the Hawaiian Islands.

INTRODUCTION

Hawaii's constitution, like many of the fundamental laws of our States, is very emphatic about the rights of man when it specifies that:

"All persons are free by nature and are equal in their inherent and inalienable rights. Among these rights are the enjoyment of life, liberty, and the pursuit of happiness, and the acquiring and possessing of property. These rights cannot endure unless the people recognize their corresponding obligations and responsibilities."¹

The fact that the rights of man can be enjoyed to such a high degree in Hawaii, regardless of a man's race, religion, color, racial origin or ancestry, is in large part a product of our history. Equal rights legislation has played a limited but occasionally crucial part in this history.

Today, a little less than a third of Hawaii's civilian population is Caucasian; a little less than a third is Japanese; about 17 percent are Hawaiian or part Hawaiian; 11 percent are Filipino; and 6 percent are Chinese. Another 3 percent includes Koreans, Negroes, Samoans, and others.² None of these data are very accurate since a large proportion of our people are really part Japanese or part Chinese or part Caucasian, even though they are arbitrarily listed under a single racial category.

I should note that the term "race" is used rather loosely in Hawaii. I'm sure that sociologists would prefer that we use the term "ethnic background" or some similar phrase, but "race" is the popular term; it is used to refer to a combination of a person's ancestry, cultural background, and racial identification preference. Few Hawaiians are particularly sensitive about identifying their racial antecedents. Observations about a person's race and how that person typifies his race are common in Hawaii. Sometimes these discussions almost take on the form of a game, especially when you try to identify the ancestry of young Katy O'Day, a lovely looking lass who obviously is not Irish.

HAWAII TODAY

I'd like to move on and briefly describe the situation regarding equal rights in Hawaii today in those areas of concern identified by the U.S. Civil Rights Commission and other analysts.

Education is one of the focal points of the civil rights movement. Hawaii's constitution is very specific that "there shall be no segregation in public educational institutions because of race, religion or ancestry,"³ and this describes the situation as it is. We have one single public school district for the entire State and the schools are all racially

mixed, though the population composition varies from school to school. A number of years back we had what were called English standard schools and these served, in large measure, as a device for insulating much of the Caucasian and some of the Hawaiian and part Hawaiian student population from the orientals, though, it must be noted, these schools were never entirely segregated. Our problem today in public education is not that of assuring racial mixing but rather of making certain that we have adequate schooling for all our children, especially those who are culturally and economically disadvantaged. Our university once served a relatively small student body consisting almost entirely of residents of the territory. Today, however, the university serves not only thousands of Hawaiian students of many races but it also serves an increasingly large number of students from the mainland and abroad.

The nondiscriminatory administration of justice and of other government services and facilities has been a matter of great concern in this country. The constitutional mandate in Hawaii concerning justice specifies that:

"No person shall be deprived of life, liberty or property without due process of law, nor be denied the equal protection of the laws, nor be denied the enjoyment of his civil rights or be discriminated against in the exercise thereof because of race, religion, sex or ancestry."⁴

I think one can fairly say that the instruments of justice in Hawaii are relatively well integrated. In illustration, I may note that the chief justice of the supreme court is an American of Japanese ancestry, as is the current president of the bar association. The chief of the police department in Honolulu is of Chinese extraction. Correctional facilities are not and have not been maintained on a segregated basis. In fact, government facilities in Hawaii are and have for the most part always been integrated, and government services offered to all regardless of race. There is one notable exception to this generalization and that is a special land program to help persons of Hawaiian ancestry.

Medical services and facilities are another area which has been tarnished by discrimination. There is no discrimination in the hospitals, public or private, in Hawaii, and no discrimination that I know of by medical practitioners. Many persons, however, especially older Orientals and Caucasians, probably prefer to go to practitioners of their own race.

The availability of privately owned, public accommodations to people of all races is unfortunately an emotion-packed issue in the United States. Today, in Hawaii, such accommodations are, to the best of my knowledge, available to all regardless of race, though this has not always been the case. There are some places, of course, where the clientele is primarily of one race, but this is mainly a matter of choice. There are no State laws on the availability of accommodations, though I have no doubt that we would pass such legislation swiftly if the need should arise.

The free exercise of the franchise is one of the important avenues to equality. There are no racial restrictions on voting in Hawaii. Every racial group is a minority and few politicians rely solely on an appeal to the members of one group. Politicians talk race a lot and they spend a lot of time designing racially balanced tickets. The lesser politicians blame their defeats, in private, on the members of other races that they think must have voted against them; while the successful ones credit their victories, in public, to the fact that they garnered the support of people of all races. Actually, race is only one of many factors

in an election. It is seldom the sole determinant. There is some demonstrable tendency for members of a race to vote for candidates of their own race, within certain limits, but it is not a disciplined effort, nor is it sufficient in itself to get one elected. Today, people of all races are in both political parties and political control is not along racial lines. To illustrate this, I might point out that the Governor is Caucasian; the Speaker's ancestors came from Portugal; mine from Japan. The racial backgrounds of our four county executive officers include Chinese, Hawaiian, Negro, Caucasian, and Indian in various proportions.

Equal employment opportunities are recognized as being fundamental to the basic equality of human beings. There are few remnants of discrimination, if any, left in public service employment in Hawaii. Teachers and civil service employees of all races work side by side. The civil service law is specifically designed to provide equal opportunity for all regardless of race, religion, or politics.⁵

The situation in private employment has been changing rapidly during the past few years. The pre-World War II history of Hawaii was marked by many instances of wage discrimination. In the early 1900's, for instance, for the same job, the Caucasian was paid the most, then the Hawaiian, next the Portuguese, who were treated as a separate group from other Caucasians, and at the bottom, the Japanese. Furthermore, many higher positions were reserved for persons of a particular race.

In 1959 a statute was passed forbidding wage discrimination on the basis of race, religion, or sex.⁶ In 1963 the legislature adopted a Fair Employment Practices Act.⁷ Today, the limiting of certain occupations or jobs in some of our businesses for people of particular racial extraction is breaking down. In fact, more and more business organizations are finding out that it is good business to have a multiracial staff and management. The two large banks in Hawaii, for example, were organized and controlled by portions of the Caucasian community, while several smaller banks have been organized over the years by various other groups, particularly segments of the Chinese and Japanese communities. It is satisfying today to watch as many of the banks begin to diversify racially. Clearly the multiracial approach improves the balance statement.

Racial discrimination in public housing, which has been and is a real problem in some portions of our country, has not been a problem in Hawaii. In fact, there is relatively little discrimination in the field of private housing, though we still have a few small, exclusive subdivisions left which are all Caucasian, and many neighborhoods in which specific racial groups dominate. This is particularly true in the rural areas and in the plantation communities. And occasionally the racial characteristics of a desired tenant are cited in a house-for-rent advertisement. We also have some problems in providing adequate off-base rental housing at reasonable rates for members of the military and occasionally instances in which Negro and other families have had difficulty obtaining adequate housing have been noted. These are problems which are recognized. The Honolulu Chamber of Commerce, together with others, is working on adequate housing for military families; the NAACP will shortly be seeking to determine whether or not there is a real problem of discrimination in the rental of housing units.

⁵ Hawaii, Revised Laws (1955), sec. 3-1 and sec. 3-22.

⁶ Hawaii, Revised Laws (1955), sec. 94-4.5, as amended.

⁷ *Ibid.*, Ch. 90A.

¹ Hawaii, "Constitution," art. I, sec. 2.

² The percentage breakdown is as follows: Caucasian, 32; Chinese, 6.1; Filipino, 10.8; Japanese, 31.5; part Hawaiian, 14.2; pure Hawaiian, 1.5; other, 2.9. From Hawaii Department of Planning and Economic Development, "Racial Statistics for Hawaii" (Statistical Rept. 15, Mar. 31, 1964).

³ Hawaii constitution, art. IX, sec. 1.

⁴ Hawaii constitution, art. I, sec. 4.

Most discussions of race problems generally touch on social relationships and intermarriage among the races. The range of interracial social relations in Hawaii has vastly increased in recent years. The present generation is much more broadminded than its predecessors. Its members have many more interracial contacts than did their parents, and our children will have many more than we.

There are still, however, some racially restricted private social and business clubs and there is still much talk and many actions which are based on racial considerations which would be irrelevant in a better Hawaii. We still traffic in the easy generalizations about race—usually other races than our own—but generally people are free to associate socially with those whom they choose.

Racial intermarriages are quite common in Hawaii and are accepted by most of its people. They are seldom a matter of social protest or experimentation; in fact, mixed backgrounds are frequently points of pride. Our State director of personnel services, for example, can rattle off with dispatch that she is Portuguese, Chinese, English, Hawaiian, and Tahitian. One personal report indicates the kind of change in attitude that has occurred over time: my parents would have been extremely displeased with me if I had married other than a Japanese girl; my wife and I, however, are not concerned about the racial ancestry of our children's future mates. One of the interesting byproducts of the high rate of intermarriage in Hawaii is that our racial statistics are becoming increasingly meaningless. Even today one has to use all kinds of cautions when citing such data. In a generation or so they won't be citable at all.

HOW THIS CAME ABOUT

Now a moment's comment about how this relatively high degree of racial harmony came about. It has been an extremely complex evolution. Sociologists have a field day in Hawaii analyzing the subject. The generally good interracial relations in Hawaii did not come about because we are inherently better human beings nor have good relations always existed. Neither are such relations the product of our balmy climate; rather there is a complex of reasons. Let me note a few of the more significant reasons as I see them.

The fact that Hawaii had a long history of political independence—it remained independent longer than almost any other Pacific Basin area—and that the native people of Hawaii extended the traditional Hawaiian hospitality and friendship to visitors and newcomers greatly influenced our later development. Because Hawaii was a monarchy and not under the direct political control of a colonial power, the missionaries, the traders, and the merchants all had to seek and obtain the cooperation of the ruling Hawaiians, even though the means employed by those seeking financial advantage were not always above reproach. During this period the tradition of accepting intermarriages was established. In fact, our largest landed estate was left by Princess Bernice Pauahi, who married a mainland Caucasian by the name of Charles Bishop. There was no open strife in Hawaii between native and newcomer nor among natives followed by the withdrawal of the indigenous people from contact with the newcomers such as occurred in the history of the Maoris in New Zealand.

The second significant factor which has promoted racial harmony in Hawaii has been universal suffrage. The Organic Act of 1900 provided the right to vote to all male citizens. This was over the vigorous opposition of the ruling Caucasian elite that had engineered the revolution in 1893 and arranged the annexation 5 years later. Fortunately, Congress did not give in and the Caucasian merchants and professionals had to accept this bitter pill. At that time only

the Caucasians, including citizen Portuguese, the Hawaiians, and a few others, could vote; but this critical provision of law made it possible for the children of immigrants to vote in later years, and it is the vote that has in large part changed the political complexion of Hawaii.

The third critical historical factor has been the emphasis on universal education in Hawaii—a tradition established by the missionaries who first came to the islands in the 1820's. Later the strong cultural drive of oriental families to gain education for their children, at whatever cost, reinforced this tradition. Finally, the Second World War and the GI bill made it possible for a great number of Hawaiians of various racial extraction, who would probably never have attended college under prewar conditions, to gain a college education and to pursue professional training at mainland universities. Further, public education, while it has not always been supported as it should have been, and frequently was extremely limited in scope, was always available in some form to children of all races.

The fourth factor—the requirements of the rigidly segregated plantation economy for a seemingly endless supply of docile, hard working laborers—did not of itself produce harmony, but it did give us our multi-racial population. Each group that came in—Chinese, Japanese, Korean, Portuguese, Spanish, Filipino—was prejudiced and race and class conscious in its own right, and the plantations themselves practiced racial prejudice. But the members of these groups, especially the children of immigrants, became more assimilated as they gained education in American ways, facility in English, and had increased positive relationships—religious, labor, business, social, educational, and political—with peoples of other races. There are still many prejudiced and narrow-minded people in Hawaii, but these are the people who have surprisingly few meaningful contacts with members of other races or across socioeconomic lines; the people who have not yet been assimilated into our society.

Finally, the Second World War pushed social changes, which had been slowly developing, ahead a generation and with it, racial harmony. Islanders with no previous mainland contacts became acquainted with other portions of the United States and with parts of Europe; thousands of mainland war workers and servicemen lived temporarily in the Islands and many stayed after the war or returned in later years as permanent residents; the question of the loyalty of Americans of Japanese ancestry was finally laid to rest; members of minority groups gained confidence in their own abilities and in their right to participate in the Hawaii community; education, as noted earlier, gained new impetus; the first war brides arrived in the early postwar years; the trend toward unionization was greatly accelerated by the events and the pent-up grievances of the war period; a significant middle class emerged; the mechanization of our agricultural industries began in earnest; progress in aviation revolutionized travel to and from and among the Islands; and many of our people began to have significant relations with people of other races.

HAWAII'S MESSAGE

There is a growing and vital concern in Hawaii about the civil rights of all Americans. With statehood we gained assurance not only that we were entitled to our views but that we were entitled to be heard—that we had a responsibility to speak out. One splendid example of our growing concern with the national civil rights question was the Civil Rights Week organized at the University of Hawaii by the students. The students, who desired to gain a keener and firmer grasp of the problems faced by our country today, brought to Hawaii some of the top spokesmen on civil rights: Muham-

med John All, of the Black Muslims, William J. Simmons, of the White Citizens Council, James Farmer, of the Congress of Racial Equality, and Martin Luther King, Jr., of the Southern Christian Leadership Council. The whole community responded to this event. The major speeches were broadcast and re-broadcast on television and radio and commentators discussed the various approaches at length.

About the same time, a civil rights conference was organized to further Hawaii's involvement in support of the legislation currently before the U.S. Senate. Several weeks ago a delegation from this conference, composed of a Negro, a Caucasian, and a Hawaiian, visited Congress and urged each Member of the Senate to support the civil rights bill. There has also been an increasing amount of letterwriting to Members of Congress and to friends on the mainland by people from Hawaii urging support of the bill. Our danger, of course, is that of becoming complacent about the civil rights struggle on the mainland. Because we have a fair degree of equal rights, it is all too easy not to be concerned about the other fellow.

Hawaii must necessarily admit to itself and to others that it has been fortunate. Our relatively high degree of equal rights is primarily attributable to a fortuitous combination of historical and cultural circumstances plus the hard work of members of immigrant minority groups and a small group of people—teachers, labor leaders, ministers, and others—who believed that the immigrants and their children should have a fair chance. Because of these circumstances Hawaii has arrived at a fairly mature and desirable stage of racial relations earlier than other parts of the country.

Hawaii has a long way to go yet. We have no cause for self-pride. We still have to wipe out the making of irrelevant judgments by individuals on the basis of race. We still have to eliminate the bitterness among peoples based on past persecutions and the attitudes of superiority which had wide currency in prior years. We still have to equalize the opportunities for people of all races—opportunities which are not equal today because of economic or cultural barriers.

What then can a still very imperfect Hawaii suggest to its fellow countrymen? I think we've had sufficient experience to be able to tell our fellow citizens that equal rights for all citizens is not only a desirable goal—it is a practical goal. Second, we can suggest that the attainment of equal rights takes hard and persistent effort on the part of members of the dominant group and of the minorities. It requires dedicated struggle to overcome the innate selfishness of those who wish to preserve the status quo and their own private share at someone else's expense. Third, we can point out that educational, economic, social and political progress are vital to facilitating the achievement of equal rights for all men; the battle is a multifront affair. Finally, we can offer witness that the increasing attainment of the goal of equal rights is worthwhile for government, for business, for labor, and for society in general, but most of all it is worthwhile for the individual. For the individual from the minority group, equal rights means a chance to fulfill his individual potentialities, a chance to be recognized for what he is—a unique individual created in his Maker's image. For the individual from the dominant majority equal rights for all citizens means true freedom—for I am not fully free as long as my countryman is enslaved by the nefarious web of discrimination. As that web is lifted from my brother, as he gains equal rights, so can I and he become freemen.

This then is Hawaii's message to you and to ourselves: as equal rights are gained and as individuals are accepted and judged as unique beings, so all of us become more truly the freemen and brothers God intended us to be.

THE SENATE RULES COMMITTEE INVESTIGATION OF THE ROBERT G. BAKER CASE

Mr. MILLER. Mr. President, in today's Washington Post is an article entitled "CASE Tells Group To Make Senators Bare Baker Deals."

This article relates the experience of the Senator from New Jersey [Mr. CASE] in advocating before the Senate Rules Committee that Members of the Senate be called before the committee to testify regarding any financial dealings with Robert Baker.

I detect from the article that there is still some question in the minds of some members of the committee as to whether or not the committee has jurisdiction to go into the activities of Members of the U.S. Senate.

I thought this matter was brought to a head and very clearly decided in the presence of almost all Senators by the distinguished majority leader, the Senator from Montana, several weeks ago, and made eminently clear by the resolution covering the investigation to apply to Senators as well as employees of the Senate in the proper sense of the term.

I must say I think the Senator from New Jersey [Mr. CASE] has an extremely good point. I for one hope the committee will act favorably on his recommendation. The Senator from New Jersey well pointed out that this body was put in a bad light as a result of the revelations heretofore made in this case.

I think it is a very unfortunate thing for the U.S. Senate to have any aura that is unfavorable hanging over its head, not to mention any cloud that might still exist over the executive branch of the Government.

I sincerely hope the committee will reconsider its apparent decision not to press the investigation further.

I ask unanimous consent to place the article to which I referred in the RECORD at this point.

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

CASE TELLS GROUP TO MAKE SENATORS BARE BAKER DEALS

(By Elsie Carper)

The Senate Rules Committee opened its doors yesterday on a stormy scene between two liberal Members.

Republican CLIFFORD P. CASE, of New Jersey, and Democrat JOSEPH S. CLARK, of Pennsylvania, fought bitterly across the table over the obligation of the committee to investigate Bobby Baker's relationship with individual Senators.

The committee is preparing a report based on its investigation of the financial operations of Robert G. Baker, who resigned as Secretary to the Democratic majority when the inquiry began.

CASE called the Baker affair a desecration of the Senate and said the committee should insist on each Senator revealing his business and financial dealings with Baker and any offers made by Baker to provide campaign contributions or choice committee assignments in return for votes.

CLARK'S CONTENTION

CLARK contended the committee lacked the authority to require Senators to testify but said he hoped the committee would seek such power in its report.

The committee was scheduled to meet in closed session to hear CASE, but after almost

a half hour the doors were thrown open at the insistence of CLARK. He had informed the committee earlier he thought it bad public relations to refuse CASE an open hearing.

He sought the hearing, CASE said, to tell members of the committee face to face how strongly he felt about the committee's responsibility "to get to the bottom of what to me is a sordid affront to the dignity" of the Senate.

"When I hear of an employee of the Senate boasting he has 10 Members of this body in his hand, I do a slow burn," CASE declared.

DEALINGS CITED

"It is difficult for me to contain my anger when I hear talk * * * of Bobby Baker's dealings in committee assignments—granting or withholding his favors * * * of Baker's offering \$5,000, to Senators or senatorial candidates for campaign purposes, and attaching strings to these offers in the form of commitments to vote for or against oil depletion allowances or amendments of the filibuster rule."

The exchange with CLARK was set off when CASE read a May 3 column by Roscoe Drummond saying that the committee had spent "arduous hours thinking of ways not to do its work."

EXCHANGE BY SENATORS

CLARK labeled as "an obvious untruth" a statement in the column that the committee had refused to hear CASE. He said Drummond has always been critical of Democrats.

CASE retorted that the invitation to appear came only after the needling in the column and a full month after he had asked to testify.

Committee Chairman B. EVERETT JORDAN, Democrat, of North Carolina, interjected, "I say emphatically the Drummond article had nothing to do with your appearance * * * to say the investigation is a whitewash is absolutely wrong and false."

Senator HUGH SCOTT, Republican, of Pennsylvania, expressed sympathy with the travail that CASE was undergoing.

"Every witness we have had who has tried to get at the truth has been put on trial," SCOTT declared.

"I resent that statement," CLARK replied. "I want the record to show it."

SCOTT maintained that the resolution authorizing the investigation of Baker was broad enough to include Senators. Senator JOHN WILLIAMS, Republican, of Delaware, who offered it, and Senate Majority Leader MIKE MANSFIELD, Democrat, of Montana, had said so.

The opinion of the committee's special counsel Lennox P. McLendon that Senators could not be questioned by the committee on campaign contributions is "not worth a tinker's dam," SCOTT maintained. The Senate has the right at all times to investigate a Senator, he said.

"I will not be stopped. I will not be silent," CASE said, "until I do everything I can to stimulate an inquiry."

Mr. McNAMARA. Mr. President, will the Senator yield for a question?

Mr. MILLER. Yes, indeed.

Mr. McNAMARA. We hear much about this Senate investigation of Senators. The indication is that those on the minority side want it investigated. I think it would come with a little better grace if it did not continue to come from the Republican side of the aisle. I think we have had enough of that. If Senators on that side have anything against anyone, they should do something about it, instead of giving us a blanket condemnation.

Mr. MILLER. Let me say nobody—least of all the Senator from New Jersey [Mr. CASE]—has accused any one Mem-

ber of the Senate. The point is that, in the interest of the Senate, that is what the investigation is designed to remove.

IOU NO. 24: STOCK OPTION WINDFALL FOR POWER COMPANY INSIDERS—ORDINARY STOCKHOLDERS, CONSUMERS UNKNOWINGLY PROVIDE MULTIMILLION DOLLAR WINDFALL

Mr. METCALF. Mr. President, the biggest, most consistently growing industry in the United States is gouging its customers, deceiving the public, diluting the equity of its stockholders, misleading those who are charged with regulating it and helping finance the raucous organizations which would abolish the income tax and United Nations, deny civil rights and destroy the competition which the industry fears.

This mammoth industry—with about 12 percent of all capital invested in business in this country—has additionally been favored with nine Federal tax reductions since World War II, many of which were not passed on to the customers who paid the taxes.

While in fact they constitute the most favored industry in the Nation, the investor-owned utilities—IOU's—feign great injury through a multimillion-dollar propaganda campaign which permeates to the most remote crossroads of the Nation.

Using the statements and reports of the industry itself and its leaders, I have discussed some of the facts involved in this sham, in a series of Senate speeches this year. I have attempted, and shall continue, to report facts which I believe have great import to legislators and the public, and news value to reporters. I shall be glad to make available to any Member, reporter, or other person who desires them, copies of the documented statements which I have made.

I also invite members of the press to dig through the heavy veneer of publicity which is the hallmark of the electric light and power industry, and ascertain the facts for themselves. The field, I can assure you, is virtually wide open, and fertile.

THE IOU'S ARE DIFFERENT

For example, much has been written and said in recent years concerning the use, by competitive industries, of restricted stock options, by which company insiders are permitted to purchase stock at a fraction of the price which ordinary stockholders must pay. I have seen no stories, heard no speeches, concerning the use of this device by electric utilities. They, as cost plus contractors assured expenses—including handsome salaries, retirement plans, insurance, and other fringe benefits—and profit, are hardly in the same category as risk businesses which, unlike the IOU's, do not have a monopoly on a necessity for which demand is unparalleled.

My interest in the use of the restricted stock option by the IOU's was generated by queries to me from fellow stockholders and ratepayers of the Montana Power Co. They asked me why the company's dividends are moderate, when its rate of return is the most exorbitant of any major IOU in the country.

I shall use my own case to illustrate the point they make. My 10 shares of stock in the Montana Power Co. have had a market value, in recent months, of approximately \$380, or \$38 per share. My last quarterly dividend check was \$2.80, or 28 cents per share. The \$11.20 annual dividend return on my stock is approximately 3 percent of its market value. But the company's rate of return is approximately 9 percent.

One of the principal reasons for the moderate dividend rate is the company's use of the restricted stock option, under which a few company officials have already made huge windfall profits. The Federal Power Commission staff has estimated that the ultimate cost of this no-risk subsidy for Montana Power Co. insiders—provided unknowingly by ordinary stockholders and ratepayers—will eventually be more than \$9 million.

As of 1961, 24 IOU's enjoyed the use of the restricted stock option. I have not, as yet, checked the use of the device by the other 23 companies. Possibly additional companies now are benefitting from such a plan. In this case, as in my 23 previous statements, all my facts and findings come from the public record. If a curious reporter chooses to brush aside the power company press releases, and if his publisher decides to shoo out the power company officials and jeopardize his advertising revenue by inquiring into this matter, a good starting point is the form 4 reports of power company insiders, available in the public reference room of the Securities and Exchange Commission, and the form 1 reports in the public reading room of the Federal Power Commission, along with the trade and financial publications.

A \$370,000 WINDFALL FOR COMPANY PRESIDENT

On October 5, 1959, the market price of Montana Power Co. stock was \$23.75. The president of the Montana Power Co. that day bought 30,000 shares of stock. He acquired 9,000 of those shares at an average price of \$11.241. He acquired the other 21,000 shares at an average price of \$11.4791.

The 30,000 shares thus cost him \$342,230.10.

Had he been required to pay what ordinary stockholders paid that day, the 30,000 shares would have cost him \$712,500.

The president of Montana Power Co. thus received a windfall profit of \$370,269.90.

On December 19, 1961, the market price of Montana Power Co. stock was \$38.75. The president's brother, who is the company attorney, a director and who at that time served as executive vice president, on that day bought 4,500 shares of stock. He paid \$21,296 per share, a total of \$95,832.

Had he been required to pay what ordinary stockholders paid that day, the 4,500 shares would have cost him \$174,375.

The company attorney thus received a windfall profit of \$78,543.

On December 3, 1963, the market price of Montana Power Co. stock was 37½. A consultant to and director of the company, who until November 1, 1963, served as senior vice president and counsel, that day bought 4,500 shares of stock. He

paid \$21,296 for 3,000 of the shares, \$23,275 for the remaining 1,500.

The 4,500 shares thus cost him \$98,800.50.

Had he been required to pay what ordinary stockholders paid that day, the 4,500 shares would have cost him \$167,062.50.

On July 2, 1957, he bought 150 shares, on October 2, 1958, he bought 450 shares and on June 16, 1959, he bought 500 shares, all at \$33.725. This was prior to the company's 3-for-1 stock split of July 27, 1959. The spiraling market price during this period was \$46.25 on July 2, 1957, \$60.25 on October 2, 1958, and \$73 on June 16, 1959. These three purchases cost him \$37,097.50. They would have cost an ordinary stockholder \$70,550.

His windfall on the five transactions reported here was thus \$101,714.50.

These three officials obtained the windfall profit of more than half a million dollars through exercise of restricted stock options, under which company insiders are permitted to purchase stock at a percentage of its market price when the options were granted years ago. In some cases, company officials paid less than 30 percent of the market value of the stock.

Ordinary stockholders of course must pay the market price. In addition they must pay a brokerage fee. It amounts to about 6 percent of small purchases, with reduced fees for larger transactions. Insiders do not have to pay a brokerage fee.

FAVORABLE TAX TREATMENT

No tax is imposed on these stock option windfalls when the option is exercised. The profits are subject to tax if and when the stock is sold, but at the long-term capital gains rate, which would not be greater than 25 percent and might be considerably less than 25 percent.

The company official pays no income tax on those shares which he gives away.

He can also in many cases deduct the market value of the gift from his personal gross income.

The president of the Montana Power Co., during the past 6 months, has given away 1,954 shares, with a market value of approximately \$75,000, leaving him 36,189 shares with a market value of approximately \$1,375,000.

The vice president-treasurer of the Montana Power Co. purchased 100 shares of stock, at \$12.785 per share, on October 4, 1963, when the market price was 37½. He purchased 1,000 shares, at an average price of \$22.895, on January 3, 1964, when the market price was 38½. He paid \$24,173.50 for stock which would have cost the ordinary stockholder \$41,887.50. His windfall profit was thus \$17,714.

The secretary of the Montana Power Co., from 1960 to 1962, purchased 825 shares of stock, at a per share price ranging from \$11.875 to \$12.78, although the market price on the three occasions when he purchased the stock ranged from \$28.50 to \$33. The stock he acquired for \$10,068.37 would have cost the ordinary stockholder \$24,950. His windfall profit was thus \$14,881.62.

The vice president for sales of the Montana Power Co. paid \$11.40 per share for 200 shares of stock he acquired on September 13, 1961, when the market price of the stock was \$38.50. He paid \$11.40 per share for another 200 shares of stock which he bought on April 6, 1962, when the market price was \$40.75. The stock he acquired for \$4,560 would have cost the ordinary stockholder \$15,850. His windfall profit was thus \$11,290.

In similar insider transactions, in 1961 and 1963, the assistant treasurer of the Montana Power Co. purchased 1,500 shares of stock for \$25,370.50. He bought 500 shares on March 30, 1961, paying \$12.19 per share for 300 and \$12.78 for 200, when the market price was \$34.25. He bought 450 shares on October 2, 1961, at an average price of \$15.39, when the market price was \$41.50. He bought 550 shares on September 27, 1963, at an average price of \$22.24, when the market price was 38%. These shares would have cost an ordinary stockholder \$57,043.75. His windfall profit was thus \$31,673.25.

An assistant secretary of the Montana Power Co. purchased 810 shares on September 25, 1961, at an average price of \$12.81 per share. The market price that day was \$42. He paid \$10,376.10 for stock which would have cost the ordinary stockholder \$34,020. On March 27, 1963, he bought 300 shares, at \$21.85. The market price that day was \$38.75. His windfall profit on these two transactions was \$28,713.90.

Mr. President, it is impossible to include at this time the total gain through insider transactions by some of these officials, because of the insufficiency of information provided by them on their form 4 reports to the Securities and Exchange Commission.

Only officers and directors of the company are required to report their transactions. According to the Montana Power Co.'s 1963 form 1 report to the Federal Power Commission, 114 officers and employees of the Montana Power Co. are entitled to buy these cut rate shares of stock under the restricted stock option plan.

Up to 750,000 shares—approximately 10 percent of the total shares of Montana Power Co. stock—can be optioned to company insiders. On December 31, 1963, 479,132 shares had already been purchased, by insiders, via the stock option gimmick. The market value of that amount of stock is now approximately \$18 million.

Much of the stock, purchased under this plan, has already been sold or given away by the insiders, despite the company's statement to the Federal Power Commission, in its July 13, 1956, application for approval, that:

The primary purpose of the plan is not to obtain funds but to secure for the company and its stockholders the added incentive to efficient and progressive management of the company's affairs which is expected to flow from the plan and from the ownership of the company's securities by its officers and other key employees.

The company's restricted stock option plan was approved by company stockholders June 16, 1954, filed with the FPC July 19, 1956, approved without hearing

or dissent August 24, 1956. I would point out here that none of the present members of the Federal Power Commission were then members. And it is well known that the Republican administration then in power and the IOU's had, by that time, deemphasized Federal Power Commission surveillance over the electric light and power industry to the point that it was practically nonexistent.

Mr. President, it is also interesting to note, in the company's 1955 annual report, that during that year—prior to approval of the plan by FPC—"options on 37,925 shares were granted to 61 officers and employees, exercisable during or after 1957."

What is the effect of this issuance of cutrate stock to company insiders?

In the first place, it dilutes the equity of ordinary stockholders.

Second, it creates, to use the phrase of J. A. Livingston, financial editor of the Philadelphia Bulletin, a "tax-sheltered elite," who are eligible for "risk free capital gains."

Third, it reduces the company's capital, to the extent that the option price is less than the market price.

Fourth, it encourages company officials to forego rate reductions and reap ever greater profits, so the market value of the stock will increase, thereby in-

creasing their windfall profits when they exercise their options.

Thus, in summary, the ratepayers and ordinary stockholders are required to pay the fare for company insiders' ride on the gravy train.

How did this raid on the ratepayers and ordinary stockholders of Montana Power Co. come into being? The story is summarized in a fascinating footnote which appears in the Federal Power Commission's December 27, 1962, Memorandum Opinion and Order, in which the FPC denied use of the restricted stock option to the Black Hills Power & Light Co.—Docket No. E-7046. In a concurring opinion, former Commissioner Howard Morgan wrote:

In 1956, on the one and only previous occasion wherein it had an opportunity to consider this matter, and by an action that came close to nonfeasance, this Commission summarily approved the issuance of 300,000 shares of stock under a restricted stock option plan set up for the management of an electric utility. (Montana Power Co.) The authority for that issuance expired in June 1959. Nevertheless, as of December 31, 1961, that utility had issued options on 348,581 shares, and had increased the number subject to option to 750,000, or to 10 percent of its total common stock. Of these totals of optioned shares and shares subject to option, during the period 1957 (when the first options were exercised) to December 31, 1961, that company issued 148,171 optioned shares. The total amount it received therefor was

approximately \$1.9 million: its resulting loss of capital was approximately \$2 million (the difference between the price received for the 148,171 shares, and the annual mid-point price of company's stock during each year in which the options were exercised). I repeat, that \$2 million is the amount of capital loss and dilution of stock equity caused by issuance of only 148,171 optioned shares. There are more than 600,000 shares optioned or subject to option still to be issued. The question naturally arises: Has this company reduced its rates to consumers in the period since 1957, a period in which the electric industry claims that nationwide electric costs to consumers have been trending downward? The answer: No, it has not. On the contrary, it has increased them.

The capital loss and dilution of stock equity, which amounted to close to \$2 million after sale of 148,171 shares of cutrate stock, is of course much greater now, with the sale to insiders, at the end of last year, of 479,132 shares. The Federal Power Commission staff has estimated that the ultimate cost of the Montana Power Co.'s stock option plan, in capital forgone, will be \$9,074,483.

Mr. President, I ask unanimous consent to insert in the RECORD, at this point, the FPC staff study which shows the estimated ultimate cost of Montana Power Co.'s stock option plan.

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

MONTANA POWER CO.^{1 2}

Actual experience of a public utility issuing stock options—Capital forgone; annual earning requirements of excess shares; annual revenue requirements of excess shares—Estimated ultimate cost of stock option plan

Capital forgone by company	Annual earning requirements of excess shares	Annual revenue requirements of excess shares				
		Year	Common shares earnings	Revenue requirements	Excess shares	Annual revenue requirements
Shares authorized for option..... 750,000	68,175 shares (of 148,181 granted and exercised) or 46 percent were excess. Grant and exercise of 750,000 shares in terms of previous experience would yield 345,000 excess shares (750,000×46 percent=345,000). Estimated earnings for 1962=\$1.75 per share. Assuming plan is consummated and shares exercised by the end of 1969, annual earnings per share in 1970 are estimated to increase by approximately 48 cents per share (8×\$0.06=\$0.48) or to a level of \$2.23 per share. Estimated annual earning requirements— At \$1.75 per share (345,000×\$1.75)=\$603,750. At \$2.23 per share (345,000×\$2.23)=\$769,350.	1970.....	\$1.75	\$3.64	345,000	\$1,255,800
Shares granted and exercised (through 1961)... 148,181		1970.....	2.23	4.64	345,000	1,600,800
Shares remaining for grant and exercise..... 601,819						
Capital forgone (148,181 shares)..... \$1,792,473						
Average per share..... 12.10						
Estimated capital forgone (601,819 shares)= 601,819 shares×\$12.10 or..... \$7,282,010						
Capital forgone (148,181 shares)..... 1,792,473						
Estimated total capital forgone by company upon consummation of stock options plan..... 9,074,483						

¹ Adjusted for 3-for-1 stock split in 1959.

² Source: "Memorandum Opinion and Order Denying in Part the Increase of Common Stock," Federal Power Commission, Black Hills Power & Light Co., Docket

No. E-7046; "Standard Listed Stock Reports," Standard & Poor's Corp., Oct. 3, 1962, June 18, 1962, Apr. 12, 1960.

Mr. METCALF. Mr. President, attempts have been made to justify the restricted stock option on the basis that it is necessary to attract and retain good men in business.

Mr. President, on this point I ask unanimous consent to insert in the RECORD at this point the salaries of Montana Power Co. officers, which range up to \$75,000 a year for the company presi-

dent, and as reported by the company to the Federal Power Commission in its form 1 report for 1963.

There being no objection, the list was ordered to be printed in the RECORD.

Title (a)	Name of officer (b)	Principal business address (city and State) (c)	Salary for year (d)
President and general manager.....	J. E. Corette.....	Butte, Mont.....	\$75,000.00
Senior vice president and counsel.....	Sam B. Chase ¹	do.....	30,793.38
Vice president.....	Colin W. Raff.....	do.....	27,250.00
Do.....	George W. O'Connor.....	do.....	26,500.00
Vice president and treasurer.....	J. J. Harrington.....	do.....	25,750.00
Vice president.....	C. H. Kirk.....	do.....	26,250.00
Do.....	L. S. Stadler.....	do.....	26,750.00
Do.....	W. W. Talbott.....	do.....	17,625.00
Secretary and assistant treasurer.....	D. J. McCaig.....	do.....	17,625.00
Attorney.....	R. D. Corette.....	do.....	28,000.00

¹ Retired Nov. 1, 1963.

Mr. METCALF. The Montana Power Co. reported to the Securities and Exchange Commission, in its form 10-K report for the year 1962, that "it is impractical to supply detailed payments in connection with the respondent's retirement plan." However, the company did report that its president will be eligible to receive annual benefits amounting to \$37,695, if his benefits continue to accrue at the present rate and if he retires at the normal retirement age.

During the time that I served on the House Ways and Means Committee in 1959, Dean Erwin N. Griswold, of Harvard Law School, told us when he testified, that "shareholders rarely know much about the exercise of stock options, and in particular, they are given little direct

information as to the actual amount of benefit derived." The same statement could be made today. Congress but gently tugged at the loose reins on stock options when it passed the new tax law this year, although the administration recommended repeal of the restricted stock option provisions in their entirety. Furthermore, the minor modifications in the new law are of no help to the ordinary stockholders and ratepayers of the Montana Power Co., whose restricted stock option plan fits the definition offered to the Senate Finance Committee in 1961 by Vanderbilt University Law Prof. Herman L. Trautman—"a tool of abuse whereby a select few, in varying amounts determined by the controlling group, can and do substantially dilute

the equity of investors, who have taken their risks in after-tax dollars."

This abuse, Mr. President, is above and beyond the one concurred with by the utility analyst for Massachusetts Investors Trust, Frank Chutter, an independent utility consultant, Arnold Hirsch, and the National Rural Electric Cooperative Association—that Montana Power Co. has the most exorbitant rate of return of any major investor-owned utility—IOW—in the Nation.

Mr. President, I ask unanimous consent to insert in the RECORD the Federal Power Commission list of 24 electric utilities in the United States with restricted stock option plans in 1961.

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

Electric utilities in the United States with restricted stock option plans, 1961¹

State	Utility ²	Holding company ³	States in which utility furnishes service
Arkansas	1. Arkansas Power & Light Co.	Middle South Utilities, Inc.	Arkansas.
Massachusetts	2. Boston Gas Co.	Eastern Gas & Fuel Associates	Massachusetts.
Louisiana	3. Central Louisiana Electric Co.		Louisiana.
Kansas	4. Central Kansas Power Co. (The)	United Utilities, Inc.	Kansas.
Ohio	5. Cleveland Electric Illuminating Co.		Ohio.
Texas	6. Dallas Power & Light Co.	Texas Utilities Co.	Texas.
Vermont	7. Green Mountain Power Corp.		Vermont.
Missouri	8. Kansas City Power & Light Co.		Kansas, Missouri.
Kansas	9. Kansas Power & Light Co. (The)		Kansas.
Louisiana	10. Louisiana Power & Light Co.	Middle South Utilities, Inc.	Louisiana.
Mississippi	11. Mississippi Power & Light Co.	do.	Mississippi.
Missouri	12. Missouri Utilities Co.		Missouri.
Montana	13. Montana Power Co. (The)		Idaho, Montana, Wyoming.
Nevada	14. Nevada Power Co.		Nevada.
Louisiana	15. New Orleans Public Service, Inc.	Middle South Utilities, Inc.	Louisiana.
New Mexico	16. New Mexico Electric Service Co.		New Mexico.
Ohio	17. Ohio Edison Co.	Ohio Edison Co.	Ohio.
Pennsylvania	18. Pennsylvania Power Co.	do.	Pennsylvania.
Texas	19. Southwestern Public Service Co.		Kansas, Oklahoma, New Mexico, Texas.
Florida	20. Tampa Electric Co.		Florida.
Texas	21. Texas Electric Service Co.	Texas Utilities Co.	Texas.
Do	22. Texas Power & Light Co.	do.	Do.
Pennsylvania	23. United Gas Improvement Co. (The)		Pennsylvania.
Washington	24. Washington Water Power Co. (The)		Idaho, Montana, Washington.

¹ "Electric utilities" constitute A and B privately owned companies which numbered 224 in 1961.

² Companies which are controlled by a holding company have stock options in the holding company common stock.

³ Holding companies with A and B electric utilities as subsidiaries number 33.

Central and South West Corp. filed a restricted stock option plan with SEC in 1962 which was approved. The subsidiaries are Central Power & Light Co., Public Service Co. of Oklahoma, Southwest Electric Power Co., West Texas Utilities Co.

Source: Moody's Public Utility Manual, 1962; annual reports to stockholders: reports filed with SEC.

CIVIL RIGHTS ACT OF 1963—CLOTURE MOTION

Mr. GRUENING. Mr. President, some of us were very much disturbed—and I include myself in that number—by a statement of the majority leader, as reported in the press, that the Senate was likely to be in session all year in order to pass the civil rights bill.

Senators will recall that during the first session of this Congress we were held until just before Christmas for that very purpose. But we did not achieve it.

I should like to inquire of the majority whip how long it will be before voting will start.

Many Senators believe that the debate, which has continued for more than 8 weeks, has been rather comprehensive. Perhaps more discussion is needed, but it seems to me the time has come when the Senate should vote on some of the proposed amendments.

I should like to inquire of the majority whip as to when he believes that time will come.

Mr. HUMPHREY. Mr. President, will the Senator from Alaska yield?

Mr. GRUENING. I yield.

Mr. HUMPHREY. I believe it would be a good idea if the Senate were to begin to vote in about 5 minutes. Voting on the amendments should start at once.

Mr. GRUENING. I share the view of the Senator from Minnesota. Is there any reason why the Senate cannot start voting now?

Mr. HUMPHREY. Under the rules of the Senate, there happens to be the right of unlimited debate, until such time as limitation of debate under a cloture motion can be obtained.

I believe the Senator knows that up until now there has been a feeling there were not enough votes for cloture; but I am happy to tell the Senator that that situation is being quickly erased. The hour for cloture on the bill is fast approaching.

I hope that Senators who wish to see some action in the Senate will give us their support when we find it necessary to file the cloture motion.

Mr. GRUENING. I confess my disappointment that a year and a half ago when a group of us on the Democratic

side of the aisle sought to get some amendment to what we considered the administration's Telstar giveaway which turned our first venture into space to a private corporation specifically "organized for profit," with no provision for regulation which some of us felt desirable, we found ourselves gavelled down and clotured in a very short time. There was not adequate time for debate to bring out the evils of this measure. It was rather disappointing to us that some Senators who had been traditionally opposed to cloture, although present in the Capitol, absented themselves in order that cloture could be imposed upon us as a result of their absence.

I remember that on that occasion, my good friend the minority leader, the Senator from Illinois [Mr. DIRKSEN], pointed out after we had been clotured, that it was a long way between the Senate dining room and the Senate. It seems to me that even on an issue as important as this one before us now, which we have debated for over 2 months, we have debated nearly long enough and should now be voted on.

I am prepared, before long, to vote for cloture.

Mr. HUMPHREY. I thank the Senator. His comments are encouraging.

CHICAGO ASSOCIATION OF COMMERCE & INDUSTRY REJECTS U.S. CHAMBER OF COMMERCE ATTACK ON URBAN RENEWAL

Mr. DOUGLAS. Mr. President, the Chicago Association of Commerce & Industry, which is Chicago's metropolitan chamber of commerce, has openly opposed the stand taken by the U.S. Chamber of Commerce against local participation in federally assisted urban renewal and housing programs.

The statement issued by the Chicago association explaining its decision is a mature, responsible, and thoughtful discussion of the need for and the desirability of urban renewal and housing projects. It points out that aside from the essential humane and social needs for the restoration of our cities and the need for better housing, urban renewal pays off in dollars and cents. The association statement cites, for example, the fact that Chicago's redevelopment program already has added over a hundred million dollars in new assessed valuation and that tax yields from recent projects have more than doubled.

I congratulate the association on its characteristically progressive stand in this matter.

I ask unanimous consent to have printed in the RECORD the statement of the Chicago Association of Commerce & Industry regarding Federal participation in urban renewal, dated April 3, 1964, along with a letter which was sent to 45 local chambers throughout the country giving a summary statement concerning the charges made by the U.S. Chamber, together with the answers given by the Urban Renewal Administration, and also an editorial on this subject which was broadcast by WIND radio on April 7, 1964.

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

CHICAGO ASSOCIATION OF
COMMERCE & INDUSTRY,
Chicago, Ill., April 17, 1964.

DEAR FELLOW CHAMBER OF COMMERCE EXECUTIVE: The Chicago Association of Commerce & Industry, a metropolitan area chamber of commerce representing 6,000 leading business firms, has long been an active supporter of the Chamber of Commerce of the United States.

Sharing the common objective of strengthening the role of private enterprise, we usually concur with U.S. chamber policies. Regarding urban renewal responsibility, we agree with the long-range ideal of restoring to States and local communities this responsibility. At the same time, we feel that efforts must first be directed toward devising means of restoring to local governments financial resources for carrying out urgently needed programs of redevelopment and blight prevention, without interruption.

Our chamber has looked upon the U.S. Chamber's current position as unrealistic because it would curtail urban renewal—one of our Nation's most pressing problems—without coming up with practical alternative financing recommendations.

Many of our members also have been disturbed by the nature of public comments on the subject made by spokesmen of the U.S. Chamber in recent months.

It is believed that you will find the enclosed statement of interest. If you concur, you also may wish to express your feelings to the U.S. Chamber, so that their public statements might reflect correctly the actual thinking of local chambers of commerce.

Cordially,

H. HAYWARD HIRSCH.

STATEMENT BY THE CHICAGO ASSOCIATION OF COMMERCE & INDUSTRY REGARDING FEDERAL PARTICIPATION IN URBAN RENEWAL, APRIL 3, 1964

The Chicago Association of Commerce & Industry opposes at this time the stand taken by the Chamber of Commerce of the United States in urging action by member companies and associations to bring about the termination of Federal participation in urban renewal and public housing programs.

While agreeing with the long-range ideal of restoring to States and local communities responsibility for urban renewal, it is felt that such action is premature until means are devised for restoring to local governments the financial resources for carrying out urgent and continuing programs of redevelopment without disruption. The fact is that Federal invasion of the tax field has diminished local taxing sources to a point where continuation of Federal grants today are essential until such time as a major realignment of taxing powers is accomplished.

As the business voice of the Metropolitan Chicago area, the Chicago Association of Commerce & Industry recognizes a dual responsibility to the community: (1) For promoting commercial and industrial growth of the area, and (2) for helping create a better community for all who live and work in the area.

These are viewed as inseparable because what is good for business is good for the community, and what is good for the community is good for business. It is recognized that Chicago's problems are fundamentally the same as those facing virtually every one of our Nation's 212 metropolitan areas which today contain over two-thirds of America's population.

Since World War II, despite high levels of economic activity, no problem facing the American city has presented a greater challenge than neighborhood deterioration and encroachment of blight, directly or indirectly afflicting the vast majority of our citizenry. If unchecked, urban blight stifles the commercial and industrial vitality of communities. It impedes flow of private funds and expansion of free enterprise by depressing the optimism and confidence required for continued capital investment. It demoralizes civic pride of urban residents and creates breeding grounds for crime and juvenile delinquency. It compounds the staggering burden of increasing costs of municipal services while at the same time diminishing local government's financial resources by reducing assessed property valuations and the local tax base.

On the other hand, money spent on urban renewal is a proven catalyst which stimulates private enterprise and attracts further investment by private sector of the economy, contributing toward winning the war on poverty and increasing total employment. The largest percentage of the urban renewal dollar, public and private, goes into labor.

Chicago was a pioneering city which, through positive business and civic leadership working in harmony with Government, developed effective legislative tools and workable programs to arrest the ravages of urban decay. No one can question the dedication to the philosophy of free enterprise by Chicago's outstanding leaders of commerce,

industry, and finance; such as Remick McDowell, chairman of The Peoples Gas Light & Coke Co., and the late Holman D. Pettibone, long time director of the U.S. Chamber, former president of the Chicago Association of Commerce and Industry, and chairman of the board, College Title & Trust Co., who labored tirelessly to develop practical approaches toward solving the threat of neighborhood blight to America's accelerating urbanization. It was through their keen judgment, businesslike realism, and facing of facts rather than idealistic delusions, that there emerged workable, rather than theoretical, devices such as land clearance and community conservation laws which today are rejuvenating Chicago and over 600 other cities in America. Passing over sociological benefits and speaking from purely a dollars-and-cents standpoint, the mere economic value of urban redevelopment has justified itself many times over. In Chicago, for example, tax yields from recent projects have more than doubled. Chicago's redevelopment program already has added over \$100 million in new assessed valuation, broadening the tax base while improving living conditions and spurring economic growth.

Citing but one of many case studies, which have been duplicated in cities throughout the land, Chicago's Hyde Park-Kenwood community conservation program, the Nation's first such comprehensive plan of urban renewal, is costing \$36,700,000 in Federal and local public funds. This program, however, will result in a total private investment of nearly \$200 million by property owners and institutions in renovation of existing properties and new construction. A bleak picture of slum envelopment 10 years ago has been dramatically transformed through clearance of pockets of blight, redevelopment, and citizen participation in creating a wholesome environment that will preserve most of the private properties through remodeling and rehabilitation. A recent survey by Chicago Mortgage Bankers Association showed that sales prices of older homes in this neighborhood have risen an average of more than 25 percent in the past 6 years.

Had termination of Federal participation in urban renewal prevailed without provision for alternative methods of generating the "seed money" necessary to attract private investment, this striking success story never could have been achieved.

The Chicago Association of Commerce and Industry is not unmindful of the obligation of States and local governments for carrying their share of responsibility for financing urban renewal. It is hoped that local governments will eventually be able to assume full responsibility.

The Chicago Association of Commerce & Industry's position on urban renewal does favor:

- (a) Continuation of the present Federal sharing of local urban renewal costs at this time.
- (b) Such Federal grants only where these are part of a comprehensive urban renewal plan and of an overall plan for the city.
- (c) Plans which encourage private enterprise to invest in the redevelopment of cleared lands.
- (d) Plans which stimulate the entire community to upgrade living standards through private development and private financing.
- (e) Continued Federal provisions for low-rent housing for families displaced by public works projects, code enforcement, and other public actions.

SUMMARY

(Following is a summary of the major arguments of the Chamber of Commerce of the United States regarding urban renewal, followed by the Urban Renewal Administration's answers to these charges. While not constituting a part of the official statement by the Chicago Association of Commerce &

Industry, it is felt that the views of both URA and the U.S. Chamber should be considered.)

1. U.S. Chamber: Dollars are not being distributed in proportion to the number of substandard homes or in proportion to preponderance of lower family incomes. Arkansas and Mississippi are examples of low income, substandard States with low per capita Federal grants. A major portion of the Federal urban renewal dollars are being spent in areas where housing is relatively good and incomes are relatively high: poorer areas get the leftovers. For example, the chamber's position compares total grants to Connecticut and New Jersey with those extended to Utah and Wyoming.

Reply by Urban Renewal Administration: The fact is there is a striking correlation between the number of low-income families and the amount of urban renewal grants approved. For example, one-half (49.7 percent) of families with incomes below \$4,000 live in eight States. These States account for 46.2 percent of approved urban renewal grant reservations. Also, nearly half (48.9 percent) of the Nation's deficient urban housing units are in eight States. These States account for 54 percent of approved urban renewal reservations. (Allocations of public housing units also show a similar correlation.) The money has, in fact, gone where it is needed.

Citing Utah and Wyoming as States that have not shared in urban renewal is particularly misleading. These two States have not chosen to enact State enabling legislation permitting their cities to obtain urban renewal grants. That is their choice. If these States wish to pass such legislation, their cities will receive Federal assistance on the same basis as cities in other States.

Grants are made to communities that request them and can support the need for them. URA does not play favorites among States or communities. As long as funds are available, any community that applies for a grant and meets the requirements of local, State and Federal laws and regulations, will receive a grant.

These charges appear to be based on the premise that funds should be allocated on the basis of percentage of low-income families to the total within that State, rather than the number of low-income families. This would result in using more money to help fewer people. States with less population and urbanization often have a smaller number of such families than more densely populated States, even though the percentage ratio within the less populated State is higher.

2. U.S. Chamber: Local irresponsibility is actually encouraged. The less the people of each State use their own tax resources the more Federal dollars they get for urban renewal. For each \$10 decline in the State and local taxes raised per \$1,000 of income there is a rise of \$235 in Federal renewal and housing grants.

Reply: Each city must pay one-third (one-fourth for smaller towns) of the cost of a renewal project. It is the same for each city. Any variation between tax rates between cities is unrelated to the proportionate cost of urban renewal, and is the result of other differences in revenues and expenditures in the city's budget. Every community must also have a satisfactory workable program to qualify for urban renewal assistance. This is to assure that it is carrying out through its own resources the basic responsibilities of the locality in eliminating and preventing urban blight.

Some States, such as New York, New Jersey, Massachusetts, Pennsylvania, and Connecticut, appropriate State funds to help carry out urban renewal. These States, however, are among the most active users of the Federal program.

3. U.S. Chamber: If all cities had been allotted their share on the same basis as politi-

cally favored cities and towns, the cost of the programs would have been about \$109 billion, instead of the \$8.8 billion presently committed.

Reply: Grants are not made on the basis of "politically favored cities and towns." As stated under charge No. 1, every city that has requested grants and was eligible under Federal law and regulations has received grant allocations.

4. U.S. Chamber: The Federal Government's service charge for taking your tax money and then returning it for urban renewal and public housing was about 12 percent, or \$1 of every \$7.50 expended in subsidies.

Reply: Administrative costs for urban renewal are about seven-tenths of 1 percent of the total grant reservations and loan funds administered each year. If private investment in the redevelopment of these areas were to be included, the percentage would be much smaller. The charge of high Federal administrative costs apparently relates cost to actual disbursements which to date are only a fraction of the total funds committed and of the cost of the projects being administered. Such a comparison is misleading.

[WIND radio 560 editorial, Apr. 7, 1964.]

FEDERAL AID FOR URBAN RENEWAL

The Chicago Association of Commerce & Industry has opposed the stand of the Chamber of Commerce of the United States against Federal participation in urban renewal and public housing programs. WIND believes the Chicago association is on firm ground in supporting Federal aid. Our current need is too urgent to await some far-distant, long-range program which would restore responsibility for urban renewal to States and local communities. Business and people suffer if blight is allowed to grow unchecked. Civic pride is demoralized, breeding grounds for crime and juvenile delinquency are fostered. The cost of municipal services rise. Assessed property valuations are lowered along with the local tax base.

On the other hand, expenditures for urban renewal stimulate private enterprise and investment, which in turn help fight poverty and increase employment. We think the U.S. Chamber of Commerce should take a look at what's happened economically in Chicago as the result of urban renewal. Tax yields from recent projects have more than doubled that paid on old slum property on the same sites. Assessed valuation has been increased by over \$100 million, broadening the tax base while improving living conditions and spurring economic growth. In the Hyde Park-Kenwood conservation program, for example, some \$36 million was spent in Federal and local public funds. Nearly \$200 million additional will be spent by private property owners and institutions. If Federal funds had not been available, all this private investment never would have been made.

We think the city of Chicago, therefore, should make every effort to qualify for Federal urban renewal funds. This means that bond issues defeated 2 years ago would once again need to be submitted to the voters—and that they would have to be passed. This is part of a long-range 20-year plan for a new Chicago proposed by the community renewal program. The report said, in part, "It is the city's objective to bring about substantial changes in current trends and conditions so as to reduce future loss of white families while accommodating the growing nonwhite population under the fair-housing policy. With this objective in mind, the policy of the city is to plan for accommodating an ultimate population of about 3,750,000. Accomplishment of this objective will require a combination of public actions in both physical development

and social programs." Urban renewal is one of the most crucial problems now on our doorstep. If Federal funds are needed—and there seems no alternative—then let this city begin to qualify for them without further delay.

CIVIL RIGHTS ACT OF 1963

Mr. JAVITS. Mr. President, Senators are still trying to make up their minds on cloture. What has happened in New York could be an illuminating contrast as to how to seek to handle this racial situation with justice.

We have a problem in New York with respect to our schools which is caused in many cases by patterns of housing which are heavily populated by Negroes.

The State commissioner of education, Dr. James E. Allen, Jr., has come forth with a report prepared for him by an advisory committee on human relations and community tensions, composed of three distinguished New Yorkers, Dr. Kenneth B. Clark, professor of psychology at City College of New York—incidentally, himself a Negro; Dr. John H. Fischer, president of Teachers College of Columbia University; and Rabbi Judah Cahn of Metropolitan Synagogue.

The report points out that if New York City pursues its present course, as much as it is trying, it would take far too many years to arrive at the most racially balanced schools we can get, in view of the fact that a large proportion of pupils in New York City schools are Negroes or Puerto Ricans. So the advisory committee, appointed by the State education commissioner, has made recommendations of a far more comprehensive and enterprising character than any previously made.

From what can be determined, the city will probably adopt the recommendations and go ahead with them.

The significant point is that here is an open society in which these problems are put on the table, considered, and then acted upon. Parents, whether pro or con, can have their say in a perfectly open forum. We are doing our best to bring to the people a sense of justice in a situation in which the Government participates and in which different societies participate, which centuries of experience has found to be the best road toward domestic peace and tranquillity. Contrast this with a closed society, which we find in certain areas of the country, notably in the South, where there is resistance to the mandate of the Supreme Court on school desegregation, where compliance with the law proceeds at a snail's pace, and where we are sitting on an explosive keg of dynamite without any real outlet being given to it, except by demonstrations—with all that that implies for the country.

To Senators still hesitating, on this subject, I say, study these two examples as to what our country should be, and as to what—in certain parts of it—it is. Considered on that basis, I do not see how the answer can be refuted. But where the States fail to handle such problems themselves—there are not only States' rights but States' wrongs—we must find other effective ways to act.

The PRESIDING OFFICER. The time of the Senator from New York has expired.

Mr. JAVITS. Mr. President, I ask unanimous consent that I may proceed for 1 additional minute.

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

Mr. JAVITS. This will require Federal legislation. We have before us what I consider to be a minimal package of such legislation.

Mr. President, I ask unanimous consent to have printed in the RECORD excerpts from the report of the Advisory Committee to Commissioner Allen.

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

[From the New York Times, May 13, 1964]

EXCERPTS FROM REPORT ON SCHOOL
INTEGRATION IN CITY
FROM COMMITTEE LETTER

"The problems of desegregating and improving the schools of New York City can be dealt with only when they are seen against the broader objective of making and keeping New York City a community in which intelligent, discerning, and responsible parents will choose to raise their families. This cannot be done, however, without a number of changes in the schools, of which the first and most important is to provide first-rate teaching for every child in every section of the city.

"In addition, the need is urgent to expand and improve the supporting services that undergird and supplement the teacher's work. School plants must be built in larger numbers and more rapidly than in the past. Teaching materials must be improved and furnished more promptly and flexibly. As earlier studies have repeatedly pointed out, the administration of the New York City schools must be decentralized if initiative, originality, and imagination are to be encouraged on as wide a scale as is necessary to cope with the complex and varied tasks the schools face. Decentralization should not, however, become the means to erect regional barriers separating segments of the city. It should not, for example, be used as an excuse to keep children in one administrative unit from entering another if there are good educational and social reasons to warrant such transfers.

"The changes we have proposed do not in every case require additional funds, but many do and the additions will have to be substantial. If the New York City schools are to be as good as they must become, the average expenditure per pupil may have to be raised a third or more over present levels. In the absence of more realistic budgets, most of the good things the schools need will either be impossible or will have to be so meagerly done as to produce virtually no effect upon the city as a whole.

"The money problems of the New York City schools must be faced squarely and responsibly by city, State, and national leaders. Because New York City is so important to the entire country the national aspect of its problems must be viewed as in part a Federal responsibility. At issue here is far more than how to build a few schools or raise teachers' salaries another notch. The whole question of New York City's future as a place to live is now being answered.

"The challenge of finding the ways and means to finance the public schools properly must be accepted not only by the appropriate governmental officers but equally by those leaders of the business community and other segments of city life whose influence so often stimulates and ratifies the ma-

for decisions of government. It would be a disgraceful commentary on the values by which we live if the financial capital of the free world should find itself unable to marshal the talents, the money, and the foresight to underwrite the development of its own most precious and promising resources.

"Faithfully yours,

"JUDAH CAHN,

"KENNETH B. CLARK,

"JOHN H. FISCHER,

"Chairman."

SUMMARY OF REPORT

A. Findings:

1. Puerto Rican, Negro, and other students in public schools in New York City suffer extensive and serious ethnic segregation.

2. This segregation increased between 1958 and 1963, and will continue to increase over the next 10 to 15 years, unless deliberate policies are introduced to reduce current levels and prevent future increases in segregation.

3. The board of education has made efforts between 1954 and the present which were intended to reduce segregation. These efforts have had no measurable effect upon the overall number of students attending segregated schools or upon the number of segregated schools in the system.

4. Early in 1954, the board of education introduced new proposals intended to aid in desegregating the public schools. The new proposals, considered singly and in combination, would not reduce current levels of school segregation or prevent future increases.

5. Ethnic segregation cannot be wholly eliminated from the schools of New York City in the foreseeable future, but the adoption of wise and intelligent policies can reduce segregation substantially. The basic requirement is a deep and sustained commitment on the part of the board and its staff to the purpose of reducing segregation throughout the city at the earliest time and at the fastest possible rate.

6. The adopted building program of the board does not treat desegregation as a main factor in choosing sites, although this factor could be utilized.

7. Wise and intelligent policies to foster desegregation must include intensified efforts to raise the quality of school program and teaching in New York City schools to the highest level, which is to say, a degree of excellence second to none in the United States. The purposes of desegregation and increased excellence must be pursued simultaneously. They are absolutely interdependent.

8. The real accomplishment of both objectives is a complicated, costly, and difficult undertaking. It is far beyond what many advocates of change have seemed willing to recognize or acknowledge. Basic changes in the present organization of the school grades and the revision of construction programs are essential to desegregation and improvement, as are new concepts of recruitment, faculty involvement, curriculum design, pupil services, administrative operation, plant use, and interschool communication.

B. Recommendations:

1. Comprehensive 4-year high schools should be built at points well outside existing ethnic ghettos, to be attended by commuting youths from points all over the city as by local residents.

2. Fifth- through eighth-grade middle schools should replace junior high schools ultimately in the entire system. The purpose of these units should be to furnish improved instruction for older children. They should be so located as to provide for as many children as possible an experience in an integrated school. Shuttle buses should be used to reach these middle schools.

3. Primary units extending from prekindergarten classes through the fourth grade

should replace existing elementary schools. These units would still be neighborhood schools, but they would be organized differently and would feed into the middle schools. Many existing elementary schools could be reorganized to contain two or more primary units.

4. Educational complexes should be formed, consisting of from two to six primary units clustered around the middle schools. These should be managed by a single administrator, with assistant administrators in the separate unit buildings. The complexes should integrate educational activities, improve the distribution of facilities and resources, and promote communication between faculties, parents, and students from diverse ethnic backgrounds. Complexes should have a high degree of organizational autonomy over their programs.

5. Eventually, educational parks housed in newly developed structures on cleared sites should replace single middle schools with their educational complexes.

6. Facilities should be equalized in every way, so that mainly Puerto Rican and Negro schools in the city will not continue to be older, more overcrowded, and in greater need of installation of essential facilities than other schools.

7. The new organization of the system should be utilized to stabilize and improve the staffing of the schools. The middle schools and clustered primary units with their new autonomy should be used to attract and retain the best teachers and administrators.

8. Board programs to improve recruitment and advancement of minority group teachers and other personnel should be extended and intensified. As part of this training relations between the system and local teacher training institutions must be greatly strengthened.

9. Preprimary programs of instruction should be introduced on a citywide basis, serving children as young as 3 years.

10. Special schools and programs, particularly those for maladjusted and retarded students, should be studied independently and the findings should be made public. A stronger policy for retaining more such students in their regular schools should be pursued.

11. State and Federal support, fiscal and administrative, should be provided to the city to accomplish these necessary changes. This support should begin after the board of education has demonstrated its new initiative and commitment by taking some of the steps toward desegregation which do not involve additional municipal expenditures.

Our proposals do, we trust, make plain the fact the substantial forces must be reckoned with and redirected if desegregation is to be achieved. If these proposals are adopted and implemented we are confident they will effect some immediate desegregation. More importantly, they would help prevent an increase in the rate of segregation within the schools. To accomplish this, however, they would have to be introduced promptly, progressively, and in an ever more extensive network during the next 5 years.

AMALGAMATED CLOTHING WORKERS OF AMERICA—50TH ANNIVERSARY

Mr. JAVITS. Mr. President, on another subject, a fine editorial was published in the New York Times, on May 9, concerning the 50th anniversary of the Amalgamated Clothing Workers of America, of which we are very proud in New York.

I ask unanimous consent to have this editorial printed in the RECORD.

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

CIVIC-MINDED UNIONISM

In pleasant contrast to the still chaotic situation on the railroad labor front is the half-century record of responsibility in the men's clothing industry, which the Amalgamated Clothing Workers of America is celebrating as it opens its 50th anniversary convention here today. This union has consistently recognized that its members' welfare was inextricably bound up with the prosperity of the industry and with the betterment of the total community.

Under the leadership first of Sidney Hillman and now of Jacob S. Potosky, the Amalgamated pioneered in developing machinery for peaceful union-management relations. But it did much more. It was a trail blazer in establishing industry-financed pension and welfare programs, in building union medical centers and cooperative housing developments and in inducing its members to become active participants in campaigns for civil rights and social improvement.

Built by immigrants from Eastern Europe and Italy, the union is now welcoming into its ranks thousands of Negro and Puerto Rican newcomers to the clothing industry. The sweatshops of 1913 are gone; today the union that played a key role in abolishing them addresses itself to the no less challenging problems of the age of automation.

SUDETEN GERMAN DAY, 1964

Mr. HARTKE. Mr. President, I recently received a letter from Dr. Walter Becher, secretary general of the Sudetendeutscher Rat of Munich, the organization which is sponsor of Sudeten German Day, 1964, next Sunday, May 17, in Nuremberg. Dr. Becher's letter invited me to send a message to the assembly there, which is expected to number some 300,000 to 400,000 persons. His letter indicates the scope and meaning of this great gathering and notes its goal of cooperating within the framework of dedication to freedom which motivates the Sudeten Germans now living outside their homeland.

Mr. President, I ask unanimous consent to have printed in the RECORD the letter by Dr. Becher, and my response, which is being sent to him in German.

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

SUDETENDEUTSCHER RAT E. V.,
March 26, 1964.

HON. VANCE HARTKE,
U.S. Senator,
Senate Office Building,
Washington, D.C.

DEAR SENATOR HARTKE: I take the liberty to call your kind attention to the Sudeten German Day 1964 which will take place on Whitsuntide, May 17 and 18, 1964, in Nuremberg, West Germany. Three hundred thousand to 400,000 Sudeten Germans are going to take part in it. Principal speakers will be the president of the Sudeten German National Union, Federal Minister of Traffic, Dr. Ing. Hans-Christoph Seebohm, further the president of the Central Union of German Expellees and Refugees, members of the West German Bundestag, Dr. H. C. Wenzel Jaksch, who is a Sudeten German himself, the Bavarian Prime Minister Alfons Goppel, and other members of the Bonn Federal and the Bavarian State Governments.

The Sudeten German Day will take place under the motto: "Reconciliation, But No

Surrender." The Sudeten Germans, 3.5 million of whom had to leave forcibly their homeland in former Czechoslovakia in 1945 and 1946, will stress their dedication to a friendly cooperation with the Czech and Slovak peoples, their hope that the East European nations, such as the Czechs, Slovaks, Poles, Ukrainians, Balts, Hungarians, Rumanians, Soviet Zone Germans and East Germans and all others will once again enjoy full freedom and self-determination in their homelands. The Sudeten Germans will also reaffirm their dedication to the cooperation with all free nations and the United States of America.

It would be very kind of you and a great honor for us if you send a few words of message to our Sudeten German Day 1964.

With my best personal regards and every good wish.

Yours very sincerely,

DR. WALTER BECHER,
Secretary General.

U.S. SENATE,
COMMITTEE ON FINANCE,
May 13, 1964.

DR. WALTER BECHER,
Secretary General, Sudetendeutscher Rat
e. V. Germany.

DEAR DR. BECHER: As an American of German descent, I am happy to send greetings to the great assembly marking Sudeten German Day 1964 in the city of Nuremberg.

The memories of those who fled their homes in political conflict nearly two decades ago still hold longing and concern for their native soil. The convictions which separate them from those left behind cannot be discarded, for freedom as we embrace it is dear to us. But this does not prevent extending friendship, cooperation, and hope for freedom and self-determination, for wanting in the words of your slogan "Reconciliation, But No Surrender."

So I am proud to greet you as a citizen of the United States and Member of its Senate, as you rededicate yourselves to freedom and to cooperation with others for its greater extension. Please convey my best wishes to those assembled on Sudeten German Day.

Sincerely yours,

VANCE HARTKE,
U.S. Senator.

COLLEGE STUDENTS SUPPORT HARTKE EDUCATION BILL

Mr. HARTKE. Mr. President, I have noted previously the wide range of support for the Hartke college student assistance bill, S. 2490, among professional organizations concerned with higher education. But how about the reaction of students themselves?

Several college papers have published editorials on the subject, among them those of the students at Indiana University and Butler University. I have now received a clipping of a two-column editorial, accompanied by a cartoon, from the Daily Collegian of the University of Michigan.

The cartoon has reference to the self-help element whereby the student rather than his parents may take major responsibility for his education through work-study programs, loans, and scholarships. It shows a student in academic cap and rolled-up shirtsleeves, digging away with a shovel labeled "Hartke bill."

The editorial is titled, "Education Act Outstanding." It asserts that "the outstanding feature of this bill which places it above its predecessors, is that it offers

help where it is needed the most," and comments that the tax credit approach "gave too much unneeded help to upper-income brackets." It reflects the approval it is receiving on college campuses. Mr. President, I request unanimous consent that this editorial may be inserted in the RECORD.

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

EDUCATION ACT OUTSTANDING

The Higher Education Association Act (S. 2490), now before the U.S. Senate, is the best of the current rash of Federal aid to education bills which the Collegian has seen.

The bill, sponsored jointly by Senator VANCE HARTKE, Democrat, of Indiana, and Senator PAUL DOUGLAS, Democrat, of Illinois, has three main provisions: (1) a work-study program for students; (2) Federal guarantees to colleges and private companies that loans to students would be repaid; and (3) an expanded Federal scholarship program.

According to HARTKE, "The basic aim of the program is to insure that no capable student will be denied the opportunity for education beyond high school because of his or her parents' inability to meet the financial burden."

The outstanding feature of this bill which places it above its predecessors, is that it offers help where it is needed the most. Senator ABRAHAM RIBICOFF—Democrat, of Connecticut—plan for student tax cuts which was narrowly defeated last February, for example, gave too much unneeded help to upper-income brackets.

The only weakness of the bill is that as it now stands, it would not apply to students in trade or technical schools. However, HARTKE said this is something that may be changed before the bill gets out of the Senate Education Subcommittee.

The work-study program is the feature which appeals most.

Under the provision, the Government would provide funds to colleges to hire students for part-time work in jobs connected with their studies.

This would obviously be of benefit to students by providing both money and practical training.

Schools would benefit because instructors could be freed from many lesser jobs for more important work.

As HARTKE pointed out, what does it benefit a student to work as a store clerk or gas station attendant in relation to his preparation for a career in teaching or accounting?

The program could even have an effect on the unemployment problem. If more students were employed in academic jobs, there would be more openings available to non-students as gas station attendants and store clerks.

It is not a function of government to provide higher education on a silver platter, but it is a function of government to provide the opportunity for education to those who are willing to work. This is what the work-study program accomplishes.

Why not write to Michigan Senators PHILIP HART and PATRICK McNAMARA in favor of the bill?

Mr. KEATING. Mr. President—

The PRESIDING OFFICER (Mr. DODD in the chair). The Senator from New York.

ART COMES TO THE WORLD'S FAIR

Mr. KEATING. Mr. President, the magnificent world's fair is still growing and an important new addition to its many wonderful features will be the

"American Art Today" exhibit scheduled to open on June 15.

This exhibit devoted to contemporary American art works will supplement the many fair exhibits displaying the works of artists from other countries.

The Long Island Art Center, one of the great organizations devoted to enriching the cultural life of the State, is sponsoring the new exhibit. All those associated with this important undertaking deserve the highest commendation for their perseverance and dedication.

Mr. President, I am delighted to be able to call attention to this latest step in making the New York World's Fair the most successful ever.

PROBLEM OF DEFENSE CUTBACKS

Mr. KEATING. Mr. President, a serious problem is shaping up for workers in defense industries throughout the Nation including New York. The latest figures from the Defense Department, for instance, show that New York has gained a slightly larger percentage of defense dollars over the first three quarters of this fiscal year as compared with the last year, up from 8.9 to 9.2 percent. But dollarwise as the overall total of defense procurement is reduced, New York has so far received \$8 million less than in the previous year.

What this means is that despite the best competitive efforts of New York's topnotch firms, the defense picture is changing. The amount of money spent and the number of jobs created in such military industrial complexes as aircraft, missiles, electronics, and shipbuilding, are being reduced.

As a result these industries and communities which depend upon them for a livelihood, or at least for a high rate of economic growth, will have to take a new look at the economic situation and perhaps take a new approach, a regional point of view, to meet some of the resulting dislocations.

Mr. President, a series of articles by Leonard Baker which appeared in *Newsday* recently points to some of the problems of arms cutbacks and emphasizes the need for more effective planning to meet this challenge. These are excellent and perceptive articles and I ask unanimous consent to include them following my remarks in the *RECORD*.

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

[From *Newsday*, Apr. 20, 1964]

THE PRICE OF PEACE: ARMS CUTBACKS COULD ROCK ECONOMY

(By Leonard Baker)

WASHINGTON.—A defense contract is canceled, so the community's main plant lays off 500 workers.

A military base is closed and its men transferred, so the community loses the income that the base and its personnel produced.

These situations now are becoming almost commonplace, as a growing number of communities across the country, Long Island among them, are learning to their dismay. It is all part of the Nation's gradual cutback in defense spending, a program certain to intensify as long as there is no new heating up of the cold war. What that means eco-

nomically to the defense worker, his employer and his community is obvious. As Archibald S. Alexander of the Arms Control and Disarmament Agency warns, "It is a very real problem. If preparation is not made to take care of it, it could be very serious."

The figures prompting the concern are these: Since 1961 about 500 military installations have been closed. Many were small with just a few personnel, but some were of significant size. And still more closings are due, in line with President Johnson's promise to shut "every archaic military establishment." Already the number of planes, missiles and ships being purchased is going down. Next year the Government will buy 343 fewer planes, 24,269 fewer missiles and six fewer ships than it is buying this year. Funds for research and development for new weapons will drop \$300 million between 1964 and 1965.

It is the first time since the mid-1950's that defense spending has been cut. For the fiscal year 1964, spending for national defense is estimated at \$55.3 billion; that figure, in the President's trimmed-down \$97.9 billion budget, is expected to fall to \$54 billion for the fiscal year 1965. More cuts are seen for the future.

Roswell Gilpatric, former second in command at the Pentagon, estimates that "should there develop a continued easing of the level of East-West tension such as we have seen during the past year," the defense budget could be cut one-fourth by 1970. Johnson, rather than describing the cutbacks as "disarmament," attributes the reduction to economies that will "further strengthen our defense programs" while saving money.

Most of the cuts in defense spending will come in the aerospace industry (which does 94 percent of its business with the Pentagon) because of the shift from manned bombers to missiles. "You know an airplane is going to wear out and will have to be replaced," an official says, "but once a missile is in place, it stays there and doesn't wear out. You don't have to replace it." Representative CARL VINSON, Democrat, of Georgia, chairman of the House Armed Services Committee, explains it this way: "Simply stated, we are reaching a point in several areas, principally missiles, where we are coming up pretty close to our total needs. And we simply do not need to buy as many of the items as we did before." Another industry that can anticipate being hard hit is shipbuilding (whose companies do 61 percent of their work for the Pentagon), also because of the shift to missiles. And the aerospace and shipbuilding industries generate work for hundreds of subcontractors and suppliers across the Nation.

Defense industries currently employ about 3 million persons, but what is unknown is the rippling effect these workers have in the economy—how many other jobs in the service industries, in the neighborhood stores, in the professional fields are dependent upon the defense worker.

Seymour Melman, professor of industrial engineering at Columbia University and an authority on the economics involved in disarmament, estimates that 19 major defense firms in 6 States have laid off 67,000 workers since the beginning of 1963. Almost 7,000 of these layoffs occurred on Long Island, and most were Republic Aviation Corp. employees. "These layoffs," Melman says, "are the result of weakness in private and public planning to effect a smooth transition from defense to civilian activity."

A major task in meeting the problem is getting the public and Congress to accept the necessity for the cutbacks. When a contract is ended or a military base closed, the local community and its representatives in Congress usually rise up in their wrath to denounce the Pentagon for not giving the community its "fair share" of the defense dollar. A case in point is the an-

nounced closing last December of 33 military bases—7 in New York State involving 6,000 jobs. Representative SAMUEL S. STRATTON, Democrat, of New York, quickly denounced the closings, asking: "Why must proposed economies and changes in our defense program always seem to come at the expense of New York State?" Other Senators and Congressmen similarly complained. In the 1950's and early 1960's, officials concede, this approach often resulted in a base being kept open or a new contract being awarded, but no longer. "You could shift defense contracts around when you had an expanding defense budget, as we had then," an official says, "but not when you have a contracting budget, as we have now."

An obvious solution is to convert defense industries to civilian industries. "Competence for converting from a military to a civilian economy is a basic requirement for the economic and political security of the United States," Senator GEORGE MCGOVERN, Democrat, of South Dakota, said recently. MCGOVERN, who has made this problem a special interest of his, added that such conversion is easier talked about than accomplished. "Many people, including the defense manufacturers themselves," he said, "seriously doubt that these huge industrial plants can produce anything at all for the civilian market."

At Republic, which has laid off 6,298 workers since March 1963, John Stack, a vice president, said: "Naturally, a plant such as an aircraft plant is a plant that can only diversify about so much. By this I mean it is a plant that is suited for building vehicles." Republic, according to Stack, is "putting considerable effort" into finding new products for the commercial transportation field—short-haul aircraft, a monorail, hydrofoils, and the like.

Communities that have existed primarily on the basis of defense expenditures are beginning to worry, however. California has been the envy of the other 49 States because it receives 23 percent of all prime defense contracts, but Irvine H. Sprague, deputy director of the State's department of finance, says of defense contracts: "We do not think that this type of work is the long-range solution to the State's economic problems and we are looking elsewhere for our solutions."

On Long Island, Senator KENNETH B. KEATING, Republican, of New York, recently warned that "the doors of the Pentagon are getting narrower" and that many defense contractors were going to be left outside. Aware of the problem, Nassau County executive Nickerson has established a new department of county development, commerce, and industry. "One of its main purposes," Nickerson said, "is to induce business to come out here."

But mostly the communities, the industries, and the people are unprepared for what is coming. A Senate subcommittee, which studied the problem for several months last year, recently reported: "Very little industry or local planning was underway to handle the inevitable economic and manpower adjustments that would have to be made as defense outlays slackened or were altered in character."

[From *Newsday*, Apr. 1, 1964]

THE PRICE OF PEACE: PLANNING (AND HELP) SOFTEN THE BLOW

(By Leonard Baker)

WASHINGTON.—In 1961, when the 1,300 residents of the isolated community of Presque Isle, Maine, learned that the Snark missile base there was to be closed, they were confronted with the loss of their only industry, and, with it, \$5,500,000 a year in Federal funds.

But what could have been a story of despair and economic depression for the people of Presque Isle was transformed by

them into a story of triumph. Through the help of the Pentagon's Office of Economic Adjustment, the community acquired the missile base property and transformed it into an industrial park. Encouraged and helped somewhat by the Federal Government, Presque Isle then began a diligent search for private industry. It succeeded. Where once Presque Isle had 1 major industry—the Federal Government—it now has more than 30. The private payroll and the tax revenues are greater than when the missile base was there. According to James K. Keefe, industrial director for the community: "The economy of Presque Isle now and in the future is considerably brighter and sounder than it has ever been in the past."

Senator EDMUND S. MUSKIE, Democrat, of Maine, who watched over the Presque Isle situation and helped with the liaison between the local people and the Federal Government, explained the successful transformation from a defense-oriented to civilian economy this way: "The people of Presque Isle could have panicked; they could have wrung their hands in despair. They did neither. Calmly and intelligently, they considered the alternative, sought all possible assistance, and embarked upon a program designed to achieve a practical solution to their problem. * * * The Presque Isle story demonstrates what can be done when those faced with a problem have imagination, the willingness to work and perseverance."

Officials here concerned with the problem of the economic impact of a gradually reduced defense budget refer to the story of Presque Isle as the best example of a community facing and overcoming this problem. They cite two ingredients that made the story one of success. One was an early warning by the Government that the Snark base would be closed, and the other was local initiative.

Local initiative is the challenge of the local communities. As in the case of Presque Isle, it sometimes comes after the cutback. In California, which receives 23 percent of all prime defense contracts, an effort is being made to prepare for cutbacks before they come. An "economic forecast" for the next 15 to 20 years now is being drawn up to show the impact within the State of shifts or cutbacks in defense spending. A State law passed last year requires an annual report from the Governor on employment, what actions he has taken to increase employment, and his recommendations for future employment. A State assembly subcommittee is now studying means of adjusting to shifts in defense spending. "California must continue to broaden its economy," said Gov. Edmund G. Brown, "and we in no way are looking to an expanded defense effort as our solution. We do not believe this is the answer for any State."

On Long Island, which has been hit heavily by defense cutbacks, industrial and political leaders have formed the Nassau-Suffolk Development Council to exchange ideas. In Nassau, a new department of county development, commerce, and industry has been formed to attract new industry. And recently Senator KENNETH B. KEATING, Republican, of New York, suggested that Long Island form an economic commission "to think about the island's future, its special resources, its advantages and its drawbacks, and chart a domestic-aid plan for Long Island."

Some experts, such as Seymour Melman, professor of industrial engineering at Columbia University, believe that the Government must lead the planning for conversion to nondefense production. Melman urges, for example, that Federal money that otherwise would be spent on arms be diverted into such programs as urban renewal, road construction, and other public works. Defense workers who found themselves laid off would be

retrained for other employment. These measures, Melman feels, would cushion the economy against the effects of reduced arms spending while benefiting the Nation as a whole.

Senator GEORGE MCGOVERN, Democrat, of South Dakota, has suggested that the Federal Government take the initiative in pushing conversion. He has sponsored a bill calling for a national commission in the Commerce Department to give the transfer to a peacetime economy overall direction. The bill also calls on defense industries to begin the research and development that would eventually lead to the production of civilian products.

McGOVERN's bill, introduced last year, did not spark too much interest immediately, but interest has been picking up as President Johnson and Defense Secretary McNamara have made evident their intention to cut defense spending. The bill now has 12 co-sponsors in the Senate and 20 in the House.

Murray L. Weidenbaum of the Stanford Research Institute, who recently made a study for the Defense Department of the problem of converting a defense-oriented economy to a civilian-oriented one, says: "Our economy does not require defense spending for its continued growth and well-being." He adds, however, "A transition to a more peacetime economy will be successful only if we recognize and take proper account of the job involved in making a major change in the structure of American industry. If we could channel the same scientific and industrial skills to peacetime pursuits that are now devoted to military programs, we would make a most significant contribution to human welfare and progress."

NEW YORK CHAMBER OF COMMERCE REPORT ON PRESIDENTIAL INABILITY

Mr. KEATING. Mr. President, the New York Chamber of Commerce, at its regular meeting of April 16, 1964, adopted a report of its committee on law reform recommending constitutional amendments in the area of presidential inability. Its recommendations consist of an amalgam between a proposal offered by the chairman of the Subcommittee on Constitutional Amendments, Senator BAYH, and other Senators, which would permit the filling of a vacancy in the vice-presidency through presidential appointment and congressional confirmation and one offered by the late Senator Kefauver and myself, which would authorize Congress to establish disability procedures by ordinary legislation and make clear that in cases of disability, the Vice President shall succeed only to the powers and duties, but not the office, of the President.

The report of the chamber of commerce, based as it is upon intensive studies on this subject by the distinguished members of its law reform committee, is an important contribution to the work of those of us in Congress who have been pressing for measures to cure the constitutional silences on disability that stand as a source of potential mischief to the stability of our form of Government. I am personally gratified that the chamber's recommendations largely coincide with my own present view that the most fruitful path of approach lies in combining the best features of Senator BAYH's plan—Senate Joint Resolution 139—with the pro-

visions of the Kefauver-Keating resolution—Senate Joint Resolution 35—giving Congress legislative powers with regard to Presidential inability procedures. I know the chairman of the subcommittee, the junior Senator from Indiana [Mr. BAYH], has been trying to schedule further subcommittee consideration of this problem, and I am as anxious as he for us to thrash out minor differences of detail and reach common agreement on a solution that would be acceptable to the Congress and likely to receive ratification by the required number of States.

Mr. President, I ask unanimous consent that the report of the New York Chamber of Commerce be printed in the RECORD at this point.

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

PRESIDENTIAL INABILITY

The Constitution of the United States leaves unsolved one problem, the proper solution of which may be vital to the safety of our Republic. The problem is how the Presidential duties and powers are transferred in the event a President becomes incapable of carrying out the duties of his office, particularly in the case where he does not understand that he has become incapacitated. Although there has long been an awareness of this problem, and although it has brought forth a multitude of studies and proposed solutions, it is as yet unresolved. It came to the fore during the disability of President Garfield in 1881, and again in 1919 and 1920 during the illness of President Wilson. Most recently it arose during the illness of President Eisenhower. In each case the Vice President was faced with a dilemma. There was a need to exercise leadership, yet a fear of usurping Presidential powers or even the Office itself. These instances pointed out the need of a definite procedure and guideline by which the Vice President might assume the duties of the Presidency during the President's incapacity and thereafter relinquish such duties. It was also realized that there was a need to provide expressly that the Vice President, during any such disability of the President, would assume only the powers and duties of the Office of the President, and not the Office itself, thus perhaps permanently ousting the elected President.

The recent assassination of President Kennedy has again emphasized the importance of a Vice President's quickly and assuredly picking up the reins of Government as they fall from the hands of a faltering President. The urgency may be just as pressing in the case of a President's incapacity as in the case of death, but a Vice President and the Nation have no guidelines in such a case.

BASIC QUESTIONS UNDER THE PRESENT CONSTITUTIONAL PROVISION

The present constitutional provisions relating to succession to the Presidency are found in section 1 of article II which states: "In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President, and the Congress may by law provide for the case of removal, death, resignation or inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected."

The basic questions which the Constitution leaves unanswered are these:

1. Who, or what body, is to decide that a President is unable to discharge the powers and duties of his office?

2. What is the proper procedure for declaring that a President's inability has been terminated?

3. Does the Vice President assume the office of the Presidency in the event of Presidential inability, or does he become acting President, assuming only the powers and duties of the office?

4. Does the problem of succession in the case of disability require constitutional amendment, or can it be resolved by legislation?

SPECIAL AGREEMENTS

Recognizing the problem thus presented, President Eisenhower concluded a memorandum of understanding with Vice President Nixon as to the procedure to be followed in case the President should become incapacitated. Similarly, President Kennedy and Vice President Johnson entered into such an agreement. These agreements were to be effective, however, only during the terms of office of the parties concerned. In substance, these agreements provided that if possible, the President would inform the Vice President of any inability, and the latter would serve as Acting President for the duration of the inability. If the President were unable to communicate his disability, the Vice President, after such consultation as seemed appropriate, would decide the question and assume to serve as Acting President. In either case the President would decide when the disability had ended.

These agreements could serve as no more than an emergency device pending a permanent solution. Not only are these agreements temporary in nature, but they do not cover the case of a mentally ill President who insists that he is well.

PROPOSED SOLUTION

It is almost unanimously agreed that there is a need for a more permanent solution, but there are almost as many proposed solutions as there are people considering the matter. The Committee on Law Reform has studied these alternate proposals, and the New York Chamber of Commerce on January 11, 1961, adopted the first report of this committee. The report recommended that the provisions of the Constitution of the United States relating to the death, resignation, removal, or inability of the President, be amended to provide (1) that the Vice President, in case of inability of the President, shall succeed to the powers and duties of the office of the President, but not to the office itself; and (2) that the determination, commencement and termination of such Presidential inability be by such method as the Congress, by law, shall provide.

The recommendation of the Committee on Law Reform was preceded by, and partially based on, work in the same area by the bar association. Reports were published by the committee on Federal legislation of the Association of the Bar of the City of New York, the New York State Bar Association, and the American Bar Association. The recommendations of all three were in substance the same as the recommendations of the Committee on Law Reform.

In 1962 the American Bar Association reaffirmed its prior stand in support of such an amendment, and recommended interim legislation pending adoption of the proposed constitutional change. Later in 1962 the committee on Federal legislation of the Association of the Bar of the City of New York issued a report which took cognizance of the fact that its prior recommendation was consistent with the position of the American and New York State Bar Associations. It also reaffirmed its prior stand and again endorsed the recommended amendment.

More recently, on January 20 and 21, 1964, the American Bar Association convened the Conference on Presidential Inability and Succession. In addition to the many prominent lawyers who constituted the conference,

several Members of Congress participated in the discussion, including Senators KEATING, HRUSKA, and BAYH, the first two being members of the Senate Judiciary Committee, and the latter being chairman of the Subcommittee on Constitutional Amendments of that committee, and Representatives CELLER and WYMAN, the former being chairman of the Judiciary Committee of the House. The conference issued a report stating the general consensus of those attending. The American Bar Association, through a special committee, is now working toward the implementation of such consensus by a constitutional amendment.

The proposal is to amend the Constitution as follows:

"1. In the event of the inability of the President, the powers and duties, but not the office, shall devolve upon the Vice President or person next in line of succession for the duration of the inability of the President or until expiration of his term of office;

"2. The inability of the President may be established by declaration in writing of the President. In the event that the President does not make known his inability, it may be established by action of the Vice President or person next in line of succession with the concurrence of a majority of the Cabinet or by action of such other body as the Congress may by law provide;

"3. The ability of the President to resume the powers and duties of his office shall be established by his declaration in writing. In the event that the Vice President and a majority of the Cabinet or such other body as Congress may by law provide shall not concur in the declaration of the President, the continuing disability of the President may then be determined by the vote of two-thirds of the elected Members of each House of the Congress;

"4. In the event of the death, resignation or removal of the President, the Vice President or the person next in line of succession shall succeed to the office for the unexpired term; and

"5. When a vacancy occurs in the office of the Vice President the President shall nominate a person who, upon approval by a majority of the elected Members of Congress meeting in joint session, shall then become Vice President for the unexpired term.

This proposal varies from the prior recommendations of the bar associations and of the chamber of commerce. The major points on which it varies are:

1. It would put into the Constitution the procedure, subject to any express right of Congress to legislate in the area, for determining the incapacity of the President and the termination thereof, rather than leaving this wholly to be supplied by Congress in the form of legislation; and

2. It provides that when the office of Vice President falls vacant, it shall be filled by nomination of the President with the approval of Congress.

RECOMMENDATIONS OF THE COMMITTEE ON LAW REFORM

Except as to the provisions for filling a vacancy in the office of Vice President, this committee prefers its original proposal, which would leave entirely to Congress the procedure for determining a President's capacity and recovery. This would allow flexibility for any future changes and at the same time would provide enough protection from partisan politics, since any such legislation would need either the approval of the President or the vote of two-thirds of Congress to override a veto. The Committee on Law Reform does not consider this difference as vital, however, and it believes that this more recent proposal is acceptable. The fate of all proposed reform in the past has been that it faltered when its supporters disagreed on the form that the change should take. It is important that this proposal not meet the same fate.

As to the second change concerning filling a vacancy in the Vice Presidency, the committee agrees that this is desirable and endorses it fully. At a time such as the present, it is highly desirable to fill immediately the vacancy left when a Vice President dies or steps into the Presidency. The second highest office in the land should not be left vacant for any extended period of time.

In the opinion of the committee it is essential that there be a clearly defined procedure and line of succession in the case of the incapacity of a President. The committee also believes that a constitutional amendment is necessary in this regard so that the validity of the procedure may not be called into question at a time of crisis. The United States has been fortunate in the past, but in the present day of instant communication and constant tension we cannot afford a situation in which we would be without a Chief Executive. The committee urges that this matter be resolved with all due speed. The Committee on Law Reform therefore, as an acceptable alternative, supports the plan recommended by the American Bar Association. It is assumed that any ambiguity in the proposal will be corrected in its ultimate implementation, and the form of such implementation will make abundantly clear that the Vice President becomes President in case of death, removal, or resignation of the President.

The committee, therefore, recommends the adoption by the chamber of the following resolutions:

"Resolved, That the New York Chamber of Commerce recommends that the present provisions of the Constitution of the United States relating to the death, resignation, removal or inability of a President, be amended to provide:

"1. That the Vice President, in case of the inability of the President, shall succeed to the powers and duties of the Office of the President, but not to the Office itself;

"2. That any determination of the commencement and termination of such Presidential inability shall be as the Congress, by law, shall provide;

"3. When a vacancy occurs in the office of the Vice President the President shall nominate a person who, upon approval by a majority of the elected Members of Congress meeting in joint session, shall then become Vice President for the unexpired term;

"Further resolved, That the New York Chamber of Commerce recommends that as an alternative to the above proposal the Constitution of the United States be amended to effect in principle the proposals of the American Bar Association; and

"Further resolved, That interim legislation of the nature recommended by the American Bar Association in 1962 be enacted pending adoption of the proposed constitutional changes.

"Respectfully submitted,

Churchill Rodgers, Chairman; C. Jay Parkinson; H. I. Romnes; H. B. Farr, Jr.; Orison S. Marden; Arthur B. Langlie; Thomas C. Lawrence; Wilkie Bushby; Harold J. Gallagher; Whitney North Seymour; Committee on Law Reform."

GEORGE CHAMPION,
President,
New York Chamber of Commerce.

THE INTERNATIONAL JUNIOR CHAMBER OF COMMERCE

Mr. HUMPHREY. Mr. President, I shall take only a moment of the Senate's time. I have been informed that visiting in the Nation's Capital are some very fine and distinguished representatives of the International Junior Chamber of Commerce.

The Junior Chamber of Commerce of the United States is one of the outstanding organizations of young men in the field of business, professions, and civic life. It has become international in its activities and membership, which, to me, is one of the most reassuring developments for the free world that we can possibly have.

The visitors to the United States are from Brussels, Belgium. Belgium has been a faithful ally of the United States. It occupies an important role in matters of economic development and trade. The center of the Common Market is in Brussels.

We are very fortunate in having the representatives of Belgium, young businessmen and professional men, visit us in the United States, to study our governmental institutions and our economy, as well as our labor movement and our community life.

I take these few moments to pay my respects to the U.S. Junior Chamber of Commerce for its sponsorship of these activities and this development in connection with the International Junior Chamber of Commerce.

When we reach the age where we no longer qualify for membership in the Junior Chamber of Commerce, we can become Senators in the International Chamber of Commerce. I am fortunate to be one of those Senators in the International Chamber of Commerce, as well as a Senator of the United States, both of which I consider to be positions of honor and of great privilege.

HARTFORD'S CONSTITUTION PLAZA

Mr. RIBICOFF. Mr. President, one of the most successful and dramatic urban renewal projects in the country is Constitution Plaza in Hartford, Conn., the formal dedication of which took place on May 11.

Constitution Plaza is a complex of buildings, representing some \$50 million in new construction. It is already 90 percent occupied. It replaces what was once a slum area.

From an economic point of view, its impact is tremendous—more jobs, greater retail sales, an increase in tax revenue to the city as a result of assessments going up from \$2.3 million before clearance to \$26 million after development, are the dollars-and-cents benefits.

From an architectural point of view, the plaza has received international acclaim.

Among the guests at the dedication on May 11 was Administrator Robert C. Weaver, of the Housing and Home Finance Administration, and Mr. William L. Slayton, the Urban Renewal Commissioner. I think Mr. Weaver's statement will be of great interest to Members of the Senate.

I ask unanimous consent that the full text of his statement be inserted in the RECORD, together with an article appearing in the May 3 issue of the Sunday New York Times entitled "Old Traditions and New Skylines."

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

ADDRESS BY ROBERT C. WEAVER, ADMINISTRATOR, HOUSING AND HOME FINANCE AGENCY, AT LUNCHEON FOLLOWING FORMAL DEDICATION OF CONSTITUTION PLAZA, HARTFORD, CONN., MAY 11, 1964

As never before urban renewal is an issue of public discussion. This is as it should be. No generation should attempt to recast and rebuild its basic environment without careful consideration of the impact of its actions.

On the other hand, discussions of this vital matter must be cast in the frame of reference of the ingredients involved. Any and all such discussions, if they are to be meaningful, should start with consideration of what we want to renew. And that leads us to a definition of the role and function of a city.

As we look to the urban environment of today and envision trends of the future, a new concept of the city emerges. We can no longer think of an independent urban community, or even one that is just the focal point of a metropolitan area. Rather we must think in terms of urban communities that will function as one of the many nerve centers of a vast, complex, and delicately interconnected social organism. As President Johnson has stated, "For the problems of urbanization, this is a decade of decision."

Too often we hear references to the central city versus the suburbs, and too many of us accept as inevitable the continuing flight from the city and the decay of core areas. Already urban renewal has shown that this need not be. Where there are vital and attractive commercial and industrial redevelopments in the downtown, business, industry, and managerial functions are attracted back to the core cities. And such action is self-sustaining, occasioning greater concentration of similar activities.

Concurrently, as has been demonstrated in a score of cities, attractive townhouses and apartments in desirable settings in the central cities are attracting and holding middle-class American families. Since the passage of the Housing Act of 1961, there has been a new ingredient, the construction of moderate-income housing.

Both of these phenomena—the stabilization of commercial and industrial activity and the return and consolidation of some high-, medium-, and moderate-income families in American cities—demonstrate that people and business will come to, and remain in, the core areas when the latter are revitalized and made functional as well as attractive.

The central city and the metropolitan complex, of which it is a part, must have healthy economic bases if they are to survive and prosper. Such a base is fundamental to all aspects of urban life. It affords the source of employment for people, it attracts capital investment and expansion, it provides the economic *raison d'être* for a central city, at the same time that it affords a major source of tax revenues for the local governmental functions.

The central city, even in this era of suburban growth, has certain unique functions which it can and does perform. Just as many industries find economies and efficiency in horizontally oriented plants of the suburbs, so managerial functions are often best performed in the high-rise structures of the central city. At the same time, small industries, requiring group-supported services of varying types, responsive to changes in style, or dependent upon specialized professional talents, frequently flourish in a core area. Medical research, closely associated with university hospitals and nurtured

by a diverse population, is primarily a central city activity. And, of course, urban culture finds its greatest flowering in an environment which is typified by a large concentration of people and institutions.

Contrary to much that has been said recently, there is no dichotomy or conflict between nonresidential and residential urban redevelopment. In both instances slums are cleared and in both instances those families which are dislocated are, in the great majority of cases, relocated into decent, safe, and sanitary shelter. Today most of those displaced by all forms of urban renewal upgrade the quality of their shelter in the process.

The interrelation between nonresidential and residential redevelopment is dramatically revealed by the following data. In the nonresidential redevelopments, 13 percent of the land space, exclusive of streets and public areas, is utilized for public and institutional uses, and 26 percent is devoted to residential building. The important consideration, however, is that the healthy, vibrant, and vital city of tomorrow must have places of employment, cultural centers, efficient modes of transportation, a sound tax base, adequate public services, and attractive and diversified housing. Urban renewal, as it matures and profits from experience, is making a major contribution to these objectives.

Those who criticize overemphasis upon nonresidential redevelopment have the germ of a sound position. Although many of them are recent recruits to concern for people, such a concern is valid. It becomes less impressive, however, when it ignores the fact that working people have a hollow success when there is concern for their shelter but no interest in their ability to pay for what may be provided. Nonresidential redevelopment provides a part of this necessary purchasing power. It is, therefore, as both Democrats and Republicans in the Congress have recognized, an indispensable element in an effective urban renewal program. But I would be the first to object if the urban renewal effort were to become primarily or exclusively a nonresidential activity. Consequently, when in the hearings before the Housing Subcommittee of the Senate Banking and Currency Committee on the housing and community development bill of 1964, I stated that urban renewal must remain primarily a program for residential redevelopment.

Urban renewal, as most federally assisted programs, is a joint effort. Although most of the funds involved come from the Federal Government, it is an activity which always involves local initiative planning, and execution. In those States, such as Connecticut, Massachusetts, New York, and Pennsylvania, where the State government is ready and willing to contribute to the effort, urban renewal involves the Federal, State, and local government. This is as it should be, and I hope it will become increasingly typical.

This State has recognized its responsibilities, and it is realizing its potentialities. Thus in the May 3, 1964, issue of the Sunday New York Times, devoted to "The Connecticut Way of Life," there is an article entitled, "Old Traditions and New Skylines." The subtitle reads, "Connecticut's Cities Build for the Future With \$340 Million for Urban Renewal." The article says:

"The earlier years of urban renewal planning are beginning to pay off in Connecticut. As old skylines come down and new ones take their places, families are moving into better homes, businesses are rebuilt, new jobs created, playgrounds put in, new industrial sites occupied and tax bases strengthened.

"In Hartford, the opening of the de luxe Hotel America, complete with convention facilities, swimming pool and top restaurant, effectively completes the city's already famous Constitution Plaza. This gigantic renewal project, begun in the mid-fifties, has

completely transformed the center of Connecticut's capital city, and established itself as a model of public and private cooperation."

The evidence to support that statement stands before us today. Connecticut has not only availed itself of the Federal aids under the urban renewal program, but it has acted to maximize the benefit possible therefrom. Quoting again from the advertisement in the May 3 issue of the Sunday Times where it is noted that, since March 1963, the State has guaranteed some \$14 million in new and expanding industries:

"The Connecticut plan is, in short, so conceived as to give an impetus to industrial development without charging the community an exorbitant price for a few new jobs. At the same time, it provides industry with financing it needs to get started, without the threat of bringing the public debt back to roost on the ridgepole of the new industrial resident as soon as he is too well established to move away without disastrous consequences."

This leads us into another controversial issue: whether or not nonresidential renewal should be financed by loans or grants. There are two questions involved. The first is an issue of feasibility and the answer is far from categorical. There is some nonresidential redevelopment which could be paid out of future increased revenue; others could not. The second issue is more basic. It relates to the desirability of limiting nonresidential redevelopment to those undertakings which could be self-liquidating.

Clearly a program limited to the latter type of financing would be a severely restricted program. It would include fewer public, institutional, or cultural uses and concentrate only upon those things directly supporting business development. In addition, even in the commercially oriented projects, the amount of open space, the concern for esthetics, and the public uses would be markedly restricted.

To affirm that nonresidential renewal should invariably pay its own way through high tax yields is to ignore the essential relationship of these areas to the functioning of the rest of the city. These areas provide the jobs necessary to keep the city functioning, and the taxes necessary for an adequate level of public service in the low tax yield residential sections. At the same time, their capacity to flourish as dynamic mercantile centers depends on their ability to attract and to accommodate the urban population for a wide range of purposes—for cultural opportunity and entertainment, for the surge and stimulation of the manifold variety of urban living that such urban centers can afford, for the social and esthetic satisfactions that these centers can provide to the entire urban society.

Let us render unto business the things that belong to business. But let us remember in our redevelopment of these areas that they are more than business complexes. They are also the focal center of the entire community life that requires public investment for the services and amenities and the varied environment essential to a dynamic urban society. Our business areas did not decline for lack of wares on the merchant's shelves. They declined for lack of people and of space to grow, and from the inability of these areas to maintain the inviting environment and the increasing variety that attracts and satisfies the urban population today. This is the basic element that is missing and that must be restored. And it can only be done through the combined use of appropriate private and public resources.

I could choose no better place to illustrate what I mean than this exciting new central plaza that we dedicate here today. Constitution Plaza expresses better than anything we can say how much better we can plan and build for the whole community where

private and public resources and vision are joined in a common undertaking. It is a gleaming example of what the modern American city can and is achieving to recreate its urban center and to project its confidence in a dynamic future.

Those who know Hartford need only short memories to appreciate the transformation that has been wrought in this plaza area in less than a decade. We see here a rebirth of both business and civic beauty standing in place of spreading slums and urban decay compounded by recurrent flooding.

More important, Constitution Plaza represents a restoration of confidence and hope in the future of Hartford in place of despair and surrender. Only a few years ago business was fleeing the decay of the central city. Some of Hartford's most substantial firms just picked up and got out. There was no room to expand. Trade declined. Taxes and congestion increased. The population of the city was shrinking. Hartford was on the verge of losing its renown as the insurance capital of the Nation. The future of Connecticut's capital city appeared dismal.

The only resource for most of Hartford's great business institutions seemed to be to get out or go down. Then urban renewal got underway. It pointed to another way to go and that was up. A movement to rebuild and build anew for Hartford's future was launched.

I do not know what factors, other than desperation, induced Travelers Insurance Co. and other business leadership to stem and reverse this tide of blight. But this was a time when urban communities throughout the country were wrestling with inner city decay and when many of them were launching major efforts to combat it. It was a time when the Federal Government's urban renewal program was coming of age, and when Federal support extended the financial leverage to cities that private investment required to assure the future solvency of its own undertakings.

Hartford made full and responsible use of public resources, Federal, State, and local, to support and stimulate the effort of private capital to save itself. We see here today the eloquent testimony and the financially successful payoff of that kind of private and public cooperation.

It is symbolic, I think, that Phoenix Mutual, which had about given up hope of surviving in this dying city, joined with Travelers and other business concerns in the decision to remain and rebuild. It well fits this plaza that the name of Phoenix should be attached to one of its finest architectural adornments. This is indeed an area that has risen from slums and squalor to become an inspiring pacesetter for our urban future.

I also want to pay credit to the vision of all those who have played a role in the re-creation of Hartford's downtown area—and our Urban Renewal Commissioner, William Slayton, would particularly want to join me in this. The task was undertaken not as a short-run job to shore up the past for a temporary period, but as a farsighted task of replanning and reconstruction. You enlisted the services of some of the Nation's finest planners, designers, and architects to build into this new Hartford a standard of quality and inspiration that will affect not only the whole community but, by example, the communities of America.

To those who contend that rescuing the economic centers of our cities is merely a dollar-and-cents proposition, I would like to say, as President Kennedy said of Berlin, "come to Hartford." Public support has been an essential ingredient in the realization of this project, but it has not been the primary one. The protection of the area from flooding, the removal of the dead hand of slum and blighted structures, the provision of streets and other public facilities and public

service areas have all been indispensable to creating a new area with a new and lasting life.

But most of what has been done here has been through private investment generated and made effective by public support. The Federal renewal funds that have gone into the Constitution Plaza project total \$1,800,000. Measure that against nearly \$50 million in building construction alone, and against the rise in property assessments from \$2.3 to \$26 million after redevelopment. Measure that also against expanded business, large-scale increases in employment, and the stimulating benefits of an inviting, attractive city center for people's pleasure as well as their productive pursuits.

It is, I think, a very small price we are paying. It is true that the increased tax revenues should more than repay the city for its investment over the years and will, indeed, enable it to reinvest much of that return in bettering the whole community. That is what urban renewal is intended to do. But that is not the whole story. For the tax-producing wealth created here will also over the years repay the people of the Nation as a whole many times what they have invested to help this recently decaying city to live again and grow.

In my enthusiasm about Constitution Plaza, I do not want to leave the impression that because Hartford has done a fine job, it has done the whole job. Constitution Plaza and the renewal projects underway around it are only the genesis of meeting the renewal objectives of Hartford and the urban community around it.

As I said at the outset of my talk, re-establishment of the economic core of the urban area is important not for itself alone, but for its effect on the entire urban community. Regeneration of the business center of a city provides the employment, the income, and the tax base that is often essential to deal effectively with many broader problems.

The neglect and decay of our urban centers has been a large factor in driving wealth out of the central city and creating poverty within it. It has caused the well to do to flee to the outlying hinterlands and the lower income people and segregated minorities to be trapped in the deteriorating confines of the older city.

The renaissance of the downtown economy, however, can and must change this pattern. It creates a renewed demand and desire for in-town living. It affords employment opportunity and a need for the services of the lower income and working population. We can, with sound planning and assistance, restore the natural mix of economic levels, based on choice and need, without constraints of income, age, or race.

The ultimate success of Constitution Plaza and the surrounding renewal now going on, therefore, will not be measured solely by its ability to keep its buildings tenanted and to pay its way out. It is apparent that it can do that. It will depend even more on the benefits it extends to the entire urban area in higher living and educational standards and freer choice of housing and employment opportunity throughout the area.

The improvement of the housing and living standards of all the people in the total community is still the end-purpose of any city's urban renewal program. Hartford has under way or in planning renewal projects that begin to reach in the residential field. And it is undertaking a comprehensive communitywide renewal program. This is now its major challenge in translating what has been done into the full scope of what can be done in this community. I feel confident that the vision and enterprise reflected here in Constitution Plaza today will motivate your further and larger renewal progress.

What is happening here in Hartford, I am pleased to say, is now becoming not the exception, but the rule. The imaginative regeneration of our cities is taking visible and exciting form throughout this land—from Philadelphia and Providence to San Francisco, from Boston and New Haven to Pittsburgh and St. Louis, from Atlanta to Baltimore and Kansas City.

We have critics, and, as I said at the beginning, we should have criticism. The urban environment we are creating is for the benefit of the people and should, so far as possible, reflect their hopes and desires. But we also have some criticism from on high that never seems to get down to the Hartfords where things are being done. Such outer-space voices as the United States Chamber of Commerce, which has recently deplored this cooperative partnership of public and private enterprise, are rarely echoed, I find, in cities such as this, where chambers of commerce and business leaders have been prime movers in the renewal of our cities.

Urban renewal today is paying off. We are now getting the first dividends on our investment, such as Constitution Plaza, and in most cases, it is well worth the price.

Urban renewal can be bettered—and we intend that it shall be. But it must be continued. It is a basic part of our urban future.

OLD TRADITIONS AND NEW SKYLINES—CONNECTICUT'S CITIES BUILD FOR THE FUTURE WITH \$340 MILLION FOR URBAN RENEWAL

The earlier years of urban renewal planning are beginning to pay off in Connecticut. As old skylines come down and new ones take their places, families are moving into better homes, businesses are rebuilt, new jobs created, playgrounds put in, new industrial sites occupied and tax bases strengthened.

Specifically, look at the city of Bridgeport. With a gross project cost of \$20 million not including new construction, three urban renewals are underway with construction slated to commence before the end of the year on the west side No. 1 project.

Some of the new construction, estimated at \$35 million, has already begun in the Lafayette Plaza project, a downtown area adjoining the Connecticut Turnpike which will eventually refurbish the central business district with a major department store, offices, motor hotel, retail shops, apartments.

Contiguous to Lafayette Plaza is the new 11-story Bridgeport People's Savings Bank Building, already in progress. It is the first all-electric office building on the east coast, with electric heating and air conditioning installed by General Electric. It was designed by the firm of Fletcher-Thompson, the architects and engineers charged with planning and coordinating the entire Bridgeport redevelopment program.

As recently as March 16, the White House announced approval of a \$23.7 million renewal grant to the city of Stamford, thus giving the official go-ahead to a projected \$88 million program that will thoroughly revamp the "Research City's" downtown area. Sponsors will invest some \$55 million in such varied projects as 600,000 square feet of new retail floor space, 1200 high-rise apartment units, over 100 relocation housing units, and office and light industrial buildings. Within the 130 acre project area, new streets, parking facilities, flood control measures, pedestrian malls and utilities will be installed. The success of the program is an excellent example of cooperative action by citizens' groups such as the Stamford Chamber of Commerce, Citizens Action Council and the Stamford Good Government Association.

In Hartford, the opening of the de luxe new Hotel America, complete with convention facilities, swimming pool and top restaurant, effectively completes this city's already fa-

mous Constitution Plaza. This gigantic renewal project, begun in the mid-fifties, has completely transformed the center of Connecticut's capital city and established itself as a model of public and private cooperation.

Featuring two high-rise office buildings, one the new home office of the Connecticut Bank & Trust Co. and the other with Hartford National Bank & Trust as prime tenant, Constitution Plaza is, in effect, a new city unto itself. Hartford National Bank, in addition to its Constitution Plaza offices, is currently redeveloping its main offices a block away. A 26-story building will rise to headquarter the bank as soon as present demolition is completed.

The renewal program in the city of New Haven continues with magnitude and vigor. Currently, there are nine renewal projects in New Haven, covering over 2,000 acres and involving an aggregate net cost in excess of \$100 million. Private investment in new construction completed or underway totals more than \$88 million. The city's renewal efforts are diversified, including not only commercial and industrial construction, but residential construction and rehabilitation.

The city of Middletown has completed one redevelopment project, sold its second one for downtown business uses for which construction will soon start, and is moving toward further renewal work through the undertaking of a citywide study of renewal needs.

In Danbury, a 30-acre project oriented to the redevelopment of the central part of the city is now nearing completion. The redevelopment activities are providing substantial acreage within the city for commercial uses, as well as river channel improvements and new bridge construction.

All this is part of the nearly \$340 million renewal job being done in Connecticut. Milford is imaginatively redeveloping a large beach front section for residences, shopping center and municipal beach. East Hartford proposes its 122-acre South Meadows area for a shopping and business center. Meriden and New Britain are making use of urban renewal to strengthen their respective central business centers. New housing and industry are going in as well. Across the State to the east, Danielson is taking a look at its center through urban renewal. The Brass City, Waterbury, is undertaking three urban renewal projects. West Haven's once famous Savin Rock resort and amusement center will be redeveloped for recreational, commercial and residential uses.

These Connecticut communities and some 20 others indicate the commitment to urban renewal in Connecticut. Significant progress is shown, for example, in new construction, with well over \$100 million in buildings already completed or being built. Some 850 new housing units and 5,500,000 square feet of new commercial, industrial, and public floor space are being provided. New, and predominantly private, urban renewal construction is estimated to reach \$1 billion within 10 years. More than 6,000 families have been relocated from substandard housing. Renewal projects have been completed in Washington, East Granby, Farmington, Seymour, and Torrington.

That Connecticut's cities and towns are committed to rebuilding can be seen by noting that at the beginning of 1963 in only four other States were a greater number of urban renewal projects under way. At that same time, Connecticut stood fourth in the Nation in terms of amount of Federal urban renewal grant reservations, with over \$188 million reserved.

Connecticut's position in rebuilding its cities and towns is due in considerable measure to the strong support given urban renewal by the State government itself. Initiating a three-way partnership of local-State-Federal participation in renewal nearly 10 years ago, the State through its develop-

ment commission pays for approximately one-half of the local, municipal share of the cost of a renewal project. Authorized grants and advances now total over \$56 million. Twenty-six cities and towns have taken advantage of this assistance in 60 projects. Expanding interest in many other Connecticut communities make it clear that urban renewal is well on its way toward becoming part of the Connecticut way of life.

THE AMERICAN SUGARBEET INDUSTRY

Mr. MUNDT. Mr. President, it now appears that the Department of Agriculture and the Department of State are once again preparing to negotiate away prosperity and growth for another segment of American agriculture. I have previously called to the attention of the Senate the sad plight of the producers of bluegrass seed, and also of our cattle industry.

This time I am referring to the growing and prosperous beet sugar industry which has developed in the United States during the past few years. From information reaching me, I am alarmed when I learn that the Department of State and the Department of Agriculture are in the process of thinking of curbing the production growth of this great segment of our agriculture industry which is so vital to the economy of Midwest farmers who have at the urging of their Government gone into beet production with heavy investments in land preparation and equipment so as to meet the sugar needs of the United States.

With sugar legislation to be considered by the Congress in the next few months, many of us who are interested in sugar-beet production have been eagerly awaiting the administration position and their thinking with regard to sugarbeet production. I am alarmed over the future of the beet industry if what I hear is the true thinking of the administration.

It seems, from reports reaching me, that the current administration thinking calls for an increase in the basic beet sugar quota in 1964 by about 350,000 to 375,000 tons. I understand that this plan for the 1964 expanded beet sugar production is considered by the administration as being acceptable to the beet-sugar industry since it would be implementing the President's request for authority for unlimited marketing of domestically produced sugar this year and would be in line with the prorated 500,000-ton increase in domestic beet and mainland cane quotas this year which has been proposed in various legislative proposals now pending.

Such is not the case, however, for 1965 and later years; the current administration thinking—I should probably say Departments of State and Agriculture thinking—would only permit an increase in the basic beet sugar quota by about 500,000 tons. While this would permit the beet sugar industry to market much of the additional sugar it is producing at the Government's request to meet the continuing threat the world supply-demand situation is causing to U.S. sugar supplies and prices—it is still 250,000 tons a year short of the needed addition of 750,000 tons annually, as established by the beet sugar industry's

production projections and which has been recognized in the bills sponsored by Senators from beet-producing areas, myself included, as being the necessary minimum.

Mr. President, if the State Department and Agriculture Department thinking prevails it means that beginning in 1966, there will be heavy production cuts—reductions, if you please. In fact the estimate runs as much as 15- to 20-percent reduction in beet acreage. I say this because it appears to be the thinking of the executive departments that in 1966 the beet sugar industry should be held to its 1965 quota level and not permitted to share in the future growth or expansion of the U.S. sugar market. It is the executive department thinking—State and Agriculture—that all growth should go to foreign producers for an indefinite period. It is the old story of more imports to take away our American markets—we have heard that story so often on this very Senate floor in the past weeks with regard to meat imports, bluegrass seed, and other products.

If the administration thinking prevails for the beet sugar growers after 1966 it would deprive the U.S. beet sugar industry of its present share of total annual U.S. market growth—about 50 percent under existing law—for an unknown number of years and would turn over that growth to sugar interests of foreign countries.

This program would bring to a standstill the U.S. beet sugar industry. There would be no extension of sugarbeet production for new plants in new areas for an indefinite period. Such a freeze on domestic sugarbeet production is and it should be most unacceptable to the beet sugar industry.

Mr. President, at a time when unstable foreign conditions demanded a revision in our sugar production needs, the U.S. Sugar producers, at Government urgings, responded both supply- and price-wise so as to meet consumers' supply and price problems. World sugar production continues to lag behind world consumption. It is estimated that this year production will lag behind consumption by about 1,350,000 tons. World stocks, we are told, will be down at the end of the current world crop year—August 31—to a figure representing only about a month and a half of world needs.

In the face of these facts, Mr. President, the Department of State and the Department of Agriculture are giving thought to curtailing our American beet sugar acreage. They are giving thought to prohibiting American agriculture from contributing to the increase in the gross national product. These planners in the administration are once again selling out the American farmer who today must compete with society when his net income is at its lowest point since 1939—75 percent parity. This is the lowest point in 25 years, and an average loss to the farmer in parity rates of 10 percent, compared with the rates in the 8 Eisenhower years. The income will be driven lower if imports are expanded even more.

Mr. President, just yesterday I received in my office an excerpt of a speech by

Secretary of Agriculture Freeman in which he said:

There is no task of greater importance today than the elimination of poverty—particularly in rural America. In the Nation as a whole, one-fifth of our people live in poverty—but rural America with a third of our population is the dwelling place for half of those stricken with poverty.

These are the words of Secretary of Agriculture Freeman, who speaks against poverty on the one hand, but plans on the other hand to stultify, to prohibit, if you please, the American farmer who produces sugarbeets from expanding his profits and to share in this fight in the war on poverty instead of continuing to be a statistic for those who speak of the poverty stricken.

Mr. President, Secretary Freeman in the same speech said:

It is a disgrace to humanity when the richest and most powerful Nation in the world cannot find the way to make sure that every person gets a decent break and a fair chance to make good.

Mr. President, with the Secretary of Agriculture and the Secretary of State working against the sugarbeet producers, how do they "get the decent break for a fair chance to make good"? It is time for Mr. Freeman to act instead of talk, and to utilize the resources of the Department of Agriculture, which he administers, to fight for the farmers of America and insure for our American producers that we will have the right to the American markets instead of continually turning those markets over to foreign producers.

I sincerely hope that when the administration sends to Congress its views on sugar legislation that it will be recommendations increasing the opportunities for our American sugarbeet producers instead of curtailing our American opportunities and turning them over to foreign countries. Let us, in America, Mr. President, do as the Secretary of Agriculture says:

Make sure that every person gets a decent break and a fair chance to make good.

Let the administration expand the opportunities of our American sugarbeet industry instead of curtailing and shrinking them. Let us fight the war on rural poverty to which Mr. Freeman pays lip-service by offering opportunity for the American farmer so he can share in the expanding economy of which we hear so much.

Let me add, Mr. President, that if instead of protecting the needs and the future of the American sugar producer, the administration, in fact, sends to Congress recommendations which conform with the rumors we now hear and which turn our right to produce over to foreign countries, this Senator will certainly do his level best to defeat such recommendations or to amend them so that the American farmer is permitted to produce for the American market. In that effort, I am sure I shall have the support of many other Senators and Representatives in Congress.

Mr. HRUSKA subsequently said: Mr. President, I concur in the remarks made by my colleague from South Dakota

[Mr. MUNDT] on the contemplated revision of beet sugar quotas. He is to be commended for his forthright and clear statement of this very vital issue, and the potential damaging and highly dangerous threat involved.

As consumers, we all remember well the sugar crisis of 1963, which was caused by a shortage of foreign sugar. At that time, foreign interests failed to ship to the United States enough sugar to meet consumer needs at reasonable prices. The beet sugar industry responded to executive requests to produce to the hilt in 1963, 1964, and 1965. The result was a saving of millions of dollars for U.S. consumers.

Increases in production far above existing quota levels, as requested by the Government, give rise to the necessity of increasing the domestic beet sugar quota. Without such an increase farmers soon would be required to cut back acreage. Not only is an increase vital to the U.S. sugar consumer, it is vital to the Nebraska farmer who needs sugar beets as a cash crop and as an alternate or replacement for crops now in surplus production. Restrictions in production acreage would affect employment, not just on the farms, but in processing plants and related supplying industries as well.

It must be remembered that nearly one-third of the world sugar production is now under Communist control. Added to this are the continuing threats of political instability in some of the Latin American sugar-supplying nations.

An increase of the basic beet sugar quota would not disturb the quota for the State of Hawaii and the Commonwealth of Puerto Rico or the individual foreign country quotas. A 750,000-ton increase as proposed by S. 2657, introduced by Senator YOUNG, of North Dakota, and cosponsored by myself and other Senators, would still guarantee foreign countries about a third of the total U.S. sugar market of some 10 million tons.

I am disturbed to learn that the State Department and Department of Agriculture may be developing recommendations which would take away the present rights of domestic beet producers to share in the growth of the sugar market in our own country, as well as cut back from the level which the same administration has asked them to produce.

It is also disturbing to hear that the administration is considering giving away virtually all the remaining Cuba quota now in global form to the same countries who failed to ship us sugar that our consumers needed only last year.

This Senator understands that the administration's recommendation will be presented soon, perhaps within the next 2 weeks. It is earnestly hoped that if policies are in fact being developed along these unfair and unwise lines, the administration will reconsider and revise its recommendations before they are sent to the Congress.

The Senator from South Dakota can count on the support of this Senator in any efforts made to defeat any recom-

mendations which will bar American sugarbeet growers from participating in growth market of domestic sugar and which would require them to cut back in beet acreage.

DEL MAR COLLEGE OFFICIAL OUTLINES PLIGHT OF VETERANS OF COLD WAR WITHOUT EDUCATIONAL OPPORTUNITIES

Mr. YARBOROUGH. Mr. President, S. 5, the cold war GI bill, remains unmoved on the Senate Calendar while the 5 million veterans of the cold war are losing their opportunities in life by being denied equal educational opportunities because of the failure of Congress to extend the educational opportunities of the World War II and Korean war GI bills to the veterans of the cold war.

Mrs. Edith B. Trevino, coordinator of veterans' training at Del Mar College, Corpus Christi, Tex., who has been working with veterans for the past 16 years, has written to me under date of May 6, 1964, outlining the plight of the cold war veterans who are without the educational opportunities of a GI bill. This is a touching letter, because Mrs. Trevino herself is a war widow. I shall read several sentences from her letter.

Many of our young men who have been drafted and served their time continue to inquire about the cold war bill.

What are the possibilities of getting the cold war bill approved and extending time for eligible veterans? My main concern in regards to veterans goes back to World War II, when I became a war widow, June 22, 1944. Every veteran I have helped this past 16 years has been with sincere interest as they have, as I, given part of their life.

I am sure that many of our young men (cold war veterans) will not be able to receive an education without some help from the Veterans' Administration. I feel that I am in a position to say this, since I have talked to several hundred men who have made inquiry in this office concerning this matter.

Mrs. Trevino is coordinator of veterans' training at Del Mar College. She continues:

I feel approximately 90 percent of the young men I have interviewed will not be able to complete their educational program because they do not have the money and cannot count on assistance from home.

In view of this fact, I strongly urge you to continue pressing for the passage of this bill in every way possible.

This letter is typical of many that I receive from college presidents and deans; from coordinators of veterans' training; from placement bureaus; from every facet of our educational life that is concerned with the education of young men.

Mr. President, I ask unanimous consent that the entire letter may be printed at this point in the RECORD.

The PRESIDING OFFICER (Mr. RIBICOFF in the chair). Without objection, it is so ordered.

DEL MAR COLLEGE,
Corpus Christi, Tex., May 6, 1964.

Senator RALPH YARBOROUGH,
Senate Building,
Washington, D.C.

DEAR SENATOR YARBOROUGH: First may I congratulate you for your victory in this election for which I am sincerely happy. I

tried to listen to every speech you made, but my working schedule made this impossible. I wanted so much to talk to you or to your campaign manager while you were in Corpus Christi Saturday, in regard to the cold war GI bill.

I have been a secretary for GI school enrollments since 1948 and with Del Mar College Veterans' Office since 1952, which gives me a total of 16 years serving our veterans who have trained under Public Law 346, 16, 550, 894, 634, and 87-815. In the past 2 years, many World War II veterans have retired from the service and are starting school under Public Law 550. Many of this group will not be able to obtain a degree, or a trade due to the delimiting date of the bill, January 31, 1965. Also many of our young men who have been drafted and served their time, continue to inquire about the cold war bill.

I would like very much to have your viewpoint on this matter. What are the possibilities of getting the cold war bill approved and extending time for eligible veterans. I am not running out of a job here at Del Mar College, for I have duties other than the GI bill and have been assured that I can remain for as long as I wish. My main concern in regard to veterans goes back to World War II when I became a war widow June 22, 1944. Every veteran I have helped this past 16 years has been with sincere interest as they have, as I, given part of their life.

Senator YARBOROUGH, in many of your speeches you talked about education to better our country. I am sure that many of our young men (cold war veterans) will not be able to receive an education without some help from the Veterans' Administration. I feel that I am in a position to say this, since I have talked to several hundred men who have made inquiry in this office concerning this matter. I feel approximately 90 percent of the young men I have interviewed will not be able to complete their education or program because they do not have the money and cannot count on assistance from home.

In view of this fact, I strongly urge you to continue pressing for the passage of this bill in every way possible. I have faith in your ability to assist our veterans in this request.

Yours sincerely,

MRS. EDITH B. TREVINO.

PRESIDENT JOHNSON PUTS NEW LIFE INTO ALLIANCE FOR PROGRESS

Mr. YARBOROUGH. Mr. President, President Johnson's vigorous and clear reaffirmation that the Alliance for Progress will have full administration support and, his statement that there will be 100-percent increase in accomplishment in 1965 was both wise and timely.

With his address to Latin American ambassadors, the President has dispelled all possibility of doubt of this Nation's intent to fully support the Alliance. I congratulate President Lyndon B. Johnson for the vigor and breath of life that he has breathed into the Alliance for Progress.

Our participation in the Alliance for Progress is a struggle for the good of mankind today and in the future and at the same time it is a practical massive war on communism.

I ask unanimous consent that the story from page 1 of the New York Times, Tuesday, May 12, captioned "Johnson Assures Latins United States Seeks Full Democracy," and the text of the President's comments as reprinted in the Times for the same day, be printed at this point in the RECORD.

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

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

JOHNSON ASSURES LATIN UNITED STATES SEEKS FULL DEMOCRACY—STRESSES IN TALK TO ENVOYS THAT FREEDOM IS A GOAL OF ALLIANCE FOR PROGRESS—VOWS TO CONTINUE AID—JOINS SIGNING FOR \$40 MILLION MORE IN HELP—ROSTOW GETS MOSCOSO'S POST

(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 *chefs 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.

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 Cabinet 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 "takeoff" 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.

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

TEXT OF PRESIDENT'S COMMENTS TO LATIN AMERICAN AMBASSADORS

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." With-

in 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—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 Este. 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, or 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 country's and mine—will indicate the vision of those who set us on this path.

ABOLITION OF SMALL BUSINESS ADVISORY CENTER, SBA

Mr. McCLELLAN. Mr. President, earlier this year, several Senators, industries, and manufacturers who sought to submit bids on Federal procurement contracts, called to the attention of the Committee on Government Operations a proposal of the Small Business Administration to close the Advisory Service Center.

The complaints made to the committee were based upon the premise that this proposed action might have an adverse influence on Government procurement through the discouragement of competitive bidding by small industries, thus increasing the cost of goods, supplies, and materials required by the Government.

As far back as 1919, President Wilson, recognizing the need for such a service, directed that the Procurement Information Center be established and operated by the Department of the Army, in order to permit manufacturers to procure information with respect to invitations to bid on Army and Navy contracts, and to inspect bid results from the official bid tabulations covering these invitations. This service was carried on for many years in the Department of Defense, but was later transferred to the Small Business Administration, primarily to aid small business firms to obtain necessary information to permit them to submit bids on proposed procurement for which they might qualify.

In conformance with these requests submitted to the committee, the Administrator of Small Business and the Bureau of the Budget were requested, on January 23, 1964, to delay the proposed closing of the Advisory Service Center, scheduled for January 31, 1964, in order to permit the committee and its staff to develop all the facts. Pursuant to this request, the abolition of this service was postponed for 60 days.

In view of the interest expressed in support of the continuation of this service, both on the part of Senators and manufacturers interested in having the Center continued, the staff of the com-

mittee was directed to make a study of the entire situation, in order that the committee might determine what further action would be appropriate.

On February 3, 1964, the staff submitted a preliminary report to the committee in the form of Staff Memorandum No. 88-2-7, and, on March 23, 1964, submitted another report, in Staff Memorandum No. 88-2-15. Mr. President, I ask unanimous consent that these staff reports be incorporated at this point in the RECORD as a part of my remarks.

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

SENATE COMMITTEE ON GOVERNMENT OPERATIONS, February 3, 1964.

Staff memorandum No. 88-2-7.
Subject: Proposed abolition of Small Business Advisory Center.

Pursuant to the request of the chairman, the proposed closing of the Procurement Advisory Center of the Small Business Administration on January 31, 1964, has been postponed by the Administrator for 60 days to permit this committee to examine the public interest in this matter.

Staff memorandum No. 88-2-5, dated January 24, 1964, provides full details regarding this requested action.

The following communications relating to the proposed hearings have been received by the committee.

From Eugene P. Foley, Administrator, Small Business Administration, Washington, D.C.:

"Your letter of January 23, 1964, asks that we delay the closing, as an economy measure, of the Small Business Advisory Center in order to afford the Committee on Government Operations an opportunity to develop further information on the desirability of terminating this service.

"We are happy, of course, to accede to your desires in this matter. After discussions with representatives of the Bureau of the Budget, we have been asked and have agreed to continue the operation of the Service Center for 60 days so that your committee may examine the public interest in this matter.

"We are anxious to give you and the committee any assistance which may be required."

From Kermit Gordon, Director, Bureau of the Budget, Washington, D.C.:

"Mr. Broadbent has brought to my attention your letter of January 23, 1964, concerning the planned closing on January 31 of the Advisory Service Center of the Small Business Administration.

"Your letter pointed out that the Committee on Government Operations desires an opportunity to develop further facts in this matter, and advised us of your request that the Administrator delay the closing.

"I agree that this is an appropriate and desirable course of action. The Administrator has, accordingly, been asked to continue the operation of the Service Center for 60 days, in order to give your committee an opportunity to review all the facts.

"I appreciate your bringing this matter to our attention, and I am glad to be of assistance to you and the committee."

From Richard W. Webb, Director, Small Business Policy Office of the Assistant Secretary of Defense:

"Receipt is acknowledged of your letter of January 23 requesting that we consider your letter and inclosures addressed to Mr. Eugene P. Foley, Administrator, Small Business Administration, relating to the proposed closing of the Procurement Advisory Center, 811 Vermont Avenue, Washington, D.C.

"The procurement information currently being made available to the advisory center by the military departments and the Defense Supply Agency is of two types—(1) Notices of invitations to bid on prospective procurements and (2) abstract of bids of completed procurements.

"With respect to the invitations to bid the same information is either published daily in the Commerce Business Daily (copy attached) in accordance with Public Law 87-305, or each procurement installation puts this information on bid boards located in the office of the small business specialist at the issuing installation.

"To obtain personal, direct, and more prompt information with respect to forthcoming procurements, any business concern may make application to have its name included on the bidders' lists. This will assure the firm of receiving, by mail, invitations to bid on all supplies and services. Instructions on how to get on the bidders' lists are published in DOD booklets—one entitled "Selling to the Military" is enclosed. Therefore, it is our judgment that small business firms and others do not have to rely upon the procurement advisory center for information concerning forthcoming procurements.

"With respect to the abstracts of bids—this is a listing of all of the bids received and publicly opened with the bid price of each competitor listed opposite his name. This information is called out at the public opening of all bids at the procurement installation conducting the purchase. It is the practice of the Defense Department to later publish in the Commerce Business Daily the name, address, and contract price of the successful contractor in all unclassified contracts exceeding \$25,000 in value. The full abstracts of bids are available for inspection at the address of the contracting office. With respect to direct notice of the outcome of competitive purchases the Defense procurement policy provides:

"In the case of all unclassified formally advertised contracts, the purchasing office shall as a minimum, (1) notify unsuccessful bidders promptly of the fact that their bids were not accepted, and (2) extend the appreciation of the purchasing office for the interest the unsuccessful bidder has shown in submitting a bid. Notification to unsuccessful bidders may be either orally or in writing through the use of a form postal card or other appropriate means. Should additional information be requested, the purchasing office shall either provide the unsuccessful bidders with the name and address of the successful bidder, together with the contract price, or when workload does not permit, inform the inquirers as to the location where a copy of the abstract of bids is available for inspection." (ASPR 2-408.1.)

"Thus the bid prices—including abstracts of bids will continue to be available to bidders at the military procuring offices.

"In view of these circumstances we concur in the proposed action by Mr. Foley to close the advisory center as of January 31, 1964."

From Hon. J. GLENN BEALL, U.S. Senate:
"I have received complaints from Maryland businessmen regarding the proposed abolishment of the Advisory Service Center of the Small Business Administration.

"It is my understanding that this Center disseminates information regarding all invitations to bid of the Army, Navy, and Air Force. The abolition of this Center is allegedly justified by the President's economy drive. As much as I support the President in his economic campaign, I fail to see justification here. If this Center is abolished, it could well be a case of saving pennies today and losing dollars tomorrow. I request that the Government Operations Committee schedule hearings to determine the prudence of the Small Business Administration's decision to terminate the services of the Center.

Since this Center apparently has no legislative status and is merely an administrative creation of the Small Business Administration, I feel that it may be wise if the committee also considered giving legislative status to this Center.

"If the committee schedules hearings, I would appreciate having the opportunity to testify."

From Edward Meyers, president, Terminal Musical Supply, New York, N.Y.:

"It has come to our attention that the Small Business Administration has announced the closing of the Procurement Advisory Center in Washington, D.C.

"We have been greatly dismayed by this news since we have relied on our Washington representatives over the past years to provide us with copies of bid invitations of all Defense Department installations throughout the country.

"Our business income to a great extent depends upon supplying the Army and Air Force installations all over the world with musical instruments and supplies. Almost all Government invitations upon which we bid are below the \$10,000 limit and we would have no other source of supply for these invitations should the Procurement Advisory Center be closed.

"We are on the agency's bidders mailing list, but we find that for a small business such as we are, it is very difficult if not impossible to take the required steps to insure receipts of all invitations issued. It would also be impossible for us to receive complete bid results from remotely located agencies if this information were not made available to our representatives at the Procurement Advisory Center. These bid results are quite necessary to us if we are to bid intelligently against our competition.

"If we are to supply the Government with good quality musical equipment at low competitive prices, it is imperative that we have a source of information available to us at the Procurement Advisory Center in Washington.

"Any effort by your committee to vigorously oppose the closing of the Procurement Advisory Center would be appreciated."

WALTER L. REYNOLDS,
Chief Clerk and Staff Director.

SENATE COMMITTEE
ON GOVERNMENT OPERATIONS,
March 23, 1964.

Staff memorandum No. 88-2-15.

Subject: Closing of Advisory Service Center, Small Business Administration, and proposed hearings on Government competition with private industry.

ADVISORY SERVICE CENTER, SBA

Pursuant to recommendations of members of the committee, in executive session, January 21, 1964, and at the direction of the chairman, the staff has conducted a study into the need for continuation of the Advisory Service Center, Small Business Administration. Proposed action was postponed at the request of the chairman for 60 days after its scheduled closing, on January 31, 1964.

Following a preliminary staff study of the operations of the Center, and related services performed by the Departments of Commerce and Defense, a conference was held with representatives of these agencies, and of the Bureau of the Budget on March 5, 1964. The following is a report on these activities, with recommendations from the agencies involved:

EXECUTIVE OFFICE
OF THE PRESIDENT,
BUREAU OF THE BUDGET,
March 20, 1964.

DEAR MR. CHAIRMAN: Representatives of the Department of Defense, the Department of Commerce, the Small Business Administration, and the Bureau of the Budget met with the staff of your committee on the morning of March 5, 1964, to discuss the pro-

posed closing of the Small Business Administration Advisory Service Center. Mr. Walter Reynolds at that time requested that the Bureau of the Budget bring together reports from the agencies present at the meeting and send a summary report to you, together with any recommendations we might wish to make. This is the report that was requested.

The Department of Defense report incorporates the Department's January 29, 1964, letter to you in which it is pointed out that small business firms do not have to rely upon the Advisory Service Center for information concerning forthcoming procurements, and that the bid prices, including abstracts of bids, will continue to be available to bidders at the military procuring office, if the Center is closed. The Department's March 13, 1964, report also describes the program of procurement conferences and clinics whereby Department of Defense small business specialists, together with representatives of the Small Business Administration, and to some extent the Department of Commerce, meet with small firms to acquaint them with Defense purchasing procedures.

The report of the Small Business Administration emphasizes the limited scope of the procurement activity covered, generally the same military transactions covered by the Commerce Business Daily. It is also pointed out that personal visits to the center are confined almost exclusively to representatives of approximately 10 concerns who sell the information to the public through publications and sales representation. Requests for abstracts received by mail or personal visits have averaged less than five per week. The Small Business Administration describes the procurement assistance given to small businesses in the field through its 67 offices. In fiscal year 1963, the SBA furnished 20,522 prime contract opportunities, 3,761 subcontracting sources, and 56,992 cases of procurement counseling. The agency also participated in 246 opportunity meetings serving 10,000 small firms. The report states that in the opinion of the agency, the present operation cannot be efficiently performed with fewer than five to six employees and at a cost of less than \$50,000 to \$60,000 per year. This does not cover the cost of handling and mailing the documents from the procurement centers. The report from the Department of Commerce states that due to a lack of familiarity with the program, the Department is unable to comment on the matter of the center's benefits as against its cost.

The Bureau of the Budget has, over the years, been interested in the subject of competitive bidding on military procurement and the means by which competition can be broadened and the procurement process made more effective. We share the committee's concern over any actions which might significantly reduce competition or impair the military procurement program. We initially considered the closing of the Service Center in this light and have continued to do so in our review of correspondence which has been received from business firms and groups and the reports submitted herewith.

We have reached the following conclusions as a result of our review:

(a) The Advisory Service Center operation is a limited one both as to service to its users and its industry coverage.

(b) The Federal Government's sizable procurement assistance programs give businessmen around the country adequate access to procurement opportunities, bidders' lists, and invitations for bids. The Service Center does not add appreciably to the availability of information on invitations for bids, although about three-fourths of the paper volume involves such information.

(c) The present operation though limited in scope requires the handling of a sizable volume of paper and contact with the public, both of which cannot be handled by two or

three clerks alone. Supervision is required, as well as standby help, and some stenographic assistance.

(d) Bidders who are interested in obtaining more detailed information on the results of individual bids at a particular offering may have difficulty in obtaining such information.

We were impressed by the fact that not all users of the information understand the exact coverage of the information flowing into the Center. Some indicated in their letters that invitations to bid in excess of \$2,500 were available. Yet, the Center is only authorized to receive invitations to bid in excess of \$10,000 and abstracts of bids in excess of \$25,000. These limits are identical with those of the Commerce Business Daily. Further, within these limits, not all actions find their way to the Center. As to the industry coverage represented by the bid firms and publications, the statement has been made that 80,000 manufacturers benefit from the Center. Yet it is our understanding that a high proportion of these firms are in the construction and related trades. Construction is a respectable element of military procurement, but it is restricted to a relatively few military procurement offices. The Center's contribution to manufacturers of military goods is not nearly so extensive as it first appears.

A fair question is, "What would happen to the clients and beneficiaries of the Center if it were closed down?" We believe that a number of the firms visiting the Center would continue to serve a substantial part of their clientele. A bid firm which is one of the heaviest users of the Center has 80 field reporters at major procurement centers. The firm with the largest clientele, over 60,000, uses the Center to supplement the information compiled by its field reporters and as a double check on Government building projects. Thus, all of the firms are not relying solely on the Center for this information. It should be emphasized that a bid service's clients are not faced with the necessity of contacting innumerable procurement offices. Most manufacturers bid on certain classes of commodities which are purchased in quantity at a relatively few military procurement offices. There has been a very marked drive in the Department of Defense to concentrate procurement at particular centers and then to assist all businessmen in contacting such centers.

A major point made by the users of the Center is the availability of detailed abstracts of bids. Because these abstracts are frequently voluminous and are costly to reproduce and disseminate, procurement centers are required to make available one copy at the site for inspection by bidders. Another copy is mailed to the Service Center. If the average businessman seeking military business wants full information concerning each bid made in a particular offering he must obtain the information through local bid services, Western Union, or other agents, if he cannot inspect the abstract personally.

In view of the agency reports and our own examination of the Advisory Service Center, we find no justification for continuation of its functions, with the possible exception of those associated with abstracts of bids. We are therefore requesting the agencies to examine the practicability of reducing the scope of the Small Business Administration Advisory Service Center operation to the handling of abstracts of bids. At the same time, the agencies are being asked to explore alternative means of broadening the dissemination of abstracts of bids information and possible locations for such activity.

Sincerely,

KERMIT GORDON,
Director.

In view of the fact that these operating agencies have taken the position that (1) the continuation of the Advisory Service

Center is not essential, (2) the number of employees and the cost of providing this service cannot be materially reduced, and (3) the savings proposed are warranted in the public interest, resulting in savings estimated to total \$50,000 to \$75,000 per year (not including compilation and working of the information and the paperwork involved), the Chairman has indicated that no further committee action is contemplated at this time.

GOVERNMENT COMPETITION WITH PRIVATE ENTERPRISE

As outlined in staff memorandum No. 88-2-5, the staff was also directed to develop information relative to policies adopted and regulations which are now in effect in connection with Government programs which may be in competition with private industry. Pursuant to this directive, the staff requested the Bureau of the Budget to also inform the committee as to any actions already taken or to be initiated in conformity with the objectives of legislative proposals relating to Government competition with private business now pending before the committee, including all actions taken by the administration to eliminate Government services, activities, and operations now being carried on by the Federal Government which should be procured through private industry.

At the staff meeting held on March 5, 1964, the Bureau of the Budget agreed to submit a report relative to the present status of such policy, to review the programs which might be involved, and to take affirmative action to tighten up existing regulations in order to correct any existing abuses. Pursuant to this agreement, the following report has been submitted to the chairman, which is being forwarded to all members of the committee, and to other Senators and individuals who have expressed an interest in this matter, for their information:

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
March 23, 1964.

DEAR MR. CHAIRMAN: Mr. Reynolds has informed us of your committee's continuing interest in the efforts of the executive branch to avoid Government activities which compete unnecessarily with private enterprise. We are also familiar with the bills on this subject which have been referred to your committee and with the excellent background study and analysis which was prepared by the committee's staff and published last June as a committee print. In view of the committee's interest, I believe it may be useful to review our current plans related to this program.

For approximately 9 years, executive agencies have been directed in bulletins issued by the Bureau of the Budget to avoid activities which compete unnecessarily with private enterprise. The policy is stated in Budget Bulletin 60-2 and provides essentially that the Government will not engage in commercial or industrial types of activities to provide services or products for its own use if it is feasible and economical to rely upon private enterprise for its needs. Under this policy, the Government has curtailed, discontinued, or avoided starting many activities such as hospital laundries, paint factories, maintenance facilities, the Panama Ship Line, etc.

The Government relies primarily upon private enterprise to furnish most of its needs for commercial and industrial types of products and services, but exceptions are necessary in some instances. Our bulletin provides general guidelines for deciding when an exception is warranted but it is usually necessary to exercise judgment in evaluating many technical and cost factors which frequently are related to the agency's program responsibilities.

We are currently engaged in redrafting our Bulletin 60-2 because we believe some of

our guidelines can be improved and that our bulletin can be strengthened and clarified. We also hope to reissue the directive as a budget circular in order to establish the policies and procedures on a more permanent basis. However, no important changes are planned in the statement of the basic policy in Bulletin 60-2.

We shall inform your committee promptly of any significant developments in this area and will provide copies of any documents or directives which are issued on the subject. Sincerely,

ELMER B. STAATS,
Deputy Director.

Approved:

WALTER L. REYNOLDS,
Chief Clerk and Staff Director.
GLENN K. SHRIVER,
Professional Staff Member.

Mr. McCLELLAN. Mr. President, according to a recent report from the Small Business Administration, it has now been determined that present services afforded by the Advisory Service Center will be reduced, effective on the close of business on May 22, 1964. Beyond that date the service will be limited to providing bid abstract information only.

In view of the legislative situation which has developed in the Senate, the committee was not able to follow through on this matter as it would have under normal legislative conditions. The matter may be pursued, however, if complaints are renewed.

ADDRESSES BY ROBERT MOSES

Mr. PELL. Mr. President, many of us know Robert Moses; and all of us have heard of that brilliant, indefatigable energizer of projects that make the 20th century a more agreeable era in which to live.

I ask unanimous consent to have printed in the RECORD two speeches delivered by Mr. Moses—one, at a luncheon of the National Highway Users, on Friday, May 8; and another, at the opening of the 50th anniversary convention of the Amalgamated Clothing Workers of America, on May 9, 1964.

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

REMARKS OF ROBERT MOSES, CHAIRMAN OF THE TRIBOROUGH BRIDGE AND TUNNEL AUTHORITY, AT A LUNCHEON OF THE NATIONAL HIGHWAY USERS, AT THE INDONESIAN PAVILION RESTAURANT, WORLD'S FAIR, FLUSHING MEADOW, MAY 8, 1964

I gather that my role here is by a few words to pave the way for more detailed examination of arterial road problems in the motor age. At the risk of being charged with dogmatism and in the interest of brevity, I suggest that we attempt to agree on a few underlying facts and principles to serve as a basis for a realizable program. These seem to be the 10 underlying facts:

1. We live in an increasingly motorized civilization.
2. The car with internal combustion in its various manifestations is here to stay and must somehow be accommodated.
3. Manufacture of cars is one of our biggest industries and employers of labor. It must increase. It is indispensable. Its diminution would cause serious maladjustments in our economy.
4. Cars must have good roads to ride on, and the building of roads must catch up and keep pace with the output of cars. We have

not yet caught up. We are behind and shall keep losing ground unless we act fast. Congestion is here. Strangulation is not far off.

The number of motor vehicles now registered in the country, an estimate made by the U.S. Bureau of Public Roads, in round figures, is 69 million passenger cars and taxis and 13,500,000 trucks and buses. Production increases gradually at about the rate of 2½ percent a year. A larger proportion of cars is scrapped each year. The net result is a gradual increase in registration of about 2,000,000 a year. Total national registrations of passenger cars in 1970 will be about 83,500,000 as against less than 70 million today.

The top carmakers have at last waked up. Their lively exhibits at the New York World's Fair amply demonstrate alertness. The indifference and indeed hostility of the thirties and forties are gone. It is accepted doctrine now that a car without a road is as futile as a ship without an ocean or a plane without air and is kin to the proverbial reveler all dressed up but with no place to go.

5. The car owner and motorist is paying the bill directly or indirectly. He must be prepared to pay even more, but should be guaranteed against large diversions for other purposes. About \$3 billion a year has been going into the Federal highway aid trust funds. Increasing taxes to provide a 50-percent increase in Federal aid from 1964 to 1970 would be relatively simple. The main revenue flows from the tax on gasoline. If this tax were increased by 50 percent of the present rate, this would do. This increase in taxes would bring in some \$4.5 billion a year now which would be increased in 1970 by some 14 to 20 percent. The maximum might be over \$5 billion a year. Federal aid would be increased from the 1963 allocation of \$3.3 billion to \$4.5 billion.

6. Federal aid of 90 percent for main arteries of a regional, metropolitan, and continental character is fully justified. The 50-50 system should be made 70 and 30. This is indispensable to progress.

7. Public authorities financed by prudent investors are required for many bridges, tunnels, and thruways to supplement Government funds, expedite work, and avoid unimaginative, routine bureaucracy.

8. Commuter mass transportation by rail should be coordinated with highway as well as air and water transportation, but no good purpose is served by attempts to consolidate all transport agencies under one administrative head nationally or regionally. In recent years the railroads have not produced leaders with the ingenuity, courage, and pioneer spirit of their founders.

We must use the pragmatic approach to improved commuter rail service—perhaps by extension of the public authority device—at any rate, with complete frankness and cold arithmetic. If the railroads are to be further subsidized and supported, they must produce convincing proof of a new attitude. Meanwhile, the sideline pundits must abandon their demand for one big all-embracing elephantine transportation monopoly operated by as yet undiscovered geniuses.

If it can be demonstrated that the highway users should, as a matter of logic and enlightened self-interest, contribute out of their tax payments to help specific railroads in special cases. I believe that car drivers and owners can be persuaded to take a large view of the entire transportation problem and help such railroads in exceptional instances to help themselves. Such a broad viewpoint should not, however, be extended to justify all sorts of handouts or to attempt to encompass consolidated transport administration.

9. The monorail has its undeniable uses in special settings, but it is no panacea for conventional travel facilities. I am all for helicopters and hydrofoils, but they are adjuncts, auxiliaries, and incidental aids in the

big movements. Walking isn't bad either and swimming is the best exercise. Still you can't walk back and forth to work or use the six-beat crawl from beach to office. The turbine engine car may make travel cheaper and smoother, if not faster. It may prolong the life of the auto and perhaps revolutionize fuel usage and manufacture, but one thing is quite certain—it will not lessen the demand for good roads.

10. Pay no attention to slanted, irresponsible criticism. I refer you to a horrid picture book entitled "God's Own Junkyard" by Peter Blake, managing editor of the Luce Architectural Forum. By selecting the most ugly, grotesque pictures of land and city scapes, and skillfully avoiding evidences of devoted, intelligent, courageous, and successful planning, Mr. Blake proves to the satisfaction of a sour audience that our expressways, parkways, ribbon parks and landscapes are exclusively the result of unregulated private profit, that manmade America is an unrelieved mess, that the so-called esthetics and amenities have been entirely absent and that only the Blakes can save us.

Blake has not examined factual, honest pictures of progress. He has never visited pleasant scenes, even those near his office. He manifestly doesn't know the points of the metropolitan compass. He has never in my rather long experience offered a single constructive suggestion in any specific instance in the field of major arterial or other public improvements. Wholesale denunciation, smearing and scorn have never built, improved or saved anything yet. Something better is owed to those who love the rocks, rills, and templed hills of our beloved country, who all their lives have met opposition and made sacrifices to produce results that some miserable little scribbler and candid snapshot-taker claims do not exist. Based on these 10 findings, what must we do? It is simple enough to state. Implementation, however, is something else. The three levels of government, the public authorities, the press, the manufacturers, labor, and the engineering societies must impress upon the public the vital need of an expanded highway program which will insure prompt location of all major arteries, immediate acquisition of rights-of-way, forthright plans to move people and business in a humane, orderly, and systematic way, and as early a start on construction as increased appropriations will permit. The picture which presents itself at the moment is not pretty—slowdown in the Federal program, failure of many States to show initiative and courage, municipal indifference and obstruction, adding up to appalling waste through rising cost of land and building in the very bed of rights-of-way.

We need that vaunted, phantom shelf of genuine public works, not made work and boondoggling, ready when a recession, automation, and other temporary threats to full employment become menacing. The RFC and PWA of the thirties, including projects largely but not wholly self-liquidating, left durable facilities which are still in good order and use.

Roadwork must be planned in relation to housing, recreation, and business, but balanced, semipolitical boards to insure cooperation are like all boards—long, narrow, and wooden. Genuine leaders can find ways to work together without being shoveled into new administrative bureaucracies with fine sounding comprehensive objectives announced in the best Madison Avenue tradition, a wonder for the proverbial 9 days.

Why are these obvious realizable step-by-step objectives of metropolitan transportation improvements neglected in favor of grandiose administrative monstrosities? In 1949 the Long Island Railroad was forced into bankruptcy. In 1951 a commission of three, on which I served with the late Judges Robert P. Patterson and Charles C. Lock-

wood, recommended to Governor Dewey converting the Long Island Railroad, a local commuter, neglected orphan of the Pennsylvania system, into a genuine public authority. Instead, a sort of bastard standby apology for an authority was established to rehabilitate the road and in 1954 it went back to the Pennsylvania with noble stipulations, and a provision that tax exemption would run out in 1966.

Meanwhile, the basic proposal of consolidation of the Pennsylvania and New York Central systems, which would offer an opportunity to do something constructive about commuter as well as continental travel, has been the subject of hearings by examiners lasting 128 days, involving 36,000 pages of testimony, and molders in the Interstate Commerce Commission, one of those curious floating kidneys, neither court nor executive agency, which bedevils the metabolism of the body politic. The rail applicants seem incapable of either initiative or indignation and become picaresque mendicants walling up and down the streets for handouts and showing their sores and spavins at the entrances to public buildings.

Let me give you another illustration of obstacles piled up in front of public works: The Niagara improvement included power, parks, parkways, highways, railroad grade eliminations and just about everything else at the Niagara River and Gorge from Lake Erie to Lake Ontario. In August 1956, the Power Authority of New York applied to the Federal Power Commission for a Niagara license. The Commission held against it and refused even to consider the application on its merits. In June 1957, the U.S. Court of Appeals for the District of Columbia reversed the Commission and ordered it to consider the application. In August 1957, Congress passed legislation specifically directing the Commission to issue a license to the authority. The Commission refused to schedule hearings until the fall of 1957. Then it consumed 2 months in hearings, took 4,000 pages of testimony and spent 2 more months deliberating to reach a compromise, the apparent purpose of which was to placate obstructionists. The result was to add \$25 million to the cost of the project. In the fall of 1958 after the U.S. Court of Appeals ordered the Commission to make findings on the Tuscarora Indian Reservation aspects, it used up another 6 weeks in hearings, took another 2,000 pages of testimony and spent another month deliberating before making a 3-to-2 decision. Finally, in March 1960, the Supreme Court reversed the court of appeals in the Indian case and the Commission's findings became academic. The power authority at last was able to build the project.

Let me turn now to land acquisition for highways. Proper location of rights-of-way is almost never a complex question until prolonged packed hearings, fomented and stimulated opposition and pressure politics enter into the decision. Clearance of rights-of-way is always tough and gets worse with time. Obvious, logical routes become dubious because of understandably stubborn residents, encumbrances with friends in high places and astronomical costs. In such contexts compromises without principle and unhappy alternatives are resorted to by timid officials. These second-rate expedients show up later and become the targets of critics who know nothing of the original circumstances.

The Wrens and Baron Haussmanns, who stubbornly cut wide swaths through the accumulations of centuries in old cities, are few and far between. A stomach for fighting and thirst for martyrdoms are rare among bureaucrats, but fortunately still appear at critical times and in the oddest places. You can draw any kind of picture you like on a clean slate and indulge your every whim in the wilderness in laying out a New Delhi, Canberra, or Brazilia, but when you operate

in an overbuilt metropolis you have to hack your way with a meat ax. Do not fall for the cliché that fancy planners lay out entire communities on such clean slates. The framework, including arterial and transportation as well as topographical and water system, is very likely to come first. Industry and residence follow. It is the roadbuilder who usually determines what will come next. If he doesn't know what will flow over his stone stream and crop up beside it, he is a lousy roadbuilder and should be repairing holes in pavement.

Finally, traffic control, which is always in the end a police problem, should be handled by the police, work hours staggered, emphasis shifted from styling to safety, safety regulations drastically raised and amplified and something like status, reward and respect given to those who achieve measurable results.

Major roads are no incidental matter in planning. The road system fixes the pattern of the future. It touches life at all levels. It runs full till into taboos and prejudices. And so it becomes harder and harder to find men who can stand the gaff. How can complete honesty and candor be expected in an atmosphere of small politics, expediency and the unwritten law, where there is a conspiracy of silence on controversial questions, where "keep off the grass" and "don't stick your neck out" signs abound, and the unlit lamp and ungrit loin are standard equipment? The solution of the road problem lies with men, not with machines, methods, formulas, laws, trick financing, and magic.

Metropolitan and regional highway programs are bedeviled by real estate and commercial promotion campaigns, as well as legitimate engineering obstacles. Because whale-shaped Long Island runs out east into the Atlantic, with its head in New York and its fluked tail in New England, local boosters have conceived the idea of running a causeway 23 miles long across the Sound to Connecticut and Rhode Island. It would cost as much as over \$300 million of somebody's money at a time when every nickel in sight for 20 or 30 years ahead is required to finish projected main east and west and north and south arteries where the fast-growing year-round population demands action. Years hence perhaps, but not today.

There could not conceivably be enough Federal and State money to build the chimerical New England causeway, and no bankers or prudent investors in their right minds would visualize sufficient reliable traffic to make it attractive as an investment. On the basis of conservative guessing, it would take about 50 years to amortize this project. A car or truck driver on a wintry night halfway across this trestle, with Atlantic Ocean spray breaking over it and surrounded by mist, sleet, and gloom, would be just about the most lonesome creature in the known world. This would be a swell picture to offer a prudent investor in authority bonds. At any rate, the legislature has passed a bill to investigate this subject and see what it is all about.

Planners, professors, editors, and pundits advocate long-range, comprehensive and regional programs with all the parts boldly proclaimed and integrated, but they are usually silent when influential elected officials shy away from sensible projects which at the moment are politically embarrassing, and promise another look after election when the public can more safely be taken into their confidence. Builders with ants in their pants and the itch for action, who find this stultifying and even maddening, are admonished that this is the democratic process and little can be done about it. As in so many contexts today, the people ask for bread and they get a stone. They ask for action and get committees, reports, and oratory.

Our New York World's Fair, if it does nothing else, will demonstrate new ideas, processes, and materials and a welcome to youth and originality. The withered hand and the hollow sounding shell with the echoes of the past in it, these cannot any longer dominate roadbuilding and transportation, or any other modern building endeavor merely because they represent tradition and experience. As Browning said, "Greet the unseen with a cheer."

Immense, shattering changes are before us. The turbine or jet car engine is in the offing with revolutionary effects on design and fuel. Is it not a fact that in most major revolutionary power changes involving simplification and economy, the engineers often move cautiously by temporary intermediate steps to what is the obvious objective, for example, from propeller to propjet to jet instead of straight to jet? The auto manufacturers have immense investments, commitments, and sales campaigns underway. They naturally want to cushion the shock of invention.

Sounds engagingly simple, you will say. You will recall the yarn about the cockroaches who, tired of their contemptible place in the animal kingdom, appointed a committee to wait on the head lion who ran the great open spaces. The roaches complained of their miserable crawling life. "Why," said the lion, "don't you get yourself wings like the grasshoppers and fly through the air with the greatest of ease?" "That's all very well," said the cockroach leader, "but how do we get the wings?" The lion roared at them, "On your way, you silly insects. I gave you the idea. Now you work out the details."

The details, my friends, are for your subsequent attention.

REMARKS OF ROBERT MOSES, PRESIDENT OF THE NEW YORK WORLD'S FAIR 1964-65, AT THE OPENING OF THE 50TH ANNIVERSARY CONVENTION OF THE AMALGAMATED CLOTHING WORKERS OF AMERICA, AFL-CIO, SINGER BOWL, FLUSHING MEADOW, MAY 9, 1964

President Johnson, Mr. Potofsky, and friends, some of my most cherished recollections as a public official are rooted in working with the great needle trades on civic projects in which the unions have combined concern for their own members with a generous regard for others. This has been particularly true in the case of cooperative housing, the best hope of comfortable, attractive middle income shelter under other than exclusive public auspices.

I am sure Jack Potofsky will not resent it if on this occasion, and in the presence of so many of his members, I address him as an enlightened non-profit capitalist. The unions today are big business. They have their own management problems. They are among our leading pragmatists.

The fair welcomes the Amalgamated on the occasion of half a century of distinguished service and urges your members to spread themselves over Flushing Meadow to visit our pavilions, exhibits, shows and entertainments, foreign and domestic. We have attempted to assemble here the best the world has to offer in free competition, without the trappings of diplomacy. At this olympics of progress and achievement we devoutly hope that new friendships, based on our common humanity and need, will be formed and cemented, and that as a result peace will be brought nearer to a torn and troubled world.

The PRESIDING OFFICER. Is there further morning business? If not, morning business is closed.

CIVIL RIGHTS ACT OF 1963

The PRESIDING OFFICER. The Chair lays before the Senate the unfinished business.

The Senate resumed the consideration of the bill (H.R. 7152) to enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States to provide injunctive relief against discrimination in public accommodations, to authorize the Attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes.

The PRESIDING OFFICER. The question is on agreeing to the amendment (No. 577) proposed by the Senator from Louisiana [Mr. LONG] to the amendments (No. 513) proposed by the Senator from Georgia [Mr. TALMADGE], for himself and other Senators, relating to jury trials in criminal contempt cases.

Mr. ERVIN. 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. 219 Leg.]

Aiken	Hart	Moss
Allott	Hartke	Mundt
Bartlett	Hickenlooper	Muskie
Bayh	Holland	Nelson
Beall	Hruska	Neuberger
Bible	Humphrey	Pearson
Boggs	Inouye	Pell
Brewster	Jackson	Proxmire
Burdick	Javits	Ribicoff
Cannon	Johnston	Robertson
Carlson	Jordan, N.C.	Russell
Case	Jordan, Idaho	Saltonstall
Church	Keating	Scott
Clark	Kennedy	Smith
Cooper	Lausche	Sparkman
Cotton	McClellan	Symington
Curtis	McGee	Talmadge
Dirksen	McGovern	Walters
Dodd	McIntyre	Williams, N.J.
Dominick	McNamara	Williams, Del.
Douglas	Metcalf	Yarborough
Ellender	Miller	Young, N. Dak.
Ervin	Monroney	Young, Ohio
Fong	Morse	
Gruening	Morton	

The PRESIDING OFFICER. A quorum is present.

INVESTIGATION BY COMMITTEE ON RULES AND ADMINISTRATION OF ROBERT G. BAKER

Mr. WILLIAMS of Delaware. Mr. President, I ask unanimous consent that the rule of germaneness be waived, in order that I may proceed.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. WILLIAMS of Delaware. Mr. President, on October 10, 1963, I submitted Senate Resolution 212, the purpose of which was to authorize and direct the Senate Rules Committee to conduct an investigation into any type of questionable activities of any employee or former employee of the U.S. Senate. It was specifically understood and agreed at that time that the resolution as drafted was broad enough to include the necessary authority to investigate any such irregularities on the part of the Members or former Members of the U.S.

Senate as well as any of its other employees.

This resolution was specifically directed toward an investigation of the activities of Mr. Robert G. Baker; however, at that time it was recognized that other employees as well as Members of the Senate may likewise be involved.

After the investigation had proceeded for several weeks a question was raised as to the scope and authority of the Rules Committee under this resolution. A specific suggestion was made that the resolution was not broad enough to authorize an investigation involving activities of a Member of the U.S. Senate.

When this question was raised, Senator GORE, of Tennessee, and many others including myself went to the floor of the Senate and offered to broaden this resolution if it were considered necessary, since it was clearly our intention that there be no limit to the authority of the Rules Committee.

During the colloquy in the Senate on February 4, 1964, the majority leader, Senator MANSFIELD; the minority leader, Senator DIRKSEN; the chairman of the Senate Rules Committee, Senator JORDAN; as well as many other Members of the Senate all agreed that the resolution as drafted did include Members of the Senate. Based on the stated opinion of the majority and minority leaders and the chairman of the Senate Rules Committee that they accepted and interpreted the resolution in such a broad nature it was decided that no further authority was considered necessary.

Yesterday, however, the Senator from New Jersey [Mr. CASE], appeared before the Senate Rules Committee, and again this same question arose. This time the chief counsel of the Senate Rules Committee rendered an opinion that the resolution as originally introduced and presented to the Rules Committee did not contain any authority whereby the Rules Committee could, even if it wished, investigate alleged improper activities involving a Member of the U.S. Senate.

I cannot conceive of any such ruling or interpretation being made, especially in the light of the historical background of the interpretation of the resolution by the leaders of the Senate and by the chairman and other members of the Rules Committee itself.

However, I am not going to engage in any further argument as to who is right on the interpretation of the original resolution. I do know what my intentions were; and I know what the intent of the Senate was—that is a matter of public record.

But rather than debate this issue further, I am today submitting an amendment to the original resolution which unquestionably will lay to rest forevermore the question of the authority of this committee.

This amendment which I shall offer to the original resolution amends the first sentence of Senate Resolution 212 to read as follows:

Resolved, That the first sentence of Senate Resolution 212, 88th Congress, agreed to October 10, 1963, is amended to read as follows: "That the Committee on Rules and Administration or any duly authorized subcommittee

thereof is authorized and directed to make a study and investigation with respect to any financial or business interests or activities, or any illegal, immoral, or improper activities, including activities involving the giving or receiving of campaign funds under questionable circumstances, of any Member or former Member of the Senate, employee or former employee in the office of a Senator or former Senator, employee or former employee of a Senate committee or subcommittee thereof or of any joint committee the expenses of which are disbursed by the Senate Disbursing Office, officer or employee or former officer or employee of the Senate who receives or has received payment of salary through the Senate Disbursing Office, or any other officer or employee or former officer or employee of the Government who is employed or was formerly employed in either of the Senate office buildings or in the Senate Wing of the Capitol, for the purpose of ascertaining (1) whether any such interests or activities have involved conflicts of interest, or any other impropriety of any kind, and (2) whether additional laws, rules, or regulations are necessary or desirable for the purpose of prohibiting or restricting any such interests or activities."

SEC. 2. Senate Resolution 291, 88th Congress, agreed to February 10, 1964, as amended, is amended by striking out "May 31, 1964" and inserting in lieu thereof "September 1, 1964".

In addition to amending the first sentence of the original resolution I have added a new section extending the authority of the committee from May 1, 1964, to September 1, 1964. In light of the situation in which we find ourselves, this would be necessary.

Historically the Senate has never been reluctant to investigate all phases of questionable activities involving officials in the executive branch or involving persons in private life.

In this particular instance we are investigating grave questions of impropriety which involve the Senate of the United States itself. There have been questions in the minds of many people as to whether or not the Senate has the nerve or the integrity to carry through this investigation which involves our own house. We cannot afford to leave any doubt lingering in the minds of the American people on this question. We have no choice except to lay before the public every phase of any questionable practice of any description which involves any employee or former employee of the U.S. Senate—and by "employee" I mean to include the Members of the U.S. Senate itself as well as any member of our staffs or any of our committee staffs, et cetera.

I send this amendment to the resolution to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, the clerk will read—

Mr. ERVIN. Mr. President, I object to its immediate consideration.

Mr. WILLIAMS of Delaware. Mr. President, will the Senator withhold that objection to allow me to have it presented to the Senate first?

Mr. ERVIN. There is pending business before the Senate, and the resolution can go to committee in orderly fashion. That is the basis of my objection. I do not mind withdrawing my objection temporarily, provided I am given an ade-

quate opportunity to interpose it a second time before any action is taken.

I cannot agree to immediate consideration.

Mr. WILLIAMS of Delaware. Mr. President, I hope the Senator, upon reflection, will agree to this request. The Senate acted on the original resolution, without sending it to committee. This amendment merely spells out what was understood to be included in the original resolution. That was my intention at that time. It was also the understanding of the majority and minority leaders, as stated in the CONGRESSIONAL RECORD on February 4. There was a clear understanding on the part of the chairman of the Senate Rules Committee as to what was expressed on the floor of the Senate by the Senator from Tennessee [Mr. GORE], who conferred with him as to the interpretation of the resolution.

However, Major McLendon has now ruled otherwise.

I do not question for one moment Major McLendon's comments. He feels that this is the correct interpretation, and he has rendered his opinion. Rather than quarrel with it, I suggest that if it was the intention of the Senate and if it is still the intention of the Senate, that the resolution be amended to correct the misunderstanding. Let us amend it so that the committee can proceed on that premise.

I realize that the Senate has before it another important bill which has taken many weeks and months to discuss. I am not suggesting that discussion of the pending bill be laid aside for any length of time, but over the period we have laid aside the bill for the consideration of nominations. We have laid the bill aside for the consideration of the enactment of scores of more or less noncontroversial bills. Consideration of the resolution would not require more than 5 minutes. I cannot conceive of any Senator insisting that this language should not be a part of the original resolution.

Personally, I believe this resolution is unnecessary. I felt so from the beginning; but a question has been raised, and we are now confronted with a situation in which either we must amend it or abide by the opinion of counsel. Apparently a majority of the committee have decided to accept the opinion of counsel.

Several Senators addressed the Chair.

Mr. WILLIAMS of Delaware. Mr. President, I yield to the Senator from Nebraska [Mr. CURTIS].

Mr. CURTIS. Mr. President, I once more commend the Senator from Delaware for his action and his diligence. I agree with him that the resolution is unnecessary, but it may be advisable for the Senate once again to speak out on this issue. But I would also add that that will not solve the problem of the committee. Until the Committee of Rules and Administration is directed by the Senate to follow its own rules and call witnesses, there can be no thorough and complete investigation.

The rules adopted by the Committee on Rules and Administration clearly establish the right of any Senator to call a witness, subject only to the require-

ment that the testimony shall be relevant to the investigation.

Up to this very hour, the majority of the committee have intentionally and willfully disobeyed that rule and have not called a single witness requested by the minority.

I am for the resolution of the Senator from Delaware, but if it is to be considered—as I hope it will be—I plan to offer an amendment so that the Senate can vote on the question as to whether we can call witnesses, or whether there will be an alleged legal opinion and a ruling and then a partisan vote to close the investigation.

Had the rules which were adopted been followed, there would have been a great probability that the facts which have been unearthed would have made the resolution unnecessary.

While I am for the resolution of the Senator from Delaware [Mr. WILLIAMS], without direction from the Senate which would lead to enforcing the committee's own rules, the investigation will still be thwarted.

I thank the Senator from Delaware for yielding to me.

Several Senators addressed the Chair.

Mr. WILLIAMS of Delaware. Mr. President, I shall yield in a moment to the Senator from New Jersey [Mr. CASE], who is a cosponsor of this resolution, but first I should like to say again that the sole purpose of offering the amendment to the original resolution is to carry out the clear understanding and intention which I had as the author of the resolution on October 10, 1963.

The interpretation of the resolution was clear enough. Our views were expressed in the Senate. The entire Senate accepted the resolution with the interpretation that it gave the committee adequate authority, if it wished, to call any Member of the Senate.

But since the question has been raised by the chief counsel of the committee I feel that this question should be cleared up beyond any question of doubt. Let us spell out the clear intention of the Senate.

I now yield to the Senator from New Jersey [Mr. CASE].

Mr. CASE. Mr. President, I thank the Senator from Delaware for yielding to me.

I am happy indeed to be a cosponsor with the Senator from Delaware of the resolution to amend his original resolution, authorizing this inquiry.

I regret the need for this resolution, but my regret in no way suggests to me that the need does not exist. It does exist.

It is time to put an end to the situation in which one thing is said on the floor of the Senate in the broad light of day about the power of this committee, and another thing is said behind closed doors in committee rooms and acted upon by a committee.

That is what has happened. There is no question about the Senator's original intent when he introduced his resolution of inquiry—as he has expressed it himself. There is no question that this intent was repeated on the floor of the Senate by at least half a dozen Senators,

specifically including the Senator from Tennessee [Mr. GORE], and the majority leader, the Senator from Montana [Mr. MANSFIELD]. The Senator from Pennsylvania [Mr. SCOTT] was another. The Senator from Nebraska [Mr. CURTIS] was another.

The Senator from Kentucky [Mr. COOPER] was another. I believe there were others also. They made it clear that it was understood by everyone that this resolution authorized an inquiry into the activity of Senators as well as employees of the Senate—if there is a difference. This is quibbling about names, but Senators were to be included, as the majority leader and other Senators have stated; yet we find that, no later than yesterday, counsel furnished the committee with his opinion. I hold in my hand a story published in the Washington Bureau of the Baltimore Sun that my view as to the duty of the committee in regard to relationships between Senators and Robert Baker, former secretary of the Democratic majority, was disputed by counsel. The article states that the rules group has "no mandate or authority to look into the activities of individual Senators."

This is repeated in other newspaper stories, including one in the Washington Post this morning.

There is no reason for any difference of opinion about this. There is no reason for any confusion. There is particularly no excuse for inactivity by the committee. The chairman of the committee, whom I see in the Chamber at the present moment, my esteemed friend, the Senator from North Carolina [Mr. JORDAN], is quoted on the UPI ticker this morning as having said that I scaled the heights of demagoguery when I demanded that each Senator be asked about his business dealings with Bobby Baker.

Mr. President, I am content to let the whole world decide whether to ask the committee to ask this question of each individual Senator, whether it has any relationship to demagoguery or not. I will stake my reputation on the absence or presence of demagoguery on my conduct and on my record, and on everything I have done or stood for and now stand for, including this particular inquiry, and including this particular request. I suggest that what happens here is only another example of what happens any time anyone suggests that the Senate does not treat Members of this body the same as it treats everyone else.

We should stop applying a double standard, treating other people outside the club in one way and treating ourselves in quite another. I suggest that this sort of thing is the reason for the lack of prestige, as shown by public opinion polls and comments generally about this body.

It is time that we put an end to it in the interest of ourselves and in the interest of this body, in which we have the honor to serve, as well as in the interest of democratic government generally.

I repeat my statement that the committee has the authority to establish beyond question whether this former employee of the Senate had any relations

with any Member of the Senate; whether Bobby Baker had any financial or business dealings with any Member of the Senate and, if so, what they were; whether Bobby Baker offered to get for any Senator any campaign contributions or anything of value whatever. The reason for all this is that the Senate is involved. This is not a matter of punishing an individual for culpable action. It is a question of finding out what the truth is, particularly when a statement is made to the effect that Bobby Baker had 10 Senators in the palm of his hand. What does that mean? It is time to get to the bottom of this sort of thing. This is all familiar territory to every Member of the Senate. It is time we looked into the situation. That is why it is essential that this committee should actually be doing its job. I am happy to join the Senator in his effort.

Mr. SCOTT. Mr. President, will the Senator from North Carolina yield to me?

Mr. ERVIN. I wish to ask a question. Did the able and distinguished Senator from Delaware give any notice to the leadership of the Senate that it was his purpose to offer the resolution at this time?

Mr. WILLIAMS of Delaware. I discussed it yesterday afternoon with the chairman of the Committee on Rules and Administration, the Senator from North Carolina [Mr. JORDAN], and told him that something should be done. He can speak for himself. I understood that he felt it was not necessary. I wish to make it clear that neither do I think it is necessary because I believe the resolution originally was drafted in such broad language that it gave adequate authority to the committee to make inquiry into any questionable operations involving a Member of the Senate.

At the time I submitted the original resolution, I repeated that understanding, and so did the majority leader.

The question, however, seems to be a recurring one, and now we are confronted with the situation that if we accept the opinion of the chief counsel of the committee and take no action we shall apparently be bound by it. I merely wish to make sure that there would be no question left in the mind of anyone that this was my intention when I submitted the resolution. Therefore, it should be brought before the Senate.

The majority leader was not in the Chamber. I discussed the subject with the acting leader prior to bringing it up. I told him I would discuss this subject immediately after the morning hour. The chairman of the Committee on Rules and Administration is present. He can speak for himself with regard to our conversation of yesterday.

I am not becoming involved in any quarrels between members of the committee. I am not raising any other questions. All I am saying is that I am trying to settle this question in clear language so that there will be no question—no shadow of doubt about the fact that the committee does have the authority to include Senators, as both the chairman of the committee and I thought it had in the beginning.

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

Mr. WILLIAMS of Delaware. I yield to the Senator from Pennsylvania.

Mr. SCOTT. Mr. President, the chronology in this matter makes very interesting reading. Behind the closed doors of the Committee on Rules and Administration is an attempt to conceal from the public, through the raising of a miasma of pettifoggery, exactly what the Senate itself intended to do and what the Senate by its pledged word, through the majority leader, undertook to say was the intent of the Senate and the intent of the committee. If the Senator will permit me to do so, I should like to give the chronology.

The resolution was submitted in October. The majority members of the committee consistently took the position that there were two things the committee could not do. One was to investigate improprieties, unless they involved some form of financial juggling; second, they made sure that there would be no investigation of the relationship of Senators with Bobby Baker.

Mr. President, Bobby Baker used to stand here in the well of the Senate. The question is, Where does the Senate stand now?

On the 4th of February, because of the interpretations that were being given in the Rules Committee, with which some of us disagreed, the controversy came to the floor. I believe that on the night before the Senator from Tennessee [Mr. GORE] rose to propose that the resolution be extended to include Senators. On the following morning there was a gathering of the leadership. I saw it happen myself. The majority leader, the Senator from Montana [Mr. MANSFIELD], the minority leader, the Senator from Illinois [Mr. DIRKSEN], the Senator from Delaware [Mr. WILLIAMS] and other Senators gathered to discuss the subject.

When they returned, the following colloquy took place. It occurs beginning at page 1870 of the CONGRESSIONAL RECORD of February 4, 1964. The Senator from Delaware said that he had discussed the subject with the Senator from Tennessee [Mr. GORE]. He said:

Mr. WILLIAMS of Delaware. Mr. President, I have discussed the subject with the Senator from Tennessee. If there were any doubt in my mind that the resolution originally adopted was not all-inclusive, I most certainly would support the proposed change in the resolution or any other change necessary to make it so. However, as I have stated earlier, I do not believe that is necessary, because the resolution as offered on October 10 was broad enough to cover Senators as well as all our employees.

He then read the resolution.

Then he said:

The question that has bothered the Senator from Tennessee arose from discussion in certain quarters that the resolution did not embrace adequate authority should the committee find it necessary to examine activities or association which Senators or members of our staffs may have had in connection with the investigation. In order to lay at rest the question as to whether Members of the Senate and our staffs are covered—

The Senator from Delaware pointed out that the original resolution was all-inclusive, and that the committee had jurisdiction to examine a Senator, or any member of the staff, or any other employee of the Senate.

He also pointed out that the majority leader and the chairman of the committee and other members of the Committee on Rules and Administration held the same view.

The majority leader was present, and he pledged the word of the Senate that the resolution was broad enough. That made legislative history. This is what he said:

I wish to corroborate what the distinguished senior Senator from Delaware has said. At the time we met to discuss the original resolution, it was to be applied to employees and former employees of the Senate. Since that time I have seen copies of his income tax form and I am sure that we all received the same copies. I wish to inform the Senate that if we did not know it before, we are all employees of the U.S. Senate. Therefore, the original resolution adopted by the Senate would encompass all that the Senator from Delaware has said. So I hope in view of that statement the distinguished Senator from Tennessee would consider withdrawing the resolution so that the Senate could get on with the tax bill.

The Senator from Tennessee [Mr. GORE] then said:

Mr. GORE. I am now advised by the distinguished chairman of the Committee on Rules and Administration that his interpretation of the resolution comports with the interpretation which the distinguished majority leader and the distinguished senior Senator from Delaware have placed upon it. If the offering of my resolution has brought about a meeting of minds, I am pleased. My purpose has been accomplished, and I withdraw the resolution.

I must admit that at that point I left the Senate feeling that the Committee on Rules and Administration had been thoroughly apprised of the extent of the resolution; that they then knew, beyond peradventure, that they were operating under the interpretation given them by the Senate's own leader and by the author of the resolution. As the Senator from Delaware knows, they did no such thing.

Did they follow their clear instructions? Did they follow the history of the resolution? Did they follow the majority leader, or the Senator from Tennessee [Mr. GORE], or the Senator from Delaware [Mr. WILLIAMS]? Indeed, they did not. Without any notice at all to minority Members, they proceeded to obtain legal opinions, one from counsel for the committee and one from the Office of the Legislative Counsel. If that gentleman is examined, I think it will appear that his opinion might very well have varied, if he had had brought to his attention by minority counsel the colloquy on the floor, in detail, and what it meant.

On the 23d of March, they prepared opinions saying what? That the resolution does not cover Senators; that the resolution does not cover improprieties, except money, dishonesty, and financial juggling; nothing else. Both are nice legal opinions, but they are not worth a tinker's dam, so far as the attention of the Senate is concerned, as we were com-

mitted to proceed by the interpretation of the majority leader himself. The committee knew that. They did not advise the minority members until 1 day last week, when a draft of the report was submitted to us. When that draft was submitted, these opinions showed up; so we learned for the first time that they had quietly obtained, back in March, an opinion that they did not have to do what the Senate told them to do. That is what they are relying on now. It is what they intend to bring in. They intend to ignore the Senate; they intend to ignore the people; they intend to ignore criticism which says, "You are covering up. You are engaged in an unwillingness—a studied unwillingness—to investigate the relationship of Bobby Baker with employees of the Senate, including Senators; a man who at one time said, 'I hold 10 Senators in the palm of my hand.'"

The Senate committee, in spite of the expression of the majority leader himself, has refused to do its plain, simple duty, but relies, instead, on a web of legal evasiveness in order to withdraw from its obligation. That withdrawal casts a stain on every Member of the Senate.

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

Mr. SCOTT. I yield to the Senator from Nebraska.

Mr. WILLIAMS of Delaware. I have the floor. I will yield to the Senator from Nebraska.

Mr. SCOTT. I beg the Senator's pardon. I thank the Senator from Delaware for yielding to me.

Mr. WILLIAMS of Delaware. I promised to yield first to the Senator from North Carolina. I shall later yield to the Senator from Nebraska.

The Senator from Pennsylvania [Mr. SCOTT] is correct in stating that at the time the Senator from Tennessee [Mr. GORE] proposed to offer his amendment, he did so in good faith. I said at the time that I thought the resolution already provided adequate authority. Likewise, the majority leader insisted that that was his understanding. The Senator from Montana [Mr. MANSFIELD] came to the floor of the Senate and made that statement lest there be any misunderstanding about the scope of the committee's authority.

I am today only trying to carry out what was the intention of all Senators who supported the resolution at that time, including the majority leader of the Senate. No Member of the Senate has been more cooperative from the beginning than the majority leader. I went to him prior to submitting the resolution and outlined to him my concern over some of the activities of Baker. At no time was there any indication of reluctance on the part of the majority leader to cooperate in having full disclosure. I pay my respects to him and thank him for his cooperation.

The submission of my resolution here today is not in any way intended to be a reflection on anyone.

If the failure of the resolution to have been properly drawn has reflected on anyone I accept it as a reflection on myself for not having made it broad enough and clear enough in the beginning. I can only state that it was drafted with my

full understanding at that time that it was broad enough. I am not a lawyer, and I had assistance in having it drafted. But it was drafted with a clear understanding on the part of all Senators who supported it on that day in October that the authority did exist whereby the committee could, if it wished, call Senators.

I do not propose to enter into any argument as to whether Major McLendon is right or wrong. I have my opinion; he has his opinion. He is entitled to his opinion.

I merely wish to say that the majority leader of the Senate has supported the original resolution; the minority leader has supported the resolution; the chairman of the Committee on Rules and Administration, who is now in the Chamber, likewise supported that interpretation of the resolution. All of us agreed that the resolution as it was originally drafted included authority to call any Member of the Senate, if it were so desired. That was the clear understanding of all of us. A legal opinion has since been rendered by the chief counsel of the committee changing this interpretation. I merely suggest that we not quarrel about whether the legal opinion is right or wrong. Let us simply spell it out on the floor of the Senate, so that from this moment on there will be no controversy regarding what the committee can do.

Mr. COOPER. Mr. President, will the Senator from Delaware yield?

Mr. WILLIAMS of Delaware. I promised to yield first to the chairman of the committee.

Mr. JORDAN of North Carolina. I will wait until the Senator from Kentucky has spoken.

Mr. WILLIAMS of Delaware. I yield to the Senator from Kentucky.

Mr. COOPER. Mr. President, there was never any doubt in my mind when the resolution was submitted that it covered Members of the Senate as well as employees of the Senate, if any proof were adduced which would connect them with the activities of Bobby Baker or with any other activity of a similar nature. Later, when the Senator from Tennessee, Senator GORE, raised the question on the floor of the Senate, I was present. I said at that time that it was my view that the resolution covered Members of the Senate as well as employees of the Senate. I may not have said so much on the outside about what has occurred in committee, but I have been present in committee, and I know what has happened there. I want to be as fair as I can in what I say.

No interpretation of the resolution as it related to Senators, was given by the legislative counsel of the Senate. The opinion did not touch on the question of whether Senators were included. The opinion went to the scope of the resolution, as to whether it went beyond the business activities of Baker, and matters related to his activities. Impliedly, it considered the question of whether the resolution dealt with morality. The opinion of Herberg merely said that in his view the resolution went to the business activities of Baker and matters related to such activities. It had nothing at all to do with the issue of whether Senators were included.

Yesterday, when my colleague and friend the distinguished senior Senator from New Jersey [Mr. CASE] appeared before the committee, counsel gave an opinion. If I remember correctly, his opinion dealt only with that part of Senator CASE's proposal that we should go into the subject of campaign contributions. The counsel said in that respect that he did not think we had the authority. I do not know the basis of his opinion, but it was suggested by the Senator from Pennsylvania [Mr. CLARK] that it is because there is a special subcommittee of the Committee on Rules charged with that subject. If I am correct, the counsel, Major McClendon, did not in any way say we could not go into the question of activities on the part of Senators connected with the activities of Baker, or any activities of a similar nature.

I suggest that if Senators have any information about the connection of any Senator with the activities of Baker, or any other activities of that kind, which they believe wrongful or improper, they present us with the proof.

The Senator from Delaware [Mr. WILLIAMS] has come before the committee and given us information. Some of it was connected with one or two Members of the Senate. Other Senators should follow the same course if they have evidence.

It is not sufficient to make general allegations of impropriety or wrongdoing. But if evidence is presented so far as I am concerned, I will do all that I can to see to it that no matter who may be involved—a Member of the Senate or anyone else—we will seek to obtain all the information we can.

Mr. WILLIAMS of Delaware. I thank the Senator from Kentucky.

I will yield to the Senator from North Carolina [Mr. JORDAN], the chairman of the committee, but first I wish to say that I agree fully with what the Senator from Kentucky has said. If any Member of the Senate has information on this subject I believe it is his responsibility to present it to the committee. I tried to do so. I consulted the chairman of the committee, and he has extended to me every opportunity to present any information I might have had, and I did present it to his committee. At the time, I told him that some of my information was well documented and was rather a closed case, so far as the surface indications went. I presented to the committee other information which was not so well documented, and I presented it on that basis and asked the committee's staff to check it out and determine whether it could or could not be substantiated. But I did not present wild rumors.

As the Senator has said, it is very easy to destroy a man's reputation, and it is most difficult to rebuild it. Therefore, rather than mention the names of persons—whether Members of the Senate or Senate employees or persons outside the Senate—it has always been my policy that one must be sure he is correct before any charges are brought.

I have not quarreled about the care and diligence with which the committee wishes to proceed in every case in order

to make sure it is correct; and certainly I would regret exceedingly if harm were done to a man's reputation and then we found an error had been made.

I believe all Senators have a definite responsibility. I have tried to cooperate with the committee, and I shall continue to do so.

The amendment I am proposing to the resolution is not anything different from what was originally intended. However, if some believe it does amount to a reflection on anyone it might be said to be a reflection on me as the author of the resolution for not having included such language in the resolution in the beginning. If so, I accept such criticism.

But rather than quarrel with the past let us proceed with the business of correcting any possible misunderstanding.

I now yield to the Senator from North Carolina.

Mr. JORDAN of North Carolina. Mr. President, I appreciate the courtesy of the Senator from Delaware in yielding to me, to permit me to answer some of the questions which concern me a great deal, in connection with the accusations made about the Committee on Rules and Administration.

Yesterday, a number of the members of the committee were present at a hearing. The Senator from New Jersey [Mr. CASE] was there. The record will show that I said to him that if he had any information concerning any Senator or any charges to make, we would be glad to have them presented. That invitation is still open. So far as I know, no one has presented charges against any Senator, in connection with the activities of Mr. Baker or the activities of anyone else. We are still in business, and we will hear all charges.

But someone must specify the charges to which he has referred. The Senator has made a blanket indictment of Senators, and I do not think that is proper. If he will name the 10 Senators to whom he has referred, let him name them. But he has not yet named them.

Mr. WILLIAMS of Delaware. Mr. President, will the Senator from North Carolina yield to me?

The PRESIDING OFFICER (Mr. WALTERS in the chair). Does the Senator from North Carolina yield to the Senator from Delaware?

Mr. JORDAN of North Carolina. I yield.

Mr. WILLIAMS of Delaware. In the proposed amendment to the resolution I am not making any charges. I am only suggesting that we clear up, beyond any shadow of doubt, the authority of the committee to look into such cases if they are called to its attention. That doubt has been raised—perhaps unfortunately so—first as a result of a statement that the committee was not investigating Senators. Now we get the interpretation that the committee has no such authority.

So I am trying to clear up that situation beyond any shadow of doubt so as to make clear that the committee does have such authority and that if there comes to its attention information involving John Doe, the fact that he may be or may have been a Member of the

Senate will not preclude an investigation of the charges against him. That is all I am trying to do; and I hope we do not become involved in a quarrel involving differences within the committee. First, let us clear up this matter, because I think the chairman of the committee will agree that on February 4 he concurred in the statements that the committee did have all the authority which this amendment of the resolution would now give it; and the committee could have used this authority if it wished to.

Mr. JORDAN of North Carolina. The Senator from Tennessee [Mr. GORE] took his seat, and I was sitting beside him. He said he intended to withdraw his resolution. Someone asked me if I had any objection to his withdrawing the resolution. I said, "No." That is all I said.

Mr. WILLIAMS of Delaware. On February 4, 1964, the Senator from Tennessee quoted the Senator from North Carolina as stating that he concurred in the opinion that the first resolution did cover the authority as to Senators. If the Senator from Tennessee was in error in making that statement I am sure it was unintentional, but he did make that statement.

Mr. JORDAN of North Carolina. I repeat that the Senator from Tennessee asked me if I had any objection to his withdrawing the resolution; and I said I had no objection to his withdrawing it.

As the Senator from Delaware has stated, he presented to our committee several pieces of evidence; and he has told me, as he has stated on the floor, that in every case it has been investigated to his entire satisfaction and a report has been made on it. So far as I know, that is correct.

Mr. WILLIAMS of Delaware. I have not discussed what the committee has done; but the committee has received the evidence. I have not expressed any fault or compliments upon what the committee has done, nor am I passing any opinion on how thorough its investigation has been. I do not have access to all the information to which the committee has developed, as the Senator from North Carolina well knows. I discharged my responsibilities by turning my information over to the committee; and I made available to the committee all the information I had.

I do not wish to become involved in a controversy among the members of the committee or between them and other Senators.

I did regret that the committee did not see fit to wait for me to present to them the material I was gathering; however, apparently the orders—which came from somewhere—were that copies of my letters to the departments were to be sent to the committee. I would have preferred to have delivered the material personally to the committee, but perhaps the result was that the committee received it sooner and therefore was able to investigate it more quickly than otherwise would have been possible.

As to the extent to which the committee followed up the information contained in the letters I cannot answer.

But certainly the committee was then alerted in that way to some of the matters on which I was checking.

On this premise I naturally did not feel it necessary to follow through with a personal appearance.

Mr. CASE. Mr. President, will the Senator from Delaware yield, inasmuch as my name has been mentioned? I wish to make a comment soon after my name has been mentioned.

Mr. WILLIAMS of Delaware. I yield to the Senator from New Jersey.

Mr. CASE. I, too, with the Senator from Delaware, do not wish to go off on a tangent. The issue is the authority of the committee to deal with Members of the Senate.

Mr. WILLIAMS of Delaware. That is correct.

Mr. CASE. I do not wish to discuss any differences with the chairman of the committee. I still press for clarification of the power of the committee. So I do not wish to refer to the statements made just now about me, although I will say, in passing, that not one line of testimony has been taken by the committee as to the basis of Bobby Baker's statement that he had 10 Senators in the palm of his hand, or that he was offering campaign contributions with strings attached, for example, in connection with a proposed amendment of the filibuster rules, or other things. We shall forget all that, and shall talk now only about the resolution of the Senator from Delaware and the situation which arose on February 4.

The Senator from North Carolina has just said that he was on the floor, and that he heard the interpretation made by the Senator from Delaware, and the acquiescence in it by the majority leader and by other Senators. Furthermore, the Senator from North Carolina sat next to the Senator from Tennessee when the Senator from Tennessee said:

I am now advised by the distinguished chairman of the Committee on Rules and Administration that his interpretation of the resolution comports with the interpretation which the distinguished majority leader and the distinguished senior Senator from Delaware have placed upon it. If the offering of my resolution has brought about a meeting of minds, I am pleased. My purpose has been accomplished, and I withdraw the resolution.

The Senator from North Carolina sat next to the Senator from Tennessee. He heard that statement made. He made no protest. Can he now be heard to say that he did not hear the Senator from Tennessee say what he said at that time?

Mr. JORDAN of North Carolina. Mr. President, will the Senator yield?

Mr. WILLIAMS of Delaware. I yield.

Mr. JORDAN of North Carolina. I said a moment ago, and I say again, that I was not on the floor when the colloquy occurred about which the Senator is speaking. I was not on the floor. Someone called and said, "They are discussing an amendment to the rules." I came in and sat down beside the Senator from Tennessee [Mr. GORE]. The Senator from Tennessee said, "We have reached some kind of agreement. I am not going to argue my resolution. Does it suit you?" I said, "It does suit me."

That is all I said to the Senator from Tennessee. I think the Senator will verify that. I do not remember anything about the other things that happened before I reached the Chamber which the Senator mentioned. As the Senator said before—and it is quite true—the Senator spoke to me in the corridor about the necessity of submitting another resolution. I did not agree to that.

Mr. WILLIAMS of Delaware. I did not say the Senator agreed to this resolution today. To the contrary, if I understood the Senator correctly the Senator would have preferred not to have the amendment to the resolution. But I did discuss it with the Senator yesterday.

Mr. JORDAN of North Carolina. The Senator is correct. He did discuss it with me, and we reached no conclusion, as far as I am concerned.

Mr. WILLIAMS of Delaware. That is correct.

Mr. JORDAN of North Carolina. The Senator said, "Let us think about it overnight, and talk about it tomorrow." If I am incorrect, the Senator can tell me so.

Mr. WILLIAMS of Delaware. That is right. I did not understand that the Senator agreed to it, then or now.

Mr. JORDAN of North Carolina. Did not the Senator suggest that we think about it overnight?

Mr. WILLIAMS of Delaware. Yes. I said, "Think about it overnight and perhaps you will change your mind," and I hoped that the Senator would. I accept what the Senator from North Carolina said as to the colloquy on February 4. I shall say only this, that at that time, when we were discussing this question, the Senator from North Carolina was in the discussion in the Chamber. Prior to its being discussed by the majority leader, the Senator from Tennessee, and myself, the Senator from Tennessee spoke to the Senator from North Carolina, who was in the Chamber. It was my understanding that the Senator from North Carolina was going to speak for himself; however, Senators were operating under controlled time. I believe the Senator from Illinois had the floor, and perhaps he did not wish to yield or to extend the discussion. Why the Senator from North Carolina did not speak for himself I do not know. But the Senator from Tennessee [Mr. GORE] did speak for the Senator from North Carolina. So as far as I was concerned, I accepted his statement in good faith. It was on that basis that I concurred with the Senator from Tennessee that his amendment to the resolution should be withdrawn. And as the Senator from New Jersey has stated, the Senator from Tennessee very clearly stated:

I am now advised by the distinguished chairman of the Committee on Rules and Administration that his interpretation of the resolution comports with the interpretation which the distinguished majority leader and the distinguished senior Senator from Delaware have placed upon it.

Our interpretation was that we already had adequate authority. I and other Members of the Senate interpreted his statement as the opinion of the Senator from North Carolina that day. But let

us not quarrel with what has been done. As I understand it, we are at the point now where the Senator from North Carolina feels he does not have the authority, even though the Senator from Tennessee withdrew his resolution thinking that he had obtained the concurrence of the Senator from North Carolina. But let us clear it up now.

The Senator should have the necessary authority. We thought he had it. All the Senate has to do is to adopt this resolution, and then there can be no question. This amendment does not relate to any opinions on any questions that have been raised in the controversy between the majority and minority members of the committee or on any other question raised in the Senate, either today or any other day.

All we are suggesting now is that the dispute be cleared up and that the Committee on Rules and Administration have the necessary authority, if I or some other witness appears before the committee and suggests the name of any Senator, to call that Senator in and ask him about the charges.

When I testified before the committee, I testified with the clear understanding that if this investigation went beyond an employee of the committee the authority would cover it; if it went to a Member of the Senate it would cover it. In my testimony I mentioned the name of a Senator or a former Senator, I will not specify which. The committee accepted this information. The Senator did not reject this information. The Senator and his committee accepted this information, and had it not been accepted I would have raised a question then.

I do not want any implication that I think the Senate is an unholy body. I am proud of my membership of the Senate. I wish to say for the record that so far as I am concerned the overwhelming percentage of the employees of the U.S. Government, whether they be in the Senate, in the legislative branch, in the executive branch, or anywhere else, are honestly trying to do a good job. That applies to Members of the Senate on both sides of the aisle.

I paid my respects today to the majority leader. He has cooperated as fully as any Member of the Senate in trying to get to the bottom of this unpleasant situation. Other Senators have cooperated. I shall not name them; it is not necessary. But when we find a rotten apple or find that someone has gone bad we have the responsibility of cleaning up the situation. I am not unmindful of the fact that there has been partisan discussions. Such has existed in the past on both sides of the aisle. But neither political party is perfect. The Teapot Dome scandal developed under a Republican administration. I would resent any man saying that that was a reflection against every Republican solely because it developed in a Republican administration. I would equally resent it being said that this is solely a Democratic problem because this is a Democratic administration.

It should not be considered a partisan situation because the John Doe who

went wrong was affiliated with any certain political party. A man should be called to task, whether he be on the Senator's side of the aisle or mine. We must protect the good name of the Government. And we can only do this by taking action when we find someone has done wrong; let us call him to task.

I am merely suggesting that we remove from the minds of the people any doubt but that if there is a question concerning anyone raised it will be checked. What difference if it involves a Member of the Senate or anyone else; no matter how high he is, he is not too high to be held accountable for his actions. We would be derelict in our duty if we did not conduct this investigation of Bobby Baker and his associates. I am sure that the Senator from North Carolina will agree that, whether a man be a Member of the Senate or a former Senator, or whether he be associated with Mr. Baker or not, he should be held accountable just the same. I am sure the Senator will agree to that. That is all I ask the committee to do—just to proceed on the premise that no man is too big in Government to be called to account for his conduct.

Mr. JORDAN of North Carolina. Mr. President, will the Senator yield further? Mr. WILLIAMS of Delaware. I yield.

Mr. JORDAN of North Carolina. The Senator made a statement a while ago that the record was not accessible to him. The records are available to him. Practically all of the testimony which has been taken has been made public. What has not been made public has been turned over to the Federal Bureau of Investigation. The records are available. We have asked the Department of Justice to participate in any investigation in which it desires to participate. The Department has been active in the case all the time.

Mr. WILLIAMS of Delaware. My statement was not intended as a criticism. I made that statement not as a criticism of the manner in which the committee operated. I do not sit in on the executive committee meetings. I do not know everything which the committee has done. It was merely a statement on my part that Members of the Senate cannot possibly be advised of the extent of the investigation which is being conducted. The Senator recognizes that I have not been present at the executive committee meetings, and I have not asked for or received—and I am not requesting today—the opportunity to read the transcript of the executive committee sessions. I am not asking for these now. That is only a statement of fact.

Mr. JORDAN of North Carolina. The thing that disturbs me about the allegations which have been made is the inference that we are acting behind closed doors. That is not fair.

Mr. WILLIAMS of Delaware. I do not think the Senator can recall a single instance in which I made such an allegation or tried to make it.

Mr. JORDAN of North Carolina. That is the implication the public is getting.

As I said yesterday before the Committee on Rules and Administration, before the cameras, before all the members

who were present, we have heard many witnesses. We have taken thousands of pages of testimony. To my knowledge—and I have attended practically every meeting that has been held, as have most other Senators on the committee—there has not been a single Senator, a Member of the Senate nor in the past, that I know of who has been accused of any wrongdoing in connection with Bobby Baker.

I state again that I have no objection to including Senators in the resolution. I do object to having this proposal popped up on the floor without my seeing it. I am not going to have the Senate vote on it at this time, if I can help it, because I want to read it and study it.

Let me tell the Senator something else. I will state this again. I am perfectly willing, so far as I am concerned, as Chairman of the Committee, to have any member on the Republican side, or any Senator, present charges. There have been no such charges. Bobby Baker has been charged with everything in the catalog. We have heard every single witness, so far as I know, on those charges.

I am willing to have this adopted after I have had an opportunity to study it, and make amendments to it, but I do not want to do it now, because I do not know what is in it.

Mr. WILLIAMS of Delaware. I will ask that the amendment to the resolution lie on the desk today. I do not want to send it to committee. I shall ask postponement of its consideration until tomorrow, but I will insist on calling it up later because I think this point should be cleared up, beyond any shadow of a doubt.

I am not entering into a discussion today of how thorough the investigation was as to Mr. Baker. I have said before that, while we know Mr. Baker was the major factor behind the introduction of the resolution, it was not specifically intended to be directed toward him only but to ascertain the extent of improprieties which may have involved any employee or former employee, and that included Members and former Members of the Senate.

I am sure the Senator from North Carolina did not mean to leave an inference to the contrary. The investigation was not intended to mean an investigation only of those who were found to be related to or connected with Mr. Baker. It also meant that if we found similar circumstances, not connected with Mr. Baker, but of wrongdoing, involving another employee or a Member of the Senate, comparable to what Mr. Baker did, we were not going to excuse such activity solely because Mr. Baker was not involved. Mr. Baker may not be the only one involved in the investigation. If we found that a Member of the Senate, for example, was involved with "Joe Doakes," and neither one of them was on speaking terms with Mr. Baker, but there was wrongdoing, it should be brought out.

I am sure the Senator from North Carolina will agree that we were not gunning for one man. We were investigating improper actions, and that was all-inclusive, involving our own Members or any of our employees. This had to be done

in order to put our house in order. That is all I am suggesting we do at this time.

Mr. JORDAN of North Carolina. Mr. President, will the Senator yield?

Mr. WILLIAMS of Delaware. I yield.

Mr. JORDAN of North Carolina. I shall make one more observation and then quit, because I do not think it is necessary to prolong this debate. One other employee of the Senate has been investigated. There is a complete record of every transaction he had. His checks have been photostated. His bank accounts have been checked. So we are not confining this investigation to Mr. Baker alone. But those two employees are the only ones the investigation brought to the attention of the committee that have involved any possible wrong-doing. If the Senator has others, bring them in. I do not know of any more.

Mr. WILLIAMS of Delaware. I hope the Senator from North Carolina will not involve this discussion in the question of the extent to which I may have evidence or what I may have presented to the committee. I want to keep this discussion on the right track. However, I will say that there has been evidence concerning more than Mr. Baker and one other employee presented to the committee, and the committee has documented that evidence.

I now yield to the Senator from Nebraska [Mr. CURTIS].

Mr. CURTIS. Mr. President, may I inquire whether the Senator expects to press for a vote on his resolution at this time?

Mr. WILLIAMS of Delaware. No; I will let it go over until tomorrow. I will withdraw my request that it be considered immediately. However, I want it clear that I do not want the resolution referred to committee. I want it to lie on the desk where it will be here to be called up tomorrow when I can obtain the floor.

Mr. CURTIS. Mr. President, will the Senator yield further?

Mr. WILLIAMS of Delaware. I yield to the Senator from Nebraska.

Mr. CURTIS. I serve notice now that I will offer an amendment to the Williams resolution. I shall demand a ye-and-nay vote, if I can get one. I want the Senate to determine whether or not the majority can deny a Senator the right to call witnesses. My amendment will read as follows:

After the period at the end of section 1 add the following sentence: "Any member of the committee may request that a witness or witnesses may be called to testify before the committee and all such requests shall be honored by the chairman."

This committee is not in a straitjacket because of any deficiency in language of the resolution. On the one issue as to whether or not we could investigate immorality or other activities not connected with financial transactions, it hinges on a very narrow interpretation of the word "any." The insertion of the word "any" prior to the word "improprieties" would have taken care of it. I do not regard that as an overriding of the intent of the Senate as shown by the legislative history.

I also call to the attention of the Senate the fact that the resolution did not authorize the committee to investigate insurance men, but in the pursuit of our duties we did call an insurance man, Don Reynolds. He was placed under oath. He testified. If we can retreat behind language and say we cannot call Senators because they were not named, we would not have called an insurance man.

I point out that this resolution did not authorize us to call gamblers or owners of gambling casinos, but we did call a Mr. Levenson, of Las Vegas, and asked him to tell us of his transactions with Baker. He took refuge in the fifth amendment, but the committee asserted the power to call him, and there was nothing in the language of the resolution showing that we could investigate gamblers. The resolution did not authorize the Rules Committee to investigate Government contractors, but we did call as witnesses Government contractors. I have in mind one Mr. Bostick. He was asked about his transactions with a Senate employee.

Mr. President, it is clear that there cannot be an investigation if there are limits to it. The only way to get at the facts is to get all the facts. However, to have one important fact missing misleads the public and the Senate, and it is unfair to do it.

When the Senate directed that the committee investigate Senate employees and past employees, the plain intent of that language was that we should follow the facts wherever they might lead and call all witnesses.

So while I support the Senator from Delaware in his amendment to make this objective abundantly clear, I think the record should very well show that the failure of the committee to get all the facts—and there is no investigation until all the facts are obtained—has not been because of deficiency in language.

I hope that this resolution will be called up before long. I, at that time, will offer the amendment which I have read into the RECORD, and I expect to ask for a vote.

Mr. JORDAN of North Carolina. Mr. President, will the Senator from Delaware yield?

Mr. WILLIAMS of Delaware. I am glad to yield to the Senator from North Carolina [Mr. JORDAN].

Mr. JORDAN of North Carolina. I wish to commend the Senator for making that observation, because we did call insurance men, we did call gamblers, we called a great many people. But I want to make the record entirely and abundantly clear that every one of these people was directly connected with a business transaction with Mr. Baker. His trip to Puerto Rico, his trip to the Virgin Islands, his trips to the Carousels and everywhere he went—to the Dominican Republic—wherever he had made transactions and met with gamblers in gambling casinos and everything else, they were traced down to the very end. We called every person we found connected with it. We either interviewed or called in for testimony every person connected with the investigation. I am glad the

Senator brought up that question. It is absolutely correct.

We did not just go out and grab anyone we saw and say, "We want to investigate you for something you might have done."

I repeat on the floor of the Senate that we have not issued a blanket indictment against the Senate—against every Senator here—and said, "You might have done something." I am not going to do it, either.

I have no objection to this resolution, after I have had an opportunity to study and amend it if it needs it. But I repeat and emphasize—regardless of what happens to this resolution—we will investigate any Senator that another Senator wishes to present evidence against and testify against him, or anyone else. That offer still stands. It stands today. I cannot do anything else. We have never refused to do it.

Roscoe Drummond's article in the paper, which the Senator from Pennsylvania [Mr. CLARK] brought out in testimony yesterday, reported that we refused to hear the Senator from New Jersey [Mr. CASE]. That was absolutely not true. We invited the Senator from New Jersey [Mr. CASE] to come before our committee. We changed the time to suit him. I do not know what else we could have done in open session. I have been as cooperative as I can be.

I am getting a little bit tired of the insinuations being made about Democrats on that committee.

I have finished.

Mr. WILLIAMS of Delaware. I am not making any insinuations against any members of the majority on the committee, neither have I done so before.

What I am trying to clear up beyond a shadow of doubt is what the intention of the Senate and what my intention as the sponsor of the resolution was at this time. It was also the clear intention of the majority leader and, so I thought, the intention of the Senator from North Carolina [Mr. JORDAN] himself—at least he is so quoted by the Senator from Tennessee [Mr. GORE]. I am only trying to clear up any possible misunderstanding. Then, if there is evidence presented to the committee or the committee has reason to believe that evidence could be developed involving a Senator they could proceed. There would be no question in the minds of any American citizen but that the committee does have adequate authority to do this. If I understood the discussion of the Senator from North Carolina today, even now there is some question in his mind as to such authority. I am delighted that he has indicated his willingness to support a change in the resolution which will clear up this misunderstanding. I shall withhold the resolution until the Senator from North Carolina has had an opportunity to study it overnight. I believe it is a very proper request, but I will want to call it up tomorrow.

Mr. PELL. Mr. President, will the Senator from Delaware yield?

Mr. WILLIAMS of Delaware. I am glad to yield to the Senator from Rhode Island.

Mr. PELL. I support the statement just made by my chairman, the Senator from North Carolina [Mr. JORDAN], very much indeed.

I should like to ask a few questions which I believe should be answered for the RECORD which Senators may read tomorrow, and that is in connection with the resolution, this very interesting resolution, and I notice it refers to an investigation—a study and investigation—including activities involving the receiving of money and campaign funds under "questionable circumstances."

In the view of the Senator from Delaware, this does include both parties naturally, not just one party?

Mr. WILLIAMS of Delaware. Oh, certainly.

Mr. PELL. A complete, open record of all contributions, cash, checks, to the campaign committees which support these individuals as well as to the individuals themselves; in other words, the secretary for the minority will open his books as would the secretary for the majority?

Mr. WILLIAMS of Delaware. If the Rules Committee feels that such contributions were made under questionable circumstances, certainly. The only reason this resolution was drafted in such broad nature—if the Senator wishes the truth of the matter—was to make sure that this time it was broad enough. I told the counsel when preparing the amendment to throw in the kitchen sink to make sure everything was included.

Frankly, I am getting slightly impatient with this shadowboxing as to what the committee can or should be doing.

Get the facts—that is the committee's duty—and let the chips fall where they may.

The reason the campaign question arose—

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

Mr. WILLIAMS of Delaware. Just a moment, I should like to answer the Senator's question first.

As to the reason this question arose about campaign funds and the reason the words "questionable circumstances" were put in—let us face it, Mr. Baker ended up with \$30,000 to \$40,000 in cash which as yet he has not indicated where he got the cash. Was that money which he obtained from a payoff on certain operations, or was that money which was supposed to have been used in campaigns but which was converted to his own use, or was it underworld money which was being channeled into legitimate enterprises?

All these questions are in our minds. It may be that the committee will never get answers, but we do believe it should try.

I am sure the Senator from Rhode Island recognizes this point. Sure, there is nothing wrong with either the Senator or I, or any American citizen, having \$30,000 to \$40,000 in hundred dollar bills in our possession and using that money for the payment of legitimate operations, but it is a perfectly proper question to ask him, "Where did you get this money and what did you do for it?" And when that

man is a public official that question becomes even more important.

Then when that man takes the fifth amendment by all the lines of reasoning we must proceed and get the answer.

In my opinion the Senate is on trial.

The legislative counsel came up this morning and said he was thinking overnight about the question of this money which was circulating around so freely—the hundred dollar bills, as it was described the piles of it—and he was afraid that if it developed that this was from campaign funds a question could be raised as to whether or not this was covered under the resolution. I wanted to be sure this time that it was all-inclusive. That is the reason it was written in. It was not written in with any other motive in mind. Certainly the finances of a campaign can be examined when they are obtained under circumstances which can be described as "questionable."

Mr. PELL. I have an open mind on the resolution. It could well be voted for. But I invite the attention of Senators to the fact that it does not matter if a sentence is written in ink, as it appears in this copy, or on a typewriter. When it is finally enacted into legislation, it will have the same effect.

I still wonder how the Senator can sensibly investigate the existence of "questionable circumstances," without a general investigation of all the contributions. We may be throwing in the kitchen sink to authorize this, but this resolution does not just authorize—

Mr. WILLIAMS of Delaware. It directs.

Mr. PELL. It directs it?

Mr. WILLIAMS of Delaware. Absolutely. So did the first one.

Mr. PELL. As I interpret this resolution from the author—and I wish to get an answer from him on it—it could be effective and have great merit as I interpret it, but it would mean a general investigation and disclosure of all campaign funds, no matter from what source, whether to campaign committees or to Senators; is that not correct?

Mr. WILLIAMS of Delaware. If they felt committee campaign funds were being accepted under questionable circumstances. Certainly the committee would have a right to go in and examine it.

I will give the Senator another example. I do not know to what extent the committee went into this, but there was a charge made that a Member of the Senate was offered a \$10,000 campaign contribution if he in turn would promise to vote on a certain question a certain way. The Senator knows that if such an offer were made it would be a violation of the law. It is illegal for any citizen to offer any public official or candidate for public office a contribution of \$10,000, or \$1,000, or even \$1, in return for a vote in the U.S. Senate.

What has the committee done about that? That specific charge was made. If I recall correctly the charge was made by a Member of the U.S. Senate.

Mr. PELL. Not made to the committee.

Mr. WILLIAMS of Delaware. It was made in the press, and the committee can read.

Mr. PELL. To the Senate, on the floor?

Mr. WILLIAMS of Delaware. It appeared in the press.

Mr. PELL. Was it made on the floor? Is the Senator making it now?

Mr. WILLIAMS of Delaware. I will say this, that—

Mr. PELL. Is the Senator making the charge?

Mr. WILLIAMS of Delaware. No, I am not making the charge. I am only quoting the charge as it appeared in the newspaper; I am quoting an example of what the committee can go into. I am amazed the committee has not already checked this, because the charge was made by a Member on the Senator's side of the aisle. As I understand the charge, Mr. Baker had approached a certain candidate for public office and said that he could get him a contribution—I believe it was \$10,000—if he would promise to vote a certain way on the oil depletion question. If that were true that was a violation of the law. It should be verified and referred to the Department of Justice. That is an example of what I am speaking of, when I talk about questionable campaign contributions. I am not speaking of legitimate campaign contributions.

The Senator is on the Rules Committee that appraises the propriety of what it should criticize or examine.

Let us not become technical. The Senator has looked this document over. If the Senator has any way of rewording the resolution to make it more workable, I do not object.

Mr. PELL. I am not trying to be technical.

Mr. WILLIAMS of Delaware. When we are through with this investigation, I wish to make sure that no one will be able to hide behind the statement, "We do not have the authority to do this." That is why I used the phrase "kitchen sink."

In my opinion, the resolution originally was broad enough. It was so intended and was so interpreted. However, a question has been raised by the counsel of the committee. I understand that the Senator from Rhode Island and other members of the committee are accepting the counsel's recommendation as being valid.

As I have said, I will not quarrel with their views. The question of whether I agree with them is beside the point. It is a simple matter to change the resolution, if it is necessary to do so. If the Senator has a different method of writing the language I wish he would write it. I have no pride of authorship. All that I want to do is to make sure that the Senator and his committee have the full authority to go into these matters and that he has all the authority he needs. I will cooperate with the Senator, as I have cooperated in the past, to the best of my ability. I will help him to do the job.

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

Mr. WILLIAMS of Delaware. I yield.

Mr. PELL. For the benefit of Senators who may read this colloquy in the Record, does the Senator believe the res-

olution could be clarified and changed, to get across the thought that the Senator wishes to get across? Does he wish to amend it now?

My question, however, has not been answered. How does one discover questionable circumstances without going into all the contributions? Personally, I believe this could be a very good idea. I might well vote for the Senator's resolution. I wonder whether this interpretation would receive the support of all our colleagues.

Mr. WILLIAMS of Delaware. I do not know how I can make it any clearer. I respect the intelligence of my colleague from Rhode Island. I have every confidence that he can look at a contribution and determine whether it was received under questionable circumstances.

Mr. PELL. Then we would have to go into all contributions.

Mr. WILLIAMS of Delaware. If the Senator wished to do so.

Mr. PELL. Is there any other way of finding out?

Mr. WILLIAMS of Delaware. I am not limiting the committee. I do not intend to limit it. The Senator can go into all the contributions they think necessary. I wish to make sure that they are able to do so.

Mr. PELL. The Senator is directing us to do so.

Mr. WILLIAMS of Delaware. I recognize what the Senator is trying to do. I would suggest that he not push it too far. I would not wish to have all of this case discussed on the floor of the Senate in all of its dirty details. Let us get it into the committee where it belongs. I wish to make sure that the Senator and the committee have all the authority they need to do the job. It has been pushed onto the floor, but it does not belong here. If it has to be done, of course, it can be done that way.

Mr. PELL. All I am asking is a simple question. If the resolution is adopted—and I believe it could be an excellent idea—it would direct our committee to look into the questionable circumstances surrounding campaign funds from whatever sources they were made.

Mr. WILLIAMS of Delaware. If any campaign contributions are received under questionable circumstances the committee could and should look into them.

Mr. PELL. We would have to know the sources of all contributions to ascertain that fact.

Mr. WILLIAMS of Delaware. The Senator would have to know whether a contribution was questionable. Let us find out what it is. If campaign contributions are being made in return for a commitment to vote in a certain way the committee ought to know it. That charge was made in the press. I will see that a copy of that charge is delivered to the committee. I was certain that the committee had received it before; otherwise, I would have sent it to the committee.

Inasmuch as the committee does not seem to have a copy of that charge I will see to it that it is delivered. If there is any truth to it it certainly is a contribution that was made under questionable circumstances. It is a questionable

circumstance for any man to offer a contribution to a Senator to vote a certain way.

I might say that the language I am offering is a mere rewriting of the first sentence. The authority and direction was contained in the original resolution, which was approved.

Mr. PELL. I believe the Senator's objections are excellent.

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

Mr. WILLIAMS of Delaware. I yield.

Mr. SCOTT. I believe I can clarify the question that was raised as to whether there was any effort made to find out whether any money was offered. I have just spoken with a member of the minority staff, who tells me that he did make a request that witnesses be invited to clarify the matter, but that he was overruled by the majority staff. He also repeated the request in executive session of the Rules Committee, and, although he was not overruled, he was ignored.

The suggestion was made that certain contributions were questionable. Let me again inform the Senator from Rhode Island about something which has been made public many times with respect to the matter of campaign contributions.

News items in Oklahoma and California, as well as elsewhere, mentioned a man by the name of Preston Moore in Oklahoma, who had spent \$1,500 in the primary campaign, some years ago, of an esteemed finance chairman. He said he had spent the money. The chairman said, "I will send the \$1,500 to Bobby Baker." The chairman had sent the \$1,500 to Bobby Baker. After some interval, he said to Mr. Preston Moore, "Did you ever get your money?"

Mr. Moore said, "No."

Mr. Moore then got in touch, according to his statement, with Mr. Baker, and said to him, "Where is my \$1,500?"

Mr. Baker said, "I spent it for other campaign purposes."

This is all before the committee. They refused to call Preston Moore or the finance chairman involved.

When we say to them, "Let us investigate improprieties," they say, "We can only investigate fiscal irregularities."

When we say to them, "Let us investigate a fiscal irregularity and find out what Bobby Baker did with the \$1,500, and let us find out whether he misappropriated it," they say, "Oh, no; we cannot investigate that, because that is a campaign contribution."

They are trying to have it both ways. They zigzag perilously through narrow channels of interpretation. Either they want to investigate irregular campaign contributions or they do not. I say to the Senator they do not. Either they want to go into improprieties, or they do not. I say they do not. Either they want to extend the inquiry into fiscal irregularities, or they do not. I say to the Senator they do not.

Mr. WILLIAMS of Delaware. My instructions to the member of legislative counsel who drafted the resolution was that he should make sure that there would be no authority lacking this time. That is why I am using the phrase "kitchen sink." I wanted it clearly spelled out.

The question has been raised, and we have this situation before use, in which an employee of the Senate—and this has been established by the committee—had \$30,000 to \$40,000 in cash, mostly in \$100 bills, which were used for various purposes. It is a very proper question to ask where he got it. It has been suggested that he did not use the money for the purpose for which it was received. I do not know whether or not that is right. I do not want the committee to be precluded from looking into the question solely because we did not spell it out in the resolution. That is the reason why we should spell it out. Frankly I believe it is wholly unnecessary for us to do this. I thought we had settled this argument on February 4 beyond any shadow of a doubt. However, inasmuch as the chief counsel of the committee has ruled differently, if we let it stand, the American people will not get the facts. The chief counsel has ruled that we cannot question a Member of the Senate, that a Member of the Senate is too sacred. I say no man is too big, not even a Senator, to answer for his official conduct. I yield to the Senator from Washington.

Mr. MAGNUSON. I have not read the resolution this morning, but I am wondering if the Senator is suggesting in his proposal that it might now be a good thing—I am not passing on it—to have the Committee on Rules and Administration conduct an investigation of campaign contributions for the coming campaign.

Mr. WILLIAMS of Delaware. No; I have made no such suggestion.

Mr. MAGNUSON. I was simply asking.

Mr. WILLIAMS of Delaware. I said in the resolution—

Mr. MAGNUSON. I am chairman of the senatorial campaign committee; and if the Senator from Delaware wishes to come to the Old Senate Office Building, the books are wide open.

Mr. WILLIAMS of Delaware. I have made no such suggestion.

Mr. MAGNUSON. The Senator from Pennsylvania [Mr. SCOTT] is running and the Senator from Delaware [Mr. WILLIAMS] is running. I am sure they do not run their campaigns on hot air. They might, but I feel certain they do not.

Mr. WILLIAMS of Delaware. We all use a certain amount of hot air.

Mr. MAGNUSON. I am sure they have a certain amount of campaign contributions. In a State such as Pennsylvania it costs a great deal of money to run a campaign.

Mr. SCOTT. I wish the Senator from Washington would make his appeal for me a little more general.

Mr. MAGNUSON. I was asking if that was the purpose of the Senator's proposal.

Mr. WILLIAMS of Delaware. No, it is not. The only purpose is to spell out in clear language what I thought every Member of the Senate understood in the beginning. In the process of checking the Baker case—

Mr. MAGNUSON. I have no objection—

Mr. WILLIAMS of Delaware. Some \$30,000 or \$40,000 in cash was discovered, and someone said it may have been campaign funds. That is the reason why I used the words "questionable circumstances." If the Senator from Rhode Island [Mr. PELL] knows of any campaign funds obtained under questionable circumstances let us look into them. That is the purpose of my request to broaden the field. Let us find out if there were any irregularities or any improprieties on the part of any employee or former employee or Member or former Member of the Senate. That is what was intended in the beginning; that is all I am trying to do now.

I do not want it to be said that we cannot touch these things because the money came from a certain source and there is no right to disclose where it came from. I simply do not want the committee to be hamstrung. I want the committee to have adequate authority to examine every detail of any alleged wrongdoing.

The legislative counsel said to me that he did not think it is necessary to include some of the language, but I said, "Let us spell it out so that no one can raise a question again."

Mr. MAGNUSON. I am an oldtime district attorney. Before I could suggest that somebody be indicted, I was required to prove that I had reasonable cause to believe the person had done something wrong. Until that time, I was prohibited from suggesting by innuendo that perhaps he had. Does the Senator believe in that principle?

Mr. WILLIAMS of Delaware. Can the Senator name one single incident in which I have violated that principle?

Mr. MAGNUSON. I think that perhaps now this proposal will be a blanket indictment of the whole Senate.

Mr. WILLIAMS of Delaware. There is no reason why it should be. The only reason why it could be would be if the Senate itself decided that it is too good or too sacred to be investigated.

Mr. MAGNUSON. The Senator is not answering my question. Does the Senator have reasonable cause to believe that any Member of the Senate, in relation to what the Senator is talking about, has done something wrong? If he has such reasonable cause, he ought to name him and name him now.

Mr. WILLIAMS of Delaware. I have not made any such charges on or off the floor of the Senate.

Mr. MAGNUSON. The Senator makes a blanket innuendo charge that something is wrong. If there is—and there may be, and I will support the resolution—the Senator ought to give the names right now, instead of making a blanket indictment of the whole Senate. Many good Members of this body are running for office on both sides of the aisle. They are going to have snide charges made to the effect that Senator WILLIAMS said something was wrong with them. I am saying that they ought to be named now, if the Senator has any evidence to that effect.

Mr. WILLIAMS of Delaware. No one has suggested that.

Mr. MAGNUSON. What is the Senator suggesting?

Mr. WILLIAMS of Delaware. The Senator from Washington is not going to get me into the position of saying that I have made a blanket indictment against the Senate or of any other group. I am only trying to interpret the resolution as it was originally agreed upon by the majority leader of the Senate, to whom I paid my respects a few minutes ago.

I say that we have a responsibility to follow through on this investigation.

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

Mr. WILLIAMS of Delaware. Not now; I shall yield in a moment.

Mr. MAGNUSON. I will take the floor as a matter of personal privilege.

Mr. WILLIAMS of Delaware. I will yield in a moment.

Mr. MAGNUSON. Mr. President, a point of order.

The PRESIDING OFFICER (Mr. WALTERS in the chair). The Senator from Delaware has the floor.

Mr. WILLIAMS of Delaware. I shall yield to the Senator from Washington in a moment.

I say to the Senator from Washington that I am not making any blanket indictment, nor have I tried the case on the floor of the Senate, nor do I propose to do so. I am only trying to have adopted an amendment to the resolution which will clear up beyond any shadow of doubt the fact that the Committee on Rules and Administration, has the authority, if it desires to do so, to examine any question of impropriety even though it may involve a Member of the Senate. I am sure the Senator from Washington would not disagree with that.

I said earlier that I was not making charges against any Member of the Senate. I have no information involving any Member of the Senate. I am proud of the membership of the Senate, and I would resent any such blanket indictment. I will not accept the inference that I am now trying to make such a charge. I would resent a blanket indictment of the employees of the Senate. The overwhelming number of employees of the Senate and the Members of the Senate on both sides of the aisle are honest; they are trying to do their jobs well. I am not pointing up the incident of wrongdoing merely because it happened to be on the part of an employee on the Senator's side of the aisle. Neither do I charge it against the Senator's party.

The Republican Party had its Teapot Dome scandal. I mentioned that earlier. It involved officials of a Republican administration. I am ashamed of that. But I would resent a reference to that as being an attempt to make a blanket indictment of the Republican Party. I would resent anyone making a charge that the Baker incident might involve the Senator's entire party or might be an indictment of all the Members of the Senator's side of the aisle, any more than I would resent such a charge being made against Senators on this side of the aisle. I said that before the Senator entered the Chamber; I again repeat it.

I cannot emphasize this too strongly that the resolution is not intended as an indictment against any individual or group in the Senate. I am not attempt-

ing to take part in any differences in the Rules Committee. I am simply trying to clear up beyond any shadow of doubt the fact that the Rules Committee has the authority if they find that any Member of the Senate is involved—and I am using the word "if" advisedly—can investigate.

The question has been asked: Why was not that authority included in the original resolution? The reason why the word "Senator" was not included—and this should answer the point raised by the Senator from Washington—is that we discussed it with the legislative counsel and did not think it necessary. I had no evidence whatsoever that any Senator or any other employee was involved, yet we all recognized that there was a possibility when the investigation took place that it might involve more than one person and that it might even involve a Member or former Member of the Senate. I am sure the Senator would agree with me that if that were the case, the committee should have authority to investigate the entire subject and call in this Senator if it felt such were necessary. If it did involve a Senator, I know the Senator from Washington will agree with me that the committee should have gone into it.

I repeat—my resolution was intended to be broad enough to authorize the committee to look into any matter even if it involved a Member of the Senate. But I felt that if I actually used the word "Senator," and so forth, in the resolution that would be regarded as a blanket indictment of the entire membership of the Senate. So we framed the first resolution in the broadest terms.

As I have said, this new resolution is not submitted now because I have evidence against a Member of the Senate. It is submitted only because of yesterday's ruling by the chief counsel of the Committee on Rules and Administration. I am not a lawyer, but I do not agree with his ruling that if the committee finds a Member of the Senate involved in an impropriety, it is not authorized to investigate such a matter. So my new resolution is not a shotgun authorization to investigate this or that particular Senator. I would resent very greatly indeed a shotgun indictment or a broad-scale inquiry about some general subject of that sort, and particularly if the names of Senators were used in that way.

Mr. MAGNUSON. Let me ask the Senator from Delaware whether we are "back down on the farm" now?

Mr. WILLIAMS of Delaware. Yes. If names are mentioned, I believe there should be definite reasons for doing so. I assure the Senator from Washington that I shall never mention the name of any individual, here on the floor of the Senate or elsewhere, unless I have definite evidence beyond the shadow of a doubt, sufficient to back up such use of a particular name. I recognize that a man's reputation is about the most sacred thing he has, and it can easily be destroyed; once it is destroyed it cannot be returned to him.

So I am offering the new resolution today, I repeat again and again, not with the thought that I have any informa-

tion to take before the committee involving any Member of the Senate. I am offering the new resolution solely in order to clear up the point which has been made; namely, that the public has the impression—and I do not say how the public got it—that where Senators are involved the Senate is not big enough to follow through.

But I do not intend to join in an attempt to smear anyone. I will always oppose such actions. I realize the Senator from Washington did not hear the first part of my remarks, and therefore we were snapping at each other as the result of a misunderstanding.

Mr. MAGNUSON. Oh, we have been snapping at each other for years.

Mr. WILLIAMS of Delaware. But that does not diminish our respect.

Mr. MAGNUSON. And he has repeated his statement that the new resolution is not intended as a blanket indictment of the membership of the Senate.

Does the Senator from Delaware have any reason to believe that a Member of the Senate is involved in this matter?

Mr. WILLIAMS of Delaware. No; and I said that at the beginning.

Mr. MAGNUSON. Very well; the Senator from Delaware has answered my question.

Mr. WILLIAMS of Delaware. I had said that at the beginning of my statement.

Mr. MAGNUSON. Then the Senator from Delaware has answered my question.

Mr. WILLIAMS of Delaware. In further answer to the question of the Senator from Washington I point out that I told the chairman of the committee that as long as the committee is functioning, if any evidence of that nature or of any other nature came to me I would call it to the attention of the committee first.

Mr. ERVIN. Mr. President, will the Senator from Delaware yield?

Mr. WILLIAMS of Delaware. I yield.

Mr. ERVIN. I wish to inform the Senator from Delaware why I objected to his request for immediate consideration of his new resolution.

Mr. WILLIAMS of Delaware. I am about to withdraw the request.

Mr. ERVIN. First, I thought the leadership should have been notified before the resolution was brought up.

Second—and this is more fundamental—I am supposed to speak today on the pending civil rights bill; and several Senators have asked me whether they could safely leave the Chamber for 2 or 3 hours. I assured them that if the good Lord gave me strength enough to stand on the floor of the Senate and speak for 2 or 3 hours, they could leave for that length of time.

I deeply regret, however, that the senior Senator from New Jersey [Mr. CASE] has left the floor, because I wished to call to his attention these words written by Shakespeare:

Who steals my purse steals trash; 'tis something, nothing;
'Twas mine, 'tis his, and has been slave to thousands;
But he that filches from me my good name
Robs me of that which not enriches him,
And makes me poor indeed.

The Senator from New Jersey has been insinuating that there is such grave reason to believe that Members of the Senate have been guilty of disreputable conduct, that they should be requested to come before the Committee on Rules and Administration and prove their innocence of a charge which he does not dare make.

Mr. WILLIAMS of Delaware. I thank the Senator from North Carolina.

I repeat that I am not making charges against anyone. I appreciate the position of the Senator from North Carolina. Upon the request of the chairman of the committee I will withdraw my request for immediate consideration of the new resolution. Instead, I shall ask that the resolution go over until tomorrow. Therefore, at this time I ask that the resolution be printed and lie on the table, and I shall not ask that the resolution be considered at this time.

As I have stated, I am only trying to clear up beyond any doubt, and if some other Senator has better language for this purpose I shall be glad to join in using it—the apparent misunderstanding of what the majority leader and other Senators said as to the scope and authority of the committee under the other resolution. The acting majority leader was told before the morning hour that I was going to bring this question up here today.

The PRESIDING OFFICER. The question is whether there is objection to the submission of the resolution, in order that it be printed and lie on the table. The other resolution itself is not now before the Senate.

Mr. WILLIAMS of Delaware. That is correct.

I ask whether the Senator from North Carolina will have objection to having the new resolution printed, so it will be available.

Mr. ERVIN. I have no objection whatever. I understand that the Senator from Delaware is not requesting that the new resolution be considered at this time.

Mr. WILLIAMS of Delaware. I am only asking that the resolution be printed and lie on the table.

The PRESIDING OFFICER. Does the Senator from Delaware withdraw his request for immediate consideration of the resolution proposing to amend the original resolution?

Mr. WILLIAMS of Delaware. Yes. I ask only that the resolution be printed in order that it may be available to Members of the Senate. I do not request the immediate consideration of the resolution. However, I do not want the resolution sent to the committee. I wish to have the resolution printed and to have it lie on the table.

The PRESIDING OFFICER. Without objection, the resolution submitted by the Senator from Delaware will be received, printed, and will lie on the table. Is there objection? The Chair hears none. Without objection, it is so ordered; and the resolution submitted by the Senator from Delaware will be printed and will lie on the table.

The resolution (S. Res. 330) submitted by Mr. WILLIAMS of Delaware (for

himself and Mr. CASE) was ordered to lie on the table, as follows:

Resolved, That the first sentence of S. Res. 212, 88th Congress, agreed to October 10, 1963, is amended to read as follows: "That the Committee on Rules and Administration or any duly authorized subcommittee thereof is authorized and directed to make a study and investigation with respect to any financial or business interests or activities, or any illegal, immoral, or improper activities, including activities involving the giving or receiving of campaign funds under questionable circumstances, of any Member or former Member of the Senate, employee or former employee in the office of a Senator or former Senator, employee or former employee of a Senate committee or subcommittee thereof or of any joint committee the expenses of which are disbursed by the Senate Disbursing Office, officer or employee or former officer or employee of the Senate who receives or has received payment of salary through the Senate Disbursing Office, or any other officer or employee or former officer or employee of the Government who is employed or was formerly employed in either of the Senate office buildings or in the Senate Wing of the Capitol, for the purpose of ascertaining (1) whether any such interests or activities have involved conflicts of interest, or any other impropriety of any kind, and (2) whether additional laws, rules, or regulations are necessary or desirable for the purpose of prohibiting or restricting any such interests or activities."

SEC. 2. S. Res. 291, 88th Congress, agreed to February 10, 1964, as amended, is amended by striking out "May 31, 1964" and inserting in lieu thereof "September 1, 1964".

CIVIL RIGHTS ACT OF 1963

The Senate resumed the consideration of the bill (H.R. 7152) to enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States to provide injunctive relief against discrimination in public accommodations, to authorize the Attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes.

Mr. ERVIN obtained the floor.

Mr. HUMPHREY. Mr. President, will the Senator from North Carolina yield to me?

Mr. ERVIN. I yield, provided that in doing so, I shall not lose my right to the floor or any of my other rights.

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

Mr. HUMPHREY. Mr. President, earlier today I discussed with the distinguished minority leader the procedure in connection with the civil rights bill. At the request of the Senator from Wyoming [Mr. MCGEE], we discussed the possibility of Senate consideration of Senate Resolution 71, to establish a National Commission on Food Marketing, to study the food industry from the farm to the consumer. Many Senators are keenly interested in that measure.

There are on the calendar other measures in which a substantial number of Senators are much interested.

I then indicated to the minority leader that I would have to object to requests

for the consideration of calendar measures until the Senate completed its action on the civil rights bill.

So, I believe it only fair to me to state what transpired this morning. I understood that the minority leader was of exactly the same opinion.

As a result, after consultation with the senior Senator from Georgia [Mr. RUSSELL], the minority leader [Mr. DIRKSEN], the Senator from Wyoming [Mr. MCGEE], and myself, we had to deny the Senator from Wyoming an opportunity to have his resolution called up.

I wish to say to the acting minority leader that I request that when Senators ask a Senator who has the floor and is speaking on the civil rights bill to yield for purposes other than a question or for debate on the pending question, objection be made by him. Otherwise, the Senate will make no progress with the bill.

Mr. President, we are going to get on with this legislation, even if we have to take a very firm stand on the enforcement of the rules of this body. So I would hope, whoever occupies, either the minority leader's chair or the majority leader's chair, that if the Senator from Minnesota is absent from the Chamber, or if the Senator from California [Mr. KUCHEL] is not present, there will be objection.

I know that this request will be honored, so that if Senators ask the Senator from North Carolina to yield today for the purpose of discussing a part of the world, or any of our foreign policy problems, or any of our domestic policy problems—all of which I am sure would be very interesting—I should hope that my associate, whoever may be acting as acting majority leader, or acting minority leader, would object. I make that request.

Mr. ERVIN. I assure the Senator from Minnesota that I shall not attempt to extend them the courtesy; and I shall attribute to the pronouncement of the Senator my inability to extend them that courtesy.

Mr. HUMPHREY. Mr. President, will the Senator yield further?

Mr. ERVIN. I yield.

Mr. HUMPHREY. I do not like to be put in the position of a disciplinarian on these matters. But there has been discussion already on the part of the leadership, both Republican and Democratic. This is not novel, may I say to the opponents to the bill. The Senator from Georgia, I believe, was likewise informed. I will take the full responsibility.

Mr. ERVIN. I assure the able and distinguished Senator from Minnesota that I have a great deal to say on the bill. I shall be glad to have an opportunity to do so without interruption.

The PRESIDING OFFICER. The Senator from North Carolina has the floor.

Mr. ERVIN. Mr. President, when my speech was interrupted in a somewhat untimely manner on last Wednesday, I was in the process of discussing the amendments which Congress passed to the Clayton Act in 1914. I pointed out that those amendments to the Clayton Act, which had to do with the right of trial by jury in criminal contempt cases,

are now codified in somewhat changed phraseology in sections 402 and 3691 of title 18 of the United States Code.

Under these sections, a respondent, whether a natural person or a corporation, charged with an indirect contempt for violation of an injunction is entitled to a jury trial if the act charged as a violation of the injunction is also a crime under an act of Congress or the laws of the State in which it was committed. It is noted, in passing, that virtually all violations of the civil rights of others constitute crimes under both Federal and State laws.

If H.R. 7152 should be enacted into law, violations of titles I, II, III, and IV, and also of VI by State or local officials involved in the administration of federally assisted programs would constitute crimes under section 242 of title 18 of the United States Code, and would be punishable as misdemeanors by imprisonment for not more than 1 year or a fine not exceeding \$1,000, or both.

This is true because section 242 of title 18 of the United States Code specifies in very plain language that any State or local official who willfully deprives any person of any right secured to him by the Constitution or laws of the United States is guilty of a crime.

When the U.S. Government undertakes to prosecute one accused under that statute, the U.S. Government has the burden of making out a case of his guilt beyond a reasonable doubt before the jury is justified in returning a verdict of guilty.

One of the greatest tragedies in the field of the administration of justice in recent years has been the preference of the U.S. Department of Justice for prosecutions of State and local officials for alleged criminal contempts rather than for a violation of this statute. By this process, the United States is able to deny to the accused the right of trial by jury. A resort to prosecutions for criminal contempt is also practiced by the United States in preference to the use of the criminal statute because such action also denies to the accused the right of trial in the district, or even in the State in which the alleged contemptuous act occurred.

This process also enables the Federal Government to deny to the accused the benefit of limited punishment as specified in the statute. It subjects the accused, if found guilty by the judge without a jury, to a punishment which knows no limit beyond the nebulous limit of the eighth amendment, which prohibits excessive fines, and cruel and unusual punishment.

The habit of the Department of Justice in resorting to criminal contempt procedures rather than to criminal prosecutions also denies to the accused the benefit of the constitutional provision which provides that an accused cannot be placed twice in jeopardy for the same offense.

When the Clayton Act was passed, it provided other substantial benefits to persons accused of criminal contempts which also constituted crimes against Federal or State laws, in addition to the benefit of the right of trial by jury.

Sections 402 and 3691 of title 18 of the United States Code confer another substantial right, additional to that of the right of trial by jury, upon a respondent who is a natural person in case he is convicted. While they provide that he may be "punished by fine or imprisonment or both," they set definite limits to his punishment by specifying that he cannot be required to pay a fine to the United States in excess of \$1,000 or subjected to imprisonment for a term in excess of 6 months.

One extremely unfortunate provision, however, was inserted in the amendments to the Clayton Act dealing with criminal contempt proceedings. This provision, which is now embodied in sections 402 and 3691 of title 18 of the United States Code, stipulates in express terms that their salutary provisions do not apply "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."

Borah, of Idaho; Norris, of Nebraska; Walsh, of Montana, and the other liberal Senators of that day favored extending the right of trial by jury of all persons charged with indirect contempts arising out of alleged violations of injunctions.

In a magnificent speech pointing out that such right was secured to the people by constitutional or statutory provisions in a number of States, Walsh declared that "the most perfect judicial systems ever known are those of which the jury forms an essential part"; that "trial by jury is the greatest school in self-government ever devised by the ingenuity of man"; that "Jefferson maintained all his life that cases in chancery should be tried before a jury"; that "there is not an argument that can be advanced or thought of in opposition to trial by jury in contempt cases that is not equally an argument against the jury as we now know it"; and that "instead of being an attack on the court, the proposal to submit to trial by jury alleged contempts not committed in the presence of the court is a plan to restore to the Federal courts the confidence and good will which the people ought to bear toward them, but which, unfortunately, by a liberal and sometimes inconsiderate exercise of the power to issue injunctions and to punish as for contempt, has, among certain classes of citizens, been all but forfeited."

Senator Borah denounced with rare eloquence the provisions now embodied in sections 402 and 3691 of title 18 of the United States Code denying the right of trial by jury and the protection of limited punishment to persons charged with "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."

In offering an amendment to strike out this provision, Borah said that "the effect of this amendment is to provide for jury trial in contempt cases in actions brought by the Government the same as when actions are brought by private individuals"; that "every argu-

ment in favor of the right of trial by jury upon the part of one citizen of the United States is equally applicable to the right of trial by jury upon the part of every other citizen of the United States"; that "the right of the citizen to have his guilt or innocence determined by his peers cannot be changed by reason of the fact that a particular party happens to be a plaintiff in one case and another party a plaintiff in another case"; and that the provision denying persons charged with indirect contempts trial by jury in case the injunction alleged to have been violated was issued in a suit brought by the United States "offends every sense of justice and every principle of free institutions and equal rights."

I should like to emphasize that statement by Senator Borah, because it expresses a truth which no amount of cringing before the demands of the Department of Justice can erase. In a speech in favor of his amendment to strike out this provision giving to the United States rights and privileges superior to those granted to litigants in every other contempt proceeding Senator Borah declared:

The provision * * * offends every sense of justice * * * and every principle of free institutions and equal rights.

I agree completely with that statement of Senator Borah.

When the United States comes into one of its own courts and prosecutes any kind of proceeding against any of its citizens, the United States already has a tremendous advantage over that citizen. It has the total financial resources of the United States to aid it in its investigation of the charge against the citizen, in assembling the evidence to support the charge, in procuring witnesses to give such evidence, and in presenting its case to the court.

It is, as Senator Borah said, an offense to every sense of justice and to every principle of free institutions and equal rights to give the U.S. Government, in the prosecution of criminal contempt cases against its citizens, the power to deny them the right to a trial by jury.

Another great Senator of that day was Senator Reed, of Missouri, who had a most distinguished career as a trial lawyer before he became a Member of the Senate. As a result of his vast experience as a trial lawyer, Senator Reed was fully familiar with the safeguards necessary to assure justice to every man in the courts of our land.

Senator Reed made these trenchant remarks in support of the Borah amendment to strike from the Clayton Act the provision exempting from the salutary principles of the Clayton Act actions or suits prosecuted by or in the name of the United States:

I believe that if it is right to submit questions involving the right of life to a jury it is not dangerous to submit to a jury a mere question of contempt. If we can safely repose in a jury the power to try all questions of property, all questions affecting the honor of the citizen, all questions affecting the liberty of the citizen * * * there is nothing unsafe in submitting to the same kind of tribunal, summoned in the same way, the simple question of fact has this corporation

or that individual violated the order of the Court * * *. So, Mr. President, I feel that it is safe, that it is proper, to support the amendment offered by the Senator from Idaho. I believe that the dignity and authority of the courts will remain unimpaired. At the same time judges inclined to tyrannical practices or who are influenced by prejudice or passion will find a wholesome check has been placed upon unjust and arbitrary punishment.

That is the end of the quotation from the speech of Senator Reed in support of the amendment offered by Senator Borah to strike from the provisions of the Clayton Act now embodied in sections 402 and 3691 of title 18 of the United States Code, the words, "Provided, That the provisions of this Act do not apply to contempt committed in disobedience of any willful authority, 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 Borah amendment was rejected by the narrow margin of three votes. Events proved that the Clayton Act did not suffice to end many of the abuses of the injunctive and contempt processes in industrial controversies. This is due in large part to the failure of the amendment to extend the benefit of jury trials and limited punishment to persons charged with contempt based on supposed violations of injunctions issued in actions brought in the name of or on behalf of the United States and to persons charged with indirect contempt based upon supposed violations of injunctions enjoining acts themselves, not illegal under Federal or State laws.

I know of no case which illustrates in more graphic fashion the failure of the law to provide for jury trial and limited punishment in cases of criminal contempt proceedings where the alleged criminal contempt does not involve the violation of a Federal or State law, and for this reason the person accused of such contempt is prevented from enjoying the benefit of the right of trial by jury, than the case of Gompers against the United States, which is reported in 233 U.S. 604.

This was not a case prosecuted by the United States, and for this reason would not have fallen into the category of the exception set out in the Clayton Act giving the United States a great advantage over all other litigants, even if that statute had been in force in 1913, when the case was decided.

Mr. Gompers was convicted of contempt in a trial without a jury, and was sentenced to imprisonment for making a perfectly truthful statement in violation of an injunction—namely, that no one was compelled by law to buy stoves manufactured by the plaintiff, which was the Bucks Stove & Range Co. The only thing which saved this great labor statesman from actual incarceration for criminal contempt in a case tried by a judge without a jury was the fact that the Supreme Court held, in an opinion by Mr. Justice Holmes, that prosecutions for criminal contempts were covered by the Federal Statute of Limitations on criminal prosecutions.

This case illustrates the danger to liberty and to the right of freedom of speech in any instance in which the Federal

Government, or any private litigant, for that matter, resorts to the injunctive process, and thereby makes it possible not only to send a man to prison without a trial by jury for a criminal act, but also for doing acts which are perfectly innocent under the provisions of criminal law.

Congress saw the injustice being perpetrated upon labor in its efforts to improve wages and working conditions by the provisions of the Clayton Act, denying the right of trial by jury in cases in which an injunction was procured in a suit brought by or in the name of the United States. Congress undertook to remedy these injustices to labor by the enactment of the Norris-La Guardia Act in 1932. One of the salient provisions of the Norris-La Guardia Act is now embodied, in changed phraseology, in section 3692 of title 18 of the United States Code, which reads as follows:

In all cases of contempt arising under the laws of the United States governing the issuance of injunctions or restraining orders in any case involving or growing out of a labor dispute, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the contempt shall have been committed.

This section shall not apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice nor to the misbehavior, misconduct, or disobedience of any officer of the court in respect to the writs, orders, or process of the court. (June 25, 1948, ch. 645, 62 Stat. 844.)

I believe that this provision of the Norris-La Guardia Act is just and salutary. It embodies a procedure which secures to a person involved in a labor dispute the right of trial by jury in criminal contempts arising out of that dispute.

It is queer to me that the advocates of civil rights proposals demand that the United States be permitted to use unequal laws for the avowed purpose of promoting equality.

The 14th amendment places an obligation upon the States to refrain from denying to any person within their jurisdiction the equal protection of the laws. When this constitutional phrase is stated in simple language, it means that every State must see to it that its statutes apply in like manner to all men in like circumstances. As the courts have remarked, it guarantees to every person the right to equality of treatment under equal laws.

The Constitution of the United States does not undertake to place upon the Federal Government the responsibility in this field of law which it places upon the States.

With all due deference to all persons who would deny the right of trial by jury under certain provisions of the pending bill, it is a mockery of justice to propose in a bill that the Federal Government should be armed with unequal laws for the purpose of enforcing upon the States the prohibition that they shall not deny to any person within their jurisdiction equal protection of the laws. Yet that is exactly what happens when we have laws like the Clayton Act, which gives the right of trial by jury and the benefit of limited punishment to persons in crim-

inal contempt proceedings when such criminal contempt proceedings arise in litigation between private litigants, and deny the right of trial by jury and the benefit of limited punishment to persons accused of criminal contempt in litigation brought by the United States.

I also assert that the provisions of the Norris-La Guardia Act result in unequal Federal laws in the case of persons charged with criminal contempt.

The provision of the Norris-La Guardia Act which I have read grants the right of trial by jury in all cases of contempt arising under the laws of the United States governing the issuance of injunctions or restraining orders involving or growing out of a labor dispute. At the same time it denies the right of trial by jury to persons not falling within the provisions of the Clayton Act, and to all persons not involved in a charge of criminal contempt arising under the laws of the United States not growing out of labor disputes.

In other words, we have, in the Federal law on criminal contempt, one law for one group of people, and another law for another group of people, in violation of the principle that in any just system of jurisprudence the laws shall apply in like manner to all persons in like circumstances.

Mr. President, I wish to refer for a moment to the Clayton Act, especially the provisions of that act which exclude from its beneficent provisions for jury trial and limited punishment persons charged with criminal contempt in suits brought by or in the name of the United States. The injustice of a law which grants the right of jury trial to some litigants and denies the right of jury trial to other litigants charged with identical offenses is well illustrated by the decision of the Supreme Court of the United States in the case of *Hill v. United States ex rel Weiner*, 300 U.S. 105. I read from the opinion of the Court:

The relator, Weiner, was convicted in a Federal district court of violating a decree entered against him and numerous others by that court in a suit in equity brought by the United States under the Sherman Antitrust Act, title 15, U.S.C., sections 1, 2, 4. He, with others, was charged by information with the commission of several specified acts in violation of the decree, constituting criminal contempts. Upon a trial before the court sitting without a jury, he was found guilty and sentenced for certain of the contempts to imprisonment for 6 months in the house of detention, and for other contempts for 2 years additional in the penitentiary. Upon his application and consent, the first part of the sentence was increased from 6 months in the house of detention to a year and a day in the penitentiary, but to run concurrently with the 2 years' imprisonment.

On June 5, 1935, he was committed to the penitentiary. At the end of 11 months, he applied by petition to another Federal district court to be discharged on habeas corpus, on the ground that the first court was without power to sentence him for a period of more than 6 months; and, having served that long, that he was entitled to be set at liberty.

The district court accepted that view, granted the writ, and ordered the relator discharged (11 F. Supp. 195). Upon appeal, the court below affirmed the order (84 F. (2d) 27).

The case involves a consideration of sections 21, 22, and 24 of the Clayton Act, title 28, U.S.C., sections 386, 387, and 389. Section 21, so far as pertinent, provides that any person who shall willfully disobey any lawful decree of the Federal district court by doing any act or thing thereby forbidden to be done by him, if of a character to constitute also a criminal offense under any statute of the United States or laws of any State in which the act was committed, shall be proceeded against as thereafter provided. Section 22 provides for trial by the court or, upon demand of the accused, by a jury. If found guilty, punishment is to be either by fine or imprisonment or both, in the discretion of the court, "but in no case shall the fine to be paid to the United States exceed, in case the accused is a natural person, the sum of \$1,000, nor shall such imprisonment exceed the term of 6 months." Section 24, however, provides that "nothing herein contained [sections 21, 22, 23, 25] shall be construed to relate to contempts committed in disobedience of any lawful * * * decree * * * entered in any suit or action brought or prosecuted in the name of, or on behalf of, the United States, but the same, and all other cases of contempt not specifically embraced within section twenty-one * * * may be punished in conformity to the usages at law and in equity prevailing on October 15, 1914." If section 24 applies, the sentence was within the statutory authority of the court.

Mr. President, this case illustrates the grave injustice of the provisions of the Clayton Act, now codified in sections 402 and 3691 of title 18, United States Code. Under the Antitrust Act, the United States can bring a suit for an injunction to restrain certain monopolies of trade and certain restraints of trade. Under the provisions of the Antitrust Act, an individual or a corporation which is threatened with injury by a monopoly of trade or a restraint of trade in violation of the provisions of the act can also bring a suit to protect its interests.

If the suit is brought by an individual or a corporation, as plaintiff, any person charged with criminal contempt for a violation of an injunction issued in the suit is entitled to a trial by jury before he can be sentenced. Upon his conviction by a jury, the defendant cannot be punished by being imprisoned for more than 6 months or by having a fine of more than \$1,000 imposed, or both. However, if the suit is brought by the United States, under exactly the same law—the Antitrust Act—and if a person is charged with a criminal contempt for violation of an injunction issued in the suit, such person is denied the right of trial by jury. Furthermore, he is denied the benefit of the provision of the statute that no man can be fined more than \$1,000; and he is denied the provision of the statute which limits the imprisonment to a period not to exceed 6 months. This is made clear by the decision of the Supreme Court in the Hill case in reversing the decision of the lower court. The Court said:

First. The court below held, and relator here contends, that the limitation of imprisonment to 6 months is not affected by the provisions of section 24.

The defendant was sentenced to 2 years' imprisonment.

The Court also said:

A similar question was before this Court in *United States v. Goldman*, 277 U.S. 229,

and was there decided contrary to the views of the court below. In that case, an information was presented by the United States to a Federal district court, charging Goldman and others with criminal contempts committed by acts in violation of an injunction decreed by that court in an equity suit brought by the United States. The information was dismissed on the ground that under section 25 of the Clayton Act, the prosecution was barred by the statute of limitations. This court reversed. Section 25 provides that no proceeding for contempt shall be instituted unless begun within 1 year of the act complained of; but we held that the specific exception contained in section 24—"nothing herein contained"—applied to all provisions of the act relating to prosecutions for criminal contempts, and therefore applied to section 25, "as well as to the other sections," and that the 1-year limitation prescribed by section 25 was without application to a case brought for the disobedience of a decree entered in a suit prosecuted by the United States.

That decision controls here. The object of section 24 clearly was to limit the application of the provisions of section 22, and the other sections named, to prosecutions for contempt arising out of cases instituted by private litigants.

Mr. President, regardless of what anyone else may say, I am firmly of the opinion that it is a gross injustice to have a law under which one has the benefit of trial by jury and the benefit of limited punishment in criminal contempt cases arising from suits instituted by private litigants, but under which the accused is denied the right of trial by jury and the benefit of limited punishment. This is the situation if he is convicted of doing exactly the same kind of act, constituting a criminal contempt, merely because the suit, in connection with which the alleged contempt occurs, is brought by the United States of America, instead of by a private litigant.

This injustice is illustrated in the *Weiner* case. If the antitrust suit in which *Weiner* was charged with criminal contempt had been brought by an individual or a corporation, *Weiner* could not have been imprisoned for more than 6 months. However, since the suit was brought by the United States, the court was compelled to hold that, under the Clayton Act, he could be punished by imprisonment for as long as 2 years, or even longer than that, if the sentence had been for a longer period of time.

Any statute makes a mockery of justice when it provides that the rights of an accused are to be determined, not on the basis of his conduct, but, instead, on the basis of the character of the litigant who brings the suit. Yet that is precisely what the Clayton Act provides; and the provisions of the Clayton Act have been continued in force to this very hour, and are now found, as I have said, in sections 402 and 3691 of title 18 of the United States Code.

It is the duty of the Congress of the United States to prescribe the procedures which will govern all controversies in the U.S. courts. Congress is derelict in the performance of its duty, in my honest judgment, when it authorizes such a procedure as the one set forth in the Clayton Act, under which the punishment of an individual is not adjudged on the basis of his own conduct, but is adjudged

on the basis of the character of the other litigant.

A moment ago, I stated that in 1932, Congress enacted the Norris-La Guardia Act. In that connection, I read to the Senate section 3692 of title 18 of the United States Code, which embodies the jury-trial provision of the Norris-La Guardia Act, and secures the right of trial by jury to all persons charged with criminal contempts in matters arising out of labor disputes. I regret to state that this provision of the Norris-La Guardia Act has been modified by the provision of the Taft-Hartley Act embodied in section 178(b) of title 29 of the United States Code. This modification provides, in substance, that the jury-trial provision of the Norris-La Guardia Act does not apply to injunctions issued in cases of strikes and lockouts which "imperil the national health or safety."

Mr. LONG of Louisiana. Mr. President, will the Senator from North Carolina yield for a question?

Mr. ERVIN. I am delighted to yield to the able and distinguished Senator from Louisiana for a question; but I can yield only for a question, because of the pronouncement made earlier today by the floor manager of the bill.

Mr. LONG of Louisiana. Has the Senator from North Carolina heard the statements, made here on the floor, to the effect that in a great number of States there was no right of trial by jury in connection with criminal contempts?

Mr. ERVIN. Yes.

Mr. LONG of Louisiana. Would the Senator from North Carolina say the provisions of article III of the Constitution and the provisions of the Bill of Rights relating to the guarantee of trial by jury were intended to apply to State governments or were intended to apply only to the National Government?

Mr. ERVIN. They were intended to apply only to the National Government. That was their original purpose. The Founding Fathers realized, what some Senators apparently do not, that the individual needs protection against governmental tyranny. So they insisted on writing the first 10 amendments into the Constitution in order that the people might have protection against governmental tyranny. They wrote those 10 amendments into the Constitution because they believed that the supreme value of civilization is the right of the individual to be free from governmental tyranny. They stated in the preamble to the Constitution that they ordained and established the Constitution to secure the blessings of liberty to themselves and to their posterity.

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

Mr. ERVIN. I yield.

Mr. LONG of Louisiana. Would it not be correct to say that the manner in which the Constitution came into being was an arrangement whereby 13 States created a National Government over and above the 13 States?

Mr. ERVIN. That is undoubtedly true. As a matter of fact, each of those 13 States became a free, sovereign nation 13 years before the Constitution of the United States actually took effect. The States became independent in 1776,

and they did not succeed in creating the Constitution until it took effect in 1789.

Mr. LONG of Louisiana. Would it not be correct to say that the provisions in the Constitution relating to trial by jury were part and parcel of an arrangement whereby the Central Government was created, certain powers were given to that Central Government, and the number of limitations within which that Government would operate was spelled out?

Mr. ERVIN. There is no question about that. They created a Constitution for the purpose of giving the Federal Government such powers as were necessary to enable it to function as a central government. And they left all of the other powers either to the State or to the people themselves.

Mr. LONG of Louisiana. Mr. President, will the Senator yield for a further question?

Mr. ERVIN. I yield.

Mr. LONG of Louisiana. Would it not be correct to say that the founders of our Nation at that time would have left the matter of whether a State court could have a jury trial, or not have a jury trial, entirely to the State and its people, and that the idea of the Constitution was not at all to seek to regulate the citizens of an individual State, but rather to regulate the relationship of the citizen and his State to the Central Government thus created?

Mr. ERVIN. That is undoubtedly correct.

Mr. LONG of Louisiana. That being the case, would it not be totally irrelevant whether States did or did not require a jury trial in all cases for their citizens?

Mr. ERVIN. They have nothing to do with it. We are here as legislators for the Federal Government. We are not State legislators. It is immaterial to us as legislators what legislation the State has in this or any other field.

The only duty which we have in this connection is to see that the U.S. Government enacts into law rules of procedure governing criminal contempts in all other matters relating to the Federal court, which are fair, just, and designed to accomplish justice. In other words, we ought to see to it that persons who are accused of crime in the Federal court and persons accused of criminal contempt in the Federal court are granted a fair trial.

Mr. LONG of Louisiana. Were not these provisions placed in the Constitution in three different places, which guaranteed a citizen the right of a trial by jury in the Federal court, clearly intended to prevent the Central Government—with the powers granted to it by the State and the people—from using those powers to usurp additional powers so that the Central Government at Washington could wind up with all the powers, including those which it was never intended that it should have?

Mr. ERVIN. There is no question that that is true. I think the best answer ever given to the Senator's question was given by the greatest student of American Government who ever occupied the White House—Woodrow Wilson. Wood-

row Wilson pointed out in his campaign for the Presidency:

Liberty has never come from the government. Liberty has always come from the subjects of it. The history of liberty is a history of the limitation of governmental power, not the increase of it. When we resist therefore the concentration of power, we are resisting the processes of death, because concentration of power is what always precedes the destruction of human liberties.

If I had the power to do so, I should make every Member of the Senate, before he voted on this bill—which would create the largest concentration of Federal power in government that has ever been created by one piece of legislation—memorize that and repeat it 10 times before he ever voted for the bill.

People have never suffered to any degree at the hands of the State government, with the courts sitting close to the people. Virtually every subdivision of a State government as large as a county or a parish has a State court. People are tried as a rule in the communities in which they live and in which their neighbors live. They are tried under circumstances where they have a full opportunity, without great expense and without great difficulty, to produce the necessary witnesses for their defense on the trial.

On the contrary, Federal courts sit at a great distance from the people in most cases. That is especially true in States where we have great rural areas. People are tried at a place where it is very expensive for them to go, and very expensive for them to procure the attendance of their witnesses.

So we can have very different laws on criminal contempt, or other things, justifiable between courts that operate at a State level and courts that operate at a Federal level.

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

Mr. ERVIN. I yield for a question.

Mr. LONG of Louisiana. Is it not true that in most instances, the State district court judges are judges elected by the people in that very community?

Mr. ERVIN. That is true. And they are subject every few years to giving an account of their judicial stewardship when they come up for reelection. The Federal judges are appointed for life, and they are virtually free from any control or supervision of any other agency on the face of the earth.

Mr. LONG of Louisiana. Has the Senator ever heard lawyers complain about the tyrannical attitude of some Federal judges, and the life tenure having something to do with the inclination of some of these judges to become arrogant and tyrannical in the exercise of their office?

Mr. ERVIN. I think that charge has been made, and made with justification, with respect to some of our Federal judges throughout the course of our history. As the Senator from Louisiana undoubtedly remembers, Thomas Jefferson said that the Federal judges were thieves of jurisdiction, in that they exercised power that they did not rightfully possess, and also that they were the sappers who were undermining the sys-

tem of government created by the Constitution.

I do not say that applies to all Federal judges. The great majority of the Federal judges are good men, with a keen sense of justice; but even a good man cannot administer justice under a system of law which is so unequal that it allows the right of jury trial to some men and denies the right of jury trial to other men under the same circumstances, and allows limited punishment for the benefit of some persons convicted, but allows unlimited punishment for other persons convicted of exactly the same character of acts.

Mr. LONG of Louisiana. With regard to the person who would be prosecuting or urging a judge to sentence a man for alleged contempt, would it not be correct to say that in one instance there would be a district attorney of the local community, elected by the people, and subject to periodic election and reelection by those people, as compared to a U.S. attorney appointed out of Washington, who would be privileged to be totally calloused and totally disrespectful of the attitude of the people of the community?

Mr. ERVIN. I think the Senator has put his finger on one of the great differences between Federal and State government and why so many of us fear the concentration of power in the Federal Government in Washington.

I have always felt, in dealing with the State government of North Carolina, that State officials are reasonable men. In dealing with the people they indulge the presumption, until they have evidence to the contrary, that the citizens are honorable people.

I regret to say that too often I have experienced an entirely different kind of treatment at the hands of Federal officials, especially those who are far removed from the people in agencies of the Central Government here in Washington.

Mr. LONG of Louisiana. Would it not be fair to say, when the argument is made that southern juries will not find accused persons guilty to the extent that U.S. attorneys working out of Washington would like to have it done, that that is a deviation from the philosophy that the people are governed by the consent of the governed? In other words, is it not fair to say that those who are seeking to deny southerners the right of trial by juries of their peers are seeking to depart vastly from the philosophy that a government is to be operated by the consent of the governed? Are they not trying to seek consent that someone in New York or Chicago, perhaps, may impose an outrage on someone who never consented to that type of activity?

Mr. ERVIN. First, let me say that I have heard Senators stand upon the floor of the Senate and charge that southern juries would not convict in criminal contempt cases. They cannot cite proof of that allegation. There is no such proof.

As I have frequently said, I maintain all the people are about the same kind of folks, regardless of whether they live below or above the Mason-Dixon line. Southern juries are just as honorable and

will keep their oaths as jurors with the same fidelity as persons in any other area of the country.

I agree with the arguments of Senator Borah, Senator Reed, and Senator Norris when the Norris-La Guardia Act was under consideration and when Senator Borah's amendment to strike out the exemption in cases brought by the Federal Government from the Clayton Act was under consideration. They stated that an argument against jury trial in those cases is an argument to be made against jury trial in any case with exactly the same validity.

I spent about a quarter of a century very actively in the practice of law, and, in my judgment, jurors come nearer to avoiding errors when they return a verdict than judges do in ruling upon matters of law. Judges very frequently have their cases reversed because they did not apply the law correctly to the facts. Normally, jurors come closer to making correct decisions. The reason why we have trial by juries in most cases is that the experience of the English speaking people shows that it is the only way by which individuals can be secured against governmental tyranny.

As the Senator from Louisiana so well knows, when the Constitution was written, equity courts, where no juries were employed, had jurisdiction in a very limited area. The only jurisdiction the equity courts had at that time was jurisdiction over private property rights. They had no jurisdiction over activities not connected with private property.

If the Founding Fathers had ever thought that Congress was going to extend the jurisdiction of courts of equity in which no juries are allowed to the extent to which Congress has extended their jurisdiction, they either would never have ratified the Constitution or would have put a provision in it to guarantee the right of trial by jury in equity proceedings.

As the Senator knows and as I read a short time ago, Thomas Jefferson stated there ought to be juries in courts of chancery, which is another name for equity courts.

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

Mr. ERVIN. I yield.

Mr. LONG of Louisiana. As one who has served on the bench with great distinction, can the Senator from North Carolina explain to us briefly how this amendment would affect so-called constructive contempt of court and how it would be changed, if at all, by the amendment to the bill which is now pending?

Mr. ERVIN. The amendment which the Senator from Louisiana has called up, and which is now the pending business before the Senate, as I construe it, would not affect in any manner the present power of the court in contempts committed within the presence of the court, in which contempts are punished in summary fashion without any jury.

The amendment would not affect in the slightest degree the power of the court to compel a party to comply with the judgment of the court, through a civil contempt proceeding. That power

would still exist, unaffected, and it could be exercised by the judge without a jury.

The amendment, as I construe it, only affects the power of the court in respect to criminal contempt. It would give the accused the benefit of trial by jury and the benefit of limited punishment in criminal contempts, which are proceedings initiated not for the purpose of compelling a person to obey the order or judgment of the court, but merely to punish a man for a past offense, just as is true of a criminal prosecution.

There is no fundamental difference between a criminal act punishable as a crime, where a right of trial by jury is guaranteed by the Constitution, and a criminal contempt.

Mr. LONG of Louisiana. May I ask the Senator to explain this type of situation? Could the Senator tell me whether under the amendment a man would have a right to be tried under these circumstances? Would he have a right to be tried before a jury if the judge said, "Register John Jones," and the registrar failed to register John Jones?

Mr. ERVIN. No, he would not, because in that situation the court would have the power to imprison a man until he registered the party the court found to be entitled to be registered. The court would have that power without intervention of a jury, because that would be a civil contempt proceeding.

Mr. LONG of Louisiana. The judge would have the power to send for the registrar, have the bailiff bring him before the court, and say to him, "You register John Jones, and I am going to keep you in jail until you register him." Is that correct?

Mr. ERVIN. He would have that power. That power would be to compel obedience to the order of the court, which would be to register a qualified person.

Mr. LONG of Louisiana. Suppose the judge issued an order to the registrar saying, "I order you to quit discriminating in registering people who ask to be registered." Would the judge have the right to call the registrar in and put that man in jail without a trial by jury?

Mr. ERVIN. Yes; he would have the power to put the man in jail without trial by jury for the purpose of forcing him to register any persons the court found were qualified and had been discriminated against in being refused registration.

Mr. LONG of Louisiana. Suppose the judge had issued an order which necessarily involved some discretion, such as deciding whether or not a person was actually qualified to register. Would the burden be upon the judge to first look at the cases and see whether the man had discriminated or whether he had not discriminated, and then decide whether those particular individuals should be registered?

Mr. ERVIN. I believe that due process of law would require that the judge first conduct the hearing and give the election official the opportunity to be heard in the matter. In this hearing, he would make inquiry of two things. First, whether these persons were qualified to vote under the laws of the State in which they had

applied to register; second, whether the election official had refused to register them because of their race, color, or national origin, and so forth, after it was apparent to him or it should have been apparent to him that they were qualified.

Mr. LONG of Louisiana. Mr. President, will the Senator yield for a further question?

Mr. ERVIN. I am glad to yield to the Senator from Louisiana, under the same conditions as before.

The PRESIDING OFFICER (Mr. NELSON in the chair). Without objection, it is so ordered.

Mr. LONG of Louisiana. Can the Senator show us the kind of case which would fall outside the court's civil contempt powers which applied to voting rights, for example, wherein he is contending that a jury trial should be ordered?

Mr. ERVIN. Falling outside the criminal contempt field?

Mr. LONG of Louisiana. In other words, can the Senator show us a type of case involving voting rights wherein he would feel a jury trial should be in order, where this amendment would bring about that result?

Mr. ERVIN. There are two different kinds of contempts outside of contempt committed in the immediate presence of the court or disrupting the proceedings of the court. If the object of the court is to compel the election official to perform his duty and register every person that the court has found to be qualified under the law, then he would resort to civil contempt proceedings in which there would be no right to a trial by jury under the bill; but if the object of the court was not to compel the registration of a qualified man by an election official but to punish an election official by imprisonment or fine, then he would be entitled to the right to a trial by jury because that would be criminal contempt; in other words, if the object of the judge is to compel compliance with the judgment, that would be a civil contempt proceeding and there would be no jury trial under this amendment, as I construe it. But if the object of the judge was not to enforce compliance with the judgment of the court but to punish a man either by imprisonment, or by fine, or both, for disobeying an order of the court, then that would mean that the right to a trial by jury would exist.

Mr. LONG of Louisiana. Would it be fair to say that a judge, in seeking to obtain voting rights for someone who had been subjected to discrimination, would have the right to hold that registrar in jail until the registrar did register the person whom the judge felt should be placed on the books?

Mr. ERVIN. Yes; he could take and put him in jail until he registered the person, under a system where the man would automatically procure his own release by complying with the order of the court and registering the person whom the judge had found to be qualified.

Mr. LONG of Louisiana. Could a judge impose a fine upon him, under those conditions?

Mr. ERVIN. Yes. A judge could impose a fine. This could be done in a number of ways. A man could be fined each day until he complied with the order of the court, with the provision that the accumulation of the fine would cease the day he complied with the order of the court, the order could specify that the fine would be void when the man complied with the court's order. The fundamental difference is that the man can procure his own release from the fine or the further accumulation of the fine, by complying with the order of the court, and in the other case he cannot procure his own release except by paying the fine.

Mr. LONG of Louisiana. Would it be fair to say that the provision for which the Senator is contending would save unto a judge the power that a court can contend for, in order to compel compliance with its order, but that it would deny the judge and the court the power to prosecute a man and to punish him for a past violation which partakes of the nature of a trial for a crime?

Mr. ERVIN. The Senator is exactly right in making that distinction. The amendment which the Senator called up makes exactly that distinction. This amendment would not interfere in the slightest with the power to compel the defendant to obey the order of the court and carry out the order of the court. It would merely give the defendant the right to a trial by jury and the right to the benefit of limited punishment in case the court was seeking to punish the defendant because of his past offense.

Mr. LONG of Louisiana. Would it not have the effect of recognizing that a trial for criminal contempt is a trial for a crime?

Mr. ERVIN. The Senator is correct. One strange thing about the ruling in the Gompers case was that Justice Holmes said, in substance, that a criminal contempt was a crime, and that it was barred by the statute of limitations applicable to crimes.

The reason this question has become so acute in recent years is due to two factors:

First. Congress has expanded the jurisdiction of the courts of equity to issue injunctions out of all proportion to the jurisdiction which equity formerly enjoyed. That necessarily results in the issuance of more injunctions, more disobedience of those injunctions, and more proceedings for criminal contempt.

Second. The Department of Justice believes that it is easier to get a conviction in a trial of a party accused before a judge rather than before a jury. Therefore, in cases where the alleged contemptuous act is a Federal crime, the Department of Justice elects to proceed by criminal contempt proceedings, which would deny a man the right to a trial by jury, rather than by criminal prosecution proceedings in which the man would have the right to a trial by a jury under the Constitution.

Mr. LONG of Louisiana. Does it not stand to reason that the Department of Justice would have much more influence with the judge than the Justice Department would have with the jury? In other words, is it not true, for example,

that the Justice Department must do business with the judge, and the judge must do business with the Justice Department in making arrangements for whatever help he would get in operating his court? Is it not also true that the Justice Department studies a man's qualifications before he is appointed to the bench, that it passes upon his qualifications, and then makes its recommendation to the President; and likewise when the man is recommended for promotion, that the Justice Department also reviews his record, based on the information available to them, and makes its recommendation as to whether the man should be promoted?

Mr. ERVIN. The Senator is correct. It is one of the unfortunate aspects of our system of Government in its practical operation that a man cannot get appointed to the office of Federal judge without the approval of the Justice Department. It is also one of the unfortunate aspects of our system of Government in its practical operation that a Federal district judge cannot possibly be promoted to circuit judge or a Federal circuit judge cannot possibly be promoted to the U.S. Supreme Court unless the promotion is satisfactory to the Department of Justice.

In saying these things, I do not mean to imply that Federal judges as a rule kowtow to the Department of Justice, but they are under that temptation. A judge is a human being, and unfortunately, a human being cannot lay aside all of his human instincts when he puts on the black judicial robes and ascends to the Federal bench.

Mr. LONG of Louisiana. Is it not true that the U.S. attorney, in pursuing one of these cases, is the representative of the Attorney General of the United States?

Mr. ERVIN. Yes.

Mr. LONG of Louisiana. Is it not true that if the Attorney General is presenting his case, the district judge knows that he is a man who has the power to pass on whether that judge will be promoted?

Mr. ERVIN. There is no question about it.

Mr. LONG of Louisiana. Under those circumstances, does it not stand to reason that the Attorney General would more likely have the power to influence the judge to find in his favor, than he would a juror, who would be drafted into service and then sent back among the citizenry?

Mr. ERVIN. A judge is subject to temptation, whereas jurors are not. A juror comes out of the life of his community and serves temporarily as a juror. After he serves as a juror, he returns into the life of his community. However, the judge remains in his judicial office. No matter how pure his motives may be, no matter how hard he may strive to administer justice, he cannot rid himself entirely of the consciousness that his subsequent promotion is dependent upon the good will of the Department of Justice.

Mr. LONG of Louisiana. I should like to ask the Senator a question relating to the impartiality of a judge as against

the impartiality of a juror. If the Senator were defending a man accused of a crime, and in looking over a panel of jurors noticed that one of the proposed jurors was a man who would vote to hang his own grandmother, so to speak, could not the Senator challenge that man and keep him off the jury?

Mr. ERVIN. When a lawyer is defending a man, in a criminal case—and he would have the same right in a case of criminal contempt, if the law allowed a jury trial in criminal contempt cases—he has the right to challenge any juror for cause, if he can show that the juror is biased. If he could not challenge him for cause, he could still exercise a peremptory challenge, because he would have a certain number of peremptory challenges at his disposal. He could use the peremptory challenge if he did not have a reason for challenging the juror for cause. A procedure is provided for insuring a fair and impartial jury to try the case.

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

Mr. ERVIN. I yield.

Mr. LONG of Louisiana. Suppose the Senator were defending a client who was compelled to be tried before a Federal judge who had had a thousand cases before him, and had never decided one case against the U.S. attorney, and suppose the Senator knew that the judge's name was on the Attorney General's desk with a recommendation for promotion to the court of appeals. Could the Senator require that that judge step down on the ground that he could not be an impartial judge?

Mr. ERVIN. A lawyer in such circumstances would have to show that the judge was prejudiced in that particular case under the statute. The lawyer would hesitate to attempt that, because the lawyer would have to appear before that judge again in the same district, perhaps virtually all the time, and the lawyer would be very reluctant to put himself in a position of antagonizing the judge. Judges, being human beings, would certainly have a tendency to become irritated by a lawyer who challenged their capacity for impartiality.

Mr. LONG of Louisiana. Would it not stand to reason that a lawyer, by making the point that no person in his client's position had ever had a chance or had ever won before that judge, could not require the judge to step down?

Mr. ERVIN. The Senator is correct. He would have to show personal prejudice or bias, or something tantamount to prejudice with respect to his particular client.

Mr. LONG of Louisiana. Is it not reasonable to conclude that the judge would resent a lawyer suggesting that the judge was biased? Usually a man who is prejudiced is the first to deny that he is prejudiced. Is that not correct?

Mr. ERVIN. The Senator is correct. He would make a bigger protestation than the one who had no prejudice. The latter would be perfectly willing to step aside. If one were correctly charged with prejudice, he would not step aside unless he were compelled to do so.

I believe that the majority of the judges would appreciate a statute which

would provide the right of trial by jury in criminal contempt cases. I say that as a result of my own experience as a judge of a court of general jurisdiction in my home State for 7 years. I preferred jury trials. Sometimes lawyers would make a proposal to let me determine the the guilt or innocence of their clients, or offer to enter a plea for whatever offense I thought the jury would have adjudged him guilty if a trial by jury were had. I always refused to do that because I believe a jury is far more capable of reaching a correct decision in a case than is a judge.

A jury is composed of 12 men summoned from all segments of the community. They are certainly as capable as any judge to hear the facts in the case. They understand motives which inspire actions, and they understand the temptations to which people are subjected. I believe that trial by jury is the fairest way to try a case and ascertain the truth with respect to questions of fact that has ever been devised by the mind of man.

Mr. LONG of Louisiana. Is it not correct to say that when a person accused of crime has had an opportunity to pass upon every person who goes on his jury, and to challenge for cause anyone who can be shown to be prejudiced against him, and to challenge without cause those who cannot be shown to be prejudiced against him, he is in a position to recognize that the proceeding against him has been fair and that society has fairly judged him to be guilty?

Mr. ERVIN. Yes. On a previous occasion I quoted from a profound thinker and a distinguished editor, Gerald W. Johnson, who was a native of my State and a former editor of the Baltimore Sun. I do not quote him verbatim, but what I say is the substance of what he had to say in one of his writings, when this question was previously before the Senate. He said that he could not understand why the advocates of civil rights bills were unwilling to have jury trials in criminal contempt cases. He said that when a man is sent to jail after a trial by a judge, without a jury, there is grave danger that people will make him a martyr. However, if he were sent to jail after a conviction by a jury, there would be no danger of the people's making him a martyr.

It seems to me that that consideration ought to induce everyone to support the right of trial by jury in a criminal contempt case, because the object of a criminal contempt case, as the Senator has so well stated in his questions, is to bring a man to punishment in the same way that a man is punished for a crime.

Mr. LONG of Louisiana. Does not the Senator's statement imply that by denying a man the right to a jury trial, and insisting that a Federal judge can put him in jail without a fair trial, makes a martyr of the man who is punished?

Mr. ERVIN. Yes. There is another consideration, and that is psychological. In my judgment, the psychological implications are past measuring in their importance.

My father practiced as a member of the North Carolina bar for 65 years. I heard him state on many occasions that

not only is it important for the courts to be just to persons having business before the courts, but it is equally important for the people to believe that the courts are just to them. To me, that is significant, as was suggested by the Senator's statement.

The American people are accustomed to trials by jury in cases in which persons may be sent to prison or punished by fines. Americans are accustomed to that; they think it is the normal thing—and it is the normal thing. It is abnormal to sentence a person to jail following a trial before a judge without a jury. Sometimes persons are tried before a judge without a jury in cases of petty offenses; but even in those cases, they can exercise their constitutional or legal right to appeal to courts of general jurisdiction, where they may have a trial by jury. For that reason, it is abnormal, in the thinking of most people, that persons should be tried only by a judge and then sentenced to prison, as can be done in some criminal contempt cases.

Mr. LONG of Louisiana. Does not the famous case that has been debated on the floor of the Senate, United States against Barnett, illustrate the point that if a person is to be convicted and heavily punished without a jury trial, not only the people of his State but also the people of the entire section of the country would tend to regard him as a martyr and would rally around him?

Mr. ERVIN. There is no question that there could be that danger. When the case was before the Fifth Circuit Court of Appeals, eight judges passed upon the question. Four judges felt that the defendants were entitled to the right of trial by jury. Four judges disagreed. So the court was split, 4 to 4.

Under an act of Congress so providing, the question as to whether Governors Barnett and Johnson were entitled to a trial by jury was certified to the Supreme Court of the United States.

When the case was considered by the Supreme Court a short time ago, five Justices joined in the opinion of Mr. Justice Clark to the effect that Governors Barnett and Johnson were not entitled to the right of trial by jury, and four Justices filed vigorous dissents, saying that Barnett and Johnson were entitled to the right of a trial by jury under the Constitution.

So 17 judges passed on the question. Nine judges said that Barnett and Johnson were not entitled to a trial by jury; the other eight said they were entitled to a trial by jury under the Constitution.

In that situation, how in the world can a great percentage of the people be convinced that by trying those men without the benefit of a jury to pass on their guilt, justice has been done?

Furthermore, who would try them without a jury? The very judges whose orders were allegedly disobeyed. In other words, the judges would prefer the charge; and then they would act as judges of the charge they had preferred. That is one reason why Congress ought to enact a law to remedy that situation. A judge ought not to be put in the position of assuming the role of prosecutor, the role of judge, and the role of jury

to find the facts in a case in which he has been peculiarly concerned, a case in which he has charged disobedience of his own orders.

There is an old expression that Caesar's wife should be above suspicion. If there is any other thing that ought to be above suspicion, it is the administration of justice.

When 17 judges have passed upon the question as to whether men are entitled to the constitutional right of trial by jury, and 9 judges say "no," and 8 say "yes," how can the administration of justice be above suspicions? And how can the administration of justice be above suspicion when the judges whose orders have been allegedly disobeyed are to be the jurors as well as the judges of the case?

Mr. LONG of Louisiana. In that case, were not some of the attorneys of the Department of Justice deeply involved in the events surrounding the incident at Oxford, Miss.? Were not some of them parties to it by reason of having advised and consulted with regard to it? Were not the Government lawyers and the Government judges all parties and participants in the events that occurred in Mississippi, and were they not seeking to assess a man with a great amount of culpability, including the indirect responsibility for the loss of two lives at Oxford? Would not the Senator from North Carolina say that that was tantamount to a serious crime?

Mr. ERVIN. There was one thing on which all nine Judges of the Supreme Court agreed in the Barnett case; and that was, that under the Lausche amendment, which Congress adopted in 1960, the accused, Barnett and Johnson, were guilty of a crime, in that they used threats against the enforcement of a Federal court decree.

I remember that the Senator from Louisiana and I took part on the same side in a debate on that proposal. We favored the Lausche amendment. The Senator from Louisiana may recall that the curious advocates of civil rights had a same notion of what the civil rights bill they were trying to pass should do. They submitted a provision relating to the disobedience of court orders that would apply only to one type of disobedience or threat of violence. The Senator from Louisiana joined the senior Senator from Ohio [Mr. LAUSCHE] in a spirited fight to see to it that the provision was extended clear across the board, so that, if there were to be a law on the subject, it would apply to all men in like circumstances.

Returning to the Barnett case, I construe the majority opinion, which was written by Justice Clark, to hold that Barnett and Johnson were not entitled to the right of trial by jury under the Clayton Act. Although the majority opinion stated that the alleged contemptuous act was a crime under the Lausche amendment, it held that the Clayton Act applied only to the district courts, and not to circuit courts.

From a study of the language of the act, one can reach that conclusion. But I feel certain that if Congress had ever thought trials for criminal contempt were to be held before circuit courts

rather than district courts, it would have provided for trials in district courts in cases in which the allegedly contemptuous acts were crimes under Federal or State law.

But in those days, as the Senator from Louisiana knows—not by observation, because he is too young, but by reading—virtually no cases in which witnesses were present were tried in the first instance except in U.S. district courts. That was before the day when the circuit court, which was intended to be an appellate court, was converted into a court for the trial of cases.

Mr. LONG of Louisiana. Would it not be correct to say that while the decision held that a three-judge court would not be assembled according to the law applying to district courts, the whole intent of that law was that it applied to cases in which trials for determining the guilt of men were concerned?

Mr. ERVIN. Yes; there is much curious thinking going on about three-judge courts. The bill contains a provision for three-judge courts. It was argued that the reason why a three-judge court was desired was not to allow the Attorney General to shop around to find a court more favorable than a district court, but rather to expedite the trials by using the time of three judges instead of one.

I believe that instead of being expedited, the dockets of the courts would be clogged if this provision were used to any extent. I understand that the Attorney General did not request the inclusion in the bill of the three-judge court provision, but that it was included at the insistence of a Member of the House of Representatives.

Mr. LONG of Louisiana. Are we to understand that the advocates of the bill, particularly the advocates of the three-judge court proposal, are not sufficiently candid as to admit that the purpose is to overcome the situation which would exist if a single judge were not inclined to decide a case the way they might want it decided?

Mr. ERVIN. I think it has been stated, and has not been successfully contradicted, that the entire purpose of the three-judge court provision is to circumvent certain district courts in the Senator's circuit, for the purpose of obtaining access to one or more circuit court judges in the Senator's circuit.

Mr. LONG of Louisiana. Have there been called to the attention of the Senator from North Carolina articles in which it has been stated that a certain few judges in that circuit seem to be selected repeatedly to hear civil rights cases, and that the ones selected are the ones who seem to be most favorable to the position taken by the civil rights bill advocates?

Mr. ERVIN. Yes. I read the opinion of Judge Cameron, who stated that to be a fact; and I do not believe there has been successful contradiction of the figures he gave in that dissenting opinion. He indicated that panels of the circuit court judges in the circuit were used in so-called civil rights cases, and were composed of the same three of the four judges, in the great majority of cases.

Mr. LONG of Louisiana. Therefore, does not it seem that the advocates of the bill in its present form seek, first, to deny a defendant the right to a trial by jury, although that right is guaranteed and is clearly set forth in three different places in the Constitution and the Bill of Rights; and, second, they seek to have the opinion of a district court judge overridden by the decision reached by a three-judge court?

Mr. ERVIN. I believe that would be the inescapable conclusion if we attribute to the language of the bill its inevitable consequences.

Mr. LONG of Louisiana. Can the Senator from North Carolina state why the use of three judges would expedite the reaching of such decisions?

Mr. ERVIN. No, because instead of expediting the reaching of the decision, I believe the use of a three-judge court would delay it. Three judges would have to reach an opinion before they could take action, whereas if only one judge is used, he can proceed after he reaches his own opinion, when hearing the evidence; and usually that is not too difficult to do.

Having served on an appellate court, I can assure the Senator from Louisiana that sometimes one hears some of the most vigorous arguments ever heard in connection with law suits, when judges with different views argue—sometimes more vigorously than counsel argue before the court retires to consider its opinion.

Mr. LONG of Louisiana. Does the Senator from North Carolina think this provision of the bill would be similar to the Russian troika plan of a few years ago? I refer to the so-called troika plan which Russia attempted to impose upon the United Nations. Is it the view of the Senator from North Carolina that the three-judge court arrangement was proposed by some who felt that it might be found that the decision reached by one judge would not be sufficiently heedful of the demands made by the Department of Justice?

Mr. ERVIN. The Senator from Louisiana presents a most interesting thought. If a three-headed United Nations would not function well, I do not understand why it should be believed that a three-judge court would function better than a one-judge court would function. If the only purpose is the administration of justice, why waste all that judicial talent in trying such cases, when throughout the history of our Nation one judge has always been capable of trying these cases by himself?

I thank the Senator from Louisiana for his very penetrating questions in regard to the various provisions of the bill.

At this point I wish to call attention to another act of Congress which authorizes, under the most curious circumstances, the right of trial by jury in criminal contempt cases. I refer now to the provisions of the Civil Rights Act of 1957. When the civil rights bill of 1957 was before the Senate, the Senate struck a solid blow for justice by adopting the O'Mahoney amendment. The O'Mahoney amendment was set forth in words identical to those of the Talmadge amendment. In substance, the

O'Mahoney amendment was like the amendment which has been called up by the able and distinguished junior Senator from Louisiana [Mr. Long]. The O'Mahoney amendment provided for the right of trial by jury in all criminal contempt cases arising in the courts of the United States; and it provided for limited punishment for all persons convicted of criminal contempts in the courts of the United States.

It repealed the unjust and unfounded provision of the Clayton Act which denies persons accused of criminal contempt, in cases brought by the United States, the right of trial by jury, the benefit of the limited punishment provision, and the benefit of the right of trial in the district and in the State in which the alleged contemptuous act was committed. Unfortunately, when the civil rights bill of 1957 was returned to the House, the House changed it; and that change was later acquiesced in by the Senate.

Mr. President, the writer of the Book of Ecclesiastes said there is nothing new under the sun. But the writer of the Book of Ecclesiastes made that assertion before the House of Representatives removed the Senate-adopted O'Mahoney amendment from the civil rights bill of 1957, and inserted in lieu thereof a new provision, which now is embodied in section 1995 of title 42 of the United States Code. If one is interested in this statute, as it was originally codified, he will find it in Public Law 85-350, part 5, section 151. If that House amendment to the civil rights bill of 1957 had been adopted before the writer of the Book of Ecclesiastes wrote that book, he could never have said, in truth, "There is no new thing under the sun."

Nothing like this—which is the existing law in voting rights cases—is to be found under the sun, anywhere on the face of the earth. Nothing like this is to be found in any lawbook except in the books which contain the acts adopted by Congress in 1957.

I wish to include it in the RECORD. It reads as follows:

CRIMINAL CONTEMPT PROCEEDINGS; PENALTIES; TRIAL BY JURY

In all cases of criminal contempt arising under the provisions of this Act, the accused, upon conviction, shall be punished by fine or imprisonment or both: *Provided, however—*

I digress from reading the statute to remark that whenever legislators use the words, "*Provided, however,*" it is a sure indication that they are in too much of a hurry to put the act into proper English.

I continue with the reading of the statute:

That in case the accused is a natural person the fine to be paid shall not exceed the sum of \$1,000, nor shall imprisonment exceed the term of six months: *Provided further,* That in any such proceeding for criminal contempt, at the discretion of the judge, the accused may be tried with or without a jury: *Provided further, however,* That in the event such proceeding for criminal contempt be tried before a judge without a jury and the sentence of the court upon conviction is a fine in excess of the sum of \$300 or imprisonment in excess of forty-five days,

the accused in said proceeding, upon demand therefor, shall be entitled to a trial de novo before a jury, which shall 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 interfere directly with the administration of justice nor to the misbehavior, misconduct, or disobedience, of any officer of the court in respect to the writs, orders, or process of the court.

Nor shall anything herein or in any other provision of law be construed to deprive courts of their power, by civil contempt proceedings, without a jury, to secure compliance with or to prevent obstruction of, as distinguished from punishment for violations of, any lawful writ, process, order, rule, decree, or command of the court in accordance with the prevailing usages of law and equity, including the power of detention.

There are three provisos in this statute, which is an indication that those who drew it were in three times as much of a hurry as they should have been. Congress ought not to adopt any law that uses any proviso, because that is a sure indication of haste. It is a sure indication of a desire to conclude a task quickly, regardless of what the final legislation may do. And it is a sure indication of a lack of patience to put things in good, sound, reasonable English.

The amendment made by the House in 1957 is subject to two criticisms. In the first place, if a man has a right to a trial by jury, or should have the right of a trial by jury, that right should belong to him. He should have it as a matter of law. And he should be entitled to it even if all of the judges in the United States want to take it away from him. No man has a right to any legal protection unless it is a legal protection which he can demand for himself as a matter of right.

Instead of observing this sound principle, those who drafted this statute stated that a man should have a right to a trial by jury if the judge gave it to him, and he should have no right of a trial by jury if the judge denied it to him. The law gives a man nothing. It merely leaves it to the judge to say for any reason, or no reason whatever, that the man in the first instance shall or shall not have his case determined by the verdict of a jury. The provision vesting discretionary power in the judge to either grant or deny the right of a trial by jury in the first instance in criminal contempt cases arising under the Civil Rights Act of 1957 is clearly inconsistent with the fundamental principle that courts ought to operate under certain laws applicable in like manner to all men in like circumstances. This provision in this respect is inconsistent with the idea that this country has a government of laws rather than a government of men.

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

Mr. ERVIN. I yield to the Senator from Mississippi for a question.

Mr. STENNIS. I call the Senator's attention to a section of the code on jury trial—and I know the Senator is quite familiar with this—where the Federal law already provides that in the district court when a man is charged

with criminal contempt, he is entitled to a jury trial as a matter of right, unless—which is the major exception—the Government is a party to the suit.

Mr. ERVIN. That is provided in sections 402 and 3691 of title 18 of the United States Code, which originated in the Clayton Act.

Mr. STENNIS. It shows that the principle of the right to a trial by jury has already been recognized by Congress. The exception occurs when the Federal Government is a party to the suit. Is it not true in the opinion of the Senator from North Carolina that that is the very type case, in many instances, in which the man is more in need of a jury than he would be in a case between one citizen and another citizen?

Mr. ERVIN. The Senator from Mississippi is correct. If there is any time when a man needs protection against tyranny, it is in a case brought by the Government.

Mr. STENNIS. That is correct.

Mr. ERVIN. Tyranny cannot exist in other cases, in which two individuals are in litigation with each other. Each one of them normally has about the same capacity to carry on that litigation. Each has the right to fair treatment at the hands of the court. In other words, the scales of justice in litigation between individuals start out level.

Mr. STENNIS. Yes. And it is citizen against citizen. But in these cases, there would be the overpowering talent, prestige, force, and power of the Department of Justice on the one side, and the little citizen on the other side.

Mr. ERVIN. That is correct. There is the FBI to do the investigating, and I do not know how many lawyers there are. I never could get the information as to how many lawyers the U.S. Government has scattered through its agencies. There are 600 in the Department of Justice, and in every Federal district there is a U.S. attorney, with one or more assistants. So the Government has all those advantages to start with.

Mr. STENNIS. Yes; and the overpowering prestige and accumulation of experienced talent will be on the side of the Government.

It is incidental, but it is a fact of life, that the Department of Justice takes a major part in the selection of judges and those who may be promoted. It comes through the same channels. That is a part of the facts of life.

So I agree with the Senator from North Carolina that in such a case the little fellow who is going to be grabbed up is in need of the protection of the right of jury trial—not as a matter of gift, not by the will of anyone, but by right—and we are the only ones who can give it to him.

Mr. ERVIN. Yes. The Senator from Mississippi recalls as a matter of history that the right of trial by jury originated in Magna Carta, because the barons of England saw it was unfair to have their cases tried by government judges rather than juries. So they compelled King John at Runnymede to guarantee them the right of trial by juries of their peers. The history of trial by jury shows that even as far back as 1215 the people of England were intelligent enough to

know that trial by jury was necessary to protect them against tyranny at the hands of the royal government.

Mr. STENNIS. The Senator is correct.

Will the Senator yield further for a question?

Mr. ERVIN. I am delighted to yield.

Mr. STENNIS. After a study of the bill, is it not very clear to the Senator from North Carolina that the bill was carefully and very cleverly drawn so that a major part of the prosecutions would be through the injunctive process and would bring within the provisions of present law an exception so that there would be no jury trial as a matter of right, because the Government would be a party?

Mr. ERVIN. That is correct. Violations of titles I, II, III, and IV, and of title VI, so far as it applies to State and local officials, would be crimes under section 242, title 18, of the United States Code, and the defendants would be entitled to trial by jury. Also, when charged with criminal contempt, they would be entitled to trial by jury under section 402 and section 3691 of title 18 of the United States Code, which is the Clayton Act, were it not for the fact that such suits would be brought by the United States.

I agree with the Senator from Mississippi in the implication of his question that the purpose of these provisions is to rob Americans of the right of trial by jury, which they would otherwise have under existing law.

Mr. STENNIS. I thank the Senator for a very clear and forceful statement.

Let me ask one more question along that line. We know that the bill was put together by some very intelligent and able lawyers who have specialized in this field of work. Without imputing any personal implications to any of them, is it not true that some of them, perhaps most of them, have never tried a case before a jury?

Mr. ERVIN. That is true of a good many of them.

Mr. STENNIS. It is no reflection on them, but they really do not understand and realize the spirit behind the idea of jury trial unless they have practiced law in court and have been what I call courtroom lawyers, who know the real operations of the courts.

Mr. ERVIN. I will say to the Senator from Mississippi, that in my judgment a man who has had experience in the trial of cases, who has appeared on both sides of civil litigation, for the plaintiff and for the defendant, who has appeared as a State prosecutor and who has appeared for the accused in State prosecutions, is nearly always a believer in trial by jury.

Mr. STENNIS. That comment is well made. That has been my observation.

Let me direct the Senator's attention to section 302, on page 13 of the bill, which is in title III. In view of what the Senator has just said about the way the bill was drafted, to avoid giving parties the right of trial by jury, does it not make the sleeper section 302, which is a hidden section in the bill, all the more powerful and extensive in its application, and more deadly, and should it not be

ripped out of the bill line by line because of that very fact, if for no other reason?

Mr. ERVIN. The Senator is correct. Section 302 on page 13 of the bill would give the Attorney General of the United States absolute power to intervene in suits brought by individuals. If the suit remained between individuals, without the Attorney General's intervention, a person charged with a criminal contempt for disobedience of a court order would be entitled to a trial by jury. Not only would he be entitled to a trial by jury, but to limited punishment. Both those rights would be taken from the individual if the Attorney General sought to intervene.

Mr. STENNIS. By merely intervening in the suit the Attorney General would change the whole law with respect to punishment and the right of trial by jury.

Mr. ERVIN. In other words, no guide is laid down as to when the Attorney General should intervene or not intervene. This provision gives him complete power, at his caprice or whim, to do as he wishes. Yet, when he exercises that power by intervening, he robs a litigant of the basic rights which he would otherwise enjoy.

This section gives the lie to the contention that the bill is designed to promote the rule of law rather than the rule of individuals.

Mr. STENNIS. I thank the Senator for yielding to me.

Mr. ERVIN. At the present moment, the pending bill would not secure to any person the right to trial by jury under any circumstances except in respect to criminal contempt arising under titles I and II. Jury trials in those cases would be held under the peculiar conditions specified in the Civil Rights Act of 1957. Under the bill in its present form, persons charged with criminal contempt would not have the protection of an indictment by a grand jury under any circumstances, despite the fact that section 1 of title 18 of the United States Code provides, in substance, that there must be an indictment by a grand jury in all felonies, and that a felony is a crime punishable by death or imprisonment for more than 1 year. Under no title of the bill would there be the right to demand an indictment by grand jury before a person could be placed on trial for criminal contempt.

There is a provision in the Constitution that no man shall be placed twice in jeopardy for the same offense. Under the bill a person could be placed twice in jeopardy in any contempt case—in the first instance, for civil contempt, and in the second, for criminal contempt. And, he could be placed in jeopardy a third time, if his alleged contemptuous act also constitutes a crime under Federal law, as it would in respect to the acts of State and local officials under titles I, II, III, IV, and VI. For example, in the case of federally assisted programs administered by State and local officials, a State or local official could be tried and punished a third time for a crime.

I respectfully submit that double and triple punishment for the same act is repugnant to any sound system for the administration of justice. Yet that is precisely what the bill would sanction.

In addition, if a person were convicted of criminal contempt under any provision of this act other than titles I and II, he would be subject to unlimited punishment and the only protection he would have against unlimited punishment would be the eighth amendment which specifies that "excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted."

I have spent the major efforts of my life in the study and practice of law and in the administration of justice. I am compelled to make an honest confession that I cannot tell anyone what constitutes a cruel and unusual punishment within the purview of the eighth amendment. I further assert that I do not believe there is a single judge or a single lawyer in the United States who can cite a definite rule by which to determine whether a punishment is cruel and unusual within the purview of the eighth amendment.

It is inconsistent with any sound system of jurisprudence to enact a law subjecting any man to a punishment so unlimited in nature that no member of the bench or bar of the Nation can lay down a fixed rule by which to measure the character of such punishment; yet, that is the kind of punishment which can be inflicted upon a person convicted of criminal contempt under any title of this bill, other than titles I and II, as the bill now stands.

So far as I can determine, there never would have been any proposal, on behalf of the proponents of the bill, made to the Senate that there should be any right to trial by jury in criminal contempt cases arising under any title of the bill, other than titles I and II.

But the able and distinguished junior Senator from Georgia [Mr. TALMADGE] offered a bill which was cosponsored by the able and distinguished junior Senator from Mississippi, the able and distinguished junior Senator from Virginia, and myself, in the identical form of the O'Mahoney amendment of 1957, which provided for a jury trial clear across the board, and for the benefit of limited punishment in accordance with the provisions of the Clayton Act. Then, in order to head off the enactment of that provision into law by Congress, the able and distinguished majority leader, and the able and distinguished minority leader, introduced what is called the Mansfield-Dirksen or the Dirksen-Mansfield amendment in the nature of a substitute.

I had something of a discussion with my good friend the able and distinguished senior Senator from Rhode Island [Mr. PASTORE] as to the interpretation of this amendment in the nature of a substitute, on Wednesday of last week. He and I disagreed as to the meaning of this proposed substitute in one respect.

Really, when all is said and done, our argument came down to the question of which of two interpretations is a correct interpretation of the proposed amendment in the nature of a substitute.

I took the position that the only substantial change from the jury trial provision of the Civil Rights Act of 1957, made by the Mansfield-Dirksen amend-

ment, is the reduction of the permissible imprisonment from 45 to 30 days. Whichever interpretation may be correct, there was that change from the jury trial provision of the Civil Rights Act of 1957.

The curious jury trial provision in the Civil Rights Act of 1957 specifies in crystal-clear language that the accused in a criminal contempt proceeding arising under that act can demand and obtain a trial de novo before a jury if the judge imposes upon him a fine in excess of \$300 or imprisonment in excess of 45 days. This being true, the Civil Rights Act of 1957 certainly provides that the accused cannot demand a jury trial as a matter of right unless he is first tried by a judge without a jury and sentenced to a fine exceeding \$300 or to a term of imprisonment exceeding 45 days.

I contended in my discussion with the able and distinguished senior Senator from Rhode Island that that construction was also applicable to the Mansfield-Dirksen amendment in the nature of a substitute, because there was no significant change between the 1957 jury trial provision and the proposed amendment in the nature of a substitute, except a reduction in the permissible time of imprisonment from 45 to 30 days.

The Senator from Rhode Island contended that there would be only one trial, and he evidently based his opinion on the fact that the Mansfield-Dirksen amendment omits from its provisions these words which appear in the Civil Rights Act of 1957: "and the sentence of the court upon conviction is a fine in excess of the sum of \$300 or imprisonment in excess of forty-five days, the accused in said proceeding, upon demand therefor, shall be entitled to a trial de novo before a jury, which shall conform as near as may be to the practice in other criminal cases."

The Mansfield-Dirksen amendment in the nature of a substitute omits the words which appear in the jury trial provision of the Civil Rights Act of 1957.

It would substitute for that language the words: "the aggregate fine shall not exceed the sum of \$300 nor any cumulative imprisonment exceed 30 days. If the trial is by jury, the procedure shall conform as near as may be to that in other criminal cases."

My good friend from Rhode Island contended that, owing to the omission of the words I read first and the inclusion of the words I have read now, there would be only one trial for criminal contempt under the Mansfield-Dirksen amendment if it were enacted into law.

I am constrained to say that the court might have some difficulty choosing between the construction put upon the Mansfield-Dirksen amendment by me and the construction placed upon the amendment by the able and distinguished senior Senator from Rhode Island.

There is a rule of construction to the effect that if a statute is susceptible of two constructions, one wise and the other foolish, the court will take the construction which is wise and reject that which is foolish.

As I construe the Mansfield-Dirksen amendment, an accused would not ob-

tain a jury trial as a matter of right unless he was first tried by the judge without a jury and sentenced to pay a fine in excess of \$300 or to suffer imprisonment in excess of 30 days. This is my construction of the Mansfield-Dirksen amendment. I admit that this construction gives the amendment a foolish meaning. My good friend from Rhode Island takes another position. He says that a man can be tried only once. If he is tried by a judge without a jury, the judge cannot fine him more than \$300 or imprison him for more than 30 days. The Senator from Rhode Island may be correct in saying that that is the correct construction of those words. But if that construction is correct, I think that it is even more foolish than mine.

What does that mean? It means that the Mansfield-Dirksen amendment in the nature of a substitute is even more ridiculous than the jury trial provision in the Civil Rights Act of 1957.

I am frank to confess that until I heard the Senator from Rhode Island speak the other day, I thought the jury trial provision in the Civil Rights Act of 1957 was the most ridiculous thing that had ever been placed on the statute books.

Let us see what the situation would be if we were to accept as correct the interpretation which the able and distinguished senior Senator from Rhode Island places upon the Mansfield-Dirksen amendment.

Under his construction, the judge must decide the nature and extent of the punishment he will give the accused before he tries the case. That is exactly what it means. It means one of two things. It means either that the judge must determine in advance of the trial the nature and extent of the punishment he must give the defendant, when he is totally ignorant of all the facts of the case, or when he already knows what the facts of the case are and has already formed an opinion about the case before he tries it.

It has always been my conception that no judge ought to decide what punishment he will give to a defendant in any case until he has heard the facts of the case, has become acquainted with the character of the defendant's conduct, and has been advised of all the mitigating circumstances urged by the defendant.

Yet the bill would require in one instance that a judge should determine in advance of trial the nature and extent of the punishment he would give the defendant, when he did not know a thing about any of the significant circumstances, and when he was acting entirely out of ignorance.

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

Mr. ERVIN. I yield.

Mr. STENNIS. For the judge to reach a conclusion at that stage as to the punishment, the judge must conclude that the defendant is guilty. Is that not correct? That is, if he decides to give a jury trial.

Mr. ERVIN. If the judge is to act out of knowledge, instead of out of ignorance, he must form his opinion about

the case before he tries the accused for criminal contempt. It is necessary for the punishment to be fixed in advance by an ignorant judge, or by a judge who has already formed an opinion that the defendant is guilty, and also as to the nature and extent of the punishment he deserves.

Mr. STENNIS. The latter is the better course, always, than the course of ignorance. Therefore, is there any safeguard that in that determination the defendant would have the right to be represented by counsel and have the right of compulsory process to bring in witnesses, or the right to have any kind of hearing?

Mr. ERVIN. There is no provision in the Dirksen-Mansfield substitute which would give any person accused of criminal contempt or his attorney the right to say a word in his behalf before the judge decided what the nature and the extent of his punishment should be.

Mr. STENNIS. The judge would not hold any hearing of any kind. Is that correct?

Mr. ERVIN. None whatever. He would either have to act out of total ignorance, or he would have to act under circumstances indicating that he had already formed his opinion about the case, and therefore could not give the defendant a fair trial.

Mr. STENNIS. The Senator has made the situation very clear. He has reached the correct conclusion. Is not all this procedure, without notice to the defendant, an opportunity to be heard, to bring in witnesses, or to be represented by counsel, contrary to the fundamental concepts of justice and due process of law under our system?

Mr. ERVIN. The Senator is absolutely correct. Our system contemplates that no man shall have any sentence imposed upon him by a judge until the judge has learned the facts of the case and has weighed the facts in the light of any mitigating circumstances called to his attention by the defendant or his counsel.

The proposal does violence to that principle because it requires the judge to make up his mind and reach a decision, before he starts the trial of the case, about the character and extent of punishment which the accused should receive.

If a judge does not know the facts of the case and has no opinion on that point, he must reach that decision out of his total ignorance. That does violence to any sensible system of punishment.

On the contrary, if the judge were to act with knowledge, as the Senator suggests by his question, the judge would already know all the facts except such exculpatory facts or such mitigating circumstances as might be presented by the defendant or his counsel. In short, the judge would have to form his opinion in respect to the punishment to be imposed before he conducts the trial.

On the second horn of this unjust dilemma, a judge who tries a person when he already knows how much punishment the person ought to have is doing something that is repugnant to our

system of justice. Edmund Burke has expressed it much better than I can. He said:

Every man is entitled to be tried with the cold neutrality of an impartial judge.

How can a man be tried with the cold neutrality of an impartial judge when the judge is required by law to determine, before he tries him, what the nature and extent of the punishment should be?

Mr. STENNIS. The Senator has expressed it very well. When a judge is conducting a trial before a jury, does he not swear every one of the jurors to give the defendant the benefit of the presumption of innocence and not find him guilty until all 12 are convinced of the defendant's guilt beyond a reasonable doubt? That is different from a judge who would already have determined in his own mind that a defendant was guilty; is it not?

Mr. ERVIN. That is true. It illustrates the fact that when a law is passed to provide for the punishment of people for the purpose of enforcing a policy rather than for the purpose of doing justice, the law travels a crooked and wrong road.

Mr. STENNIS. I thank the Senator from North Carolina for yielding.

Mr. ERVIN. It occurs to me that if the proponents of the bill wish to do justice to persons charged with criminal contempt under the bill, they ought to do so in a forthright manner. They ought to adopt the pending amendment, offered by the Senator from Louisiana [Mr. LONG] and say that every man charged with criminal contempt shall have the right of trial by jury before he can be punished by either a fine or imprisonment. Why not seek our way to justice on the only road that leads to justice, instead of offering an amendment which attempts, I believe, in the words of Shakespeare, to—

Keep the word of promise to our ear,
And break it to our hope.

The amendment in the nature of a substitute is an affront to our system of jurisprudence, which is founded on the principle that a man is entitled to due process of law. By due process of law, I mean the right of a person to have a fair trial before an impartial judge and an impartial jury in an atmosphere of judicial calm.

It is absurd to provide that a judge must determine before he tries a case the nature and extent of the punishment which he will impose on the accused, so that he may determine ahead of time whether he will give the person the right of trial by jury or deny that right. That kind of statute is a negation of fair trial. Since we are talking about contempt I assert that the proposed substitute shows contempt for the basic principle on which justice rests.

I have called the attention of the Senate to various acts of Congress which undertake to provide the right of trial by jury in criminal contempt proceedings under various circumstances, and which in some cases undertake to deny the right of trial by jury in criminal contempt cases under other circumstances. I invite attention to the latest statute on

this subject. In 1959, the Senate considered and passed what is called the Labor-Management Reporting and Disclosure Act of 1959. At that time, Congress wrote into the law of the United States the following provision for jury trials in criminal contempt cases arising under that act:

CRIMINAL CONTEMPT

SEC. 608. 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 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 the 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 trial juries in criminal prosecutions in the district courts of the United States.

I am proud to be able to say that the words of that section of the act were written by me. I have always believed in the right of trial by jury for all the accused in criminal contempt proceedings. I am glad to have had a part in writing into an act of Congress a provision guaranteeing the right of trial by jury to persons involved in criminal contempt proceedings arising under the Labor-Management Reporting and Disclosure Act of 1959.

The word "Secretary" used in this act refers to the Secretary of Labor. This provision appears in a law which resulted from the passage of a bill originally sponsored by the then Senator John Fitzgerald Kennedy and myself and a number of other Senators. In its original form, the bill dealt with the internal affairs of labor unions. It was designed to give to rank-and-file members of labor unions protection against the officers of those unions. It defined the duties of the officers of the unions and the duty of the Secretary of Labor in respect to bringing certain civil actions in the district courts of the United States to compel the officers of labor unions to perform the duties it imposed upon them.

When the bill reached the House, it was amended considerably by including in it many provisions dealing with the external relations between management and labor, in addition to the provisions dealing with the internal affairs of unions. The bill became known as the Landrum-Griffin Act as a result of the changes made in the House.

It is interesting to refer to the circumstances under which section 608 of the Labor-Management Reporting and Disclosure Act of 1959 was adopted.

I wish to read a portion of the CONGRESSIONAL RECORD for April 25, 1959, which reveals the circumstances under which the last law guaranteeing the right of trial by jury in criminal contempt cases was enacted:

[From the CONGRESSIONAL RECORD for Apr. 25, 1959.]

Mr. ERVIN. Mr. President, on behalf of myself and the distinguished Senator from South Carolina [Mr. THURMOND], I offer an amendment, which I ask the clerk to state.

The PRESIDING OFFICER. The amendment offered by the Senator from North Carolina for himself and the junior Senator from South Carolina will be stated.

The LEGISLATIVE CLERK. It is proposed, at the end of title II on page 35, to add a new section, as follows:

"SEC. 207. No person as defined in section 501 of this Act 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 of Labor or any other person in any court of the United States under the provisions of the Act unless the facts constituting such criminal contempt are established by the verdict of the 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 trial juries in criminal prosecutions in the district court of the United States."

Mr. ERVIN. Mr. President, this amendment, which I offer on behalf of myself and the distinguished junior Senator from South Carolina [Mr. Thurmond], merely provides for jury trials in criminal contempt cases. In that way it would harmonize with the pattern of law which has prevailed in labor controversies since 1914, when the Clayton Act was adopted.

The purpose of the amendment is to make plain that it is not the object of Congress in enacting the present bill into law to change the pattern of legislation which has been in effect since 1914.

The amendment would not in any way affect the power of the court to enforce its judgment by civil contempt proceedings where no jury is employed.

The able and distinguished junior Senator from Massachusetts informed me that he would accept the amendment, and I have made a diligent effort to discuss the amendment with Senators on both sides of the aisle. So far I have been able to find no one in opposition to it.

Mr. JOHNSON of Texas. Mr. President, I am informed that the amendment is acceptable to the chairman of the subcommittee. I yield back the time.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from North Carolina [Mr. ERVIN], for himself and the Senator from South Carolina [Mr. THURMOND].

The amendment was agreed to.

This is the last statute granting the right of trial by jury to any person in criminal contempt proceedings enacted by Congress.

It is interesting to note that when I referred to "the able and distinguished junior Senator from Massachusetts" as having "informed me that he would accept the amendment," I was referring to John Fitzgerald Kennedy, the floor manager of the bill in the Senate, who afterwards became a distinguished President of the United States, and who met his death in such tragic fashion last November.

It is also interesting to note that the Mr. Johnson of Texas who joined me in assuring the President of the Senate that the floor manager of the bill was willing to accept the amendment is now President of the United States.

It is also very significant, I believe, to note that I then stated on the floor of the Senate that I had talked to Senators on both sides of the aisle, and I had made diligent efforts to ascertain whether any Member of the Senate was opposed to the amendment which would guarantee the right of trial by jury in criminal contempts arising under the Labor-Management Disclosure and Reporting

Act of 1959, and that I had not been able to find anyone in opposition to it.

It is also rather significant to note that the amendment was adopted by the U.S. Senate by a voice vote, without any indication whatsoever of any opposition to the amendment.

Mr. RUSSELL. Mr. President, will the Senator from North Carolina yield?

The PRESIDING OFFICER (Mr. INOUYE in the chair). Does the Senator from North Carolina yield to the Senator from Georgia?

Mr. ERVIN. I am delighted to yield to the Senator from Georgia for a question.

Mr. RUSSELL. Mr. President, I ask unanimous consent that the Senator from North Carolina may yield to me, to permit me to make an observation, without in any wise prejudicing his right to the floor.

The PRESIDING OFFICER. Without objection—

Mr. MUSKIE. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. RUSSELL. Then, Mr. President, I thank the Senator from North Carolina for yielding to me for a question:

I ask the Senator from North Carolina whether he has ever heard of a greater anomaly or has ever seen a greater demonstration of control of a legislative body by outside pressure than that shown by objection to the inclusion in a bill, which bears the title of "civil rights," of an amendment which provides the greatest of all the legal and civil rights of our people, the right of trial by jury.

I also ask the Senator from North Carolina if it is true that the right of trial by jury is the main difference between the form of government we enjoy, which has enabled us to achieve our greatness and to establish the American way of life, the highest civilization known to mankind, and that of tyranny or a government of men, rather than one of laws.

I also ask the Senator from North Carolina if it is true that the hallmark of freedom is the right to be tried by a jury of one's peers, whereas the Fascist state and the Communist state do not recognize the right and protection of the jury trial.

I also ask the Senator from North Carolina if he knows of any possible reason why—in a so-called civil rights bill which would transform the system of jurisprudence in this country from the ordinary legal processes we have inherited from our forefathers to an alien form of control by injunction and judge rule, rather than a rule by means of which a man can face a jury of his peers—there would be this violent reaction in opposition to the effort to secure this ordinary right in the trial of what really amounts to a criminal charge.

I also ask the Senator from North Carolina if any objection was made in the case of the amendment to which he has referred, when a jury trial was assured for criminal contempts in cases brought under a labor bill, as contradistinguished from the pending bill, which pretends—but it is only pretense and cant and hypocrisy—to be a civil

rights bill, but actually would deny the elementary civil right of a trial by jury?

Mr. ERVIN. I will say to the Senator from Georgia, in partial reply to his questions, that when I offered the jury trial amendment which now appears in the Labor-Management Disclosure and Reporting Act of 1959, all the Members of the Senate came running to embrace it—all of them, without exception. The then able and distinguished junior Senator from Massachusetts, later to become President John Fitzgerald Kennedy, accepted the amendment; and the present President of the United States, then Senator Lyndon B. Johnson, of Texas, stood on the floor of the Senate and said the amendment was acceptable, and yielded back the remainder of the time under his control, in connection with the amendment, so that the Senate could adopt the amendment without further delay.

I also would say, in further reply to some of the questions asked me by the able and distinguished senior Senator from Georgia, that 750 years ago the barons of England, recognizing that the only protection the people had against governmental tyranny was to be found in the right of trial by jury, confronted King John, at Runnymede, and demanded of him that he grant them Magna Carta, the great charter, and that he incorporate in it a provision guaranteeing that there be the right of trial by a jury of their peers.

It is a strange thing that those who had some little authority in England 750 years ago had a devotion to the right of a trial by jury and had a recognition of the fact that it is the only protection that people have against governmental tyranny, whereas in the year 1964, 7½ centuries later, the proponents of this bill no longer have any devotion to the right of a trial by jury—at least in criminal contempt proceedings, which are nothing in the world but criminal actions by another name.

For the life of me, I am unable to comprehend how anyone who has any devotion to the principles upon which this great Nation was founded can oppose the right of a trial by jury in any proceeding which is designed to authorize the punishment of any human being by fine or imprisonment.

As the Senator from Georgia well knows, the right of a trial by jury has existed among English-speaking people, and has been venerated by English-speaking people, as the supreme civil right of individuals for 750 years.

As the Senator from Georgia also well knows, on two occasions prior to the American Revolution, the British Parliament, acting on the recommendation and at the urging of King George III and his ministers, passed two laws virtually identical with this bill in one respect which deprived the people of the right of a trial by jury on the merits by transferring jurisdiction of criminal cases to the courts of admiralty, where no jury trials were permitted.

Subsequently, the colonists met twice and condemned the denial of the right of a trial by jury perpetrated upon them by King George III and the British Parliament. And when Thomas Jefferson

wrote the Declaration of Independence, he gave the fact that in many cases the colonists had been denied the right of a trial by jury by these acts of the British Parliament as one of the causes why the 13 Colonies should sever the bond which bound them to their mother country.

In light of these facts, it is astounding to hear the proponents of the bill urge upon the floor of the U.S. Senate in the year of our Lord 1964 that any American should be denied the right of a trial by jury in proceedings brought to punish him by fine or imprisonment.

I join the Senator from Georgia in saying that the most precious civil right that any people can enjoy is a right to a trial by jury in any kind of proceeding which is designed to punish them by fine or imprisonment.

Mr. RUSSELL. Mr. President, will the Senator yield for a question?

Mr. ERVIN. I yield for a question.

Mr. RUSSELL. Is this not a right which should be cherished by all Americans of every race, of every creed, of whatever national origin they might be?

Mr. ERVIN. The Senator is correct.

Mr. RUSSELL. Is it not enough to excite grave forebodings, and arouse and generate real fears in the breasts of all of those who love their country and who are concerned about the form of government under which the next generation will live, to see men who are willing to take their dictation, or their opinion, from the Attorney General or from the pressure of certain minority groups, and to seek to turn back the tide of freedom that was put in motion at Runnymede 750 years ago?

Mr. ERVIN. In answer to the question of the Senator from Georgia, I should like to say—what I believe is the truth—that even though people may proclaim themselves to be liberals, if they would deny the right of a trial by jury to any man in any proceeding brought to punish him by fine or imprisonment, they are even more reactionary than King John was before Runnymede.

Mr. RUSSELL. Mr. President, will the Senator yield further?

Mr. ERVIN. I yield.

Mr. RUSSELL. I ask the distinguished Senator from North Carolina if he shares my view that men who would promote so-called civil rights legislation and yet would oppose an effort to preserve this precious freedom of the right of a trial by jury are more to be feared and more subject to suspicion than the Devil quoting Scripture, when they talk for civil rights and yet oppose the right of a trial by jury?

Mr. ERVIN. I believe even the Devil, as bad as he is, would not go so far as to deny people the right of trial by jury. I think even he would think it a fundamental and necessary right.

The Senator from Georgia and the Senator from North Carolina are not the only people who have spoken in this historic Chamber in behalf of the preservation and the extension of the right to trial by jury.

Perhaps the most eloquent speech I ever heard delivered in the Chamber of the Senate by the present President of the United States, Lyndon B. Johnson,

was delivered on August 1, 1957, when he pleaded with the Senate to adopt the O'Mahoney amendment, which was identical in form with the amendment proposed by the junior Senator from Georgia [Mr. TALMADGE].

This speech was such an eloquent speech that I think it will bear reading to the United States Senate at this hour when we fight to preserve and to expand the same right that the President of the United States, as Senator from Texas, was fighting to preserve and expand on that occasion. I read from the CONGRESSIONAL RECORD, volume 103, part 10, beginning on page 13355, and ending on page 13356.

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

Mr. ERVIN. Before I read from the CONGRESSIONAL RECORD, I yield to the Senator from South Carolina for a question.

Mr. JOHNSTON. I ask the Senator from North Carolina if he has heard the people, who are supposed to be the ones who desire a fundamental change, crying out to have this right taken away from them?

Mr. ERVIN. I have not. And whenever we hear the people of the United States crying out for the abolition of the right of trial by jury, or for the denial of the right of trial by jury, then we can say that the day has come, which Justice Hand said he feared might come some day, that love of liberty has died in the hearts of the people.

Mr. JOHNSTON. Does not the Senator feel that many of those who drafted this bill so hastily probably are seeing their mistakes but will not acknowledge them?

Mr. ERVIN. I should think that anyone who loved liberty and who had been beguiled for even a moment into supporting any kind of proposal that any human being ought to be denied trial by jury in criminal contempt ought to come to the mourner's bench and get into harmony with the barons at Runnymede and with Jefferson and the other signers of the American Declaration of Independence and the Constitution and the lovers of liberty and the right of individuals to be free from governmental tyranny.

Mr. JOHNSTON. So some persons had not been reading the history of the United States, or they would not have acted so hastily in drafting this legislation. Is that not true?

Mr. ERVIN. I wish I could accept the implication of the question as being a fact. I believe that those who drew up this bill knew what they were doing. I think they were trying to draft the most monstrous blueprint for governmental tyranny ever presented to Congress; but I have indulged in the hope that many Members of the Senate who in a moment of thoughtlessness accepted this provision of the bill, not realizing all its implications, would change their minds.

Mr. JOHNSTON. The Senator agrees, then, that our judicial department, which is known as the Department of Justice, probably had some hand in it, since the bill would give to the Attorney General unlimited powers to act and almost to become a dictator?

Mr. ERVIN. It is a fair interpretation of this bill to say that, if enacted into law, it would vest in the Attorney General of the United States discretionary power which no American Congress in the history of this Nation has ever been willing to vest in any public official.

I would go so far as to say that, if enacted into law, we might well proclaim the Attorney General of the United States as the uncrowned emperor of America.

Mr. JOHNSTON. The bill would place a great deal of power in him.

Mr. ERVIN. Every day I read in the press that some of the proponents of the bill are meeting with the Attorney General and trying to devise ways and means of getting this bill passed in some form or another.

Titles I, II, III, and IV of the bill purport to create laws for our country. But the bill would make them the personal possession of whoever is the Attorney General of the United States at any particular moment. He could use the laws if he saw fit. He could refuse to use the laws if he saw fit. He could use the laws in favor of some persons, and refuse to use them in favor of some persons under exactly the same circumstances. He could use such laws against some persons and refuse to use them against other persons who had committed the same alleged acts.

One man, the occupant of one office, who is identified as the occupant of the Attorney General's office, out of the 185 million people of the United States, could take the bill, and all the provisions for the enforcement of the bill, and do what he pleased with them according to his caprice or whim, without any legal guidance. All he would have to say would be "yea" or "nay."

I do not think the man who could exercise justly and wisely for the safety of the people, the vast powers the bill would confer upon the Attorney General of the United States, has yet been born on this earth.

Mr. JOHNSTON. Is it not true that at the same time they were getting ready to draft the bill they were asking for some 70-odd additional judges throughout the United States? They asserted that the courts were congested at that time and that the additional judges were needed. Is it not true that the courts today are just as congested as they were then? Most of the requested additional judges were provided about a year ago.

Is it not the Senator's opinion that if the bill is passed 76 more judges had better be added?

Mr. ERVIN. I do not believe 76 more would be adequate. If the provisions of this bill are to be enforced, the Federal Government will have to extend its activities and send abroad in the country large numbers of officials like locusts to eat up the substance of the people. It would extend the hand of Federal regulation into every nook and corner of this Nation. Under the provisions of the bill the people would have their commercial and personal affairs taken out of their hands and regulated by the Federal Government in Washington.

Mr. JOHNSTON. To let the people know who is talking, let me ask this

question: Is it not true that the Senator from North Carolina is head of the Subcommittee on Constitutional Right?

Mr. ERVIN. That is true.

Mr. JOHNSTON. Is it not true that the Senator from North Carolina served on the supreme court of his State?

Mr. ERVIN. I was privileged to serve there for 6 years, until I resigned to accept a seat in the Senate.

Mr. JOHNSTON. And the Senator has been here since?

Mr. ERVIN. Yes.

Mr. JOHNSTON. How long did the Senator from North Carolina practice law?

Mr. ERVIN. Since it will be seen that I have lost all the "chlorophyll" from my hair, it will be evident that I have been around a while. I think I started reading Blackstone's "Commentaries on the Law of England" when I was a teenager back in 1914.

Mr. JOHNSTON. Many complex legal questions come before the Judiciary Committee, on which the Senator serves; but whenever there is a constitutional question, we rely on the Senator from North Carolina. Do not all the members of that committee—Democrat and Republican—call the Senator from North Carolina the constitutional lawyer?

Mr. ERVIN. I fear some of my friends are too generous.

Mr. JOHNSTON. But do they not do that? Has not the Senator from North Carolina been called that many times?

Mr. ERVIN. I have been paid many compliments, and I have had some things said about me that I would say were derogatory.

Mr. JOHNSTON. When the Attorney General testified on the constitutional rights bills, is it not true that the Senator from North Carolina was the one who acted as the quizzer of the Attorney General?

Mr. ERVIN. I would say that the Attorney General and I had quite a number of colloquies about bills somewhat similar to this. After we were through discussing one like this, the Attorney General left the discussion, and he has not been back since.

Mr. President, before I yielded to my distinguished friend from South Carolina, I was about to read to the Senate one of the most eloquent speeches ever made in this Chamber for the preservation and expansion of the right of trial by jury, particularly in criminal contempt cases. This speech was made in advocacy of the passage of the O'Mahoney amendment, which was identical to the Talmadge amendment now before the Senate. This speech was so eloquent that after its delivery 51 Members of the Senate voted to adopt the O'Mahoney amendment.

Among them were the present President of the United States, the late President Kennedy, the present able and distinguished majority leader [Mr. MANSFIELD], and many other illustrious Senators.

I now read the speech:

Mr. JOHNSON of Texas. Mr. President, sometimes in the course of debate we use loose language. But it is not speaking

loosely to say that the Senate is approaching a truly historic vote.

By adopting this amendment, we can strengthen and preserve two important rights. One is the right to a trial by jury. The other is the right of all Americans to serve on juries, regardless of race, creed, or color.

But the adoption of this amendment means something even more important. It means the strengthening of the basic purpose of this bill, which is to provide strong guaranties for the right to vote.

I believe we all recognize the fact that in this bill we are stepping into a new field of law enforcement. I am aware of the legal arguments that this is a traditional exercise of the powers of equity.

Those arguments will not be very impressive to our people. No lawyer—no matter how learned—will ever convince them that it is traditional to bring Federal judges directly into the voting cases.

As the bill now stands, it is an effort to convert criminal acts into civil offenses so that they may be punished criminally without a jury trial.

I digress from my reading of the speech to note how true that is of the pending bill.

In my opinion, our people will accept the necessity for bringing the Federal courts into the election picture. They realize that there is a question of speed involved if the right to vote is to be effective.

But I do not believe that our people will accept the concept that a man can be branded a criminal without a jury trial. That is stretching the processes of the law too far.

I should like to digress for a moment to emphasize the soundness of that remark:

But I do not believe that our people will accept the concept that a man can be branded a criminal without a jury trial. That is stretching the processes of the law too far.

If we were to insist upon criminal contempt proceedings without a jury trial, we would be inviting the very violations we seek to avoid. In my opinion, we could make no greater mistake.

I digress to say, "How true."

This amendment has been carefully drawn. It leaves the Federal courts with full power to enforce compliance with legitimate court orders. It does not touch, in any manner, the coercive authority the judiciary probably should have.

I digress again to say that that statement, made by the then Senator from Texas, is equally applicable to the proposed perfecting amendment called up by the junior Senator from Louisiana [Mr. Long] to the Talmadge amendment. I continue to read:

It says only that a man cannot be branded as a criminal, in the sight of his fellow man, without a trial by jury.

North, South, East, or West, our people will respond to laws that are enacted fairly after reasonable consideration. Those who will not respond can be handled under the ordinary proceedings of criminal contempt.

Mr. President, I believe in the right to vote. I believe in strengthening that right. I believe further that most of our people share my belief or are at least willing to accept it.

And I reject—absolutely reject—the contention that we must concentrate on threats in advance of violation. That is not the way to resolve an issue; it is only the way to create new issues.

Mr. President, I am not going to engage, tonight, in a lengthy argument on the merits of this amendment. There are on this floor able Senators who have explored every aspect thoroughly. The hour is late, and many Senators are prepared to vote.

But, before the rollcall is had in the Senate tonight, I should like to call the roll of the great men of the past. I do so only because I believe it will indicate the strength of the jury-trial tradition among our people.

It was Thomas Jefferson who said:

"They [the juries] have been the firmest bulwark of English liberties."

It was Alexander Hamilton who said:

"The more the operation of the institution [trial by jury] has fallen under my observation, the more reason I have discovered for holding it in high estimation."

It was the late Senator Walsh, of Montana, who said:

"There is not an argument that can be advanced or thought of in opposition to trial by jury in contempt cases that is not equally an argument against the system as we now know it."

It was the late Senator George Norris, of Nebraska, who said:

"A procedure which violates this fundamental right of trial by jury in criminal cases, even though it be a case of contempt, violates every sense of common justice, of human freedom, and of personal liberty."

Mr. President, these quotations could be continued into the evening, but it would be pointless to do so. The tradition of trial by jury is deep within the heart of our liberty-loving people.

What a wonderful expression. I shall emphasize it by rereading it:

The tradition of trial by jury is deep within the heart of our liberty-loving people.

Repeal that right, and our laws will become ineffective, except to incite disobedience. Recognize that right, and we shall have one of the strongest and most effective laws in our history.

Mr. President, I do not presume—as the minority leader has—to pass judgment on the actions of the other body.

I shall digress to make some observations about the statement made by then Senator Lyndon B. Johnson, of Texas:

Mr. President, I do not presume—as the minority leader has—to pass judgment on the actions of the other body.

We have heard most astounding statements made on the floor of the Senate in respect to what action the Senate is to be permitted to take by way of amendment to the bill. We have been warned by the proponents of the bill that the Senate must not adopt any amendments unless such amendments are first approved by Representative McCulloch. I know that Representative McCulloch is a very fine Member of the House. I know also that he is a wise man. But I am unwilling to take the position of the proponents of the bill, who evidently proceed upon the theory that the Senate must not adopt any amendment to the bill without first obtaining the consent and approval of Representative McCulloch.

Despite my strong admiration for Representative McCulloch, and despite my high respect for his intellectual ability I am unwilling to concede, as do some of the proponents of the bill, that the individual wisdom of Representative McCulloch exceeds the combined wisdom of all 100 Senators of the United States. Even if I did not labor under the belief that

the combined wisdom of 100 Senators is at least equal to that of Representative McCulloch, I would nevertheless take the position that the Senate could not be true to its oath and to its responsibilities if it were to abdicate its function, in considering legislation, and make complete obeisance to Representative McCulloch, despite the admiration in which he should be held by the Senate and the American people.

The Constitution clearly contemplates that when the Senate is convened as a legislative body, Senators shall exercise their own God-given faculties, and not abdicate the exercise of their God-given faculties to any Member of the House, no matter how wise that Member of the House may be or how high he may be held in their estimation.

In closing my comments, I wish to reiterate what former Senator Johnson said on August 1, 1957, on this point:

Mr. President, I do not presume—as the minority leader has—to pass judgment on the actions of the other body. All I know is that tonight we in the Senate must do our duty as we see it.

I commend those words of former Senator Johnson, of Texas, to the consideration of all the proponents of the bill who urge that the Senators refrain from doing their duty as Senators. I urge them to give their independent consideration to the bill without fear that their action may not be pleasing to any Member of the House of Representatives. I resume my reading of this great speech:

Mr. President, when the roll is called, I hope this amendment will be adopted by a substantial vote.

Mr. President, I yield back the remainder of the time under my control, on the condition that the minority leader will do likewise.

Mr. President, I have concluded my reading of this wonderful speech advocating the right of trial by jury in criminal contempt cases and advocating the adoption by the Senate of an amendment to secure the right of trial by jury to persons charged with contempt, even in civil rights cases. I sincerely trust that a majority of the Senate will heed the wise advice which the then Senator Lyndon B. Johnson, of Texas, gave to the Senate in 1957, and will vote for the adoption of the amendment called up by the junior Senator from Louisiana [Mr. LONG], an amendment which is in the nature of a perfecting amendment to the Talmadge amendment.

Mr. President, on Monday, May 11, I submitted certain amendments—namely, amendment No. 585, amendment No. 586, amendment No. 587, amendment No. 588, amendment No. 589, amendment No. 590, amendment No. 591, amendment No. 592, amendment No. 593, amendment No. 594, and amendment No. 595. These amendments have been printed, and they now lie at the desk.

In order that the Senate may know the provisions of these amendments and may ascertain for itself that the adoption of these amendments would remove some of the legal and constitutional inequities and illegalities from the pending bill, I ask unanimous consent that they be printed at this point in the body of the RECORD, as part of my remarks, for

the information of the Senate, and that the reading of the amendments, under the Senate rules, be waived and that they be considered as having been read in compliance with all the rules of the Senate governing the reading of amendments.

THE PRESIDING OFFICER. Is there objection? Without objection, it is so ordered; and the amendments will be printed in the RECORD.

The amendments are as follows:

AMENDMENT No. 585

On page 12, line 4, strike out "certifies" and insert in lieu thereof "satisfies the Court by competent evidence after notice and an opportunity to be heard are given to the proposed adverse parties."

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

On page 12, line 18, strike out "the Attorney General may deem," and capitalize the article "A".

On page 12, line 19, insert "are" between "persons" and "unable."

On page 12, line 24, strike out "he is satisfied that."

On page 12, line 25, strike out "would" and insert in lieu thereof "is likely."

On page 13, line 1, strike out "might."

AMENDMENT No. 586

On page 17, line 13, strike out "certifies" and insert in lieu thereof: "satisfies the court by competent evidence after notice and an opportunity to be heard are given to the proposed adverse parties".

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

On page 18, line 1, insert the following between the period and "The": "After notice and an opportunity to be heard are given to them, the district court of the United States may authorize".

On page 18, line 1, change the capital "T" in "The" to a little "t".

On page 18, line 1, strike out "may" and insert in lieu thereof: "to".

On page 18, line 4, strike out "The Attorney General may deem" and capitalize the "a" in the article "a".

Page 18, line 5, insert "are" between "persons" and "unable".

Page 18, line 10, strike out "he is satisfied that".

Page 18, line 11, strike out "would" and insert in lieu thereof: "is likely to".

Page 18, line 12, strike out "might".

AMENDMENT No. 587

Beginning with line 1, page 26, strike out all to and including line 20, page 27, and insert in lieu thereof the following:

"Sec. 602. (a) Whenever any Federal department or agency which is empowered to extend Federal financial assistance to any program or activity by way of grant, loan, or contract (other than a contract of insurance or guaranty) receives from any interested individual a complaint, duly subscribed and executed under oath, alleging that violation of section 601 is occurring in the administration of that program or activity, such department or agency shall transmit such complaint to the Attorney General for such action as he may deem appropriate pursuant to the provisions of this section.

"(b) Upon receipt of any such complaint, the Attorney General may conduct an investigation to determine whether there is probable cause for belief that the allegations contained therein are supported by substantial evidence. If the Attorney General, upon the basis of such investigation, determines that such allegations are so supported, he may institute, in the district court of the United States for the district in which

such violation is alleged to be occurring, a civil action to restrain or enjoin the continuance of such alleged violation. Upon application made by any defendant in such action, determination of the question whether the alleged violation in fact is occurring shall be made by an impartial jury of the State and district in which such violation is alleged to be occurring. Section 1291 and section 1254 of title 28, United States Code, shall be applicable for the review of judgments, decrees, and orders entered in actions instituted under this subsection.

"(c) No Federal department or agency may withhold any financial assistance from any program or activity because of any alleged violation of section 601 until it has been determined, by final judgment, decree, or order entered in an action instituted under subsection (b), that such violation is occurring."

AMENDMENT No. 588

On page 35, between lines 20 and 21, insert the following new subsection:

"(h) Notwithstanding any other provision of this title, it shall not be an unlawful employment practice—

"(1) for any employer to refuse to hire or employ any individual determined by such employer to be unqualified, for reasons other than race, color, religion, sex, or national origin, to perform the duties of the employment for which such individual makes application;

"(2) for any employment agency to fail or refuse to refer to any employer for employment any individual determined by such agency to be unqualified, for reasons other than race, color, religion, sex, or national origin, to perform the duties of the employment for which such individual makes application;

"(3) for any labor organization to exclude or expel any individual from membership for any reason not based exclusively or primarily upon race, color, religion, sex, or national origin;

"(4) for any employer, labor organization, or joint labor-management committee to exclude or expel any individual from any apprenticeship or any training or retraining program if such individual is determined by such employer, labor organization, or joint labor-management committee to be unsuitable, for any reason not based exclusively or primarily upon race, color, religion, sex, or national origin, for employment in the occupation to which such apprenticeship or program relates;

"(5) for any employer to determine, establish, or prescribe, upon any basis not founded exclusively or primarily upon race, color, religion, sex, or national origin, standards for the qualification of any employee or applicant for employment to perform any of the duties incident to any employment; or

"(6) for any employer in his discretion to fall or decline to accept for employment, to discharge from employment, to discipline in any way, or to promote, demote, assign, or reassign, any individual upon the basis of such standards."

AMENDMENT No. 589

On page 36, line 19, immediately after the period, insert the following new sentence: "It shall not be an unlawful employment practice under this title—

"(1) for any person to print or publish, or cause to be printed or published, any notice or advertisement relating to any employment which specifies, upon any basis other than race, color, religion, sex, or national origin, the qualifications required of any applicant for any employment, as determined by the employer concerned; or

"(2) for any employer concerned to determine by any means, upon any basis other than race, color, religion, sex, or national origin, whether any individual possesses the qualifications required for any employment."

AMENDMENT No. 590

Beginning with the comma in line 22, page 39, strike out all to and including the word "occurred" in line 25, page 39.

AMENDMENT No. 591

On page 40, line 22, strike out the word "bring", and insert in lieu thereof the words "refer the matter to the Attorney General, who may if he concurs in the determination of the Commission institute".

On page 40, line 25, strike out the words "bring a civil action in any case", and insert in lieu thereof the words "refer to the Attorney General any matter".

On page 41, line 1, immediately after the word "vote", insert the words "of two Commissioners".

On page 41, lines 3 and 4, strike out the words "bring a civil action", and insert in lieu thereof the words "transfer a matter to the Attorney General".

Beginning with the comma in line 5, page 41, strike out all to and including the comma in line 6, page 41.

On page 41, line 7, immediately preceding the period, insert the following: "upon the filing of an appropriate bond in such amount as the court may deem proper to save the respondent harmless from all costs, damages, and losses resulting from the institution of an improvident action".

On page 41, line 11, strike out the word "either".

Beginning with the word "or" in line 13, page 41, strike out all to and including the word "office" in line 14, page 41.

AMENDMENT No. 592

On page 42, line 16, immediately after the period, insert the following new sentence: "No order of the court may require the payment by any defendant of any sum as back-pay unless the liability of the defendant for such payment, and the amount of any such payment, has been determined by a verdict of a jury."

AMENDMENT No. 593

On page 41, line 9, immediately after the word "court", insert the words "of general original jurisdiction (other than the Supreme Court)".

AMENDMENT No. 594

On page 43, between lines 10 and 11, insert the following new subsection:

"(i) In any action or proceeding under this title, no finding or determination may be made to the effect that any person is engaged in, or has engaged in, any unlawful employment practice unless it is shown by or on behalf of the complainant, by a fair preponderance of evidence, that such person in fact is engaged in, or has engaged in, such practice. A showing as to the race, color, religion, sex, or national origin of the complainant, coupled with a showing of differentiation in the treatment accorded to the complainant, shall not be sufficient of itself to establish such differentiation in treatment as an unlawful employment practice within the meaning of this title."

AMENDMENT No. 595

On page 43, line 2, immediately after the period, insert the following new sentence: "In any hearing conducted by a master so appointed by any court such master shall conform to the evidentiary and other rules, and to the practice and procedure, of such court."

Mr. ERVIN. Mr. President, I have given details in connection with the passage of various acts of Congress, and I have attempted to analyze the contents of those acts, which secure to persons charged with criminal contempt the right

of trial by jury under varying circumstances, and which in some cases and under other circumstances deny persons charged with criminal contempt the right of trial by jury.

The United States was not much concerned with the question of the right of trial by jury in criminal contempt cases in the early days of this Republic. I think the reasons for that situation will become apparent when we consider the conditions which prevailed in the early days in the various States. It is one of the great truths of life that if we are to understand the laws and institutions of today, we must understand the events of yesterday which gave them birth. Although I do not profess to be an authority on the legal systems of the various States of the Union, I have devoted a considerable amount of time to a study of the legal system of my State of North Carolina, which I am convinced was similar in most respects to those of the other original American States.

It is easy to understand why the early Americans were not much concerned with jury trials in connection with criminal contempt charges. In fact, they were not much harassed by proceedings for criminal contempt. In the early days of this Republic, about the only kinds of contempt which ordinarily were acted upon by the courts were contempts which were committed in the immediate presence of the court and contempts which, in effect, constituted insults of the court, being committed in its presence, and having the effect of obstructing the administration of justice.

Those contempts were punished, in those days, as they are punished nowadays; and it was right that they be so dealt with. That was true because the contempts were committed in the presence of the court, and constituted an offense to the administration of justice itself, and had to be dealt with immediately if the dignity and decorum of the court and its capacity to administer justice were to be preserved. But those contempts were different from contempts in criminal contempt cases. That is true because criminal contempt ordinarily takes place in the absence of the court.

There is another reason why the people of our Republic in the early days were not as much concerned with this question as we are concerned with it today. At the time of ratification of the Constitution, and until comparatively recent years, the jurisdiction of the courts of equity was confined almost entirely to the protection of property rights. Consequently, there were few proceedings in equity; and in the great majority of cases they could be handled without either criminal contempt processes or even civil contempt processes. When a court of equity acquired jurisdiction over such cases, it had the power to enforce its judgment by its decrees, without resorting to contempt processes. But with the vast expansion of the jurisdiction of the courts of equity, an expansion which began about the time of the enactment of the antitrust laws, conditions in this area changed. Congress vested in the courts of equity the jurisdiction over proceedings whose purposes were wholly repugnant to the original purposes of

the courts in exercising equity powers. With the multiplication of equity jurisdiction, the occasions for invoking either civil contempt proceedings or criminal contempt proceedings expanded. At about that time—unfortunately, for the cause of the administration of justice—the Department of Justice began to seek to punish violations of Federal injunctions through criminal contempt proceedings. It is easier for the Department of Justice to maintain such proceedings because in them the accused is denied the right of trial by jury, the right of limited punishment, and many of the other rights I have mentioned.

I wish to discuss another reason why, in the early days, the people were not much concerned with proceedings for criminal contempt. In those days, most of those who were punished by laws were punished under a system which has long been out of vogue in this country. In those days, the States had no places in which to imprison people, except the jails of the counties and the parishes. Until about the middle of the 19th century, most of the States did not even have a penitentiary. Consequently, the courts did not and could not resort in very many cases, to punishment by imprisonment, to any great extent. We had a system that came to us from the common law of England under which most felonies were capital offenses, unless the person convicted of the felony could plead the benefit of clergy—that is to say, could plead that he could read and write. If a person was convicted of a felony and could not plead the benefit of clergy, ordinarily he was executed without any further to do, other than the necessary review of his conviction by the courts of appeal of the States or of the country. But if he could plead the benefit of clergy, instead of suffering imprisonment, he suffered branding. When a literate person was convicted of a criminal felony—for example, when he was convicted of manslaughter—it was customary for him to be branded, as the old judgments recite, “on the brawn of the thumb” with the letter “M,” so that wherever he went, those who came in contact with him would recognize, from his brand, that he had been branded, following a plea of the benefit of clergy, after he had been convicted of the felony of manslaughter.

The same thing applied to other serious felonies, such as the brand “B” for bigamy and the brand “P” for perjury, and like brands for other offenses. There was very little imprisonment, either for crime or for contempt.

The punishment in lesser offenses in the early days of this country was based upon psychological factors instead of imprisonment. If a man committed one of the lesser crimes, he was taken to the whipping post. And it was the customary procedure for the sheriff of the county, acting under the judgment of the court, to apply to his bare back, as the court records recite, 39 lashes. And I regret to say that in some cases, it appears from the court record that the clerk of the court in recording judgments of this kind spelled the adjective modifying “back” as “bear” rather than “bare.”

In that day, people were also punished by being placed in the stocks, the stocks consisting of an elevated mechanism which usually stood upon the courthouse square. The stocks were so made that the culprit who was sentenced to occupy the stocks for a certain period of time—which was usually several hours—had his head placed through the stocks, and the boards were fastened down to the hole through which his head was inserted. He was compelled to sit there for several hours and suffer the ridicule of passers-by.

In that day, imprisonment was rarely resorted to, either as punishment for crime or for contempt. The question of the importance of a jury trial in criminal contempt cases was not presented to the American people during the early days of this Republic. It was not until after the tremendous expansion of the jurisdiction of courts of equity began, about the time of the enactment of the Sherman anti-trust law in the year 1890.

Since that time, however, the question of punishment in trials for criminal contempt has been constantly arising. It has been dealt with in a number of recent decisions of the Supreme Court of the United States. It has not raised questions of equal importance in the States, because under the laws of all the States—as in my State of North Carolina—about the middle of the 19th century the old methods of punishment passed out of vogue and were succeeded by fines and imprisonment. Statutes were enacted providing for very limited punishment in criminal contempt proceedings. And for this reason, there was no great occasion to litigate the question in the courts of the States.

With the expansion of the powers of courts of equity through repeated acts of Congress extending equitable jurisdiction to cases in which it did not exist at the time of the adoption of the Constitution, and with the extension of the practice of prosecutors to resort to criminal contempt proceeding rather than to criminal prosecutions as a method of punishment, the question of the right of trial by jury in criminal contempt proceedings became acute. There have been many fine discussions of the subject in the decisions of the Supreme Court of the United States since Justice Frankfurter said in an article in the Harvard Law Review in 1923, the rules in criminal contempt proceedings were based upon mistaken notions as to the precedents which had been followed in such cases in England.

Research in this field has shown that as a general rule, in England, criminal contempts were prosecuted as ordinary crimes and were not dealt with in a summary manner as contempts. The Supreme Court of the United States held at an early date that there was no right to trial by jury in criminal contempt cases. I have consistently taken the position that that is so whenever this question has arisen. Unfortunately, however, the Federal courts, unlike the State courts, have resorted to extreme punishment in criminal contempt proceedings, and they have held that the guarantees of the Constitution do not apply to criminal contempts.

At the same time, they have written other opinions in which they have stated, in effect, that criminal contempts are crimes, or, at least, offenses against the United States, and have assimilated them into crimes for the purpose of determining when prosecutions for them are barred by the statute of limitations.

I think it can be truly said that the Federal rules about criminal contempts, except insofar as such rules have been repealed or mitigated in specific cases by acts of Congress, constitute a disgrace to any system of jurisprudence established for the primary purpose of administering justice.

I realize that this is a serious charge to be made against Federal law. I honestly believe, however, that it is true. In the first place, persons charged with criminal contempt are denied the protection of indictment by grand juries, even in cases in which the punishment for criminal contempt will exceed the punishment for ordinary felonies under the Federal law. In the second place, persons charged with criminal contempt in the courts of the United States, in the absence of an act of Congress to the contrary, are denied the right of a trial by jury and are compelled to submit to trials in most cases by the very judge whose orders they are alleged to have disobeyed. In the third place, the person charged with criminal contempt, in the absence of an act of Congress, is denied the right to a venue for trial in the district in which the alleged contempt occurred, or even in the State in which the alleged contempt occurred, where the witnesses are readily available.

That is a most serious handicap to any person in a prosecution of any kind punishable by fine or imprisonment. In the next place, as I have previously pointed out, persons charged with criminal contempt are not protected by the provision of the Constitution which prohibits the placing of any person in jeopardy twice for the same offense.

As I have noted, persons charged with contempt can be punished first by a civil contempt proceeding; then they can be punished a second time by a criminal contempt proceeding; and in cases in which their alleged contemptuous acts also constitute crimes, they can be punished a third time for the crimes. I submit that the possibility of three prosecutions for the same act or omission is something that cannot be justified under any proper regard for the principles of sound justice.

In addition, persons charged with criminal contempt are subject to whatever punishment, by way of fine or imprisonment, or both, the judge may impose upon them, with no limitation except the nebulous limitation of the eighth amendment, which prohibits cruel and unusual punishment.

As I said a short time ago, I do not believe there is a single judge or lawyer within the entire United States who can give us any understandable rule by which we can determine when punishment for criminal contempt becomes cruel and unusual within the purview of the eighth amendment.

These are the reasons why I say the Senate should adopt an amendment to

the bill to give the right of trial by jury and the right of limited punishment, to all persons charged with criminal contempt under any of the statutes of the United States. Simple justice requires that the Senate take that course.

One of the members of the Supreme Court who has been much concerned with problems and handicaps to justice arising out of Federal laws in respect to criminal contempt proceedings is Mr. Justice Hugo Black. I may add also that Justice Felix Frankfurter, who unfortunately was compelled to retire from the Court a relatively short time ago by reason of illness, was also concerned with this matter.

Justice Frankfurter, while professor of law at Harvard Law School, investigated this whole subject and wrote an excellent article which appeared in the Harvard Law Review in 1923, in which he pointed out the law in respect of criminal contempt and how the law was based upon a misconception of certain English precedents in this field. I suggested the other day, and reiterate now, that Justice Frankfurter intimated, as much as a judge can intimate such a thing, in his concurring opinion in one of the most famous cases in the field of criminal contempt, Green against the United States, that Congress ought to take action in this field. In that case Justice Frankfurter said in concurring opinion:

Congress has seen fit from time to time to qualify the power of summary punishment for contempt that it gave the Federal courts in 1789 by requiring in explicitly defined situations that a jury be associated with the court in determining whether there has been a contempt. It is for Congress to extend this participation of the jury, whenever it sees fit to do so, to other instances of the exercise of the power to punish for contempt. It is not for this Court to fashion a wholly novel constitutional doctrine that would require such participation whatever Congress may think on the matter, and in the teeth of an unbroken legislative and judicial history from the foundation of the Nation.

That passage occurs in the concurring opinion of Mr. Justice Frankfurter in Green against United States which is reported in volume 356 of the Reports of the United States Supreme Court, page 193.

I respectfully submit that it should be construed as a suggestion by Justice Frankfurter, a great student of the history of the contempt proceeding, that Congress ought to make a provision for trial by jury in criminal contempt cases.

The greatest argument for some remedial legislation in this field is to be found in the dissenting opinion of Mr. Justice Black in the Green case. The dissenting opinion of Mr. Justice Black was concurred in by the Chief Justice and Mr. Justice Douglas.

Since the dissenting opinion of Mr. Justice Black sets forth the Federal law in respect to criminal contempt, and the tremendous injustice which such law inflicts upon persons charged with criminal contempt in Federal courts, I wish to read what he has to say on the subject. It begins on page 193 of volume 356 of the United States Supreme Court Reports:

The power of a judge to inflict punishment for criminal contempt by means of a

summary proceeding stands as an anomaly in the law. In my judgment the time has come for a fundamental and searching reconsideration of the validity of this power which has aptly been characterized by a State supreme court as, "perhaps, nearest akin to despotic power of any power existing under our form of government." Even though this extraordinary authority first slipped into the law as a very limited and insignificant thing, it has relentlessly swollen, at the hands of not unwilling judges, until it has become a drastic and pervasive mode of administering criminal justice usurping our regular constitutional methods of trying those charged with offenses against society. Therefore to me this case involves basic questions of the highest importance far transcending its particular facts. But the specific facts do provide a striking example of how the great procedural safeguards erected by the Bill of Rights are now easily evaded by the ever-ready and boundless expeditors of a judicial decree and a summary contempt proceeding.

I would reject those precedents which have held that the Federal courts can punish an alleged violation outside the courtroom of their decrees by means of a summary trial, at least as long as they can punish by severe prison sentences or fines as they now can and do. I would hold that the defendants here were entitled to be tried by a jury after indictment by a grand jury and in full accordance with all the procedural safeguards required by the Constitution for "all criminal prosecutions." I am convinced that the previous cases to the contrary are wrong—wholly wrong for reasons which I shall set out in this opinion.

Ordinarily it is sound policy to adhere to prior decisions but this practice has quite properly never been a blind, inflexible rule. Courts are not omniscient. Like every other human agency, they too can profit from trial and error, from experience and reflection. As others have demonstrated, the principle commonly referred to as stare decisis has never been thought to extend so far as to prevent the courts from correcting their own errors. Accordingly, this Court has time and time again from the very beginning reconsidered the merits of its earlier decisions even though they claimed great longevity and repeated reaffirmation. See, e.g., *Erie Railroad Co. v. Tompkins*, 304 U.S. 64; *Graves v. New York ex rel. O'Keefe*, 306 U.S. 466; *Nye v. United States*, 313 U.S. 33. Indeed, the Court has a special responsibility where questions of constitutional law are involved to review its decisions from time to time and where compelling reasons present themselves to refuse to follow erroneous precedents; otherwise its mistakes in interpreting the Constitution are extremely difficult to alleviate and needlessly so. See *Burnet v. Coronado Oil & Gas Co.*, 285 U.S. 393, 405 (Brandeis, J., dissenting); *Douglas, Stare Decisis*, 49 Col. L. Rev. 735.

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 reasons. Later cases merely cite the earlier ones in a progressive cumulation while uncritically repeating their assumptions about "immemorial usage" and "inherent necessity."

No justified expectations would be destroyed by the course I propose. There has

been no heavy investment in reliance on the earlier cases; they do not remotely lay down rules to guide men in their commercial or property affairs. Instead they concern the manner in which persons are to be tried by the Government for their alleged crimes. Certainly in this area there is no excuse for the perpetuation of past errors, particularly errors of great continuing importance with ominous potentialities. Apparently even the majority recognizes the need for some kind of reform by engrafting the requirement that punishment for contempt must be "reasonable"—that irrepressible, vague, and delusive standard which at times threatens to engulf the entire law, including the Constitution itself, in a sea of judicial discretion. But this trifling amelioration does not strike at the heart of the problem and can easily come to nothing, as the majority's very approval of the grossly disproportionate sentences imposed on these defendants portends.

Before going any further, perhaps it should be emphasized that we are not all concerned with the power of courts to impose conditional imprisonment for the purpose of compelling a person to obey a valid order. Such coercion, where the defendant carries the keys to freedom in his willingness to comply with the court's directive, is essentially a civil remedy designed for the benefit of other parties and has quite properly been exercised for centuries to secure compliance with judicial decrees. See *United States v. United Mine Workers of America*, 330 U.S. 258, 330-332 (dissenting and concurring opinion). Instead, at stake here is the validity of a criminal conviction for disobedience of a court order punished by a long, fixed term of imprisonment. In my judgment the distinction between conditional confinement to compel future performance and unconditional imprisonment designed to punish past transgressions is crucial, analytically as well as historically, in determining the permissible mode of trial under the Constitution.

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.

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 impar-

tially 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 a 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.

Mr. President, with respect to the argument that a person convicted of criminal contempt can appeal and get relief, I digress from my reading of the dissenting opinion to remark that it is far easier to take a herd of camels through the eye of a needle than it is to secure a reversal of a judgment in a criminal contempt proceeding. This is true because a judge has unlimited discretion as to punishment, and there is no real way to review his determination of guilt. The only relief that can be obtained in an appeal from a lower court in a criminal contempt proceeding is for the appellate court to find that the trial judge was guilty of gross abuse of discretion.

As I suggested, it is much easier to drive a herd of camels through the eye of a needle than it is to persuade an appellate court to hold that a trial judge has grossly abused his discretion. There is no real remedy by appeal for a person convicted and sentenced for criminal contempt in a trial by a judge without a jury.

I continue to read:

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. All too often the reviewing courts stand aside readily with the formal declaration that "the trial judge has not abused his discretion." 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 8th 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.

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."

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

Mr. ERVIN. I am glad to yield to the Senator from Ohio for a question. I would not put that restriction on the Senator, except for the compulsion placed on the Senate by the floor manager of the bill.

Mr. LAUSCHE. I understand. Has the Senator from North Carolina given thought to the situation which now prevails under existing law, that under the Clayton Act, in criminal contempt proceedings, a trial by jury is mandatory?

Under the Norris-La Guardia Act, Congress has gone beyond what is provided in the Clayton Act and has declared that trial by jury shall be available both in civil and criminal contempt proceedings.

Third, in the Landrum-Griffin Act of 1959, the Senate, comprised of substantially the Members now serving, wrote into the law that trial by jury shall be allowed to labor leaders, did it not?

Mr. ERVIN. Yes; I discussed that point today. I placed in the RECORD what occurred in connection with the amendment granting the right of trial by jury in criminal contempt proceedings under the Landrum-Griffin Act, and stated that I had offered that amendment myself.

I heard the Senator from Ohio [Mr. LAUSCHE] speak on this subject last week. I have never heard a more eloquent exposition of the injustice of trying persons for criminal contempt with-

out juries than the Senator from Ohio made on that occasion.

Mr. LAUSCHE. Does the Senator from North Carolina know that some Members of this body have taken the position that they will not provide for jury trials under the civil rights bill because it was alleged that in equity, anciently, trial by jury should not be granted in criminal contempt cases, but that those very Senators voted for trial by jury for labor leaders in the Landrum-Griffin bill?

Mr. ERVIN. Yes. That amendment to the Landrum-Griffin bill, which was written and proposed by me and co-sponsored by the junior Senator from South Carolina [Mr. THURMOND], was adopted without opposition in the Senate. As I stated in my presentation, I could find no opposition to the amendment on either side of the aisle. That is why I find it strange that only 5 years later there is opposition to granting the right of trial by jury in criminal contempt cases arising under the so-called civil rights laws.

Mr. LAUSCHE. Is it not true that President Johnson was a Member of the Senate in 1959?

Mr. ERVIN. That is correct. He made a most eloquent appeal for the adoption of the O'Mahoney amendment to grant the right of trial by jury in criminal contempt cases under the Civil Rights Act of 1957.

Incidentally, I read that speech into the RECORD because I thought it was about as fine a speech as I have ever heard on the subject, with the exception of the speech made by the Senator from Wyoming, Mr. O'Mahoney, on that occasion, and the speech made by the distinguished senior Senator from Ohio [Mr. LAUSCHE] in the Senate Chamber a few days ago on the same subject.

Mr. LAUSCHE. Is it not also true that Senator O'Mahoney always took great pride in the fact that he was an exponent of what is known as liberalism?

Mr. ERVIN. That is true.

Mr. LAUSCHE. Is it not true that Senator O'Mahoney, as a liberal, stood on the floor of the Senate and argued that liberalism would be defeated if trial by jury were not allowed in criminal contempt cases?

Mr. ERVIN. That was the position which he took on that occasion and every other occasion throughout his life, so far as I am aware.

Mr. LAUSCHE. Is it not true also that in addition to the demand by former Senator Johnson for trial by jury in criminal contempt, the martyred President, John F. Kennedy, when he was a Senator from Massachusetts, joined the Senator from Texas in that argument?

Mr. ERVIN. He did. He spoke in behalf of the O'Mahoney amendment in 1957.

So far as I personally am concerned, I am willing to grant a verdict of not guilty to every person who claims to be a liberal and who is opposed to the right of trial by jury in criminal contempt proceedings. Such persons are entitled to an acquittal on the ground that they are more reactionary than was King John before Runnymede in this respect.

Mr. LAUSCHE. Yes. Will the Senator express his views about how reconciliation can be made of the inconsonant position that with respect to the Clayton Act, the Norris-La Guardia Act, and the Landrum-Griffin Act, jury trials are allowed in criminal contempt cases, with the attempt to deny jury trials in the pending civil rights bill?

Mr. ERVIN. I do not believe there can be any reconciliation of those different points of view. The only reconciliation that can be made with sound justice is to enact a provision to grant the right of trial by jury to all men in all criminal contempt cases. That is my personal view. I believe it is shared by the Senator from Ohio. I base that belief on the eloquent speech I heard him make on the floor of the Senate several days ago, and on speeches I have heard him make on previous occasions, as well.

Mr. LAUSCHE. Is the conclusion of the Senator from North Carolina based upon the proposition that one of the greatest boasts we have about our system of government is that there shall be equality of treatment of all citizens, regardless of their position, before the courts and also before Congress?

Mr. ERVIN. I certainly share that view. It is one of the firmest convictions I have that any law that is consistent with sound justice must necessarily provide that all men shall be judged exactly alike under like circumstances.

Mr. LAUSCHE. Can it be said that in the Communist nations there is an equal yardstick of justice applying to those who believe in communism as compared with those who do not believe in communism?

Mr. ERVIN. No. As I understand the distinction between the two groups in Communist nations, one group is judged by one standard, and the other by another standard. That is precisely what we do in respect to criminal contempt under the several statutes giving different rights to different persons, as the Senator has pointed out.

Mr. LAUSCHE. Does the Senator from North Carolina understand that the wire services of the Nation have published a story that there are three statutes under which juries are provided, but that in the pending bill juries are not provided? Has the Senator read the news reports on that subject?

Mr. ERVIN. I have not read any news reports today. I do not know when the story to which the Senator refers appeared.

But I have attempted to point out that in the Clayton Act there is a statute of that kind; the Norris-La Guardia Act of 1932 is a second such statute; and the Civil Rights Act of 1957 contains a very peculiar provision in that field. So there are three separate statutes. I say "three separate statutes" because of the approximateness of the provision of the Landrum-Griffin Act of 1959 to the Norris-La Guardia Act of 1932.

Mr. LAUSCHE. Does the Senator know that some important commentators, broadcasting out of Washington on television and radio, in discussing the issue of trial by jury, have not distin-

guished between criminal contempt and civil contempt?

Mr. ERVIN. I do not know that that is true, but I assume it is, because—unfortunately—as the Senator from Ohio knows, in order to grasp these distinctions, a person must have some knowledge of legal principles and equitable principles, and of the different objectives of criminal contempts and civil contempts. However, I do not understand how anyone could be mistaken about the different objectives of criminal contempts and civil contempts, if he heard the Senator speak the other day and heard him quote from the decision in the Gompers case.

Mr. LAUSCHE. Mr. President, will the Senator from North Carolina yield for another question?

The PRESIDING OFFICER (Mr. McGovern in the chair). Does the Senator from North Carolina yield to the Senator from Ohio for a question?

Mr. ERVIN. I yield for a question.

Mr. LAUSCHE. Would the Senator from North Carolina be surprised to hear that I have read newspaper articles and columns in which there have been statements or headlines such as "Jury trial in contempt cases denied," without any effort by the writer of the article to state that the issue before the Senate is jury trial in criminal contempt cases?

Mr. ERVIN. I would readily accept the Senator's statement. That is a tragic situation, because if a newspaper reporter or wire service gives such information without distinguishing between the two, it is not enlightening the American people in the way a free press should do. As the Senator from Ohio pointed out in his speech of several days ago, the line of demarcation between civil contempt proceedings and criminal contempt proceedings is very wide, for civil contempt proceedings are designed to secure compliance with the orders of the court, rather than to provide punishment, whereas criminal contempt proceedings are not designed to secure compliance with the orders of the court, but, rather, are designed to punish persons because of their past disobedience. In short, civil contempt proceedings are for the purpose of securing compliance with the orders of courts; criminal contempt proceedings are designed to punish those who are guilty of misdeeds.

Mr. LAUSCHE. Yes.

Has the Senator from North Carolina read in the newspapers or heard on the television or on the radio statements to the effect that under civil contempt proceedings, as distinguished from criminal contempt proceedings, all of the remedies needed to bring into execution the provisions of the civil rights bill are already available?

Mr. ERVIN. I must say that I do not recall reading a statement which made clear the fundamental difference between civil contempts and criminal contempts, and also made clear that those of us who are fighting for the right of trial by jury in criminal contempt cases are not seeking in any way to impair the capacity of the courts, through civil contempt proceedings, to enforce their orders or judgments. So I believe that

any commentator or writer who would make that proposition clear to the American people would be rendering a real service to our country.

Mr. LAUSCHE. So the Senator from North Carolina understands—and so do the individuals who are acquainted with the powers which are vested in a court under civil contempt proceedings—that the courts would be able to compel, by means of putting offenders into prison, all violators of the civil rights bill to do what the civil rights bill requires; is that correct?

Mr. ERVIN. The Senator is undoubtedly correct in the implication of his question. We could actually abolish totally the power of the court to punish for criminal contempt without affecting in the slightest degree the power of the court to enforce its judgments by civil contempt proceedings.

Mr. LAUSCHE. I hope the Senator from North Carolina will understand that I am repeating these questions solely for the purpose of making clear that under the civil contempt proceedings of courts, every privilege and right vested in a citizen under the civil rights bill could be achieved without resorting to criminal contempt proceedings.

Mr. ERVIN. The Senator from Ohio is absolutely correct in that; and he is pointing out the effect of the proposed law in as clear a fashion as it could possibly be explained.

Mr. LAUSCHE. I am sure the Senator understands—and I shall ask him whether he does so understand—that many citizens are of the belief, because of the failure of radio commentators, television commentators, and the writers of newspaper articles to elucidate on the subject, that in the Southern States, unless there is denial of the right of trial by jury, the purposes of the civil rights bill cannot be achieved. I ask the Senator from North Carolina whether that conclusion is correct or is incorrect.

Mr. ERVIN. That conclusion is as far wrong as any conclusion could possibly be. If the amendment which calls for jury trials in criminal contempt proceedings were adopted, as it should be, it merely would give such persons the same right of trial by jury that all Americans consider that all murderers and others charged with the most heinous crimes should have. So if the amendment were adopted, it would not interfere with the power of the courts in the North or in the South or in the East or in the West to enforce their orders and to require compliance with their orders without a jury trial.

Mr. LAUSCHE. Is it not a fact that when an offender was brought before a court, charged with violating a court's order issued in a civil rights case, the court, under the civil contempt proceedings, could put the offender in jail for such length of time as would compel him to comply?

Mr. ERVIN. That is true. If the defendant failed to comply, after he had been imprisoned as a result of a civil contempt proceeding, the judge could leave him in jail until the last lingering echo of Gabriel's horn trembled into ultimate silence.

Mr. LAUSCHE. If that is a fact, what help would it be to those who were seeking protection under the civil rights bill to be denied the right of jury trial in criminal contempt cases and proceedings—proceedings completely distinct and separate from the proceedings in civil contempt cases?

Mr. ERVIN. It would not afford them the slightest help of any kind, for the very simple reason that the court could secure every right awarded by a judgment of the court in a civil contempt proceeding tried by the judge himself, without a jury.

Mr. LAUSCHE. Yes; and that is what was embraced in the Morton amendment—not jury trial for civil contempt, but jury trial for criminal contempt; is that correct?

Mr. ERVIN. That is correct. Neither the Morton amendment—which was rejected by a margin of about one vote—or the pending amendment would interfere in any degree whatever with the power of a court to secure to the party aggrieved any right he had under the decision of the court, after a trial by the judge, without a jury.

Mr. LAUSCHE. I should like to repeat the question which I posed some five or six times when I made my argument here, about a week ago: On the basis of what logic or what morality could three statutes passed by Congress grant jury trials to labor leaders in contempt cases, but refuse to grant the right of jury trial in civil contempt cases?

Mr. ERVIN. We cannot do it and comply with logic and meet the requirements of logic, or even meet the requirements of equal justice under the law. There is no equal justice under the law when a man in a certain profession or in a certain vocation is granted the right of a trial by jury in criminal contempt proceedings and other men are denied the right of a trial by jury in criminal contempt proceedings. Such a system is incompatible with logic. It is incompatible with sound law. It is incompatible with the great goal of America to administer equal justice under the law.

Mr. LAUSCHE. In the opinion of the Senator from North Carolina, can an individual who voted for the granting of jury trials in criminal contempt cases in the Landrum-Griffin bill, where labor leaders are involved, reconcile that vote with opposition to the granting of jury trials in criminal contempt cases in the civil rights bill?

Mr. ERVIN. I am somewhat reluctant to pass on what other men can do. But if they have the kind of conscience which I have, and have the convictions that I hold, and that the Senator from Ohio holds, that there should be equal justice under the law, I do not think they can make any such reconciliation.

Mr. LAUSCHE. This is merely an encomium to the Senator from North Carolina. When the Landrum-Griffin bill was before the Senate in 1959, the Senator from North Carolina wrote the provisions which provided for a jury trial in criminal contempt cases for labor leaders. Is that not a fact?

Mr. ERVIN. That is correct. And I am proud of the fact that I did.

Mr. LAUSCHE. What the Senator from North Carolina and the Senator from Ohio are doing today in arguing for a jury trial in criminal contempt, as distinguished from civil contempt, is completely consistent with what was done by the Senate in 1959, with Lyndon B. Johnson, the present President, and John F. Kennedy, then Senator, approving and voting for what was done.

Mr. ERVIN. The Senator from Ohio and the Senator from North Carolina are fighting at this moment for the same right of trial by jury in criminal contempt cases for which they fought in 1957. I thank the Senator for making crystal clear the fact that we are not seeking to diminish to any extent the power of the court to enforce its judgment in civil contempt proceedings, in which case the judge tries the case without a jury. But on the contrary, we are merely seeking to have equal justice under law administered to all people in criminal contempt cases, when they are haled before the court for the purpose of punishment, and not for the purpose of being compelled to comply with a decree of the court.

Mr. LAUSCHE. The Senator will understand when I ask this question that in my judgment we have departed substantially from the sacred principles promulgated by our forefathers when they wrote the Declaration of Independence and the Constitution, and said there must be equality of treatment at the bar of justice and at the bar of the U.S. Congress.

Mr. ERVIN. I thoroughly agree with the Senator.

Mr. LAUSCHE. I thank the Senator.

Mr. ERVIN. Mr. President, I resume the reading of the opinion of Justice Black in the Green case:

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.¹ How can it possibly be any more of a crime to be convicted of disobeying a statute and sent to jail for three 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 Seventeenth or early Eighteenth 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 *Harv. L. Rev.* 1010, 1042-1052; Beale, *Contempt of Court, Criminal and Civil*, 21 *Harv. L. Rev.* 161. Prior to this period such contempts were tried in the normal and regular course of the criminal law, including trial by jury.² 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.

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, 611.³

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

² One scholar has argued that even contempts in the face of the courts were tried by jury after indictment by grand jury until the reign of Elizabeth I. Solly-Flood, Prince Henry of Monmouth and Chief Justice Gascoigne, 3 *Transactions of the Royal Historical Society (N.S.)* 47. Although agreeing that contempts in face were often tried by a jury up to and beyond this period, Fox takes the view that such contempts were also punishable by summary procedures from the early common law.

³ 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 and Curtis, *The Story of a Notion in the Law of Criminal Contempt*, 41 *Harv. L. Rev.* 51.

¹ 18 U.S.C. 3146.

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."⁴

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.⁵ 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 eighteenth 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."⁶

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."⁷

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.⁸

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 beginning 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.⁹ But since the 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 far-flung 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.¹⁰ In brief it has become a common device for by-passing 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

⁸ See *United States v. Thompson*, 214 F. 2d 545; *United States v. Hall*, 198 F. 2d 726.

⁹ 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.

¹⁰ 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.

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 momentum 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.¹¹ 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.¹² 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), §§ 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?¹³

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; " * * *

¹¹ 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.

¹² In 1775 Jefferson protested: "[Parliament has] extended the jurisdiction of the courts of admiralty beyond their antient 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.

¹³ Although section 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.

⁴ Fox, *The History of Contempt of Court*, VII.

⁵ *Id.*, at 116-117. See also, *id.*, at 3-4, 13, 54-55, 71-72, 89.

⁶ Power to Regulate Contempts, 37 Harv. L. Rev. 1010, 1042, 1046.

⁷ Contempt of Court, Criminal and Civil, 21 Harv. L. Rev. 161, 169-170, 174.

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.

It is true that Blackstone in his Commentaries incorporated Wilmot's erroneous fancy that at common law the courts had immemorially punished all criminal contempts without regular trial. Much ado is made over this by the proponents of summary proceedings. Yet at the very same time Blackstone openly classified and uniformly referred to contempt as a "crime" throughout his treatise, as in fact it had traditionally been regarded and punished at common law.¹⁴ Similarly, other legal treatises available in this country during the period when the Constitution was established plainly treated contempt as a "crime."¹⁵ It seems to me that if any guide to the meaning of the Constitution can be fashioned from the circulation of the Commentaries and these other legal authorities through the former colonies (primarily among lawyers and judges) it is at least as compatible with the view that the Constitution requires a jury trial for criminal contempts as with the contrary notion.

But far more significant, our Constitution and Bill of Rights were manifestly not designed to perpetuate, to preserve inviolate, every arbitrary and oppressive governmental practice then tolerated, or thought to be, in England. Cf. *Bridges v. California*, 314 U.S. 252, 263-268. Those who formed the Constitution struck out anew free of previous shackles in an effort to obtain a better order of government more congenial to human liberty and welfare. It cannot be seriously claimed that they intended to adopt the common law wholesale. They accepted those portions of it which were adapted to this country and conformed to the ideals of its citizens and rejected the remainder. In truth there was widespread hostility to the common law in general and profound opposition to its adoption into our jurisprudence from the commencement of the Revolutionary War until long after the Constitution was ratified. As summarized by one historian:

"The Revolutionary War made everything connected with the law of England distasteful to the people at large. The lawyers knew its value; the community did not. Public sentiment favored an American law for America. It was quickened by the unfriendly feeling toward the mother country which became pronounced toward the close of the

¹⁴ See, e.g., 4 Blackstone's Commentaries 1-6, 119-126, 280-287. Also pertinent here is Blackstone's oft-quoted laudation of trial by jury "as the glory of the English law * * * [I]t is the most transcendent privilege which any subject can enjoy, or wish for, that he cannot be affected either in his property, his liberty, or his person, but by the unanimous consent of twelve of his neighbours and equals." 3 id., at 379.

¹⁵ See, e.g., 1 Hawkins, Plea of the Crown (6th ed. 1787), 87.

eighteenth century and culminated in the War of 1812."¹⁶

Although the bench and bar, particularly those who were adherents to the principles of the Federalist Party, often favored carrying forward the common law to the fullest possible extent, popular sentiment was overwhelmingly against them.¹⁷

Apologists for summary trial of the crime of contempt also endeavor to justify it as a "necessity" if judicial orders are to be observed and the needful authority of the courts maintained. "Necessity" is often used in this context as convenient or desirable. But since we are dealing with an asserted power which derogates from and is fundamentally inconsistent with our ordinary, constitutionally prescribed methods of proceeding in criminal cases, "necessity," if it can justify at all, must at least refer to a situation where the extraordinary power to punish by summary process is clearly indispensable to the enforcement of court decrees and the orderly administration of justice. Or as this Court has repeatedly phrased it, the courts in punishing contempts should be rigorously restricted to the "least possible power adequate to the end proposed." See, e.g., *In re Michael*, 326 U.S. 224, 227.

Stark necessity is an impressive and often compelling thing, but unfortunately it has all too often been claimed loosely and without warrant in the law, as elsewhere, to justify that which in truth is unjustifiable. As one of our great lawyers, Edward Livingston, observed in proposing the complete abolition of summary trial of criminal contempts:

"Not one of the oppressive prerogatives of which the crown has been successively stripped, in England, but was in its day, defended on the plea of necessity. Not one of the attempts to destroy them, but was deemed a hazardous innovation."¹⁸

When examined in closer detail the argument from "necessity" appears to rest on the assumption that the regular criminal processes, including trial by petit jury and indictment by grand jury, will not result in conviction and punishment of a fair share of those guilty of violating court orders, are unduly slow and cumbersome, and by intervening between the court and punishment for those who disobey its mandate somehow detract from its dignity and prestige. Obviously this argument reflects substantial disrespect for the institution of trial by jury, although this method of trial is—and has been for centuries—an integral and highly esteemed part of our system of criminal justice enshrined in the Constitution itself. Nothing concrete is ever offered to support the innuendo that juries will not convict the same proportion of those guilty of contempt as would judges. Such evidence as is available plus my own experience convinces me that by and large juries are fully as respon-

¹⁶ Baldwin, *The American Judiciary*, 14.

"After the Revolution the public was extremely hostile to England and to all that was English and it was impossible for the common law to escape the odium of its English origin." Pound, *The Spirit of the Common Law*, 116. And see Warren, *History of the American Bar*, 224-228.

¹⁷ In 1804 the chief justice and two associate justices of the Pennsylvania Supreme Court were actually impeached for sentencing a person to jail for contempt. In part the impeachment rested on the feeling that punishment of contempt by summary process was an arbitrary practice of the common law unsuited to this country. While the justices were narrowly acquitted this apparently only aggravated popular antagonism toward the contempt power. See 3 McMaster, *History of the People of the United States* (1938 ed.), 153-16.

¹⁸ 1 Works of Edward Livingston 264.

sible in meting out justice in criminal cases as are the judiciary.¹⁹ At the same time, and immeasurably more important, trial before a jury and in full compliance with all of the other protections of the Bill of Rights is much less likely to result in a miscarriage of justice than summary trial by the same judge who issued the order allegedly violated.

Although some are prone to overlook it, an accused's right to trial by a jury of his fellow citizens when charged with a serious criminal offense is unquestionably one of his most valuable and well-established safeguards in this country.²⁰ In the words of Chief Justice Cooley: "The law has established this tribunal because it is believed that, from its numbers, the mode of their selection, and the fact that jurors come from all classes of society, they are better calculated to judge of motives, weigh probabilities, and take what may be called a common-sense view of a set of circumstances, involving both act and intent, than any single man, however pure, wise and eminent he may be. This is the theory of the law; and as applied to criminal accusations, it is eminently wise, and favorable alike to liberty and to justice." *People v. Garbutt*, 17 Mich. 9, 27. Trial by an impartial jury of independent laymen raises another imposing barrier to oppression by government officers. As one of the more perceptive students of our experiment in freedom keenly observed, "The institution of the jury * * * places the real direction of society in the hands of the governed, or of a portion of the governed, and not in that of the government." 1 De Tocqueville, *Democracy in America* (Reeve trans., 1948 ed.), 282. The jury injects a democratic element into the law. This element is vital to the effective administration of criminal justice, not only in safeguarding the rights of the accused, but in encouraging popular acceptance of the laws and the necessary general acquiescence in their application. It can hardly be denied that trial by jury removes a great burden from the shoulders of the judiciary. Martyrdom does not come easily to a man who has been found guilty as charged by 12 of his neighbors and fellow citizens.

It is undoubtedly true that a judge can dispose of charges of criminal contempt faster and cheaper than a jury. But such trifling economies as may result have not generally been thought sufficient reason for abandoning our great constitutional safeguards aimed at protecting freedom and other basic human rights of incalculable value. Cheap, easy convictions were not the primary concern of those who adopted the Constitution and the Bill of Rights. Every procedural safeguard they established purposely made it more difficult for the Government to convict those it accused of crimes. On their scale of values justice occupied at least as high a position as economy. But even setting this dominant consideration to one side, what compelling necessity is there for special dispatch in punishing criminal contempts, especially those occurring beyond the courtroom? When the desired action or inaction can no longer be compelled by coercive measures and all that remains is the punishment of past sins there is adequate time to give defendants the full benefit of the ordinary criminal procedures. As a matter of fact any slight

¹⁹ See, e.g., Sunderland, *Trial by Jury*, 11 Univ. of Cin. L. Rev. 119, 120; Hartshorne, *Jury Verdicts: A Study of Their Characteristics and Trends*, 35 A.B.A.J. 113.

²⁰ See *Ex parte Milligan*, 4 Wall. 2, 122-123; *Thompson v. Utah*, 170 U.S. 343, 349-350; *Dimick v. Schiedt*, 293 U.S. 474, 485-486; *United States ex rel. Toth v. Quarles*, 350 U.S. 11, 16, 18-19; *The Federalist*, No. 83 (Hamilton); 2 Story, *Commentaries on the Constitution of the United States*, 544; 2 Wilson's Works (Andrews ed. 1896) 222.

delay involved might well discourage a court from resorting to hasty, unnecessary measures to chastise suspected disobedience. I believe that Mr. Justice Holmes, speaking for himself and Mr. Justice Brandeis, took his stand on invulnerable ground when he declared that where "there is no need for immediate action contempts are like any other breach of law and should be dealt with as the law deals with other illegal acts." *Toledo Newspaper Co. v. United States*, 247 U.S. 402, 425-426 (dissenting opinion).²¹

For almost a half century the Clayton Act has provided for trial by jury in all cases of criminal contempt where the alleged contempt is also a violation of a Federal criminal statute.²² And since 1931 the Norris-La Guardia Act has granted the same right where a charge of criminal contempt is based on the alleged violation of an injunction issued in a labor dispute.²³ Notwithstanding the forebodings of calamity and destruction of the judicial system which preceded, accompanied, and briefly followed these reforms, there is no indication whatever that trial by jury has impaired the effectiveness or authority of the courts in these important areas of the law. Furthermore it appears that in at least five States one accused of the crime of contempt is entitled, at least to some degree, to demand jury trial where the alleged contempt occurred beyond the courtroom.²⁴ Again, I am unable to find any evidence, or even an assertion, that judicial orders have been stripped of their efficacy or courts deprived of their requisite dignity by the intervention of the jury in those States. So far as can be discerned the wheels of justice have not ground to a halt or even noticeably slowed. After all the English courts apparently got on with their business for six or seven centuries without any general power to try charges of criminal contempt summarily.

I am confident that in the long run due respect for the courts and their mandates would be much more likely if they faithfully observed the procedures laid down by our nationally acclaimed charter of liberty, the Bill of Rights.²⁵ Respect and obedience in this country are not engendered—and rightly not—by arbitrary and autocratic procedures. In the end such methods only yield real contempt for the courts and the law. The

²¹ Again this case aptly demonstrates the point. Here the defendants surrendered several years after they had been ordered to appear and serve their sentences. There was no reason for urgent action to punish them for their absence, there was ample time to impanel a jury and prosecute them in the regular manner. As a matter of fact almost a month and a half did elapse between their surrender and trial.

Alleged contempts committed beyond the court's presence where the judge has no personal knowledge of the material facts are especially suited for trial by jury. A hearing must be held, witnesses must be called, and evidence taken in any event. Cf. *Cooke v. United States*, 267 U.S. 517. And often, as in this case, crucial facts are in close dispute.

I might add, at this point, that Mr. Justice Brennan has forcefully demonstrated, in my judgment, that the evidence in this case was wholly insufficient to prove a crucial element of the offense charged—namely, notice of the surrender order.

²² 38 Stat. 738-739, as amended, 18 U.S.C. 402, 3691.

²³ 47 Stat. 72, 18 U.S.C. 3692.

²⁴ Arizona, Rev. Stat. Ann., 1956, sec. 12-863; Georgia, Code Ann., 1935, sec. 24-105; Kentucky, Rev. Stat. Ann., 1955, sec. 432.260; Oklahoma, Stat. Ann., 1936, Tit. 21, sec. 567; Pennsylvania, Purdon's Stat. Ann., 1930 (Cum. Ann. Pocket Pt. 1957), Tit. 17, sec. 2047.

²⁵ See Brown, Whence Come These Sinews? 12 Wyo. L. J. 22.

classic example of this is the use and abuse of the injunction and summary contempt power in the labor field. The Federal courts have still not recovered from the scars inflicted by their intervention in that area where Congress finally stepped in and preserved the right of jury trial to all those charged with the crime of contempt.

In the last analysis there is no justification in history in necessity, or most important in the Constitution for trying those charged with violating a court's decree in a manner wholly different from those accused of disobeying any other mandate of the state. It is significant that neither the Court nor the Government makes any serious effort to justify such differentiation except that it has been sanctioned by prior decisions. Under the Constitution courts are merely one of the coordinate agencies which hold and exercise governmental power. Their decrees are simply another form of sovereign directive aimed at guiding the citizen's activity. I can perceive nothing which places these decrees on any higher or different plane than the laws of Congress or the regulations of the Executive insofar as punishment for their violation is concerned. There is no valid reason why they should be singled out for an extraordinary and essentially arbitrary mode of enforcement. Unfortunately judges and lawyers have told each other the contrary so often that they have come to accept it as the gospel truth. In my judgment trial by the same procedures, constitutional and otherwise, which are extended to criminal defendants in all other instances is also wholly sufficient for the crime of contempt.

Mr. President, that completes the reading of the illuminating and eloquent dissenting opinion of Justice Black.

I can appreciate the position of the majorities in the Green case and in the Barnett case. They took the position, which has been very consistently taken by Mr. Justice Frankfurter. It is a position to which many appellate judges adhere—that even though there has been error in reaching a decision on a particular point, it is better to leave the correction of that error to a legislative body than it is for the court to assume the power to correct the error after a multitude of other decisions have been based upon it.

I quote from remarks made by Senator Norris of Nebraska when he advocated the adoption of the Norris-La Guardia Act. Senator Norris 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. * * * 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 facts.

In concluding this phase of my remarks, I assert that no sound reason exists for enacting the provisions of the bill into law. This is true because existing Federal statutes afford ample remedies for the protection or vindication of

all civil rights created by the Constitution or laws of the United States by means of criminal prosecutions by the United States; private actions at law for damages by the party aggrieved; and private suits in equity for injunctive relief by the party aggrieved.

To be sure, the defendants in the criminal prosecutions are accorded the right of indictment by grand jury, the right of trial by petit jury, and the right to confront and cross-examine adverse witnesses guaranteed to them by article III and the fifth and sixth amendments; the defendants in the private action at law for damages are accorded the right of trial by jury guaranteed to them by the seventh amendment; and the defendants in the private suits in equity for injunctive relief are accorded the benefits of jury trials and limited punishments secured to them by sections 402 and 3691 of title 18 of the United States Code in the event they are charged with contemptuous acts which are also crimes under Federal or State law.

Surely no one who loves the American constitutional and legal systems ought to object to these things. No one should object to the right of a trial by jury in criminal contempt cases where the object of the proceeding is to bring a defendant to the bar of justice for the purpose of punishing him for his past misdeeds, rather than for the purpose of enforcing compliance with the decree of the court.

I yield the floor.

CLARENCE CANNON DAM AND RESERVOIR, MO.

During the delivery of Mr. ERVIN'S speech,

Mr. ERVIN. Mr. President, I ask unanimous consent that I may yield to the able and distinguished senior Senator from Missouri [Mr. SYMINGTON] for the purpose of enabling him to introduce a bill in memory of the late Representative Clarence Cannon, of Missouri, and to make any remarks that he may deem appropriate to make at this time, with the understanding that by so doing I shall not lose my right to the floor.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. SYMINGTON. Mr. President, I appreciate the gracious courtesy of the distinguished senior Senator from North Carolina.

Mr. President, tomorrow afternoon, the Honorable Clarence Cannon, one of the great statesmen of our time, will be taken to his last resting place in Elsberry, Mo., his hometown in the north-east part of our State for all of his 85 years.

The Nation will honor his memory for the some 53 years he served in Washington; and the more than 18 years during which, with superb effectiveness, he carried the responsibilities of chairman of the House Appropriations Committee.

The people of northeast Missouri could never forget Mr. Cannon's personal friendship, expressed during long and devoted service to all of them over the years of his service in Washington.

One of the works which will stand as a monument to Clarence Cannon is a multipurpose dam and reservoir—the first in north Missouri—soon to be built in Ralls County, not more than an hour's drive from his farm home in Lincoln County.

Mr. Cannon's standard as chairman of the House Appropriations Committee was that public investment must be recovered with ample margin of benefit to the people; and when the project now known as Joanna Dam was proved to have met this standard, Mr. Cannon became its champion and saw it through to approval by the Congress.

Several years ago, when it first appeared certain this project would be built, a number of leaders in his district suggested that it bear his name.

However, with characteristic modesty, Mr. Cannon declined the honor during his lifetime.

Because of his great interest in the development of Missouri, especially its rural areas, and because this dam, to which he contributed so much will be close to his permanent resting place, on behalf of my colleague, Senator EDWARD V. LONG, of Missouri, and myself, I introduce, for appropriate reference, a bill to rename the Joanna Dam the Clarence Cannon Dam and Reservoir, as a permanent memorial to the memory of our honored and beloved colleague, a great Missourian and a great American, Hon. Clarence Cannon.

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

The PRESIDING OFFICER. The bill will be received and appropriately referred; and without objection, the bill will be printed in the RECORD.

The bill (S. 2835) authorizing the change in name of the Joanna Dam and Reservoir, Salt River, Mo., to the Clarence Cannon Dam and Reservoir, introduced by Mr. SYMINGTON (for himself and Mr. LONG of Missouri), was received, read twice by its title, referred to the Committee on Public Works, and ordered to be printed in the RECORD as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Joanna Dam and Reservoir, Salt River, Missouri, authorized by the Flood Control Act of October 23, 1962, in accordance with the provisions of House Document Numbered 507, Eighty seventh Congress, shall hereafter be known and designated as the Clarence Cannon Dam and Reservoir, in honor of the late Representative Clarence Cannon of the Ninth Congressional District of Missouri. Any law, regulation, document or record of the United States in which such project is designated or referred to under the name of the Joanna Dam and Reservoir, Missouri, shall be held and considered to refer to such project by the name of Clarence Cannon Dam and Reservoir.

Mr. SYMINGTON. Mr. President, I thank the able and distinguished senior Senator from North Carolina for yielding.

Mr. ERVIN. Mr. President, it was a privilege to yield to the distinguished senior Senator from Missouri for the purpose of introducing a bill to name a dam and reservoir in Missouri in honor of the late distinguished Representative Clar-

ence Cannon of Missouri. Representative Cannon had a long and honorable career in public life. All of us who were privileged to know him and to appreciate the fine work he did in behalf of his country over the years will be conscious of the fact that we shall not see his like again. He was a distinguished Member of Congress.

Mr. SYMINGTON. I thank the able Senator from North Carolina for his gracious remarks, especially because of the high regard in which the Senator from North Carolina is held not only in the Senate but throughout the Nation. I know that Mrs. Cannon and her two gracious daughters will be most appreciative of the Senator's statement.

Mr. ERVIN. I thank the Senator from Missouri.

MORE ABOUT THE INTEREST RATE ON ALASKA DISASTER LOANS

During the delivery of Mr. ERVIN's speech,

Mr. GRUENING. Mr. President, the Seattle Post-Intelligencer, the long-established morning daily of our northernmost major west coast seaport and State metropolis, a member of the Hearst newspaper chain, published this week an excellent lead editorial entitled "Alaska Aid."

It calls attention to the fact which I have spoken of repeatedly—that disaster loans to Alaska are being made at the maximum rate allowable by the Disaster Loan Act. It contrasts, as I have, this maximum 3-percent interest rate with three-fourths of 1 percent made on development loans to private enterprise in foreign countries under our foreign aid program.

Now, the Disaster Loan Act sets no minimum rate of interest. The Administrator of the program has confirmed to me that he could make these loans at any rate he chooses lower than 3 percent. He has, to be sure, indicated that on these loans he would grant no repayment of interest the first year, and no repayment of principal for 5 years. But, under the development loans made to foreign private enterprises, the United States not only grants a three-fourths of 1 percent interest rate, but permits no repayment of principal for 10 years—a period twice as long as that granted our domestic borrowers, who, moreover, have suffered a disaster, which the foreign beneficiaries of our loans have not. This, to me, is an unfortunate example of "the double standard." I cannot see why our American citizens—disaster victims—should not be treated at least as well as those in foreign lands, who have suffered no disaster.

The Seattle Post-Intelligencer supports my view and reports that the Senator from Washington [Mr. MAGNUSON], chairman of the Senate Commerce Committee, who has had more familiarity with Alaska than any other Member of Congress from the 48 older States, does also.

I ask unanimous consent that the editorial, "Alaska Aid," published in the May 11 issue of the Seattle Post-Intelligencer, may be printed in the RECORD.

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

ALASKA AID

Senator WARREN G. MAGNUSON has joined Senator ERNEST GRUENING and this newspaper in criticism of the Small Business Administration for charging the maximum allowed interest on loans to Alaska firms.

The law allows the SBA to charge a maximum of 3 percent. The law also allows the SBA to impose less interest—or no interest at all, as in the case of many U.S. loans to foreign governments.

But the SBA is imposing on Alaskans all the interest that the law allows. As Senator MAGNUSON says, "There's no reason why the SBA cannot make the interest rates lower."

Nonetheless Senator MAGNUSON and others in Washington, D.C., defend the pace and degree of the Federal Government's assistance to Alaska generally.

But the Post-Intelligencer believes that the Federal Government's action on Alaska's plight is both slow and piecemeal. Alaska is a special case, our youngest State and one with economic problems that predate the earthquake disaster.

That debate on the civil rights bill is interfering with congressional attention to Alaska is no excuse. The current announcement that four Federal agencies have agreed to help Alaska homeowners only adds to the confusion and may mean that Alaska homeless will be engaged in a game of buck passing. That is usually what happens when more than one Government agency is involved.

There should be a centralized effort on the Alaska problem.

That effort should be fast.

And it should be adequate.

Mr. JOHNSTON. Mr. President, may I make a very brief statement at this time on this same subject?

The PRESIDING OFFICER. Is there objection? The Chair hears none and it is so ordered.

Mr. JOHNSTON. Mr. President, I should like to inform the Senator from Alaska—

Mr. ERVIN. Mr. President, I take it that the statement which the Senator from South Carolina [Mr. JOHNSTON] may make will be covered by the same unanimous-consent agreement just made a moment ago.

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

Mr. JOHNSTON. I invite the attention of the Senate, and the Senator from Alaska in particular, to the fact that I introduced the bill now known as the Disaster Loan Act. It called for a lower rate of interest. It went to the committee and they discussed it. If the Senator will read the act closely, he will see that it provides that not more than 3 percent can be charged, but any rate lower than that may be charged. Up until that time, the rate of interest could go up to 5 percent. It had been raised to 5 percent. That was about 10 years ago. Some borrowers were being charged a 5-percent rate of interest. We believed that was too much. So we put the figure 3 where the figure 5 had been, with the understanding that borrowers could be charged even less than that amount.

I hope the Senator will continue to tell Senators about the problems in his State, especially in connection with the recent earthquake there. We should let

them have these loans as cheaply as they can get them anywhere else in the world.

Mr. GRUENING. I appreciate the important contribution which the sponsor of the Disaster Loan Act has made, because it certainly has been of invaluable merit in cases of disaster. But I still find it impossible to understand why, when our citizens have suffered such a disaster, they should not get as low a rate of interest as is made available to hundreds of private enterprises abroad to the extent of billions of dollars, who have suffered no disaster.

I have called this a double standard. This is a shocking example of it.

I have long held the idea—and it might be reactionary—that Americans should have priority, but they do not even get equality in this field.

I am grateful to the Senator from South Carolina for his contribution in calling attention to his authorship of this valuable act, and making clear the legislative intent that disaster loans could be made at less than the maximum rate of 3 percent interest.

NASSER AND KHRUSHCHEV—FELLOW FISHERMEN IN JORDAN'S TROUBLED WATERS

During the delivery of Mr. ERVIN's speech,

Mr. GRUENING. Mr. President, yesterday in addressing the Senate, I called attention to serious developments—which were to me not surprising—in the Middle East. In fact, I foretold them in my 472-page report, which I made to the Senate last year after a 10-week study of our foreign aid program in 10 Middle Eastern countries. It was plain to me, at the time, that Nasser, the dictator of Egypt, whom U.S. aid and support has kept in office, would soon be completely revealed as an ally and associate of the ruler of the Kremlin, Mr. Khrushchev.

The news dispatches emanating from Cairo amply demonstrate that fact.

The Associated Press sent out a story from Cairo on May 11 which was printed in the New York Daily News, under the heading: "K Backs Arabs in Row With Israel on Water." This is both a figurative as well as a literal illustration of the way the rulers of the U.S.S.R. and of the United Arab Republic like to fish in troubled waters.

Israel, a tiny country, a large part of whose surface is desert, desperately needs water for irrigation. By an arrangement postulated years ago, it, as well as its neighbors, Jordan, Syria, and Lebanon, are entitled to a share of the waters of the River Jordan. Actually, the United States is, through our foreign aid program, paying most of the costs of Jordan's irrigation projects.

The Arab nations, under the leadership of Nasser, and now even including Jordan, speaking through King Hussein, intent on Israel's destruction, have already served notice that they would oppose Israel's legitimate right to its share of these waters. Now, Khrushchev has joined them. This unholy alliance and its declared purpose runs directly counter to the ideas on the subject expressed cor-

rectly by President Johnson over 3 months ago when, in a New York address, he offered to assist any nations needing water, adding:

Water should never be a cause for war; it should always be a force for peace. Peace is first on our agenda.

But, more clearly than ever, is it now apparent that if the United States wishes to preserve the uneasy peace in the Middle East and avert a war there, it must reverse the policy which President Johnson has inherited of appeasing and aiding Nasser. Our financial aid has supplied him with the means to wage aggressive warfare in Yemen, where he has been engaged for 20 months at a cost of not less than a half a million dollars a day. It may be conservatively estimated at \$300 million to date. Meanwhile, he is also building up a tremendous armament of sophisticated weapons—missiles, rockets, jet planes, tanks, and submarines. His purpose, which he has never ceased to declare, is to destroy Israel.

I ask unanimous consent that the article published in the New York Daily News of May 11, entitled "K. Backs Arabs in Row With Israel on Water," may be printed in the RECORD.

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

K. BACKS ARABS IN ROW WITH ISRAEL ON WATER

CAIRO, May 11.—Soviet Premier Khrushchev gave his support to the Arab world today in its opposition to diversion of the Jordan River waters by Israel.

Speaking to the United Arab Republic's one-party National Assembly, Khrushchev said Israel planned to "rob the Arab world of its own water."

Khrushchev called on Israel to implement UN resolutions on Palestine, which would reduce Israel's present frontiers.

The assembly rose en masse in boisterous cheering at Khrushchev's new declaration of support for the Arabs.

The Israelis have announced that some time this summer they will begin diverting waters of the Jordan to irrigate the Negev Desert. The Arabs have threatened counteraction to cut off the headwaters of the Jordan.

The 70-year-old Soviet Premier also assailed British occupation of military bases in Cyprus and Aden. His government supports the "just and reasonable" demands of local populations for the evacuation of these and all other foreign bases, the Soviet leader said.

"The presence of foreign armies is the source of danger, tension, and disputes between countries," Khrushchev added.

He denied that there was any contradiction between the Soviet Union's stated policy of seeking international understanding and its shipments of arms to foreign trouble spots.

"It is true that we give arms for the struggle against imperialism and for the sacred struggle of national liberation," he said. "Our armaments will always be available for peoples seeking self-determination."

The 360 members of the assembly cheered and applauded throughout the speech, which Khrushchev delivered in Russian. It was translated into Arabic by a Soviet interpreter whose polished Arabic has drawn awed praise from Egyptians.

Khrushchev warned the assembly against "imperialist stooges" he said the colonial powers left behind when they gave up their role in Africa.

In a veiled attack on Communist Chinese efforts to assume leadership in Africa and

Asia, Khrushchev said "the unity of all revolutionary forces in the world * * * can never be supplanted by blocs based on color and races." Moscow has accused the Chinese of seeking to bar the Soviet Union from African and Asian councils on racial grounds.

Introducing his guest to the assembly, President Nasser pointedly cited the Russian revolution as a force in Asia.

"Khrushchev," Nasser said, "is one of the leaders of a great revolution which started vast and unlimited transformations of the world's continents, especially in Europe and Asia, and liberated millions of human beings."

Nasser put on a display of pageantry reminiscent of a Hollywood extravaganza for his guest last night.

More than 100,000 exuberant Egyptians jammed a giant German-bull stadium for a program of gymnastics, dancing girls, prancing Arab stallions, music from a 380-man military band, and the blare of 27 medieval trumpets.

Khrushchev read the first and last parts of his 20-minute speech and let an interpreter give the rest. The speech praised Egyptian socialism and denounced colonialism in Africa.

At the close, fireworks erupted and fiery lights spelled out slogans of welcome in Russian and Arabic.

"ERROR UPON ERROR" IN SOUTH VIETNAM

During the delivery of Mr. ERVIN's speech,

Mr. GRUENING. Mr. President, the Wall Street Journal, a conservative and well-edited publication, carries as its leading editorial in the May 13 issue a discussion of the U.S. role in South Vietnam entitled "Error Upon Error."

I recommend its reading to the Congress and to those who would pursue and continue the folly of our participation in this civil war in southeast Asia.

The final paragraph is worth repeating and commenting upon at this time:

No nation should count on military success, even limited, in the most unfavorable circumstances. No piece of territory is beyond all price, worth any cost, as the French finally discovered 10 years ago after such great cost. And the United States, for all its great power, cannot forever police the world alone and unaided.

How long is it going to take for our administration in office, which inherited this mess, to face up to the realities? Why should the United States, all by itself, rush into every troubled area in the world, no matter how unfavorably situated, not merely with our heavy financial and material aid, but far more tragic, with the lives of our young Americans?

If the battle is worth fighting—which I dispute—it is certainly not worth fighting all alone. Again and again I have asked, as has Senator MORSE: "Where are our SEATO allies?" Their boys are not on the firing line. Our SEATO allies are Great Britain, France, Australia, New Zealand, Pakistan, Thailand, and the Philippines, seven of them. But we see no British boys on the firing line. The French, having learned by bitter experience that this is a lost cause, are certainly not sacrificing any more of their young men to add to the tragic toll of tens of thousands of Frenchmen whose bones lie in the tropical infested jungles of southeast Asia.

The Australians have sent no contingent to battle with us; neither have the New Zealanders. The Philippines have recently made some promise of a token force of—believe it or not—75 soldiers. That is hardly more than a meaningless gesture, although we should, perhaps, applaud even this gesture if it is translated into action. The people of Thailand, right next door, who might be presumed to have a stake in whatever happens in southeast Asia, have sent not a single soldier to the South Vietnamese front. As for the Pakistanis, to whom we are giving large quantities of money for military aid, to say nothing of hundreds of millions of dollars for economic aid, are using that aid to prepare to fight India over Kashmir, and not the Communists, either from China or in southeast Asia.

Likewise, Mr. President, there is an article in the May 18 issue of U.S. News & World Report, entitled "True Story of War in Vietnam." The various subheads which appear throughout this article are suggestive of what a real mess our war there is. Let me quote them:

First, "Lacking: A Will To Win"—that, of course, refers to the Government of South Vietnam forces.

Second, "Advisers in Combat"—this refers to the fact that our men who are fighting and losing their lives are supposed to be advisers—a piece of totally unjustifiable hypocrisy.

Third, "Officers Picked by Politics."

Fourth, "Luxury in Midst of War."

Fifth, "Cowardice and Laziness."

Sixth, "Graft and Corruption."

Seventh, "Redtape and Delay."

Eighth, "U.S. Equipment Wasted."

Ninth, "Why Villagers Desert."

And what is the conclusion of the writer of this article—Mr. Robert L. Moore, Jr., who, U.S. News & World Report says, lived 4 months with United States and Vietnamese soldiers and went on combat missions with them? His conclusion is as follows:

Until the Vietnamese military develops the will to win and the courage to face the enemy unflinchingly by day or by night, even if outnumbered, the war against communism in Vietnam will not be won—no matter if we pour in \$3 or \$4 or \$5 million a day in aid.

The only realistic solution that most Americans see in Vietnam is for the United States to take operational control of the war away from the luxury-loving, coup d'etat minded, casualty-fearing Vietnamese officer corps until such time as they can develop the leadership necessary to win the war. If we do not take operational control, we merely waste lives and money in a hopeless stalemate.

What a tragic prospect that is for the American people. I am confident that if a referendum were taken in the United States of our fellow citizens, the position that I have upheld—that we should get out of Vietnam—would be supported overwhelmingly.

My mail continues to run, with impressive unanimity, in favor of my recommendations, which I herewith repeat: We should get out of South Vietnam, make the best possible arrangement; and strive within the United Nations for a negotiated settlement. We should not sacrifice another American boy. I

strongly reiterate at this time my conviction that all of South Vietnam is not worth the life of one of our fellow Americans. We have lost far too many already.

I ask unanimous consent that the editorial "Error Upon Error," which appeared in the Wall Street Journal of May 13, as well as the article by Robert L. Moore, Jr., appearing in the May 18 issue of U.S. News & World Report, entitled "True Story of War in Vietnam," be printed in the RECORD at this point in my remarks.

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

[From the Wall Street Journal, May 13, 1964]

ERROR UPON ERROR

Ten years almost to the day after the fall of Dienbienphu, Secretary McNamara is in Saigon—for the second time in the past couple of months. Yet no matter how many high officials visit Vietnam, or how frequently, nothing gets clarified. Except, that is, the continuing failure of U.S. policy.

Though the conjunction of the Secretary's trip with the anniversary of the French defeat is accidental, it could be unpleasantly symbolic. With a far greater force than the United States has committed, the French fought the Communists for some 8 grisly years, and lost.

Vietnam was then divided North and South, Korea-like, but unlike Korea the border was fluid and not patrolled by large contingents of U.S. or any other troops. The Communists predictably made the most of their opportunity, first as infiltrators and guerrilla fighters; now they are so strong they can and do attack in force.

Today the French wonder aloud how the United States expects to win at the rate it is going. They are not the only ones; American servicemen and reporters have long been saying we are losing the war. U.S. officials are alternately reassuring and gloomy.

Part of the official attitude appears to be that we are not supposed to win in a formal sense; only help the South Vietnamese drive the Communists out and keep them out. But even this limited objective keeps going glimmering. After all the U.S.-supported fighting, the Communists are said to be in effective control of sizable and important parts of South Vietnam.

In view of that, it is almost impossible to figure out what is the U.S. strategy, if any—that is, how it thinks it can in fact drive the Communists out and keep them out. Not that anyone expects the Pentagon to reveal its war plans in detail; it is rather that the evidence indicates the lack of any plan which promises to be workable against the varied and successful tactics of the Communists.

Not even the commitment of many more American soldiers or the bombing of Communist bases in the north, which has been talked of off and on, would be guaranteed to accomplish the objective. In other circumstances perhaps, but not necessarily against this particular enemy, in this particular terrain, with this particular ally.

At the same time the French solution of neutralizing all of Vietnam sounds like a proposal in a vacuum, at least for the present. Why should Ho Chi Minh, the dictator of the north, want to neutralize when he is doing so well as it is? Or if he did want to, we may be sure he would see it as a means of continuing the conquest.

We do not rule out the possibility that the United States may somehow someday turn the tide, any more than we rule out the possibility that the realities of the situation may finally dictate withdrawal. But whatever happens, the U.S. involvement in

Vietnam reveals a series of classic military and political errors from which it may be hoped the Government will eventually profit.

First, the United States drifted into the war, initially intending only to advise. It evidently overestimated the fighting capacity of the South Vietnamese troops while underestimating the Communist Vietcong.

Second, the United States got into a war where the enemy chose the field. The field, moreover, is extremely disadvantageous for us not only in terms of terrain but of distance from our shores.

Third, it got into a war without allies, even though the interests of many nations are affected. If its allies care at all, they are willing to let the United States do it. Its only ally, South Vietnam itself, has never given an impressive demonstration of a will to win, on the part of the people, the troops, or the successive governments.

To all this it may well be objected that the alternative was to let South Vietnam go down the Red drain, and perhaps the rest of southeast Asia with it. The objection, we think, begs the real issues:

No nation should count on military success, even limited, in the most unfavorable circumstances. No piece of territory is beyond all price, worth any cost, as the French finally discovered 10 years ago after such great cost. And the United States, for all its great power, cannot forever police the world alone and unaided.

[From the U.S. News & World Report, May 18, 1964]

FROM THE FRONT: TRUE STORY OF WAR IN VIETNAM

(Go out to the frontlines, in the jungles of South Vietnam, and you get a view of the war that Secretary McNamara and other high Washington officials do not see. One American writer did that. Robert L. Moore, Jr., lived 4 months with United States and Vietnamese soldiers, went on combat missions with them. What this writer saw raises important questions about the way that war is being fought. He found incompetence, cowardice, graft—and no will to win—among many of the Vietnamese officers and public officials directing war operations. In this report, he tells why he thinks the war will not be won until the United States takes over control.)

SAIGON, SOUTH VIETNAM.—"In his trips to South Vietnam, Secretary of Defense Robert McNamara was never exposed to the hard, unpleasant facts facing those Americans who are actually fighting the war against the Communist Vietcong."

These words were written by an American who has spent 4 months living in the field with the United States and Vietnamese fighting forces—actually going with them into combat.

From firsthand experience, this on the spot American observer has reached these conclusions:

"The basic problem that America faces in Vietnam is not that of defeating the Vietcong Communists. That could be done in a year or less.

"Our problem is to be allowed to win—to be permitted by our Vietnamese allies to prosecute this war aggressively and end it. This does not necessarily have to involve bringing U.S. battle groups into Vietnam to fight the war. Vietnam has the soldiers and equipment to win.

"But, as U.S. advisers in the field say privately: The war can't be won under the present ground rules because of the inability of most Vietnamese military leaders to lead."

The American who wrote these conclusions is Robert L. Moore, Jr., from Boston, Mass. He was an Air Force nose gunner in World War II. After graduation from Harvard in 1949, he worked in television and in public relations and then turned to writing. His output includes two books.

Last year Mr. Moore got the consent of the Department of the Army to live among the U.S. special forces in South Vietnam to gather material for a book about them. In preparation, he took parachute training at Fort Benning, Ga., went through Special Warfare School at Fort Bragg, N.C.

Now, after 4 months in Vietnam, Mr. Moore is returning to write at length about what he has observed there. But he feels that some of his findings are so important and so timely that they should be published quickly. So he has given U.S. News & World Report permission to quote from the first draft of one article that he is preparing.

The story that Mr. Moore tells is a story of a war that Secretary McNamara has not seen. Mr. Moore says:

"Many U.S. fighting men expressed disappointment that the Secretary did not visit American units in daily combat with the Vietcong and find out at first hand from his soldiers what their problems are.

"The U.S. high command in Saigon does not encourage its men to pass their problems along to the Pentagon chief."

Following, from Mr. Moore's report, are some of those problems that Americans face in Vietnam.

LACKING A WILL TO WIN

One major problem is the attitude of the Vietnamese. Mr. Moore says:

"The will to fight, endure privations and win is just not in the majority of the Vietnamese military officers."

Mr. Moore questions whether some of the high officials and military officers of that country really want to see the war end. Why? He writes this:

"Never before have so many Vietnamese officers and public officials lived so well in such a booming economy—injected as it is with a daily dose of almost \$2 million of American money.

"It is obvious to the Vietnamese who are benefiting from this dole that when the war is over this massive aid will cease, or at least be drastically modified."

ADVISERS IN COMBAT

The official role of U.S. Army special forces in Vietnam is that of advisers to Vietnamese combat forces. But Mr. Moore reports that these so-called advisers have suffered more than half the U.S. combat casualties, although they make up only about 6 percent of the total U.S. force in Vietnam.

Here, from Mr. Moore's account, is how the U.S. special forces actually operate:

"The basic special forces combat unit—technically referred to as an advisory unit—is a 12-man team known as an A team. There are 42 such units, directed and supported by four B teams, located in the four military corps areas of South Vietnam, with a headquarters unit known as the special forces operating base in Saigon.

"Each A team is strategically situated in an area dominated by the Communists. Anywhere from 300 to 600 Vietnamese civilians—trained by the special forces—are quartered in an A-team camp and are used to reconnoiter Vietcong positions and raid their concentrations.

"Also in each camp there is a Vietnamese special forces A team which, in theory, parallels the American team in capabilities, composition and organization—that is: 2 officers and 10 enlisted men."

Actually, however, Mr. Moore finds a great difference between the United States and Vietnamese special forces.

OFFICERS PICKED BY POLITICS

Mr. Moore gives this description of the Vietnamese special forces—and of how they are selected: "The Vietnamese special forces—or Luc-Luong Dac-Biet, to use the Vietnamese designation—were primarily a unit of political troops organized under the regime of the late President, Ngo Dinh Diem,

to serve as the President's private police and riot squad.

"Coveted positions in this elite group were given out as political favors to the sons of friends and supporters of President Diem and his family. To give the group status and equip it with the finest U.S. military hardware, Diem aligned his special forces with U.S. special forces—thus saddling the Americans with Vietnamese teams made up of youths who had no taste for combat and whose only training was as palace guards.

"To make things worse, instead of the Vietnamese going out to learn from their highly trained American counterparts, the Vietnamese team captain was made camp commander over the experienced American, who can only advise.

"Despite the two recent coups, each supposedly dedicated to a more aggressive war effort, the character of the Vietnamese special forces seems to be changing all too slowly. Vietnamese officers move into and out of jail as power changes hands, but their overall quality still stands at a dismally low level."

LUXURY IN MIDST OF WAR

You get this description of how officers of the Vietnamese special forces live in the midst of a war:

"Most of the officers have a batman to serve them tea in bed in the morning. Frequently they refuse to see their American counterpart, particularly if they think he is going to goad them into a combat operation. When they do go out on operations, the officers make their men carry all their equipment. Americans carry their own gear.

"Many 35- or 40-year-old lieutenants and captains—whose lack of political connections accounts for their lack of promotions—are sent to some of the most dangerous areas where the majority of Vietnamese officers refused to be posted.

"With increasing effort by the Vietnamese Government to make the army more effective, it is usually possible now for a U.S. special forces A-team captain to have his Vietnamese counterpart relieved from command. Unfortunately, such officers are merely transferred as camp commander to another special forces team in another corps area to begin anew the same cycle of embezzlement of U.S.-supplied funds and deterioration of fighting efficiency."

COWARDICE AND LAZINESS

Mr. Moore tells of the difficulties often encountered in trying to get Vietnamese officers to go out and fight the enemy: "I participated in six combat operations throughout the four corps areas and the pattern never deviated. As soon as it was ascertained that a Vietnamese patrol was closing in on a Vietcong concentration antinoise discipline disintegrated. Shots were 'accidentally' fired and canteens rattled to let the enemy know that he was being pursued.

"When, in spite of these precautions, the Vietcong appeared ready to dig in and fight, the Vietnamese commander inevitably came up with some excuse for pulling back.

"One excuse for turning from the enemy particularly sticks in my mind. It was uttered by a Vietnamese officer in Tay Ninh Province. We had to ford a river to get at what we judged to be a platoon of Vietcong on the other side. We had a full company. The two American advisers were exuberant at the opportunity of engaging a Vietcong unit. But the Vietnamese officer turned to the Americans and said his men could not cross the river because there were too many alligators in it.

"There are, of course, exceptions to the general rule of cowardice and laziness in the Vietnamese special forces.

"I spent some time in the camp of a U.S. special forces officer who had nothing but praise for his former counterpart, a Viet-

namese lieutenant in his early thirties. This Vietnamese officer was an aggressive fighting man, able to inspire great courage and loyalty among the civilian defense troops.

"The American officer wrote a letter of commendation for the Vietnamese officer, recommending that he be given a promotion to captain. Two weeks later the lieutenant was transferred to Saigon and replaced by a more typical Vietnamese officer—a 22-year-old anti-American captain who has failed to go out on a single operation to date.

"U.S. special forces men can hardly be blamed for their bitterness toward the Vietnamese officers who make a difficult job almost impossible."

GRAFT AND CORRUPTION

Among the things that make American soldiers angry are the graft and corruption that are widespread in Vietnam—even in combat areas. Mr. Moore cites a few examples. Here is one:

"In April I visited several camps where Vietnamese camp commanders had under them 200 or 300 Montagnard troops. Montagnards are mountain tribesmen who are the best fighting men in the Vietnamese Army. But the Vietnamese despise the darker skinned and coarser featured Montagnards. These Vietnamese camp commanders made the lives of their Montagnard men so miserable by degrading punishment and cutting down on their food that desertions soared.

"The camp commanders failed to report the deserters until after pay day. They collected from the Americans the pay for the entire camp roster, indicating on the payroll that all the deserters had been paid while in actuality the commanders kept the deserters' pay for themselves.

"Yet if Americans object too strenuously to such things they are severely reprimanded for not being cooperative with their Vietnamese counterparts."

Another example:

"On patrols, one Vietnamese commander made his Montagnards hunt deer instead of Vietcong. The commander drove out on the patrols in a weapons carrier. After several days during which he ate heartily while refusing to give the troops any of the meat they provided, the commander drove his load of deer carcasses into town and sold them. This same camp commander had just tried to jail the interpreter who had told the American captain that the commander had pocketed the pay of almost 100 deserters.

"Such stories are so common that Americans begin to take it for granted that they are expected to put up with Vietnamese graft and cowardice as part of their job.

"One U.S. sergeant told me ruefully: 'They took \$1,700 out of my pay for taxes last year, and I have to keep my mouth shut and see it wasted over here.'"

Mr. Moore reports:

"There is little confidence among Americans working at the combat level that corruption will be significantly diminished by the announcement of Maj. Gen. Nguyen Khanh, the new South Vietnam leader, that he will jail embezzlers of up to \$1,000 and shoot anyone who steals more than that."

REDETAPE AND DELAY

Mr. Moore says: "The biggest single fault in the Vietnamese military system is its chronic inability to react quickly." He cites "a heartbreaking example":

On March 26, two Americans were reported overdue and presumed down on a flight over a jungle area. Vietnamese rangers were asked to join the ground search.

It took 2 days just to get permission—first from a Vietnamese general and then from the district and provincial political chiefs.

Ranger officers then refused to move until they got reserves to stand by in their ab-

sence—and a special round of field rations. This cost 3 more days of delay.

On April 1, the rangers finally were flown to a camp from which they were to start a search. Then came word that a new Vietnamese commander was arriving the next day for an inspection—and the rangers had to provide an honor guard.

It was April 3—8 days after the plane went down—when the search finally got underway.

HOW TO HANDLE SNIPERS: "WITHDRAW"

Here is an example, cited by Mr. Moore, of how Vietnamese can turn U.S. military tactics into tactics of retreat: "If the Secretary of Defense really wants to see at firsthand some of the reasons we cannot win this war in Vietnam without some policy changes, he should spend a week at one of the special forces B teams. They are truly microcosms of the entire war. Most of our basic frustrations and quandaries are reflected in a B team's daily incidents.

"At one B team I found the operations officer laughing wryly over the translation of a recent directive. Vietcong snipers picking off a few men were routing whole companies and battalions. U.S. advisers showed the Vietnamese how to dispatch squads to kill or drive off the snipers. The Americans were pleased when a directive on their methods of dealing with snipers went out from corps headquarters.

"A few weeks later, however, the tactical genius of the Vietnamese military mind came forth in a new communiqué. It instructed units coming under Vietcong sniper fire to withdraw—leaving ambushes in case the sniper charged."

U.S. EQUIPMENT WASTED

Here is another problem reported by Mr. Moore, from his own observations:

"Secretary McNamara talks about sending more supplies and equipment to help the Vietnamese win their war against communism. This is fine, except that by and large the Vietnamese have no concept of maintenance, much less preventive maintenance. Unless Americans are maintaining the equipment here it quickly deteriorates from sheer lack of care—and then the Vietnamese ask for more."

RESCUE—OR FLIGHT?

Vietnamese pilots were taught to fly U.S. helicopters, then eight helicopters were turned over to them. The Vietnamese painted parts of the helicopters yellow—the color of their flag. Then the Vietnamese took over the flying of rescue flights to evacuate Vietnamese wounded from jungle combat areas.

Mr. Moore tells how this worked out:

"I had heard so many stories about the Vietnamese pilots flying over the evacuation site at 5,000 feet, well out of range of ground fire, and then flying back without even trying to pick up the wounded that I decided to go along on an all-Vietnamese evacuation flight.

"For 15 minutes the chopper pilots circled the clearing. Finally the chopper in which I was riding descended almost into the clearing. Then it popped up into the air like a cork released under water. The crew chief examined the fuselage for bullet holes. There were none. So the chopper started to drop in again. Lower and lower we hovered. I saw a wounded man, smiling, being helped toward the helicopter. Then suddenly the helicopter began to rise again. The last thing I saw was a sudden hopeless expression wipe out the game smile on the wounded man's face. Vietcong ground fire had apparently frightened the Vietnamese pilot off, although he later told me he was afraid the clearing was too small and the rotor blades would hit the trees—this after he was already less than a foot from the ground."

"Over and over again," Mr. Moore says, "U.S. advisers reported the terrible fall in morale among the Vietnamese troops when they realized that their own pilots were afraid to come down in Vietcong-infested jungles to pick up the wounded. The ground troops automatically gave up hope when they saw the yellow streak on the choppers high above."

WHY VILLAGERS DESERT

Vietnamese strategy is to clear an area of Vietcong Communist forces—and then try to hold that area while clearing other areas. But Mr. Moore reports:

"So far, holding operations by the Vietnamese alone have not been successful."

One instance is cited where Americans trained thousands of mountain tribesmen, cleared the area. Then the camp was turned over to the Vietnamese. Result: "Less than 2 months after the Americans pulled out the Vietcong attacked, drove the Vietnamese out of the fort and destroyed it." Another example:

"In a program to get the Montagnards away from the Vietcong—preventing them from feeding the Communists or joining them, either willingly or by impressment—the tribesmen were taken from their villages in the mountains and brought into new villages built around forts garrisoned by Vietnamese troops. But the Vietnamese troops refuse to leave their forts after dark. So the Vietcong come into the villages at about 6 p.m. and stay the night, giving political orientations, eating, imposing taxes, and punishing villagers suspected of cooperating with the Government. In the morning, the Vietcong leave and the Vietnamese troops take over until evening."

"Until the Vietnamese muster the courage to go out at night and patrol the areas they are supposed to be securing, the entire 'clear and hold' concept is a joke.

"With no protection at night, the villagers know that death and torture will be their lot if they cooperate with the Government. Hundreds of tribesmen are moving back into the hills. As long as they are going to be dominated by the Vietcong anyway, they prefer to be in their own home mountains. And then, of course, they are turned into hard-core Communists when the Vietnamese Air Force bombs and strafes their villages because they deserted their Government hamlets to go back to Vietcong territory."

SOLUTION: U.S. CONTROL

After watching the war in Vietnam for 4 months, this American writer has reached this overall conclusion:

"Until the Vietnamese military develops the will to win and the courage to face the enemy unflinchingly by day or by night, even if outnumbered, the war against communism in Vietnam will not be won, no matter if we pour in \$3 or \$4 or \$5 million a day in aid.

"The only realistic solution that most Americans see in Vietnam is for the United States to take operational control of the war away from the luxury-loving, coup d'état-minded, casualty-fearing Vietnamese officer corps until such time as they can develop the leadership necessary to win the war. If we do not take operational control, we merely waste lives and money in a hopeless stalemate."

AMENDMENT TO ALASKA OMNIBUS ACT

During the delivery of Mr. ERVIN'S speech,

Mr. JACKSON. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 965, Senate bill 2772.

The PRESIDING OFFICER. The bill will be stated by title for the information of the Senate.

The LEGISLATIVE CLERK. A bill (S. 2772) to amend the Alaska Omnibus Act.

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

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Interior and Insular Affairs with an amendment on page 1, line 6, after the word "of", where it appears the second time, to strike out "\$22,500,000" and insert "\$23,500,000"; so as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (a) of section 44 of the Alaska Omnibus Act (73 Stat. 141) is amended by striking the word "and" following "1962" and the period at the end thereof and inserting in lieu of the period "; and the sum of \$23,500,000 for the period ending June 30, 1966."

Sec. 2. Subsections (b) and (c) of section 44 of the Alaska Omnibus Act are amended by striking "June 30, 1964" wherever it appears therein and inserting in lieu thereof "June 30, 1966" and subsection (a) of section 45 of that Act is amended by striking "July 1, 1964" and inserting in lieu thereof "July 1, 1966".

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. JACKSON. Mr. President, this bill is an emergency measure to provide urgently needed assistance to Alaska in recovering from the earthquake disaster of March 27. Consideration at this time has been cleared with the distinguished majority leader and the distinguished minority leader.

The bill authorizes grants of up to \$23½ million to provide emergency assistance to the State government of Alaska and its local governmental entities.

There has been some discussion that more than \$23½ million should be authorized at this time. I wish to state that the question was carefully considered by the Committee on Interior and Insular Affairs at our public hearings on S. 2772, and the members came to the conclusion that the \$23½ million would meet the State's essential needs at this time.

I recognize the fact that subsequent to our committee's action there has been further discussion that the amount should be larger. As our committee report states, if more is required we will give prompt consideration to the matter. But I am convinced that the figure of \$23.5 million will meet the essential requirements for immediate help to the State government of Alaska. The State government has lost about one-half of its sources of revenue as a result of the Good Friday earthquake and accompanying disasters, including tidal wave and fire.

Mr. President, S. 2772, which was reported unanimously by the Committee on Interior and Insular Affairs, is, as I stated, an emergency measure to enable the State of Alaska and its local governments to carry on local governmental functions.

Never in all our history has the economy of a single State been as hard hit

by a natural disaster as that which struck the 49th State 6 weeks ago.

PROMPT ACTION BY FEDERAL GOVERNMENT

The Federal Government has moved promptly to help alleviate the suffering and hardship of our fellow Americans. The present bill, S. 2772, is a measure designed to give emergency help to the public sector, as distinguished from the private sector, of Alaskan life. It would authorize grants to the State of up to \$23.5 million to make up, in part, for the revenues the State will lose as a result of the disaster.

Technically, the measure amends the Alaska Omnibus Act, which we enacted in the 86th Congress, by increasing the amount of transitional grants provided in that law and by extending the time for such grants for an additional 2 years, or until June 30, 1966. The figures—both as to the amount and the time—are those submitted by the Bureau of the Budget with the exception of an additional million dollars provided by the committee amendment. This amendment was necessary to offset a short-term drop in the revenues of the Anchorage Independent School District which has not been taken into consideration by the Budget Bureau in submitting its original \$22.5 estimate.

The committee amendment was made with the full concurrence of the Bureau of the Budget.

ESTIMATES OF AMOUNTS NEEDED DIFFER

Mr. President, it should be emphasized that the \$23½ million is the Budget Bureau's figure for an 18-month emergency period. It is not that of the State. The State of Alaska has estimated that it needs transitional grants amounting to about \$46½ million for a 30-month period. However, if the State's estimates are reduced to the same 18-month base used by the Bureau of the Budget, the State total would be about \$27 to \$30 million.

The Interior Committee conducted public hearings on S. 2772, which was drafted by the Bureau of the Budget and transmitted to the Congress by President Johnson. In its unanimous report urging prompt favorable action on the bill, the committee recognized the fact that the amounts and the time period were estimates. They may be too little; more time may be needed. On the other hand, both figures may be more than actually needed.

The Bureau of the Budget stated unequivocally that its position is that there is no commitment, express or implied, to request appropriations in the full amount of the authorization. Rather, the Bureau stated that initial appropriation requests would be made only on its estimate of the amount needed to carry the State over until the beginning of the calendar year 1965. At that time more facts will be available and a better estimate can be made whether, and in what amounts, additional funds may be needed to offset the State's temporary loss in revenues.

Mr. President, prompt enactment of S. 2772 is urgently needed for the continued functioning of State and local governments in a State of the United States. It

is an emergency measure for temporary aid.

I urge immediate approval by the Senate of this emergency measure.

Mr. JOHNSTON. Mr. President, I should like to make a statement at this time.

Mr. ERVIN. Mr. President, I should like to ask unanimous consent to yield to the Senator from South Carolina [Mr. JOHNSTON] and to any other Senators who may wish to comment on this bill, on the same unanimous-consent agreement terms granted to me by the Senate a moment ago.

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

Mr. JOHNSTON. Mr. President, if at a later time the State of Alaska should apply for loans, I believe the Senate should look into the possibility of lowering the 3-percent interest rate we have established. I believe that borrowers in an emergency such as that in Alaska should have the very lowest rate of interest possible under the circumstances.

I do not believe we should lend money to other countries more cheaply than to a State in the United States. For that reason I believe the Senate at this time should let it be known that we believe Alaska and any other State suffering a great disaster should have the lowest possible rate of interest. That is what I am urging.

Mr. BARTLETT. Mr. President, I should like to thank the Senator from South Carolina for his comments.

This particular bill authorizes grants, rather than loans, in the amount of \$23½ million and there is no provision for repayment by the State, but I think the Senator's point is well taken.

Mr. JOHNSTON. The State of Alaska may need to borrow more money at a later time.

Mr. BARTLETT. The Senator is correct and I believe he has in mind also loans from the Small Business Administration.

Mr. JOHNSTON. People in the Senator's State well may need to apply for Federal funds through small business loans, is that not correct?

Mr. BARTLETT. Yes, out of the money already appropriated to that agency.

Mr. JOHNSTON. The Senator is correct. Funds are available in case of emergencies such as the Alaska disaster. I think interest rates should be as low as possible.

Mr. BARTLETT. I agree with the distinguished Senator, and I thank him. With respect to S. 2772, the amount of \$22½ million was suggested by the administration, and increased to \$23.5 by the Interior Committee, with the understanding announced by the Bureau of the Budget that should the State be in need of further funds, the State could come back and would have a prompt and sympathetic hearing before the administration and the Congress. As the Senator from Washington said, there is urgent need for money right now to tide the State and local governments over until such time as they can recover themselves in respect to tax revenues.

I join the distinguished chairman of the Interior Committee in urging prompt

passage by the Senate of this administration-approved bill so that the State of Alaska can get funds immediately.

Mr. GRUENING. Mr. President, while I highly approve the administration's approval of a transitional grant to make up for the State of Alaska's lost revenue—lost because of the earthquake disaster of March 27; a catastrophe unprecedented and greater in magnitude than has befallen any State since the beginning of the Nation's history but I feel the amount proposed is inadequate. The loss of business and employment wrought in Alaska's metropolis, Anchorage, in the coastal cities of Seward, Valdez, Kodiak, and Cordova, and in the Kenai Peninsula, will result in a greater reduction of business and personal income which will in turn be reflected in the State's tax revenue, than I believe the Bureau of the Budget has estimated. I am comforted by the assurance, however, that if the sum authorized proves insufficient, the administration is prepared to ask for an additional authorization. The transitional grant is what in our foreign aid program is referred to as budget support. We have been giving it freely in many parts of the world to close the gap between a government's income and expenditure. We have done this in countries which have suffered no disaster, as has Alaska. It is fitting and proper that it be done for one of our own American States.

The PRESIDING OFFICER. The bill is before the Senate and open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

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

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Bartlett, one of its reading clerks, announced that the House had passed, without amendment, the bill (S. 2214) to amend the International Development Association Act to authorize the United States to participate in an increase in the resources of the International Development Association.

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

The PRESIDING OFFICER. The clerk will call the roll.

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

[No. 220 Leg.]

Aiken	Eastland	Lausche
Allott	Ellender	Magnuson
Bartlett	Ervin	Mansfield
Bayh	Fong	McCarthy
Bennett	Gruening	McGee
Bible	Hart	McGovern
Boggs	Hartke	McNamara
Burdick	Hickenlooper	Metcalf
Cannon	Hruska	Miller
Case	Humphrey	Monroney
Church	Inouye	Morse
Clark	Jackson	Morton
Cooper	Javits	Moss
Cotton	Johnston	Mundt
Curtis	Jordan, N.C.	Muskie
Dirksen	Jordan, Idaho	Nelson
Dodd	Keating	Neuberger
Dominick	Kennedy	Pearson
Douglas	Kuchel	Pell

Prouty	Smith	Williams, Del.
Proxmire	Sparkman	Yarborough
Ribicoff	Symington	Young, N. Dak.
Scott	Williams, N.J.	Young, Ohio

The PRESIDING OFFICER. A quorum is present.

THE CIVIL RIGHTS DEBATE

Mr. MORSE. Mr. President, I rise to speak on several subjects. If a procedure could be devised for ending the filibuster on the civil rights bill, I would not be rising to discuss any subject. However, so long as apparently there is no design for ending the filibuster, I think it is quite proper to discuss matters which are more important at the moment to the American people than a mere procedural sham battle in the Senate.

I said weeks ago that I stood ready and willing to support a move to hold the Senate in session 24 hours, day and night, week in and week out, until the American people became so concerned about the status of their legislative body that they would bring the necessary influence to bear and cause a vote to be taken in the Senate on delivering the Constitution, for the first time in our history, to the American Negro. I am still of the opinion that that is the only way the Constitution will ever be delivered to the Negro.

I am satisfied that if we continue our present procedural course of action, either the filibuster will never end or there will be such a retreat on the bill that as it is passed, it will be such a mushy mess that it will not be digested and will not answer the great domestic crisis that confronts the Republic.

The other night, when a long time was spent in trying to develop a quorum, I moved that the Sergeant at Arms be instructed to issue the necessary warrants to arrest absent Senators. The suggestion did not meet with the favor of more than two or three Senators, although I say, most respectfully, that we meant it as a test as to whether or not the proponents of civil rights mean business or whether they mean merely to continue a parliamentary sham battle.

Failing in that motion, some half hour or so later I made a motion that the Sergeant at Arms be instructed to compel the attendance of absent Senators. That motion seemed to meet with no more favor than my motion to have absent Senators arrested. But at least it served the purpose of making clear that as of that time there was no real determination to draw this issue. I do not believe that that determination has developed up to this hour.

I desire to have my leadership know that from time to time, when quorums cannot be speedily produced, I shall renew my motion to have the Sergeant at Arms instructed to issue the necessary warrants to arrest absent Senators. The parliamentary crisis in the Senate will not be met by having quorum calls merely to produce the pro-civil-righters. Filibusters cannot be broken in that way. We are merely kidding ourselves, and we should stop trying to kid the American people. All the Senators must be produced, the anti-civil-righters as well as the pro-civil-righters. We must make

the civil rights bill the sole business of the Senate—and I am ready to do it. We must do it 24 hours of the day and night, for as many weeks as necessary until the American people exercise their ultimate control.

I am worried about the way the bill is being handled at present in the Senate. I believe we shall end with proposals for a watered-down bill that will betray the rights of the Negroes of America, and by so doing will betray the best interests of the American people of all colors. We ought to get the bill behind us. We ought to pass a bill that will give to the Negroes of the country exactly the same constitutional rights that I possess; the same constitutional rights that every white person in America possesses. But the Negroes do not enjoy those rights now because rights exist only to the extent that they exist in practice. So long as the practices in all sections of America, North, South, East, and West, are practices which make second-class citizens out of Negroes, the conclusion is undeniable that we fall short of delivering the Constitution to them.

It is clear that an obligation rests on the shoulders of the civil-righters to tell the American people that they will not support amendments that would water down the bill. But I am deeply worried as to whether or not they will tell that to the American people. I am worried as to whether, if they do tell it to the American people, they will vote that way when the final votes are taken.

I want to get this constitutional crisis behind us, because that is what we are confronted with. This is a constitutional crisis. It has the potentialities of being a constitutional crisis as serious as that of 1862.

I have been criticized for the point of view I express again. I have been criticized for it on the floor of the Senate. I shall not be deterred by any criticism. It is irrelevant, immaterial, and inconsequential to the obligation that rests upon every Senator. We may be entering a period in which protests against the nondelivery of the Constitution to the Negroes of America will be taken to the streets of America. I repeat that if those protests are taken to the streets of America and violations of law are committed, the senior Senator from Oregon will stand in support of the enforcement of the law and the maintenance of law and order. But that will not change the fact that protests will be made. In many instances, I fear they will get out of hand and that disorderly conduct will result, laws will be broken, violence will exist, and blood will be shed. If that happens, not one Senator can justify ducking out through an exist or escaping down an escape hatch, so far as his duty in this body is concerned. Every Senator has exactly the same duty under the oath of office he took in front of the Senate when he was last sworn in to uphold the Constitution; and upholding the Constitution includes support of making these rights available to every Negro in the country as well as to every white man. That is the issue.

Proposed amendments that would hack away at the historic common law

doctrine embedded in the Constitution in regard to public accommodations cannot justifiably be supported by alleged liberals in the Senate—or by conservatives, either. No argument of expediency on the civil rights bill can be justified on moral grounds. No argument of gradualism can be justified on moral grounds. No vote for any civil rights bill or amendment thereto that provides less than the full constitutional rights to the Negroes of the country can be justified on moral grounds.

If the leadership of this body wants to lose liberal votes, here is one it will lose if it offers me only a compromise of constitutional principles by way of amendments that spell out expediency, but do not spell out constitutional rights.

I do not mean to imply a criticism of my leadership. I know it has a very difficult job. But I say most respectfully to my leadership, "You are on an irrefutable ground when you make very clear that you will not be a party to any amendment that seeks to compromise the constitutional rights of Negroes"—for example, any amendment to a public accommodations bill which seeks to chisel away from a common law doctrine embedded in our Constitution that if a businessman holds himself out to offer public service, he cannot discriminate against customers on the basis of the color of their skin. Any amendment which seeks to justify that expediency would be, in my judgment, not an amendment for which a Senator could vote and at the same time could say he was voting to uphold the Constitution of the United States.

It is going to be a long, hard struggle. But I repeat with great pride that there has been no indication from the White House—and I am satisfied there never will be—that the President of the United States will agree to any compromise of the great speech he made last Memorial Day at Gettysburg, Pa.—a speech which no one can read without recognizing that it spelled out exactly what I have just stated, in principle—namely, that the Negroes of this country are entitled to all the constitutional rights that the white men of the United States are entitled to under the Constitution. That is the issue.

I say to my leadership in the Senate that I do not intend to leave my President on the issue of civil rights, because I am satisfied he is unanswerably right. But I will leave my President whenever I think he is wrong.

But let Senators who think the President was wrong in his speech on last Memorial Day, at Gettysburg, Pa., stand up and say so, in attempting to justify or to alibi for watered-down amendments to the civil rights bill.

Mr. President, I have made these introductory remarks; and now I shall proceed to discuss matters not related to civil rights. I would not do so if the leadership in the Senate had hewed out a parliamentary course of action designed to hold us to the civil rights issue until it was disposed of. But I renew the recommendation I made many weeks ago; namely, that certainly the time now has come—in fact, it has long

since passed—when the Senate leadership, in charge of the bill, should say to the American people, "The Senate is going to be held in session every hour of the day and night, for as many weeks as it may take to finally dispose of this bill."

I do not think there is any other way to get the American people to recognize the crisis in which we are now living.

I do not think there is any other way ultimately to obtain cloture; and I do not think there is any other way to deliver—for the first time in our history—to the Negroes of this country their full constitutional rights.

So, Mr. President, what are we waiting for? I hope finally the leadership in charge of the bill will follow the course of action that some of us have suggested for some weeks. They have already tried every other way; but I believe we are further tonight from passing a civil rights bill than we were on the day when the debate began; at least, I am satisfied that we are now further from passing the civil rights bill than the Negroes of this country are entitled to have the Senate pass—a bill that will give them their full constitutional rights and will implement those rights—than we were on the day when this debate began.

So tonight I say quite frankly, Mr. President, that I think the anti-civil-righters have gained, and have strengthened their position, in many respects, since this debate began.

We do not have to go very far to obtain proof of that. All we have to do is go into the cloakroom, and listen to the cloakroom discussion of proposed amendments. I am stunned by some of the proposals to chisel away one right after another that the Negroes of this country are entitled to have provided by any civil rights bill that is brought to a vote here in the Senate.

I say to my leadership that I always stand ready and willing to join them in any procedure that will hasten the passage of a fully adequate civil rights bill. But, Mr. President, whom are we wearing out? Whom are we inconveniencing? We begin our sessions at 10 o'clock in the morning, and we have several live quorum calls during the morning, and we have several live quorum calls during the afternoon, so that thereafter Members of the Senate can attend the various black-tie affairs and the saloons in Washington that are called cocktail parties, and can reach a gentlemen's agreement that no live quorums will be had while the guzzling is going on. That is some performance. That is some way to operate a parliamentary body. But, Mr. President, as an old livestock man, let me say I would not even try to operate a dog kennel that way.

I wish to say to Senators on this side of the aisle who are pro-civil-righters that I hope that in the next several days there will be a reappraisal of our parliamentary strategy, and we shall make up our minds as to whether we propose to go forward or continue to retreat—for at present we are retreating.

But we do not win a battle by retreating.

The Senator from Oregon, even though I think it is very important

periodically to discuss McNamara's war, would agree on the rule of germaneness being enforced 24 hours of the day and night any time the leadership wants to announce that we will debate civil rights 24 hours of the day and night, and enforce all the rules. But until the leadership in charge of the bill is willing to do that, the senior Senator from Oregon will continue to do as he now does—discuss other subject matters that I think important to the country.

There is no reason why we should not, in the absence of a determination on the part of the leadership to break this filibuster. We cannot break the filibuster, in my judgment, unless we follow the procedure that I have suggested, 24-hour sessions, day and night, and the enforcement of the rules of the Senate every minute of the time.

THE FOREIGN POLICY OF THE UNITED STATES

Mr. MORSE. I turn now to a discussion of some phases of foreign policy. I am greatly concerned about the United Nations. I am greatly concerned about the future of the United Nations. I am concerned about the future of the United Nations because of certain events that are occurring these days in the world that, in my judgment, are weakening the United Nations.

It is with a heavy heart that I point out that my own country is a party to what I consider to be a course of action that is weakening the future of the United Nations. So is Russia. So is the United Arab Republic. So is Great Britain. And so are some other nations—including the United States of America—that, in my judgment, are willingly, intentionally, and wantonly circumventing and flouting the United Nations. When we permit this list of precedents to be established, when we permit these violations of the United Nations Charter to be committed—as they are being committed around the world this very hour—we shall be in a pretty weakened position if at some time in the future we attempt to enforce the charter of the United Nations against some other violator.

Yesterday, the Senator from Alaska made what I think was a truly historic speech in the Senate, entitled "While America Sleeps, U.S. Collision Course in the Middle East." He talked about the course of action of Nasser in the Middle East, which is a course of action that threatens the peace of the Middle East, and thereby the peace of the world. He talked about the aiding and abetting that Nasser is receiving from Khrushchev on his state visit to the Middle East.

The speech of the Senator from Alaska was a brilliant speech. He was joined in colloquy during the delivery of his speech by the Senator from Illinois [Mr. DOUGLAS], the Senator from Michigan [Mr. HART], the Senator from New York [Mr. JAVITS], the Senator from Connecticut [Mr. DODD], and the Senator from New York [Mr. KEATING]—Senators whose great ability and distinguished service in the Senate are recognized by all. All those Senators thought the subject matter of the speech by the Senator from

Alaska [Mr. GRUENING] was of sufficient national and international importance to comment upon it, and to commend the Senator from Alaska for the position he took. There was a story in the New York Times about the speech, which I ask unanimous consent to have printed in the RECORD at the close of my remarks.

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

(See exhibit 1.)

Mr. MORSE. I have not had an opportunity to check a large cross-section of America's kept press. But I did check these two great examples of the Pravda-like journalism in Washington, D.C., known as the Washington Post and the Evening Star. I find not a line in either paper about the significant speech delivered by the Senator from Alaska, which was joined in by the Senators whom I have mentioned during the colloquy which occurred in the Senate yesterday.

I have read the speech. To me, it is a warning as to the future of the United Nations. If Khrushchev carries out his promises to Nasser, Nasser will be strengthened in his present threat to the peace of the Middle East. He has been making that threat for quite a while. He has been making it perfectly clear that whenever he considers himself strong enough, he will wage a war against Israel.

What will be the position of the United States then? Will we file a complaint with the Security Council of the United Nations? Will we have our answer to the charge that will be made: "What about your threat to the peace in southeast Asia? What about your violation of the peace in southeast Asia? And how about the British in Yemen? How are they going to defend the weakening of their obligations to the United Nations Charter, which bears the signature of the British Empire, if someone files a complaint before the Security Council as to some other nation's threat to the peace and Great Britain urges that United Nations jurisdiction be taken in that dispute?"

What concerns me is that some of the great powers that have signed the United Nations Charter, including the United States, are undercutting the charter, instead of living up to their obligation to make the United Nations a force in maintaining peace in this world. Powerful nations in the world are undercutting the United Nations at this very hour, including the United States. There is no denying the fact that the United States stands in violation of the United Nations Charter in South Vietnam right now, and has for a long time past.

If we are not willing to live up to the United Nations Charter, we are in a pretty weak position to seek to enforce it against others. So I want to bring to an end the weakening of the United Nations Charter. I again ask my Government to lay the South Vietnam issue before the Security Council of the United Nations, and then, if necessary because of a veto, before the General Assembly of the United Nations, to the end of stopping a war rather than making a war and running the risk of expanding that war into a nuclear war.

I want to see my country do that on its own initiative, so that we shall not be confronted in the not too distant future with a charge against us on South Vietnam, or in case we wish to protest the violation of the United Nations Charter, so we cannot be confronted with the comment, "Look who is talking," in light of the United States flouting of the United Nations Charter in South Vietnam.

In a recent speech in the Senate I called upon the United States Ambassador to the United Nations, Mr. Adlai Stevenson, to tell the American people, as their representative in the United Nations, if he believes the U.S. unilateral military action in South Vietnam, which is resulting in the unjustified killing of American boys, can be justified under the United Nations Charter.

Today I sent him a letter setting forth a series of questions, because I do not intend to let the U.S. Ambassador to the United Nations "off the hook" on this issue. As I said the other day, the possible casualty of his job as Ambassador is immaterial and irrelevant, in light of the supreme sacrifice of casualties among American boys in South Vietnam, for the American people to be denied the opinion of a man we have sent to the United Nations as the trustee of the obligations of this country under that charter.

So I say again, "Mr. Stevenson, where do you stand on the war in South Vietnam? Does it produce any problems for you in regard to your carrying out your trusteeship as Ambassador of the United States at the United Nations? Remember, you have obligations that transcend your ambassadorship obligations, for when you sit on the Security Council of the United Nations, you have obligations to the United Nations as well as to the United States."

Mr. President, that is only elementary. The Security Council is made up of ambassadors from member nations that comprise it. Each ambassador really has the duty to advise his government as to whether or not a course of action is being followed by his government or by any government that does violence to the United Nations Charter.

I have also addressed a letter to the Secretary General of the United Nations, Mr. U Thant, for the world is entitled to know from the Secretary General what his position is with regard to threats to the peace of areas of the world—and thereby threats to the peace of the world—in the Middle East, in Yemen, in South Vietnam, or anywhere else, at any time, the course of action of any nation endangers the peace of any region in the world and thereby runs the risk of endangering the peace of the world because of the possibility of escalation.

South Vietnam is the Achilles' heel of this administration. South Vietnam is the Achilles' heel of our whole foreign policy. I have said before, and repeat tonight, that our military action in South Vietnam is unconstitutional, for no President has the right, under our Constitution, to send American boys into a combat zone, running the risk of endangering their lives, and in this instance resulting in the killing of a considerable

number of them, in the absence of a declaration of war.

There has been no proposal for a declaration of war.

I ask the question again of my President, my Secretary of State, and my Secretary of Defense: "When are you going to send one up?"

Until there is a declaration of war, there is no justification either under our Constitution or under international law for sending a single American boy to his death in South Vietnam.

Earlier today, the Senator from Alaska [Mr. GRUENING] made a speech on the same subject, and in the course of his speech he inserted in the RECORD an article from this week's U.S. News & World Report written by Robert L. Moore, Jr., who, the article states, lived 4 months with United States and South Vietnamese soldiers, going with them into combat mission after combat mission in South Vietnam.

I am so glad that the Senator from Alaska made his speech and discussed this article, because it is a shocking report. I understand that a journalistic record for objectivity, dedication to reporting the truth, and the keen insight and analysis of Mr. Moore, will not be challenged by any competent critic in the field of journalism.

Let me say to the Senate and to the administration: Read it. Read it. One cannot read it and conclude with any confidence that we are either right in our policy, or have any hope of winning the war on the basis of the procedures and policies which we have followed to date. If we wish to substitute for those procedures an escalation of the war, get ready to send to their deaths tens of thousands of American boys, and be prepared to run the risk of escalating the war far beyond North Vietnam and into World War III.

As Mr. Moore reports in his article under heading after heading, the entire operation is discouraging. He comes to the final topic "Solution, U.S. Control"—and I quote him:

After watching the war in South Vietnam for 4 months, this American writer has reached this overall conclusion: Until the Vietnamese military develops the will to win and the courage to face the enemy unflinchingly, by day or by night, even if outnumbered, the war against communism in Vietnam will not be won—no matter if we pour in \$3 or \$4 or \$5 million a day in aid.

The only realistic solution that most Americans see in Vietnam is for the United States to take operational control of the war away from the luxury-loving, coup d'etat-minded, casualty-fearing Vietnamese officers corps until such time as they can develop the leadership necessary to win the war. If we do not take operational control, we merely waste lives and money in a hopeless stalemate.

If we take operational control, Mr. President, we shall have to fight the war. For what purpose? For what purpose should the United States be fighting a war in South Vietnam?

We have a slogan—to stop it from being taken over from communism. The Communists could not care less. They would not know the difference, anyway.

Mr. President, we cannot singlehandedly save Asia from communism. We are

surely not receiving any help. But I believe that if we would stop weakening the United Nations and give every indication that we would support the United Nations exercising a peace corps-keeping jurisdiction over South Vietnam, as it does in the Congo, the Middle East, and Cyprus, within the powers of the United Nations Charter, we might bring the fighting to an end; and then with the passage of time—and it may be 10 or 20 years—under some arrangement which for want of a better description I would label a form of United Nations trusteeship, maintain peace in the area until the people there finally develop the ability and the incentive to govern themselves on the basis of exercising their own will as to what form of government they wish.

Mr. President, the account in today's New York Times of Secretary McNamara's arrival in Saigon is one more evidence of the failure of the American war—which I call McNamara's war in South Vietnam. I call it McNamara's war in South Vietnam, as I have said before, because he has drawn the blueprint. He is the one who is operating it. They are his policies. True, the President is following them, which is to be expected, so long as he keeps him as his Secretary of Defense. But we know where the responsibility rests for the policies which are being followed in South Vietnam—on Secretary McNamara's shoulders.

As recently as 3 years ago, it was possible for top American officials at least to move from the Saigon airport into town in normal transportation, but yesterday Secretary McNamara arrived several hours ahead of his announced schedule and he and our Ambassador, Mr. Lodge, covered themselves with bulletproof jackets and rode in a car carrying bulletproof material on its floor. In another security precaution, the car turned into a side street and took a round-about route into town—which is indicative of a great American victory in South Vietnam. That is indicative of the great progress we have made in South Vietnam in 3 years.

Three years ago, one could at least travel in Saigon, if one were a visiting American, without a bulletproof jacket strapped on him. The same newspaper reported that it was pretty hot over there, and the Secretary of Defense decided he would take a swim in the pool.

In order to protect him, they had the pool surrounded by soldiers, with rifles pointed away from the pool, all around the pool. That is more indication of the great victory the United States is winning in South Vietnam. At least we have enough military power, apparently, to protect the Secretary of Defense while he takes a swim. If it were not so tragic, it would be funny. It is a rather tragic posture in which to find the American Republic in South Vietnam. The entrance of the Secretary of Defense into Saigon is but symbolic of what I think represents the collapse of McNamara's war.

It is a pretty good indication of how we are progressing. The United States and its officials are in no better position in South Vietnam than any other

colonial power has been in the past 20 years when it has sought to maintain a protectorate or colony by military force.

That is what South Vietnam is. It is a U.S. puppet, with its government controlled by the United States, taking U.S. orders. It is a U.S. protectorate. We are trying to pick up the failure of Great Britain, France, the Dutch, and every other colonial power in Asia of the last 50 years, and we will end with the same failure. Asia will not be run by white men. I do not know why the United States has not learned that lesson. France learned it. Great Britain learned it. The Dutch learned it. They paid a terrible price in material wealth and an even more precious price in blood.

Mr. President, the French fought terrorists and rebels in Indochina and Algeria for years; the British fought terrorists and rebels in Africa, in Cyprus, and Egypt. They were all unsuccessful, just as the United States will be unsuccessful in South Vietnam.

In trying to fight on ground and terms alien to the United States, we are needlessly killing Americans for an objective we eventually will have to abandon. Much is being said about the poor quality of the American planes being used in South Vietnam. They are killing American pilots. But under the Geneva agreement, we cannot replace the equipment used in Vietnam in 1954 with anything but an equivalent. Of course, we have stepped up the level of aid in violation of the agreement.

In fact, the commission or council created under the Geneva accords of 1954 has found North Vietnam in violation of the accords, and has found South Vietnam in violation of the accords. In finding South Vietnam in violation of the accords, it stated that the American military aid which has been made available to South Vietnam is a direct violation of the Geneva accords. Yet the paradox is that the United States says we are in there because of the Geneva accords.

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

Mr. MORSE. I yield.

Mr. EASTLAND. The Senator is making a very able speech. I have read in Scripps-Howard newspapers that our American soldiers there do not have modern weapons. Does not the Senator agree that whenever an American soldier is ordered into combat he should have the very best weapons that our country can provide him?

Mr. MORSE. There is no question about it. That is why I have asked why we are trying to fool ourselves or the American people or the world. As the Senator from Mississippi knows. Three or four weeks ago when I first started speaking against the unjustifiable war in South Vietnam I quoted what a very high Marine Corps officer came to tell me. He said, "Senator, I disagree with you. I think we ought to go in there and clean them out. We ought to go in with a full-scale war. What we are doing is that we are in there on less than a full war basis, and we are not giving to our American boys the protection they would have if we were at war. We are

making them sitting ducks in the helicopters, which have no cover protection and no ground protection."

Mr. EASTLAND. Why should we not give our boys the best weapons that we can afford? Is it not our duty to do that?

Mr. MORSE. If we make war, we should.

Mr. EASTLAND. Are we not making war?

Mr. MORSE. We should declare war or get out.

Mr. EASTLAND. Are we not making war?

Mr. MORSE. We are making it in an unconstitutional way.

Mr. EASTLAND. Do we not owe it to the boys over there to give them the best weapons that we can produce in this country?

Mr. MORSE. If we are to make war, yes; but we owe it to the American people and to the people of the world to try to bring the war to an end by enforcing peace through the United Nations Charter, not by unilateral action on the part of the United States.

Mr. EASTLAND. Of course, that is something else. However, as long as we are sending American soldiers over there, the very best armament that this country can afford should go with those men into combat, whether we declare war or do not declare war, or whatever the policy is.

Mr. MORSE. We should not send American boys into combat without a declaration of war.

Mr. EASTLAND. I agree. But when we do so, the very best weapons should be given to the men to protect themselves.

Mr. MORSE. There is no question about it. Of course, we have stepped up the level of aid, in violation of the agreement.

If we replace the planes now in use there with later models, it will be contended that that is an additional violation of the Geneva accords. That is why I say we should bring the matter before the Security Council to pass on it. If Russia vetoes it, as we could expect it to do, we should take it to the General Assembly.

The United States, and Secretary McNamara in particular, had better face the fact that the United States cannot win this war 7,000 miles away. Even if we step up the level of the fighting with rocket-firing aircraft and other weapons the Vietcong does not possess, we still will not win. On the contrary, the more we escalate the conflict, the more change there is that this country will become ensnared in an Asian war that will kill even more Americans and last even longer.

As it is now, the Vietcong has no aircraft. We monopolize the air. We are doing it with outmoded planes. But we cannot use better planes without violating the same Geneva agreements we are accusing North Vietnam of violating.

The only answer is to withdraw the American military forces from South Vietnam.

Mr. President, the Senator from Alaska [Mr. GRUENING] earlier today inserted in the RECORD an editorial from this morning's Wall Street Journal.

It needs to be more than inserted in the RECORD; it needs to be read on the floor of the Senate, and I propose to read it with comment. It is a terrific editorial. It is an editorial that not only the Senate but the administration had better contemplate. Its title is "Error Upon Error." The editorial reads:

Ten years almost to the day after the fall of Dienbienphu, Secretary McNamara is in Saigon—for the second time in the past couple of months. Yet no matter how many high officials visit Vietnam, or how frequently, nothing gets clarified. Except, that is, the continuing failure of U.S. policy.

Though the conjunction of the Secretary's trip with the anniversary of the French defeat is accidental it could be unpleasantly symbolic. With a far greater force than the United States has committed, the French fought the Communists for some 8 grisly years, and lost.

Vietnam was then divided north and south, Korea-like, but unlike Korea the border was fluid and not patrolled by large contingents of United States or any other troops. The Communists predictably made the most of their opportunity, first as infiltrators and guerrilla fighters; now they are so strong they can and do attack in force.

Today the French wonder aloud how the United States expects to win at the rate it is going. They are not the only ones; American servicemen and reporters have long been saying we are losing the war. U.S. officials are alternately reassuring and gloomy.

Part of the official attitude appears to be that we are not supposed to win in a formal sense; only help the South Vietnamese drive the Communists out and keep them out. But even this limited objective keeps going glimmering. After all the U.S.-supported fighting, the Communists are said to be in effective control of sizable and important parts of South Vietnam.

In view of that, it is almost impossible to figure out what is the U.S. strategy, if any—that is, how it thinks it can in fact drive the Communists out and keep them out. Not that anyone expects the Pentagon to reveal its war plans in detail; it is rather that the evidence indicates the lack of any plan which promises to be workable against the varied and successful tactics of the Communists.

Not even the commitment of many more American soldiers or the bombing of Communist bases in the North, which has been talked of off and on, would be guaranteed to accomplish the objective. In other circumstances perhaps, but not necessarily against this particular enemy, in this particular terrain, with this particular ally.

At the same time the French "solution" of neutralizing all of Vietnam sounds like a proposal in a vacuum, at least for the present. Why should Ho Chi Minh, the dictator of the North, want to neutralize when he is doing so well as it is? Or if he did want to, we may be sure he would see it as a means of continuing the conquest.

We do not rule out the possibility that the United States may somehow some day turn the tide, any more than we rule out the possibility that the realities of the situation may finally dictate withdrawal. But whatever happens, the U.S. involvement in Vietnam reveals a series of classic military and political errors from which it may be hoped the Government will eventually profit.

First, the United States drifted into the war, initially intending only to advise. It evidently overestimated the fighting capacity of the South Vietnamese troops while underestimating the Communist Vietcong.

Second, the United States got into a war where the enemy chose the field. The field, moreover, is extremely disadvantageous for

us not only in terms of terrain but of distance from our shores.

Third, it got into a war without allies, even though the interests of many nations are affected. If its allies care at all, they are willing to let the United States do it. Its only ally, South Vietnam itself, has never given an impressive demonstration of a will to win, on the part of the people, the troops, or the successive governments.

To all this it may well be objected that the alternative was to let South Vietnam go down the Red drain, and perhaps the rest of southeast Asia with it. The objection, we think, begs the real issues:

No nation should count on military success, even limited, in the most unfavorable circumstances. No piece of territory is beyond all price, worth any cost, as the French finally discovered 10 years ago after such great cost. And the United States, for all its great power, cannot forever police the world alone and unaided.

Mr. President, that editorial is from the Wall Street Journal. The Wall Street Journal is one of the most responsible sources of news in the Republic.

The Senator from Alaska [Mr. GRUENING], the Senator from Louisiana [Mr. ELLENDER], and the Senior Senator from Oregon for weeks on the floor of the Senate have been raising the same warnings that the Wall Street Journal sets forth in its editorial this morning.

I say to my administration that there is growing evidence of an awakening America, in spite of the thunders of silence of the press of this country, which for the most part is a Pravda press, a kept press, a press that engages in concealment of the facts from the American people, feeding the American people only what the press wants to feed them. The great constitutional guarantee that our forefathers gave them, freedom of the press, carries with it the obligation to speak the truth and tell the truth. But despite this betrayal on the part of the press of most of the country, the facts are gradually getting through to the American people about the illegal course of action of the United States in South Vietnam; the unconstitutional course of action of the United States in South Vietnam; the course of action of the United States in South Vietnam that violates our obligations under the United Nations Charter.

I say to my administration that once the American people really comprehend what is going on, they will hold this Government to an accounting for this wrong.

The Wall Street Journal is not the only newspaper that is beginning to rise to its obligations in respect to telling the truth. Presiding over the Senate at the present time is the distinguished junior Senator from Wisconsin [Mr. NELSON], in whose State there has been published for years one of the great liberal journals of the United States, the La Follette Progressive magazine, over the masthead of which is printed—I read it as a little boy in Wisconsin, and it made a lifelong impression upon me—the motto of the Progressive. It ought to be the motto of every newspaper in this country, but that is not the case:

Ye shall know the truth, and the truth shall make you free.

That great progressive periodical is speaking out in opposition to the policy of the U.S. Government in South Vietnam. I know that other liberal periodicals in this country which always seem to be far ahead of the rest of the press, by and large, in fulfilling their obligations under the freedom-of-the-press guarantee of the Constitution, are speaking out. I do not have them on my desk tonight. I had intended to bring them. But tomorrow or the next day I shall place in the RECORD some articles on the course of action of the United States in South Vietnam, articles criticizing that course of action, as the senior Senator from Oregon, the Senator from Louisiana [Mr. ELLENDER], and the Senator from Alaska [Mr. GRUENING] have criticized it for weeks in the Senate—in periodicals such as The Reporter, the New Republic, and The Nation.

But, Mr. President, some of the daily press has been spreading the facts about the unjustifiable course of action of the United States in South Vietnam. I highly commend the journalistic courage of the Scripps-Howard newspapers, which for several weeks have been issuing the same warning that the Senator from Louisiana, the Senator from Alaska, and the Senator from Oregon have been issuing on the floor of the Senate, in regard to the illegal course of conduct of the United States in South Vietnam.

One of the greatest newspapers in this country, in my opinion, the St. Louis Post-Dispatch—has not only been publishing editorials on this subject, but also has been publishing article after article pointing out the facts about the unfortunate course of action of the United States in South Vietnam. The latest editorial that has been called to my attention, as published in the St. Louis Post-Dispatch, was published in it on May 11, 1964, under the title "Why Not the U.N.?" The editorial reads as follows:

WHY NOT THE U.N.?

The announced U.S. effort to persuade some 25 nations to provide South Vietnam with "practical and material" support in the struggle against the Communist guerrillas again raises the question, and rather insistently, as to why this war is not taken to the United Nations. It could be, as Senator Morse has been pointing out.

The United States partially financed the French attempt to hold on to Indochina, and when the French were vanquished 10 years ago assumed the burden of helping turn back communism. This country is spending more than half a billion dollars a year and has more than 15,000 military advisers in South Vietnam. A few other countries are providing dribbles of aid, but helping the South Vietnamese is almost entirely a U.S. venture.

Now Secretary of State Rusk, with the backing of President Johnson, is planning to seek greater international participation at the current North Atlantic Treaty Organization meeting in Brussels. His list of prospects goes beyond the 15-member NATO group and the eight-nation Southeast Asia Treaty Organization, neither of which has shown interest in becoming embroiled in Vietnam.

Coincidentally with the NATO ministerial meeting in Brussels, Secretary of Defense McNamara is making his fifth visit to Saigon—the second in 2 months—for another firsthand look at "the progress of

military and civilian operations," to quote Mr. Johnson.

Coupling the new U.S. policy with Mr. McNamara's trip prompts the conclusion that the situation in South Vietnam is deteriorating faster than is generally realized. Else why these further measures to bolster South Vietnamese morale, for that is what they amount to? The people of Vietnam are war weary and perhaps increasingly inclined to accept a political solution. Is the United States afraid of that?

The effort to throw together this 25-nation anti-Communist alliance seems shortsighted, and possibly hazardous. It is shortsighted because, as most NATO and SEATO members already realize, a clear-cut Western victory on Red China's border is, as a practical matter, almost impossible. And it is hazardous because (unless Mr. Rusk already has private commitments) refusal of the nations to join us would make us look ridiculous. The Netherlands Government already has refused to join us, according to reports, on the logical ground that nations with direct interests in the area ought to act first.

Apparently the United States avoids talk of seeking U.N. intervention because of a fear that such a course would involve dealing with Red China, which we do not recognize and which is not a U.N. member. But that merely blinks at reality. The United States tried unsuccessfully to keep the Cyprus dispute out of the U.N. for fear the Communists would make it a major East-West issue. Is that not approximately what we are trying to do in attempting to drag other Western countries into the Vietnamese morass?

There are, of course, domestic political issues involved. The administration wants to avoid a catastrophe in Vietnam before the November elections, and it wants to keep the China question in the background at least until then. Also, the mounting casualties among Americans are a source of worry. Lining up other countries to share the risks would be reassuring to the administration on all counts.

But it would be no advance toward a permanent settlement. Appeal to the U.N. might be, and if one or more of the countries asked to join us in Vietnam should propose instead that the U.N. be approached, that might well start a movement in the right direction.

Mr. President, I commend the editor of the St. Louis Post-Dispatch for that editorial. I am waiting for the administration to answer his premises; but the administration cannot do so.

I directed my letters of inquiry to the U.S. Ambassador to the United Nations, Mr. Adlai Stevenson, and to the Secretary General of the United Nations, Mr. U Thant, because, as the editorial published in the St. Louis Post-Dispatch points out, to submit this question to the United Nations is to move in the right direction; and I think the Secretary General of the United Nations should make clear to all the world that even though the wrongdoer is the United States, he will not hesitate to ask the United Nations to call the United States to an accounting before the Security Council and, if necessary, before the General Assembly.

I know that one who criticizes his government, as I have been criticizing our Government, for some weeks, here on the floor of the Senate, is likely to be the subject of attempts by the "super patriots" to reflect on his patriotism. But, Mr. President, I will stack my patriotism against that of any "super patriot" in the United States, because

I know of no more patriotic course of action that a U.S. Senator can follow than one which seeks to have our Nation carry out its commitments under the Charter of the United Nations and carry out the purposes of that charter, which is to preserve peace in the world, not make war.

But the ugly reality is that as I speak tonight on the floor of the Senate, the United States is making war in South Vietnam, and thereby is endangering the peace of the world. I think a patriotic course of action calls upon me to seek to change the mistaken course of action of my country in the field of foreign policy.

That is why I have been pleading that this ought to be taken to the United Nations. And that is why I think the time is already overdue when the American Ambassador to the United Nations, Mr. Adlai Stevenson, should speak up and speak out. If Mr. Adlai Stevenson believes that our course of action in South Vietnam is within the United Nations Charter, in my judgment he is disqualified to serve as an American Ambassador to the United Nations. And it would not make any difference anyway, if speaking out might cause him his job. For the Adlai Stevenson that I supported in 1952 and in 1956 is not an Adlai Stevenson that would ever hesitate to express himself or to state his position on a matter of such major moment as the issue which has been raised by American unilateral military action in South Vietnam.

I call the attention of the Senate to another editorial, in the St. Louis Post-Dispatch, on this subject matter under the heading of "Senator MORSE'S Daily Speech," which reads as follows:

SENATOR MORSE'S DAILY SPEECH

Senator WAYNE F. MORSE, of Oregon, deserves commendation, in our opinion, for what some critics might regard as a meaningless stunt. Every day, he rises on the Senate floor to make a speech against American participation in the war in Vietnam. "McNamara's war," he calls it, and Secretary of Defense McNamara has replied that he is proud to be associated with it.

Mr. MORSE has had no perceptible influence upon American policy by making a daily speech, but we would not conclude that he never will have. The fact is that he is saying some things that need saying, though we do not agree with all he says. Unfortunately nobody appears to be listening very much, but at least the Senator is putting himself on record.

For the few citizens and Senators who bother to read what Senator Morse is saying, it should be illuminating to recall just how the United States got into what appears an almost inextricable position in Vietnam. As the Senator points out, we are there basically because John Foster Dulles decided we should be. President Eisenhower's Secretary of State believed from the start that the United States should take over from France when revolt against French colonialism came to a climax in 1954. The President was willing to approve American military intervention on two conditions—one, that the British cooperate, and second, that Congress approve in advance.

Secretary Dulles went to London to persuade the British, but failed. Vice President Nixon floated a trial balloon to test American public opinion, and it was shot down by widespread opposition to a military venture in Indochina. Nevertheless, Mr. Dulles

refused to make the United States a party to the Geneva agreement which ended the Indochina war, and Senator Morse presents evidence to suggest that Mr. Dulles took that course precisely because he intended to establish South Vietnam as an American military base in southeast Asia. Both the United States and the North Vietnamese, Senator Morse argues, have been guilty of breaching the 1954 agreements. He urges that both now respect them, and that the United Nations take over the task of pacifying the area.

We don't know how many readers Senator Morse has for each of his daily speeches on Vietnam, but we commend him for insisting on discussing issues which too many Americans are willing to leave in silence.

Mr. President, I shall not take the time to read it, unless I cannot get unanimous consent to insert the article, but in the New York Times of May 9, in Sulzberger's column, "Foreign Affairs," there appears a column by him entitled, "The Road to Another Dienbienphu." I shall read a paragraph or two. It is in line with the major criticisms that the senior Senator from Oregon has been making about the war in South Vietnam. It reads:

LONDON.—The extraordinary thing about Indochina in the decade since a fine French Army surrendered at Dienbienphu is that while the desperate game remains the same, the principal players have all switched positions.

France's empire received its deathblow in the battle and was subsequently extruded from Asia and Africa. The collapse of French military power in Vietnam produced a vacuum into which the United States moved.

After long hesitation Washington accepted the old Anglo-French idea of a regional alliance which became SEATO, whose only real strength was the nuclear-armed U.S. Pacific force. SEATO proclaimed unilateral protection of Indochina except for North Vietnam, which was abandoned to the victorious Communists.

Substitution of one Western power for another created temporary stalemate. Nevertheless, after consolidating its position in North Vietnam, communism resumed the initiative with guerrilla incursions into South Vietnam and Laos.

The United States of America—acting virtually alone despite SEATO—inherited the French role of damming the Communist tide. And France, more dynamic and independent-minded under De Gaulle—inherited our own role of omniscient critic and Western champion of "anticolonialism." Western positions were thus curiously reversed.

Starting with an advisory mission similar to that successfully employed against Communist guerrillas in Greece we assumed an increasingly direct military burden in South Vietnam. We sought to assist this with diplomatic action designed to neutralize Laos and block the Communist supply line from North to South; but this effort failed.

Meanwhile, there has been a coincidental switch in Communist positions. At the time of Dienbienphu, although Ho Chi Minh's logistical support came from China, the political direction was Russia's. Moscow has now lost control. The southeast Asian Communist operation is today manipulated by Peiping.

PRESTIGE COMMITTED

We have fewer men but just as much prestige committed in Vietnam as France had in 1954. And our allies are of little more use than were France's. In 1954 Britain was preoccupied with a Malayan insurrection and, until too late, the United States feared to intervene. Now, France sits carping on

the sidelines and Britain is again preoccupied, this time with Indonesia.

Our political aims differ profoundly, but we seem to have learned little from France's military experience. Like the French we have unsuccessfully sought to seal off guerrilla supply sources. Like the French we have proved unable to capture the allegiance of the Vietnamese people. The pace of fighting intensifies and we seem immutably to be heading toward disaster.

A decade ago we were telling the French that colonialism was doomed and could not be saved by military action. The French are now telling us that military action cannot prevent defeat of our Vietnamese clients, that neutralism is the only way out.

Clearly, to avoid an ultimate defeat that would tarnish our prestige and weaken our Asian influence, we must change our strategy.

Up to this point in the column, I point out that it is an accurate account of historic events. Mr. Sulzberger then—and I shall read it—proposes a way out that, in my judgment, would be disastrous. The way out of that, he proposes, amounts to an escalating of the war and running not only the risk, but also the probability that the escalating of this war into North Vietnam will start a nuclear war.

I repeat tonight what I have said before on the floor of the Senate. There is no doubt as to what is planned if we escalate the war. If we escalate the war, it will be with nuclear weapons, because no American army can win in North Vietnam. No American army can win on the ground with conventional weapons anywhere in Asia. On this point American advisers are overwhelmingly in support of the conclusion I have just stated.

In my judgment, escalating the war by the use of nuclear weapons means the beginning of a nuclear war. That is why I have been heard to say, on the foreign policy question, that this is a crisis that goes far beyond South Vietnam. It is a crisis with worldwide implications. In my judgment, it is a crisis that will determine whether or not Western civilization itself will survive. We are playing with such a danger.

But Mr. Sulzberger is entitled to his view. I disagree with some of the conclusions set forth in the remaining part of the column, but in fairness to him I shall continue reading. He says:

So long as we permit the Communists to fight according to their own rules, to train and equip guerrillas in a northern safe haven and then send them south, we cannot crush them. Our only hope of military triumph and positive political settlement would be to destroy their aggressive bases. We should never contemplate invading North Vietnam. But it is time to announce that, if aggression is not stopped, we will pulverize its bases and communications.

I ask Mr. Sulzberger, What do you think Red China and Red Russia will be doing if we start that course of action? What makes you think, Mr. Sulzberger, that the United States can continue to commit acts of aggression against North Vietnam and Cambodia and Red China and get bouquets of roses sent in return? How unrealistic can one be?

If this country starts dropping nuclear bombs against another sovereign power, even though a small sovereign

power such as North Vietnam, we shall antagonize most of the world. But that is his proposal.

He goes on to say:

Counter guerrilla action must be moved into the third dimension—an aerial riposte. The time for showdown has come. We certainly don't want holocaust any more than we wanted holocaust in Cuba 18 months ago. But we cannot afford a self-defeating strategy.

The kind of peace that would be purchased by South Vietnam's neutralization would be a humiliating sham. Nevertheless, if such is preferable to the risk of major conflict, we should face that disagreeable truth. Otherwise we must adjust to obvious realities.

That is an interesting hedge in Sulzberger's argument. Of course, if my warning should become a reality, if the use of nuclear weapons against another sovereign power, even though it is a Communist power, should result in a holocaust, Sulzberger is against that.

I warn the country and the Senate tonight that that is the inevitable risk we run. We have another course of action, which I shall describe later.

Sulzberger continues:

There is no point pretending that a continued policy of neither war nor peace can lead to anything but an ultimate political repetition of Dienbienphu.

Mr. Sulzberger, what about trying to win a peace instead of winning a war? That is the question I would have you answer in an early column in the New York Times. Mr. Sulzberger, what is wrong with the United States returning to the framework of international law, returning to a keeping of our commitments under the United Nations Charter? I would have you answer that in your column, too. Mr. Sulzberger, what is wrong with the United States conforming to its own Constitution and the President sending to the Congress of the United States a proposed declaration of war?

Let my colleagues stand up and be counted. I want my colleagues to stand up and be counted. The silence of most of my colleagues in the Senate is thunderous, but it is not fooling the American people.

We have no right as a Congress to sit by, or stand by, or whatever descriptive term one wants to use, and permit an unconstitutional war, unjustifiably murdering American boys in South Vietnam. So long as it is unconstitutional, the killing of those boys is murder. We have no right as Members of Congress to sit by and permit that condition to continue.

Mr. Sulzberger, answer it in an early column, will you? I am sure the American people would like to read your answer. I agree with much of your column. I agree with your account of the historic facts that have produced the indefensible position of the United States in South Vietnam, but I would have you turn your attention not to the question of the United States saving face—which is the major thesis of your article—but to the issue of the United States helping win a peace by carrying out the obligations which happen to be ours under the United Nations Charter.

Oh, what a glorious message it would be to have go around the world that the United States had laid the South Vietnam issue before the Security Council of the United Nations and called upon the Security Council to proceed to exercise its authority under the United Nations Charter. What if Russia vetoes it? When I ask the State Department, Why not take the issue to the United Nations? the answer I get is, Russia would veto it. That is not the end of United Nations procedure. Let us prove to the world who it is that seeks to establish an order of peace in South Vietnam. If Russia vetoes it, we can then take it to the General Assembly. That ought to be the course of action of my government. Face saving? Since when, in all the great history this Republic has had, has face saving been a consideration on the part of this Government for maintaining a wrong, illegal, unjustifiable course of action?

I know of no other example. I wish to answer this example quickly by a reversal of American course of action. The greatest lesson we could teach the world would be to show that a democracy never hesitates to correct a mistaken course.

I am pleased that I have been able to point out to the Senate tonight that there are journalists in this country who are beginning to present to the American people the facts about the unjustifiable, unilateral U.S. military action in South Vietnam. I am pleased that the Scripps-Howard chain has for some time been living up to its trust under the freedom of press guarantee in the Constitution by telling the American people the facts about South Vietnam. I am pleased that at last the Wall Street Journal, in the editorial which I read a few moments ago, published in that newspaper today, raising the issue which I and the Senator from Louisiana [Mr. ELLENDER], and the Senator from Alaska [Mr. GRUENING] have been raising for several weeks on the floor of the Senate. I am pleased that the great newspaper in St. Louis, the St. Louis Post-Dispatch, in several editorials, several special articles, and many news stories, has been telling its readers the facts about the U.S. mistaken course of action in South Vietnam. I am pleased that such periodicals as the Reporter, the LaFollette Progressive, the Nation, the New Republic, and now in its last issue, the U.S. News & World Report, are beginning to publish the facts.

Earlier in my speech I made reference to the story published in the New York Times of McNamara's trip to Saigon and commented upon the great "victory" we have won in South Vietnam, as contrasted to 3 years ago when any American official could ride in an open car from the airport in Saigon to downtown Saigon in perfect safety; yet our Secretary of Defense had to put on a bulletproof vest, and ride in a car filled with bulletproof equipment. Then, when he took a swim, the swimming pool had to be literally surrounded by soldiers pointing their rifles all around the swimming pool, in a direction away from the swim-

mingpool, in order to afford security to the Secretary of Defense.

I pointed that out in order to show the great victory the United States has won in South Vietnam in the past 3 years. What a victory. It is about all anyone should need to know, to realize that we are on our way to duplicating France's defeat in Indochina.

I ask unanimous consent that this article published in the New York Times be printed in the RECORD.

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

McNAMARA OPENS TALKS IN VIETNAM—HE AND AMBASSADOR LODGE USE BULLETPROOF JACKETS ON RIDE FROM AIRPORT

(By Peter Grose)

SAIGON, SOUTH VIETNAM, May 12.—Secretary of Defense Robert S. McNamara went through a detailed audit today of recent U.S. measures to bolster South Vietnam's war against Communist guerrillas.

The Secretary arrived this morning for his fifth visit to South Vietnam. He was several hours ahead of schedule. Discreet but elaborate security precautions provided the only note of tension in a visit otherwise free from the air of crisis or need for urgent decisions that marked his previous trips.

[Two Cambodian jet fighters flew into South Vietnam Tuesday and strafed troops searching for Communist guerrillas, sources in Saigon told the Associated Press. The Vietnamese suffered no casualties in the attack, the latest of a series of incidents with neutralist Cambodia.]

After he had heard senior American officials review steps being taken to strengthen the South Vietnamese Government of Maj. Gen. Nguyen Khanh, Mr. McNamara and Ambassador Henry Cabot Lodge joined Mrs. Lodge for a late afternoon swim at an exclusive sporting club, the Cercle Sportif.

The security measures were ordered following the discovery over the weekend of a Vietcong plot to kill Mr. McNamara as he drove from the airport into town.

BULLETPROOF JACKETS IN CAR

After the official limousine had pulled away from photographers at Saigon's Tan-Son-Nhut Airport, both Mr. McNamara and Mr. Lodge put bulletproof jackets over their shoulders and legs. Bulletproof material covered the floor and other areas of the automobile.

As the motorcade and police escort roared over a bridge Vietcong terrorists had planned to blow up, the Secretary's car took a sudden turn onto a side street and followed an unannounced and roundabout route into the center of Saigon.

The police arrested two more Vietnamese believed to be members of the Vietcong assassination squad. Two terrorists were apprehended Saturday night while laying mine and electrical detonation wire under the bridge on the main airport road.

Mr. McNamara made no comment on the plot against his life or the security precautions. In a brief statement, he said his visit was another of his regular meetings with officials responsible for the Vietnamese war effort.

ACTION TO BE REVIEWED

"We will review the progress in achieving the program which we have agreed upon and laid out during my last visit in March," Mr. McNamara said. "We will consider what additional action, if any, is required to fulfill the commitment of my Government to the South Vietnamese Government."

After Mr. McNamara had spent the day in diplomatic and military briefings with American officials, Arthur Sylvester, Assistant Secretary of Defense, said the Secretary had

surveyed the whole range of American assistance programs without particular emphasis on any single aspect.

Mr. Sylvester declined to give any judgments or comparisons of the present situation with that prevailing when Mr. McNamara was here 2 months ago.

"This visit should be put into a different context from our previous meetings," he said. "The Secretary is here to check on the status of implementation of the programs to assist the South Vietnamese. He is making an audit of the recommendations which he made to President Johnson after the March visit."

Those recommendations included increased aid for South Vietnamese armed forces, particularly paramilitary units not organized into the regular army but facing constant threat of Vietcong attacks.

Mr. Sylvester said Mr. McNamara would make an oral report to Mr. Johnson on his return to Washington but probably not a formal written report.

The Secretary and Gen. Maxwell D. Taylor, Chairman of the Joint Chiefs of Staff, who arrived yesterday, are scheduled to leave Saigon late tomorrow after a working meeting with General Khanh.

Mr. McNamara saw only American officials today at a briefing at the U.S. Embassy and a 3-hour afternoon session at the headquarters of the Military Assistance Command.

Besides Mr. McNamara, Mr. Lodge, and General Taylor, those attending the meetings included Gen. Paul D. Harkins, outgoing commander of the assistance command, Lt. Gen. William C. Westmoreland, newly appointed general as Harkins' successor, and Maj. Gen. Richard G. Stilwell, chief of staff.

Accompanying Mr. McNamara are Gen. Earle Wheeler, U.S. Army Chief of Staff, John McNaughton, Assistant Secretary of Defense for International Security Affairs, and Michael Forestal of the White House staff.

CAMBODIAN JET RAID REPORTED

SAIGON, May 12.—Two Cambodian jet fighters flew into South Vietnam today and strafed troops searching for Communist guerrillas, reliable sources reported.

The sources said there had been no Vietnamese casualties. The jets, fired upon by the troops, flew back to Cambodia.

The attack took place near Tyninh, 55 miles northwest of Saigon. It was the latest in a series of incidents between South Vietnam and Cambodia. The Communist guerrillas have been using the frontier zone of a neutralist Cambodia as a staging area for attacks on villages and military posts in South Vietnam.

In other actions in the Vietnamese conflict, U.S. sources here reported that Vietcong forces routed a Vietnamese flotilla Sunday in a battle 30 miles off the southern tip of the Cau Mau Peninsula.

Communist gunners abroad armed fishing boats attacked two motorized junks escorting three fishing vessels. They sank one of the junks, forced the other aground and made off with the fishing vessels.

Three crewmen of the flotilla were missing and presumed drowned. Communist casualties were undetermined.

South Vietnamese vessels patrol the 1,000-mile coastline day and night in an effort to keep the Communists from moving in troops and equipment by sea from North Vietnam. The attack on Sunday was the first challenge to the Government for supremacy at sea.

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

The PRESIDING OFFICER (Mr. NELSON in the chair). Does the Senator from Oregon yield to the Senator from Louisiana?

Mr. MORSE. I am glad to yield to the Senator from Louisiana.

Mr. ELLENDER. Mr. President, I am delighted to know that some segments of the press are now taking note of what is happening in the Far East.

I well remember, several years ago, when I was in South Korea, that I was severely criticized by the Scripps-Howard newspaper for having criticized President Syngman Rhee for his inefficient conduct of the Government of South Korea. When I declared that I felt there was some corruption and undemocratic practices going on in that country, I was not believed. A couple of years later, however, when some 2,000 students revolted against Mr. Rhee, our own State Department discovered that the very thing I had said 2 years earlier was true, that there was a great deal of waste, and that much money was being channeled into private sectors of the South Korean economy.

Today, the situation in South Korea has not improved very much. This is supposed to be a United Nations action. But who is there but us? Two Canadians, two Britishers, two New Zealanders, a brigade of Turks, Ethiopians, and Greeks. To add insult to injury, we are paying for the logistics of those soldiers, except a few—the two from England, the two from New Zealand, and the two from Australia. I believe it is shameful that we must bear almost all the financial responsibility for stabilizing that area.

I discussed this subject with some of our noted generals. As the Senator from Oregon mentioned a moment ago, they are afraid to move out because they may lose face by doing so. And they feel that the military balance may be upset. In the meantime, we are spending today in South Korea, on a yearly average, about a half billion dollars. Up to now, in addition to the amount of money we have already spent in order to carry on the war on our own, we have put up about 95 percent of the cost. The number of American soldiers killed, besides the South Koreans themselves, amounts to 96 percent of the total. This is a U.N. operation in name only.

I say to my good friend, the Senator from Oregon, that our people do not seem to learn from the experience of history. Our allies are often not willing to carry their share of the burden.

What the Senator is saying now, in my opinion, is that if we remain in South Vietnam we shall have another South Korea on our hands. We shall be carrying the whole load there. Our American boys will be the ones to be killed there. Our so-called allies will be standing on the sidelines, watching what is happening. It is a difficult position which we have inherited from the French, who were forced out of Indochina. Our choices are few. The spread of communism must be resisted, according to the generals, but it is unfortunate that our allies will not help shoulder the financial and human burden of this resistance.

Even today we are receiving the gratuitous advice of the French Government about the proper way of conducting our affairs in that area. This is in spite of the fact that the French were ousted from that area and their responsibilities were thrown upon us.

But, Mr. President, I am satisfied that if the course suggested by my good friend, the Senator from Oregon, were to be pursued, we would receive no response from the United Nations. The U.N. is not equipped to fight a war. What member countries of the United Nations would contribute money and soldiers in order to help carry the burden the Senator is now talking about? I do not think any would, except perhaps token forces. We have taken this course alone, and we shall remain on that course alone.

Mr. MORSE. I say to my friend from Louisiana that if his warning proves true, we should completely change our policy vis-a-vis the United Nations. However, I remember very well the warning he gave us about South Korea. He was ahead of most of us. Some of us tried to catch up with him not too long thereafter by reinforcing his position on the floor of the Senate.

I can remember, as though it were yesterday, the speech I delivered on the floor of the Senate against the tyranny of the administration in South Korea. What an attack I received by suggesting that the support we were giving to the administration in South Korea was not producing freedom, but tyranny. We were supporting a police state in South Korea, as we are supporting a police state in South Vietnam tonight.

Mr. ELLENDER. The Senator is correct.

Mr. MORSE. One of the shocking pieces of deception of the State Department and the Pentagon is the propaganda which their mimeograph machines are pouring out to the effect that the United States is supporting freedom in South Vietnam. We are supporting a Fascist military dictatorship.

Mr. ELLENDER. The same thing goes for South Korea.

Mr. MORSE. Yes. That is what we are supporting in South Vietnam. It is a dictatorship. I abhor both fascism and communism as police states. I remember how well the Senator from Louisiana forewarned us about South Korea.

However, so long as we are a member of the United Nations we have an obligation under its charter to call upon it to take jurisdiction. If the United Nations tries to repeat the kind of pattern it set in South Korea, Senators will find the senior Senator from Oregon on his feet on the floor of the Senate advocating whatever corrective measures are necessary to stop the United Nations from imposing any such repetitive burden upon the United States.

Before I close this subject matter, I ask unanimous consent that there may be inserted in the CONGRESSIONAL RECORD an article published in the Sunday Advertiser of Honolulu entitled "MORSE Flays Vietnam War."

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

MORSE FLAYS VIETNAM WAR

(EDITOR'S NOTE.—The following provocative comment on the situation in South Vietnam is reprinted, not necessarily as an indication of agreement or disagreement with all that is said, but to stimulate thought and discussion.)

(From a Senate Speech by WAYNE MORSE, of Oregon)

Richard Nixon's election year prescription for our troubles in Vietnam is more war. He proposes to carry the war beyond the borders of South Vietnam into Laos and North Vietnam.

I would like to see Nixon enter a primary race somewhere and campaign on that platform. The bugle call for sending the Marines into Cuba was greeted in New Hampshire with a thunder of silence, and I am certain that the American people are infinitely less anxious to make war on the mainland of Asia than they are to make war on Cuba.

In this election year, Nixon has trotted out all the old clichés that one might hope had been buried with General MacArthur—"privileged sanctuary," and "no substitute for victory."

The interesting thing about Asia is that the French, British, and Dutch have never discovered what victory is in Asia. France fought for 8 years on the same ground we are now fighting on in Vietnam. Every battle was called a victory; every month was said to bring victory into sight; every year was called the one when the victory would be achieved.

Suddenly, France quit. Her people had had enough.

Now Nixon has decided that the problem with the war over there is that it is not big enough. He wants to expand it. He wants the United States to attack North Vietnam. He wants to replace the shred of legal right we have to help South Vietnam defend herself with a naked aggression by the United States 7,000 miles from home.

General MacArthur was wrong in thinking Red China would tolerate an American advance toward her borders in Korea. Why does Nixon think an American attack on North Vietnam will be greeted any differently by China?

The Nixon prescription for war in Asia will mean an American involvement in war with China that could bleed this country for decades. It is bad enough that Secretary McNamara has promised that we will fight in South Vietnam "forever" without Nixon urging that we will fight in North Vietnam, and very likely in China as well.

It must be remembered that Nixon is a longtime advocate of war in Asia. In April of 1954, when France was passing the word that she had had about enough in Indochina, it was Nixon who spoke in New York City, in his capacity as Vice President of the United States, to suggest that American forces might be sent to Indochina. Nixon was sounding out American opinion on the possibility of replacing the French in Indochina.

His trial balloon turned out to be made of lead. The American people and the Congress did not buy it. Neither did our allies. So direct intervention by American forces was not tried then.

But then Secretary of State Dulles did something else. He refused to sign the treaty whereby France left Indochina, and the country was divided into four parts. He also put the financial backing of the United States behind a puppet of our own, who was elected to carry out American interests in that part of the world.

In effect, the United States created its own protectorate in South Vietnam. Far from limiting our support to the original organizer of its government—President Diem—we encouraged his overthrow when he proved inefficient, and we have since supported two subsequent military juntas.

These puppets have proved no more capable of sustaining themselves alone than were the French puppets. We have had to put American troops in to help keep our men in power.

Now Nixon, the original advocate of direct American military participation in an Asian war, is urging the same thing 10 years later;

namely, that we not only defend South Vietnam but that we make war on North Vietnam. Let there be no mistake that this would not be a South Vietnamese war, but an American war.

The first proposal is for air strikes into Laos and North Vietnam. What can we expect them to accomplish? Thanks to the large numbers of American aircraft in South Vietnam, manned by Americans, the Government forces have complete control of the air in South Vietnam. We have dozens of U.S. helicopters and unlimited fighters and bombers, flown by American military personnel. Our control of the air is undisputed.

The Vietcong has no air force at all. It has no air strength. It never has had any airpower to use in that conflict.

If airpower and control of the air were all its advocates claim for it, why is the Vietcong doing so well without it? More important, why do the advocates of air attacks on North Vietnam think they will be successful in disrupting supply and communication lines? If Vietcong bases in South Vietnam cannot be destroyed with air and ground forces together, how are we to destroy bases in North Vietnam with air attacks alone?

The Nixon thesis of air attacks on bases in North Vietnam is only the first installment on direct American fighting in Vietnam. When the air attacks fail, then we will say the only thing left is to send American ground troops to do the job.

This has been a consistent pattern for drawing this country into a war in Asia a piece at a time. Far from being a pattern set down by our enemies, it is the pattern of our own Government.

It must be repudiated by the American people before it is too late, just as they repudiated the invitation to send marines into Cuba.

Mr. MORSE. Mr. President, it is a little embarrassing to put personal references in the CONGRESSIONAL RECORD. However, I owe it to myself and to my supporters and friends to point out that even though there has not been too much vocal support for my position in the Senate, the premises that I have been uttering and the policies that I have been defending are beginning to percolate.

I am satisfied that as the facts become better known, Members of the Senate and Members of the House will begin to hear from home. Then perhaps we shall begin to hear from them on the floor of the Senate and on the floor of the House.

My mail from across the Nation is running better than 9 to 1 in support of my opposition to the U.S. unilateral military action in South Vietnam.

Neither the Congress nor the executive branch of Government can "sell" the Vietnamese war to the American people. If they think they can, I say to them, "Come on up with your declaration of war. Let your elected representatives stand up in Congress and be counted on a declaration of war. You will get your answer from home if you do that."

I ask unanimous consent that such other material as I may have overlooked, dealing with the Vietnam war, which I intended to insert in the CONGRESSIONAL RECORD, may be inserted at this point in my remarks.

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

The material is as follows:

TEN YEARS LATER

The 10th anniversary of the fall of Dienbienphu, which occurs today, should not go

unmarked. It offers an opportunity for reflection on what has happened in Indochina since the end of World War II. The overwhelming of the French fortress in North Vietnam by the Communist-led Viet Minh climaxed a struggle of 7 years and 7 months and ended French power in Vietnam, Cambodia and Laos.

France spent \$5 billion (of which the United States contributed \$2 billion) to fight the losing guerrilla war; some 100,000 men were killed or listed as missing, and 140,000 wounded. That is the struggle the United States continued after the French debacle, with aid that now runs at the rate of more than half a billion dollars a year and with more than 15,000 advisory troops on the scene.

Long before Dienbienphu was overrun, many Frenchmen knew they could not win by military means over Vietnamese nationalists and Communists, but they still followed a military plan that proved ill conceived. A Post-Dispatch reporter who visited Hanoi, the capital of Communist North Vietnam, several months before the climax at Dienbienphu, wrote that the gloomy outlook was in part occasioned by the fact that the war was raging on fronts other than military—"political, psychological, economic, educational, social."

This is still the case, and it is still the reason why the war may never be won. As Richard Dudman pointed out in this newspaper recently, the United States "is still trying to solve a primarily political problem by military and police techniques." Secretary of Defense McNamara said in March that in Vietnam "political and economic progress are the sine qua non of military success." But such progress is still invisible.

The success of the Communist leader, Ho Chi Minh, in rallying nationalist sentiments against the French at the conclusion of World War II was possible because the people were united in opposition to their colonial masters. The present-day Communist guerrillas are formidable because they have a strong political base; the South Vietnamese do not. If they did, perhaps they would not need American help. They are tired of the long war and it is difficult to blame them.

Recognition of these facts appears slowly to be bringing about a discussion of the alternatives, some of it stimulated by General de Gaulle's proposal for neutralizing Indochina. Senator MORSE has been making speeches regularly on the subject, and in one reprinted in today's Mirror of Public Opinion he urges that the Vietnamese problem be referred to the United Nations. This seems a sound proposal; it has been made before. Why has it not been considered?

Apparently it is feared that intervention by the U.N. would involve Red China, which is not a member and which the United States is still trying to exclude. It is difficult to see how a political solution can be reached in Indochina without consultation with Red China. Indeed, from one viewpoint the entire Vietnamese struggle is a holding action whose solution awaits an accommodation between the United States and China.

Meanwhile, it is appropriate to look back at Dienbienphu and the preceding years, and wonder whether anything has been accomplished. The Geneva agreement of 1954 contemplated, on paper at least, that North and South Vietnam would eventually settle their own fate through elections. But the elections have never been held and meanwhile the North's alliance with communism and the South's alliance with the United States have hardened the division. American power, in short, has replaced French power. But it is much the same sort of struggle, and the future is no brighter unless a political settlement can somehow be achieved.

EXHIBIT I

[From the New York (N.Y.) Times, May 13, 1964]

SENATOR SAYS NASSER AIDS SOVIET DRIVE FOR OIL

(By Hedrick Smith)

WASHINGTON, May 12.—Senator ERNEST GRUENING charged today that Premier Khrushchev's current visit to the United Arab Republic showed that President Gamal Abdel Nasser had been serving as "the Kremlin's stooge" in a drive by Moscow to seize control of the Middle East's oil.

The Alaska Democrat called on President Johnson to change U.S. policies toward the Middle East to prevent such a takeover and to protect Israel.

"With the help of the appeasers in our own State Department, Russia is about to succeed in its centuries-old drive to control the oil of the Middle East and the nations of the Middle East," Mr. GRUENING said in the Senate.

He noted that Mr. Khrushchev, during his visit, had warmly endorsed President Nasser's opposition to a U.S. airbase in Libya, to British bases in Aden and to Israel's use of waters from the Jordan River.

"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," the Senator declared. "He has been behind Nasser's moves in that direction for years. Khrushchev has pulled the strings and Nasser has moved."

Senator GRUENING urged President Johnson to summon the leaders of Arab nations and Israel to a joint conference to persuade the Arabs to renounce their pledges to destroy Israel.

The Senator called again for the United States to sign a mutual defense treaty with Israel, backed by the power of the Sixth Fleet.

"We should make it clear beyond any possibility of doubt," he said, "that the United States will not tolerate an Egyptian attack on Israel," and that U.S. power stood ready "for instant retaliation as a deterrent to Cairo's atomic force."

Senators JACOB K. JAVITS, Republican, of New York; PHILIP A. HART, Democrat, of Michigan; PAUL H. DOUGLAS, Democrat, of Illinois; and THOMAS J. DONN, Democrat, of Connecticut, joined Senator GRUENING in voicing fears about President Nasser's role in the Middle East.

"I find it incomprehensible that our State Department should remain silent about Nasser's aggression in Yemen," Senator DONN declared. He was referring to the stationing of about 40,000 soldiers in Yemen to support the republican government there against royalist tribesmen.

"Our aid to Nasser made it possible for him to carry out his invasion of Yemen," Mr. DONN asserted. By providing economic aid to Cairo, Mr. DONN said, the United States has become "an accomplice" to President Nasser's actions in Yemen.

Mr. JOHNSTON subsequently said: Mr. President, at this point I think I should state how I feel in regard to what the senior Senator from Oregon [Mr. MORSE] has been speaking about this evening in regard to South Vietnam. For a long time I have thought we were making a great mistake because of the way we have been proceeding in South Vietnam. I believe the Senator from Oregon is entirely correct when he states that we should have turned over that matter, in the beginning, to the United Nations. Certainly it is not too late to do so now, because that is a duty the United Nations should be performing,

instead of letting the United States handle the situation almost alone.

Mr. MORSE. Mr. President, will the Senator from South Carolina yield?

Mr. JOHNSTON. I yield.

Mr. MORSE. I cannot begin to tell the Senator from South Carolina how much I appreciate the statement he has just made about the South Vietnam issue, because I know the Senator from South Carolina is one of the most able Members of the Senate in many fields; and his position on foreign policy will carry great weights, not only in his part of the country, but also in many other parts of the country where it will be heeded.

I realize that it is not easy for a Senator to state on the floor of the Senate his disagreement with the foreign policy of our country; but the Senator from South Carolina has always manifested that sort of statesmanship. I commend him and thank him for the courage and the foresight he has displayed in the statement he has just made.

Mr. JOHNSTON. Mr. President, I thank the Senator from Oregon for his complimentary remarks about me; but I do not claim to know too much about foreign affairs. I am not a member of the Foreign Relations Committee; but I try to keep up with what my Nation is doing and with what I think is best.

I well remember the night when the Senator from Oregon was first sworn in as a Member of the U.S. Senate. He and I began our service in the Senate at the same time, as he will recall. Later that evening, I said on the radio that I feared that in the future the United States would feel so big and so strong that she would attempt to run things by herself, without joining the other nations. I also said I thought we would soon win the war, but that winning the war was not everything, and that in the future we would have many problems to solve. I said that for that reason I hoped my country—the country I loved dearly—would not make the mistake of not working with the other nations of the world.

I thank the Senator from Oregon for his kind remarks; and I want him to know that I feel as he does in regard to this matter.

So far as face saving at this time for our Nation is concerned, I believe that when we find we have made a mistake, we should immediately try to correct it in the best way possible.

ST. LOUIS CIVIL LIBERTIES COMMITTEE AWARD TO ARTHUR FREUND

Mr. MORSE. Mr. President, I ask unanimous consent that there may be inserted in the RECORD at this point an article published in the St. Louis Post-Dispatch of Thursday, May 7, entitled "Arthur Freund Gets Liberties Award."

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

ARTHUR FREUND GETS LIBERTIES AWARD

Arthur J. Freund, an attorney, received the 1964 award of the St. Louis Civil Liberties Committee last night at the organization's

annual meeting at the Chip Room, 1401 Hampton Avenue.

He was cited for "lifelong devotion to the protection of individual liberties" and for what was termed as "almost singlehanded struggle" to alert the public to the danger of three proposed States rights amendments to the U.S. Constitution.

One of the proposals would permit amendment of the Constitution by the State legislatures alone, without congressional action. Another would end all constitutional restraints on the ways the States apportion their legislatures. The third would set up a Court of the Union, composed of the 50 State chief justices, to review Supreme Court decisions.

Freund, former member of the boards of election and police commissioners, has law offices at 7 North Seventh Street. He lives at 6235 Washington Boulevard.

Freund's wife and two daughters, Mrs. Paul Ullman, Jr., and Mrs. Morton S. Binder, witnessed the presentation of the award. Freund received the 1937 St. Louis Award for public service and the Washington University Alumni distinguished service citation in 1955.

Miss Frances Levenson, general counsel of the New York City Commission on Human Rights, principal speaker at the meeting, said the Federal Government must change from a negative to a positive role in housing legislation.

She said implementation of the Executive order by the late President John F. Kennedy forbidding racial discrimination in federally financed housing had been weak and needed more vigorous enforcement.

Miss Levenson said the St. Louis fair housing ordinance is one of the most comprehensive in the Nation. She urged passage of a fair housing law by the State legislature.

Mr. MORSE. Mr. President, this award was given to one of the outstanding leaders of the American bar, one of the great lawyers of our time, a great constitutionalist dedicated to public service. It is an award which is truly deserved. I am proud to be able to call Arthur J. Freund a close personal friend. He is also a great teacher of mine. Although I have never sat in a classroom over which he presided, I have been a student of his sound theories of constitutionalism for a long time.

I am glad to use this medium for extending my congratulations to him and for making the award a matter of historic record in the CONGRESSIONAL RECORD.

I ask unanimous consent, also, that the citation to Arthur J. Freund be printed in the RECORD at this point.

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

CITATION TO ARTHUR J. FREUND, MAY 6, 1964

The St. Louis Civil Liberties Committee, in presenting you with its 1964 award for your lifelong devotion to the protection of individual liberties, cites you specifically for your almost single-handed struggle to alert the public and your fellow lawyers to the quiet attack on our Federal system of constitutional government in the form of the recent proposals to amend the U.S. Constitution in three different respects, each of which would undermine our Federal constitutional guarantees of liberty, justice and equality. In December of 1962, you were first to be alerted to the dangers represented in the proposals which would (1) permit amendment of the U.S. Constitution solely by the States and without any congressional action or national convention, as is now re-

quired; (2) which would remove the power of the Supreme Court to rule on legislative apportionment questions; and (3), which would create a so-called Court of the Union made up of chief justices of the supreme courts of the 50 States and having the power to reverse decisions of the U.S. Supreme Court involving Federal versus State powers.

Like a modern-day Paul Revere riding through the night of indifference among lawyers and responsible citizens, you began a ceaseless campaign by corresponding with and talking to your many friends and acquaintances in positions of leadership throughout the Nation, warning them of the dangers presented by these proposals and urging them to take action.

While you worked and the Nation slept, the proponents of these measures quietly and without any public debate or comment by the press obtained the adoption by the legislatures of 12 States of resolutions to change the form of amending the Constitution and to remove the legislative apportionment power of the Federal courts, and several legislatures adopted Court of the Union resolutions.

By April of 1963, however, your line of minutemen began to take station and their shots were soon heard 'round the country and ultimately felt around the world. The first responsible press coverage of this phenomenon, which Prof. Paul A. Freund has characterized as the greatest threat to the existence of our Republic as we know it in our entire history, appeared in the New York Times on April 14, 1963. Prof. Charles L. Black, Jr.'s, well-written and scholarly analysis of these three proposed constitutional amendments appeared in the April issue of the Yale Law Journal. On April 28, Robert L. Riggs, Washington correspondent of the Louisville Courier-Journal, added to the light of public debate that began to shine on this important and growing threat to constitutional government. On April 27, Chief Justice Earl Warren in a talk at Duke University, ended the total silence among the officials of our Federal Government.

As a result of these opening volleys and as a result of your unceasing effort to enlist the strength of bar associations and other organizations and leaders throughout the country, it is no longer possible for individual State legislatures to adopt resolutions promoting these constitutional amendments without debate and without public attention.

Your role as Paul Revere suits you. You have shown your sensitivity to subtle and subsequently unnoticed threats to individual liberties before. We are proud to salute you as a fellow St. Louisan and we are proud to present you with our award for 1964.

Mr. MORSE. Mr. President, I ask unanimous consent that an editorial published in the St. Louis-Post Dispatch entitled "Lifelong Devotion" be inserted in the RECORD at this point, being a tribute to Arthur J. Freund.

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

LIFELONG DEVOTION

The few words of the 1964 St. Louis Civil Liberties Committee award to Arthur J. Freund summarize a long story. The words mention his "lifelong devotion" to liberty and his "almost single-handed struggle" to warn the public of the three States rights amendments that have crept quietly through some State legislatures. Mr. Freund is well known for public service, for his work on the election and police boards and his St. Louis award in 1937. Perhaps no one but he knows the exact amount of hard work he put into his opposition to the dangerous States amendments. Out of his efforts, directly and indirectly, grew proper warnings

from individual lawyers and teachers of law, the highest Government officials and Justices of the Supreme Court. Arthur Freund has his connections as well as his convictions. It is a fine thing his powers of persuasion have been used so consistently in behalf of its basic liberties.

THE GROWTH OF PENSION TRUSTS

Mr. MORSE. Mr. President, for the past 2 years the Senate Small Business Committee, and its Financing Subcommittee, of which I am chairman, had been studying the growth of large pension trusts and their impact upon small business.

In Chicago, on April 27, a trial opened involving the alleged diversion of more than \$1 million from one of these funds to the personal use of certain union officials. This trial raises some disturbing questions about the use of such funds, and its progress will be watched with much interest.

In January of this year, the National Bureau of Economic Research released the results of a study showing that corporate pension funds have reached a total of nearly \$67 billion, which is more than the entire gross national product of France—\$63 billion.

In growth, these funds have increased by 2,000 percent in assets since 1945, which is phenomenal by any standard.

The SEC's Special Study of the Securities Markets, which was released in mid-1963, pointed out that these funds increased their holdings in securities fivefold between 1954 and 1961, the largest rise in any investor group.

These figures make it clear that pension funds are becoming increasingly significant factors in many areas.

Thus, the attention which the Senate Small Business Committee has been giving to the implications of this growth appears to be justified by their increasing importance.

THE OREGON DUNES

Mr. MORSE. Mr. President, I ask unanimous consent that there be printed in the RECORD at this point an article entitled "Boots on the Dunes," written by Hugh Peyton who, I understand, is a former employee of the Forest Service.

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

BOOTS ON THE DUNES

To the EDITOR: President Kennedy is not able to stop in Portland because of the powerful influence of the Negro minority, but he will be able, no doubt, to fly unhampered over the Oregon Dunes. It is hoped that his plane's-eye view of this area will be inspiring and pleasant. He will be insulated by a proper altitude from the anguish and helplessness of the better than 260 homeowners and 39 business operations below him, that are being swept into benevolent and autocratic arms of the Secretary of the Interior as provided for in the insidious dunes bill, S. 1137.

Those people who find themselves threatened with this heartless legislation have not threatened violence or picketing, murder or mayhem, but like the good citizens that they are, have fought valiantly and desperately by all legal means to save their hearths, homes and means of making a living. It has

been a fight against an overwhelming wave of propaganda, half truths, and bureaucratic manufactured platitudes that have appealed to many well meaning residents of Oregon. They have never taken the time to read the contents of Senate bill 1137 or noted the impact of this deadly legislation on the rights and freedoms of the people caught within the boundaries of the proposed Oregon Dunes area.

The people caught within the boundaries of this dunes bill must certainly be shocked and amazed to find that their duly elected Representatives in Congress and other residents of Oregon have allied themselves against them to deprive them of their constitutional rights and privileges of ownership of home and business. These citizens of the dunes area have helped develop the community, paid taxes and have shouldered the duties of citizenship during good years and lean ones and deserve better than to be dispossessed by an obviously bureaucratic land grab. Once these bureaucratic seven-league boots have been firmly, legally (?), and irrevocably established in the sands of Oregon, does anyone think that this will end the measured and sickening tread of these aforementioned boots? A piece of the dunes today, then more coastline north and south and more lands to the eastward may well feel the tread of these boots in the months and years to come.

HUGH PEYTON.

REPORT OF THE INTERGROUP RELATIONS COMMISSION

Mr. MORSE. Mr. President, I ask unanimous consent that there may be inserted in the RECORD at this point a press release issued by Mr. Charles W. Bursch, II, chairman of the Subcommittee of the Intergroup Relations Commission, of Portland, Oreg., dealing with a dispute and conflict which the group headed by Mr. Bursch was having with the Portland Housing Authority. It is a release which was sent to me by Mr. Mayfield K. Webb, president of the Portland branch of the National Association for the Advancement of Colored People.

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

INTERGROUP RELATIONS COMMISSION COMMITTEE REPORT ON PORTLAND HOUSING AUTHORITY

On January 15, 1964, a committee consisting of Dr. Unthank, Dr. Brown, Mr. Holmes, Dr. Gustafson, and Dr. Bursch was appointed by Chairman Rosenbaum to evaluate reports and documents received by the Intergroup Relations Commission relative to practices and policies of the Portland Housing Authority. After individual review of documents, the committee, with Chairman Rosenbaum, met on February 10, 1964, for discussion and adoption of specific recommendations. Dr. Brown, being out of town, was unable to take part in the February 10 meeting. On behalf of the committee, I submit the following conclusions and recommendations for your examination and possible adoption:

The Housing Authority of Portland has been the focal point of public controversy for some time. In the opinion of your committee, the central aspect of controversy seems to be the fact that present policies of tenant selection and placement have resulted in racially concentrated projects. Other critical phases of HAP practice and policy which have produced controversy and tension center around location of projects in areas of racial concentration, and around communication patterns between HAP and interested community leaders and agencies.

It has not been established that the HAP believes in or works for the segregation of races. On the contrary, various official investigations have produced only negative results. It has been established, however, that tensions arising from the phenomenon of racial concentration in public housing have been aggravated by certain practices of the HAP, and by certain statements from members and staff of HAP. These practices, in particular, make it difficult to disprove charges of discrimination or discriminatory intent. While the record, as it now stands, shows no instances of clearly established discriminatory practice, the situation is tension producing and serious—demanding corrective action. It is not the responsibility of the intergroup relations commission to try, or even to indict the HAP. We propose to enter the fray only in an attempt to ameliorate a regrettable situation.

The intergroup relations commission is charged by city ordinance with responsibility for making recommendations calculated to reduce intergroup tensions. Pursuant to that authority, your committee recommends a finding that certain practices and policies of the Housing Authority of Portland are, in fact, producing intergroup tensions in Portland, and we further recommend the adoption of the following suggestions in the hope and expectation that acceptance of the suggestions by the HAP will reduce present tension levels.

1. All applications should be made on forms provided by the HAP, and should be accepted only when presented in person by the applicant or an authorized representative.
2. Each application form for housing should be stamped with time and date, and upon acceptance for the waiting list should be assigned a serial number in sequence.
3. The person presenting an application for housing should be provided with a receipt showing the time and date of acceptance for the waiting list, and the serial number of the application.
4. All transactions relative to an application on the waiting list should be stamped with time and date, and should carry an indication of which employee processed the transaction.
5. When a vacancy occurs, it should be classified appropriately, and proffers should be made in strict order of seniority among those eligible.
6. The HAP should regularly publish, by serial number, and in some public place, the current waiting list.
7. When a proffer is made, the applicant should be given 3 days in which to respond, and must either accept, reject without stating reasons, or reject with statement of reasons.
8. When an applicant rejects a proffer without stating a reason, or when the HAP finds the statement of reasons unsatisfactory, the application should be endorsed with a new serial number placing it at the bottom of the waiting list.
9. When the HAP finds the statement of reasons satisfactory, the application should be passed over without loss of seniority, to await the next vacancy for which the applicant is eligible.
10. In considering statements of reasons, desire on the part of an applicant to maintain a segregated pattern of personal housing should not be accepted by the HAP as satisfactory.
11. The HAP should establish and maintain an up-to-date roster of leaders of interested community agencies and organizations. Minutes and notices of meetings should be sent to the names on this roster, and the HAP should periodically reaffirm its interest in and desire for, the advice and counsel of such community leaders on matters of mutual concern.
12. When special purpose projects are constructed or acquired, a special effort should

be made by HAP to give wide publicity to the limited nature of the eligibility requirements.

The foregoing report was approved by the commission on intergroup relations at its February 19, 1964, meeting. Report submitted by Charles W. Bursch II, chairman of subcommittee.

RELIEF OF CERTAIN INDIVIDUALS

Mr. MORSE. Mr. President, I introduce for appropriate reference a bill for the relief of certain individuals. I ask unanimous consent that it be printed in the RECORD.

The PRESIDING OFFICER. The bill will be received and appropriately referred; and without objection, the bill will be printed in the RECORD.

The bill (S. 2836) for the relief of certain individuals, introduced by Mr. MORSE, was received, read twice by its title, referred to the Committee on the Judiciary, and ordered to be printed in the RECORD, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That each individual named in section 2 of this Act is relieved of liability to pay to the United States the amount set forth opposite his name, which amount represents an overpayment of per diem received by him while stationed at Fleet Air Western Pacific Repair Activity, Tokyo and Osaka, Japan. In the audit and settlement of the accounts of any certifying or disbursing officer of the United States, credit shall be given for amounts for which liability is relieved by this Act.

Sec. 2. The individuals referred to in the first section of this Act and the amount of the liability of each of them, are as follows:

Wilson, Ruddy (2686566), United States Navy Fleet Reserve, \$1,708.60.
 Gilbert, William L. (2747774), United States Navy Fleet Reserve, \$7,154.70.
 Hoover, Russel D. (3132792), United States Navy Fleet Reserve, \$6,783.20.
 Floyd, Fretwell J. (8456082), United States Navy Fleet Reserve, \$8,273.20.
 Dahlen, Wallace A., lieutenant commander, United States Navy, \$7,508.86.
 Benson, Leonard R. (3933163), United States Navy Fleet Reserve, \$11,218.75.
 Raines, James C. (2952599), United States Navy Fleet Reserve, \$6,953.80.
 Ringstead, Richard G. (3286779), United States Navy Fleet Reserve, \$3,821.85.
 McKee, Benjamin A. (3466670), United States Navy Fleet Reserve, \$6,471.45.
 Coleman, Johnny R. (3603289), United States Navy Fleet Reserve, \$4,280.85.
 Hudson, William J., Jr. (2744556), United States Navy Fleet Reserve, \$1,226.70.
 Lindley, William R. (814054), United States Marine Corps Fleet Reserve, \$10,232.80.
 Gorski, William S. (507173), United States Marine Corps Fleet Reserve, \$2,843.95.
 Zidnak, Leonard G., 1772 Carlyle Street, Memphis, Tennessee, \$5,261.55.

Sec. 3. The Secretary of the Treasury is hereby authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to each individual listed in section 2 of this Act an amount equal to the aggregate of the amounts paid by him, or withheld from sums otherwise due him, in complete or partial satisfaction of the liability to the United States specified in the first section of this Act. No part of the amount appropriated in this Act for the payment of any one claim in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with such claim, and the same shall be

unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding \$1,000.

CONSTRUCTION OF A NAVIGATION PROJECT AT PORT ORFORD, OREG.

Mr. MORSE. Mr. President, for myself and on behalf of my junior colleague from Oregon [Mrs. NEUBERGER] I introduce for appropriate reference a bill authorizing construction of a navigation project at Port Orford, Ore. I ask unanimous consent that the bill be printed at this point in the RECORD.

The PRESIDING OFFICER. The bill will be received and appropriately referred; and without objection, the bill will be printed in the RECORD.

The bill (S. 2837) authorizing construction of a navigation project at Port Orford, Ore., introduced by Mr. MORSE (for himself and Mrs. NEUBERGER), was received, read twice by its title, referred to the Committee on Public Works, and ordered to be printed in the RECORD, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the project for improving the harbor at Port Orford, Oregon, is authorized in accordance with the recommendations in the report of the Chief of Engineers, Department of the Army, contained in Senate Document Numbered 62, Eighty-eighth Congress. The improvements recommended in such report shall be carried out under the direction of the Secretary of the Army and the supervision of the Chief of Engineers in accordance with the plan recommended in such report and subject to the conditions set forth therein, at an estimated cost of \$696,000.

Sec. 2. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

THE LATIN LABOR LEADER

Mr. MORSE. Mr. President, recently the AFL-CIO magazine American Federationist published an article written by one of the foremost leaders in the democratic labor movement. He is Serafino Romualdi, whose work on behalf of labor unions in Latin America is one of the most useful efforts being carried on abroad anywhere, by anyone, in the cause of freedom.

Mr. Romualdi's article entitled "The Latin Labor Leader—Democratic and Dedicated," describes the work of the American Institute for Free Labor Development.

I ask unanimous consent that the article be printed in the RECORD.

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

THE LATIN LABOR LEADER—DEMOCRATIC AND DEDICATED

(By Serafino Romualdi)

The American Institute for Free Labor Development was organized to build democracy in the Western Hemisphere through strong and free labor unions. The institute is 2 years old this spring—time to evaluate what its education and community development programs have accomplished and why, as well as where it intends to go in the future.

The AIFLD opened its doors in June 1962, when the first class of Latin American trade union leaders assembled in a vacant, street-level store in Northwest Washington. Their presence was the result of an education program proposal by Vice President Joseph A. Beirne, which was accepted by the AFL-CIO executive council in August 1960. The proposal was subsequently developed to the point where, in March 1962, I was asked by AFL-CIO President George Meany and Beirne to put the program into action as soon as possible.

Fundamentally, the AIFLD is a projection of the AFL-CIO's keen interest in the development of free labor in Latin America and the Caribbean area. Organized labor is in a strategic position to influence policies which will shape the economic, social, and political future of the nations in the southern half of this hemisphere.

The old concept of confining organized labor's role to matters pertaining to wages and working conditions and, above all, fighting against the employer, is being supplanted by the new concept of labor as a full-fledged partner in a national society, able to work constructively with the government as well as with the employer, offering to both of them its own contribution toward making social and economic progress feasible and obtainable.

There was a time when a Latin American labor leader's primary qualification was his ability to sway listeners to his point of view through oratory. Today, he is becoming a source of constructive contributions for the development of the national economy, enabling wage earners to receive a greater share of the ever-growing fruits of their labor. This new type of labor leader cannot be improvised. To begin with, he must have deep within himself a burning desire to serve his fellow workers and, through them, his own country. But he must also acquire a great deal of technical knowledge and this requires specialized education and intensive study.

A desirable technical development that can aid the emergence of a strong independent labor movement in the Latin American countries now going through the process of economic and social development requires an atmosphere of representative democracy in which all elements of society are encouraged to actively contribute to the general welfare. The concept of the various economic power elements in a free society working together, instead of in opposition, has become the most fundamental credo of the Institute. The idea of labor and management pulling together is seen as a necessity for the continued growth of a democratic society.

In tribute to this concept the Institute was organized on the basis of tripartite participation. American industry provides as much support as the affiliated unions of the AFL-CIO. The third party is the Federal Government which, through the Alliance for Progress, shares in underwriting the cost of the Washington program and supplies much of the funds for the national Institute programs operating in many Latin American countries and the Caribbean.

When the AIFLD endeavor first began, the program consisted only of the training course in Washington. The courses and the people chosen to attend them were considered in terms of a "multiplier" effect; that is, that the Institute would train those who had a capacity for training others. But this approach proved inadequate on two counts.

In the first place, the Institute was not securing a sufficient uniformity in the background experience of students to give the courses continuity. Second, the Institute was not moving fast enough in enabling its trainees to take care of themselves. The Institute does not want to entrench itself in these peoples' native countries, but simply offer them the experience gathered in

the decades of trade union activity in North America and then withdraw to let them move their countries forward as they see fit.

The Board of Trustees felt the best answer to these problems would be the establishment of training programs in Latin America itself, programs which, as soon as possible, would be completely operated by local union leaders.

In the early months of 1963, such programs were started in Peru, Colombia, and Venezuela. The response was so positive that, by the end of the year, local programs had been set up in Ecuador, Brazil, Argentina, Bolivia, Honduras (for Central America), the Dominican Republic, Chile, and Uruguay. Other education programs were organized in Mexico and Jamaica (for the Caribbean area) early in 1964.

The national education programs vary according to the country. Where conditions were especially favorable the Institute was able to establish a national center, whose 8- to 10-week resident program was patterned after the Washington school's full-time curriculum. In other countries short-term seminars were held in a variety of industrial complexes. At the present time the Institute is endeavoring to establish both kinds of programs in each country. So far, more than 3,600 men and women have attended these field program courses.

Since June 1962, 215 trade unionists have been trained in the Washington school alone. Another 34 are scheduled to begin the seventh AIFLD course in April.

These Institute graduates are already showing their strength in many countries. Although, for example, "fighting communism" is not the sole purpose of AIFLD, its graduates have found in several cases that they had to fight it if they were going to continue to work for the development of the free labor movement. Graduates already have been challenged by Communist agitators in Venezuela, British Guiana, Honduras, Brazil, Bolivia, and Chile. In each case the challenges were met head on; the graduates not only held their own but eliminated totalitarian elements from a number of important unions.

In August 1963, two graduates were able to bring a Honduran union that had been solidly under Communist control back into the democratic camp, but only after a 9-month fight in which the family of one of the men had been savagely beaten in the street by known Communist toughs.

In British Guiana, another graduate used the parliamentary procedures he had learned in Washington to eject an agent of that country's Marxist Prime Minister from the presidency of the Commercial and Clerical Workers' Union. Incidentally, the Prime Minister, Cheddi Jagan, has been so concerned about the effect of Institute-trained trade union leaders on his attempts to liquidate the country's free trade union movement that he has taken time to attack us, both in a letter to the New York Times and in a London news conference, for training "local Guianese * * * to overthrow my government."

In other positive action, a number of Brazilian graduates from the Washington school have trained their fellow countrymen in short-term seminars reaching more than 200 people.

In setting up the several levels of trade union education, the Institute has been able to give its curriculum a definite hierarchy. The best of those trained in the short-term seminars are selected as candidates for the resident courses at the national centers. The best of the national center graduates further their knowledge by attending the Washington school for an additional 12 weeks of training.

Three courses are held in Washington each year, training a total of some 100 unionists. Many of these men return to their countries

to teach in the national programs. It is hoped that in the near future, these national courses will be entirely in the hands of local citizens who were trained in Washington. At the present time, Washington graduates are already taking part in the direction and administration of the Institute programs in the Dominican Republic, Brazil, Uruguay, Colombia, Chile, Peru, Bolivia, and the Caribbean area.

In Peru, of the 27 men that graduated from the first national resident course there, 17 have become secretary generals of their unions.

In Bolivia, one of the Washington graduates is serving as second in command of the AIFLD seminars.

In Colombia, a graduate has become the first secretary general of the recently formed National Federation of Oil & Refinery Workers.

In Washington, the school's 12-week program is divided into two class groups. The first devotes the full period to studies and field trips to industrial centers in the eastern United States. The second group (of about 10 students) spends several weeks in Washington and then studies in Europe and the Middle East in a travel program.

The Washington-based group covers the following subject areas:

American Government and democratic institutions. Traditions and means of a free society, with illustrations from the American system; explanation of the functioning of the American Government.

Labor history and American labor movement. Origins and development of present-day American labor organizations; their role in the democratic process. Trade union structure; techniques of organizing.

International labor. The significance of international cooperation and exchange of information by labor groups and the roles played by different international labor organizations, such as the United Nations' International Labor Organization, the International Confederation of Free Trade Unions and ORIT, its regional arm in the Americas.

Labor education techniques. Application of the techniques of teaching, conducting conferences and of audio-visual aids; planning programs and preparing labor education seminars; trade union public relations.

Collective bargaining. Labor-management relations and the process of collective bargaining. Negotiation strategy, grievance procedures, union security issues, and labor-management cooperation.

Threats to unionism and democracy; communism, and other forms of totalitarianism. Analysis of the strategy and tactics of subversion and its effect upon democracy and trade unions. Defense tactics and safeguards.

Labor economics and the economic problems of industry and agriculture. Analysis of the functioning of the labor market and its manpower implications on wages, employment, unemployment, and underemployment. Economic effects on industry and agriculture, with special emphasis on problems of developing nations.

Special Latin American issues, including analysis of Alliance for Progress, Organization of American States and Latin American free trade areas.

Other special issues, including cooperatives, workers' housing, credit unions and community development programs.

Role of unions in a modern democratic society. The economic, political, social and cultural functions of trade unions in a democratic setting.

The European travel program began with the first class of 1964.

The class first spends 3 weeks in the United States at the Washington school to acquire a basic knowledge of the structure and functions of the U.S. labor movement and its role in the Nation's economy. The

students then study for 3 weeks in Israel, 2 weeks in Italy, 2 weeks in West Germany. One additional week will be spent in short visits to the ILO office in Geneva, to the Organization for Economic Cooperation and Development, the office of the AFL-CIO European representative in Paris and to the ICFTU headquarters in Brussels.

In Israel, the 3-week program is under the supervision of Histadrut, the country's General Confederation of Labor, in conjunction with the Afro-Asian Labor Institute in Tel Aviv. The curriculum includes classroom work and field trips, with the general objective of observing how a cooperative economy can coexist with free enterprise and how state-run services can operate in an atmosphere of freedom, pragmatic interdependence and competition.

The program in Italy, worked out in cooperation with the Italian Confederation of Labor Unions (CISL), consists of 1 week of lectures at the CISL Center for Trade Union Studies in Florence, with a field trip to a nearby cooperative center and 1 week of visits and roundtable discussions with labor and political leaders in Rome. The main objective of the Italian program is to expose the visitors to the causes and effects, good or bad, of "trade union pluralism" even at the shop level and to the division of the labor movement almost exclusively along political and ideological lines.

In West Germany, the travel program is supervised by the Friedrich Ebert Foundation of Bonn. The three main objectives of this program are:

(a) To obtain from the spokesmen of management and labor firsthand information on the operation of the codetermination policy;

(b) To observe how public services can be operated profitably and efficiently regardless of private or public ownership;

(c) To bring the visitors to West Berlin, and possibly to East Berlin, in order to see for themselves the dramatic and ultimate contrast between the worlds of democracy and totalitarianism.

At the end of their European program the participants return to Washington, where they rejoin the class for a final week of evaluation and exchange of information and impressions with their fellow students and the staff before their graduation.

It should be emphasized that the travel program has been initiated on an experimental basis. A review of its effectiveness will be made at the end of the first year. The program was initiated with the view of giving to a specially selected group of young Latin American labor leaders a multinational exposure to the problems, structure, functions, and achievements of democratic labor, thus broadening their horizons and experiences in preparations for their future positions in their native countries.

AIFLD education is not restricted to classroom studies and related projects but also shows, by example, the role free trade unionists can play in the development of their countries through a social projects program.

The Institute's social projects department is specifically devoted to assisting workers who are helping themselves and in some 15 months of operation has provided several examples of just how it can be done.

In Honduras, the school is complemented by a housing project for the workers of the Tela Railroad Co., a subsidiary of the United Fruit Co. The union had organized its own project and had obtained a U.S. Agency for International Development loan for construction, on land provided by the company as part of a collective bargaining agreement. Institute experts were requested to review the program. They completely redesigned the house, providing 20 percent more living space while cutting the cost by 25 percent down to \$2,050 for a three-bedroom home.

Looking back, the Institute substantially helped the union gain its housing, but the

initiative lay with the local union leaders. It is interesting to note that shortly after all U.S. aid to Honduras was stopped due to the military coup of October 3, this one program was reinstated on the basis that the people of Honduras should not be penalized for a takeover by a nonrepresentative government.

In Mexico City, on the initiative of the Graphic Arts Union (newspapers and publishing), the Institute is assisting in the construction of the largest housing project in the Western Hemisphere.

The social projects department has programs in nearly every country in Latin America. Although most of them relate to housing, there are many projects designed for food and consumer cooperatives, specialized schools, banks, and savings and loan associations and other institutions needed for the growth of equality in democracy at all levels of society. Under this department, the Institute has been recognized as a registered voluntary agency of the Federal Government, enabling the use of Latin American trade unions as distributive outlets for surplus U.S. foodstuffs under Public Law 480. It is important to note that under the AIFLD food-for-peace program, unions will be providing a service to the general public, not just to organized workers.

The foreign trade unionists who have worked with AIFLD programs, in either the education or the social projects fields, are their own men. Many of their beliefs differ from ours. They take from the Institute only what they themselves feel will benefit their fellow countrymen. We offer our experience; then they are on their own again. But in the eyes of the Institute, and the AFL-CIO, they stand stronger, straighter, and taller, better able to do the job their people expect of them.

ROCKEFELLER JOINS THE IRRESPONSIBLES

Mr. MORSE. Mr. President, I ask unanimous consent to have printed in the RECORD an editorial entitled "Rocky Joins the Irresponsibles," published in the Berkshire Eagle of Pittsfield, Mass., of April 28, 1964.

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

ROCKY JOINS THE IRRESPONSIBLES

One of the claims put forward by Governor Rockefeller's disciples is that, unlike some of his rivals for the nomination, he is too big a man to compromise his principles for the sake of temporary political advantage.

This claim was given a rather severe shaking by the Governor's conduct during the New Hampshire primary. It was all but demolished in Oregon yesterday when Mr. Rockefeller joined the ranks of Richard Nixon and assorted other irresponsibles who are insisting that the United States should expand the war in South Vietnam by "permitting" the South Vietnamese forces to strike by land and by air at Communist "sanctuaries" in Laos, Cambodia and North Vietnam.

Presumably Governor Rockefeller is well aware that this sort of talk is mischievous nonsense. He is a basically intelligent and well-informed person whose natural inclinations are moderate and rational. He has a well paid staff of knowledgeable researchers who are qualified to acquaint him with the facts in areas where he himself is not competent.

He must know, therefore, that the basic problem in South Vietnam has nothing to do with the so-called sanctuaries from which he says the Communists are deriving their strength. He must know that this is not comparable to the situation that pre-

valled in the Korean war, where the Chinese "volunteers" were being supplied by bases beyond the Yalu River and where the military situation involved two organized armies confronting each other along a fairly well defined front.

He must know, further, that the guerrilla forces in South Vietnam control more than two-thirds of that country's territory as well as the loyalties of more than half its inhabitants, and that it is therefore nonsensical to suppose they can be wiped out by carrying the war against them into adjacent countries. And he must also know that the South Vietnamese military establishment is utterly unable (not to mention unwilling) to attempt any such adventure without the direct and large-scale participation of American air and ground forces which Mr. Rockefeller carefully stops short of saying we should commit to the cause.

Why, in view of all this, does Mr. Rockefeller talk so glibly about how quickly his plan could win the war in South Vietnam? Partly because our difficult situation there provides a handy political cudgel for flailing at an administration which seems rather invulnerable at the moment to more honest attack. Partly because offering simple solutions to complicated problems always appeals to the less enlightened elements in the electorate. And partly, no doubt, because anything that derogates American policy in South Vietnam tends to derogate Ambassador Henry Cabot Lodge, who is the man to beat in the Oregon presidential primary.

And this, apparently, is sufficient justification for advocating a policy which at best couldn't possibly work and at worst could involve us in a catastrophically foolhardy war with Communist China. It is a rather sorry commentary on Mr. Rockefeller to have to cite as the only extenuating circumstance the probability that he doesn't believe what he is saying.

DR. HOWARD ZAHNISER— CONSERVATIONIST

Mr. MORSE. Mr. President, on May 4 Dr. Howard Zahniser passed away. He was one of America's leading conservationists, serving on the Advisory Committee on Conservation to Secretary of the Interior Stewart Udall, a director of the Citizens' Committee on Natural Resources, a trustee and the Washington representative of Trustees for Conservation, a contributor on conservation to the Encyclopedia Britannica, and executive secretary of the Wilderness Society, and the editor of its excellent magazine, the Living Wilderness. He also was president of the Thoreau Society in 1956 and was an honorary vice president of the Sierra Club. His long and illustrious career in conservation included service with the U.S. Fish and Wildlife Service in the Department of the Interior.

Above all, Howard Zahniser was an active outdoor conservationist, a man who knew the true meaning of conservation. Howard Zahniser was the father of the wilderness bills which have been before the Congress. It was due to his efforts that America became alert to the true meaning and value of wilderness.

When Howard Zahniser passed away quietly in his sleep, America suffered a great and tragic loss.

I would like to pay my tribute to this dedicated citizen who served the interest of all of our people so well and so long by reading from the First Epistle of Paul the Apostle to the Corinthians, chapter 13. This is the perfect tribute to Howard

Zahniser, for Paul the Apostle, 2,000 years ago, described the type of man that he was. Paul said:

And though I have the gift of prophecy, and understand all mysteries, and all knowledge; and though I have all faith so that I could remove mountains and have not charity, I am nothing.

And though I bestow all my goods to feed the poor and though I give my body to be burned, and have not charity, it profiteth me nothing.

Charity suffereth long, and is kind; charity envieth not; charity vaunteth not itself, is not puffed up, doth not behave itself unseemly, seeketh not her own, is not easily provoked, and thinketh no evil;

Rejoiceth not in iniquity but rejoiceth in the truth;

Beareth all things, believeth all things, hopeth all things, endureth all things.

Charity never falleth; but whether there be prophecies, they shall fail; whether there be tongues, they shall cease; whether there be knowledge, it shall vanish away.

For we know in part, and we prophecy in part.

But when that which is perfect is come then that which is in part shall be done away.

When I was a child, I spake as a child, I understood as a child, I thought as a child; but when I became a man, I put away childish things.

For now we see through a glass darkly; but then face to face: now I know in part; but then I shall know even as also I am known.

And now abideth faith, hope, charity, these three; but the greatest of these is charity.

Howard Zahniser had faith, hope, and charity, and he had these sterling qualities in good measure.

On May 1, it was my honor to speak before the Columbia River section of the Society of American Foresters at Bend, Oreg. With the mighty Cascade Mountains as a backdrop, I spoke using the theme "Forests Are for People." The inspiration for much of what I said came from the understanding that Howard Zahniser gave me of the true meaning of wilderness.

In that speech I touched on the many aspects of the utilization and development of our forests for mankind, but I also spoke of wilderness. I believe it appropriate at this point to quote what I said then, for it epitomizes the meaning that Howard Zahniser gave to wilderness.

We know that our Nation is growing rapidly. Our population is expanding at an unbelievable rate, while our land base—particularly our rich, usable land base—is not expanding; indeed, it is decreasing in size when measured on a per capita basis.

So let us think together about why "forests are for people." And let us think about it against the background of our growing population and shrinking land base.

Forests are for people to have. There are those among us who urge that we keep some of our public forests in a primeval state. They urge that we set it aside and let nature, in its own unique way, work its forces with a minimum interference from man. They want our forests, not as man made them, but as the Creator willed them to be.

There are others who find this concept unacceptable. They believe that it is wasteful to leave forests untouched. They believe that man can and should try to improve on what the Creator has done.

Senator CLINTON ANDERSON, of New Mexico, described eloquently for all of us what wilderness means. He called it "an anchor to windward," and he pointed out, when the

wilderness bill was before the Senate, that our ability as a people to preserve some of our forest land shouled us and the world at large that we are a strong and rich Nation, that we can afford to keep some of our forests as nature gave them to us. I believe sincerely that this is the right course.

Forests are for people to have and we must always have, not just a little, but a good supply kept forever as nature's workshop.

Howard Zahniser, as he trod the halls of Congress seeking the enactment of the wilderness bill, urged upon us in his humble and sincere way that we in our time take the steps necessary to assure that forever there will be a good supply of wilderness as nature's workshop.

Generations of Americans yet unborn will owe a debt of gratitude to Howard Zahniser. A wilderness bill will be passed, and this will be his gift to future generations—a gift which will become of ever-increasing value to mankind.

Mrs. Morse and I regret deeply the untimely passing of Howard Zahniser, and we extend our deepest sympathies to Mrs. Zahniser and to their children.

Mr. President, I yield the floor.

CIVIL RIGHTS ACT OF 1963

The Senate resumed the consideration of the bill (H.R. 7152) to enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States to provide injunctive relief against discrimination in public accommodations, to authorize the Attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes.

Mr. JOHNSTON. Mr. President, the U.S. Senate has now thrown aside all semblance of orderly procedure and has, for all intents and purposes, become a disorganized Committee of the Whole. If the proponents of civil rights legislation earlier this year had paid attention to those of us who opposed bypassing the orderly committee procedures of the Senate, we would not tonight be in the predicament in which we now find ourselves. As the distinguished senior Senator from Oregon has pointed out so many times, the committees of the Senate and the normal procedures requiring committee consideration of bills were established for very good reasons. By ignoring these procedures and by paying no attention to the reasoning of the minority of this body, the Senate has become a Committee of the Whole on civil rights legislation, thereby blocking and hamstringing almost all other activity of the Senate and holding up the business of the country.

If the bill now before us had gone to the Senate Judiciary Committee, where proponents of civil rights legislation overwhelmingly predominate, the bill probably would already have been amended and put into acceptable shape, to be considered expeditiously on the floor of the Senate.

Let us bear in mind that at that time the pending motion was to refer the bill

to the Judiciary Committee, with instructions for the Judiciary Committee to report the bill to the Senate in 2 weeks. The lawyers who make up the membership of the Judiciary Committee unquestionably would have agreed, for the most part, that trial by jury was a constitutional requirement that mandatorily should be in the bill. But instead of letting those Members with legal training settle this problem in committee, the more ardent supporters of civil rights legislation demanded that the committee be bypassed. As a result, today we are bogged down in disorderly procedure on an issue involving the most intricate constitutional and legal questions.

The Senate will continue to be crippled in this way on other amendments and other sections of the bill, and all because the orderly procedures of the Senate were bypassed in the beginning. It is not too late to save the good name of the Senate by sending the bill to the Judiciary Committee, where it should have been sent in the first place.

However, since this hardly seems likely to occur, I should like to explore some of the reasons why I feel so strongly that we should adopt the most comprehensive jury-trial provision possible, to insure all of our citizens their constitutional rights.

In short, I am opposed to any of the limiting amendments that restrict the broad proposal giving everyone the right of trial by jury. My position is very simple: I am opposed to limiting amendments on jury-trial provisions, because I am steadfastly in favor of a jury trial without limitation in all criminal cases.

I am for jury trials because the entire history of this country teaches us that the jury trial is our basic guarantee of the things that make American citizenship worth while.

The jury trial, as I have pointed out on previous occasions, actually preceded our Constitution; and I should like to take a few minutes of the time of the Senate to review the history of jury trial in State constitutions and State statutes.

The denial of the right of trial by a jury of 12 men, 12 of their peers of their own vicinity, was one of the grievances complained of in the Declaration of Independence. Almost every State constitution asserted these rights. Those provisions varied in wording and degree, but all of them guaranteed the individual these fundamental rights.

In North Carolina, the first State constitution, stated:

That, in all criminal proceedings, every man has a right to be informed of the accusation against him, and to confront the accusers and witnesses with other testimony, and shall not be compelled to give evidence against himself * * * that no freeman shall be convicted of any crime, but by the unanimous verdict of a jury of good and lawful men, in open court, as heretofore used.

An article in South Carolina's constitution states very clearly and simply:

No freeman of this State shall be taken or imprisoned, or disseized of his freehold, liberties or privileges, or outlawed, exiled, or deprived of his life, liberty, or property, but by the judgment of his peers or by the law of the land.

The Virginia bill of rights contains a specific list of rights guaranteed to accused criminals:

In all capital or criminal prosecutions a man hath a right to demand the cause and nature of his accusation, to be confronted with the accusers and witnesses, to call for evidence in his favour, and to a speedy trial by an impartial jury of 12 men of his vicinage, without whose unanimous consent he cannot be found guilty; nor can he be compelled to give evidence against himself.

The constitutions of New Jersey, Georgia, New Hampshire, Massachusetts—all provided guarantees to the criminally accused. In language as widely differing as the States themselves the words nevertheless echoed the rights set forth in the Magna Carta—that is, to give a man the right of trial by jury.

When the delegates assembled at Philadelphia in 1787 to draft a constitution for the Thirteen States, there was no general demand to incorporate such guarantees for the criminally accused in the Federal Constitution, thinking perhaps that such rights came under the jurisdiction of the several States. However, it soon became evident to the delegates that in order to preserve the rights of the States in judicial matters, a provision should be included guaranteeing the right of trial by jury. In the proposed New Jersey plan it was stipulated that:

No person shall be liable to be tried for any criminal offense, committed within any of the United States, in any other State than that wherein the offense shall be committed, nor be deprived of the privilege of trial by jury, by virtue of any law of the United States.

Charles Cotesworth Pinckney's draft suggested a trial by jury in the State where the offense was committed, and that the trial should be open and public.

Language providing for a trial by jury was finally adopted as the third clause of the second section of article III.

Mr. President, several weeks ago I spoke at length on the entire history of trial by jury as known by our Anglo-Saxon history of jurisprudence. At that time I traced trial by jury from its earliest origins down to its present-day status, including the most recent decision of the Supreme Court, United States against Barnett, with which we are all now very familiar. I pointed out that in our early days, trial by jury was one of the most cherished rights in America, and it has remained so until the present time. I further quoted from one of the dissenting Justices in this case, calling for the disposal of this judge-instituted infringement of the Constitution "root and branch." This, Mr. President, is a Justice's statement with which I can agree.

It is worth noting for the benefit of those who oppose our present struggle to guarantee the continued right of trial by jury to all those accused of violating the various insidious provisions of the civil rights bill we are asked to enact, that 17 judges acting in an appellate capacity were involved in hearing this case—8 judges in the circuit court of appeals and 9 Justices on the Supreme Court. In the circuit court of appeals the eight judges split right down the middle, four in favor of granting trial

by jury to these defendants as guaranteed by our Constitution, and four opposed because of previous actions taken by courts, perpetuating trial by jury. In other words, they were following the precedents laid down before. With the judges splitting 4 to 4 in the circuit court of appeals it was no decision at all, so the case was sent to the Supreme Court for final determination.

The Supreme Court, after hearing arguments on both sides, decided by the narrowest possible margin, that is, 5 to 4, to deny these defendants their right of trial by jury. And the five begged the question. They made the statement that they were only following a precedent and gave us to understand that they felt a little different, but that they were following decisions laid down before the decision was rendered.

Mr. President, even this 5-to-4 decision was in part vitiated by a now famous footnote pointing out that some of this five-member majority were of the opinion that if the defendants were sentenced to any punishment greater than that granted to that for petty offenses, then the whole issue would have to be redecided. The five decided the case, but they said that if it was decided as a petty offense, they would have to send the case back.

Mr. President, I have said before and I will say again, and regardless of the arguments by those who would abolish the right of trial by jury, this whole situation is simply untenable. Again, regardless of the protestations of the opponents of jury trial, the dictum included in this footnote means nothing more than that the judge must decide on his verdict, before he even hears the case, to determine whether or not the defendant shall have a trial by jury or the defendant must, in effect, be tried twice—once by the judge and once by the jury.

Mr. President, I have been a lawyer for 40 years and I can think of no parallel situation presently established in our judicial system. All I ask and all my colleagues fighting this battle with me ask, is what is already guaranteed in our Constitution—the right to a trial by jury for all criminal prosecutions. This right is guaranteed not only once in our Constitution, but in three different places, and we have pointed out and spoken at length on all three of these provisions. What the enemies of trial by jury are seeking to do in this instance, ironically in the name of guaranteeing full constitutional rights to all of our citizens regardless of race, creed, or color, is wipe out one of the essential constitutional rights enjoyed by all Americans. That is the right of trial by jury.

One of the provisions which I mentioned which was early incorporated in the Constitution was the sixth amendment. But rather than give my own interpretation of the establishment of this bedrock foundation upon which this right is based, I would like to quote at length from a book entitled "The Sixth Amendment to the Constitution," a study in constitutional development by Francis Howard Heller.

Mr. Heller did extensive research and produced a scholarly treatise dealing entirely with the sixth amendment.

I have used several quotes from Mr. Heller's book, but at this time, rather than be charged with putting my personal interpretation on various acts of the State legislatures and the Continental Congress, I quote verbatim from Mr. Heller's book:

When the Continental Congress declared "that the respective colonies are entitled to the common law, and more especially to the great and inestimable privilege of being tried by their peers of the vicinage, according to the course of that law," the common law so appealed to must be understood to include not only trial by a jury of 12 men of the vicinage but also publicity of the proceedings, and the right to witnesses and to the assistance of counsel; in short, all the recognized rights of the accused. The denial of these rights was among the grievances complained of in the Declaration of Independence. The inviolability of these rights was asserted in the constitutional documents of most of the new States, which, while differing in details and degree of emphasis, sounded a common note in including, among the fundamental rights of the individual, guarantees against arbitrary practices in criminal proceedings, safeguards to counteract the might of government when it called the individual lawbreaker before the bar of justice.

The declaration of rights of the new State of Maryland (1776), after reiterating, in language borrowed from the Continental Congress declaration of 1774, the right of its inhabitants to the common law of England and trial by jury, proclaimed "that the trial of facts where they arise, is one of the greatest securities of the lives, liberties, and estates of the people," and then enumerated the rights which every man had in criminal proceedings: to be informed of the accusation against him; to receive a copy of the indictment in time to permit him to prepare his defense; to be allowed counsel; to be confronted with the witnesses against him; to have process for his own witnesses; to examine the witnesses, for and against him, on oath; and to have "a speedy trial by an impartial jury, without whose unanimous consent he ought not to be found guilty."

In North Carolina, the first State constitution, in its declaration of rights, stated "that, in all criminal proceedings, every man has a right to be informed of the accusation against him, and to confront the accusers and witnesses with other testimony, and shall not be compelled to give evidence against himself," and "that no freeman shall be convicted of any crime, but by the unanimous verdict of a jury of good and lawful men, in open court, as heretofore used."

The New Jersey constitution of 1776 echoed the words of Pennsylvania's Charter of 1701 in its article XVII: "That all criminals shall be admitted to the same privileges of witnesses and counsel, as their prosecutors are or shall be entitled to—"

Under the provisions of the bill, the costs of the lawyers and witnesses and everything else will be paid for one side, but not for the other side—which seems a little different from what we read in the different constitutions of the various States.

Continuing to quote from Mr. Heller's book—

while in article XXII it guarantees " * * * that the inestimable right of trial by jury shall remain confirmed as a part of the law of this State, without repeal, forever."

South Carolina furnishes a telling example of the high esteem in which Magna Carta was held at the time, in a single brief article

of its constitution which obviously was intended to parallel the wording of the great charter:

"That no freeman of this State be taken or imprisoned, or disseized of his freehold, liberties or privileges, or outlawed, exiled, or deprived of his life, liberty, or property, but by the judgment of his peers or by the law of the land."

Georgia included in its constitution of 1777 two disconnected paragraphs, one of which stated the inviolability of the right to trial by jury, while the other guaranteed a trial within the county of commission.

John Jay's constitution for the State of New York (1777) assured the accused's right to counsel and affirmed that " * * * trial by jury, in all cases in which it hath heretofore been used in the colony of New York shall be established and remain inviolate forever."

Earliest in point of adoption, the Virginia bill of rights as framed by George Mason presents in one compact article (art. 8) a detailed list of rights extended to the criminally accused. "In all capital or criminal prosecutions," this article reads, "a man hath a right to demand the cause and nature of his accusation, to be confronted with the accusers and witnesses, to call for evidence in his favour, and to a speedy trial by an impartial jury of 12 men of his vicinage, without whose unanimous consent he cannot be found guilty; nor can he be compelled to give evidence against himself."

The most detailed provisions are those contained in the declaration of rights of Massachusetts (1780) and the largely identical language of the bill of rights of New Hampshire (1784). Elaborately and circumpectly phrased, these documents in essence guaranteed the accused the right to know the nature of the accusation, to decline self-incrimination, to present his own evidence, to meet the witnesses against him, and to have the assistance of counsel; and in words that hark back to Magna Carta they reaffirmed the right to trial by jury or by the law of the land. In each instance, a separate article limited criminal trials to the vicinity where the alleged offense had taken place.

The New Hampshire articles numbered almost 300 words; while South Carolina used less than 50 words to cover the same subject. This numerical difference alone is indicative of the diversity of substance to be found among the several States. As the perception and interpretation of the common law varied in the several States, as criminal procedures were more or less fair or arbitrary, so differed the sense of urgency with which the inhabitants of the different States viewed the problem of protecting the accused. Hence it is not surprising that the delegates who convened at Philadelphia in the spring of 1787 made no effort to embody details of criminal procedure in the document they were about to propose to the Nation. The original Virginia plan contained no references whatsoever to the procedure to be had in criminal cases. The new Jersey plan, however, with an eye toward the preservation of the rights of the States in judicial matters, proposed "that no person shall be liable to be tried for any criminal offense, committed within any of the United States, in any other State than that wherein the offense shall be committed, nor be deprived of the privilege of trial by jury, by virtue of any law of the United States."

A similar provision was included in Alexander Hamilton's draft; and Pinckney's outline suggested the same two guarantees, and in addition would have stipulated that trials should be open and public.

The committee on detail adopted the essence of these suggestions and embodied them in its draft constitution as section 4 of article XI, in language resembling

Pinckney's draft: "The trial of criminal offenses (except in cases of impeachment) shall be in the State where they shall be committed; and shall be by jury."

Without much debate, this section was amended in Committee of the Whole in order to "provide for trial by jury of offenses committed out of any State." It was in this amended form that the provision was sent to the committee on style, which, without further change, incorporated it in the judicial article of the final document as the third clause of the second section.

Mr. President, all the States had trial by jury cases. I well remember that when I started practicing law, there were not many cases in the criminal courts. It has grown by leaps and bounds so that today we have spread and increased the latitude of what was held to be in interstate commerce. For that reason, more cases are being tried in criminal courts. As we enact more Federal laws on certain crimes—for instance, violation of the income tax laws, since the beginning of income taxes in 1913, where up until that time there were no income taxes, today we find that income tax cases are drifting into the Federal courts instead of into the State courts, because those are criminal actions.

Almost every year more bills are enacted, which builds up more trials to be held in Federal courts from the criminal side of the court. I fear that that situation will continue to exist until what has taken place in the States will be wiped out, to a large extent.

But, when the Constitution was being written, the Founding Fathers did not think so much about the right to trial by jury, because very few cases of criminal action were being tried in Federal courts.

Think how many more we have today than during those days. What do we think the Founding Fathers would have had to say about jury trials if they had found themselves in the same position in which we find ourselves today? I believe they would have clamored more for a jury trial then, than even they did at that time, because of the larger volume of cases going into the Federal courts today.

Continuing the quotation:

The opponents of the proposed Federal Constitution not only protested the absence of a specific Bill of Rights but also claimed that those guarantees already included were inadequate in nature and scope. The jury trial clause of article III was thus subjected to severe criticism in the debates over the ratification of the Constitution. The attack on this provision used several different approaches. First, those advocating rejection of the proposed document pointed to the appellate jurisdiction of the Federal courts and predicted that it would, "in its operation, destroy the trial by jury. The verdict of an impartial jury will be reversed by judges unacquainted with the circumstances." But the most vocal objections were aimed at the lack of a narrowly drawn vicinage requirement and of an explicit provision saving the right to challenge prospective jurors. In the Virginia convention, Patrick Henry exclaimed that he would have preferred to see trial by jury left out altogether "than have it so vaguely and equivocally provided for." With the forceful eloquence for which he was so justly famed Henry declared that "this great privilege

* * * is prostrated by this paper. Juries from the vicinage being not secured, this right is in reality sacrificed. All is gone. Why do we love this trial by jury? Because it prevents the hand of oppression from cutting you off. Has not your mother country magnanimously preserved this noble privilege upward of a thousand years? And shall Americans give up that which nothing could induce the English people to relinquish? The idea is abhorrent to my mind."

Grayson, seconding Henry's attack, cited the example of Rome to show that abandonment of trial by jury would lead to servitude. "It may be laid down as a rule," he stated, "that, where the governing power possesses an unlimited control over the venue, no man's life is in safety. The idea which I call true vicinage is, that a man shall be tried by his neighbors. But the idea here is, that he may be tried in any part of the State. The conclusion * * * is that they can hang anyone they please, by having a jury to suit their purposes."

Similar language had earlier been heard in the Massachusetts convention, where Holmes had not only addressed himself to the deficiencies of the jury-trial provisions but also deplored the absence of other procedural safeguards:

"It is a maxim universally admitted, that the safety of the subject consists in having a right to a trial as free and impartial as the lot of humanity will admit of. Does the Constitution make provision for such a trial? I think not; for in a criminal process, a person shall not have a right to insist on a trial in the vicinity where the fact was committed, where a jury of the peers would, from their local situation, have an opportunity to form a judgment of the character of the person charged with the crime, and also to judge of the credibility of the witnesses. There a person must be tried by a jury of strangers; a jury who may be interested in his conviction; and he may, by reason of the distance of his residence from the place of trial, be incapable of making such a defense as he is, in justice, entitled to, and which he could avail himself of, if his trial was in the same county where the crime is said to have been committed."

Mr. President, all these things the author is speaking about we find in the bill. These trials will not be held in the county, or even in the district, which includes many counties in a great many States. The bill would break down all these things, which were brought out almost 200 years ago.

The quotation continues:

But what makes the matter still more alarming is, that the mode of criminal process is to be pointed out by Congress, and they have no constitutional check on them, except that the trial is to be by a jury; but who this jury is to be, how qualified, where to live, how appointed, or by what rules to regulate their procedure, we are ignorant as of yet.

All this fits in so well with the bill. This was the situation years ago.

Continuing:

The mode of trial is altogether indetermined; whether the criminal is to be allowed the benefit of counsel; whether he is to be allowed to meet his accuser face to face; whether he is to be allowed to confront the witnesses; and to have the advantage of cross-examination, we are not yet told. These are matters of by no means small consequence; yet we have not the smallest constitutional security that we shall be allowed the exercise of these privileges.

The author points out the situation so clearly and so plainly, especially to me,

that I thought it was absolutely necessary that I read into the RECORD what he had to say. I continue reading:

In rebuttal of these attacks the proponents of the new Constitution emphatically denied any intention of infringing or abolishing trial by jury, and John Marshall, speaking in the Virginia convention, even asserted that, by virtue of the constitutional provision, trial by jury would be more secure in the United States than in England, for "what part of their constitution is there that the Parliament cannot change?" Various replies were made to those critics who had complained of the lack of a vicinage requirement. Madison suggested that it was impractical: "Suppose a rebellion in a whole district; would it not be impossible to get a jury?" Pendleton in the Virginia convention and Gore in that of Massachusetts pointed out that the role of the jury was not, as contended, to judge character and personalities but to find a verdict on the facts presented in court; knowledge of the neighborhood was no longer essential to the performance of their functions. In all available convention reports, wherever the question of jury trial was raised, allusion was also made to the fact that "it was only by reason of the diversity of practice in the various States that a more detailed constitutional provision was not used," that "the rule could not have been drawn more narrowly without changing the rule of some of the States."

It may be doubted that the objections raised against the trial by jury clause of the original Constitution, as they are reflected in the existing records of the State conventions, would in themselves have been sufficient to bring about the addition of an amendment to the Constitution. Still these criticisms, part and parcel of the louder and wider clamor for a Bill of Rights, indicated that the public continued to demand the maintenance of a fair balance in criminal trials, and to that end the protection of the rights of the accused.

With the din of these debates still resounding, the Nation turned to the establishment of its Government, faced at the outset with the task of "impregably fortifying * * * characteristic rights of freemen (in order that) public harmony be * * * advantageously promoted." For, as was said in a leading Supreme Court opinion nearly fourscore years later, "so strong was the sense of the country of the importance (of these rights), and so jealous were the people that these rights, highly prized, might be denied them by implication, that when the original Constitution was proposed for adoption it encountered severe opposition; and, but for the belief that it would be amended so as to embrace them, it would never have been ratified."

It was difficult to secure the ratification of the Constitution of the United States. One of the difficulties was that the Founding Fathers wanted the people to be protected, and they wanted the right of trial by jury more than anything else. Promises had to be made by the leaders that certain protections would be inserted before ratification was had. Several of the States held out for a long time.

The author continues:

The preparation and introduction in the First Congress of the amendments that were to discharge this political obligation was undertaken by James Madison, who, while campaigning for Congress, had pledged himself to the support of a Bill of Rights to be added to the Constitution. Although himself not convinced of the constitutional necessity for such amendments, he was highly sensitive to their political desirability. "Amendments," he wrote to a political

friend during this election campaign, "if pursued with a proper moderation and in proper mode, will not only be safe, but may serve the double purpose of satisfying the minds of well-meaning opponents, and of providing additional guards in favor of liberty."

In the formulation of the amendments to be proposed Madison was able to utilize the results of similar efforts in the several States. From 5 of the ratifying States and North Carolina there had come a total of 103 desired changes in the Constitution. Four of the States had included provisions concerning trial by jury and rights of the accused among their proposals. Maryland had submitted a brief but flexible article:

"That there shall be a trial by jury in criminal cases, according to the course of proceeding in the State where the offense was committed; and that there by no appeal from matter of fact, or second trial after acquittal; but this procedure shall not extend to such cases as may arise in the Government of the land or naval forces."

They were trying their best at that time to take care of the right of trial by jury and to do what they could to satisfy and pacify the people. I continue to read:

In New York it had been proposed that among the rights "which cannot be abridged or violated" there should be included "that (except in the government of the land and naval forces, and of the militia when in actual service, and in cases of impeachment) a presentment or indictment by a grand jury ought to be observed as a necessary preliminary to the trial of all crimes cognizable by the judiciary of the United States, and such trial should be speedy, public, and by an impartial jury of the county where the crime was committed; and that no person can be found guilty without the unanimous consent of such jury. But in cases of crimes not committed within any county of any of the United States, and in cases of crimes committed within any county in which a general insurrection may prevail, or which may be in possession of a foreign enemy, the inquiry and trial may be in such county as the Congress shall by law direct; which county, in the two cases last mentioned, should be as near as conveniently may be to that county in which the crime may have been committed; and that in all criminal prosecutions, the accused ought to be informed of the cause and nature of his accusation, to be confronted with his accusers and the witnesses against him, to have the means of producing his witnesses, and the assistance of counsel for his defense; and should not be compelled to give evidence against himself."

The convention of Virginia had recommended the incorporation in the Constitution of the respective clause of their own bill of rights, with only two modifications, the addition of the right to counsel and a parenthetical clause exempting the land and naval forces from the operation of the section. North Carolina made the same proposal in identical language.

Madison correlated these various proposals, eliminating those most likely to meet with opposition, and on June 8, 1789, introduced his amendments in the form of nine propositions in the House of Representatives. Three of these proposals referred, in parts, to matters of criminal procedure.

By one amendment Madison proposed to expunge in its entirety the trial-by-jury clause of the original Constitution, which had met with such criticism in the Virginia and other conventions, and to replace it by a much longer and more detailed clause providing for trial by an impartial jury of the vicinage, guaranteeing the right to challenge, and affirming the requirement of a unanimous verdict for conviction "and other accustomed requisites."

By another proposition trial by jury was to be protected against impairment by any State along with freedom of speech, press, and religion.

Still another proposal was to insert a section guaranteeing procedural safeguards other than jury trial. This proposition was drafted in these words:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial; to be informed of the nature and cause of the accusation; to be confronted with his accusers and 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"—language which, with only two changes, eventually was adopted as the sixth amendment.

On July 21, 1789, Madison's proposals were referred to a committee of 11 on which each State was represented by 1 member, Madison being the member from Virginia. This committee completed its work on July 28, and on August 13, the House, in Committee of the Whole, began consideration of the proposed amendments, examining each one separately.

The proposed restriction on State action was discussed first, on August 17. Tucker, of South Carolina, was the principal speaker in opposition, while Madison defended the proposition, calling it the most valuable amendment in the whole list. If there was any reason to restrain the Government of the United States from infringing upon these essential rights, it was equally necessary that they should be secured against the State governments. Livermore, of New Hampshire, moved to rephrase the resolution so as to read:

"The equal rights of conscience, the freedom of speech and the press, and the right of trial by jury in criminal cases, shall not be infringed by any State."

And in this form it was passed by the Committee of the Whole.

On the same and the following day, the other two articles touching on criminal procedure were presented for consideration. The committee of 11 had changed the arrangement of these 2 articles by combining them into one proposition—the seventh—consisting of two clauses, to take the place of the deleted clause 3 of article III, section 2. The principal opposition to this proposition was furnished by Burke, of South Carolina; on August 17, he moved to permit an accused to put off the trial to the next session of the court, provided he made it appear to the court that the evidence of the witnesses, for whom process was granted, but not served, was material to his defense; and, on August 18, he moved to replace the word "vicinage" by "district or county within which the offense was committed"; this change, he maintained, would be in conformity with South Carolina practice. Both motions failed of passage, but a proposal by Livermore to secure to the criminal the right of being tried in the State where the offense was committed was accepted.

The House of Representatives made no further changes in these articles, and passed them, in the form agreed to by the Committee of the Whole, on August 20. On August 22, they were referred to a committee of three (Benson, Sherman, Sedgwick) appointed to arrange the amendments, presumably to conform with the House decision to add the amendments as supplements rather than to change the text of the original document. This committee reported on August 24, and the rearranged amendments—17 in number—were ordered sent to the Senate on the same day.

The Senate consideration of the amendments began on September 2, and lasted for 1 week. Unfortunately, Senator Maclay, of Pennsylvania, whose journal is the principal source of information on the proceedings

of the Senate in the First Congress, was ill during the period the amendments were debated in the Senate; and hence we are without knowledge of the Senate's action on, and individual Senators' reaction to, the proposed amendments. Available records merely reveal that when the amendments were returned to the House on September 10, they contained several changes and deletions, and were accompanied by a request for a conference of managers for the two Houses.

Madison reported this to Edmund Pendleton in a letter which identified the trial-by-jury provisions as a principal stumbling block. "The Senate," he wrote, "have sent back the plan of amendments with some alterations which strike in my opinion at the most salutary articles. In many of the States juries, even in criminal cases, are taken from the State at large; in others, from districts of considerable extent; in very few from the county alone. Hence a * * * (manuscript torn here) like to the restraint with respect to vicinage, which has produced a negative on that clause. Several others have had a similar fate. The difficulty of uniting the minds of men accustomed to think and act differently can only be conceived by those who have witnessed it."

On September 12, 1789, the House appointed as its managers for the conference Madison, Sherman, and Vining. Again, a letter from Madison to Pendleton is our sole source of information on the negotiations of the conference committee: "The Senate," reported Madison to Virginia's Chief Justice, on September 23, "are * * * inflexible in opposing a definition of the locality of juries. The vicinage they contend is either too vague or too strict a term, too vague if depending on limits to be fixed by the pleasure of the law, too strict if limited to the county. It was proposed to insert after the word juries, 'with the accustomed requisites,' leaving the definition to be construed according to the judgment of professional men. Even this could not be obtained. The truth is that in most of the States the practice is different and hence the irreconcilable difference of ideas on the subject."

The conference committee apparently failed to achieve any compromise on the particular subject, for when their report was returned to the House on September 24, the criminal procedure article was still among the points of disagreement. The House insisted on its version, and, by withdrawing its objections to all but one other of the Senate's changes, succeeded in placing its phrasing of this article into the amendments. It was in this form that the article was submitted to, and ratified by, the States.

Any attempt to trace the exact development of the finished product, to ascribe with definitive certainty the authorship of specific words, or to place the responsibility for its ultimate form and arrangement, continues to the present to be frustrated and hampered by the complete lack of information on the proceedings in the Senate. Among Madison's original propositions, three, as we have seen, were related to the subject of criminal procedure. After minor changes by the committee of 11 they were adopted by the House and sent to the Senate. The committee of three, whose task it had been to rearrange the articles as supplements rather than substitution for the original text, had made no significant changes in the wording. Of the three propositions sent to the Senate we hear no more of the original fifth ("no State shall infringe"), and it may be assumed that it was deleted by the upper Chamber.

Mr. President, it is obvious from the material contained in Mr. Heller's book that the inclusion of this right of trial by jury in three separate places in the Constitution had a vast precedence in both common law and constitutions and statutes of the various States that joined

together to form this great United States of America. I do not believe anyone could possibly review the almost unanimous agreement of our forefathers on the right of trial by jury, the all-encompassing statutes and constitutions of the various States guaranteeing this right to jury trial, and could conclude that it was anything less than one of the most precious rights guaranteed in the Constitution.

Mr. President, as evidenced by the arguments against the very inclusion of the constitutional guarantee of jury trial, the argument against the right that in some cases juries might not render a just verdict, is as old as this right itself. It is important to note that in the very time this right was being included at three separate places in our Constitution, the opponents of the right of trial by jury, although fortunately for all of us very small in number, were pointing out the same arguments that the opponents of jury trial are using today—that is, that in a certain given instance a certain specific jury might not render a just verdict.

Mr. President, as evidenced by the history of this whole concept this is no argument at all, but merely an effort to eliminate one of our great constitutional guarantees. We are not perfect as human beings. We never shall be. Neither will we find all jurors to be perfect. But I for one think that it is the best way to settle matters, especially when it comes to convicting someone of a criminal act.

As shown by the information I have already reviewed and information I shall subsequently give, there have always been those people who did not believe in our concept of freedom, our constitutional liberties and our system of trial by jury. In almost every instance in the past these people have been defeated in their efforts to eliminate jury trial in the United States.

In more recent days in the great upheaval that swept this country when the labor unions were seeking to use their freedom of speech and freedom of press, they were hampered unmercifully through judicial injunctions handed down by Federal judges. The judges had, of course, at a much earlier date managed to establish the concept that contempt of court was to be tried by the judge himself, in his own discretion and at his own pleasure. The vagueness of the contempt process, the very thin line between civil contempt and criminal contempt, and the ability of the judge to make his own order and then interpret it as he saw fit, placed a fantastic burden on our labor people who were in truth seeking fair play and justice, but in many cases were denied it by the courts, so long as the judges exercised the powers of injunction that they were enforcing at that time.

Subsequently, of course, specific legislation was passed giving these people the right of trial by jury, except, of course, in those particular instances of contempt occurring before the court or in such close proximity of the court to impair the judicial process itself.

At the time these people were given the right of trial by jury, there were, as to-

day, people opposed to this concept who used every imaginable argument, pertinent or not, to defeat the trial-by-jury provisions.

Mr. President, in my opinion, there should be no necessity for statutes requiring trial by jury since, as I have above pointed out, the Constitution itself guarantees in three separate places the right of trial by jury in all criminal cases or prosecutions. But because of this judge-instituted infringement of our Constitution, which I am happy to note that the Supreme Court of the United States has recently limited, and will, I firmly believe, throw out entirely in my lifetime, we must face again and again the question of legislating in specific bills the right of trial by jury.

If the courts were to do their duty and decide the cases according to the Constitution, we should not need any new legislation on this subject. I firmly believe that the Constitution guarantees that right—as the Supreme Court, in a divided opinion, 5 to 4, said. In the circuit court, it was 4 to 4. So one can readily see that even judges on the Supreme Court think that way. In that case, even the Chief Justice, who is such a civil righter, decided with the four in writing the decision. So, we have some hopes that in the future the courts will get back in line and give us our constitutional right.

Mr. President, one of the few things I can say about my life, in court as a lawyer, as a Governor, and as a Senator, is that I am not afraid of a jury. Our forefathers were wise enough to place the very life, liberty and property of all the citizens of America under attack by the Government or fellow citizens in the hands of a jury of their peers and not in the hands of a single judge.

There are many honest judges. Taken as a whole, they are a very fine judiciary. But they are individuals; and when we consider our judges as individuals, we find that they have different ways of looking at things. They have different ways of making decisions. And when they once make a decision, it becomes binding in the future. It is not like the verdict of a jury. If a jury makes a mistake, the verdict does not have to be followed in future cases. But it is customary when a court—the Supreme Court, in particular—renders a decision, to follow that precedent in the future.

That is well illustrated by the fact that for about 100 years, the Supreme Court of the United States, almost all the way down through that 100 years, followed a unanimous decision which stated that the schools could be segregated, but that they must be equal, in the case of the whites, the Negroes, or the Indians—whatever race happened to be involved. They all had to be treated alike so far as facilities were concerned. The Court followed that decision for 100 years. In 1954, that decision was set aside, and the Court ruled that there must be integration. Were the judges all wrong for 100 years? We have it.

Today, in modern America, a man can be tried for his life, and who decides whether he is to die? A jury. Today, in

modern America, a man can be tried for a crime, the punishment of which would be life imprisonment, or, for that matter, 150 years in prison, which would far surpass the life expectancy. I have heard of them getting that long a sentence. And who decides whether he breathes the free air of an innocent man or the prison air of a convicted person? A jury. Or, in another case, a man could be sued for all of his worldly possessions and no matter what amount of fortune he had been able to accrue in his lifetime, who could award to his adversary the earnings of a lifetime? The jury.

Our forefathers were wise enough to see and foresighted enough to understand that these things were the essence of life—that no one man, regardless of his competence, his fairness, regardless of his wisdom, could possibly, in case after case, after case, render a perfect judgment satisfying all parties and all wrongs without the assistance of an unbiased jury, drawn from the peers of the person on trial so that he could be judged—not from the lofty pinnacle of the judge's bench, but by his peers—men who operated under the same instructions, rules, and liabilities as the man on trial—and thus was in a far better position to judge his actions than the judge himself.

In the Federal courts the Federal judge has a right, when he charges the jury, to charge the jury on the facts. In my State no judge has a right to go into the facts at all. If he does so, and a good lawyer is representing the defendant, he will be able to get the defendant a new trial if he is convicted. Of course, if he is not convicted, he goes free anyway. But if the judge even makes reference to the testimony, the defendant can get a new trial. It shows how much we depend on jury trials in my State. I think it is a good thing. I wish the Federal judges did not have the right to charge on the facts.

Mr. President, it is beyond my comprehension to understand why, when the juries are entrusted with the decision of the life and liberty of our citizens, why the opponents of these jury trial provisions maintain a jury is constitutionally unable to decide a simple matter of fact whether or not a man has obeyed a court order. As an alternative to the jury trial provisions, the opponents propose a patently absurd solution. They suggest that the judge should first hear a charge, decide the case, issue an injunction, and subsequently, if he felt the defendant did not obey the injunction, bring him back and try him for the violation of the first order the judge himself had written.

One sees very soon that the judge is the legislator, the jury, and the jurist. He does it all with one sweep of the pen. I think it is a little too much power for any man to have. That is the reason why I am pleading tonight for trial by jury in cases under the bill. It would be a simple matter to provide. The way the bill is written, the Attorney General would not have to try a man in the county in which he lived. He would not have to try a man in the State. He would not even have to try a man 50 miles from where he lived. But he could bring him

into court perhaps 100 miles away from home and say to him, "You have violated my order. I am going to put you in jail for 45 days and fine you \$300."

I think that is taking away rights that an individual should have.

Then if the Attorney General does not find a judge in a district court with whom he is satisfied, he can call in a three-judge court and have the defendant tried 300, 400, or 500 miles away. The court can then issue an order. Then the defendant can be called back into court 300, 400, or 500 miles away and be sentenced for a violation of a law the judge had made.

There is nothing like that today. It is a new kind of law which is being proposed.

I love the laboring people. I have lived my life trying to help the laboring people of my State and Nation. But I am warning the laboring people that if this bill were enacted, and the Supreme Court should uphold it, as surely as I am standing here tonight it would take away from the laboring people of the Nation the law that is on the statute books today which gives them a right of trial by jury and a right to be tried in the county where they live. That is why I am talking about having a trial in the vicinity where a man lives. That is the reason why I read what I did into the RECORD. I am warning the people what is coming next. This is only the beginning. I hate to think what will happen next.

Any man—judge, philosopher, scholar, or Senator—could issue an order, a writ or a list of instructions and present them to another man and have them at times misunderstood. A judge might very well conceive of one thought or one order and write out another, at least to the understanding of the layman. The man hailed into court for the contempt of such an order, along with everyone else in the community, has misunderstood what the judge intended to say.

Remember, when the judge issues orders, it is not against one man. It is against anybody who violates the order. It is not confined to one man. It is a sweeping order. It brings them all under it. Do not tell me that is going to prove to be successful in the future.

Under the provisions proposed by the opponents of jury trial, however, the luckless defendant would never have a chance of defending himself against the whim of the judge involved.

I dislike to think this would happen, but I can imagine that in many cases the judge would be pretty close to the Attorney General. He would go into court, file the suit, get an order, and go back and convict the defendant. In some instances the Attorney General might talk to the judge before he had the accused brought in, and the defendant would not be present.

Then how could there be a fair trial? But if one is tried before a jury, he has the right to have a lawyer, to bring in witnesses and to prove his case. Such would not be so under the bill now pending before the Senate. I believe that I should speak up and let these things be heard.

Again, we are not talking here about the power of the judge to maintain the

dignity of his court, or the enforcement of the orders of his court, but about things that occur outside the court. If this legislation is enacted, covering the vast segments of American life as it does, there could not help but be numerous misunderstandings, numerous violations of both legislation and forthcoming judicial decisions under this legislation.

To deprive our citizens of the right of trial by jury while they are trying as diligently as possible to comply with monstrous legislation such as this, would be unfair, unjudicial, and un-American.

Mr. President, I am aware that jury trials are sometimes difficult and certainly more expensive than having a man tried by a single judge. In fact, shortly I shall discuss some of the things in Mr. Heller's book regarding difficulties caused by some of the interpretations of the sixth amendment provisions for jury trial. But the historical solution to the problem of letting the judge act as judge, jury, and executioner is not the answer. Neither Latin American nor European civil law systems use any device of the nature or proportion of our contempt power. Those who would do away with jury trial in contempt cases, of course, argue that our system is superior in this respect. I think not. In this instance, as in all instances, I think a man accused of a crime should have a jury of his peers, and our Constitution so states. Those who scoff at the Latin American and European civil law legal system disregard the fact that these systems manage to keep away anarchy on the one hand and totalitarianism on the other. I do not think our democracy is so imperfect, our citizens so well behaved, or our judicial system so fragile that we must deny the basic rights guaranteed under the Constitution to our citizens in order to protect a judge's legal authority. I submit that a trial by jury in these cases would work as nicely as in all other cases since this country has been founded. Certainly some of the decisions of juries have been unjust and certainly some imperfect and some innocent citizens have been convicted and some guilty citizens acquitted. But in the vast majority of the cases and for the overwhelming number of citizens, the jury system has proved adequate to protect our system of justice, our laws, and our citizens. The people opposed to granting a trial by jury in these contempt cases constantly cite historical precedence and the very close but binding decisions of the Supreme Court denying the right of trial by jury in certain instances. As I stated before, I fully expect within my lifetime to see the courts themselves, if the Congress fails to act, regrant this constitutional guarantee of trial by jury to all citizens in criminal cases.

But I am impatient for our people to have this right now. As far as the historical foundation for this judge-instituted practice, I believe it has been manifestly overstated. Rarely have I seen any data or arguments set forth to support this assertion, but rather opponents of the jury trial assert the contempt power rests on a solid historical foundation. I think this assertion is open to question and I am certainly not alone in this thought. For instance, in the book,

"The Contempt Power," by Donald Goldfarb, published in 1963 by the Columbia University Press, the author makes the following statement:

Aside from contemporary, mid-20th-century conflicts, can the contempt power be traced to a proper historical foundation? Or was the comment, made some time ago by one student of the problem, correct that this criminal, arbitrary power is less unassailable than unquestioned historically, though it is "foreign to the whole spirit of Anglo-American jurisprudence"?

Mr. President, that assertion is one that I gladly endorse that this arbitrary power is less unassailable than unquestioned historically and it is "foreign to the whole spirit of Anglo-American jurisprudence."

I yield to no man in my respect for the Federal judiciary in this country. As a member of the Committee on the Judiciary and chairman of the Subcommittee on Judiciary Improvements, I have worked for years and have done everything in my power to improve the Federal judicial system.

I think we have a Federal judiciary unsurpassed by any other in the world; nevertheless, I would not be in favor of turning over trials in criminal cases to a judge alone without the constitutional protection of a trial by jury. Every type of semantic differentiation is made in an effort to make these cases and criminal prosecutions different from other cases protected by our Constitution. None of the arguments I have seen or heard can hold water in trying to deny the right of trial by jury to these defendants. As I said earlier, I realize the difficulties involved in a trial by jury, the added expense, the additional time required, the necessity for a unanimous verdict, but I would not give up the constitutional right of a trial by jury for such reasons or a thousand others like them.

From the beginning of the country there have been problems involved with trials by jury, but our forefathers never questioned the wisdom of providing these more difficult trials as a means of protecting our citizens. In my opinion, trial by jury is one of the bulwarks in the American freedoms and I, for one, dislike to see this right diminished in any respect.

We have constantly had before our courts this nebulous theory of the right of a judge to try certain cases without a jury, the most recent only several weeks ago, where it is necessary to go all the way to the Supreme Court of the land to determine whether the defendant has the right of a trial by jury.

If the constitutional right of trial by jury were reinstated as it was intended by our forefathers when they wrote it three times in our Constitution, then every lawyer in the land and most of the laymen could tell a defendant whether he had a right to a trial by jury or not. I am in favor of removing all of the gobbledgeop attempting to differentiate certain cases under certain circumstances, between the right of trial by jury and the arbitrary power of a judge to put a man in prison for a certain time or an indefinite time.

As I previously stated, trial by jury has not been an easy question, and to

illustrate some of the problems that were involved and were faced by the earlier countries I would like to again quote from Mr. Heller's book on the sixth amendment, especially from the chapter entitled "Trial by Jury," which begins on page 60. As Mr. Heller states:

TRIAL BY JURY

By the terms of the sixth amendment the defendant in a criminal trial is assured the right to a speedy and public trial by an impartial jury. What interpretation has been placed upon these words by the courts, and what do they import today?

What constitutes a speedy trial is necessarily a relative matter. Indeed, one court has said that speed in trying accused persons is not of itself a primal and separate consideration. Justice, both to the accused and to the public, is the prime consideration. Thus the right to a speedy trial may not be asserted merely in order to forestall the ends of public justice. With this characterization the Supreme Court condemned, for instance, the efforts of a defendant who faced several criminal charges to obtain a speedy trial for one offense in an attempt to avoid prosecution for the others.

Nor may a defendant claim denial of this right unless he himself has asked for a trial during the period of delay. A defendant cannot acquiesce in the postponement of his trial, and then when the case is called, move that it be dismissed because he had not been given a speedy trial. The courts will assume that a speedy trial would have been granted had it been asked for, and the burden is on the complaining defendant to show that he had not acquiesced in the delay.

The defendant's duty to ask for a speedy trial before he may allege denial of this right is not lifted or lessened because he may be confined in prison. A person confined in a penal institution or jail is not immune from, nor is he denied access to, the judicial process, and hence the fact of imprisonment does not by itself raise a presumption that a speedy trial had been denied or that a defendant could not have asked for one had he so desired.

The relatively few cases on the right to a speedy trial are thus in agreement that this procedural element continues to be a privilege rather than a right, something that must be asked for, and which furthermore remains subordinate to the broader aims of public justice.

Although the Federal court decisions on the right to a "public" trial are even fewer in number, they do not present the same kind of unanimity. It is, of course, plain that a public trial does not mean one which takes place "under the eyes of the movie camera," and equally clear that it precludes a trial held in complete secrecy, but to what extent a trial court may exercise its discretion in limiting the audience and spectators is a question upon which the cases have differed.

In 1912 the Circuit Court of Appeals for the Ninth Circuit declared that the preservation of order in the courtroom or the protection of public morals justified the exclusion of some or all of the spectators from a trial unless it was shown that the defendant was prejudiced thereby, or deprived of the presence, aid, or counsel, of any person whose presence might have been of advantage to him. Thus, by this rule, a burden of proof analogous to that established with respect to speedy trials was imposed upon the defendant.

This position was not accepted by another circuit court of appeals when it was presented with the same question. This court observed that, by its very expression, a public trial implied that the public should be at liberty to attend. A status of relationship to the parties or of membership in a group or class, such as the press, could not be made an essential prerequisite to a person's

attendance. For, indeed, a prospective spectator might be without any interest whatsoever in the cause being tried, and be desirous only of observing the administration of justice in action. Disorderly spectators could always be ejected, but a defendant should not be required to show that the exclusion of the public had operated to his disadvantage. "A violation of the constitutional right necessarily applies prejudice and more than that need not appear."

The cases were capable of distinction on the basis of their facts; the latter one dealt with a train robbery, whereas the former cases involved statutory rape. However, their conflict as to the nature of the constitutional guarantee could not be rationalized on the grounds of factual differences. The doctrine of the Reagan case, which viewed a public trial as a privilege the abridgment of which could not be claimed without a showing of actual injury, was declared to be the "better" doctrine by some commentators. Nevertheless, by a decision of the same tribunal which originally enunciated the rule, it has today apparently been disavowed, except possibly in application to a strictly identical set of facts.

This, the most recent decision with respect to public trial in Federal courts, was *Tanksley v. United States*, a rape case in which the trial judge, in reliance on the Reagan case, had excluded the public. The court of appeals, however, decided to treat as a dictum that portion of the opinion of *Reagan v. United States* which would place the burden on the defendant to show that denial of publicity had been prejudicial, and accepted the contrary view that the fact of a violation of the constitutional right carried a necessary implication of prejudice. "One of the main purposes of the admission of the public," the court declared, "is the reasonable possibility that persons unknown to the parties or their counsel, but having knowledge of the facts may be drawn to the trial," and presumably by their presence aid in the better dispensation of justice.

Thus in spite of the propinquity of the two requirements of speed and of publicity in the text of the sixth amendment their judicial construction has given them altogether unequal status. The right to a speedy trial must have been claimed before denial may be asserted. On the other hand, with the possible exception of statutory rape cases, publicity must now be granted, and denial of public trial will, without anything more, result in voidance of the proceedings. One commentator has suggested that neither speed nor publicity today represents an advantage to the accused, that, indeed, most defendants would prefer a private and long-delayed trial, and that this explains the small number of cases in which these guarantees have been invoked. This comment was made, however, before the *Tanksley* case was decided and, while it is probably borne out by extralegal observations, would not appear to answer the obvious question of why these companion requirements should have received such divergent construction. This may perhaps be made more intelligible if the *Tanksley* case is considered in conjunction with the series of decisions in which the Supreme Court has extended its supervision over judicial proceedings through the due process clause. Read in that context, speed, once thought so vital when transportation beyond the seas threatened the accused in the American colonies and defendants were rarely permitted the assistance of proper legal advisers, is, indeed, not a primary consideration. Publicity, on the other hand, acquires increased significance in an era in which judicial and public attention increasingly focuses on the fairness of court procedures and equality in the dispensation of justice.

The sixth amendment entitles one accused of crime to be tried "by an impartial jury." The meaning of the phrase "trial by

jury" within the context of the amendment was set out most clearly by Mr. Justice Sutherland, deciding *Patton v. United States*:

"That it means a trial by jury as understood and applied at common law, and includes all the essential elements as they were recognized in this country and in England when the Constitution was adopted, is not open to question. Those elements were—(1) that the jury should consist of 12 men, neither more nor less; (2) that the trial should be in the presence and under the superintendence of a judge having power to instruct them [the jurors] as to the law and advise them in respect to facts; and (3) that the verdict should be unanimous."

So I contend we would be doing wrong if we took away the right of trial by jury.

TRANSACTION OF ADDITIONAL ROUTINE BUSINESS

By unanimous consent, the following additional routine business was transacted:

ADDITIONAL BILLS INTRODUCED

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

By Mr. MORSE:

S. 2836. A bill for the relief of certain individuals; to the Committee on the Judiciary. (See the remarks of Mr. Morse when he introduced the above bill, which appear under a separate heading.)

By Mr. MORSE (for himself and Mrs. NEUBERGER):

S. 2837. A bill authorizing construction of a navigation project at Port Orford, Oreg.; to the Committee on Public Works.

RECESS UNTIL 10 A.M. THURSDAY

Mr. COOPER. Mr. President, I move that the Senate take a recess, in accordance with the previous order, until 10 o'clock tomorrow morning.

The motion was agreed to; and (at 10 o'clock and 53 minutes p.m.) the Senate took a recess, under the previous order, until tomorrow, Thursday, May 14, 1964, at 10 o'clock a.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate May 13 (legislative day of March 30), 1964:

U.S. COAST AND GEODETIC SURVEY

Subject to qualifications provided by law, the following for permanent appointment to the grade indicated in the Coast and Geodetic Survey:

To be lieutenant (junior grade)

George M. Cole, Jr.

U.S. COAST GUARD

The following-named person to be a permanent commissioned officer in the Regular Coast Guard in the grade indicated:

To be lieutenant

Alexander E. Tanos

The following-named person to be a permanent commissioned officer in the Regular Coast Guard in the grade indicated:

To be lieutenant (junior grade)

George J. Thompson

The following-named officers to be permanent commissioned officers in the Regular Coast Guard in the grade indicated:

To be lieutenants

Max H. Casper
Lloyd D. Wilson

The following-named officers to be permanent commissioned officers in the Regular Coast Guard in the grade indicated:

To be lieutenants (junior grade)

Robert W. Davis
Richard F. Young
Paul Resnick

Arthur C. Foster
Fred M. Lane
Timothy J. Howard

The following-named persons to be permanent commissioned officers in the Regular Coast Guard in the grade indicated:

To be ensigns

Richard Lee Anderson
Robert Leo Armacost
David Neil Arnold
George Allen Bachtell
Jerry Craig Bacon
Kenneth Wilson Bates
Robert Bates
Richard Jay Beaver
William Donald Bishton
Leo John Black, Jr.
Walter Francis Bodner, Jr.
Harry Edward Choate Budd, Jr.
Richard Victor Butchka
Donald Glenn Campbell
Harold Joseph Capell
James Conrad Card
David Elmer Clements
Raymond Edwin Cunningham, Jr.
Robert Thomas Dailey
Ronald Judge Davies
Stephen Henry Davis
Robert Ray Dudley
Stephen Ray Edmondson
Douglas Bright Engel
Dennis Michael Fairbrother
James Warren Featherer, Jr.
Burton Fredrick Folce, Jr.
William Walter Furrer
Thomas Henry Galligan
Gilbert Thatcher George
John Alfred Gloria
Fred Harry Halvorsen
Robert Earl Hammond II
Robert Lee Hanna, Jr.
John Richard Harrald
Richard Walter Hawkins
Robert James Heid
Peter Joseph Helstand
Morris Deen Helton
Richard Dennis Herr
Andrew Ford Hobson
Larry Richard Hyde
Richard Stephen Jarombek
Timothy Virgil Johnson
F. Michael Kien
James William Kunkle
William Richard Ladd
James Matthias Landt
Philip Roland Laut
Martin Lars Lindahl
Arnold Herman Litteken, Jr.
Frank Robert Long
James Milton Loy
Anthony James Lutkus
Richard Edward MacDonald
William George MacDonald
Joseph Michael Maska
Paul Andre Martin
Steven Cecil Martin
Thomas Joseph McCarthy
John Harold McGowan
Edward Vincent McGuire
Michael Joseph Meehan
Earl Joseph Melers, Jr.
Berne Carre Miller
Martin Conner Miller
James Alfred Monahan
Larry Allan Murdock
Charles Whitacre Murray
John Norman Naegle
Paul Wallace Needham, Jr.
Gary Charles Nelson

Thomas Nunes
Lewis Wentworth Parker
Gordon Grant Piche
Terrance Ross Pietenpol
Stephen Philip Plusch
Donald Francis Potter
Paul Terry Potter
David Leon Priddy
Richard Bernard Ralph
Harold Gaynor Reed
Walter Charles Reissig
William Ellis Remley
Grant Winston Risinger
Frank Elliott Rockwell
Alan Dale Rosebrook
Gary Russell
Thomas Rutter
Norman Thomas Saunders
William Munter Senske, Jr.
James Robert Sherrard
Michael Bruce Stenger
Robert Lynn Sundin
Jerry James Surbey
Kenneth Wells Thompson
William Heppburn Thompson
Peter King Valade
Ronald Arthur Walrod
Richard Carson Waterman
George Ernest Watts
Joseph James Wehmeyer
Thomas Alfred Welch
William Everett Wheelock
William Robert Wilkins
Ralph Carl Yetka
David Zawadzki
Kurt Gutsav Zimmerman

The following-named persons to the grade indicated in the U.S. Coast Guard:

To be chief warrant officers, W-4

Walter R. Goldhammer	Alva W. Henderson
Donald A. Nystrom	Herbert H. Oakes
Leroy F. Lander	Christopher D. Elling
Seymour Alexander	Frederick D. Dubrucq
Harold D. Gallery	Kenneth T. Outten
Philip J. Crawley	Robert S. Gaddy
Frederick M. Rummel	James D. Walters
Sidney Cruthirds	Burford A. Norris
Bernard Hogan	Wendell C. Leatherman
Rudolph T. Lenac	Philip L. Regan
Arnold J. Anderson	Millard W. Foster
Hubert Craven	Carl A. Simon
Joseph A. Del Torto	Raymond C. Buday
Leo C. Horner	Richard R. Spencer
Lewis H. Keeton	Boyd M. Smith
Robert N. Filand, Jr.	Frank E. Smith
Curtis J. Olds	Albert Solberg
Robert L. Roberts	Raymond J. White
John W. Babcock	John H. Forbing
Walter H. Becker	Burton B. Watkins
Wilbur T. Hutchinson	Herman J. Lentz
William E. Bentler	John C. Horton
Charles M. McHenry	William O. Caverly
Robert J. Krueger	William T. Dickinson
Warren E. Riley	Henry T. Hutchins
Peter J. Monk	Harold A. C. Duchene
Santiago P. Quinones, Jr.	Joseph W. Ellis
George C. Werth	Earl R. Gard
Thomas O. Cameron, Jr.	Norman W. Zelck
John C. Carney	Donald H. Bangs
Edmond S. Cinq Mars	Starr C. Burgess
Glen C. Furst	Carl F. Michael
William Maki	Frank B. Wright
	Wendell M. Cahill
	Michael O'Connell

The following-named persons to the grade indicated in the U.S. Coast Guard:

To be chief warrant officers, W-3

Edgar S. Hutchinson	William H. Dotson
David A. Corey	Kenneth G. Allen
John B. Thwing, Jr.	Axel J. Hagstrom
Kenneth E. White	David L. Abbott
Richard A. Schnase	John H. Hancock, Jr.
Richard G. Nelson	Francis M. Coonrod, Jr.
Franklin E. Thrall	Donald L. Alsup
Edward L. Bailey	Robert J. Ross
Charles W. Mason	John B. Friel
John F. Curry	Cyril D. Maxwell
Peter D. Corson	Julian W. Howell
William R. Lipham	

John F. Sutton	Paul C. Carman	Baker W. Herbert	Clifford H. Brunner	The following-named persons to the grade indicated in the U.S. Coast Guard:
Galen B. Nielsen	John W. Forster	Paul H. Johannes	Willard S. Foust	To be chief warrant officers, W-2
Norvon B. Freeland	Myron E. Chesley	George M. Bruner	Gustav R. Froehlich, Jr.	Alfred G. Howe
Dale R. Foster	John A. Ritter	Herman Schmidt	Richard B. Robinson	Robert W. Talley
Walter Hamilton	Michael H. Bower	Norman F. Meunch	Edward W. Kinsey	Cyrus E. Potts
Billy C. Read	Alfred L. Hunt	Lee R. Green	John E. Williams	Donald E. Grant
Emerson E. Chambers	Alvadore C. Grant	Jesse H. Burgess	Clarence E. Curry	Ted R. Cox, Jr.
Thomas L. Wedgewood	Elliott J. Echols	Lester M. H. Roehr	Harold Rapp, Jr.	Charles E. Fulcher
William T. White	James L. Reynolds	Raymond J. Moen	Robert L. Hood	Alfred E. Schreiber
Kenneth O. Robertson	Joseph J. Glynn	Kenneth C. Oliver	James N. Neville	Edward J. Flynn
James G. Wilcox, Jr.	Ernest B. Roark	George A. Menge	Stanley P. Sleda	William C. McKinley
Robert J. Descoteaux	Edward F. Mattingly	Leo O. Madden, Jr.	John H. Kittila, Jr.	Owen M. Halstad
William W. Thurmond	Fay K. Thompson	Hubert A. Anderson	Magnes L. Campbell	Hugh L. Franklin
Roland D. Moriarty	Edward L. Wyman	Edward A. Liles	"C" "D" Cofield	Donald Burmeister
John J. Smith, Jr.	Fred Pilatsky	Reckner B. Moe	Robert J. Whitman	Thomas J. Hummel
Neal G. Nelson	Keith R. Bruhl	Marion O. Simmons	Joseph A. Spori, Jr.	Norman E. Haynie
John P. Sanken, Jr.	John W. McKinn	Charles W. Price	Vincent G. Carlson	Orrin E. Starr
Robert Casper	Maurice K. Nelson	Calvin W. Pratt	Harold E. Whitwer	George P. Fredriksen
Arthur W. Lee	Hershel A. Drury	John E. Dunn	Gordon W. Leamons	James C. Myers
Harold U. Wilson, Jr.	Donn W. Repper	Robert H. McGinnis, Jr.	Harvey W. Willson	John P. Higman, Jr.
Earle K. Hand	Robert J. W. Collins	Thomas E. Bockman	Victor Loher	Herbert E. Roche
John J. Janda, Jr.	Marion K. Reynolds	Phillip E. Thompson	William A. Izzo	Charles C. Stephenson
John W. Colton	Carl B. Kaiser	Arnold M. DeShaw	Ralph C. Howland	John S. Drodz
Gordon H. Dickman	Jeroy P. Phelps	Joe D. Wright, Jr.	Glenn R. Cox	John E. Cutright
Albert L. Olson, Jr.	Orval K. Haisey	Curtis W. Chamberlain	Clyde F. Skiles	William S. O'Neill
Carl L. Lane	Zigmund F. Golaszewski	Robert E. Callmer	John R. Quinlivan	Ian D. Maxwell
James H. Scott	Donald C. Ebert	James P. McBride	William J. Merritt	Jack W. Beatty
Donald L. Sherman	Milton M. Midgette	Thomas H. Renfroe	Richard M. Van Gee	Clarence A. Hall
George P. Asche	John Sabath	Herbert L. Shuey	Ralph E. Baumann	Thomas A. Fillmore
Paul L. Lamb	Karl C. Teater	John W. Hammack	William L. Taylor	William E. McLaughlin
James W. Brawley, Jr.	Theodore L. Turgeon	Lavern G. Ketcherside	Paul R. Saylor	William D. Franklin
William Senn	James C. Bond	Wilfred J. Sellers	Laurin J. Wiersema	Paul E. Morin
Milton J. Stewart	Johnnie P. Gilbert	Edwin L. Brusstar, Jr.	Edwin L. Brusstar, Jr.	John Gunsaullas
Johnnie Cox	Leon D. Shea	Ivey N. McClure	Ivey N. McClure	Eugene A. Emert
George F. Garry	William L. Patterson	Joseph A. Kalczyński	Joseph A. Kalczyński	John W. Wyant III
Harold E. Geck	Lyle G. Tilden	Francis J. Taddei	Francis J. Taddei	Travis B. Hiers
Robert E. Larose	Joseph W. Dunhour	Homer T. Austin, Jr.	Homer T. Austin, Jr.	Ralph W. Gentry
John J. Clayton	Donald S. Grisham	Delaney J. Elliott	Delaney J. Elliott	William B. Johnson
Robert E. Nielsen	Wilbur J. Davis	John H. Lee	John H. Lee	John A. Bateman, Jr.
Frederick H. Muesse	Louis E. K. Pall	Marvin L. Olson	Marvin L. Olson	Robert C. Knowlton
William H. Thorrington	Robert R. Harber, Jr.	Robert W. Oviatt	Robert W. Oviatt	Lewis C. Moch, Jr.
Patrick M. Shellito	Walter A. Evans	Elizabeth F. Splaine	Elizabeth F. Splaine	Ronald A. Sands
Donald B. Fish	William M. Price, Jr.	Harold F. McPherson	Harold F. McPherson	Henry E. Prentiss
Keith R. McClinton	Charles T. Buckner	Chester R. Brooks	Chester R. Brooks	Chester E. Duffey
William H. Westin	Robert L. Sellers	Robert H. Piper	Robert H. Piper	Paul S. Johnson
Clarence A. Long	Charles E. Shook	Earl F. Hauser	Earl F. Hauser	Hebert J. Nuse
John E. Kenny	Frederick Jones	Sam Haas, Jr.	Sam Haas, Jr.	Maurice A. Rowe
Richard K. Mitchell	James R. Comerford	Herbert M. Collins	Herbert M. Collins	Alfred E. Janz, Jr.
James V. Elgo	Edward H. Askew, Jr.	Melvin W. Ellis, Jr.	Melvin W. Ellis, Jr.	Gary M. Vaughn
Raymond G. Herrington	Edward H. Askew, Jr.	Herbert V. Parkin III	Herbert V. Parkin III	William D. Jackson
Harold I. Baker	Don E. McDonald	Herbert W. Bagg	Herbert W. Bagg	Sherman M. Weeks
	Frank H. Buzzee, Jr.	Valentine Galda	Valentine Galda	
	John C. Lippincott			
	Norvel E. Cosby			

EXTENSIONS OF REMARKS

The First New \$75 Savings Bond Bearing the Portrait of Our Late Beloved President Was Purchased by President Lyndon B. Johnson, While the Second and Third Bonds Went to Caroline and John, Respectively, the Next 20 Went to the Kennedy Family, and President Truman Purchased the Next Five

EXTENSION OF REMARKS

OF

HON. JAMES H. MORRISON

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 13, 1964

Mr. MORRISON. Mr. Speaker, May 1, 1964, marked not only the opening of the 1964 Operation Security drive for the U.S. savings bonds, but also the offering by the Treasury Department of a new \$75 denomination savings bond bearing the

portrait of our late and beloved President John F. Kennedy.

It seems to me altogether fitting and proper that U.S. savings bonds—the path that has led so many of our people to financial security and well-being—should honor our martyred President.

Perhaps no man in modern American history so captured the fancy of these same people since the first series E bond was sold 23 years ago today.

Savings bonds have enabled American working men and women to earmark a dollar here and a dollar there into a payroll savings plan until suddenly they found themselves in a position of relative financial security. This is attested to by the millions and millions of Americans who today own and hold more than \$47 billion in savings bonds—an investment backlog that not only protects these individuals and their families, but strengthens our communities and our country.

This new \$75 savings bond could justly be considered a memorial to that great young man who walked with us, battled

for us, and led this great Nation of ours with brilliant leadership. It is a fitting tribute to his belief in America and the fact that through savings bonds so many of our people have been enabled to actually own a share in America.

Israel's Independence Day

EXTENSION OF REMARKS

OF

HON. THOMAS M. PELLY

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 13, 1964

Mr. PELLY. Mr. Speaker, although celebrated in April due to a difference in calendars—it was actually on May 14, 1948—the hopes of millions of exiled Jews around the world were realized when Israel's independence was declared and the ancient Palestine homeland was