[*Introduced and referred May 11, 1964*]

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

By Mr. ASPINALL (by request):

H.R. 11203. A bill to authorize the Secretary of the Interior to employ aliens in a scientific or technical capacity; to the Committee on Interior and Insular Affairs.

By Mr. DORN:

H.R. 11204. A bill to grant the consent of Congress for the construction of a dam across Savannah River between South Carolina and Georgia; to the Committee on Public Works.

By Mr. FARBSTEIN:

H.R. 11205. A bill to amend the U.S. Housing Act of 1937 to remove the existing 15-percent limit on the amount of assistance which may be provided thereunder for low-rent public housing in any one State; to the Committee on Banking and Currency.

By Mr. FRASER:

H.R. 11206. A bill to provide a uniform period for daylight saving time; to the Committee on Interstate and Foreign Commerce.

By Mr. HALPERN:

H.R. 11207. A bill to increase annuities payable to certain annuitants from the civil service retirement and disability fund; to the Committee on Post Office and Civil Service.

By Mr. MORRISON:

H.R. 11208. 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. RYAN of New York:

H.R. 11209. A bill to provide for the establishment of a National Council on the Arts and a National Arts Foundation to assist in the growth and development of the arts in the United States; to the Committee on Education and Labor.

By Mr. ST. ONGE:

H.R. 11210. A bill to amend title 38 of the United States Code to provide that in determining income of a veteran for pension purposes certain amounts paid by him in connection with the last illness or death of his wife or child shall not be included; to the Committee on Veterans' Affairs.

By Mr. TEAGUE of California:

H.R. 11211. A bill to amend section 3 of the Travel Expense Act of 1949, as amended, to provide authority for the payment of per diem for certain travel of employees of the Department of the Navy; to the Committee on Government Operations.

By Mr. UTT:

H. Res. 716. Resolution creating a select committee to conduct an investigation and study of the illegal handling of U.S. surplus food in South Vietnam and the United Nation's report on religious persecution in Saigon; to the Committee on Rules.

H. Res. 717. Resolution to provide funds for the expenses of the investigation and study authorized by House Resolution 716; to the Committee on House Administration.

MEMORIALS

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

By the SPEAKER: Memorial of the Legislature of the State of California, memorializing the President and the Congress of the United States relative to levee maintenance; to the Committee on Public Works.

Also, memorial of the Legislature of the State of Massachusetts, memorializing the President and 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; to the Committee on Armed Services.

Also, memorial of the Legislature of the State of Mississippi, memorializing the President and the Congress of the United States, requesting the proposal of amendments to the Constitution of the United States whereby the U.S. Government will refrain from engaging in private enterprise except as provided by the Constitution and repealing the 16th amendment to the Constitution of the United States whereby Congress shall not have the power to levy taxes on personal incomes, estates and/or gifts; to the Committee on the Judiciary.

PRIVATE BILLS AND RESOLUTIONS

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

By Mr. BROWN of California:

H.R. 11212. A bill for the relief of Peter Pastor Edo; to the Committee on the Judiciary.

By Mr. COLLIER:

H.R. 11213. A bill for the relief of Jose Bolamos; to the Committee on the Judiciary.

By Mrs. KELLY:

H.R. 11214. A bill for the relief of Mrs. Myrtle Weir Prince; to the Committee on the Judiciary.

By Mr. MICHEL:

H.R. 11215. A bill for the relief of Sydney Cecil Phillips; to the Committee on the Judiciary.

By Mr. ROBISON:

H.R. 11216. A bill for the relief of Ralph S. DeSocio, Jr.; to the Committee on the Judiciary.

PETITIONS, ETC.

Under clause 1 of rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

887. By the SPEAKER: Petition of Emil L. Knesnik, president, Yonkers Chamber of Commerce, Yonkers, N.Y., relative to the board of directors of the Yonkers Chamber of Commerce urging and requesting the Congress of the United States and appropriate committees of it, to deny the request to increase the percentage of the sugar market allocated to the beet sugar industry; to the Committee on Agriculture.

888. Also, petition of Joseph F. McChristal, city clerk, Revere, Mass., relative to requesting that the President and the Secretary of Defense review the decision to close the Charlestown Navy Yard; to the Committee on Armed Services.

889. Also, petition of Joseph F. McChristal, city clerk, Revere, Mass., requesting that the Secretary of Defense and the President review their decision to close the Watertown Arsenal so that the technical skills of the people employed at the arsenal will not be wasted and that the economy of the Greater Boston area be preserved; to the Committee on Armed Services.

SENATE

MONDAY, MAY 11, 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:

Father of our life, Fountain of our being: In the light of Thy countenance, our pathway is illumined with eternal splendor.

Without that light we walk in the darkness of a meaningless existence which at last is blown out like a candle's flame. Without Thee as guide our boasted progress but leads to the quagmires of oblivion. Without Thee our science but whets the sword to a sharper edge and would destroy us with our own wheels and wings. Without Thee commerce cannot save us for selfish trade but lifts the hunger of covetousness to a higher pitch. Without Thee even education cannot redeem us for we know now that the mere sharpening of the intellect, the massing and mastery of facts and figures may but fit men to be tenfold more skillful in the awful art of slaughter.

And so, we pray that our deliberations here may be begun, continued, and ended in Thee, as Thou dost shatter our delusions, shine through our blindness, and shame our foolish pride.

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

THE JOURNAL

On request by Mr. MANSFIELD, and by unanimous consent, the reading of the Journal of the proceedings of Friday, May 8, 1964, was dispensed with.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Hackney, one of its reading clerks, informed the Senate that, pursuant to the provisions of section 8002 of the Internal Revenue Code of 1954, Mr. MILLS, chairman, Committee on Ways and Means, designated Mr. BOGGS of the Committee on Ways and Means as a member of the Joint Committee on Internal Revenue Taxation to fill the vacancy created by the death of Mr. O'Brien, of Illinois.

ORDER FOR TRANSACTION OF ROUTINE BUSINESS

Mr. MANSFIELD. Mr. President, I ask that at the conclusion of the quorum call, there be the usual morning hour, under the usual circumstances.

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

LIMITATION OF STATEMENTS DURING MORNING HOUR

Mr. MANSFIELD. Mr. President, I ask unanimous consent that during the morning hour, statements therein be limited to 3 minutes.

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

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

ORDER FOR RECESS TO TUESDAY AT 10 A.M.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 10 o'clock a.m., tomorrow.

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

CALL OF THE ROLL

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

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

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

[No. 209 Leg.]

Aiken	Holland	Mundt
Allott	Humphrey	Muskie
Anderson	Inouye	Nelson
Bayh	Jackson	Neuberger
Beall	Johnston	Pastore
Bennett	Jordan, Idaho	Pearson
Boggs	Keating	Prouty
Burdick	Kennedy	Proxmire
Carlson	Lausche	Randolph
Case	Long, Mo.	Ribicoff
Clark	Magnuson	Robertson
Cooper	Mansfield	Russell
Curtis	McCarthy	Saltonstall
Dodd	McClellan	Smith
Dominick	McGee	Sparkman
Douglas	McGovern	Stennis
Ellender	McIntyre	Talmadge
Fong	McNamara	Walters
Gruening	Metcalf	Williams, Del.
Hart	Miller	Yarborough
Hartke	Monroney	Young, N. Dak.
Hickenlooper	Morton	Young, Ohio
Hill	Moss	

Mr. HUMPHREY. I announce that the Senator from Alaska [Mr. BARTLETT], the Senator from Virginia [Mr. BYRD], the Senator from Nevada [Mr. CANNON], the Senator from Idaho [Mr. CHURCH], the Senator from Arkansas [Mr. FULBRIGHT], the Senator from Arizona [Mr. HAYDEN], the Senator from Louisiana [Mr. LONG], and the Senator from Oregon [Mr. MORSE] are absent on official business.

I also announce that the Senator from Nevada [Mr. BIBLE], the Senator from Maryland [Mr. BREWSTER], the Senator from West Virginia [Mr. BYRD], the Senator from Mississippi [Mr. EASTLAND], the Senator from Oklahoma [Mr. EDMONDSON], the Senator from North Carolina [Mr. ERVIN], the Senator from Tennessee [Mr. GORE], the Senator from North Carolina [Mr. JORDAN], the Senator from Florida [Mr. SMATHERS], the Senator from Missouri [Mr. SYMINGTON], the Senator from South Carolina [Mr. THURMOND], and the Senator from New Jersey [Mr. WILLIAMS] are necessarily absent.

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

I further announce that the Senator from Rhode Island [Mr. PELL] is absent to attend a funeral in the State.

Mr. KEATING. I announce that the Senator from New Hampshire [Mr. COTTON], the Senator from Illinois [Mr. DIRKSEN], the Senator from Arizona [Mr. GOLDWATER], the Senator from New York [Mr. JAVITS], the Senator from California [Mr. KUCHEL], and the Senator from Wyoming [Mr. SIMPSON] are necessarily absent.

The Senator from Nebraska [Mr. HRUSKA] and the Senator from Pennsylvania [Mr. SCOTT] are absent on official business.

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

The ACTING PRESIDENT pro tempore. A quorum is present.

Morning business is in order.

EXECUTIVE COMMUNICATIONS, ETC.

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

RECOGNITION OF 50 YEARS OF COOPERATIVE EXTENSION SERVICE WORK

A letter from the Secretary of Agriculture, transmitting a draft of proposed legislation to provide for recognition of 50 years of cooperative extension service work with the people of the United States (with an accompanying paper); to the Committee on Agriculture and Forestry.

REPORT ON REAL AND PERSONAL PROPERTY RECEIVED BY OR DISPOSED OF TO CERTAIN PUBLIC HEALTH AND EDUCATIONAL INSTITUTIONS

A letter from the Secretary of Health, Education, and Welfare, transmitting, pursuant to law, a report on real and personal property received by or disposed of to certain public health and educational institutions, for the quarter ended March 31, 1964 (with an accompanying report); to the Committee on Government Operations.

REPORT ON LOSS OF REVENUE RESULTING FROM INADEQUATE RENTAL RATES FOR GARAGES USED BY FIELD STATION EMPLOYEES

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report on loss of revenue resulting from inadequate rental rates for garages used by field station employees, Veterans' Administration, dated May 1964 (with an accompanying report); to the Committee on Government Operations.

REPORT ON INADEQUATE RENTAL RATES FOR GOVERNMENT-OWNED HOUSING AT THE BROOKHAVEN NATIONAL LABORATORY, ATOMIC ENERGY COMMISSION

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report on inadequate rental rates for Government-owned housing at the Brookhaven National Laboratory, Atomic Energy Commission, dated May 1964 (with an accompanying report); to the Committee on Government Operations.

AUTHORITY TO EMPLOY ALIENS IN A SCIENTIFIC OR TECHNICAL CAPACITY

A letter from the Assistant Secretary of the Interior, transmitting a draft of proposed legislation to authorize the Secretary of the Interior to employ aliens in a scientific or technical capacity (with an accompanying paper); to the Committee on Interior and Insular Affairs.

PETITIONS AND MEMORIALS

Petitions, etc., were laid before the Senate, or presented, and referred as indicated:

By the ACTING PRESIDENT pro tempore:

A concurrent resolution of the Legislature of the State of Mississippi; to the Committee on the Judiciary:

"HOUSE CONCURRENT RESOLUTION 16 OF THE STATE OF MISSISSIPPI

"Concurrent resolution requesting the Congress of the United States to propose to the people amendments to the Constitution of the United States whereby the U.S. Government will refrain from engaging in private enterprise except as provided by the Constitution and repealing the 16th amendment to the Constitution of the United States whereby Congress shall not have the power to levy taxes on personal incomes, estate and/or gifts

"Be it resolved by the House of Representatives of the State of Mississippi, the Senate concurring therein, That we respectfully request the Congress of the United States to propose to the people an amendment as provided by article V of the Constitution an article providing as follows:

" 'ARTICLE —

" 'Section 1. The Government of the United States shall not engage in any business, professional, commercial, financial or industrial enterprise except as specified in the Constitution.

" 'SEC. 2. The constitution or laws of any State, or the laws of the United States shall not be subject to the terms of any foreign or domestic agreement which would abrogate this amendment.

" 'SEC. 3. The activities of the U.S. Government which violate the intent and purposes of this amendment shall, within a period of 3 years from the date of ratification of this amendment, be liquidated and the properties and facilities affected shall be sold.

" 'SEC. 4. Three years after the ratification of this amendment, the 16th amendment to the Constitution of the United States shall stand repealed and thereafter Congress shall not levy taxes on personal incomes, estates, and/or gifts.'

"Be it further resolved, That a certified copy of this resolution be forwarded by the secretary of state to the President of the U.S. Senate, the Speaker of the House of Representatives, and to each Member of Congress from the State of Mississippi.

"Adopted by the house of representatives, March 25, 1964.

"WALTER SILLERS,
"Speaker of the House of Representatives.

"Adopted by the senate, April 28, 1964.

"CLARENCE GARTH,
"President of the Senate."

The petition of Terutake Oyadomari, chairman, Nishihara-Son Municipal Assembly, island of Okinawa, praying for a reversion of the government of that island to the mother state; to the Committee on Foreign Relations.

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

Mr. SALTONSTALL. Mr. President, on behalf of myself, and my colleague, the junior Senator from Massachusetts [Mr. KENNEDY], I present a resolution adopted by the Senate of the State of

Massachusetts, relating to the closing of the Watertown Arsenal. I ask that the resolution be appropriately referred.

There being no objection, the resolution was referred to the Committee on Armed Services, and, under the rule, ordered to be printed in the RECORD, as follows:

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

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

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

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

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

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

Senate, adopted, April 29, 1964.

THOMAS A. CHADWICK,
Clerk.

Attest:

KEVIN H. WHITE,
Secretary of the Commonwealth.

BILLS AND JOINT RESOLUTION INTRODUCED

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

By Mr. MANSFIELD (for himself and Mr. METCALF):

S. 2821. A bill to amend section 8 of the Soil Conservation and Domestic Allotment Act, as amended; to the Committee on Agriculture and Forestry.

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

By Mr. HUMPHREY:

S. 2822. A bill for the relief of Khachik H. Tatian; to the Committee on the Judiciary.

By Mr. McCLELLAN (by request):

S. 2823. A bill to amend section 408 of title 37, United States Code, to provide for reimbursement for the expenses of parking fees incurred by a member of a uniformed service in connection with transportation necessary for conducting official business of the United States; to the Committee on Government Operations.

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

By Mr. KEATING:

S. 2824. A bill to amend the Internal Revenue Code of 1954 to exempt schoolbuses from the manufacturers excise tax; to the Committee on Finance.

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

S. 2825. A bill for the relief of Radomir Bojovic; to the Committee on the Judiciary.

By Mr. THURMOND:

S. 2826. A bill to grant the consent of Congress for the construction of a dam across Savannah River between South Carolina and Georgia; to the Committee on Public Works.

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

By Mr. KENNEDY:

S. 2827. A bill for the relief of Lillian Sheehan; and

S. 2828. A bill for the relief of Samuel L. McCoy; to the Committee on the Judiciary.

By Mr. NELSON:

S.J. Res. 176. Joint resolution to direct the Secretary of Commerce to make an investigation and study with respect to motor vehicle tire safety and to recommend certain standards for such tires; to the Committee on Commerce.

(See the remarks of Mr. NELSON when he introduced the above joint resolution, which appear under a separate heading.)

RESOLUTIONS

PRESENTATION OF DESK OF SENATOR JOHN F. KENNEDY TO THE JOHN FITZGERALD KENNEDY LIBRARY

Mr. McNAMARA (for himself and Mr. HART) submitted a resolution (S. Res. 326) to give the Senate desk occupied by Senator John F. Kennedy to the John Fitzgerald Kennedy Library, which was referred to the Committee on Rules and Administration.

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

FAVORING THE MOST EFFECTIVE EQUIPMENT FOR AMERICAN SERVICEMEN WHEREVER FIGHTING

Mr. TOWER submitted a resolution (S. Res. 327) favoring the most effective equipment, weapons and aircraft for American servicemen wherever fighting, which was referred to the Committee on Armed Services.

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

AGRICULTURAL CONSERVATION PROGRAM

Mr. MANSFIELD. Mr. President, the agricultural conservation program is one example of a good program illustrating what can be done when people at the grassroots combine their efforts to conserve and improve our vital natural resources. I know of, and am proud of, the great work farmers in Montana have done through the agricultural conservation program to preserve our farm and rangeland.

The agricultural conservation program is an investment in the public interest to help insure the wise use and preservation of our basic, natural soil and water resources even as we use them. Each year through the agricultural conservation program, over a million farmers throughout the Nation voluntarily join with their Government to carry out soil, water, woodland, and wildlife conservation practices. Agricultural conservation program is the one great national program through which the public is able to share in soil and water conservation accomplishments. Through this program, the results of our research in the conservation field and the technical advice of many agencies, Federal and State, are actually placed in effect on the land. Much of this success is due to the contributions of the locally elected agricultural stabilization and conservation farmer committees who administer the program and the other public agencies that cooperate so wholeheartedly.

In Montana, farmers and ranchers received over $93,800,000 through the agricultural conservation program from 1936 through 1963 to establish permanent cover for soil protection, to improve cover on rangeland, to conserve and use wisely the scarce water, and to provide protection to land from wind and water erosion. It is important to remember that for each dollar contributed by the public, the Montana farmer, on whose farm the work was done, put up a matching dollar, or more. Thus, for every dollar invested, the public got a $2 return in the form of guaranteed land care and assurance of plentiful food in the future.

Under other provisions of law, it is necessary for at least 75 percent of the farm allotment for wheat to be seeded at least 1 year out of 3 to avoid losing part or all of the farm allotment. Similar provisions apply to other basic commodities.

This forces some operators to plant a crop when they would prefer to seed the ground to grass and stop or greatly reduce grain production. They cannot afford to forego the allotment entirely because it has value in the event the unit must be sold.

By amending the basic authority for this program, we can offer the small operators interested in both grain and a livestock operation a chance to advance conservation farming on their units. They may do so pursuant to the authority granted here, without losing the value of the grain allotment on the unit in the event the operating unit may change hands in the future.

This amendment will not cost taxpayers a red cent. It will aid conservation and it will reduce grain production somewhere it can be used. At the present time, land in soil bank and Great Plains program is regarded as planted for purposes.

A letter of recommendation recently received from the Montana Agricultural Stabilization and Conservation State Committee has prompted my distinguished colleague, Senator LEE METCALF, and I to have prepared for introduction legislation which would provide the necessary changes in the law to protect the preservation of a farmer's wheat history. The Montana Committee, Viola Herak, chairman, James Wood and Lloyd Barnard, have done an exceedingly fine job of administering the agricultural stabilization and conservation service program at the State level. The proposal submitted by the committee is another of their constructive efforts to help the farmers of the Treasure State.

Mr. President, on behalf of Senator METCALF and myself, we have sent to the desk a bill containing these recommendations. In view of the widespread interest in the matter of protecting wheat acreage, I ask that the bill lay on the table for additional cosponsors for 1 week.

The provisions of this legislation could affect some 8 million acres of cropland now on participating farms in Montana.

In conclusion, Mr. President, I ask unanimous consent to have the text of this bill and the letter of endorsement, dated April 28, 1964, from the Montana Agricultural Stabilization and Conservation State Committee printed at the conclusion of my remarks.

The PRESIDING OFFICER (Mr. RIBICOFF in the chair). The bill will be received and appropriately referred; and, without objection, the bill and letter will be printed in the RECORD, and the bill will lie on the desk, as requested by the Senator from Montana.

The bill (S. 2821) to amend section 8 of the Soil Conservation and Domestic Allotment Act, as amended, introduced by Mr. MANSFIELD (for himself and Mr. METCALF), was received, read twice by its title, referred to the Committee on Agriculture and Forestry, 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 Soil Conservation and Domestic Allotment Act, as amended, is further amended by adding at the end of section 8 thereof the following new subsection:

"(h) Notwithstanding any other provision of law, the acreage of cropland, crop acreage, and allotment history applicable to land devoted to authorized uses under programs carried out pursuant to this section may be preserved for the period for which the program is in effect with respect to such land, and for an equal period thereafter as long as the use of the land achieved under the program is maintained, for the purpose of any Federal program under which such history is used as a basis for any allotment, or other limitation on the production of such crop, unless the history and allotment are surrendered."

The attached amendment adding paragraph (h) to section 8 of the Soil Conservation and Domestic Allotment Act provides authority for the preservation of cropland, crop acreage and allotment history in respect to land which is devoted to conservation use under programs carried out under section 8 which includes the agricultural conservation program. Observation indicates that some landholders continue to crop acreage for the purpose of maintaining cropland status and allotment history even though such land has been shifted to conservation use under the various programs provided by section 8. Some producers have indicated their desire to maintain this land in soil conservation uses provided their allotment history and crop history could be preserved for a reasonable time. The adoption of this amendment would permit the Secretary to authorize the preservation of this history whenever he determined it was desirable to do so.

The letter presented by Mr. MANSFIELD is as follows:

U.S. DEPARTMENT OF AGRICULTURE,
AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE, MONTANA STATE OFFICE,
Bozeman, Mont., April 28, 1964.

Hon. MIKE MANSFIELD,
Senate Building,
Washington, D.C.

DEAR SENATOR MANSFIELD: For the past several years the State committee and our State office, both during and before our tenure of office, have received many recommendations and suggestions for a change in the current legislative provisions for the preservation of wheat history. Section 377 of the Agricultural Adjustment Act of 1938 as amended, now requires that an acreage equal to 75 percent or more of the farm acreage allotment be actually planted to wheat or considered devoted to wheat under a diversion program at least once every 3 years to avoid the loss of wheat history credit.

The legislative provision requiring the use of 75 percent of the allotment once every 3 years became effective with the 1959 crop of wheat. We have had numerous recommendations for changes from county ASC committees and from individuals since that time.

It has been suggested frequently that one of the lowest cost ways of getting acreage diverted from the production of wheat would be to guarantee a producer that his allotment will be retained for the farm without the necessity of planting wheat. In many instances farmers will participate in diversion programs but the extent to which they may participate does not enable them to meet the history requirement without also planting some wheat.

We would also like to point out that one of our most needed and used soil and water conserving practices under the agricultural conservation program is the seeding of grasses and legumes for soil protection or as needed land use adjustment measure. However, farmers and ranchers who do this in cooperation with the agricultural conservation program are required to leave the seeding for a minimum of 5 years or else refund in their ACP cost share. If they seed down a considerable acreage this may result in their not having enough land available under normal rotation to meet their summer fallow and wheat needs to protect their history.

We know that you also understand that in some dryland areas where moisture is variable, as much as 3 years may be required to get a stand of grass and legumes established. Thus, if a producer has planted land down to permanent cover, it may be necessary for him to plow it up before the stand is fully established in order to use the land to protect his wheat acreage.

Wheat farmers recognize the value of farm allotment and are reluctant to lose it even though they might desire to change to another type of agriculture. This tends to limit changes in types of farming.

In view of these and similar cogent reasons we recommend that section 377 of the Agricultural Adjustment Act of 1938 be amended to provide that where a farmer diverts acreage of wheat from production and plants permanent grasses or legumes on the area, he be given history credit so he is not forced to plow up permanent cover to protect his wheat history.

Sincerely yours,
J. VIOLA HERAK, *Chairman,*
JAMES WOOD, Jr., *Member,*
LLOYD BARNARD, *Member,*
Montana ASC State Committee.

REIMBURSEMENT FOR EXPENSES OF PARKING FEES BY MEMBERS OF ARMED SERVICES

Mr. McCLELLAN. Mr. President, by request, I introduce, for appropriate reference, a bill to amend section 408 of title 37 of the United States Code, to provide for reimbursement for the expenses of parking fees incurred by a member of the armed services in connection with transportation necessary for conducting official business of the United States.

This bill is being introduced at the request of the Under Secretary of the Navy. The Navy Department has informed the committee that the Bureau of the Budget has approved this proposal as being in accord with the administration's program.

The proposed legislation would authorize reimbursement of parking fees and charges required to be paid by uniformed personnel of Army, Navy, Air Force, and other service personnel in the same manner as such charges are paid by civilian employees of the Government.

Mr. President, I request unanimous consent that the letter addressed to the President pro tempore of the Senate, dated March 31, 1964, be printed in the RECORD at this point as part of my remarks.

The PRESIDING OFFICER. The bill will be received and appropriately referred; and, without objection, the letter will be printed in the RECORD.

The bill (S. 2823) to amend section 408 of title 37, United States Code, to provide for reimbursement for the expenses of parking fees incurred by a member of a uniformed service in connection with transportation necessary for conducting official business of the United States, introduced by Mr. McCLELLAN, by request, was received, read twice by its title, and referred to the Committee on Government Operations.

The letter presented by Mr. McCLELLAN is as follows:

DEPARTMENT OF THE NAVY,
OFFICE OF THE SECRETARY,
Washington, D.C., March 31, 1964.

Hon. CARL HAYDEN,
President pro tempore, U.S. Senate,
Washington, D.C.

MY DEAR MR. PRESIDENT: There is enclosed a draft of legislation "to amend section 408 of title 37, United States Code, to provide for reimbursement for the expenses of parking fees incurred by a member of a uniformed service in connection with transportation necessary for conducting official business of the United States."

This proposal is a part of the Department of Defense legislative program for the 88th Congress. The Bureau of the Budget has advised that, from the standpoint of the administration's program, there is no objection to the submission of this proposal for the consideration of the Congress. The Department of the Navy has been designated as the representative of the Department of Defense for this legislation. It is recom-

mended that this proposal be enacted by the Congress.

PURPOSE OF THE LEGISLATION

The purpose of this proposed legislation is to equalize treatment of members of the uniformed services and civilian employees with respect to payment of parking fees incurred while conducting official business.

Section 4 of the Travel Expense Act of 1949, as amended (5 U.S.C. 837), provides that civilian officers and employees of the Federal Government when engaged in official business within or outside their designated post of duty may be allowed reimbursement for the actual cost of parking fees. There is no authority, however, to reimburse a member of a uniformed service for parking fees incurred while conducting official business in the areas surrounding his station. This results in disparity of treatment between civilian employees and uniformed service members who incur parking fees on official business. The proposed legislation would amend section 408 of title 37, United States Code, to authorize reimbursement for expenses of parking fees incurred by members of the uniformed services under such circumstances. Enactment of this proposal is recommended.

COST AND BUDGET DATA

Estimated additional costs to the Department of Defense for this proposal are as follows:

Army	$98,000
Navy and Marine Corps	105,000
Air Force	300,000
Total	503,000

Sincerely yours,

PAUL B. FAY, Jr.,
Acting Secretary of the Navy.

EXEMPTION OF SCHOOLBUSES FROM MANUFACTURERS' EXCISE TAX

Mr. KEATING. Mr. President, I introduce, for appropriate reference, a bill to exempt schoolbuses from the manufacturers' excise tax on motor vehicles.

The motor vehicle excise tax, which so far as it applies to schoolbuses brings in a negligible amount of Federal revenue, results in unfair discrimination against private enterprise schoolbus operators who serve school systems under contract or similar arrangement.

The reason is that buses sold to private operators are subject to the tax, while buses sold to school districts or other governmental bodies are not. The tax, therefore, creates unfair competitive conditions which operate gradually to eliminate private initiative from the field of school transportation in this country.

The private operators are, by and large, small businesses. They are a source of employment opportunity for thousands of drivers, as well as self-employment for the operator. They perform vital public services. We in Congress should take steps to insure their survival.

Exemption of schoolbuses from this particular excise tax, at little revenue cost to the Federal Government, would go far toward promoting this end, and I am hopeful it will receive approval.

Mr. President, I ask unanimous consent to have the text of this proposed legislation printed at the end of my remarks.

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. 2824) to amend the Internal Revenue Code of 1954 to exempt schoolbuses from the manufacturers excise tax, introduced by Mr. KEATING, was received, read twice by its title, referred to the Committee on Finance, and ordered to be printed in the RECORD, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 4063 of the Internal Bureau Code of 1954 (relating to exemptions from the manufacturers excise tax on motor vehicles) is amended by adding at the end thereof the following subsection:

"(c) SCHOOLBUSES.—

"(1) EXEMPTION.—The tax imposed under section 4061(a)(1) shall not apply in the case of an automobile bus chassis or automobile bus body sold by the manufacturer, producer, or importer exclusively for use as the chassis or body of a schoolbus. The right to exemption under this subsection shall be evidenced in such manner as the Secretary or his delegate may prescribe by regulations.

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

"(A) SCHOOLBUS.—The term 'schoolbus' means an automobile bus which is used (by the institution or institutions involved, or by any other person under a contractual or other arrangement with one or more such institutions) for the transportation to and from school of students of an educational institution or institutions.

"(B) EDUCATIONAL INSTITUTION.—The term 'educational institution' means an educational institution which (1) is a nonprofit educational organization (as defined in section 4221(d)(5)), or (2) is an agency or instrumentality of any government or any political subdivision thereof or is owned or operated by a government or any political subdivision thereof or by any agency or instrumentality of one or more governments or political subdivisions."

SEC. 2. The amendment made by the first section of this Act shall apply only with respect to articles sold (by the manufacturer, producer, or importer thereof) on or after the date of the enactment of this Act.

GRANTING THE CONSENT OF CONGRESS FOR THE CONSTRUCTION OF A DAM ACROSS THE SAVANNAH RIVER BETWEEN SOUTH CAROLINA AND GEORGIA

Mr. THURMOND. Mr. President, I introduce a bill to grant the consent of Congress for the construction of a dam by the Duke Power Co. across the Savannah River between South Carolina and Georgia. This bill is similar to S. 1795 of the 87th Congress, and I ask unanimous consent that it be printed in the RECORD at this point and appropriately referred.

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. 2826) to grant the consent of Congress for the construction of a dam across Savannah River between South Carolina and Georgia, introduced by Mr. THURMOND, 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 consent of Congress is hereby granted to Duke Power Company, its successors and assigns, to construct, maintain, and operate a dam across Savannah River between Anderson County, South Carolina, and Elbert County, Georgia, near Middleton Shoals, and about two hundred ninety-seven miles above the mouth of said river, for the purpose of providing a pool for condenser water for a steam-electric plant: *Provided,* That work shall not be commenced until the plans therefor have been submitted to and approved by the Chief of Engineers, United States Army, and by the Secretary of the Army, and when such plans have been approved by the Chief of Engineers and by the Secretary of the Army, it shall not be lawful to deviate from such plans either before or after completion of said dam unless the modification of such plans has previously been submitted to and approved by the Chief of Engineers and the Secretary of the Army: *Provided further,* That this Act shall not be construed to authorize the use of such dam to develop waterpower or generate hydroelectric energy: *And provided further,* That the grantee, or its successors, shall hold and save the United States free from all claims arising from damage which may be sustained by the dam herein authorized, or damage sustained by the appurtenances of the said dam, by reason of the future construction and operation by the United States of Hartwell Reservoir or any other Federal project upstream or downstream from the dam herein authorized.

SEC. 2. In order to make feasible the dam and steam-electric generating plant which Duke Power Company intends to construct, it is hereby expressly provided that, should such dam and plant be constructed, no existing or future unit at Hartwell Reservoir will be operated to pump water from below Hartwell Dam back to Hartwell Reservoir.

SEC. 3. The authority granted by this Act shall cease and be deemed null and void unless the actual construction of the dam hereby authorized is commenced within four years and completed within seven years from the date of approval of this Act.

SEC. 4. The right to alter, amend, or repeal this Act is hereby expressly reserved.

SETTING TIRE STANDARDS TO SAVE LIVES ON THE HIGHWAY

Mr. NELSON. Mr. President, I introduce for appropriate reference a joint resolution to direct the Secretary of Commerce to make an investigation and study with respect to motor vehicle tire safety and to recommend certain standards for such tires.

Mr. President, each year thousands of Americans die or are permanently injured on our Nation's highways. Each year, countless American families suffer the tragic loss of a daughter, a son, a husband, or a wife. Each Fourth of July, each Thanksgiving, and each New Year's Eve, the National Safety Council undertakes the desolate task of morbidly predicting the number of Americans who will die in traffic accidents during the holiday.

To all of us, the steady increase in traffic accident deaths and injuries is a cause of grave concern. Traffic accidents claimed an average of 112 lives per day

in 1962. During that same year, 1,500,000 persons were injured in traffic accidents. This is approximately 120 persons injured per day. Last year 43,400 persons died in motor vehicle accidents.

The National Safety Council reports that for the first 2 months of 1964 there was a 22-percent increase in fatal motor vehicle accidents over the first 2 months of 1963. These national traffic accident statistics, however cold and inhuman they may be, underline the alarming loss of life and property caused by motor vehicle accidents.

But the senseless tragedy for increasing automobile accidents is better illustrated by the number of young men who have given 2 or 3 years to the service of their country in the Armed Forces only to die during their service in foolish highway crashes.

The Department of Defense reports that 1,394 servicemen from all branches of the Armed Forces lost their lives in private automobile accidents in 1962. One hundred and fifty-six men died in Government vehicles. Overall, servicemen in private cars were involved in 11,606 automobile accidents in 1962.

The human tragedy of these accidents is overwhelming. But we cannot overlook their high cost to the Federal Government. The Defense Department lost 385,666 man-days because of accidents in 1962. Furthermore, the Department calculates that the overall average cost to the Government in 1962, calculating the costs of disability payments and widows pensions, of each automobile accident in 1962 was $5,456.

Fortunately, each branch of the armed services has excellent traffic safety programs designed to reduce the terrible loss of life and property caused by motor vehicle accidents. Rigid on-post automobile inspection requirements, and driver training courses attempt to instill safe driving habits.

But the story of the Armed Forces is minimal compared to the national story. Automobile and traffic safety has become a major national concern. Throughout the country, driver training courses in high schools, safe highway engineering studies, and strict traffic safety law enforcement efforts attest to the great concern, and the greater national loss, that occurs each year because of motor vehicle accidents.

In the past week I have been gathering material about the problems of automobile and traffic safety. We all know that traffic accidents have many causes. Some are preventable. Others, only the driver can prevent. Speeding, drunkenness, and driver fatigue are primary causes of accidents. But poorly constructed highways, bad weather and visibility, defective steering mechanisms, or worn brakes can also turn safety into tragedy for the most expert drivers.

But there is another major killer on our Nations' highways. Defective tires are a major cause of motor vehicle accidents. A recent New York Times editorial said that "traffic safety experts contend that high quality tires could do more to cut road mishaps than making teetotalers of all drivers."

Writing in Traffic Safety magazine, Maj. Singleton Sheaffer, then in charge of the Pennsylvania Turnpike State Police Patrol, called worn or defective tires "killers of the highways."

Police are trained investigators—

He wrote—

but too often this killer [tires] slips through the net of blame, masquerading under the names "too fast for conditions" or "lost control on curve" or "hazardous highway conditions." We need to strip off these disguises and identify the killer once and for all.

Turnpike and throughway studies of emergency road service calls show that about 20 percent are because of tire trouble; 5.1 percent of the 3,638 accidents on the New York Thruway in 1962 were caused by blowouts or skids. Indiana Turnpike officials say that poor tires rank second as a cause of highway accidents.

We know that bald, worn, overloaded, or shoddily made tires cause accidents. But, the unfortunate fact is, we do not know exactly what standards of safety and performance could be applied to tires to reduce these accidents.

We know that safe tires can save our lives, but we have no standards for judging how safe and durable a tire is.

Today, there are no standards of safety, quality, and performance for motor vehicle tires in the United States. There is no way that a person shopping for tires can tell whether the super deluxe tire he buys from one manufacturer is as good as the super deluxe tire sold by another manufacturer. A car owner may find that the tire he bought for $9.98 at the neighborhood hardware store will last longer than the premium brand he considered buying for $30, $40, or $60. This lack of standards or guidelines is even more disconcerting when a tire buyer considers recapped or retreaded tires.

On the 15th of January of this year, Senator HUBERT HUMPHREY's distinguished Subcommittee on Retailing, Distribution, and Marketing Practices issued a report on the automotive tire industry, recommending the introduction of a system of quality rating in the tire industry. I quote from this report:

The currently used complex methods of naming different brands or lines of tires is misleading and confusing to the public. The FTC tire advertising guides proscribes misleading terminology in advertisements, yet it does not provide for an objective standard of quality rating to be applied tc tires. Such a standard is needed as the average buyer it not equipped to rate the quality of tires. A system whereby tires are rated according to Government standards of safety, endurance, general quality, and construction such as is done in the meat industry would let the consumer know exactly what he is buying. Your subcommittee recommends that a system of quality rating would be in the interest of safe transportation and should be enacted.

Further investigations have proved this point.

Several years ago Motor Vehicle Research of New Hampshire, an independent testing organization, issued a report based on tests of 25 brands of tires. I quote a citation of that report found in an excellent article by Beatrice B. Schalet in Minutes, the magazine of the Nationwide Mutual Insurance Co. for June 1963. The director of the New Hampshire study said:

We have found that the inexpensive grades of most tires are stronger than most premium or first grades. The word premium when used in connection with tires is an excellent clue for tire buyers to realize that the word means only a premium price and not quality, performance or strength. We feel that the tire industry must grade tires by a method similar to throwing darts at name squares while the buying public foots the bill.

Mr. President, the Consumer's Bulletin annual for 1962–63 concludes that the "nomenclature of tires remains in confusion so far as the average ultimate consumer is concerned, and the brand name does not tell the consumer whether he is being offered a first-, second-, or third-line tire."

Beatrice Schalet, in her article in Minutes magazine, portrays the plight of the tire buyer most graphically.

While calling for a scale of consistent standards of safety and performance for automobile tires, she says:

Until such standards are adopted, the consumer shopping for tires will be like a boatman adrift without a compass—lost in a sea of conflicting claims, confusing terms, and seemingly capricious prices.

I ask unanimous consent that Beatrice Schalet's article be inserted in the RECORD at the close of my remarks.

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

(See exhibit 1.)

Mr. NELSON. The maze of different brand names and grades; the plethora of deluxe, premium, and super deluxe labels; and the conflicting implications of different prices have left the American tire user with little assurance that the tire he buys today may not cause his death tomorrow.

I do not wish to imply that the tire manufacturers and retailers in this country are deliberately selling shoddy or misrepresented products.

My point is that there are no adequate standards of tire safety and performance to guide the tire buyer. Furthermore, there is no adequate system of labeling tires to show what the different levels of safety and performance for different grades of tires might be. And my concern is not only over the befuddlement of the consumer, but over the possibly tragic consequences of his confusion.

Establishing standards of tire safety and performance is a vital part of our national effort to increase motor vehicle and traffic safety. Much attention has already been brought to bear on the urgent need for tire safety standards.

My own State of Wisconsin was among the first to outlaw regrooved tires on passenger vehicles. New York State prohibited regrooved tires and made driving on bald or excessively worn tires a punishable traffic offense.

The New York State Joint Legislative Committee on Motor Vehicle and Traffic Safety, under the leadership of State Senator Edward J. Speno, has sought to establish minimum standards of safety and performance for new and retreaded tires sold in New York State.

Moreover, I understand that one of the main items on the agenda of the Motor Vehicle Equipment Commission will be a study of standards of safety and performance for motor vehicle tires. This interstate commission was set up by the 28 States and the District of Columbia who are signatories of the motor vehicle equipment safety compact.

And finally, it is concern for the safety and well-being of the millions of automobile drivers in our country that has led the distinguished Congressman from Alabama, KENNETH A. ROBERTS, to introduce H.R. 10712, a bill providing that all tires sold or shipped in interstate commerce for use on motor vehicles shall meet certain safety standards prescribed by the Secretary of Commerce.

Mr. President, I have long been impressed by the standards of tire safety set by the Interstate Commerce Commission for interstate motor carriers. These standards are designed to insure that tires and other safety equipment on trucks and passenger buses are in safe working condition.

The Interstate Commerce Commission can prohibit the operation of motor carriers with worn, smooth, or otherwise dangerously defective tires. Furthermore the ICC prohibits interstate buses from using regrooved, recapped, or retreaded front tires.

I also find that the Department of Commerce long ago drew up standards for recapping and retreading automobile and truck tires.

In addition to these precedents, the National Bureau of Standards has drawn up specifications of safety, quality, and performance for new and retreaded tires purchased by the Federal Government. In a letter to me, Mr. A. V. Astin, Director of the National Bureau of Standards, has cited these Federal specifications prepared for the use of Government agencies. I ask unanimous consent that Mr. Astin's letter be printed in the RECORD at the close of my remarks.

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

(See exhibit 2.)

Mr. NELSON. The promulgation and enforcement of these tire standards for commercial motor vehicles by the Interstate Commerce Commission and the National Bureau of Standards testify to the critical role played by tires in motor vehicle and traffic safety.

Mr. President, the time has come for the Senate to move further into the field of motor vehicle safety. The distinguished Members of the Senate have acted courageously in this field in the past. The Senate has already passed two bills providing much needed protection to motorists in the United States. The first was H.R. 134, the automobile safety seat belt bill. The second was H.R. 2446, the bill setting standards of quality and safety for hydraulic brake fluids. I call on my distinguished colleagues to act courageously again in the interests of 94 million licensed American motorists.

The danger to life and property caused by defective or low grade automobile tires is clear, and the confusion of the tire market place is evident. Precedents for action have been established and we must now take another step toward insuring the safety and well being of motorists in the United States.

Mr. President, the joint resolution which I have introduced today directs the Secretary of Commerce to investigate and study the field of tire safety and make recommendations for establishing standards of safety and performance for tires. I ask that this joint resolution be printed in the RECORD at this point.

The PRESIDING OFFICER. The joint resolution will be received and appropriately referred; and, without objection, the joint resolution will be printed in the RECORD.

The joint resolution (S.J. Res. 176) to direct the Secretary of Commerce to make an investigation and study with respect to motor vehicle tire safety and to recommend certain standards for such times, introduced by Mr. NELSON, was received, read twice by its title, referred to the Committee on Commerce, and ordered to be printed in the RECORD, as follows:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of Commerce shall (1) make a full and complete investigation and study of motor vehicle tire safety and performance capabilities and (2) prepare recommended minimum safety and performance standards for motor vehicle tires of all types which are made available to the public and a recommended system for grading and labeling such tires.

SEC. 2. In carrying out the provisions of this joint resolution, the Secretary of Commerce shall give consideration to the number of traffic accidents and fatalities caused by tire breakdowns, and shall consult with appropriate Federal, State, and local government agencies, the tire industry, the motor vehicle industry, consumers organizations, transportation and trucking companies, and organizations concerned with automobiles and highway safety, such as the American Automobile Association, the National Safety Council, and the American Association of Motor Vehicle Administrators.

SEC. 3. The Secretary of Commerce shall report the results of the investigation and study provided for in this joint resolution together with his recommendations, not later than January 1, 1965, or 180 days after the date of enactment of this joint resolution, whichever is later.

Mr. NELSON. Mr. President, it is my intention that a thorough study of the field of tire safety and standards by the Secretary of Commerce will bring some order out of the chaos of the tire market. This study will help the American public know what they are buying. And most important, this study will lay the foundation for a just and realistic scale of safety, performance, and labeling standards which can be applied to tires sold in interstate commerce.

It is my intention that in making his study the Secretary of Commerce should call on the invaluable experience and advice of both public and private persons concerned with tire safety and traffic safety. Federal, State, and local government agencies that work with traffic and motor vehicle safety problems could be of great help. Tire manufacturers, the automobile industry, consumers organizations, transportation and trucking companies, and other organizations concerned with traffic safety such as the American Automobile Association, the National Safety Council, and the American Association of Motor Vehicle Administrators could all make a realistic and balanced contribution to this study, and to the formulation of adequate standards of tire safety and performance.

If we are concerned with the safety and welfare of the people who drive on the highways of this Nation; if we are alarmed at the ever-increasing death toll reaped by our national highways, we must move further into the crucial field of motor vehicle and traffic safety. Though we begin with a study of the field of tire safety, and the establishment of standards of safety, performance, and labeling for motor vehicle tires, this is only a first step in a field of urgent national concern. If we do this now we can help save thousands of American lives.

The article and letter presented by Mr. NELSON are as follows:

EXHIBIT 1

THE TROUBLE WITH TIRES: SHOPPING FOR TIRES IS LIKE BEING ADRIFT WITHOUT A COMPASS—THERE ARE NO STANDARDS, NO LABELING REQUIREMENTS, NO GUIDELINES FOR THE CONSUMERS—ISN'T IT ABOUT TIME TO BRING SOME ORDER OUT OF THE CHAOS?

(By Beatrice B. Schalet)

Are your tires safe enough for vacation driving? Chances are you can't answer that question.

Despite clear indications that tire failure is a major cause of highway accidents; despite the fact that the life of everyone who drives or rides in a car may depend upon the strength and durability of tires—there is virtually no way for a driver to be certain that the tires on his car are capable of withstanding the stress of fast, nonstop, long-distance driving.

Are your tires new? They may be fine for normal driving but unsuitable for sustained turnpike speeds. Are they "first line" tires? The term has no precise definition. Did you pay a high price for them? The cost of a tire isn't a reliable measure of quality.

The simple fact is, there are no reliable, consistent standards for automobile tires. Until such standards are adopted and enforced, the consumer shopping for tires will be like a boatman adrift without a compass—lost in a sea of conflicting claims, confusing terms, and seemingly capricious prices.

This chaos in the marketplace is partly the consumer's fault, of course. Manufacturers produce products that can be sold at prices people are willing to pay, and it seems that car owners differ widely in what they think a tire is worth. Hence, the well-advertised $8.95 special and the prestigious, $60, foil-wrapped premium.

Unfortunately, the price paid for a tire often has no bearing on the use to which the tire is put. Both the bargain special and the premium may be subjected to the same kind of punishment on the highway, punishment that neither was designed to take.

No one knows how many accidents are caused by weak, defective, or worn tires, but enough evidence has been uncovered to convince a number of authorities that tire-caused accidents are much more frequent than the public realizes.

Alfred L. Moseley, chief investigator for Harvard University's research on fatal highway collisions, wrote in the Harvard Medical Alumni Bulletin: "There are many more collisions within this category (faulty tires) than anyone has heretofore suspected, simply because adequate investigation was not available."

To Maj. Singleton Sheaffer, under whose charge the Pennsylvania State Police patrol the turnpike, a worn or defective tire is a killer loose on the highways. "Police are trained investigators," he wrote in Traffic Safety magazine, "but too often this killer slips through the net of blame, masquerading under the names of 'too fast for conditions' or 'lost control on curve' or 'hazardous highway conditions.' We need to strip off these disguises and identify this killer once and for all."

Blowouts, slowouts, and skids definitely play a part in rising turnpike accident rates. Last year, the New York Thruway ranked tire failure highest in all vehicle-caused accidents. Officials of the Indiana and Pennsylvania turnpikes say tire failure is second only to driver fatigue as a cause of accidents. New Jersey reports that 9.2 percent of its turnpike accidents are directly traceable to defective tires, and Ohio lists 10 percent.

Tires wear fast on turnpikes, especially in hot weather. At 100°, wear is five times greater than at 40°. Several surveys of emergency road service calls indicate that about 20 percent are for tire trouble.

Is the public alert to the hazard of unsafe tires? Apparently not. In a tire safety check in Wichita, Kans., 4 in every 10 of the 36,284 vehicles checked had one or more defective tires.

Some State officials have recognized the hazard and taken steps to eliminate it. A few weeks ago, New York legislators enacted a law making it illegal for tires with less than 1/32-inch tread thickness to be on the highways. Other States may follow.

On the Pennsylvania Turnpike, tires are spot checked at entrance points and at other strategic locations. Drivers with questionable tires are warned, and cars with tires in bad condition are banned. Three years after this practice was started, fatal accidents due to poor tires had dropped from 26 percent of the total to less than 5 percent.

Suppose all these statistics convince you that your tires are unsafe. How do you go about replacing them with good, safe tires at a reasonable cost?

There's no simple answer. This writer asked a technician associated with one of the country's outstanding automotive research projects what advice he might give to a prospective tire buyer. "None," was the terse reply. "Even if he had the necessary technical knowledge, he couldn't use it merely by looking at a tire. He doesn't know what he's getting any more than he would if he were buying a mattress."

How about relying on price as a guide to quality? Five years ago, Motor Vehicle Research of New Hampshire (an independent testing agency) released a startling report. After extensive testing of 25 brands of tires, Director A. J. White told the press: "We have found that the inexpensive grades of most tires are stronger than most premium and first grades. The word premium when used in connection with tires is an excellent clue for tire buyers to realize that the word means only a premium price and not quality, performance, or strength. We feel the industry must grade tires by a method similar to throwing darts at name squares while the buying public foots the bill. Basically, a tire buyer will receive greater value in a third line tire than in most premium grades."

There are, of course, expensive blowout-proof tires on the market. A former safety officer for a major turnpike, having all-too-vivid memories of strewn wreckage and broken bodies, exchanges the tires on his new cars for these. "It's a cheap price to pay for peace of mind," he says. But this advice is of no help to people for whom the extra cost (about $200 a set) would be prohibitive.

When the question of statutory standards for tires came up in the New York State Legislature last year, Senator Edward Speno, chairman of the Joint Legislative Committee on Motor Vehicles and Traffic, found no precedent to guide him. "I was amazed," he said at the hearings, "when we found there is no regulation in the Nation * * * that says what the minimum standard should be for an automobile tire. The manufacturer can wrap some rubber around the rim and that is a tire."

The tire industry has no warmth for regulation. M. A. Wilson, testifying for the industry, said, "The position that we take here is that there is no one or numerous tests which in themselves would insure safety on the highway * * *. We would say that the tire industry only produces safe tires and that price alone is not a determining factor as to the satisfaction of the safety of the tire. * * * We test many tires, all brands and all varieties, and we have yet to find one that we would say was unsafe if used as intended."

But the bargain tires that are splashed across newspaper pages in come-on ads carry on their labels no limitations on their use. Their widely spaced cord (nylon notwithstanding) and thin tread could make them lethal on turnpikes.

If the manufacturer's grade cannot be relied upon and if price is no gage of quality, what can a tire buyer do? He can buy the same tires that gave him good service in the past, but even this is no guarantee. Last year's tires may since have had their quality cut for the sake of price advantage. The tire market is among the most sharply competitive.

This is clearly a situation where the consumer has been boxed in by the industry. He cannot buy knowledgeably, on a rational basis, but must rely on the good faith of his retailer—who may or may not know the facts.

Consumers who find the situation intolerable might consider starting a movement toward the establishment of standards and informative labeling. They'd have pretty good arguments to support their cause. Airplane tires, for example, for all civil and military aircraft, must meet standards laid down and regulated by the Federal Aviation Agency. Also, truck and bus tires receive a degree of regulation from the Interstate Commerce Commission.

Traffic fatalities reached a new high last year, claiming an average of 112 lives per day. With more and more cars crowding the roads, every possibility of cutting the toll merits exploration. A minimum standard for brake fluid was enacted into law last year. Why not standards for tires? After all, cars and superhighways both cross State lines, and this makes tire safety a national concern.

Would the President's Consumer Advisory Council be a good place to begin?

TIPS FOR TIRE CARE

Use correct air pressure. Too much air causes excessive wear on the middle of the tire tread; too little wears out the outer edges. Check air pressure when the tires are cool. It's a good idea to carry a good tire gage with you; many service station gages are inaccurate.

To help tires run cooler on long trips, increase air pressure about 4 pounds above the normal recommended cold starting pressure. On long trips, too, it helps to stop at reasonable intervals to let tires cool off.

If air pressure shows a decided drop, check for a leak. Change the tire or make repairs immediately.

Inspect tires regularly. Check tread depth (most good tires have five-sixteenths to six-sixteenths inches when new). Look for uneven wear, which may indicate wheels out of balance or incorrect air pressure. Cuts, bruises, and breaks are danger signals. If in doubt, ask the opinion of a trained mechanic.

Inspect valve cores and replace if worn or damaged. Make sure all tires have valve caps, and screw them on finger tight.

Avoid bumping curbs, driving over chuckholes or other obstructions, and riding the edge of the pavement.

Drive at moderate speeds. Avoid fast starts and stops. Don't speed over rough roads or around curves.

Rotate tires at regular intervals (most manufacturers recommend every 5,000 miles). The pattern should be: left front to left rear; left rear to right front; right front to right rear; right rear to spare; spare to left front.

EXHIBIT 2

U.S. DEPARTMENT OF COMMERCE,
NATIONAL BUREAU OF STANDARDS,
Washington, D.C., April 7, 1964.

Hon. GAYLORD NELSON,
U.S. Senate,
Washington, D.C.

DEAR SENATOR NELSON: In reply to your letter of April 1 concerning standards for new and retreaded automobile tires, the standards listed below contain quality and safety requirements:

1. Interim Federal specification ZZ–T–00381j, tires, pneumatic, vehicle, and portable equipment, dated July 13, 1959.

Paragraph 3 of this specification lists the requirements for tires used on highway vehicles. In particular, paragraphs 3.7 and 3.8 on pages 7 and 8 include a number of requirements which concern safety.

2. Federal specification ZZ–T–441a, tires, pneumatic: retreaded and repaired, dated January 19, 1960.

Paragraph 3 of this specification contains the requirements which must be met by retreaded or repaired tires.

3. Commercial standard CS108–43, treading automobile and truck tires, dated June 10, 1943.

General requirements for the inspection and processing of the tire during retreading are listed on pages 2 and 3.

The Federal specifications listed above were prepared for use by Federal agencies in purchasing new and retreaded tires. These specifications are based on test methods developed at the National Bureau of Standards, and our personnel participated in the preparation of the specifications. The General Services Administration is the cognizant agency for these specifications.

Commercial standard CS108–43 was developed by the industry and promulgated by the Department of Commerce. The use of this standard is entirely voluntary. The requirements of the standard are general and are primarily recommended practices. There is no commercial standard for new tires.

Tests of tires are conducted at the National Bureau of Standards at the request of other Government agencies.

Copies of the Federal specifications and the commercial standard are enclosed. I shall be pleased to supply any additional information you may wish in connection with your review of this matter.

Sincerely yours,

A. V. ASTIN,
Director.

PRESENTATION OF DESK OF SENATOR JOHN F. KENNEDY TO THE JOHN FITZGERALD KENNEDY LIBRARY

Mr. McNAMARA. Mr. President, I send a resolution to the desk and ask that it be appropriately referred.

All of us have noted with interest the plans for the John Fitzgerald Kennedy Memorial Library, to be located in Cambridge, Mass.

This library is to be the depository of documents and items relating to the life and career of the late President John F. Kennedy.

When completed the library will be a treasure trove for historians, as well as a memorial to the late President which undoubtedly will draw many thousands of visitors each year.

A major facet of the distinguished public service career of the late President was his years as a Member of the U.S. Senate. From 1953 until his resignation following his election to the Presidency in 1960 he was our friend and colleague, Senator John F. Kennedy.

These Senate years unquestionably will have an important place in the planning of the memorial library. These were the years when the young Senator from Massachusetts won the national reputation which led to his nomination and election as President.

It has come to my attention that upon his departure from the Senate to assume his Presidential duties President Kennedy purchased the chair he had occupied in this Senate Chamber as a remembrance of his 8 Senate years. This chair will be one of the objects placed in the memorial library in Cambridge.

It occurred to me it would be very appropriate for the Senate to complete this tableau by providing also the desk in the Senate Chamber last used by the late President as a Senator.

The resolution I have submitted today would permit the donation of the desk to the John Fitzgerald Kennedy Memorial Library.

I am informally advised that, while our Senate desks are unique and of historical significance, replacing a desk presents no serious problem.

I ask unanimous consent that the text of the resolution be printed at this point in the RECORD.

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

The resolution (S. Res. 326) was referred to the Committee on Rules and Administration; and, under the rule, was ordered to be printed in the RECORD, as follows:

Whereas the late John Fitzgerald Kennedy, the thirty-fifth President of the United States, was a distinguished Member of the United States Senate from 1953 until his election to the Presidency in 1960; and

Whereas the John Fitzgerald Kennedy Memorial Library, to be located in Cambridge, Massachusetts, is to be the depository of articles, documents and other memorabilia relating to the life and career of the late President; and

Whereas it would be most appropriate for the Senate career of our late President and colleague to be represented in the memorial library by some object of historic interest tangibly related to his Senate years: Now, therefore, be it

Resolved, That the United States Senate donate to the John Fitzgerald Kennedy Memorial Library the desk in the Senate Chamber occupied by the late John Fitzgerald Kennedy at the time of his election to the Presidency, and that the Sergeant at Arms of the Senate is directed to make appropriate arrangements to carry out the purpose of this resolution.

FAVORING THE MOST EFFECTIVE EQUIPMENT FOR AMERICAN SERVICEMEN WHEREVER FIGHTING

Mr. TOWER. Mr. President, I submit, for consideration of the Senate, a resolution which will express the desire of Senators that our men fighting in Vietnam be provided not with obsolete weapons which are not intended for combat use, but that they be provided with the latest, most effective weapons.

Mr. President, I ask unanimous consent that this resolution be allowed to remain on the desk until the close of business on Friday for the benefit of additional cosponsors.

The PRESIDING OFFICER. The resolution will be received and appropriately referred; and, without objection, the resolution will be printed in the RECORD, and held at the desk, as requested by the Senator from Texas.

The resolution (S. Res. 327), submitted by Mr. TOWER, was received, referred to the Committee on Armed Services, and, under the rule, ordered to be printed in the RECORD, as follows:

S. RES. 327

The resolution, numbered as above, is being held for additional sponsors through the close of business Friday, May 15. It was introduced by Mr. TOWER (for himself):

"Whereas American military servicemen are fighting and dying in the Republic of Vietnam; and

"Whereas these Americans and their comrades in arms from the Republic of Vietnam are fighting to preserve freedom and liberty from the treachery and brutality of Communist aggressors; and

"Whereas the United States does not regard its soldier sons as mere mercenaries fighting only for pay, but as dedicated and courageous protectors of liberty who are committed to battle to preserve and defend principles which Americans hold to be of the utmost importance; and

"Whereas American servicemen go into battle knowing that they will not be betrayed in trust or in support by their Government or their fellow citizens for whom they offer their lives if need be: Now, therefore, be it

"Resolved, That American servicemen fighting in the Republic of Vietnam, or at any other place, be provided promptly and in adequate numbers with the most effective weapons, equipment, and aircraft available in American military inventories."

CIVIL RIGHTS—AMENDMENTS (AMENDMENT NO. 582)

Mr. STENNIS submitted an amendment (No. 582) intended to be proposed by him to 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, which was ordered to lie on the table and to be printed.

Mr. TOWER submitted an amendment (No. 583) intended to be proposed by him to House bill 7152, supra, which was ordered to lie on the table and to be printed.

Mr. ERVIN submitted an amendment (No. 584), intended to be proposed by him to amendment No. 513 to House bill 7152, supra, which was ordered to lie on the table and to be printed.

Mr. ERVIN also submitted 11 amendments (Nos. 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, and 595) intended to be proposed by him to House bill 7152, supra, which were ordered to lie on the table and to be printed.

TRANSPORTATION ACT OF 1964—ADDITIONAL COSPONSORS OF BILL

Under authority of the order of the Senate of May 2, 1964, the names of Mr. BARTLETT, Mr. BEALL, Mr. HARTKE, Mr. MCGEE, Mr. RANDOLPH, Mr. SCOTT, and Mr. SMATHERS were added as additional cosponsors 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 Mr. COTTON) on May 2, 1964.

DEATH OF HOWARD ZAHNISER

Mr. ANDERSON. Mr. President, last Tuesday I rose with deep sadness to announce to the Senate the death of Howard Zahniser, a man known to many Members of the Congress as one of the leading conservationists of our time. To us who were associated with him in the cause of conservation, he was always "Zahnie." Although he suffered from a heart ailment, he never suffered from lack of energy or zeal for the public cause closest to his heart—the preservation of wilderness areas—a cause that had been so much a part of his life's work. At the time of his death, Dr. Zahniser was the executive director of the Wilderness Society and editor of the Living Wilderness.

Sometimes, frankly, I found myself in disagreement with Dr. Zahniser's views, but I never found myself in disagreement with the goal he was seeking. He was steadfast in his devotion to the concept of wilderness as a fundamental part of American culture and tradition. In the words of Harvey Broome, president of the Wilderness Society:

To this objective he brought great powers of persuasion and conciliation; and the wilderness bill, when it is finally enacted, will be a monument to him and to his vision.

I concur in this judgment because no more spirited champion for this public service could be found than Howard Zahniser.

His family and the staff of the Wilderness Society for whom he was the guiding spirit have my deepest sympathy.

I ask unanimous consent that an editorial concerning Dr. Zahniser's contributions, which appeared in the Washington Post, be printed in the RECORD at this point. I also ask unanimous consent that a statement dealing with his many activities be printed at the conclusion of my remarks.

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

HOWARD ZAHNISER

In the death of Howard Zahniser the country has lost an authentic and sensitive exponent of the wilderness. Not only was he executive director of the Wilderness Society and editor of the Living Wilderness.

Not only was he a persistent advocate—in hearings, articles and speeches—of preservation of the wild beauty of America. Not only was he one of the authors of the wilderness bill which now seems to be making its weary way through Congress. He was also in love with the open spaces, the rivers and mountains, the wildlife, the music of nature, and the lure of the unspoiled world.

"Zahnie," as his friends called him, had spent most of his adult life in studying the wilderness and writing and talking about it. Because of his feeling for poetry and art as well as nature, he was good company on the trail. We surmise that he lived a very rewarding life despite the fact that many of his dreams have not yet come true.

One who knew him well has suggested that the wilderness bill, when it is enacted, will become his monument. But his concept of his mission in life was much broader than any single project or piece of legislation. In a recent editorial in the Living Wilderness he wrote: "The wilderness that has come to us from the eternity of the past we have the boldness to project into the eternity of the future." This is the broad and worthy aim for which he lived and worked. It is a concept that carries profound significance for the well-being of a civilization that is fast devouring the unspoiled beauty of the earth.

ESSAYIST, EDITOR, ADVISER

Dr. Zahniser was one of the organizers and early chairman of the Natural Resources Council of America and contributed to the council's book, America's Natural Resources. He served on the Advisory Committee on Conservation to the Secretary of the Interior, was a director of the Citizens' Committee on Natural Resources, a trustee and Washington representative of Trustees for Conservation, a contributor on conservation to the Encyclopaedia Britannica, and a member of the Cosmos Club and National Press Club, among many others. He was president of the Thoreau Society in 1957 and was an honorary vice president of the Sierra Club. He received his A.B. from Greenville College, Illinois, and was awarded the honorary degree of doctor of letters by Greenville in 1957.

At the time of his election to the staff of the Wilderness Society as executive secretary, in 1945, he was principal research writer of the Bureau of Plant Industry, Soils, and Agricultural Engineering in the U.S. Department of Agriculture's Research Administration and as head of that Bureau's Division of Information was directing its publication and research-reporting program. He was Chairman of the U.S. Department of Agriculture's Special Committee on Improvement of Publications.

From 1931 to 1942 he had served the Bureau of Biological Survey and its successor agency the U.S. Fish and Wildlife Service as an editor, writer, and broadcaster on wildlife research, administration, and conservation and was in charge of the agency's section of current and visual information.

From 1935 to 1959 he was an essayist and book editor of Nature magazine and since 1940 he was the Encyclopaedia Britannica's annual contributor on "Wildlife Conservation," and on "Wilderness Preservation."

He was also a freelance writer of articles and verse, including "America Grows Corn," in the Scientific Monthly for May 1948, "Happy Young Spring," in the Living Wilderness, spring 1952, etc. Book contributions include the chapter on "Parks and Wilderness" in America's Natural Resources (Ronald Press, New York, 1957), edited for the Natural Resources Council of America by Charles H. Callison; the chapter "Wilderness Forever" in Wilderness: America's Living Heritage (Sierra Club, San Francisco, 1961), edited by David Brower; foreword to "Planning for America's Wildlands," by Arthur H. Carhart, 1961; foreword to "Tomorrow's Wilderness," edited by Francois Leydet, 1963.

Dr. Zahniser was born February 25, 1906, at Franklin, Pa. His parents were the Reverend A. H. M. and Bertha Belle (Newton) Zahniser. He is survived by his wife, Alice Bernita (Hayden) Zahniser, at the home address, 6222 43d Avenue, Hyattsville, Md., and their four children—Rev. Alison Howard Mathias Zahniser, Asbury Theological Seminary, Wilmore, Ky.; Mrs. Esther Belle (H. Edward) Knox, 25 Cedar Street, Somerville, Mass.; Miss Karen Elizabeth Zahniser, Greenville College, Greenville, Ill.; and Edward DeFrance Zahniser, Greenville College, Greenville, Ill.; and also a grandson, James Howard Knox.

LIBERTY, SCIENCE, AND LAW—EDUCATION FOR NAVAL LEADERSHIP—ADDRESSES BY ADM. H. G. RICKOVER

Mr. AIKEN. Mr. President, Admiral Rickover made two outstanding speeches, one on April 16 to the U.S. Naval Academy midshipmen, and one on May 1, 1964, at the Philadelphia Bar Association's ceremonies in celebration of Law Day U.S.A.

I consider them to be good enough to be printed in the RECORD, and I ask unanimous consent to do so.

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

EDUCATION FOR NAVAL LEADERSHIP

(Address to U.S. Naval Academy Midshipmen, Apr. 16, 1964, by H. G. Rickover)

Admiral Kirkpatrick was good enough to ask me to speak with you today. He thought you might be interested in my views on some aspects of the education of naval officers. I hope what I say will have pertinence to the problems you will face throughout your naval career.

First I will explain why education is indispensable to leadership. Then I will tell you what I consider to be weaknesses in the education of officers—weaknesses which are inimical to the development of the military leadership our Nation requires. Finally I will urge you as individuals to take specific steps which can assist you in developing your own potential for military leadership. I limit myself to the Navy because of my greater familiarity with the service in which I have been on active duty for 45 years.

Science and technology are rapidly and radically changing the world and forcing mankind to face up to two alternatives: Adopt new ways of thinking or risk extermination. I need not belabor this point; no thoughtful person can help but be aware of the grave problems confronting us and of the inadequacies of traditional ways of dealing with them. Some of the concepts that we have long been taught and accepted are no longer relevant; others are no longer adequate; still others have now become profoundly dangerous. As Magnus Pike has said:

"There have been many well-run societies and there have been well-run armies, too. The danger arises when big changes take place. When this happens a system designed for a particular purpose needs to be changed to meet the changed circumstances. If the system has become rigid, however, and people are not willing to change it, then it begins to impose itself on them."

We cannot cope with this new world if our minds are like attics stored with abandoned and useless furniture. What this new world demands of us is that we learn and that we think. Only those who have been taught to think with their own minds can discover and remedy their own deficiencies.

Our leading colleges recognize this problem and are upgrading their curriculums so as to prepare their graduates more adequately for coping with the increasingly complex problems they will face. I have been privileged to work with the engineering schools of Princeton, Yale, and Cornell, and to assist them in revising their programs. These colleges as well as many others have replaced descriptive and applied courses with subjects which develop understanding of basic principles. To quote Dean Elgin, of Princeton:

"Instruction in the engineering principles of heat and mass transfer, mechanics of solids and fluids, and of electromagnetic theory is replacing the teaching of the technologies of diesel engines, steam powerplants, the manufacture of gasoline or alcohol, and how to construct an alternating current motor."

The basic humanities have not been slighted to accomplish this. Leading engineering schools now require that a substantial portion of their courses be in the areas of history, languages, English and the like. Here, too, the emphasis is on principles, not on descriptive or applied subjects. A serious intellectual attitude is fostered and it is not surprising that those who most successfully meet this intellectual challenge are also the ones who succeed in the tasks they undertake after graduation. Let me quote from a recent report (Apr. 5, 1962), by Frederick R. Kappel, chairman of the board of the American Telephone & Telegraph Co., on a study made of the records of 17,000 college graduates in his company:

"The figures show that the single most reliable predictive indicator of a college graduate's success in the Bell System is his rank in his graduating class."

Like other colleges, the Naval Academy has been attempting to improve its curriculum. Some improvements have been made; others are currently being considered. Independent of these attempts, however, each of you should acquire an awareness of the importance of grasping the basic fundamentals of mathematics, science, engineering, and the humanities. There is evidence you are not doing this. I know some of you feel that because the Academy is a military institution it need not compete with other colleges on an intellectual level; that perhaps military leadership is not in any significant way dependent on intellectual development. Nothing could be further from the truth, as I hope to show you.

Let us examine closely and critically just what military leadership consists of in the changing world in which your naval careers will be spent. The significance of military leadership has reached unprecedented importance, not only because of the obvious military threat to our country but also because of the increasing role of the military in our foreign relations and in our national economy.

Certain attributes of military leadership have always been important to success in warfare; among these is knowledge. History warns us to recognize the importance of this attribute; it supplies us with many examples where failure to do so has led to defeat. One striking example of such a failure is the war of 1870 between France and Prussia. I quote from Michael Howard's book, "The Franco-Prussian War":

"In the summer of 1870 the Kingdom of Prussia and her German allies totally destroyed the military power of Imperial France. For nearly 80 years the defeated nation had given the law in military matters to Europe, whereas the victor, 10 years earlier, had been the least of the continent's major military powers. Within a month Prussia established a military preeminence and a political hegemony which made the unification of Germany under her leadership a matter of course, and which only an

alliance embracing nearly every major power in the world was to wrest from her half a century later.

"The collapse at Sedan, like that of the Prussians at Jena, 64 years earlier, was the result not simply of faulty command but of a military system; and the military system of a nation is not an independent section of the social system but an aspect of it in its totality. The French had good reason to look on their disasters as a judgment. The social and economic developments of the past 50 years had brought about a military as well as an industrial revolution. The Prussians had kept abreast of it and France had not. Therein lay the basic cause of her defeat."

The consequences of error in today's world of nuclear warfare are far more ominous than they were in 1870. The destiny of our country and of all free peoples is now at stake. Today it is too dangerous to harbor illusions. An illusion may be defined as a belief that has lost contact with reality. Illusions are a form of excess baggage which prevent a man or a nation from facing squarely up to issues and solving problems properly. How we fare will be determined in large measure by the relative capabilities of enlightened leadership in all areas, including the military. By enlightened leadership I mean leadership that sets new standards for itself as dictated by the dynamic developments of the times; leadership that is not bound by tradition; that is not based on frozen concepts which may have been important yesterday, but are no longer very important today.

For example, during the 18th and 19th centuries armies marched shoulder to shoulder, three, four, or six ranks deep, and then slowly and mechanically fired volley after volley at each other at dueling distance until one side was demolished or broke, leaving the ground literally carpeted with countless dead. Our own Civil War had similar hand-to-hand combats where both sides stood their ground and many thousands died. That type of warfare, employing as it did simple tactics with simple weapons, demanded emphasis on sheer physical bravery. Leadership excelling in bravery could bring success in battles of this sort. Such leadership is no longer sufficient to meet the military challenges that face us today when you may never even see the enemy—he may be hundreds, even thousands of miles distant.

What then are the main characteristics of military leadership in today's world of guided and ballistic missiles, supersonic aircraft, high-powered sonar and radar, deep-diving nuclear submarines and other complex weapons? In such a world military power depends upon technology, and technology depends on educated brainpower. Therefore, today the keystone of military leadership clearly is an educated mind. Indeed, the motto of the Naval Academy itself is truly prophetic. For it says: "From Knowledge, Sea Power."

The educated man has knowledge that makes the world around him intelligible; his mind has been sharpened so that he can use it effectively; he is receptive to ideas; he thinks about them; he imparts something of himself to them, and comes forth with something new. Because he has broad general knowledge, the educated man is able to see things in perspective, as well as in relation to other things.

The uneducated man, who knows little about the forces which shape the world around him, lacks this ability to see things in true perspective and in their relation to other things. He is like a mirror; he does not absorb ideas, he merely reflects them. Each thing stands alone for him. He lacks the ability of the educated man to join different ideas and bring some sort of order into them. Ability to withdraw into himself and think things out independently is perhaps the educated man's most important attribute. This ability to withdraw into oneself and think things out is the most significant characteristic distinguishing man from animals. This characteristic is developed through education. The uneducated have it to a much less degree than the educated. It has been said that some people are a bit like a seal who sleeps for a minute and a half, wakes up, takes a quick look at his surroundings and goes back to sleep again. He either sleeps or he looks—he doesn't think about what he sees. He just reacts.

A good liberal education endows a man with the faculty of entering with comparative ease into any subject and of taking up with aptitude any science and profession. It enables him to draw his own conclusions from what he observes around him. It equips him with sufficient general knowledge to understand the world. It develops in him the ability to make rational decisions in difficult circumstances and to meet totally new and unexpected contingencies. Education has familiarized him with the ways in which other people at other times have solved problems similar to the ones he must deal with. Thus he is supported by the vast fund of wisdom collected in the past and throughout the whole world. This sort of education takes much time and effort. It isn't finished when formal schooling ends but goes on all through life.

Certainly these characteristics, acquired through education, are necessary qualities in a modern military leader. Not enough officers in the Navy, I feel, recognize the need for this type of education.

Many studies have sought to find a definition of "leader." To most people the answer is simple: A leader is an active, forceful, outgoing person, the kind others look up to; the type that gets elected class president or football captain—the "big man on campus."

But there is another point of view that holds that the true leader makes no effort to impress his personality on others; he has no obvious "following." But because of him—because of the quiet influence of his ideas or his example—other people change their thinking and act in new ways.

About all that can be said for sure about a leader is that his actions influence others. Qualities which contribute to this ability to exert such influence are above-average intelligence, originality and constructive imagination, practical knowledge, relative to the situation, speed and accuracy in thought and decision, intensity of application and industry.

One of England's great educators, Lord James, says more lucidly than I have seen anywhere else that no society needs the quality of leadership as much as a free democracy. Again and again he stresses that the single most important ability required of a leader in today's complex life is trained intelligence of a higher caliber.

Yet, James notes that this quality of high intelligence is "more commonly underrated than any other aspect of leadership." The popular conception of a naval leader emphasizes the more obvious and spectacular qualities of character—as bravery, stamina, dominance, and so forth; these may mask and even ridicule intelligence. High intelligence in naval leadership does not militate against these other qualities of character. Rather, implicit in high intelligence are all of these character qualities, but placed in proper perspective as dictated by the needs of the time. In essence, the intellectual element is always basic to a society. The other leadership qualities are essential, integral, indispensable, but they are not enough. When you have only the more obvious leadership to guide your action, you may lose early in the fight. The very nature of man requires that in the last analysis he be moved to action by ideas, not by codes.

Convinced as I am of the importance of intelligence and education to military leadership, I have in the past proposed certain changes at the Naval Academy. I have, for instance, recommended decreased emphasis in nonacademic areas like organized athletics and extracurricular activities. These too often tend to become ends in themselves and thereby detract from academic effort, which should receive foremost attention. The retort invariably is the old chestnut attributed to the Duke of Wellington: "The Battle of Waterloo was won on the playing fields of Eton." This implies that the qualities required for success in warfare are acquired on the playing field rather than in the classroom. If it ever was true of any wars, it is certainly not true of modern wars. There is no clear evidence that the duke ever made this statement. The headmaster at Eton, incidentally, believes the duke said something to the effect that he had learned the spirit of adventure by jumping over a ditch. The duke, you may be interested in knowing, liked to toboggan around the corridors on a tea tray drawn by a team of young women.

Athletics are, of course, essential to the physical fitness of young men. But not overorganized athletics. They become a drain on time and energy which should be devoted to the more important aspects of education. The time one has during his life for uninterrupted devotion to intellectual development is too brief even under the best of circumstances. Long ago a Greek physician sighed, "The life so short, the art so long to learn." I commend this sentiment to all of you. It is unwise to devote too much of your time to nonessentials, athletic department and alumni pressures notwithstanding.

It is not really the function of the Naval Academy to engage in large-scale competitive spectacles for the benefit of the public. Of course, it will be said that this sort of competition develops leadership. But for many years the Naval Academy did not, in fact, engage in such activities. Was its leadership, then, deficient in the years prior to the advent of organized intercollegiate contests? I doubt this. The American economic and industrial system is also based on competition, yet the better colleges from which business recruits its leaders are now deemphasizing organized athletics. Knowledge now doubles every 10 years, hence the demands on the intellectual qualities of leaders are therefore growing apace. Can we then afford to devote precious time—time that can never be regained—to anything that is not essential?

You know that much of the college athletics today is big business. Professional coaches are hired at considerable expense to win some sort of status for the college where they happen to be working that year. But do the methods used by most coaches really develop leadership in the student player? The coaches call the "shots"; they manipulate the players in accordance with schemes developed by professional staffs. If it is initiative, team spirit, and the like which is intended to be stressed, then it would seem logical to let the students call their own "shots." In this manner, individualism, originality of thought, pride in accomplishment would be inculcated in the player and not remain with the coldly calculating professional athletic organization.

Take the case of intramural sports. It so happens they were started here when I was a midshipman. The idea was good. It was to get as many midshipmen as possible to learn to play various games—to extend such an opportunity to more than varsity squads. The organization and schedules were left up to the midshipmen themselves. While important to the individuals involved, the outcome did not count for the company competition. Today, however, it seems that intramural sports are in danger of becoming overorganized, like varsity athletics. The important role they now have in intercompany

competition may induce midshipmen to give them too much emphasis. Is the excess emphasis worth it? Does it really contribute to developing good officers?

Another problem in developing qualities of military leadership has to do with instilling a proper understanding of the relationship between authority and independent thought. This always has been a problem but it is particularly acute today.

To illustrate the danger of unquestioned acceptance of a rule by authority, take the case of the formula used by the British Admiralty in the last war to determine the number of escort vessels for a convoy. A longstanding rule required 3 escort vessels plus 1 additional escort for each 10 ships in the convoy. Thus a convoy of 20 ships would have 5 escorts and a convoy of 60 ships, 9 escorts. The theory behind this rule, whose origin had been lost in the mists of time, was that this number of escort vessels would make convoys of different size equally safe; that is, the same average percentage losses could be expected.

Because it presumably had its origin in "higher authority," the formula was never questioned until a group of civilians attached to the admiralty decided to examine the actual records of ships lost in convoys of different sizes. To their amazement they found the rule to be not valid—that in the previous 2 years, large convoys had suffered much fewer losses in relation to their size than small convoys. They also found that the number of ships sunk depended on the number of convoying vessels, not on the number of ships in the convoy. As a result the size of convoys was increased from a maximum of 60 ships to as high as 187, and fewer escort vessels were required. Had the policy of large convoys been adopted in 1942 instead of 1943, the merchant ship tonnage lost during this period might have been reduced by at least 20 percent. This is a good example showing that you should not take things for granted. Any formula followed unthinkingly may lead to disaster.

Take the traditional concept of morale. I often ask young officers which destroyer they would prefer to take to sea in war: The dirtiest one in the force, the one that had low morale, yet stood first in gunnery; or the smartest one, with high morale, but which stood last in gunnery. The answer almost invariably is the smart ship with the high morale. Now I admit this is a loaded question, because it is unlikely the dirty ship would have stood highest in gunnery. Yet in terms of my question, wasn't it the better ship? Isn't the real purpose of a naval ship to hit the enemy? Is morale an end in itself, or is it only a means to an end? Should we judge the value of a ship by its morale, or by its ability to sink an enemy?

Several years ago one of our large insurance companies decided to find out whether its highly organized employee morale program which included picnics, games, and so on was worth the cost and effort. They found that the employees who liked picnics and games at company expense went to them and were quite happy—but they didn't do any better work. The point I am trying to make is that we must question critically, we must never unthinkingly accept traditional rules and routines. Perhaps some efforts to build morale are overdone. Often they take the form of engaging ceaselessly in activities, so that little or no time is left for contemplation. Many of us would like to be just plain let alone; we may be quite capable of deciding all by ourselves what to do with our own time.

You should cultivate the habit of questioning the validity of all formulas and established traditions. There is some value even in the stalest truisms we memorized and recite; and since they are a convenient substitute for painful thinking, uneducated minds accept them as dogma and close themselves to new ideas that are necessary to keep in step with the times.

The military are not alone in becoming prisoners of outworn ideas. This is a characteristic of all elements of society. It happens in science too. Take the discovery of oxygen. Priestley, the Englishman, and Lavoisier, the Frenchman, were working on this problem at the same time. Priestley could not conceive there could possibly be any other gas but air. He saw the gas he was experimenting with as dephlogisticated air. But Lavoisier had long been convinced that something was wrong with the phlogistic theory. So he could see in Priestley's experiments a gas that Priestley himself had been unable to see. To the end of his life, some 30 years after the new gas had been discovered and used, Priestley was still unable to see it. Or take Einstein's theory. There were some who did not accept it until it was dramatically proved at Hiroshima.

Max Planck, whose quantum theory is a cornerstone of modern physics, sadly remarked that "a new * * * truth does not triumph by convincing its opponents and making them see the light, but rather because its opponents eventually die, and a new generation grows up that is familiar with it." So great is the power of self-deception, so difficult is it to leave the warm womb of effortless routine, that hardly anyone who listens to a statement like Planck's conceives that it could possibly apply to himself—though he can instantly visualize many others to whom it does apply.

I keep pointing out that education is fundamental to the development of leadership. I keep giving examples of practices which detract from this development. I have made recommendations for the improvement of education at the Academy. But I do not intend to discuss these today. Rather I will show you weaknesses that you yourselves can do something about. I believe I can best do this by telling you about my observations of a large number of midshipmen and naval officers.

Over the past 14 years, I have interviewed more than 3,300 naval officers and prospective naval officers. I have done this in order to be able to recommend those whom I considered had the requisite qualifications for duty involving operation of nuclear-powered ships. Over 1,000 of these have been midshipmen fresh from the Naval Academy and from civilian colleges. These interviews confirm my conviction that the Naval Academy midshipmen are not acquiring as good an education as do the midshipmen from civilian colleges. This conviction is supported by my observations of the remaining 2,300 officers who had varying amounts of experience in the Navy; most of these officers reflect the same shortcoming in education I saw in the young midshipmen.

Whenever one attempts to compare graduates of the Naval Academy with those from civilian colleges he is told that the need to develop leadership at the Academy gives it a unique mission requiring special time-consuming efforts. It is said that the Academy is a military institution preparing men dedicated to a loyal career in the service and, hence, cannot be like other colleges. It is also said that midshipmen are assigned military and administrative duties so that they may learn, by doing, to be followers and leaders; that regimentation is essential to the development of a fighting man, and therefore a necessary part of the experience of a midshipman.

These statements are not in accord with evidence at hand. Take Marine Corps officers. Would anyone say they are not as loyal, or do not have as high a sense of duty as the officers in any of our other services? But the majority come from civilian colleges, receiving 6 months' training when they are commissioned. Are they inferior officers because they have not experienced a Naval Academy type of life for 4 years?

Or take NROTC graduates. The Navy itself has testified to Congress that after 2 or 3 years there is no distinction; that the captain of a ship rarely knows whether his officer is Naval Academy or college NROTC. Evidently some of the time-consuming efforts devoted by midshipmen to nonacademic activities may not be necessary to the development of an effective officer.

The central deficiency in the education of Naval Academy midshipmen is that they do not learn principles, and therefore do not learn to reason from principles. The extent of this deficiency is perhaps best understood by those who have themselves been educated at the Academy and then at a civilian college of the first rank. The contrast is markedly in favor of the civilian college. That this weakness in Academy education exists is real enough. Where the difficulty lies is in conveying a comprehension of this weakness to those who need to know about it.

Suppose we consider a course in thermodynamics. The course description in the Naval Academy catalog compares favorably with that for a similar course in other colleges. We find the standard topics: The first law of thermodynamics, the second law, and so forth. But the evidence available to me is that midshipmen simply do not acquire a real understanding of the principles. It appears that they memorize the formulas, they learn how to do the standard problems, and they contrive to pass the course with more or less credit. But never having comprehended the fundamental principles involved, they take away precious little of enduring value. The appearance of education is there, but not the reality.

Midshipmen, of course, are seldom aware of this. When asked whether they are getting the education they need, the answer is generally in the affirmative. The reason, of course, is that most of them have no way of comparing their own education with education at one of our better colleges. Similarly, if you asked a Chinese coolie whether he liked rice he'd probably say "Yes." How could he answer otherwise? He doesn't know how well he likes rice until you give him a beefsteak.

Deficiencies in Naval Academy education show up clearly in our nuclear power schools. We find that the NROTC graduates, on the average, do better than Naval Academy graduates, the principal reason being that they have, as a group, a better educational foundation than have officers from the Academy. For example, in one nuclear power school group the top 11 students are all non-Academy graduates. These 11, again as a group, were B-minus students at college, yet they stand higher than 10 Academy graduates, 4 of whom stood in the top 100 of their class. These are unpleasant facts. But it is better that you know them now than that you keep on deluding yourselves about your educational development.

Let me read from a letter I received commenting on a young Naval Academy graduate enrolled at one of our nuclear power schools:

"This young officer was most enthusiastic about the rigorous nuclear power school curriculum. For the first time in his life he was enjoying a new-found revelation of his capabilities * * * he mentioned one mathematics exam [at the Naval Academy] that he outguessed to make an almost perfect mark—3.98. During a typical study period at night he would read a few pages of an assignment and then shine shoes, wash cap covers, or play cards. This officer is now studying approximately 6 hours each night and a major part of each weekend. He has discovered how much he can learn and understand by applying himself and this I think is the lasting value of the nuclear power school course. He will retain more or less of the detailed

knowledge depending on his interests and continued application of the material; he will retain the principles and methods of approach a longer time. But most important, and fortunately for him, this young man has learned early in life what his academic capabilities are; this knowledge he will never lose."

This young man finally discovered how important education was to his professional development as a naval officer. This is not understood by most midshipmen. I am often told that in the past they had not applied themselves to academics because they had only recently considered duty in the nuclear power program—that they would be ready to start studying if accepted for this program. My message is addressed to all of you, not just to those who may desire duty in nuclear-powered ships. An intellectual approach cannot be decided upon overnight; it cannot be turned on and off like a faucet. It must grow out of continued and determined effort from the very beginning. Prolonged inattention to study and failure to develop oneself intellectually is a difficult habit to overcome; very few overcome it.

Many Academy graduates also believe that the academic phase of their education ends with graduation and that thereafter they merely apply in a routine manner what they learned at the Academy of the trade of naval officers. I seldom find an officer who devotes a significant amount of free time to continuing his general and professional studies. Perhaps there is too little reward or encouragement offered for this type of self-development. Most officers devote their energy to routine and perfunctory tasks associated with their jobs. Few maintain intellectual interests in science, engineering, history, languages, or similar academics. Without them, officers are really no more than technicians. They are stagnating intellectually. The fact that they are judged by their practical skills tends to mask this intellectual stagnation. This only reveals itself when real leadership and keen insight are needed to guide their decisions in dealing with the unforeseen problems that our rapidly changing times throw at them.

What impresses me in my interviews is the greater maturity of the NROTC students compared to Academy students. I attribute this to the fact that the generally superior academic education and the open life at civilian colleges tend to foster maturity. Or perhaps some practices at the Academy, such as hazing, tend to foster continuance of an adolescent attitude through and beyond the age when one should reach maturity. I am reminded of what the author and journalist Alan Pryce-Jones said recently about Oxford:

"We were treated as grownups at the age of 17. And there were superb libraries and memorable tutors in an ambience of learning."

Is it too much to expect that a youth of 17 be treated as an adult? In Biblical times a young man attained manhood at the age of 13. In medieval times when the child reached the age of about 7, he belonged to adult society. This may have been due to the fact that because of the very high child mortality little emotional investment was made in young children. The child was dressed like the grownup. When you look at medieval paintings you can see the similarity in clothes. For many centuries there was no dividing line between the games and pastimes of older children, and adults. Girls often married at 13 and boys at 14. For a long time the child, the adolescent, and the adult all sat at the feet of the same master and studied the same lessons.

Children were accorded adult treatment even in later times. Our own naval hero, Farragut, was made master of a prize at 10. Yet at the age of 22 I still had to get my company officer's signed approval to buy a pair of socks at the midshipmen's store.

Relative immaturity of midshipmen is often explained away by arguing that Anglo-Saxon youth ripen slowly in comparison with other people. Do not delude yourself on this point. Comprehensive studies show that it has no basis in fact. Therefore, the lack of maturity to which I referred is your own personal responsibility, not that of your ancestors.

I mentioned hazing as possibly contributing to immaturity. You may be interested in the origin of the type of hazing in vogue here. It began in England in the early 19th century when the growing industrial and business class sought better education for their sons. As there was then no public education in England, the few private schools became crowded. There were simply not enough teachers to do the teaching and maintain order, too. Because of this, and to save money, the maintenance of order was turned over to the older students who accomplished this by hazing. This is the origin of modern hazing which continues to this day, in symbolic form at our civilian colleges, in actual practice at the service academies.

The harm done by hazing is not its physical aspect. I am sure this is quite minor and hurts no one. The harm is done in a more subtle way and to both parties. The newly arrived midshipman is made to feel, not as an equal who has joined a goodly company whose older members assume the responsibility for his welfare, but as an inferior who must do things because they are ordered, whether there is any reason or not. The upperclassman acquires a false concept of the proper way to exercise authority. The plebes also waste much time carrying out the whims of their seniors, to the detriment of their studies.

Yet hazing is not something the authorities require or officially condone. For 40 years I have been hoping that some day there would be a Naval Academy class that upon becoming third classmen at the age of 18, would be mature enough to depart from boyish practices and adopt an adult, manly attitude toward their juniors. As the Apostle Paul said in his first letter to the Corinthians:

"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."

A misconception I find prevalent among midshipmen and younger officers is the feeling that during their years at the Academy and as young officers they are so far down the ladder that nothing they do can have real importance. This is exactly the opposite of the truth. Generally, the first 10 to 15 years of a man's career are the truly creative ones. Therefore, you cannot ever postpone doing the very best you know how. On the contrary, you must use your years at the Academy and as a young officer to work and study your very hardest. It is in these years that the foundations of your career are laid. Otherwise, you will find to your sorrow later in life that you have lost an opportunity which cannot be recovered.

Too often, midshipmen place the blame for their educational deficiencies on others. I am frequently told that the "atmosphere" in a particular company at the Academy is not conducive to study; or that no one teaches them about practical engineering on summer cruises. Yet, when confronted with the obvious question as to what initiative they themselves took to improve their lot in the face of these situations, the answer invariably is "None." This lack of initiative is a personal weakness characteristic of individuals who are content to follow passively and to bemoan that they are victims of their surroundings. The circumstances in which you find yourselves may be beyond your power. But your conduct in these circumstances is within your own power to control.

Blaming others for deficient conditions is of course not unique to midshipmen. It applies equally to many officers I interview for entry into the nuclear program. Many of these officers do not understand the true meaning of the word "responsibility." When questioned, they readily admit that the combat efficiency of their ship needs to be improved. Yet when asked what they are doing to improve matters, it seldom occurs to them that they have a personal responsibility. The fault, as they have analyzed it, lies in the inexperienced men assigned to them, in old or poor equipment, in not being motivated by their seniors, etc., but never in themselves. Yet these same officers usually have little knowledge of the fundamental or detailed technical aspects of the equipment for which they are responsible. They rarely study technical manuals or instruction books to overcome this ignorance. These weaknesses in the educational development of our naval officers can and should be corrected. The Navy cannot otherwise contribute its proper share to the military stature of our country. The question for each of you is: What can I do personally? No one can answer it for you. If you have listened to what I have said, it should be clear that each of you must find his own answer. "You yourself must set flame to the faggots which you have brought"—a statement, incidentally, by a playwright who was a naval officer. But I can perhaps help by posing some pertinent questions. I suggest you ponder these and like questions which will occur to you and decide your own positive courses of action.

Is broad and continuing intellectual development my foremost objective here at the Naval Academy? Or am I content merely to get by?

Am I striving to acquire a real understanding of the fundamentals of science, engineering, and the humanities? Or am I resorting to techniques whose purpose it is to get the best possible grade for the least effort?

Do I choose electives which are difficult and intellectually stimulating? Or do I choose easy ones which may improve my class standing, yet contribute little to further my educational development?

Am I taking advantage of every available opportunity to broaden my knowledge? Or am I devoting time to meaningless activities which have little relevance to my development as a human being and as a professional naval officer?

Am I developing the habit of independent thought and inquiry which requires me to question doctrinaire and traditional approaches to problems? Or do I blindly accept everything that is cloaked with the mantle of authority?

In attempting to answer these self-imposed questions you may discover that you are discontented with what you have accomplished. You may find that a strong effort on your part is needed to wrench your mind from intellectual stagnation. While positive corrective action in your environment may be difficult to acquire, remember it is your responsibility to do what you can to overcome such difficulties. Ignorance is a voluntary misfortune.

In conclusion I will quote a perceptive passage at the end of Darwin's "Origin of Species":

"Although I am fully convinced of the truth of the views given in this volume * * * I by no means expect to convince experienced naturalists whose minds are stocked with a multitude of facts all viewed, during a long course of years, from a point of view directly opposite to mine * * *. But I look with confidence to the future—to young and rising naturalists who will be able to view both sides of the question with impartiality."

My hope is a similar one. While I do not expect that my views will gain wide acceptance in the Navy today, I am hopeful that

you of the younger generation will eventually learn to understand them and perhaps benefit from them. If what I have said disturbs you, bear in mind I did not come here to please you but to make you think.

Speakers often tell you that the future lies in your hands. By these words they do not mean that you are superior in capacity or in intelligence. Many of you appear to believe this as you graciously accept this platitudinous homage. Not at all. What they are attempting to convey to you is the hope that perhaps as many as a handful in the audience will be inspired to ponder their purpose in life and set themselves difficult goals.

The Spanish philosopher Ortega y Gasset once wrote a book around the thesis—to quote him—that "there is no doubt the most radical division it is possible to make of humanity is that which splits it into two classes of creatures: those who make great demands on themselves, piling up difficulties and duties; and those who demand nothing special of themselves, but for whom to live is to be every moment what they already are." I read this as a young man and it impressed me deeply. And all my life I have unconsciously judged people and institutions by whether or not they set themselves a standard; whether they measure themselves against a criterion that requires effort because they deem it worthy of effort.

The Navy can offer unlimited opportunity to anyone who is willing to study and work hard—to anyone who is willing to exercise his brain and who is not afraid to question outworn shibboleths. The Navy is also a place where an officer can, for a while, coast; where he can get by with a minimum of effort and with perfunctory work.

Take your choice. When the time comes for you to contemplate your life and you ask yourself, "What have I accomplished?" will you have something to show; will you have had an impact on your environment, or will you have become nothing but a statistic?

COMMENTS BY NAVAL ACADEMY FACULTY

The following comments were recently given to me by personnel at the Naval Academy. How well they represent the true feeling at the Academy I do not know. However, they are food for thought and should be read by the Board of Visitors.

First, here are some notes taken by one instructor during a discussion between a number of instructors and an academic official of the Academy. Questions were asked by the instructors and answers were given by the Academy official. Neither the questions nor the answers are direct quotes but represent the general tone of the discussion.

Question. Do you feel that Naval Academy midshipmen are properly motivated toward academics?

Answer. I don't know. I wasn't aware that this was a problem.

Question. Do you intend to meet with the midshipmen and company officers as you are now meeting with us?

Answer. Perhaps; although I really had not thought about it. I intend to teach a class and from that get a cross section "feeling" of the midshipman attitude.

Question. Do you feel that the Academy standards are high?

A. They seem high to me, perhaps too high, since academics is a small part in the making of a good naval officer. Other attributes are leadership, morale, and strength. After all, do we really need educated officers? What is the product we are after? The Navy must decide the answer to this.

Question. What should the Academy do about the academic curriculum?

Answer. Perhaps there should be more specialization to suit midshipmen rather than a blanket course, i.e., specializations in mechanical, aeronautical, and electrical engineering, business administration, liberal arts, and naval science. All degrees should be bachelor of science. Degrees, not certificates, should be given.

Question. What do you feel the Navy wants from the Academy?

Answer. I do not know. Does the Navy want educated officers? Perhaps their needs would be satisfied with a 100-hour hard core curriculum and a 60-hour specialty course.

Question. What do you think the future holds for the Naval Academy?

Answer. Perhaps graduate schooling—better faculty—smaller classes—new facilities—new rooms for faculty—research.

Question. In your opinion how much knowledge, in percentage of the 4-year overall exposure in courses taken, should a student demonstrate in order to obtain a degree at USNA? Should it be 80, 60, 40 percent * * *?

Answer. I do not know. If tests were given both at some well-recognized college I will call college "A" and the Naval Academy, the former would have the higher overall average.

Question. Both College "A" and the Naval Academy would give bachelor of science degrees in engineering but we know that the college "A" student has had the better education. Should both institutions be allowed to give the same degrees?

Answer. Yes.

During the above discussion the Academy official expressed additional views on this same subject. These views were essentially as follows:

"We could care less about how the academic community views our product.

"We must watch our A's and B's we give since they certify knowledge for entrance to PG schools.

"I consider that a C average, 2.0 may be too high a requirement for graduation and that perhaps 1.8 would be more satisactory."

The instructors considered that they were being required to assign grades that were higher than what some students had actually earned. In answer, the Academy official stated, "I don't know why we control the percent of D's and F's other than during final course grades—perhaps we should keep our hands off." There is a strong feeling among Naval Academy instructors that the grading standards are low and that they should not be limited to giving only 8 to 10 percent D's and F's. The instructors also voiced a complaint at the meeting that pressure was being put on them to make the grades look good, whereas the midshipmen were not being given added motivation to spend more time studying, so as to be better prepared academically and to learn more.

Second, here are some more comments given me by personnel on Naval Academy:

"(a) Notwithstanding the difficulty or ease of the subject matter, the capability of the instructor, or the performance of the midshipmen, only a fixed low percent of the midshipmen are allowed to fail. This is due to the existing practice of administrative assignment of grades. Important grades, such as examination and final grades, are plotted and only the lower few percent (say 10 percent) will be assigned D's and F's. This practice often makes a C grade, the grade satisfactory for graduation, as low as 60 percent, sometimes lower. This method of grade assignment is generally known to the midshipmen. As a result, they know their best efforts are not needed.

"(b) One course given at the Naval Academy had a total of less than 2 percent failing students (F's). One instructor estimated a good college would have given 5 to 10 times as many F's based on the knowledge actually demonstrated by the midshipmen.

"(c) It would be interesting to give entire classes of midshipmen an examination in one or more of their courses with the exam being prepared by a top college, such as MIT, and graded to standards of that college.

"(d) Motivation of midshipmen toward academics is low. This is evidenced by frequent poor class preparation and also by too many midshipmen not paying attention to their work while in class."

LIBERTY, SCIENCE, AND LAW

(Speech by Vice Adm. H. G. Rickover, U.S. Navy, at the Philadelphia Bar Association's ceremonies in celebration of Law Day U.S.A. 1964, Independence Hall, Philadelphia, Pa., May 1, 1964)

I am honored to have been invited as your speaker on Law Day 1964—also surprised, for I lack the proper credentials. My concern with public affairs has indeed been intense and sustained throughout my adult life but I am neither a lawyer nor a legal philosopher. I can offer you but the thoughts of a lay citizen. I offer them hesitantly for it seems to me almost presumptuous to deliver a speech here where the echo still lingers of the great debates that led to the founding of our Nation.

Standing on this historic spot one has a sense of personal inadequacy. We are dwarfed, we 20th century Americans, by the events that occurred here nearly two centuries ago and by the men who brought them to pass. Today our immensely more populous Nation could not duplicate the array of talent assembled in the Continental Congresses and the Constitutional Convention. We no longer have men in public life who possess in equal measure the rare combination of qualities of the Founding Fathers: Their intellectual power and practical commonsense; independence of spirit and political wisdom; bold vision and prudent foresight; devotion to the common good and transcendent courage.

Recently I was asked to explain why this should be so. I have not yet found a satisfactory answer. It may be that we no longer look for such qualities in our leaders. Or, having done everything in our power to make it distasteful, we no longer attract men possessing such qualities to public service. The root cause may simply be that we are not as deeply concerned with freedom as was 18th century America; nor, for that matter, as interested in public affairs.

Noting the active participation in politics he encountered everywhere, De Tocqueville wrote that, "If an American were condemned to confine his activity to his own affairs, he would be robbed of one-half of his existence." That was in the 1830's. Today we make almost a virtue of disinterest in public issues; "not meddling in matters that do not concern us," we call it. And we meekly tolerate, even applaud, the preposterous claims frequently made by spokesmen for powerful special interest groups that anyone who examines the effects of their actions on the political or economic health of our society must be considered a controversial person, if not a traitor to our form of government. Criticism of our educational system has been termed "disloyalty to our way of life," criticism of the heathen pomp and outrageous cost of funerals communistic. This does not augur well for the survival of our free society.

A democracy remains viable only when it is actively supported and kept under constant critical scrutiny by the great body of its citizens. It has been rightly said: "the price of freedom is eternal vigilance," to which should be added: "and the courage to speak out when freedom is threatened."

Liberty is never established for once and for all. Each generation must defend it against new perils. These perils arise because men, being endowed with free will, continually alter the conditions of life. Countless decisions made in pursuit of private objectives may so transform society that institutional safeguards that once adequately protected human liberty become ineffective. Usually, public action alone will

then restore their effectiveness. Unless we are alert, we may not perceive the effects of social change; unless we have civic courage, we may hesitate to call atttention to them, especially when this would displease powerfully organized special interests.

To hold on to our free society calls for continuing effort, intelligent, and informed effort. A citizen cannot meet his civic responsibilities unless he has a thoroughgoing knowledge of our political system. To acquire this knowledge he must do his own homework. It isn't safe to rely on the word of others. Not with public relations techniques perfected to a degree where the most blatantly undemocratic ideas and actions can be persuasively presented as being in perfect accord with the Constitution and the American way of life. Since slogans and cliches are among the most powerful public relations tools, the habit of mistrusting them ought to be assiduously cultivated by every responsible citizen. I don't believe it is going too far to say that educating oneself politically is as much a duty of democratic citizenship as is assumption of the burden of defense of the country in time of war. The right to be free is necessarily correlative with the obligation to preserve our free society against whatever dangers beset it.

The basic tenets of our political system are spelled out in the Declaration of Independence; the institutional mechanism giving them reality is the Constitution. Familiarity with these great documents, and with the Federalist which elucidates their meaning, is as essential to a strong democratic faith as familiarity with the Bible is to religious faith. We must know them well enough to be able to distinguish clearly between tenet and technique, principle and procedure. Preserving our free society means keeping techniques or procedures effective under changing circumstances of social life; it does not touch upon tenets or principles, for these remain constant so long as we are committed to a democratic form of government.

The distinction is often difficult to make. Knowing how our political system came into being will be helpful in case of doubt; so will immersing oneself in the thought processes of the Founding Fathers: What did they seek to accomplish? What prerequisites did they consider indispensable to a free society? What contemporary ideas influenced their thinking?

They were men of the enlightenment; an era when throughout the Western World political philosophers were mounting an attack on every custom and institution that shackles the mind of man or arbitrarily restrains his action—from superstition to class privilege, from tyranny by an established church to tyranny by an absolute monarch. The central problem agitating the thinkers of the age of reason was how to limit power so that men might be free. They saw more clearly than anyone before or since that it was civilization—life in civilized society—which created the problem. Savages lived in freedom, but as soon as men entered civilized society their social needs generated power which in the end suppressed their liberties.

Though separated by the Atlantic from the center of all this intellectual ferment, the Founding Fathers were extraordinarily receptive to the ideas then in the air. Unlike the philosophers who were debating power as an abstract problem, the founders were experienced politicians, active in public life. Their immense achievement was to have found a practical solution to the problem of how to reconcile civilization and human freedom.

They had the political genius to recognize that on this rich, empty, newly colonized American continent a new type of self-reliant man, a new type of basically egalitarian society was developing; that this offered a unique opportunity to establish here the utopia the philosophers were dreaming about: a country where all men would be free to manage their personal lives, where the law recognized no special privilege or handicap, where government would be the servant, not the master, of the people. With consummate skill they devised a political system combining maximum protection of individual liberty with adequate provision for the proper governance of a civilized society. Hamilton called the Constitution a happy mean between "the energy of government and the security of private rights."

It needs stressing, I think, that nothing in the Declaration of Independence, the Constitution or the Federalist could lead one to believe that the Founding Fathers feared government or wished it to be weak, though this is a claim one often hears these days. The statement that ours is "a government of laws, not men," for instance, means no more than that those who exercise the governing power are subject to the law; hence that arbitrariness—the kind of abuse of power Acton meant when he said that "all power corrupts"—was to have no chance of creeping into our system. But the founders made it amply clear that government was to have the power to carry out whatever the people deemed necessary. To paraphrase a passage in the Federalist: "As the people are the only legitimate fountain of power" from which the Constitution derives, it is they who decide when "it may be necessary to enlarge, diminish, or new-model the powers of government."

Our political system rests upon three fundamental precepts, having to do with the liberty of the citizen, the purpose of government, and the location of sovereignty in our society. You find these basic tenets stated in the Declaration of Independence:

First, all men are born equally "endowed by their Creator with certain unalienable Rights"; among these are "Life, Liberty, and the pursuit of Happiness." Three years after adoption of the Constitution the list of these inalienable rights was extended, by the first nine amendments, known as the Bill of Rights.

In our system inalienable rights are absolute. As Madison wrote, they are not lost because a man enters civil society. They are rights the Founders considered so intimate a part of the dignity of man that, were he forced to relinquish them, he would be diminished in his humanity. They are what makes the citizen a free man and because of this freedom, able to meet his civic responsibilities.

A man has many other rights, of course, which are not placed on so high a plane as his inalienable rights. It is these other rights Jay meant when he wrote in the Federalist that "nothing is more certain than the indispensable necessity of government, and it is equally undeniable, that whenever and however it is instituted, the people must cede to it some of their natural rights, in order to vest it with requisite powers."

Second, governments are instituted among men to secure the individual's inalienable rights. This is a uniquely American concept; perhaps our greatest contribution to preserving liberty in a civilized society. It goes beyond the injunctions in the Bill of Rights which categorically command that government shall or shall not do certain things, thus erecting a fence around the private realm of the citizen from which government is excluded; at any rate, into which government may enter only via the slow and cumbersome amending process. According to the Declaration of Independence the very purpose of government is to secure or safeguard the citizen's inalienable rights, presumably against anyone who infringes them. It make government the guardian of these rights.

Third, government derives its just powers from the consent of the governed. Madison restates the principle a number of times in the Federalist. Perhaps best known is his definition of our Government as one "which derives all its powers directly or indirectly from the great body of the people, and is administered by persons holding their offices during pleasure, for a limited period, or during good behavior." Clearly, in our system of government sovereignty is vested in the people. Their relationship to men elected or appointed to public office is therefore that of principal to agent.

The French have a saying that "to govern is to foresee." Being highly gifted in the art of government, the founders of our Nation proved amazingly accurate forecasters. They anticipated for decades to come the problems the new Nation was to encounter. James Bryce, in one of his essays, examines the record and notes that up until the Civil War virtually every one of the difficulties foreseen by the Constitution builders had been overcome, the reason doubtless being that, having been anticipated, it was possible to arm against them.

The foresight of the founders could not, of course, extend beyond the time when our problems arose from causes familiar to them. By an accident of history, the Civil War coincides with the end of the era during which American society retained essentially the pattern familiar to the founders of our Nation; a pattern based on our possessing certain unique advantages vouchsafed few other nations: Immense, unclaimed wealth in land and other natural resources, which made for a high degree of economic equality and prevented division of society into master and servant classes. Anyone, by going west, could obtain free land and build himself a house; no one needed to remain a propertyless proletarian. (I leave out of consideration the special case of the plantation society of the South.) A scarce and largely homogeneous population, composed for the most part of independent farmers, artisans, and merchants, with the way open to any enterprising young man to become an entrepreneur himself.

A way of life, sufficiently simple and uncomplicated, that most men were able to pull their own weight, and differences among them of intelligence and competence did not manifest themselves conspicuously.

All this made for a high degree of de facto equality which naturally facilitated the operation of a system of government based on political equality. The slow and cumbersome democratic process could deal adequately with issues requiring public action because geographic distance from the world's trouble spots protected the Nation against foreign attack. De Tocqueville remarked that "America has no neighbors," and counted this one of the prime reasons for the success of American democracy. Distance provided a margin of time to work out social and political problems, besides relieving man and society of the burden of military preparedness. In truth the founders were right when they said that the land, the people and the political system were made for each other.

The industrial revolution, which reached our shores about midpoint of the last century, and the scientific revolution, whose full impact hit us about midpoint of the present century, wrought immense transformations in the pattern of American society. They greatly diminished, in many cases destroyed, the unique advantages we possessed in the past, advantages on which the founders had counted heavily to insure success of the new democratic experiment. They did not envisage the explosion in scientific and technical knowledge that came after their time, thus could not prepare our society to meet the consequences of this explosion.

Every thinking American is aware of the changes in our pattern of life. Free land is gone, we have an excess not a scarcity of people—as measured by available jobs—and for many it is becoming increasingly difficult to acquire the competencies for which there

is demand in our complex industrial society. Only 1 in 10 now works for himself.

As long as they keep up their installment payments, most people have the use of many possessions, but few now possess the kind of property that, when fully owned, gives a man a sense of independence. The gap in wealth has grown. The richest 1 percent of the population now owns 28 percent of the total wealth of the Nation, while the poorest 10 percent own but 1 percent—a difference of 280 to 1. One-fourth to one-fifth of our people live in want and economic insecurity. No longer is there de facto economic equality. Moreover, as intelligence and education become more important, inequalities appear that are far harder to bridge than differences in wealth. Technology has conquered distance, and we are now faced with the ever-present danger of military aggression and permanently saddled with a huge and costly military establishment.

Directly or indirectly these transformations spring from the growth of scientific knowledge. I should like to devote the remainder of my remarks to consideration of certain prevalent attitudes toward science that seem to me dangerous to our free society.

Of itself science, being pure knowledge, does not endanger anyone or anything. It is when men utilize science—when they create technology—that potentialities for injury to human beings and to society as a whole arise. Today these are enormous—greater by far than at any previous time.

The possibility that misuse of science may cause untold harm hangs like the sword of Damocles above us. How can we maximize the benefits to be derived from science while guarding against harmful uses? I suggest we can do this best through the instrumentality of the law. And I would urge those trained in the law to accept, as a special civic responsibility the task of helping the American people find right solutions to this problem.

The problem is aggravated by the bureaucratization of American life, in itself an indirect result of science and technology. Our society is now dominated by huge public and private power conglomerates which interpose themselves between the American people and the men elected or appointed to public office, making it increasingly difficult for the popular will to assert itself whenever it goes counter to the interests of large organizations. Or, to put it more accurately, of the men who manage these organizations; the men who are their absolute rulers; who determine what is or what is not an organization "interest." Proposed legislation seeking to prevent misuse of science is nearly always held by them to be inimical to their organization "interests."

So great is bureaucratic power today that normally the interest of the sovereign people in getting protective laws enacted and enforced does not carry as much weight as the interest of organizations whose practices would be affected by these laws. Often something in the nature of a catastrophe which causes a public outcry will alone get action—the tragic case of the thalidomide babies comes to mind. One could cite numerous examples of delayed or emasculated legislation and of inadequate enforcement of existing laws. For instance, against sale of foods and drugs containing new miracle ingredients not properly tested for side effects; against dangerous pesticides and weed killers which poison fish—thus detroying fishery industries—or which upset the ecological balance of nature—thereby harming the land that nourishes us; against industrial pollution of air and water; against lumbering and mining practices that cause soil erosion, etc.

Popular demand is all too often drowned out by the public relations and lobbying activities of large and rich organizations. At times the public is brainwashed by superficially persuasive arguments and slogans, such as that the proposed law, by regulating how science may be utilized, would interfere with the freedom of the user and thus contravene basic tenets of our free society, or that modern technology demands the action the public would like to prevent by law—"you can't stop progress." These are specious arguments.

No axiom is more firmly established in our law than that one man's—or organization's—freedom to act ends where it harms another. To quote Chief Justice Charles Evans Hughes, "freedom of action would be a barren privilege, if it did not also connote freedom from injurious action by others." Only the self-centered, immature mind equates freedom with absence of all legal restraint; with the untrammeled right to pursue one's own objectives, regardless of the effect they may have on others—fellow citizens and society as a whole, people now living and generations to follow. "To be free," said Voltaire, "implies being subject to law alone"; it does not mean being subject to no law.

Let us also be clear that technology "demands" nothing of us; it is but a tool to be used by man. It is not an end in itself; merely a means to an end. The mere fact that men who rule large organizations now have at their disposal new technologies, and that these may serve their purposes, does not of itself give them the right to their use. Availability does not legitimize. Whether a new technology may be used and how it may be used depends on the principles that govern human conduct in our society. Technology has no bearing on these principles; it isn't concerned with principles at all. Technology is based on the laws of nature; it deals with physical properties, material processes; in other words, with things.

Principles have to do with the way we marshal our inner resources, discipline our actions, respond to the prompting of our conscience and to the categorical imperatives of the law; with the ordering of our personal lives and of our relations with fellow citizens, both in private and public life. Principles are based on the laws of God and man, they apply to human relationships, human thoughts and actions, in other words to people.

One other point should be made: Under our system, "inalienable" rights stand on a higher plane than other rights. The right to use science as one pleases is not inalienable, but certain human rights that may be put in jeopardy by new technologies are inalienable, notably the right to life. It may come as a shock to some people, but the Bill of Rights is not concerned with economic rights; it is concerned with rights pertaining to individual human beings, rights that are protective of human liberties. I wonder whether in a conflict between inalienable human rights and the right claimed by organizations to use certain new technologies, the citizen's inalienable right should not on principle prevail, simply because in our political system it is recognized as being a higher kind of right? This seems to me a point the law might elucidate more clearly.

We must never forget that our political system pivots on the autonomous individual. It seeks to organize society in such a manner that civilized life may proceed without diminishing the human beings who compose our society. The first commandment of our Kantian imperative: "Every man is to be respected as an absolute end in himself; and it is a crime against the dignity that belongs to him as a human being, to use him as a mere means for some external purpose."

Is there no recourse then against being compelled to go through life with an assigned number—as if one were the inmate of a prison—just because this facilitates the work of bureaucrats handling social security and income tax returns? Must the citizen's right to privacy in his personal life yield when a public or private bureaucracy finds it convenient to subject job applicants to lie detector tests? Quite apart from the dubious validity of these tests does anyone have the right to subject another human being to this indignity—as a routine employment practice? The theoretical right of the applicant to refuse the test means little when in fact his ability to earn a living may depend on submitting to it. Or consider the absurdity of maintaining that the technical advantage of straight-line highways must always outweigh considerations of tradition, esthetics, or the passionate desire of human beings that their community remain intact. We make a fetish of science and technology when we claim that they justify riding roughshod over man's inalienable right to life, liberty, and the pursuit of happiness.

It disturbs me that we are so easily pressured by purveyors of technology into permitting so-called technical progress to alter our lives, without attempting to control this development—almost as if technology were an irrepressible force of nature to which we must meekly submit.

Is there not something topsy-turvy about the constant exhortation to go out, be patriotic and buy, or the economy will collapse? Has our national purpose shrunk to the single objective of digging out our limited capital of nonrenewable natural wealth, turning it into goods that will quickly become obsolescent, so that more wealth can be dug out and more goods produced and so on ad infinitum until all our natural capital is gone? The implication is that technology dictates human behavior and we must obey its commands.

Let us reject the notion that man is no longer master of his own and his society's destiny. I suggest we put him back in the center of the stage and do some hard thinking about the kind of life science and technology are currently creating for us and how we may improve it. The chances for improvement are not good unless we find ways to limit the power of huge bureaucratic organizations—private and public. To our misfortune, the Founding Fathers left us no specific institutional safeguards against bureaucratic power. When they wrote our political charters, there were but 7 corporations in all of the 13 Colonies; there were no labor unions, professional associations, organized special interest groups, or even political parties. Government itself had no large bureaucratic agencies.

The founders of our Nation saw the problem of limiting power exclusively in terms of governmental power, as was only natural since monarchical absolutism was then at its apogee and everywhere men were ruled by autocrats who felt neither accountable to the people nor—in many cases—bound by the law. What the individual then needed was protection against arbitrary absolutist government. This was the concern of philosophical speculation abroad; it was the objective of the Constitution builders here. But the problem of limiting power is perennial and cumulative. No sooner is society organized to control one kind of power, than new ones appear, ranging themselves alongside the old power.

To prevent bureaucratic power from crushing the individual and rendering the democratic process ineffective is our task today. This we must do on our own; we can no longer just hang on to the coattails of the Founding Fathers. To guide us, we do, however, have their concept of a free society. On the evidence, it seems clear to me that they meant it to be a society so organized that citizens are equal before the law and in all other relations with government; that individuals possess, absolutely, certain specified rights deemed essential to their freedom; and that no one may legitimately rule others unless he has received a mandate from the

governed and is accountable to his constituency for actions taken in their name.

As civilization becomes more complex, wrote Hughes, "the range of personal volition must be limited by law in the interest of liberty itself." With rare prescience, for he spoke in 1921, Hughes notes that "the discoveries of science constantly reveal new menaces with which only organized society can cope," and he reminds us that "the supreme aim and justification of the lawmaking of free men and women * * * should ever be found * * * in the purpose to secure the freedom of the individual—an ordered freedom, but still freedom—subject only to such restraint as a sound and tolerant judgment determines to be essential to the mutuality of liberty."

RUMANIA WILL AGAIN BE FREE

Mr. YOUNG of Ohio. Mr. President, it is fitting that today we commemorate the national holiday of the Rumanian people. Independence Day came to Rumania on May 10, 1877. May 10 stands as a symbol of a proud history and of freedom valiantly won.

Rumanian Independence Day 1964, however, is marked with mixed emotion. It is with pride that we note the fortitude and courage of the Rumanian people as reflected by their history. It is also a source of pride that here in America citizens of Rumanian extraction have contributed those noble qualities to our national life.

However, it is disheartening that this holiday cannot be celebrated within the boundaries of a nation whose history is so steeped in love of freedom. The Communist dictatorship imposed by the Soviet Union on the Rumanian people has ripped this day from the calendar just as it has torn freedom away from that once proud and happy land. Today in Rumania dissent is not tolerated; freedom does not exist.

The Communist dictatorship has tried to force the people to forget this day, and their proud history. There will be no singing of the national anthem today in Bucharest, but we know that love of freedom persists in Rumania. It is for us here to give voice to the thoughts and desires which Rumanians cannot express in their own homeland.

Rumanians have known oppression before in their long history. Theirs is a nation of a great history and noble tradition. Let the Communist dictators be reminded that Rumania lived under the tyranny of the Ottoman Turks for 400 years. Since the time of Peter the Great it has been invaded 10 times by power-hungry neighbors, including Russia. However, the Rumanian people finally won their freedom, and for six decades stood proud as a free nation. They will once again take their proper place among freedom-loving peoples and free nations. Freedom won after centuries of struggle and once enjoyed in happier days cannot remain suppressed.

We look forward with them to the day when they will be free. Our prayer is that on another May 10 in the not too distant future, Rumania will once again stand proud among the family of free nations.

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

Mr. YOUNG of Ohio. I yield.

Mr. LAUSCHE. I should like to join in the expressions just made by my colleague about the Rumanian people, their fight for freedom, and their deep friendship to our common cause. I join in every thought expressed by the Senator in his statement.

Mr. YOUNG of Ohio. I thank my colleague.

REPORT OF BOARD OF VISITORS TO U.S. NAVAL ACADEMY

Mr. YOUNG of Ohio. Mr. President, I have had the honor of serving on the Board of Visitors to the U.S. Naval Academy for 1964. Our final report has now been submitted to the President. Because of the general interest in this subject I ask unanimous consent that the full text of this report be printed at this point in the RECORD.

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

REPORT OF THE BOARD OF VISITORS TO THE U.S. NAVAL ACADEMY, 1964

THE BOARD OF VISITORS TO THE U.S. NAVAL ACADEMY, 1964

Appointed by the President

Mr. Thomas J. Deegan, Jr., chairman, Thomas J. Deegan Co., Inc., New York, N.Y. (term expires December 30, 1965).

Mr. David J. McDonald, president, United Steel Workers of America, Pittsburgh, Pa. (term expires December 30, 1966).

Dr. James M. Nabrit, Jr., president, Howard University, Washington, D.C. (term expires December 30, 1966).

Dr. Edgar F. Shannon, Jr., president, University of Virginia, Charlottesville, Va. (term expires December 30, 1964).

Mr. Stanley M. Stalford, chairman of the board, Fidelity Bank, Beverly Hills, Calif. (term expires December 30, 1965).

Mr. William H. Vanderbilt, president, Citizens' Research Foundation, former Governor of Rhode Island, Chestnut Hill, Mass. (term expires December 30, 1964).

Appointed by President pro tempore of the Senate (in lieu of the Vice President)

Senator J. GLENN BEALL of Maryland.

Senator A. S. MIKE MONRONEY, of Oklahoma.

Senator JOHN O. PASTORE, of Rhode Island.

Appointed by the Speaker of the House

Representative DANIEL J. FLOOD, 11th District of Pennsylvania.

Representative ELIZABETH KEE, Fifth District of West Virginia.

Representative WILLIAM E. MINSHALL, 23d District of Ohio.

Representative K. W. STINSON, Seventh District of Washington.

Ex officio members of the board [1]

Senator STEPHEN M. YOUNG, of Ohio (designee of Senator RICHARD B. RUSSELL).

Representative CLARENCE D. LONG, Second District of Maryland (designee of Congressman CARL VINSON).

ANNAPOLIS, MD.,
March 7, 1964.

The PRESIDENT OF THE UNITED STATES:

SIR: The Board of Visitors to the U.S. Naval Academy convened at Annapolis on Thursday, March 5, 1964, and continued its deliberations until Saturday, March 7. Mr. William H. Vanderbilt was elected Chairman. Comdr. Albert A. Folop served as secretary and Comdr. Frederick V. Martin and Dr. William S. Shields served as assistant secretaries.

The Board voted that the 1965 meeting of the Board of Visitors would be held during the period of April 29 through May 2.

The Board of Visitors is gratified at the substantial progress which has been made during the past year in a number of areas suggested by the Superintendent and endorsed by the Board at its last meeting.

Among these are the following:

1. The appointment of a civilian academic dean. Dr. A. Bernard Drought assumed his duties as academic dean last August. There is every indication that Dean Drought's selection has been a most happy one and that a great deal of benefit to the Academy has already resulted. Proposed organizational and curriculum changes which have evolved from close study and cooperation between the Superintendent, the faculty, and the new academic dean, and approved by the Academic Board of the Naval Academy, will, when put into effect, bring additional improvements.

2. The increase in salaries for civilian members of the faculty.

3. The approval by the Department of Defense of an increase in the number of civilian faculty by 52 in the coming fiscal year and an additional 28 in fiscal year 1966, thus bringing the total increase to 80 as recommended last year. This will mean a faculty of 320 civilians and 282 officers.

It is to be noted that it takes some time to find, interview, and engage civilians of the high caliber required for the faculty and, therefore, it may be several months before all the authorized billets are filled. Thus it is of vital importance that the authorization for 80 additional civilian faculty by fiscal year 1966 be continued even though there may still be some vacancies at that time. This increase in salaries and in numbers of civilian faculty, resulting in a reduction in the now heavy workload, will be of assistance in recruiting faculty members of outstanding ability and will improve the quality of teaching and research at the Academy.

4. The increase in the academic qualifications of the officer faculty from 15 percent holding master's degrees or above last year to 32 percent at present, and an anticipated further increase to 43 percent in the coming academic year is noted with enthusiastic approval. The Board urges that this policy be continued and that increased efforts be made to secure faculty, both civilian and military, with advanced degrees. We repeat for purpose of emphasis that in assigning officers with high academic qualifications to the faculty, great care should be given to selecting those officers with demonstrated teaching ability and outstanding qualities of personality and leadership.

5. We believe that the termination of inter-Service transfers has been an important and necessary step and that it has resulted in improved morale in the Brigade of Midshipmen.

6. The expansion of the summer cruise program as described in the Superintendent's statement is, we believe, of the utmost importance in the overall education and training of future naval officers. With the increased emphasis at the Academy on academics, it is only through an expanded summer cruise program that the necessary practical training with ships and weapons systems can be accomplished.

Modernization—Construction program

The Board of Visitors views with interest and approval the revised program for the modernization and construction of additional facilities at the Naval Academy. We are pleased at the expected completion of Bancroft Hall this year, though we deplore the fact that the authorization for the new science building has been put back another year

[1] The chairman of the Committee on Armed Services of the Senate and the chairman of the Committee on Armed Services of the House of Representatives, or their designees, are, by law, ex officio members of the Board.

and that the building cannot now be ready for use until 1968. We reiterate our statement of last year: "We have found existing conditions in many of the classrooms and faculty offices to be far below minimum standards in any first-class educational institution. We believe that the faculty and staff of the Academy have done an amazing job in carrying on their work in areas originally designed for use by approximately 800 midshipmen, whereas today the brigade consists of nearly 4,000. Most faculty members, whether officer or civilian, are crowded into large rooms, desks back to back, with absolutely no facilities for private study or consultation with students. We believe that this is a most pressing problem and of vital importance to the educational process at the Naval Academy. This problem can best be corrected by the construction of the new science building."

This required program, developed from the master plan recently submitted by the architect-engineer and which this Board endorses, is as follows:

Line item	
Fiscal year 1965:	
Public works shops building	$897,000
Utilities rehabilitation and extension (first increment)	436,000
Land acquisition (17.3 acres of Naval Athletic Association property)	165,000
Subtotal	1,498,000
Fiscal year 1966:	
Science building	13,900,000
Central heating plant	3,480,000
Laundry and dry cleaning plant	1,433,000
Subtotal	18,813,000
Fiscal year 1967:	
Utilities rehabilitation and extension (second increment)	2,100,000
Dorsey Creek Bridge	1,000,000
Subtotal	3,100,000
Fiscal year 1968:	
Academic facilities rehabilitation first increment)	$2,000,000
Administrative and support facilities rehabilitation	3,000,000
Utilities rehabilitation and extension (third increment)	2,300,000
Library rehabilitation	2,355,000
Subtotal	9,655,000
Fiscal year 1969:	
Auditorium	6,075,000
Academic facilities rehabilitation (second increment)	2,000,000
Subtotal	8,075,000
Grand total	41,141,000

Maintenance

We regret that the recommendations of the Board of Visitors in 1960, 1961, and 1963 have not been implemented with sufficient personnel and funds, and as a result the Naval Academy plant continues to deteriorate at an alarming rate. There now exists a backlog of $3,250,000 in deferred maintenance and alterations. Prompt completion of the modernization program will eliminate $2,100,000 of this backlog. The Public Works Department at the Academy is preparing a 5-year, long-range, maintenance program. The Board commends the initiative thus shown and hopes that once established this plan will be strictly adhered to. Once again, we cannot urge too strongly the early appropriation of funds necessary to overcome this backlog and to provide an adequate annual maintenance budget. The Naval Academy is, in effect, a national monument, visited annually by thousands of visitors from all over the United States and abroad. It is unthinkable that it should be allowed to deteriorate to the point where the lack of care is obvious.

Inadequacy of staffing

There is a serious shortage of staff in the administrative and academic departments. The company officers, who have the principal and closest contact with the midshipmen, are unable to do as thorough a job as they should because of the sheer weight of numbers. The company officer is the one to whom the midshipman, when he first arrives, and throughout his 4 years, looks for guidance, counsel, and help. The company officer should know every member of his company well in order to complete his mission successfully and so that each midshipman will receive the greatest benefit. He is to the midshipman the image of the naval officer. At the Naval Academy there are approximately 165 midshipmen to each company officer. At West Point the ratio is 1 officer to 100 cadets and at the Air Force Academy 2 officers for 100 cadets. The Board of Visitors strongly supports the request of the Superintendent for an additional allocation of 12 company officers, which would provide a ratio of 1 officer to 110 midshipmen.

Clerical staff in the academic departments is so small that in many instances members of the faculty are forced to do their own typing or run a mimeograph machine. This seems to us to be an expensive and wasteful use of time. An increase of 18 clerical staff is recommended. This would bring the ratio of clerical staff to faculty to 1 to 15, still far below that existing in comparable civilian institutions.

There is also a critical shortage of personnel in the Superintendent's office, and the dean's office. Personnel performing comparable functions relating to the dean's responsibilities at the three Academies are as follows:

	Students
Air Force (29)	2,500
Military (15)	2,500
Navy (4)	4,000

This kind of shortage is hampering the effectiveness and efficiency of both officers and civilian faculty members and is obviously false economy. Adequate staffing is an essential part of the success of the new academic program, and the administrative organization which the Superintendent is proposing to the Department of the Navy is also clearly required.

Midshipmen's financial status

There is at present a deficiency of about $200 a year in the spendable pay of midshipmen as compared with cadets at the Military and Air Force Academies. Though the base pay at all the Academies is the same ($111.15 a month), the charges made against this by the Navy are substantially higher. For example, the other Academies furnish bedding. The Navy pays for bedding on all ships and all naval stations throughout the world, but it requires the midshipmen to pay for their bedding. This would appear to be inexplicable discrimination by the Navy Department against its own future officers. It is recommended that this charge, which amounts to about $45 a year per midshipman, be borne by the Navy.

Recently, meetings have been held between the financial officers at the four Service Academies, looking toward a more uniform set of charges and allowances for midshipmen and cadets. Agreement has been reached by these officers and will be submitted for the approval of the Superintendents in the near future. As a part of this plan, it is proposed that midshipmen's and cadets' pay, now set by law at 50 percent of the base pay of ensigns and second lieutenants, be established as a separate pay grade. The Board of Visitors heartily endorses the creation of this separate pay grade as there is no relationship in fact between the expenses confronting the commissioned officer and the midshipment/cadet. It is sincerely hoped that agreement will be reached so that charges at all four Academies, and hence the spendable income of each midshipman and cadet, will be approximately equal.

Faculty

Research is essential to the quality of the faculty and to the vitality of the academic program. The Board, therefore, notes the scientific research being carried on under a $25,000 annual grant from the Office of Naval Research and emphasizes the importance of greatly increasing the participation of the faculty in research which is not directly related to fulfilling a requirement for an advanced degree. The need for space in which to conduct such research underlines the urgency of constructing without further delay the proposed new Science Building. Not only should funds and facilities for research be developed by the Academy itself, but faculty members should be urged and assisted to seek individual research grants or contracts from Government agencies, foundations, and industry.

We reiterate the recommendations of the 1963 report of the Board of Visitors that members of the civilian faculty be allowed the privilege of the midshipmen's store for the purpose of buying books.

Since the mission of the Naval Academy is to graduate well-educated junior officers capable of and dedicated to a career in the Naval Service, it is apparent that every effort must be made, during the entire 4 years of midshipman education and training, to encourage and strengthen motivation and incentive for such a career. Motivation stems from a variety of sources, but no single factor exercises so much influence in this area as the caliber and performance of the officers with whom the midshipmen have daily contact in Bancroft Hall and in the classroom. Only officers with superior service records and outstanding potential should be considered for assignment to the Naval Academy in any capacity. In addition, graduate study at least to the level of the master's degree in the field in which they as officers will teach should be the minimum academic qualification for assignment to the faculty. To achieve this high selectivity, the Naval Academy must retain a priority equal to that of any other activity in the Navy.

Generally speaking, such an assignment policy appears now to be in effect, but it could be immeasurably strengthened if Naval Academy duty were clearly identified as a prestige assignment for promotion purposes. It must be recognized throughout the Navy that it is the highest honor for an officer to be chosen for an assignment to the Naval Academy. The individual so selected must feel that he is being presented with a professionally rewarding opportunity. The best and quickest way to achieve these two objectives is to insure that officers assigned to the Naval Academy have the highest professional and educational competence. The service reputation and inevitable future success of these individuals will be the most convincing evidence of the prestige and professional worth of a Naval Academy assignment.

Curriculum

The Board commends the Naval Academy faculty and administration on the steps which they have taken to strengthen the academic program. The very fact that a curriculum study which contemplates substantial changes is in progress is a healthy sign of academic vitality. Of especial interest to the Board is the proposition that

the curriculum is to be redesigned to place greater emphasis on developing the ability for critical thinking. While the current basic program of instruction for the midshipmen provides a broad introduction to a variety of liberal arts, engineering, and naval professional fields, it does not probe deeply enough into any single field to prepare a midshipman fully for graduate work. At present, it is only through carrying elective courses, beyond those of the 160-semester-hour basic curriculum, that a midshipman can achieve a major in any academic discipline. About one-third of the midshipmen now carry additional elective courses, but most of them will not achieve a major. The new plan is to insure that every midshipman's curriculum include an educational experience in depth that will develop critical thinking to a greater degree. The Board approves of the concept that the educational program be planned to take advantage of individual talents useful to the naval profession. Thus, the provision of a number of fields of concentration seems reasonable and desirable for the development of talents in some depth.

It is obvious that the Naval Academy cannot reduce its corps curriculum without eliminating or curtailing some discipline currently taught. The Board realizes that thoughtful consideration has been given to this problem by the faculty and staff of the Academy, taking into account the requirements of the graduates, the contributions of secondary school education, and the education provided naval officers subsequent to graduation from the Academy. Nevertheless, the Board observes with concern the proposal whereby a midshipman would lack the opportunity to continue during his first year at the Academy the language studies begun in high school, and is particularly disturbed by the plan to require only 1 year of language study at the Academy for midshipmen who present less than 2 years of secondary school foreign language. The Board is pleased to note that opportunities for foreign language study will not be so curtailed for midshipmen in non-engineering fields of concentration.

The Board would also recommend for the serious consideration of the Naval Academy that a need exists for greater emphasis on the fundamental concepts of constitutional and administrative law. The Board considers that the present curriculum revision provides a most timely opportunity to remedy this deficiency.

The Board is impressed with the significant advances being made at the Naval Academy as a result of the curricular and organizational studies begun under the direction of Admiral Kirkpatrick and continued so effectively by Admiral Minter. The continuity provided by Admiral Minter's experience of 2½ years as Commandant of Midshipmen and member of the Academic Board has facilitated the carrying forward of these important academic improvements.

We express our appreciation to Admiral Minter, the Superintendent; Captain Kinney, the Commandant; Captain McNitt, the academic aide; Dr. Drought, the academic dean; their staffs, and the faculty members, both officer and civilian, for their many courtesies and excellent cooperation. We extend our special thanks to Comdr. Albert A. Folop, Comdr. Frederick V. Martin, and Dr. W. S. Shields for their invaluable help.

A. A. FOLOP,
Commander, U.S. Navy,
Secretary to the Board of Visitors.
WILLIAM H. VANDERBILT.
JAMES M. NABRIT, Jr.
WILLIAM E. MINSHALL.
A. S. MIKE MONRONEY.
EDGAR F. SHANNON, Jr.
CLARENCE D. LONG.
DANIEL J. FLOOD.

STATEMENT TO THE BOARD OF VISITORS SUBMITTED BY THE SUPERINTENDENT OF THE U.S. NAVAL ACADEMY, MARCH 5, 1964

Members of the Board:

It is a privilege to welcome you to the Naval Academy. We are looking forward with pleasure to the opportunity of discussing with you our current operations and our plans for the future, and to receive the benefit of your comments and advice.

The advancements which have been made since the Board of Visitors meeting of a year ago have been significant in a number of areas. I know that members of the Board who were here last year will be especially pleased to note the appointment of the academic dean, the improvement in qualifications, numbers and salaries of faculty, the termination of interservice transfers upon graduation, and the expansion of the summer cruise programs. Unfortunately, some of the important needs which we discussed last year remain with us. All members of the Board will be interested in the continuing efforts we are making to improve our program.

Improvements in procedures are made with one purpose in mind; namely, to enable us to do a better job of producing well prepared and dedicated officers for the naval service.

The motivation of young men for a naval career has always been a function of the Naval Academy. Life in Bancroft Hall, participation in the various activities of the brigade, experience on the cruises, and the many elements of tradition at the Academy combine to form a strong basis for dedication to a naval career.

A deep sense of responsibility must accompany dedication to the career. In the brigade organization, a carefully planned program for the development of responsibility is carried out under the direction of the commandant of midshipmen. The program begins with the assignment of individual tasks to the newly admitted midshipment and, through the progressive assignment of increasing responsibilities, culminates in the administration of the brigade of midshipmen of the first class.

The development of personal integrity and the highest sense of honor are essential for service as a commissioned officer. The public trusts imposed upon a naval officer, the command relationships within the Navy, and the proximity of life aboard ship render anything but truthfulness and honesty intolerable. Through precept, example, discussion and regulation the principles underlying the honor concept are made part of the life of the brigade.

A program of physical education throughout the 4 years and wide participation in varsity and intramural sports provide for the physical development of the midshipmen and contribute to the establishment of habits of healthful exercise and competitive spirit and teamwork that they will need in their naval careers.

CURRICULUM

The progress that has been made under the revised curriculum introduced in the fall of 1959 has been considerable. An extensive offering of elective courses has been developed by our faculty, and the midshipmen have subscribed in great numbers to these courses. The number of elective course enrollments this semester is double the number for the same period last year. The validation, or advanced placement, program has also steadily increased every year. In this year's entering class of 1,290, there were 386 midshipmen who were exempted from a total of 1,026 one-semester courses. One member of last year's entering class succeeded in validating a total of 50 semester hours. In the class of 1963 there were 105 graduates who attained majors in fields of concentration within patterns of elective courses established by the various academic departments. Approximately one-third of the brigade is currently participating in the validation and elective program; two-thirds adhere to the basic curriculum of 160 semester hours.

Experience in administering this program underlined the values of flexibility and development of individual talents. The flexibility introduced by the validation program made it possible for a midshipman to forge ahead rather than mark time in basic curriculum courses which he had already sufficiently mastered. By taking elective courses, he could develop his individual talents, in fields of use to him as a naval officer, beyond the opportunities provided in the basic curriculum. With enough electives, in a specific discipline or in related disciplines, he could gain an educational experience in depth which would provide him with valuable intellectual perspective. Furthermore, the young officer's usefulness to the Navy would be enhanced by his greater knowledge in a field of importance to the naval service. For those officers going into graduate study, it would be possible to complete all undergraduate prerequisites at the Naval Academy.

We have been conducting a thorough study of our curriculum since September, therefore, to determine how these advantages of flexibility, development of individual talents and experience in depth can be made available to all midshipmen. During the meeting of the Board of Visitors, the proposals which have been evolved to accomplish these aims will be discussed in greater detail, but the major features are the following. We plan to reduce the semester hour load, exclusive of summers, to a total of 136 to 140 semester hours. Within this basic workload, each midshipman will devote approximately 30 percent of his time to a field of concentration and 70 percent to a program consisting partly of prescribed courses and partly of electives. Three broad programs will be available: Engineering or engineering science; science or naval science; and social sciences and humanities. Within each of these programs there will be a number of options available to the midshipmen. It is planned that fields of concentration will be equally demanding, with at least one offered in each department, and selection by midshipmen to be made at the end of the first year. In the physical sciences and engineering laboratories, greater emphasis will be placed on analytical experiments, and laboratory periods will in some cases be lengthened. We believe that the proposed curriculum has significant advantages. We are making arrangements to review our plans with consultants from other colleges and universities and, ultimately, with a special committee to be appointed by the Secretary of the Navy. Meanwhile, we shall be much interested in the views and counsel of the members of the Board of Visitors.

In order to provide for exceptional students, especially those interested in research, we established last year the Trident scholars program. Admiral Kirkpatrick, then Superintendent of the Naval Academy, had discussed with Dean William C. DeVane the scholars of the house program at Yale and was so favorably impressed with it that he thought we should have something similar here and asked our Academic Council to study the matter and make recommendations to our Academic Board. A well-considered plan was evolved, and in the spring of 1963 those midshipmen standing in the top 10 percent of the second (junior) class were invited to submit projects for independent study and research to be carried on during first class year. Six were selected as Trident scholars. They are excused from formal course requirements, but they may enroll in or audit courses as they desire. Each

scholar has a faculty adviser who is intimately concerned with the field in which the scholar is working and who meets frequently with the scholar. There is also a Trident scholars committee consisting of faculty members with special abilities and interests in research. The committee and the six Trident scholars have a dinner meeting once a month, on which occasion several of the scholars give reports on the progress of their research. Among the topics which our first Trident scholars have chosen to investigate are concepts of fire control using lasers for energy-beam weaponry, irradiation of transistors, and factors affecting submarine hull design. These midshipmen are having an unusually fine educational experience, which will be useful in their careers.

FACULTY

A number of significant achievements with regard to the faculty have marked this year as an outstanding one.

Dr. A. Bernard Drought came from the position of dean of engineering, Marquette University, to accept an appointment as academic dean (pro tem) at the Naval Academy. Dr. Drought has been making a thorough study of the Academy with a view to determining the organizational structure needed in order to establish the dean's position on a permanent basis, and he has been a constant consultant on curriculum changes which are under consideration. His contributions in both of these areas as well as in other academic matters have been invaluable.

The Department of Defense approved an increase of 52 members in our civilian faculty for the coming fiscal year, making a total allowance of 292 civilian faculty and 282 officer faculty. An additional 28, bringing the total increase in civilian faculty to the 80 requested by the Naval Academy, has been approved for fiscal year 1966. This authority to add needed instructional personnel is highly important to the success of our program, and of particular value to the staffing of curriculum changes we are preparing to make. Recruitment of new faculty members, conducted by academic departments, has been delayed to some extent by consideration of changes in curriculum. We are now proceeding apace, emphasizing in our recruitment, however, the qualifications of the prospective faculty members rather than just adding instructors for the sake of numbers alone.

In January, when Federal employees paid under the Classification Act received the second increment of their pay increase authorized by Congress in the fall of 1962, the civilian faculty benefited from a similar increase in accordance with Navy Department policy. This improvement in the civilian faculty salary schedule should prove helpful in our recruiting program.

During the last year, improvements in the academic qualifications of the officer faculty have been made. Last year only 15 percent of the officers were educated to the master's level or above. At this time, 32 percent have achieved advanced degrees, including four to the doctoral level and four others with all requirements completed except the doctoral dissertation. Advanced education beyond the baccalaureate but less than a master's degree is the level of achievement for 27 percent of the officers. A number of these officers will complete their work for a master's degree before the start of the next academic year. The remainder of the officer faculty have baccalaureate degrees in the field or allied fields in which they are teaching. Based upon our detachment of 103 officers this summer and their expected replacements, the following distribution is expected: 43 percent with master's degrees or above (including five Ph. D.'s); 32 percent with education beyond the baccalaureate but without the master's degree; 25 percent with bachelor's degree in the field of instruction. Comments received from academic departments point with enthusiasm to the greater motivation of midshipmen and higher quality of instruction resulting from the improved academic qualifications of our officer faculty.

SUMMER TRAINING PROGRAMS

With respect to summer training, the Naval Academy is greatly encouraged by the success of its efforts over the past 3 years to give reasonably comprehensive, operational training to the midshipmen of the three upper classes. With primary emphasis being properly placed on education during the academic year, the importance of training during the summer period cannot be overlooked. At the same time, in the face of the international situation and its resultant high tempo of fleet operations, it has been difficult to obtain the desired facilities for midshipmen training. With the full cooperation of fleet and training commands, however, our recent significant progress will culminate this summer in the realization of our goal of reasonably comprehensive, operational training. In brief, the class of 1965 will have a 2-month cruise with either the Submarine Force (Atlantic and Pacific), the 6th Fleet, or the 7th Fleet. The class of 1966 will have 1 month of aviation training at Pensacola and Jacksonville, Fla., plus 1 month of so-called splinter academic courses and tactical training in YP craft at the Naval Academy. The class of 1967 will cruise for 7 weeks in one of two midshipmen training squadrons; the Atlantic squadron will cruise in northern European waters and the Pacific squadron will cruise in eastern Pacific waters. To return to the class of 1965 for a moment, a total of 100 members of the class will accompany the class of 1967 in its training squadrons. The class of 1967 will also have 2 weeks of amphibious training at either Little Creek, Va., or Coronado, Calif.

In addition to, and instead of, these basic programs, 40 members of the class of 1965 will make exchange cruises with the navies of other nations, 3 members of the class of 1965 and 18 members of the class of 1967 will make the U.S. Coast Guard Academy's *Eagle* cruise to Europe, and a number of oarsmen and ocean sailors involved in either Olympic rowing trials or the Bermuda sailing race and Operation Sail for the World's Fair will make a special ASW hunter-killer group cruise. Other special cases will join in the ASW cruise.

In addition to the programs already named, voluntary programs for submarine training, scuba training, airborne jump training, plus training in survival, escape, and evasion will be made available to midshipmen. These programs will take part of the midshipmen's summer leave period and are strictly at the individual midshipman's request.

We are very pleased with the development of our summer training programs and feel that a serious deficiency in our overall program has now been effectively remedied.

ADMISSIONS

Of particular interest in the field of admissions are two measures designed to reduce differences in procedures and standards at the Military, Naval, and Air Force Academies.

One of these measures is an act of Congress amending title 10, United States Code, and relating to the nomination and selection of candidates. Under the new law, the authorized cadet strength is increased from 2,529 to 4,417 at the Military and Air Force Academies, bringing them up to the authorized strength of the Naval Academy. The law increases the number of authorized midshipmen from congressional sources from a level of 61 percent to a level of approximately 75 percent, by reducing the quotas for the Regular and Reserve Navy and Marine Corps candidates. In addition to standardizing the size and appointment procedures for the three academies, the law specifies that graduates shall have a period of obligated service of 5 years.

During the hearings leading up to the passage of the bill, congressional interest was expressed in greater uniformity in admission standards at the academies. As a result, the Assistant Secretary of Defense (Manpower) requested the Secretaries of the Army, Navy, and Air Force to "conduct a joint study of the mental and physical admission standards of the three service academies with the object of insuring the maximum feasible degree of uniformity." This study is in progress and will be completed by the end of this month.

LIBRARY

For the past 10 years the library budget for books and related materials has remained almost constant at $20,000 per year. For a student body of 4,000, at least $60,000 should be available for this purpose. When the Brigade Library was opened, a separate allocation was made for books and other materials. This year the total funding for all books and materials may amount to close to $28,000. Binding allocations during the 10-year period have risen from about $2,000 to $3,500 and may reach $4,500 this year.

The cost of library materials has been steadily increasing. During the past 10 years, depending on categories, these increases have ranged from 50 percent to more than 200 percent. At the same time, the needs of the Naval Academy have vastly increased by reason of the changes in curriculum and introduction of electives, many of which are in fields not previously covered in depth in the library. Moreover, the gradual increase in required collateral reading raises the problem of multiple copies and even of a reserved bookroom.

A library is neither built nor destroyed in a year, but we are now experiencing the cumulative effects of years of austerity. We clearly are in need of additional funds for books, periodicals, and other library materials.

INADEQUACY OF STAFFING

By any standard, the staffing of our dean's and commandant's organizations and the clerical support in the academic departments are inadequate. Many things we could be doing are not being done, and the abilities of senior people are being misused because of inadequate staff support.

The academic program is directed at the present time by a captain assisted by a commander assistant and a senior civilian faculty member who, in addition to advising the Superintendent on academic matters is also responsible for all of the admissions and registrar's functions. It has not been possible with this inadequate staffing to organize an effective academic counseling program or to carry out thorough studies relating to marking system effectiveness, midshipmen academic performance, and the adequacy of other features of the current academic program. It has not been possible to properly set up and manage a candidate advisory service, establish a proper faculty research program, or organize experimental efforts such as programed instruction and development of improved reading and study habits.

A plan has been submitted recommending a revision of the academic organization in accordance with the recommendations of the academic dean (pro tem). This plan, which calls for a modest strengthening of the staff and a rearrangement of the organization to effectively introduce a permanent academic dean is strongly recommended to the Board for its endorsement.

The Commandant's organization is seriously handicapped by the lack of sufficient staff in discharging its function of counseling midshipmen and carrying out the administration of the executive department. At both the Military and Air Force Academies, a much

more favorable ratio of officers to cadets makes possible closer supervision and a more thorough counseling program. While a company officer at the Naval Academy is responsible for approximately 165 midshipmen, at the Air Force Academy each squadron of about 110 cadets has two air officers commanding, and at the Military Academy each tactical officer has supervision of a company of about 100 cadets. A request to increase the number of officers in the executive department is now under preparation, and the board's endorsement of this need is urgently sought.

Additional clerical help is very much needed in the academic departments, in the Commandant's office, and in the Superintendent's office, where officers and faculty members are obliged to carry out clerical and secretarial functions which take needed time and effort away from their professional tasks. The addition of 18 clerical and technical persons has been a matter of great urgency for several years, but there has been insufficient money allocated to establish these positions.

The increased staff support in these three areas is a matter of critical importance in properly carrying out the current program, and in making the advancement in the military and academic programs which are planned for the future.

MIDSHIPMEN'S FINANCIAL STATUS

The financial status of the midshipmen continues to be a problem of serious concern. Since 1955 the midshipmen's pay has been $111.15 a month. During that same period his required expenses have increased by 19 percent from 45 to 64 percent of his pay. With the same monthly pay, the increase was absorbed by reducing money available for personal use. This personal money is not a necessity in the sense that no midshipman would suffer physically or academically without it. However, social standards have been set for midshipmen which cannot be maintained on their pay. Currently, 85 percent of the midshipmen receive money from home. Further increases in required expenses coupled with a status pay will result in midshipmen needing an outside income in order to maintain the social standards expected of them.

The Naval Academy, along with other service academies, continues to submit proposals to increase the midshipmen's pay. Last year's military pay bill raised the pay of all members of the Armed Forces, except those with less than 2 years' service. Midshipmen pay is one-half of the base pay of an ensign with less than 2 years' service, consequently midshipmen received no pay raise. With emphasis being toward increasing officers' allowances relative to the cost-of-living increases in the future, the midshipmen's plight will continue to be overlooked.

In view of the foregoing, it is considered mandatory that midshipmen's pay be divorced from its present relationship to ensign's base pay and a separate midshipman/cadet pay group be established. In addition, their pay must be increased to provide them with sufficient funds that are commensurate with the rise in consumer prices over the past 9 years.

MAINTENANCE

After review of the "Report and Analysis of the Maintenance Requirements at the U.S. Naval Academy," submitted in March 1962, the Secretary of Defense approved an increase of 143 maintenance personnel in fiscal year 1965. With this increase of manpower and the corresponding funds, it will be possible to maintain the existing plant inventory at adequate standards of maintenance. The exact requirements for funds for fiscal year 1965 will be submitted in April. The effect of the modernization program on the backlog of essential maintenance and repair work will be considered to defer some items that will be corrected by the program.

The current backlog of maintenance, repair, and alteration work exceeds $3,250,000. Most of the work included therein is deferred maintenance, the postponement of which causes accelerated deterioration and an eventual repair cost approaching that of facility replacement. Prompt completion of the modernization program will eliminate $2,100,000 of this backlog. It is expected that approximately $300,000 will be required annually for facilities projects requiring special funding.

In recognition of the large backlog of maintenance at the Naval Academy, the Congress appropriated $1,400,000 in special maintenance funds for fiscal year 1962. These funds were used for classroom lighting, interior wiring, window replacement, roof repairs, interior painting, and utility-system repairs.

It is deemed vital that the modernization program be funded without delay, in order to reduce maintenance costs, and that maintenance funds be allotted to support staffing at the Secretary of Defense approved level.

FACILITIES

The $40,670,000 expansion and rehabilitation of Bancroft Hall which began in 1958 is 90 percent complete. In fiscal year 1964, $5,219,000 was appropriated for the final phase of the work, rehabilitation of wings 1 and 2, and exterior repairs to all of Bancroft Hall. It is anticipated that the project will be complete by March 1965, at which time Bancroft Hall will in all respects be modern and efficient. It will comfortably accommodate the 4,100 midshipmen enrollment. It is the goal of the modernization program to provide facilities for the entire Naval Academy similar to those of Bancroft Hall.

In January 1962 the Special Advisory Commission to the Chief of Naval Personnel (Moreell Commission) recommended a modernization program estimated to cost $68,370,000. In December 1962 the Secretary of Defense reduced the program in scope to $38,249,000 and placed it in the Department of Defense military construction program for accomplishment over the 4-year period of fiscal years 1964 through 1967.

Of the three projects for which $13,440,000 was requested in fiscal year 1964, the Congress funded only one: the fourth and final increment of Bancroft Hall rehabilitation for $5,219,000. The Science Building, which is the vital first step in the modernization program, was not funded in fiscal year 1964 as requested. It has tentatively been deferred until fiscal year 1966. It appears from the austere fiscal year 1965 funding that the 4-year program envisaged will be extended over a much longer period. Efforts to have the modernization program funded as a package by special congressional appropriation have not been successful. The need for elements of the program to compete annually with unlike items (weapons systems, etc.) in the Department of Defense budget make completion of the modernization as an integrated program doubtful.

In June 1963, a prominent architect and planning-consultant firm was retained to study the proposed modernization program and to develop a master plan for its execution. It is hoped that the master plan recommendations will be completed in time for a presentation by the architect to the Board of Visitors. Preliminary indications are that the recommended modernization program will cost $46 million and will extend over a 5-year period from fiscal year 1965 through 1969 and will contain the following projects:

Fiscal year 1965: Public works shops building, utilities systems rehabilitation (first increment), land acquisition from Naval Academy Athletic Association (17.3 acres).

Fiscal year 1966: Science building, central heating plant, laundry and dry cleaning plant.

Fiscal year 1967: Dorsey Creek Bridge, utilities systems rehabilitation (second increment).

Fiscal year 1968: Academic facilities rehabilitation (first increment, library rehabilitation, administrative and support facilities rehabilitation, utilities systems rehabilitation (third increment).

Fiscal year 1969: Auditorium, academic facilities rehabilitation (second increment).

The accomplishment of the modernization program, much of which is rehabilitation rather than new construction work, will provide facilities comparable to those of the U.S. Air Force Academy and other major universities. It will also virtually eliminate the present backlog of maintenance, repair, and alteration work and will appreciably reduce maintenance costs.

The Board will be pleased to know that the construction of the enlisted men's barracks, as recommended in its report of 1963, will commence in June 1964.

CONCLUSION

In conclusion I would like to commend to the especial attention of the Board the following items, which I consider to be the Naval Academy's most pressing needs: Accomplishment of the construction and rehabilitation of the modernization program; improvement of midshipmen's financial status; provision of adequate staffing; and adequate funds for maintenance.

C. S. MINTER, Jr.,
Rear Admiral, U.S. Navy, Superintendent, U.S. Naval Academy.

RESOLUTION ON WILDCAT RESERVOIR

Mr. HARTKE. Mr. President, earlier this year, following the severe floods that struck the Ohio and Wabash and other Indiana river areas, I was in the official inspection party which visited several of the damaged areas by plane and helicopter. One of the projects in the area for which preliminary plans and surveys have been approved by the Corps of Engineers is the Wildcat Reservoir, which remains to secure final authorization and budget approval.

I have received a copy of a resolution concerning the Wildcat Reservoir project, which was passed by the Lafayette, Ind. Junior Chamber of Commerce recently. I ask unanimous consent that this resolution may be printed in the CONGRESSIONAL RECORD.

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

Whereas preliminary plans and surveys for the Wildcat Reservoir to be located in Tippecanoe County, Ind., have been approved by the Corps of Army Engineers and such reservoir found to be feasible; and

Whereas said Wildcat Reservoir would be of tremendous economic value to the city of Lafayette as well as Tippecanoe County and the State of Indiana; and

Whereas it would be of great advantage to have said reservoir completed at the earliest possible time; and

Whereas said Wildcat Reservoir project now needs final authorization and budget appropriation by the Federal Government for work to begin: Now, therefore, be it

Resolved by the Lafayette Junior Chamber of Commerce, That the Honorable Senators VANCE HARTKE and BIRCH BAYH, and the Honorable Congressman, CHARLES HALLECK, be, and they are hereby commended for their

joint and singular efforts in moving said Wildcat Reservoir project to its present status; be it further

Resolved, That the Lafayette Junior Chamber of Commerce does hereby endorse the Wildcat Reservoir project, and that the said honorable Senators and Congressman be further urged, for the economic good of the city of Lafayette, the Greater Lafayette area, Tippecanoe County, and the State of Indiana, to exert their best efforts within the necessary departments of the Federal Government, as by them is possible, to obtain final authorization for said Wildcat Reservoir and to obtain the appropriation for said reservoir within the fiscal budget of the Federal Government now before the Congress; be it further

Resolved, That the secretary is hereby directed to forward certified copies of this resolution to U.S. Senator VANCE HARTKE, U.S. Senator BIRCH BAYH, and U.S. Congressman CHARLES HALLECK for appropriate action by them.

Adopted and passed by the Lafayette Junior Chamber of Commerce, this 21st day of April 1964.

JAMES S. BOCKOFF,
President.

Attest:

RICHARD A. BOEHNING,
Secretary.

THE GOLDEN CORN TASSEL

Mr. DOUGLAS. Mr. President, for a number of years I have sponsored legislation to make the golden corn tassel the national floral emblem of the United States.

I ask unanimous consent that an article which appeared in the Washington Post, Parade section, for April 26, be printed at this point in my remarks.

I am very happy that this article pays tribute to Miss Margo Cairns, who has been a strong sponsor of this legislation.

I also ask unanimous consent that a letter I have received from Lightfoot Talking Eagle in support of making the corn tassel the national floral emblem be printed in the RECORD.

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

[From the Washington (D.C.) Post, Apr. 26, 1964]

THE LEGAL MAIZE: LO, THE CORN TASSEL

(By Reid Beddow)

"Any normal person loves roses," observed Margo Cairns the other day. "But was the rose at Plymouth Rock? Was it at Jamestown? No."

Miss Cairns, a thorn to the rose growers of America, likes corn. For 9 years she has stalked Washington trying to persuade Congress to make the corn tassel our national floral emblem.

"The rose is the symbol of England," continued Miss Cairns. "It wilted here with the Liberty Bell. Scotland has the thistle, Ireland the shamrock, France the fleur-de-lis, and Canada the maple leaf.

"What could be a better symbol for us than the manna of the Indians, the maize of the colonists? Corn is as American as corn pone, cornbread, johnny cakes, flapjacks, and hushpuppies."

Congress has been arguing for 50 years over an official American flower. Traditionally, lawmakers have backed the flowers of their regions, including, among others, the Texas bluebonnet, the Colorado columbine and the rose. In some respects the debate is similar to the recurring one over the national bird in which the bald eagle holds its own, but with tailfeathers periodically picked by the supporters of the Pilgrims' turkey, a symbol first proposed by Benjamin Franklin.

In this session of Congress, Senator PAUL DOUGLAS, Democrat, of Illinois, and Representative JOHN KYL, Republican, of Iowa, nurture the cause of the corn tassel. KYL, whose home State alone produced one-fifth of the 3.6 billion bushel U.S. corn crop in 1962, hopes to hold hearings on his resolution later this year before the House Administration Committee. Douglas' resolution is stymied in the Senate Judiciary Committee.

If either committee does hold a hearing, it is sure to turn into a floral Tower of Babel.

"Last time the House held a hearing," said Miss Cairns, "the caucus room was banked in roses. All the women had corsages, and the men had boutonnieres. Florists' money, of course. I walked in and attacked it all as commercially inspired. Then there were the carnation people and the marigold crowd * * * did you know that Burpee's marigolds originally came from Tibet?

"People think I wear a sunbonnet and a calico wrapper." said Miss Cairns, who conducts her tassel lobbying at her own expense from the Methodist Building, 110 Maryland Avenue NE. "I've never even lived on a farm."

Miss Cairns shucks corn-prone statistics faster than sweet corn is consumed at a picnic.

"The Pilgrims valued corn so highly they accepted it for taxes and made it legal currency. Thomas Jefferson used corn to finance the patriots' cause in the Revolution. In gratitude he ordered some 'cornstalk' columns placed in the Capitol. It was ground corn that fed the Continental Army at Valley Forge. Corn, grown in all the States, and corn products employ more Americans than any other crop."

To Miss Cairns, the corn tassel campaign is more than the selection of a mere emblem. "It is a way of giving thanks for America's bounty. Longfellow said in 'Hiawatha' that it was the 'gift of the great Spirit.' We should approach it with reverence."

And if Congress enacts floral emblem legislation naming the corn tassel, what will she do?

"Why, I will write a book on flowers. I love flowers."

TAMAQUA, PA.,
April 29, 1964.

Hon. PAUL H. DOUGLAS,
U.S. Senator,
Old Senate Office Building,
Washington, D.C.

SIR: "Whaah-umm-pee." The term "Whaa-umm-pee" is from the Aah-seh-oohguh language (language of earth and sky), the language of the ancients of ancients of the Americas, the bronze children of the Great Spirit, and means "the food from God that gives locomotion, action, or life to the mortal body."

In English we call it maize, corn, and American Indian corn.

We—the Princess Fleet Deer (my wife) and me—thank and glorify Poh-pah-tohmee, the Great Spirit, the God-creator, and ruler of the universes of worlds and heavens, even the heaven of heavens, the God of the Americans, for having inspired Miss Margo Cairns to propose the corn tassel, the flower of whaah-umm-pee, as our national floral emblem.

Miss Cairns was truly inspired and called by the living God to make this her mission; for according to a prophecy of our ancient ones, whaah-umm-pee (native American Indian corn) must become the symbol or totem of our sacred land before the Spirit of Peace will take up its habitation on earth with humankind.

Whaah-umm-pee, American Indian corn, is the gift of God, the heavenly manna, given to the native American bronze children by the Great Spirit, the living God of the Americas. It is the basic food for the mortal body of all creatures, including man. It is more than mere physical food, for according to our ancient faith within whaam-umm-pee is found also food and nourishment for the spirit.

You may be interested in the following words sent to us by our Washington, D.C., friend who brought to our attention Miss Cairns' urging to have the corn tassel adopted by Congress as our national flower:

"The American Indian spiritual leader's garden of God is a field of beautiful corn (people) planted and nurtured with love, ever growing and producing to the glorification of the God of the universes of worlds and heavens, even the heaven of heavens; the God of the ancient Americans.

"May you and the Congress and the President hear and heed the voice of the Great Spirit and present to the living God from the people the great gift of a truly American Thanksgiving Day in 1964, by enacting legislation declaring the tassel of American Indian corn to be our national floral emblem and the golden eagle to be our national bird emblem.

"This would be a day of great rejoicing throughout the earth and in the heavens because of our glorification of the living God.

"May Swah-cha-hahl-whaah-umm-pee (the guardian of the corn fields) and Oohta-sah'n-guh-nn-sa (spirit of the golden eagle) walk with you and your colleagues, and may the spirit of the living God become the host in the Halls of Congress."

NEH-POSH-NA-WA-TEE
(Forever Peace),
LIGHTFOOT TALKING EAGLE
(Ne-Saw-Sah),
A Son of the Sacred Land
of the Golden Eagle,

INDEPENDENCE OF LITHUANIA

Mr. KEATING. Mr. President, a meeting of Lithuanians and Americans of Lithuanian descent sponsored by the Lithuanian American Council of Greater New York was held at Webster Hall in New York to commemorate the 46th anniversary of the signing of the declaration of independence of Lithuania on February 16, 1918.

The resolution passed there contrasts the new independence of peoples in Africa and Asia, once ruled by Western states, with the continuing tyranny exercised over Lithuania and other Baltic States now under the Communist yoke. It calls on the United States to maintain its historic support for a free Lithuania.

Mr. President, I ask unanimous consent to have the text of the resolution printed in the RECORD.

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

RESOLUTION ADOPTED BY A MEETING OF LITHUANIANS AND AMERICANS OF LITHUANIAN DESCENT, SPONSORED BY THE LITHUANIAN AMERICAN COUNCIL OF GREATER NEW YORK ON FEBRUARY 16, 1964, AT WEBSTER HALL IN NEW YORK, N.Y., TO COMMEMORATE THE 46TH ANNIVERSARY OF THE SIGNING OF THE DECLARATION OF INDEPENDENCE OF LITHUANIA (ON FEBRUARY 16, 1918)

Whereas Lithuania, land of centuries long independent statehood, has been invaded by Soviet military forces, occupied and annexed against the will of the Lithuanian people and in violation of the law of nations and Soviet international obligations; and

Whereas the Government of the United States has refused recognition of the illegal occupation of Lithuania and continues to

oppose the Soviet attempts to obtain formal recognition of such illegal acts perpetrated in Lithuania and the other Baltic States; and

Whereas most of the former colonial countries in Africa and Asia have been freed by the Western Powers and are today sovereign and independent states admitted to the United Nations, yet the Baltic States remain subject to Soviet colonial rule, deprived of all human rights and basic freedoms: Therefore be it

Resolved, That we express our gratitude to the Government of the United States for nonrecognition of the status quo in Lithuania, and urge it to abstain from entering into any agreement with the U.S.S.R. which would imply the recognition of the present occupation and Soviet colonial rule in Lithuania; and be it also

Resolved, That we request the United States and all member nations of the United Nations to insist that the U.S.S.R. abide by the provisions of the Charter of the United Nations and restore the right of self-determination to the Lithuanian nation and withdraw all its armed forces, agents, and colonists from Lithuania; and be it further

Resolved, That we urge our own people to renew their dedication to the struggle for the ideals of freedom and to participate in the All-Lithuanian Congress to be held in June 1964, in Washington, D.C.; be it finally

Resolved, That this resolution be sent to the President of the United States, to the Secretary of State, to all delegations at the United Nations, U.S. Senators, Congressmen, and the press.

ALBERT OSLAPAS,
President of Lithuanian American Council of Greater New York.

MARIA ZUKAUSKAS,
Secretary.

DON H. FLANDERS—WINNER OF AMERICAN SUCCESS STORY AWARD

Mr. McCLELLAN. Mr. President, Mr. Don H. Flanders, a resident of Fort Smith, Ark., and the founder and president of Flanders Manufacturing Co., has been selected as a recipient of the Free Enterprise Awards Association's 12th Annual American Success Story Award as an example of the success possible under America's free enterprise democracy.

Mr. Flanders was a woodworking apprentice, cost accountant, and the holder of odd jobs early in his life. He was a lieutenant in the Navy and served as a gunnery officer in the Atlantic and the Pacific. He worked his way through college. Starting in 1954 with a small shop and a few workers, he overcame many obstacles in a highly competitive field to become a leading furniture manufacturer. His firm manufactures early American, traditional, and modern living room desks, and Yorktown solid maple bedroom furniture.

His company is continually expanding and now employs hundreds of craftsmen. The firm has 75,000 square feet of floor space, the most automated plant in the field, with two conveyorized finishing systems, nationwide warehouses, and showrooms. Mr. Flanders' 40 representatives sell to 5,000 retail stores with multimillion dollars in sales.

Mr. Flanders has been cited for his record as a devoted official of the Boy Scouts of America and civic leader who gives unstintingly of his time and resources to every community drive. He has also been cited for his company's laborsavings bonus payments to his employees. In addition to his position as president of his own firm, he is a director of the City National Bank in Fort Smith, Ark., and a president of the Southwestern Furniture Marketing Association.

Mr. President, Don Flanders is a splendid example of what a young man of imagination and enterprise can do in the United States of America. I am particularly proud that he is a resident of my State, and I know that the citizens of Fort Smith join me in expressing our pride and pleasure at Mr. Flanders' selection for this fine honor. Mr. Flanders is a credit to our State and a credit to our Nation.

CAPTAIN BROZ AWARDED 1963 KOLLIGIAN TROPHY

Mr. McGOVERN. Mr. President, on May 7, Capt. Charles W. Broz of Wagner, S. Dak., received the 1963 Koren Kolligian, Jr. Trophy, one of the Air Force's most respected awards, for safety in flight.

It was my privilege to be present with Captain Broz and his wife for this presentation at the Pentagon. Because of the unusual and heroic action of Captain Broz, I ask unanimous consent that the citation under which the trophy was received may be printed in the RECORD.

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

The Koren Kolligian, Jr., Trophy was established in 1958 by Mr. and Mrs. Kolligian of Cambridge, Mass., in memory of their son, the late Koren Kolligian, Jr., who was declared missing on a T-33 flight off the Farallon Islands, Calif., on September 14, 1955.

Capt. Charles W. Broz was selected for the 1963 award from among 22 nominees. Captain Broz demonstrated his skill by coping with an extreme emergency while flying a TF-102 at 30,000 feet and 150 miles from his base at Goose Bay, Labrador. During an attempt to retract the armament bay doors, an explosion occurred, air rushed in around the cockpit, the aircraft began to vibrate violently, and the right front windshield separated from the aircraft. The noise, vibrations, windblast, and extreme cold prevented communication between the pilots or with ground radar. After approximately 45 minutes and an unsuccessful attempt to penetrate the weather, Captain Broz made a formation penetration with another aircraft, broke out of the weather at an altitude of 500 feet, and successfully landed the aircraft, thus saving the life of his fellow pilot who was incapacitated. His achievement conforms to the highest traditions and standards established for the Koren Kolligian, Jr., Trophy.

Captain Broz was born January 17, 1934, in Wagner, S. Dak. Upon completion of high school, he attended South Dakota State College at Brookings, S. Dak., and graduated in 1956 with a bachelor of science degree in agriculture. He was commissioned from the Reserve Officers' Training Corps at South Dakota State College in June of 1956, applied for pilot training, and was called to active duty April 9, 1957. He completed his pilot training in March of 1959, and during the next 3 years served as a fighter-interceptor pilot with the 94th Fighter Interceptor Squadron of the Air Defense Command at Selfridge Air Force Base, Mich. He attended the squadron officers' course at Maxwell Air Force Base, Ala., in mid-1962, and has since been assigned to the 59th Fighter Interceptor Squadron of the Air Defense Command at Goose Bay, Labrador.

TIME TO VOTE ON CIVIL RIGHTS ACT OF 1963

Mr. PROXMIRE. Mr. President, this is the 52d day of debate on the civil rights bill, H.R. 7152. It is time the Senate voted upon it. The President of the United States has proposed a massive program for Congress which must be passed before sine die adjournment this year. Some action must be taken on the civil rights bill and soon if Congress is to vote the President's program up or down.

Two days of debate on a bill is considered substantial debate. Five days of debate on a bill is considered a long debate. Ten to fifteen days debate on a bill is considered to be a very long debate, indeed.

But on this bill, Senators have talked for 52 days, an aggregate of hundreds and hundreds of hours. There have been two votes on two relatively minor perfecting amendments. Scores of amendments are still to be acted on, but they have not been brought to a vote.

Obviously, it is time the Senate got around to considering the bill on its merits and voting the amendments up or down, or every Senator will suffer from the general public recognition that the U.S. Senate cannot do what thousands of boards, commissions, and councils throughout America do every day: discuss their differences and then act, for or against, up or down.

Of course, the essence of successful proceedings conducted in the Senate must be based upon the good will, the spirit of compromise, and the atmosphere of friendliness prevailing among its Members.

But, Mr. President, the time has come when the debate has become ridiculous.

The Senate must move.

So I say, let us move—let us vote. Let us get on with it. Let us act on the bill.

THE SALAD OIL SCANDAL

Mr. WILLIAMS of Delaware. Mr. President, in today's issue of the Wall Street Journal, there is published an article entitled, "State Study of Salad Oil Scandal Held Up by Federal Agency's Refusal To Give Data."

This article calls attention to the refusal of the Commodity Exchange Authority to make its records on salad oil trading available to the attorney general of New York.

In view of the fact that the Attorney General of the United States does not appear to be interested in prosecuting this case, I strongly recommend that the very least the Government can do is to cooperate with the State of New York in preparing its case.

The negligence of this Federal agency in not controlling the activities of Mr. DeAngelis and his Allied Crude and Vegetable Oil Refining Co. is indefensible.

Their failure now to cooperate with the attorney general of the State of New

York in prosecuting this case is even worse.

I ask unanimous consent to have printed in the RECORD the article to which I have referred.

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

STATE STUDY OF SALAD OIL SCANDAL HELD UP BY FEDERAL AGENCY'S REFUSAL TO GIVE DATA

NEW YORK.—A State investigation into events in the commodities market before the $150 million salad oil scandal broke last November appears temporarily blocked, and for an unusual reason: A Federal agency refuses to disclose information sought by the New York attorney general.

State authorities have been questioning officials of the New York Produce Exchange about the activities of a number of large companies and brokers in buying and selling contracts for the future delivery of cottonseed oil.

The investigation seeks information on trading practices in the weeks preceding the bankruptcy of Allied Crude Vegetable Oil Refining Corp. last November 19. Allied went bankrupt after it failed to meet brokers' calls for more cash margin when prices of cottonseed oil and soybean oil contracts fell sharply. Its bankruptcy led to the failure of Ira Haupt & Co., a major brokerage firm, and several other companies.

Papers filed with the New York County Supreme Court disclose the investigation is proceeding under State laws that authorize the New York attorney general to prove possible "fraudulent practices" in securities markets. The attorney general's office refuses comment on the investigation.

FEDERAL REPORT SOUGHT

The New York attorney general's office has subpenaed a report furnished to the Produce Exchange on November 14, 5 days before Allied went bankrupt, that disclosed the names of all traders holding more than 100 contracts. This report, prepared by the Federal Commodity Exchange Authority, presumably would have shown that Allied or its agents were committed to buy 90 percent of all the cottonseed oil futures contracts on the exchange.

Prices on the Produce Exchange began to fall November 14 and continued to decline until Allied and Haupt were ruined because they couldn't cover their losses.

The Produce Exchange has moved in the New York court to quash the attorney general's subpena of the Federal report. The exchange told the court that it had sought permission from the Commodity Exchange Authority to release the report but the agency refused.

The exchange submitted to the court a letter from Alex C. Caldwell, CEA Administrator, who stated: "In view of the restrictive provisions of the [Commodity Exchange] act, it is essential that every possible action be taken to prevent the disclosure of confidential information either by this department or by any board of trade to which this department has furnished such information."

Papers filed with the court state that the New York attorney general is seeking information on the trading practices of the following companies prior to Allied's bankruptcy: Bunge Corp. and Continental Grain Co., large export concerns that dealt with Allied; Merrill Lynch, Pierce, Fenner & Smith, Inc., which handled some futures transactions for Bunge; Ira Haupt and the former J. R. Williston & Beane, Inc., which handled futures trading for Allied; the Chicago Board of Trade, where Allied had also bought large numbers of futures contracts, and Allied itself.

CIVIL SUIT POSITION

The produce exchange is also resisting the New York attorney general's investigation on the ground that its position in a related civil suit might be hurt.

In the civil suit, two former limited partners of Ira Haupt charge that the produce exchange, Merrill Lynch, and other unnamed parties conspired to fix the price of cottonseed oil futures contracts before the Haupt firm collapsed. The suit alleges that Haupt lost $11 million because of the alleged conspiracy, and seeks triple damages of $33 million under the antitrust laws.

The produce exchange and Merrill Lynch have denied the charges. In the attempt to quash the New York attorney general's subpena of the CEA report, a lawyer for the produce exchange contended to the court that the State investigation should avoid "any inquiry with respect to margin requirements from October 1, 1963, until the date of the bankruptcy of Allied" because it might prejudice the exchange's defense of the suit by the Haupt limited partners.

Finally, the produce exchange argued that the attorney general has no right to investigate its activities under the State law permitting inquiry into securities sales. On this basis, the exchange also is attempting to quash a subpena served on David L. Boyer, manager of the Produce Exchange Clearing Association.

In an affidavit, Mr. Boyer argued that neither he nor the clearing association "deal in any way with the public." However, "recognizing the quasi-public status of the association," Mr. Boyer offered to testify before the New York attorney general on limited aspects of events in the days preceding Allied's bankruptcy.

A New York County Supreme Court justice is scheduled to rule later this month on the motions to quash the attorney general's subpenas.

PULITZER PRIZE TO MERRIMAN SMITH

Mr. TALMADGE. Mr. President, last week the Pulitzer Prize Committee announced that a native of Georgia, Mr. Merriman Smith, whom most of us here know, has been selected as the winner of its annual prize for distinguished reporting.

Mr. Smith long has been identified internationally as the dean of White House correspondents, the reporter whose familiar "Thank you, Mr. President" has concluded every news conference with the Chief Executive for a number of years. I believe everyone here will agree that Mr. Smith's everyday handling of his job, which perhaps is one of the most important single reportorial assignments in the world, would have merited his selection as winner of the annual Pulitzer Prize. But among the stories he wrote last year was one which shocked the world. His consumate skill and insight in handling the tragic events which unfolded in Dallas, Tex., last November when a depraved assassin killed President Kennedy afforded newspaper readers throughout the world a graphic, detailed, and objective account of the tragedy and its aftermath.

Mr. Smith was born in Savannah and entered the newspaper business as a sportswriter on the Old Atlanta Georgian, which succumbed to the plague of journalistic mergers which has swept the Nation in recent years. In 1936, he joined the United Press and transferred to the Washington bureau of that news service 5 years later. He is the author of five books and has won many awards for reporting. Ironically, one of his first awards was for coverage of the death of another American President, Franklin D. Roosevelt.

I am also glad to note here that Mr. Smith is scheduled on June 7 to be the 90th commencement exercises speaker at Oglethorpe University in Atlanta, of which he is an alumnus, class of 1936.

I think it appropriate at this time, Mr. President, to point out that the Pulitzer award was in accord with two others in which Mr. Smith's coverage of the Dallas tragedy was recognized. One, a presidential medallion, was given him by President Johnson on the day that his Pulitzer prize was announced. The other was made by the 30 Club, an organization of former reporters for the Washington Times, the Washington Herald, the Washington Times-Herald, and International News Service, all of which have been swallowed by mergers.

I ask unanimous consent to include in the RECORD two articles concerning these additional and comparatively unheralded awards to a topflight reporter and writer for his excellent reporting of President Kennedy's assassination. The first is from the New York Times of May 5, 1964, and the other is from the April issue of Overset, official publication of the Chicago Press Club.

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

[From the New York Times, May 5, 1964]

CORRESPONDENT WINS JOHNSON AWARD, TOO

WASHINGTON, May 4.—Merriman Smith, who has covered five Presidents as White House reporter for United Press International, was congratulated today by President Johnson for winning a Pulitzer Prize.

"I've got an award for you, Smitty," Mr. Johnson said, and handed Mr. Smith a special bronze Presidential medallion. It is one of 36 bearing Mr. Johnson's profile and the Presidential seal that were struck after Mr. Johnson took office last November 22.

"It will give you some distinction and recognition but it couldn't be given with more sentiment," Mr. Johnson said. Then, turning to other newsmen gathered around his desk, the President added: "I'll buy one for you if you get a Pulitzer."

The medallions were struck at Mr. Johnson's request to hand out as personal mementos to friends and dignitaries. They cost about $3 each and were paid for out of Mr. Johnson's pocket.

[From Overset, April 1964]

LOCAL CPC MEMBERS SPARK TIMES-HERALD REUNION

(By Hal Arbeen)

There's an unusual newspaper group which meets each spring in the Nation's Capital known as the T-Hirty Club that is more exclusive than the Gridiron and has more members than many chartered press clubs.

Although Washington-based, members occupy key news, publicity, advertising, and Government posts in Chicago and elsewhere throughout the world.

The T-Hirty Club wields more influence than it has affluence. The organization assesses neither dues nor initiation fees; it has no bank balance, and usually chalks up a small yearly operating deficit.

Membership eligibility is inflexible. Books were closed March 17, 1954. On that date the

Washington Times-Herald went out of business after exactly 60 years of publication.

The nucleus of the T-Hirty Club was born on that St. Patrick's Day when the paper's newly unemployed editorial workers met in a nearby saloon to mourn the passing of a great institution—and their jobs.

Soon thereafter, the old International News Service was absorbed by the United Press, and staffers were invited to be associate members.

OWNED BY GIANTS

The paper, and its predecessors, the Times and the Herald, were owned at various times over a half century by giants who cast long shadows over the newspaper business.

These included former President Herbert Hoover, William Randolph Hearst, Arthur Brisbane, Frank Munsey, Eleanor (Cissy) Patterson, and finally Col. Robert R. McCormick who sold the Times-Herald to the competing Washington Post.

Each year since, the faithful have assembled, usually in the National Press Club, to mourn the paper's passing at what probably will be the longest wake in history. Each year, several members of the Chicago Press Club have been at the wailing wall.

Somehow the T-Hirty Club limps along as a virtual dictatorship with perennial officers, no elections, no board of governors, and no standing committees.

FLYTHE IS PRESIDENT

Officers are: William P. Flythe, Jr., former city editor currently front-running Senator BARRY GOLDWATER'S bid for the Presidency; Vernon Louviere, who covers the Hill and the White House for a group of western newspapers, and who is financial secretary of the NPC, and Neil Regeimbal of Chilton Publications, an NPC board member.

Each year at these March reunions, a top-flight newsman receives a 30 Club award, and this year an outstanding photographer was added to the awards.

This is where two Chicago Press Club members enter the picture. They are Avery McBee of Hill and Knowlton who provides what is known as the Ivory Typewriter Award through a client, the Royal McBee Corp. This year Bill Healy, news director for Encyclopaedia Britannica established the photographic award, a set of Encyclopaedia Britannica.

This year's reportorial award went to Merriman Smith of United Press International, the senior White House reporter, for his outstanding coverage of President Kennedy's assassination. Smitty is known throughout the world as the man who closes presidential news conferences with "thank you, Mr. President."

L.B.J. GIVES AWARDS

Felicitations have been sent to T-Hirty Club reunions by five occupants of the White House—Herbert Hoover, Harry S. Truman, Dwight D. Eisenhower, John F. Kennedy (whose wife, Jackie, was a Times-Herald staffer) and President Lyndon B. Johnson. As Senate majority leader, President Johnson, one year made the award presentations.

Eligible members of the T-Hirty Club in Chicago, including a number of Chicago Press Club members are, Thomas R. Furlong, Al Noderer, Ed Holland, Ray Brennan and his wife, the former Betty Nowell; Marty O'Connor, Tom Michelmore, Bill Strand, McBee, Healy, Hal Arbeen, and probably many more.

MORALS AND RESPECT FOR LAW AND ORDER

Mr. TALMADGE. Mr. President, it is my belief that we have good reason to ask "what is happening to America?" What is happening to the morals and respect for law and order of our people?

To what depths have we fallen when citizens of the United States stand idly by and observe the brutal murder of a young woman? This incident is by now well known. It is shocking to the conscience. As this young woman fought for her life, while others looked on, no one went to her assistance; no one summoned the police.

What are we coming to when American citizens, hurrying to go about their own business, turn deaf ears to a girl's screams for help after she had been criminally assaulted? As in the tragic murder case, again people passed her by.

We hear of such conduct among uncivilized peoples who live without any code of law, ethics, or moral behavior, but when such events as this take place on the streets of our great cities, we had best stop and examine what is happening to civilization in our country.

Mr. President, there appeared in the May 6 edition of the Atlanta Journal an excellent editorial which asked these questions, and I ask unanimous consent that it be printed in the RECORD.

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

MORAL DISINTEGRATION?

Some years ago the New Yorker magazine carried a cartoon by Charles Addams showing an octopus attacking a well-dressed New Yorker in the street. The punch to the cartoon was the group of people standing idly by watching the one-sided battle with interest, but giving no aid to the unfortunate victim.

Such an attitude is no longer a joke. It has devolved into grim reality.

We have a story from New York about a teenage girl, naked, screaming to passers-by that she had been raped and asking for help. Her frantic pleas evoked no assistance. People paused and looked, and hurried on about their business.

A patrolman testified in court, "40 people could have helped the girl but none of the jerks helped her."

Only last month a 28-year-old woman was stabbed to death in New York. Her screams for help produced scattered shouts from neighbors telling her assailant to leave her alone. But nothing was done to protect her. No one even called the police.

Is this evidence of our moral disintegration? Were the people so frightened they wished to avoid physical violence? Did they regard it as strictly a private affair in which not to become involved? Or were they just callous? Was their attitude one of being glad they were not involved in the incident, so that they felt they had no interest in it?

These horrifying events are certainly examples of a lack of civic responsibility, and a complete absence of any feeling toward fellow human beings.

What transpired in New York, coupled with a national tendency to gang up on police when they try to enforce the law, is a grim omen of deterioration in our society.

True, it hasn't happened here * * * yet. We pray that it will not. But the fact that it has happened in these United States is cause for sober reflection on why it happened at all.

TEXAN J. FRANK DOBIE VISITS TEXAN LYNDON B. JOHNSON IN WHITE HOUSE

Mr. YARBOROUGH. Mr. President, J. Frank Dobie, Texas' foremost man of letters visited President Lyndon B. Johnson, Texas' foremost statesman, in the White House recently. J. Frank Dobie, former professor of English at the University of Texas, now a consultant in American culture of the Library of Congress, is a naturalist and folklorist, as well as Texas' literary giant. He has written in an earthy descriptive vein of his visit to the White House, of his sleeping in the Lincoln bed, of the very unusual Johnson family, of the fast pace of President Lyndon B. Johnson. It is an article of accurate contemporary history.

Mr. President, I ask unanimous consent that Mr. Dobie's article entitled "A White House Visit," as printed in the Washington Post for Sunday, May 10, 1964, be printed at this point in the RECORD.

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

A WHITE HOUSE VISIT: OLD TEXAS FRIEND TELLS OF WEEKEND WITH LBJ FAMILY

(By J. Frank Dobie)

The lives of a President of the United States and his family must be both public and private. The blend varies according to personality, political aptitude, particular circumstances, wisdom, social adaptation, the way of saying, "Thus far and no farther." The President's wife has a marked role in this blend.

Without presuming to an intimate acquaintance with either President Johnson or Mrs. Johnson, I have seen them at home in the White House. My views were enlarged and sharpened by my wife's being a guest at the same time. We have been at L.B.J. ranch barbecues, but this was something different.

The beginning was a dinner on March 25, 1964, in the home of the Marshall McNeils in Washington. I was not present. The only guests were President Lyndon B. Johnson and Mrs. Johnson, and Mr. and Mrs. Walker Stone. Stone has lived in Washington as reporter and editor of the Scripps-Howard newspapers since 1927 (editor in chief for more than a decade). Marshall McNeil has been associated with him in Washington nearly as long.

During the evening, as Walker Stone wrote me the next day, Marshall McNeil said that in honor of President Johnson's first attendance as President at a Gridiron dinner he was going to invite Frank Dobie from Texas. To quote Stone's letter: "Both Lyndon and Lady Bird welcomed the idea. They want you to stay in the White House. Lady Bird insisted that you bring Mrs. Dobie and be their first guests to occupy the Lincoln bedroom."

The Gridiron invitation, for the evening of April 25, was followed by a personal note from Mrs. Johnson, whom for some time I have addressed as "Miss Lady Bird." I wanted to hear the Gridiron's satiric skits on notables; I wanted to see friends and linger in the White House; but a dearth of vitality held me bound. After waiting several days, I declined both invitations. One morning later, before I had come down to breakfast, there was a long-distance call for me. Bertha Dobie offered to take the message. "No," a secretary in Washington spoke, "the President wishes to speak to J. Frank Dobie himself."

"We want you up here," he said.

"I can't get up before daylight and go at your rate," I said.

"You won't have to get up until you feel like it," he said. "You can lie there in Lincoln's bed all day if you want to."

At this point Miss Lady Bird's voice added persuasiveness.

When I announced to Bertha Dobie that we were going to Washington, she said, "If President Johnson can persuade you to this, there won't be a railroad strike." Before our

arrival, he had coalesced the unions of railroad workers and railroad management.

I had written that we would arrive at the Dulles Airport about 4 p.m., April 24. Word came back that a car and driver would meet us. They did, with Marshall McNeil and Mrs. McNeil as welcomers. He said that the President had commandeered him to escort us.

Awaiting us at what is called the Diplomatic Entrance to the White House was Lynda Bird Johnson, whom we knew in Texas. The President and Mrs. Johnson were spending 14 hours that day visiting poverty-stricken areas in four States. Lynda Bird was hostess. A Secret Service man took our names. An elevator took us to the second floor, which is the private home of the President and his family. Their rooms are toward the west end of the wide and gracious hall. In the northwest corner are kitchen and dining room. The west end of the hall itself is used as a sitting space.

The Lincoln bedroom, at the east end of the hall, overlooks the main White House grounds to the south, the Washington Monument, and the Lincoln Monument.

Combined with it and a bathroom is a sitting room. For Abraham Lincoln it was a Cabinet room. As a plaque on the mantelpiece tells, Lincoln here signed the Emancipation Proclamation freeing 4 million slaves and prohibiting forever slavery in these United States.

My wife, Bertha, was assigned to the Queen's bedroom facing Pennsylvania Avenue, across the hall from the Lincoln bedroom. Wherever one looks in the White House one reads history in pictures, tables, chairs, almost all the belongings.

Lynda Bird is a mature, capable young lady for 20, the freshness and spontaneity of youth still unspoiled. Before dinner she introduced us to winsome Warrie Lynn Smith, of San Antonio, who was her roommate last fall at the University of Texas and who came to Washington with her. She introduced also her sister Luci before she left with four girl guests for a dance.

About 10 o'clock the next morning Lady Bird Johnson came to greet us. She arranged for a White House car to take Bertha to art galleries. Before she left, the President appeared. We talked for a brief while in the sitting end of the hall.

There have been times when I called him Lyndon. Now I said, "Out of deference to you and to your office I want to call you President Johnson or Mr. Johnson."

"As you choose," he replied.

I noticed later that President Truman addresses him as Mr. President.

As we talked we could look down on the rose garden in front of the President's office. "Come with me," he said. On our way into the office, I was introduced to several assistants. We went into the main receiving room and presently Gov. Edmund G. (Pat) Brown, of California, was ushered in. "You won't be in the way," the President had said to me quietly. "Stay with us."

Like all Governors of California and like millions of other Californians, Brown expressed a need for water. He said there was some talk of getting it from the Yukon River, but he hoped to get it from the Columbia River. I noticed that the President didn't promise him anything.

The next visitor was Walter Reuther, of AFL-CIO. After the President had introduced us, he conducted me into a side room in which hang portraits autographed to Lyndon Johnson from President Truman, Sam Rayburn and one or two other individuals.

You can tell what's in a man's mind by what he emphasizes. Framed in this room is the following sentence from Edmund Burke: "Those who would carry on the great public schemes must be proof against the most fatiguing delays, the most mortifying disappointments, the most shocking insults, and, worst of all, the presumptuous judgment of the ignorant upon their designs."

I understood from a phone talk that President Truman was a guest in Blair House and was to be at the Gridiron dinner that evening. He came to the office and not long after his arrival a press conference was called, the third for the week. I estimated between 60 and 70 reporters. Standing, they made a half circle in front of the President, with President Truman to his right and I to his left.

Lunch hour at the White House seems to be between 2:30 and 3 o'clock. Mr. Truman, Walker Stone, William P. Steven, editor of the Houston Chronicle, and I accompanied the President from the press conference. As we sat in the hall sipping refreshment before lunch, I saw a weariness in his posture and in his great frame. Yet his country, I believe, can trust him not to drive himself habitually. What appears to many people to be drive is merely using up energy.

Lyndon B. Johnson will be 56 years old in August. "No young man believes that he shall ever die." But at 56 no man, no matter how vigorous, can be wholly unaware of "the smell of mortality."

The telephone no doubt adds privacy to President Johnson's executive life. In his private office I noticed a small telephone switchboard with several knobs to punch by his side. A similar device was by his side in the hall sitting room. It was by his plate at luncheon. While others talk he can communicate through this telephone without interrupting the talk. Sitting by Mrs. Johnson across from Mr. Truman, I did not hear him ask somebody he had called, "What is going on in Laos?" Bertha Dobie, who sat at his right, did hear him.

He could not have heard Mr. Truman say: "Lyndon Johnson may be the greatest President since Lincoln." This opinion came out of remarks on the railroad achievement.

Personal contacts stimulate the putting of things together. My brief contacts with President Johnson as his guest confirm a deduction that has been growing from reading speeches made by him since the fatal day of last November and many reports on press conference utterances. He has grown in mellowness, in wisdom, and in compassion. In past years his egotism and ambition have often been subjects of remark. I think now that Walker Stone is right in saying that without a dominating egotism no man could be effective as President. So far as position goes, nothing higher remains for Lyndon Baines Johnson to seek. His ambition has never been merely to make more money. According to published reports, the Johnson family is now wealthy, largely through Mrs. Johnson's business acumen.

President Johnson's ambition is patently more and more not only for his country but for people, the human race itself.

The sense of compassion is developing in Lyndon B. Johnson. His concern for better living for the poor and training for the ignorant and the untrained comes out of humanity and not out of political opportunism.

Along with food, achievement, and other factors, relaxation is a strong nourisher of energy. I saw this in President Johnson on Sunday when Secretary of Defense McNamara and Mrs. McNamara came to the White House for a swim and then for lunch. The only other swimmers were President and Mrs. Johnson. Bertha and I sat on chairs by the pool, talking now and then with the swimmers. Any tenseness there may have been over Vietnam and the Pentagon-industry complex was gone. The air was as serene as the tulips blooming in the garden.

At lunch on Saturday Mrs. Johnson had said: "We are having hash well seasoned with jalapena because Lyndon likes it." She added that another meat would be passed for those not wishing hash. I myself am a hash man. This had plenty of juice as well as pepper. We seemed to have some of it in sandwich form for Sunday lunch.

For commonsense and seeing into things I had as soon converse with Lady Bird Johnson as with a President. During this century, in my time, only three wives of Presidents have made an impact upon the imagination and to an extent upon the thought of the country: Eleanor Roosevelt, Jacqueline Kennedy, Lady Bird Johnson. When, after the funeral of her husband, Mrs. John F. Kennedy absented herself from public life almost as totally as her husband had been taken from that life, millions of people wondered if another light would give out brightness. Lady Bird Johnson's brightness has come to be part of the natural illumination of the land.

Formal dress and formal occasion do not restrict her naturalness. In dignity she remains appealing. A kind of gaiety informs her seriousness She is always herself, never playing a part, only meeting, in a fitting way, the part to be taken. I have not heard her make a speech. One I read made in a poverty-stricken region of the Appalachian Mountains sounded just, humane, sympathetic.

"You must get very tired shaking hands with so many people," Bertha Dobie said to her.

"I feel," she replied, "that for each of them it is an experience. I try to make it as good as I can."

My last observation on life in the White House is that members of the family are affectionate toward one another as well as respectful of each one's individuality. A Negro cook advanced in years who has been with the Johnsons for many years and about whom I saw Lynda Bird encircle an arm is manifestly one who feels affection.

Politicians more interested in getting votes than in people themselves are not unknown. On Saturday morning while a constant line of people, said to number between 15,000 and 20,000 for the day, was passing from Pennsylvania Avenue into the White House grounds and then across one end of the White House on the first floor, the President, taking me with him, opened a door from the inside. There he could look upon maybe 200 startled men and women. The nearest began reaching for his hand.

He shook with three or four—maybe half a dozen, then held his hands up too high for grasping. I saw a Secret Service man at his side very uneasy. With a farewell word, President Johnson drew back and shut the door. His way, his look, his voice told me that this gesture was for something beyond votes. I suppose all observers who have been with him have noted his sincere liking for people.

We came away from the White House realizing more than ever that the friendliness and hospitality of the First Lady of the land and her husband are sincere.

ABOUT THE AUTHOR

J. Frank Dobie, now 75, is regarded as one of the great American storytellers of all time from that State of tall tales—Texas.

His first book was "Legends of Texas," published in 1921. His next, due out in the fall, is "Cow People." It is about the early Texans whom he says didn't brag. The bragging came later, says forthright, outspoken Dobie who used to look like Will Rogers in his younger days and now is often mistaken for the late Robert Frost or Carl Sandburg.

During his years of teaching a course in Southwestern literature at the University of Texas, there was standing room only in his classroom.

He dislikes being called a folklorist nor does he want to be called a spinner of tall tales, either.

"I am not a scientific historian," he says. "I present chronicles of what it was like in past years."

As one Texas editor describes Dobie:

"He's an old cowhand who gave up ridin' on the range for writin' on the range. When he has something to say, which he does about almost everything under the sun, it can be as sharp as a rattlesnake's bite or as staggering as a .45 slug—and very often both at the same time."

Dobie has an A.B. degree from Texas' Southwestern University, an M.A. from Columbia University and an honorary M.A. from Cambridge University where he was a visiting professor in American history during World War II.

Today, he and his wife Bertha live in Austin, Tex., near the campus of the University of Texas.

The Dobies and President and Mrs. Johnson have been friends for 20 years. The Johnsons' move to the White House has not changed the friendship. During his overnight stay in the Lincoln bedroom, Dobie expressed outspoken concern for the President's fast pace and heavy schedule.

TRIBUTE TO MR. AND MRS. SAM EIG

Mr. BEALL. Mr. President, last Thursday evening I attended a dinner at the Washingtonian Motel in Montgomery County honoring two of Maryland's outstanding citizens, Mr. and Mrs. Sam Eig.

These distinguished Marylanders have been outstanding civic leaders and have contributed much to the development of nearby Montgomery County. I would like to associate myself with the eloquent remarks of Mayor Theodore R. McKeldin and join him in paying tribute to these two distinguished Marylanders.

I ask unanimous consent that a copy of Mayor McKeldin's remarks be printed in the RECORD.

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

MR. AND MRS. SAM EIG

(Remarks of Mayor Theodore R. McKeldin, testimonial dinner for Samuel and Esther Eig, Washingtonian Country Club, Gaithersburg, Md., May 7, 1964, 6:30 p.m.)

I have two reasons for feeling honored by being permitted to pay tribute to the man and woman who are our guests tonight.

The first reason you may call local in the sense that it appeals strongly to a Marylander. It is based on the contribution that the Eigs—I refuse to separate them in any aspect of their lives and work—have made to this State. It is, of course, largely attributable to the business genius of Sam Eig that he has added enormously to both economic and cultural values in this Commonwealth, but I will not concede that it was all his doing. If the little delicatessen in which he started has grown and blossomed into a huge business empire, some, and I think a great deal, of the credit belongs to the woman, a young girl then, who stood behind the counter serving customers in a way that brought them back again and again.

And if Sam Eig has won gratitude and praise from all sects and all factions for a philanthropy that was extended on no other qualification than human need, I am sure that it was due, in part, to the woman who stood by him constantly reminding him that there is more in life than money and greater values than power.

So I salute them together, as a pair—good citizens, good neighbors, good friends, who have brought to Maryland good gifts, some economic, but the larger and more valuable part cultural, riches of the mind and spirit that moth and rust do not corrupt nor thieves break through and steal.

But the second reason for rejoicing in this occasion is not local, not confined to Maryland and the District of Columbia, to Washington and Baltimore. It is not even confined to the Eigs themselves; it goes beyond them to the things that they symbolize. These are important, not to Maryland alone, but to the United States of America and, through it, to the world.

For this man and woman stand as living reputations of the cynicism and pessimism, the narrow mind and the closed heart that are too sadly characteristic of our time. Once upon a time the Eigs were technically aliens. Once upon a time the Eigs where poor, without money, without power, without influence, forced to make their way by their own efforts in a fiercely competitive society. Once upon a time they were the kind of people whom pride and prejudice would like to bar from our shores.

Think, then, what we should have lost if pride and prejudice had prevailed when they applied for admission. Those evil passions are not yet dominant, but they are still strong in our society; think, then, of what we may be losing now whenever they are allowed to prevail.

This is not a mere theoretical proposition suitable to a textbook on ethics, but remote from the daily lives of businessmen and housewives. It is an intensely practical matter, demanding immediate attention and prompt action, on pain of loss and peril to an extent that no one can compute. It is far indeed from being confined to our immigration policy. Ignorance, prejudice, and superstition are riding hard, riding with whip and spur, through many phases of our national life. Not in the faces of aliens alone are we slamming the door of opportunity. Many of the native born are being excluded as ruthlessly. It is estimated that already there are at least 4 or 5 million men who will never again be allowed a chance to support themselves by their own efforts. Their fate is either to starve or to eat the bitter bread of charity.

This is an appalling thing to say of a country now on a level of prosperity higher than any attained before. It is the more appalling when one digs down to the causes of the condition and finds what it is based upon fear—fear of armed enemies, fear of racial equality, fear of new ideas and, most potent of all, fear of the loss of profits. When you analyze them all these fears boil down to the oldest handicap under which man has struggled, fear of taking the next step. Take them one by one—fear of armed enemies may be abated by following the Biblical injunction, "agree with thine adversary quickly." Fear of racial equality has been proved baseless by a thousand tests, some scientific, some historical. Fear of new ideas is nothing but fear of progress. Fear of the loss of profits is based on the theory, exploded long ago, that the only way to make a dollar is to take it from somebody else—the medieval economics of the robber barons.

Yet while each of these fears is baseless in itself, each of them is solidly based on that other fear—the fear of going ahead, of facing the facts, which I have called fear of taking the next step. Centuries ago the church condemned it among the seven deadly sins under the name of sloth. Modern students of public affairs usually call it apathy, but under whatever name it means refusing to use the brains that God has given us to devise new solutions of new problems.

To take the illustration at hand, remember that the Eigs came from Russia. I shudder to think how many Americans, given that information, would say, "It is enough. If they are Russians, they are enemies, for all Russians are our enemies." That is sheer lunacy. The great men—novelists, scientists, musicians, philosophers—and the great ideas—mathematical, psychological, social and economic—that have come out of Russia to enrich the intellectual heritage of the whole world are far beyond computation.

What is true of Russia applies with equal force to any other great nation you may choose to name. Not one of them but has something of immense value to us, if we have wit enough to separate the gold from the ore; and if we are not intelligent enough to do that, whose fault is it? Certainly not that of the foreigners.

Yet many of the loudest voices in America are those of fellows who strut and bellow about the danger of "foreigners," and claim to be great patriots for so doing. In fact, they are robbing their own Nation of incalculable treasure that it might have.

This is even plainer when what they declaim against is not "foreign isms" but the danger of releasing that power of brain and character inherent in some of our own minorities. The pending civil rights legislation, for instance, is nearly always described as giving something to the Negroes, whereas it ought to be called an effort to get more out of the Negroes. By a policy of repression we have hitherto discarded most of the brain potential and a large part of the brawn potential of 10 percent of the population.

We can no longer afford that waste. But the only way to stop it is to make sure that the Negro minority shall have every opportunity to develop to the fullest extent every kind of talent with which it is endowed.

It is the fashion of American orators in referring to such people as we honor here tonight to say that this country gave the immigrant opportunity. It is a misuse of terms. We gave nothing. We invested opportunity in Sam and Esther Eig, and if you want to know how magnificent was the return on the investment all you have to do is look around you.

Surely, the lesson will not be lost upon us. Here is the symbol of what we may expect if we can summon the courage to take the next step, confident that in justice and even generosity to our fellowman there is far more gain to be hoped than loss to be feared. The immigrant who has made use of his opportunity as brilliantly as these two have done may well be as great an inspiration to us as Shakespeare said that Henry V was to his soldiers at Agincourt: "That every wretch, pining and pale before, beholding him, plucks comfort from his looks: a largess universial, like the sun, his liberal eye doth give to every one, thawing cold fear."

PRAYER AND BIBLE READING IN THE PUBLIC SCHOOLS

Mr. BEALL. Mr. President, Miss Betty Robertson, a senior at Westminster High School, recently wrote a guest editorial in the Carroll County Times. In her editorial, she advocates the restoration of prayer and Bible reading in the public schools.

I ask unanimous consent that the editorial, along with the news article about Betty, be printed in the RECORD.

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

BETTY ROBERTSON'S EDITORIAL "TO BE OR NOT TO BE" WINS AWARD FOR JOURNALISM

"To Be or Not To Be," an editorial which appeared in the Owl, publication of Westminster High School, has won for its author a National Award Gold Key by the Quill and Scroll, honorary society for high school journalists.

The editorial, written by Miss Betty Robertson, is reprinted on page 4A of this edition of the Times as a guest editorial.

Miss Robertson's outstanding piece deals with the Supreme Court decision banning the Bible and prayers from the classrooms of America.

TO ENTER NURSES' TRAINING

The award makes her eligible to apply for a $500 scholarship in journalism at a college offering the course as a major. She plans, however, to enter nurse's training after she graduates from high school in June.

Miss Robertson has already been accepted as a student nurse trainee in Virginia Baptist Hospital, Lynchburg, Va.

She received a pin for outstanding services rendered at the Carroll County General Hospital as a "Pinkie." She worked for 2 years as a volunteer at the hospital here.

Betty is the daughter of Mr. and Mrs. William Robertson, Route 6, Westminster. She is a member of the Emmanuel Baptist Church at Gamber and is active in all activities of the church.

OTHERS HONORED

Miss Robertson was one of nine Westminster High students who were recommended for membership in the Quill and Scroll society. Selection was based on work as writers on the high school paper, the Owl, plus scholastic standing.

Others named were Jennifer Clise and Nancy Kennedy, for essays written in connection with the Carroll County Times teenage writing contest. Both young ladies had their entries published in the Times in addition to receiving monetary awards and certificates for outstanding writing from Willow Farms Dairy and the Maryland-Delaware Press Association.

Sue Briscoe, Jo Farinholt, Carol Staub, Jane Uhrig, Beverly Myers, and Barbara Shipley were honored for high-quality writing in the school newspaper.

TO BE OR NOT TO BE

Not long ago a schoolday started out with the familiar "Our Father who art in Heaven, hallowed be Thy name." Today these words are no longer heard in the classroom. This sounds like something that would happen in Russia, but it is not in Russia this happened, but here in the United States.

What brought about this abolition of prayer? Numerous reasons contributed, but the clincher was Mrs. Murray and a Supreme Court leaning over backward to pacify the minority.

The United States was founded and dedicated to God. God was the mainstay of the lives of every American citizen. Since America is a melting pot, there are some atheists in the United States.

Previously the atheists went about life their own way without interfering with the basic beliefs this country was founded upon.

A democracy is rule by the majority of the people with the protection of the minorities. This is true enough, but protection of the minority has gone too far. One person in Maryland, Mrs. Murray, was able to cause abolition of the prayer and Bible reading in schools because she is an atheist and therefore her son should not be subjected to listening to the Bible.

Even though her son was allowed to leave the room during the service, Mrs. Murray felt her son was being discriminated against.

Whether or not prayer is needed every morning before school is up to the individual. The decision about prayer should be left to the majority. Today many schools do not allow prayer because of the repercussions that may result. The school is placed in a difficult position.

A bill has been introduced in Congress making prayer in public schools legal. An amendment of this type would bring back Bible reading and prayer in public schools.

Since our Congressmen are influenced greatly by letters from home, why not write and let yours know your viewpoints? He cannot be a service to us unless we let him know how we feel. If you favor this bill as I do, why not let someone know?

If our country was founded on a belief in God, we should keep it that way. If we do not have prayer, we are coming one step closer to communism.

Think for yourself. Is prayer in schools to be or not to be?

BETTY ROBERTSON,
Westminster High School Owl.

THE NEED FOR PROGRESS: AN ADDRESS ON THE CHALLENGE OF LOCAL GOVERNMENT BY SENATOR GAYLORD NELSON

Mr. HUMPHREY. Mr. President, the Senate is called upon daily to face the most serious national and international problems, which occupy the headlines of our newspapers. While facing these problems as we should, it is important not to forget the extremely serious challenges which confront our local governments back home.

It would be a serious mistake if we were to assume that the problems faced by local government were any less serious or less urgent than the problems with which we deal here in the Senate.

The distinguished Senator from Wisconsin [Mr. NELSON] has had a long and continuing interest in local government, through his 10 years' experience as a State senator and 4 years as Governor. He has continued to take an interest in this problem now that he is a U.S. Senator.

The Milwaukee Sentinel asked Senator NELSON to keynote a recent forum on the problems of local government, which brought together a distinguished, blue ribbon audience of the State's civic and political leaders. In his speech, Senator NELSON restated the crucial importance of local government to our way of life in America, and then made a hard-hitting analysis of the shortcomings of the present governmental structure.

The problems of local government are not limited to Wisconsin. Many of the issues which Senator NELSON discussed in this speech apply throughout our Nation. I ask unanimous consent that the Senator's speech, "The Need for Progress," be printed at this point in the RECORD.

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

THE NEED FOR PROGRESS

(By Senator NELSON, Monday, May 4, 1964)

I cannot overemphasize how delighted I am to take part in this forum. The Milwaukee Sentinel deserves the highest praise for arranging such a vital discussion of one of our most serious and most neglected public problems. The officials and students of government who have taken the time to come here today deserve to be congratulated. None of you will earn any money or win any votes here today. You will have to find your reward in the belief that the public will be served by this free and untrammeled discussion.

Pleased as I am to take part, I can't avoid the feeling of a man who is settling down for the late, late show, who suddenly discovers that he has already seen the movie several times before.

I am willing to watch this old drama once again, because I realize that others may not have seen it as often as I have.

I also realize that many people have watched the action but have never gotten the message.

My great hope is that because the movie now has a new sponsor—an aggressive metropolitan newspaper looking for new worlds to conquer—that the show will play to a bigger audience this time and that someone will really get the message.

The Milwaukee Sentinel, in an excellent series of articles last fall on the need for local government reform, reported that my greatest disappointment as Governor was my inability to effect any major reform in local government.

That was a true report. Based on my 4 years' experience as Governor, I want to warn anyone here today who may be fired up with enthusiasm: You are about to bang your head against one of the thickest stone walls standing anywhere.

On January 18, 1961, before the Wisconsin Legislature, I made the broadest and most urgent plea I had ever made for sweeping, comprehensive governmental reform. As I recall, the Milwaukee Journal editorial commenting on that speech was entitled, "Governor Nelson Shoots the Works."

The blue ribbon committee on tax revision had just submitted its final report, and under brilliant, bipartisan leadership had put its finger squarely on the No. 1 problem in State and local government—the inequitable distribution of money collected by the State, combined with the inadequacy and the regressiveness of property taxes.

Secondly, a topflight, nonpartisan commission on constitutional revision, appointed by me, had also just reported, recommending a number of immediate reforms in our governmental structure and proposing continued, long-range study of the tougher problems.

The newspapers—at least those who can afford State capitol correspondents—had begun taking an interest in the problems of tax revision and governmental reform. The public was showing signs of becoming aroused.

So I shot the works. In that message, I called for a series of major changes at the State level which are indispensable to any broad reform in State and local government:

Four year terms for State officials.

Direct borrowing by the State, within reasonable limits.

Equitable reapportionment of legislative and congressional districts.

Creation of a continuing, nonpartisan reapportionment commission.

Reorganization of the State highway program under a single executive.

Uniform reporting of automobile accidents throughout the State.

Next, I recommended major changes in the structure of local government itself:

Repeal of the constitutional requirement that all counties have a uniform system of government.

Major reform of the system of untrained, part-time local health officers and establishment of more and more county health departments and county health commissions.

Broad extension of the county executive system, with veto power for the executive.

Easier annexation procedures.

Nonpartisan election of county officials.

State authority to take over zoning responsibilities in the crucial areas around major new highway interchanges.

You know the story. A few of these changes were accomplished, mostly in watered down fashion. The great majority were never even seriously considered by the legislature.

Even if every one of these reforms had been speedily enacted, we would not have solved the urgent problem of local government. But at least we would have been on our way, and the harsh truth is that the problems of local government have continued to snowball so rapidly in the 3 long years since then that, even if we had accomplished

all these reforms, we might still be losing ground against the forces of rapid change.

I mention this recent history for one very important reason. When the Sentinel invited me to keynote this session, I had to decide exactly what my role, my responsibilities should be. It seemed obvious that I should not offer any program of specific reforms such as I did back in 1961.

Instead, I feel that I should speak from my experience as a legislator, Governor and now U.S. Senator and try to show in the broadest possible terms just what is wrong with local government and what must be done to correct it.

The problem of local government in Wisconsin is approaching the proportions of a scandal. If it really were a scandal—if some county treasurer would steal a million dollars or if a sheriff were found running a crime school, the newspapers and the public would go crazy with excitement and we might get some action.

But the real scandal is actually much more serious than any banner-line story such as that. Jay Sykes' series in the Sentinel estimated that the scandal is making off with not $1 million but $20 to $80 million a year. And the injustices and inequities resulting from poor or inadequate government are far more shocking, far more damaging to the public interest than any moral infractions by a single official.

The story of local government in Wisconsin, with of course many notable exceptions, is a story of wasted tax money, inadequate services, chaotic growth, and an almost complete failure to face the far more serious problems of the future.

We are stuck with a system of government which was developed over one century ago. Look back over that century and consider how times have changed. I don't see how anyone who does that can seriously contend that our system of local government is adequate for today.

But much more dramtically—look ahead not for a century but for a mere 10 years. If local government is inadequate today, what are we going to face 10 years from now?

Much of the problem, as you all know so well, is simply population—both population growth and population movement.

The simple truth is that the communities that are gaining people and the communities that are losing people are both throwing up their hands in despair over the problems that result.

By 1965, a majority of all the people in Wisconsin will live in seven counties—Milwaukee, Ozaukee, Racine, Kenosha, Waukesha, Washington, and Walworth.

The overwhelming majority of the people, 75 to 80 percent, will live in the southeastern section formed by drawing a line from Green Bay to Madison.

Our people are moving into these booming urban areas from farms and small towns all over Wisconsin. They are reducing the tax base and the work force and the leadership potential of the areas they leave behind, and they are putting a strain on the schools, the streets, the welfare services of the cities to which they go.

Furthermore, the people who already live in those urban areas are moving out to the suburbs, creating an insatiable demand for new schools, water and sewer mains, streets, parks and police protection in a day of very high costs.

These great population shifts are taking place at a time of revolutionary economic and social change. People are earning more money and have more leisure time than we ever dreamed was possible a few years ago. They are demanding a complete new way of life—huge homes on big lots, two high-powered cars and a boat, bigger families, a higher standard of education and of services. The whole pattern of retail trade is shifting to meet these changes. Grand old department stores which have stood solidly for three quarters of a century are fighting for their lives against gaudy discount stores on the outskirts. Whole business districts are moving. Even factories are heading for the green grass of the suburbs.

The whole system of providing governmental services and protecting public health and safety, which had remained basically unchanged for almost a century, has been suddenly rendered obsolete. Most of these changes—changes which alter the whole course of government in Wisconsin—have occurred in the brief 15 years since I was first elected to the legislature.

If you have to oversimplify the problems of local government, for discussion purposes, I believe you can cover most of the whole broad subject by discussing two general issues:

1. Boundary lines.
2. Finances.

There is no reason why the people of the State of Wisconsin cannot provide the kind of local government they want and need. The trouble is, the State of Wisconsin is carved up into a baffling patchwork of governmental units, few of which are able to cope with either their own problems or the problems they share with all the units of government around them.

This governmental patchwork was conceived more than a century ago to serve an almost completely rural society in a vast State with a tiny population. Actually, when you try to visualize the problems our people faced at that time, taming the wilderness and extending some form of government into the most remote, undeveloped, and isolated areas, you can see that they were bold and resourceful in the system they established. I only wish we would be as bold and resourceful today.

They created a State government; a network of 71 county governments, largely to serve as agents of the State on the local level; and they created town government as a kind of a weak, miniature model of State and county government. Cities and villages began to grow up and they were more or less superimposed on this statewide system, with great independence in managing their own affairs.

Throughout our history the pattern of government has continued to reflect our rural, agricultural origins. The town chairman is the key man in the rural area. The county board is heavily influenced by the town chairmen, and the legislature in turn is heavily influenced by the county boards. Cities have remained free to run their own affairs, but when they have sought to spread out, under the force of the changes I described earlier, they have run into bitter opposition.

The result has been a reckless waste of the taxpayers' money and near chaos in governmental services.

As the cities have burst their seams, the leaders in the outlying rural areas have blocked their normal expansion by creating rings of suburbs around them. In some cases, the towns themselves have sought to make believe that they are city-type governments.

Instead of grappling with how to extend water and sewer and police services to thousands of new families, instead of trying to adapt local institutions to urgent problems never dreamed of a generation ago, many of our local officials have staged a kind of "Keystone Cop" comedy, annexing one another's business districts, running corridors north to link up to a valuable industrial site, and suing one another over who is to supply the water.

Meanwhile, back on the farm, town and county government muddles along as if nothing has changed. We have 1,272 town governments today, ranging upward from one with a population of only 28. Even if they lose almost all their population, they go right on maintaining their tiny bureaucracy, and, what is far more important, they go on controlling 57,000 miles of highways. The Sentinel series to which I referred earlier told of one town with 37 miles of road which bought a $20,000 grader and a $5,000 truck.

The Sentinel series also told of the utter exasperation of trying to develop a modern State highway system in which all maintenance, even on State and Federal highways, is turned over to county boards, largely controlled by the rural towns.

The Sentinel series added up to a ringing indictment of the present system of town and county government. It documented the fantastic waste involved in this ancient and outmoded system.

But I do think two important points must be made:

1. The waste of money, bad as it is, is not as significant as the poor government, the sheer inability to supply vital services, and to plan for the future, which results from this system.

2. Bad as the problem is at the town and county level, the real problem of local government in Wisconsin is in its urban areas.

I would like to see reform in town and county government. But if it could be left completely unchanged without standing in the way of some immediate, dramatic solution to our urban problems, that would be a bargain.

It takes hard digging to discover what is lacking in town and county government. But anyone with an automobile cannot escape the brutal reality of urban problems.

I think the worst price we pay for urban disintegration is sheer ugliness. We have some beautiful cities and some magnificent rural areas. But drive the busy highways on the borders of our cities and see the tragedy of uncontrolled growth.

In this no man's land on the outskirts, where the pattern of life is urban and dynamic and the pattern of government is rural and lethargic, you find the billboard alleys, the honkytonks, the junkyards next to country mansions, and a form of ugliness which I am convinced pleases no one but which is spreading across the face of America.

Why must a city, which preserves its own sense of decency for 100 years, see its outskirts—which inevitably will become a part of the city—turned into a neon decorated slum?

Why can't we have orderly growth, responsible zoning, and careful planning, so that this era of pellmell progress does not destroy everything that has been left to us?

Of course we can't fight the cancerous spread of ugliness, we can't lay out streets and sewers and water mains, we can't control traffic, we can't protect public health or control crime or perform any other vital services, if our rapidly growing urban areas are going to be continually Balkanized into more and more competing and inadequate units of government.

To meet this mounting scandal we need some clear, long-term goals. Someone—either the legislature itself or some new blue-ribbon commission of citizens and public officials—must take a complete look at the chaos of local government, figure out just where we are headed, and develop some plans for our future.

Such a study—just like this conference today—should avoid bogging down in the petty details of change which seem to arouse such better antagonism. Before we start fighting over whether to abolish town assessors, we ought to decide what to do with the towns.

Such a study could dramatize anew just how crucial local government is. It is true that our National Government determines great and overriding issues, such as war and peace, depression and prosperity, but State

and local government—and the two are inseparable—determines our way of life:

Our schools, our hospitals and institutions, our parks and playgrounds and libraries; our streets and our neighborhoods; our water supply; our police protection—the very character and beauty of our environment.

I think these specific things are wrong and need attention:

1. We simply have too many units of government.

2. Their existing boundary lines make very little sense. They are wasteful of money, they are confusing, and they lead to injustice and inequity.

3. At the same time that we have too many units of government, we also have many governmental problems which no unit of government is equipped to handle.

4. In many cases, the county might be the logical unit to take over these new responsibilities, but county government, by its very structure, cannot presently do the job.

5. We must make increasing use of cooperative, regional organizations, including regional planning commissions for big areas and smaller urban regional councils for more localized problems which disregard local boundaries.

6. We need sweeping reform of the system of financing local government.

7. The responsibility for all these changes rests with the State. The State must set new standards for local government. And reform of local government must go hand in hand with reform of State government.

The State has got to step in with new annexation laws, with new controls over platting of subdivisions, and with some genuine incentives to governmental consolidation and cooperation.

We have got to accept the fact that there is nothing sacred about the boundary lines of local government in Wisconsin. Rural towns have got to stop thinking of their adjoining city as something like the Soviet Union if not worse.

Community leaders, who champion States rights against what they see as an overcentralized, bureaucratic Federal Government, have got to stop thinking that the State government is the same kind of monster only a little smaller. They have got to abandon the notion that the only good government is a weak, hometown government which they can control. They have got to realize that if they really want to avoid the total federalizing of the country, which they seem to fear so desperately, then they have got to support strong State government and revitalized local government.

The financing of local government is a scandal all by itself. I urge you all to read, "Financing Metropolitan Municipalities in Wisconsin," published in the February 1964 issue of Land Economics magazine, by Prof. Harold Groves, of the University of Wisconsin, and Prof. John Riew, of Pennsylvania State University.

In cold statistics, this article tells the story: How Milwaukee County—a single city if I ever saw one—has been carved up into 19 independent municipal governments; how the city of Superior, possibly the only city in Wisconsin laid out with adequate room for future growth, is the only metropolitan area in the State to lose population; how the village of River Hills finances its services with a property tax base of almost $15,000 per person compared to $5,000 in Milwaukee, and with per capita income of $9,500 compared to $1,800 in Milwaukee.

The article tells anew the shocking truth which came out in the blue ribbon tax study, and which I tried so hard but so unsuccessfully to get across to the people of Wisconsin, and that is this: The State of Wisconsin, which gave the Nation the progressive income tax more than half a century ago, finances vital local government through a regressive system.

The more a community has, the more it gets. The less resources a community has in its struggle to provide services, the less it gets from the State.

North Bay Village is rich. Its residents pay $4 per $1,000 in property taxes. The town of Superior is poor. Its residents pay $42 per $1,000.

Rich River Hills receives $273 per person from the State in shared taxes. The poor village of Oliver, near Superior, receives $4.55.

The average incorparted suburb in Wisconsin has resources 82 percent above those of the average central city.

Meanwhile, the inner sections of many of these cities are rotting and no matter what is to be done with them, the cost is going to be high.

As the Groves article stated: "Whatever was the original rationale of shared taxes, it seems ironic that the income tax based on ability to pay should be used to aid progressively the units that are fiscally superior."

Speaking of the inequities among various communities in Wisconsin, the Groves article also said: "It is doubtful if any other State has so compounded them with an antiquated and perverse shared tax system."

The whole rationale for collecting money at the State level and returning it to the local level is that the State has superior powers of taxation and administration, and that the burden should be spread out as uniformly as possible over the State. The shared tax system, as it is operating today, is not carrying out the purposes for which it was designed and not serving the public interest.

In developing a better system, we have a perfect example to follow in our State school aid program.

Education is one of the most important responsibilities of local government. Sixteen years ago, local education in Wisconsin was reaching scandal proportions. The legislature acted boldly and decisively in the face of bitter minority protest.

It created county school committees with the power to order reorganization of local school districts to produce more sensible boundaries.

It passed a law to make these changes financially attractive. The State offered some money to every school district; more money if the district would consolidate with other districts; and still more money if it would raise its educational standards.

The results have been fantastic. We had almost 8,000 school districts in 1937; almost 6,000 in 1950, almost 3,000 in 1959, and only 725 today.

Couldn't we get similar results in our patchwork of local government?

We must create new forms of county government, free of the ancient uniformity rule, with at least one kind of county government really suited to rural areas and another really suited to urban areas.

We must make local government democratic, both responsive and responsible to the people it serves. We cannot turn local government over to the existing county system as long as it is unwieldly, as long as it is without an elected leader and as long as it has unequal representation which reaches a margin of 70 to 1 between rural and urban areas in Dane County.

Where we cannot get agreement on revamping boundary lines, we have got to select some functions which can easily be transferred to the larger unit of government, such as giving the county authority to assess and collect all taxes within its boundaries.

The State must take over greater responsibility for highways, a truly statewide function.

One specific, simple, and badly needed reform is a system of centralized purchasing, worked out jointly for the State, the counties and the cities. Obvoiusly, it makes no sense at all for the tiny towns I mentioned earlier to be negotiating with industries over the purchase of $20,000 road graders. The savings from common specifications, from the use of expert personnel in deciding what to buy, when to buy it, and in what quantities, would be enormous. Estimates range up to one-third. It could be much more.

But the benefits of centralized purchasing are not restricted to the expensive and complicated machinery used by local government. The same economics apply in buying typewriters, desks, office supplies, and all the other necessities of government. Why can't we have this one reform almost immediately? Surely no large corporation would go on wasting money day after day simply because its various departments wanted to do all their own shopping.

Finally I want to say that reform of local government will never be achieved without reform of State government. The two are inescapably intertwined. Until we give our Governor—whichever party he represents—sufficient time and sufficient administrative tools with which to work, we cannot expect him to produce any solution to this exasperating problem of local government. We have got to streamline our State bureaucracy. We have got to centralize responsibility, to produce clear, direct lines of action.

If we are going to demand that our local officials give up even one tiny bit of their sovereignty, we cannot go on making believe that each commission and each agency of State government is a kind of sovereign and independent State.

The problem of local government will not be solved easily, or quickly, or without controversy. But it also will not be solved by doing nothing. We have here today many of the people who would logically lead the fight both for and against the changes which are needed if our local system is to meet the challenges which lie ahead. We should not pass the buck to others. We should admit the existence of the problem, admit our own responsibilities for solving it, and begin the long, painful but creative process of developing a real solution.

WHO FINANCES THE COORDINATING COMMITTEE FOR FUNDAMENTAL AMERICAN FREEDOM?

Mr. HUMPHREY. Mr. President, thousands of Americans have written to every Member of this body on the civil rights bill. The pages of the RECORD since late winter reflect mail embracing every conceivable position a person could take on this bill.

This, I am sure, is very much the fact. Every aspect of the bill has been debated and redebated at least a half dozen times. Therefore the hour for the Senate to work its will on the provisions of the bill is long overdue. The time must now come for us to start voting on the public business.

The discussions have been all to the good, because the free expression of opinion on this or any other legislation is the American way of getting at the truth and finding acceptable solutions to our problems.

I received a letter 2 days ago, which I find both curious and alarming. It describes an exchange of views on civil rights which occurred in an open forum at Catholic University in Washington. The exchange took place before about 400 students, reporters, and members of the general public. The principals in this exchange were Edmond F. Rovner, director of the civil affairs department of

the IUE–AFL–CIO and John J. Synon, director of the Coordinating Committee for Fundamental American Freedoms, Inc.

The letter was written to me by Mr. Rovner and I am bringing it to the attention of my colleagues in the Senate because I am sure that they will be as fascinated and as outraged as I was with its message.

Mr. President, many of us were shocked, perhaps because of our naivete, when we learned that the Coordinating Committee for Fundamental American Freedoms, Inc.—a group dedicated to the defeat of H.R. 7152 by hook or by crook—is financed in part by funds from the Mississippi Sovereignty Commission, a tax-supported body. We expressed our shock when we joined millions of other Americans in witnessing a full-page advertisement called "The $100 Billion Blackjack"—an advertisement written and paid for by the tax-supported coordinating committee directed by Mr. Synon.

Mr. President, we seem to have underestimated both the resources and the resourcefulness of the coordinating committee. Now we learn from a public statement by Mr. Synon, reported to me in Mr. Rovner's letter, that the coordinating committee is supported by public funds from not only one, but at least five Southern States.

I believe the Senate has a right to know about the involvement of the other States. What States? How much have they contributed? Have they used tax revenues?

If there was ever a time for an expression of outrage and indignation, that time is now. But I shall not take up the time of my colleagues by expressing the deep concern I feel. I do not need to. I know what the public response to this new revelation will be.

For the moment I shall merely ask some questions and hope for some answers—not rationalizations, Mr. President, but answers.

Which blackjack are we talking about? A bill whose modest and sensible provisions are designed to do nothing more than to give some real meaning to the phrase "equal justice under law"? Or are we talking about the blackjack—the public spectacle—of a so-called private organization which opposes this bill with public funds from southern taxpayers—white and Negro—in five States? Which States, Mr. President, and whose blackjack?

When has the Congress of the United States been called upon to resolve one of the most difficult and fundamental issues in the history of our Federal system by doing battle with State-supported propaganda machines?

These are questions which will remain long after the bill is passed. They are questions which we had better find answers for unless we believe, as some others seem to believe, that anything goes in the democratic process.

For the edification of my colleagues and for others who might like to take a closer look at the thin line between public trust and private interest, I ask unanimous consent that Mr. Rovner's letter be printed at this point in the RECORD.

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

MAY 5, 1964.

HON. HUBERT HUMPHREY,
Senate Office Building,
Washington, D.C.

DEAR SENATOR HUMPHREY: A fact came to light last evening in which I believe you might have great interest. Specifically, it was revealed that the main organization fighting the civil rights bill is being financed not just by the State of Mississippi but by funds of at least four other Southern States.

Last evening I appeared on a platform with Mr. John J. Synon, director of the Coordinating Committee for Fundamental American Freedoms, Inc., the group which placed the scurrilous and misleading anti-civil-rights advertisement in so many newspapers across the United States. At the invitation of a student group at the Catholic University here in Washington, D.C., I spoke in support of the pending bill and Mr. Synon spoke against it. The meeting was open to the public and the press, as well as the student body. I would estimate that there were approximately 400 in attendance, the overwhelming majority of whom were theologians.

At one point in my presentation I referred to Mr. Synon's corporation as a front group, explaining that it posed as an organization with no special, pecuniary interest in the outcome of the civil rights struggle whereas, in fact, the State of Mississippi was furnishing most of the funds. I pointed out that that State had a direct financial interest in preventing a cutoff of Federal funds for projects administered in a discriminatory manner by the State despite its use of Federal money. I also pointed out that the elected leaders of the State of Mississippi had a personal interest in maintaining the systematic disenfranchisement of potential Negro voters. Mr. Synon objected to the use of the term "front group" to describe his corporation and went on to say, publicly, that almost every Southern State had established the equivalent of the Mississippi Sovereignty Commission, financed by public funds and that at least five of the Southern States had contributed such State-treasury funds to Mr. Synon's corporation.

You will also be interested to know that Mr. Synon was unable to refute a single one of the specific charges of misrepresentation in the advertisement which I pointed out in my presentation. These misrepresentations are the same ones you cited in debate on the floor of the Senate. It was obvious to the audience that Mr. Synon's basic tactic is to distort the facts and to offer fragments of truth torn out of context to try to give the impression that there is some sinister hand behind the civil rights effort (exactly the tactic described by Senator ALLOTT in his Senate speech addressed to this subject).

You may rest assured that the spirited and careful leadership which you and others have provided in this epic moral struggle has the support of those who cherish truth and justice.

Very truly yours,

EDMOND F. ROVNER,
Director, Civic Affairs Department.

Mr. RUSSELL subsequently said: Mr. President, I should like to make a brief response to the statement made by the Senator from Minnesota [Mr. HUMPHREY] about the use of tax funds for some organization whose name I never seem to have in mind. It is a coordinating committee that is opposing the civil rights bill. The Senator from Minnesota stated that tax funds from five or six States had apparently gone to the commission. I know nothing about that. I do not know the source or the extent of the commission's funds.

I know that tax funds from 50 States are being used in the efforts to pass the civil rights bill through the Senate, because agencies of the Government are very active, and large numbers of employees of the Government are spending most of their time in an effort to devise ways and means to force the bill through the Senate.

The Office of the Presidency of the United States has a built-in propaganda strength that is much greater than that of all of the Members of the Senate combined. When the President speaks, his words make the front page of every paper and are properly received with respect. Everyone expects the President to take a position in support of his legislative program and I am not referring to the power of the Presidency except in connection with the handicap with which we contend in opposing the bill.

Let me say, however, that the entire time and attention of the large staff of the Civil Rights Commission, supported by tax dollars from the people of the 50 States of the Union, is devoted to propaganda in support of this legislation. References have been made to errors in an advertisement inserted by this coordinating commission The propaganda of the Civil Rights Commission is threaded with numerous errors and distortions of fact.

I have seen full-page advertisements on the civil rights issue that were stated on their face to be paid for by the leaders of certain labor organizations in this country, when I know members of the same organization within my State who are very much opposed to this bill. However, I assume that some of their dues go into these advertisements and into the literature issued by these labor organizations.

Until recent years—indeed, I believe until the present incumbent took office as Attorney General—it was generally understood that the Attorney General would not give any opinions to the Congress, much less to an individual Member of the Congress, as to the legality of the provisions of proposed legislation or existing law. Unless I am mistaken, this has been the general policy of the Attorney General's office since the foundation of the Government. Some of the predecessors of the present Attorney General have replied to requests for opinions by the Congress by stating that they were prohibited by law from furnishing such opinions.

Of late, I have noticed from time to time in the CONGRESSIONAL RECORD letters from the Attorney General giving opinions on various provisions of the pending bill.

I have written the Attorney General requesting him to outline the present policy of his office. In addition, I am undertaking to obtain some data on this subject and I hope to later offer it for the RECORD. Everyone knows that a number of employees in the Department of Justice are spending practically all of their time, paid for by the taxpayers from 50 States, working for this bill.

Several days ago the Senator from Kentucky [Mr. COOPER] asked some 12

or 14 questions of the Attorney General and received definitive answers from him, apparently giving, without hesitation, the Attorney General's views and legal opinions. All of this was printed in the RECORD at the expense of the taxpayers of 50 States.

The Attorney General and a number of his assistants have been meeting almost daily with the leadership in an effort to devise amendments that will preserve the bill, or as much of it as is possible, and make it possible to impose a gag on the Senate.

I do not favor the improper use of tax funds by any State or the Federal Government; I point out, however, that if some State has made a modest contribution in an effort to preserve its rights by opposing the bill in an attempt to prevent the transferring of State sovereignty to Washington it has every right to do so. A State ought to be permitted to fight the efforts of all the departments of the Federal Government to deprive them of what remains of their sovereignty.

Mr. HUMPHREY. Mr. President, I rise for a moment to make further comment concerning the Coordinating Committee for Fundamental American Freedom. The point of the Senator from Minnesota is not that this committee is at work. Everyone is entitled to express his views. The point is that it is a lobbying organization. It pays for advertisements. It conducts a propaganda program through pamphlets, documents, and advertisements. This is a far cry from a particular State government or an officer of a State government enunciating an opinion, or the Justice Department, or the Attorney General responding to questions from U.S. Senators, or committee reports being published, such as the one I have in my hand, the committee report of the House Committee on the Judiciary, which had both a majority and minority. The minority report was printed at public expense, just as the majority report was. Whenever a Cabinet officer takes a position which is not in support of the President's program, the Cabinet officer, who is serving at the pleasure of the President, resigns or is forced to leave.

There is a great difference between a paid program on the one hand, and a program of State and public officials doing their public duty, or stating the position of their Government and of their administration at the request of Members of Congress or of the public. I do not intend to have the record in any way confused on this issue.

There have been Presidents of the United States who have required their Cabinet officers to appear before committees of Congress and state the President's program in unequivocal terms—in the field of defense, for example, where Cabinet officers have come in and testified contrary to the wishes of the Chiefs of Staff. Why? Because the President is the Commander in Chief. I do not call that propaganda. I call that Government policy. That is the way to operate a government. To be sure, an election can overturn these matters. It can remove from office those who initiate or advocate public policy. Congress can change the public policy. But surely we have the right to expect the Attorney General of the United States to give his views on legislation which the administration proposes if the Attorney General is called before a committee of the Congress and asked to give his views.

I see no comparison between the coordinating committee on the one hand, which is a propaganda machine, and the Department of Justice, which is an agency of the Government.

PRIMARY ELECTION VICTORY OF SENATOR HOLLAND, OF FLORIDA

Mr. RUSSELL. Mr. President, many Senators were greatly delighted at the almost unparalleled victory gained by our distinguished colleague, Senator SPESSARD L. HOLLAND, in the recent Democratic primary in Florida.

Senator HOLLAND defeated a veteran campaigner, who was well known throughout the State, by a vote of about 2½ to 1.

His opponent took a strong position in support of the misnamed civil rights bill. Senator HOLLAND's integrity and forthrightness are recognized in the Senate and are well known to the people of Florida, one of the most cosmopolitan States of the Union.

The lead editorial of the Tallahassee Democrat, one of the most prominent Democratic newspapers of Florida, of Wednesday, May 6, 1964, states that the one clear, decisive message that comes through is that the people of Florida by overwhelming vote want Senator HOLLAND to stay in the Senate so he can continue to fight this bill. The editorial added that the outcome of the election "should hearten and strengthen both Senator HOLLAND and his colleague, Senator GEORGE A. SMATHERS, in their current stand" in opposition to the civil rights bill.

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

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

ONE CLEAR, DECISIVE MESSAGE

While political analysts can argue for days over what happened and why in most of Florida's primary election contests yesterday, one message from the voters came through clear and decisively:

By more than 2 to 1, they want U.S. Senator SPESSARD L. HOLLAND to stay in Washington and fight the fight he has been waging against the Johnson civil rights bill and for insistence on applying conservative constitutional principles to matters of government.

HOLLAND hardly had to come back to Florida to campaign in order to ward off the challenge from Brailey Odham, a veteran campaigner with a well-known name and a smooth line of talk who made HOLLAND'S opposition to the pending civil rights legislation a central point in the contest.

The issue was plain. HOLLAND said he'd rather be defeated than back off his fight. Odham said if he were Senator he would vote for the bill without further debate. He also vowed he would take positions opposite to HOLLAND'S stand on nearly the whole range of economic and social legislation in Washington.

With almost all the precincts reported, the vote this morning stood:

For HOLLAND	642,000
For Odham	280,000

There's a strong endorsement therein, and a mandate from the Democrats of Florida that should hearten and strengthen both Senator HOLLAND and his colleague, Senator GEORGE A. SMATHERS, in their current stand on the rights bill.

THE WAR IN VIETNAM

Mr. MUNDT. Mr. President, during the past weekend, which happily included a nonsession Saturday for the first time in many weeks, I, like many other Senators, had an opportunity to catch up on some back reading and to do a little independent study and research of my own.

Speaking for myself, I would just as happily have been on the Senate floor, because much of what I read, I did not like.

I had received a number of letters, as I suppose many other Senators have, from constituents concerning a disturbing article published in Life magazine. The article is entitled "We Fight and Die, But No One Cares," and consists of a number of letters written by Capt. Edwin G. Shank, Jr., to his wife, describing the fighting conditions in Vietnam.

Several of my constituents have asked me whether I had read the article and could say whether it was true or false.

I had never read it, nor could I evaluate it. However, I read it over the weekend and was both shocked and distressed by what I read.

The contents of the letters are directly opposite to the reports that members of the Committee on Foreign Relations, of which I am a member, have been receiving in off-the-record briefings from both Secretary Rusk and Secretary McNamara. Obviously, I have no way of knowing whether there was truth in the letters or not. But I assume that a man fighting on the ground in Vietnam and writing to his wife, an expectant mother, would not be writing in terms of falsification. Other evidence also indicates the veracity of Captain Shank's heart-rending reports. But if in fact Americans are actually fighting this war they surely are entitled to our most up-to-date equipment in fully adequate supply. Our Secretary of Defense has said we are now far stronger than Russia militarily. If that be true, let us start proving it in Vietnam.

Regardless, the American public is entitled to an explanation from the highest authority as to whether these letters are wrong, and how they are misleading, if in fact they are, because we have been told in the Committee on Foreign Relations that American boys are not fighting in Vietnam; that they are there to engage in reconnaissance flying, and in the training of Vietamese personnel. But the general public is led to believe by the letters published in Life, a great magazine having a wide circulation, that the fighting in the air is being done almost exclusively by American pilots with inadequate equipment and obsolete planes. Obviously, that is either true or false. I

do not know which. But the public has a right to know. The public should be told whether this information is true or false. Surely if Americans are actually fighting the air war in Vietnam with inadequate, inappropriate, and obsolete planes in far from sufficient numbers at that, this sort of maladministration of that conflict should be exposed and eliminated now.

I understand that Secretary McNamara is now enroute to Vietnam. I hope he will make a careful investigation of conditions described in the Shank letters and will place all the facts on the record.

Mr. President, I ask unanimous consent that the portions the letters of Captain Shank, published in Life magazine, may be printed at this point in the RECORD.

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

FROM A PILOT TO HIS WIFE: LAST LETTERS FROM VIETNAM: WE FIGHT AND DIE, BUT NO ONE CARES

(NOTE.—Along with reports out of South Vietnam last week of atack, counterattack, and general foreboding, news was also being made by letters from a U.S. flyer who was killed there. The author was Air Force Captain Edwin G. Shank, Jr., 27, one of a tiny band of Americans flying obsolescent T–28 trainers in support of ground attacks. The letters were addressed to his wife Connie, who was at home in Winamac, Ind., caring for their three children—and expecting a fourth. Captain Shank's letters were critical of the way the war was being conducted—the inferior equipment and unqualified personnel—and his criticisms were discussed in Congress and the press. But Captain Shank was also a lonely father trying to keep up the bonds with his family. Above all, he was a dedicated soldier who believed that this frustrating war had to be fought—and that the American people did not know enough or care enough about it. On these pages, Life presents a full selection from Captain Shank's last letters about his lonely war.)

THURSDAY, *November 14, 1963.*

DEAR CONNIE AND KIDS: Up to 12 missions now. All checked out for night work and I'm second up for alert tonight. Had another 3-hour flight this morning. We escorted choppers back and forth to a landing zone where they put troops in the field. Then we went over and struck some suspicious areas.

We're using equipment and bombs from World War II and it's not too reliable. There are only about 6 maintenance men, 6 armament men and 11 pilots down here. We 23 run the whole T–28 war in the Mekong Delta. This will give you some idea of Uncle Sam's part in the war. I goofed on my third mission out of here. I told you we had a real short runway. One approach is over trees and bushes and a couple of barbed wire fences. There is only one barbed wire fence now. I brought about 20 feet of fence home with me.

November 23, 1963: Been real busy with the armament job. Got all kinds of problems—can't get parts or books or charts describing the different bombs and systems. The Air Force hasn't used any of this equipment since Korea, and everybody seems to have lost the books. Main problem is personnel—no good officers or NCO's over here that really know their business. Most of them are out of SAC and have dealt only with nuclear weapons. This dosen't apply over here. What we need is someone from World War II. Some days it's like beating your head against a brick wall.

November 27, 1963: Happy Thanksgiving—no different here than any other day. You know damn well where I'd like to be today.

First of all woke up Saturday to the news of Kennedy's assassination. Such a terrible thing—the world is full of animals. Sunday all hell broke loose with the Vietcong. We had a big airborne operation against them—both choppers and parachutes. I'm up to 20 missions now and am real confident in myself. I feel like a veteran. I think I am older.

Although this is called a dirty little war and is far from the shores of the old United States of America, it's a big mean war. We are getting beat. We are undermanned and undergunned. The United States may say they are in this, but they don't know. If the United States would really put combat people in here, we could win and win fast.

Wednesday night, December 4, 1963—It's about 9:30—I guess, broke my watch. But I'll get it fixed next time into Saigon. Got my toe rot healed up and also my spider bite. I'm fully operational now.

I have debated for a week and a half now over telling you about Black Sunday—November 24, 1963, I'm going to tell you, and if you don't want to hear about these things again, well say so. You do have a right to know. Anyway, here is what I saw.

At 4:30 Frank Gerski and I took off after a fort under attack. Our airborne interpreter was very poor. The first target he said to hit was an area about the size of your dad's farm. Well, this is much too large a target, but it's all we had. After the first two bombs, we spotted the bad guys shooting at us. So Frank directed me in and I burned them with napalm. Then I spotted another bunch shooting great big bullets at me, so I told Frank to follow me in and shoot where I shot. Well, just as I had them in my gun sights my damn guns jammed. By now, dawn had broken. We were out of goodies and gas, so we came home, landing at around 0700.

We then got word that a big airlift of troops was taking place. Four of our T–28 birds went out—two to escort the choppers and two to soften up the landing zone. They came home about 2 hours later; said it was pretty hot. Two more birds took off to do the same thing for the second wave of choppers. One and one-half hours later they came home screaming battle damage. Just after the hurt birds landed two others took off—almost. I watched the first go, then waited for the second. But he didn't make it. His engine quit just at takeoff. Since the runway was short he didn't have time to stop. Hit a hidden hole and tore a gear off. So now we're down to two airplanes out of six and it's my turn. We bombed like no one has ever bombed before—we literally obliterated about 600 acres of Vietcong woods and then came home.

The Vietcong hurt is bad. What they had done was pull into the little village and commit their usual atrocities. Headquarters thought they would teach this little group of Vietcong a lesson. But the crafty little bastards withdrew from the town into foxholes and bunkers they had been secretly building all week. So when the first wave of troops went in—thinking it was just a routine chase of Vietcong—they soon ran against the Vietcong wall.

We were lucky. No T–28 pilot received so much as a hangnail. We've got a tremendous esprit and we're all skilled—so you can be proud of us. I am. There are no heroes over here, but there are a lot of fine men. America better not let us down. We've either got to get in all the way or get out. If we get out, the Vietcong will be in Saigon the next day.

I wouldn't read this to the kids. They might not understand. You can understand now why I have a duty over here, why it's a serious duty and no one could possibly shirk it. I believe in our cause—it's just. We must win.

Monday night, December 30, 1963: Missed mass yesterday—many things happened. I'm up to 38 missions now—I've been pretty busy.

Well, here goes. I got shot down yesterday. We were escorting a C–123 and I picked up three slugs in my airplane. I made it to a field called Con Tho and landed safely. Me and the airplane are both OK—not a scratch except the three bullet holes. No sweat.

Thought I should tell you.

Friday night, January 3, 1964: Missed supper. Com Deken and I were loading some napoleon [napalm] tonight for an evaluation tomorrow. I'll try and explain the experiment. One of the airmen came up with the idea of putting chunks of charcoal into our napoleon tank. Napalm is gasoline which is jelled into a mass about the consistency of honey. When you drop it, it ignites and spreads fire about 200 to 300 feet. With charcoal in it, the charcoal is thrown another 200 feet, like a burning baseball, and does further damage to Vietcong houses.

Tomorrow three birds are going out with half their load straight napalm and the other half with charcoal in it (Madame Nhu cocktail). If higher headquarters thinks it's alright then they'll buy us the charcoal. So far we've been buying it ourselves, or else borrowing it from the kitchen.

I'm going to hit the sack. It's 11:30 p.m. here now and 10:30 a.m. for you—about time for your favorite soap opera, "As the World Turns." Wasn't that it? How are things for those people? Same as last May or are they worse?

Tuesday night, January 7, 1964: Got another letter today. You can't possibly know what a letter does for morale.

Lost two guys today. One was a pretty good friend of mine. The only guess is—the airplane just came apart. B–26, Third or fourth that has done that now.

One more bit of good news. The guy who got emergency leave for their first baby. Just as he was getting on the airplane, they took him off because the commander changed his mind. Finally the guy went to the second in command over here and got ordinary leave—not emergency leave.

With ordinary leave it will take him forever to get across the Pacific. He'll have to wait for available space. Then, if he can't get back in time he's AWOL. I don't know what the United States is doing. They tell you people that we're just in training situations. But we're at war. We are doing the flying and fighting. We are losing.

Let me write again—I'll write happy. But honey, I'm so frustrated.

Thursday night, January 9, 1964: Had a good target today finally. Felt like I really dealt a blow to the Vietcong. On my second bound I got a secondary explosion. This means that after my bomb exploded there was another explosion. It was either an ammo dump or a fuel storage area. It made a huge burning fireball. You really can't tell when you roll in on a pass what is in the huts and trees you're aiming at. Just lucky today, but I paid them back for shooting me down.

Wednesday, January 15, 1964: Another B–26 went in yesterday. Nobody made it out. A couple of guys I knew pretty well bought the farm. I had met one guy's wife—real nice and they had two kids.

We can no longer save face over here, for we have no face to save. We are more than ever fighting this war. The South Vietnamese T–28's used to come down here and fly missions with us. But lately, since we've been getting shot at so much, they moved up north. I kid you not. I can't help wondering if you're in the hospital tonight—or

when you get this letter. If so, you know my prayers are with you as are my thoughts. I worry very much. I hope and pray you have a good delivery and you are strong. Please don't think I've forgotten you during all those pains. God knows I'm with you as much as humanly possible.

Monday, January 20, 1964: I'm back at Bien Hoa. Back for 2 weeks. Two long weeks, but they all add up toward the 52 I've got to spend over here. It's really not 52 weeks. It's closer to eternity. I'm over here to do the best job possible for my country—yet my country will do nothing for me or any of my buddies or even for itself. I'm sure nothing will be done over here until after the elections. Why? Because votes are more important than my life or any of my buddies' lives. What gets me most is that they won't tell you people what we do over here. I'll bet you that anyone you talk to does not know that American pilots fight this war. We—me and my buddies—do everything. The Vietnamese "students" we have on board are airmen basics. They don't even know their own serial numbers. The only reason they are on board is: in case we crash there is one American "advisor" and one Vietnamese "student." They are sacrificial lambs. They're a menace to have on board.

I got three letters from you today. Actually, two from you and two from the kids. Hope Bart's party went all right. (Bart is Captain Shank's 5-year-old son.) Wish I could have been there. A birthday party is for kids and kids only. It gives them a chance to be big. It's not for grownups. Hurrah for you for sticking by your guns.

Friday, January 31, 1964: Greetings from the Soc Trang duty officer. I should get relieved around 1500 to either fly or get a haircut—whichever comes first.

Not much word about the coup. From what we've got, this new general (Premier Nguyen Khanh) is pro-American.

President Johnson says we're going to stay and win. I hope he's right. We can't keep up like we've been 'cause we're losing. Everyone over here seems unqualified for his job. Take me. I'm a multiengine pilot, but I'm flying TAC fighters. We have no fighter pilot in our outfit.

Thursday, February 6, 1964: I thought for sure today was the day. It was all I could think of last night, so I've been expecting some kind of notification all day. It's got to be soon now. What do you think at night? Are you nervous?

Had another big chopper assault today, but we flew mostly escort. Pretty quiet assault—very few shots fired. I think they're planned that way so that no Vietnamese soldiers get hurt. I'm serious. I'm pretty well convinced that these people only go into areas that are free of Vietcong. But the Vietnamese can still put up a good front to the United States so they can get more aid. It's a known fact over here that the ARVN (South Vietnamese army units) don't receive many casualties. You know how a cornered rat fights. Well, that's the Vietcong. So the ARVN always leaves them a way free. This is fact, not rumor.

Monday evening, February 17, 1964: I'm on alert now. We don't usually pull night alert here, but all B–26's are grounded, so we are the only strike force left. A B–26 crashed last week—another case of the wings just coming off.

I'm so anxious to see my new pretty little daughter. She's probably home now. How does she like our home? I wished she missed me, too, but hell—she doesn't even know I exist.

Have you got her in the crib, or is she in a bassinette? Is she sleeping with you, or by herself in the back room?

Friday night, February 21, 1964: Haven't felt much like writing. Tuesday evening Major Fengfield got shot down. He bellied his airplane in next to a special forces camp and got out without a scratch. The airplane burned completely up, though. Bernie Lukasik, one of his wingmen, kept the Vietcong away from the plane by using his prop. He was out of ammo, so all he could do was dust off the Vietcong with his prop. Took a lot of guts. We got pretty stoned that night in celebration of no one's getting hurt. Next morning, Bernie Lukasik and Denny Sides took off for Soc Trang and had a strike on the way. Bernie was going in on his seventh strafing pass and never came out of it. That was two airplanes in 2 days. Kinda shook us up. Not only that, but the B–26's have been grounded since Monday. So the whole USAF fighter force is down to six airplanes. This should set an example of how much Uncle Sam cares. Six airplanes might as well be none.

I imagine there has been something in the papers, and I thought I should explain. Needless to say, flying is down to nothing. They're saving the T–28's for emergency action only. We're changing our tactics now to decrease any chance of getting hit.

I miss you more than ever, and I will try to come home for a good long look at Patty. I hate to spread this mood to you. Have patience. Happy letters will come soon.

February 24, 1964: I make captain this Friday. I'll be at Soc Trang, so I'll be throwing my party down there. I'd like to pay for it by check 'cause it would take too much of my green. Is this OK—can we afford it?

We're down to five airplanes now. Five airplanes to fight the war—that's just ridiculous. Tell this to my dad—let him know, too, how much the country is letting everyone down. We over here are doing the best we possibly can; we fight and we die, but no one cares. They lie to my country about us—we really don't officially exist. They've just got to help us and soon, or we are going to have another Dienbienphu. God help us.

You and the kids are my only motivating factor. I would love to be with you now, but I would not like to be back in combat after leaving you.

Saturday morning, February 29, 1964: I'm a captain now—put the new bars on yesterday. Had the big party early this morning. Then a flight of four hangovers. We had a reporter in No. 4 ship, and he got to watch an actual strike. We want somebody to tell our story over here.

Got a lot of pictures from the baptism. She sure is a cute little girl. I'd love to get my hands on her. Don't feed her too much so she'll still be tiny when I get home. Might just as well spoil her real good, too, so she'll still need a lot of picking up when I get there.

We've got a new general in command now and he really sounds good. He has ordered B–57 (bombers, jet) to replace them (the B–26's) and he asked for immediate delivery. He's also demanded that they replace our T–28 with the AD–6. This is a much more powerful single-engine dive bomber. It was designed for this type of work and has armor plating. We're pretty excited. These were three of my main gripes. Morale has just gone up 100 percent. I think we're going in the right direction. I sure hope so.

I've got 74 missions now. One more and I earn another Air Medal. I may go to Hong Kong Saturday. Don't have to take leave that way and can save it for you and me. All the pictures dad sent are stuck together. They threw me in a shower last night and I got everything wet. Give all the kids a big love for me—their daddy is very lonely.

Friday night, March 13, 1964: This is the second installment of a letter, so if you've opened this one first, put it away and open the other.

Kinda found out by grapevine that Luke Lukasik, the T–28 jock who got killed, was not shot down. He flew into the ground. This is terrible—but good. It means of the three T–28's which have been killed, only one was shot down—and even this is debatable. So I put more trust in the airplane. If it can take the beating, it increases our odds.

I figure after my next three trips to Soc Trang I may get home for that visit.

Rumors are fast and furious. Nothing yet on B–57's. That thing you saw on TV is not true—B–26's should never fly again. Even if rejuvenated. Also rumors that B–26's pilots will get instructions in another kind of single-engine dive bomber. All is still in the air—all rumors.

Well, I've really filled the pages tonight. I hope this makes up for my not writing for so long. Got to Hong Kong and just lived as if every day was my last. It's an unexplainable mood, but I'm all right now. I can fight again for 3 or 4 months without a break—at least I think I can.

I wish I could have told you all these things in front of a roaring fire. It's hard to be a man sometimes. I sure need your shoulder.

May God be with you and help you until I can come home.

SUNDAY MORNING, MARCH 22, 1964.

MY DEAR CONNIE: Forgot to tell you they put me back on lead status again. Been flying pretty heavy. We'll soon be back up to 13 airplanes again. Hope these last for a while.

I miss you all very much, but time is passing and we're almost halfway. I love you all,

JERRY AND DADDY.

Two days after he wrote this last letter home, Captain Shank was helping to bomb a Vietcong force some 10 miles from his own airbase when his T–28 came under heavy ground fire. The wing fell off his plane, and the T–28 crashed. Both Captain Shank and Tu Le Trung, the Vietnamese student pilot who was with him, were killed instantly.

QUESTIONABLE APPOINTMENT OF NORMAN REDLICH TO PRESIDENTIAL COMMISSION INVESTIGATING ASSASSINATION OF PRESIDENT KENNEDY

Mr. MUNDT. Mr. President, I was greatly disturbed over the weekend to read a statement by Representative GURNEY, of Florida, relating to a matter which has also been brought to my attention by a number of letters and from other reports, some from constituents.

The Gurney statement announced that Norman Redlich, a New York University law professor, had been appointed to the Warren Commission, which is investigating the tragic consequences flowing from the assassination of President Kennedy, and trying to determine the motivations, associations, and connections which may or may not have been held both by the assassin, Oswald, and his assassinator, Ruby.

I find, not only from what Mr. GURNEY said, but also from a little independent research that I have done to verify it, that Norman Redlich, who is on the payroll of the Warren Commission at $100 a day, is an admitted member or associate of the Emergency Civil Liberties Committee, which is one of the notorious Communist fronts of this country. I was distressed when I read that, so I went back to see whether there was any documentation, and I find that there is, in governmental reports about that organization.

Someone in a responsible position on the Commission should tell us why, on a

commission that is charged with doing a fair, honest, objective job, a commission which is supposed to be a blue ribbon commission, should bring into it at least one—I understand possibly there is a second—representative from an organization which is admittedly Communist.

This takes on more serious implications when we recognize how the Communist world and its publicity machinery tried to pollute the minds of the world originally immediately upon the assassination of President Kennedy, to condemn the city of Dallas, and to show that the assassination was the result of a rightwing conspiracy. In this instance, too, I think the public should be told the facts.

I have learned that last week Fulton Lewis, Jr., made a series of broadcasts over the Mutual Network in connection with this subject. I ask unanimous consent that the text of the broadcasts by Mr. Lewis on this subject, one on May 5 and one on May 6, be printed at this point in the RECORD.

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

NEWSCAST BY FULTON LEWIS, JR., MUTUAL BROADCASTING CO., MAY 5, 1964

Representative EDWARD J. GURNEY, Republican, of Florida, said today that a consultant to the Presidential Commission investigating the assassination of President Kennedy has been a member of three organizations cited as Communist fronts by committees of the Congress, and named the individual as Norman Redlich, a New York University law professor. The Chairman of the Commission, of course, is Chief Justice Earl Warren, whose selection was somewhat controversial because of remarks which he made at the time of the assassination, to the effect that the crime was "stimulated by forces of hatred and malevolence, such as today are eating their way into the bloodstream of American life." He also has been criticized for his statement that some of the information gathered by the investigating panel might not be released in your lifetime.

Representative GURNEY said that Redlich is being paid $100 a day as a legal consultant to the Warren Commission and that J. Lee Rankin, staff director of the Commission, has confirmed Redlich's associations with the Emergency Civil Liberties Committee, the National Committee To Abolish the House Un-American Activities Committee, and the Youth Committee To Abolish the House Un-American Activities Committee.

Mr. Redlich himself confirmed the fact that he is a member of the National Council of the Emergency Civil Liberties Committee but that he has had no connection with the other two groups. He admits having signed petitions calling for the abolition of the House Un-American Activities Committee.

The records in Congress show that Norman Redlich lives at 29 Washington Square West, New York City.

They also show the following:

On April 16, 1955, Norman Redlich was a speaker during a forum held by the Emergency Civil Liberties Committee at 165 West 57th Street, New York City, entitled "Labor and Livelihood Under Tyranny," and he spoke on the fifth amendment to the Constitution.

According to a handbill which advertised a meeting sponsored by the ECLC (the Emergency Civil Liberties Committee) to be held February 24, 1961, at Judson Hall, New York City, one of the speakers to be was identified as Prof. Norman Redlich of the New York University Law School. It is reported that on this occasion, Mr. Redlich spoke on the history of the House Committee on Un-American Activities and the legal rights of witnesses when appearing before such bodies.

The Worker, official east coast newspaper of the Communist Party, in its issue of June 24, 1962, contained an article entitled "25 Law Professors Endorse Black's Dissent in McCarran Decision." Justice Hugo Black was one of the four dissenting Justices in the 5-to-4 Supreme Court decision on June 5, 1961, requiring the Communist Party to register with the Government. The announcement was made by the ECLC and among the 25 signers of the statement was Norman Redlich.

In December, 1961, Norman Redlich was among the speakers who appeared at a rally at Manhattan Center, New York City, sponsored by the New York Council To Abolish the House Committee on Un-American Activities and in June of 1962 this same organization circulated a form letter which appealed for manpower and funds to be used during the summer months to help elect Congressmen pledged to vote for the abolition of the House Un-American Activities in the present Congress. The name of Prof. Norman Redlich was listed on the letterhead as a member of the advisory committee of the New York organization.

In November 1963, a mimeographed leaflet was distributed by the Permanent Student Committee for Travel to Cuba, which supported the defiance of 59 young Americans who traveled to Cuba in the summer of 1963 with regular passports against the wishes of the State Department. Among those listed in support of the statement in the leaflet was Norman Redlich, professor of law, New York University. (It should be remembered that Lee Harvey Oswald was connected with the Fair Play for Cuba group.)

In February 1962, it is understood that a petition was being circulated which was a plea to the President of the United States urging executive clemency in the cases of Carl Braden and Frank Wilkinson, who, at the time of the circulation of this petition, were imprisoned as "first amendment victims," for refusing to answer congressional questions about their possible Communist affiliations. One of the signers of this petition was set forth as "Prof. Norman Redlich, New York."

The exact citation on the ECLC by Congress is found in the 1961 Guide to Subversive Organizations and Publications, page 69, as follows:

"The Emergency Civil Liberties Committee is an organization with headquarters in New York, whose avowed purpose is to abolish the House Committee on Un-American Activities and discredit the FBI. * * * The committee finds that the Emergency Civil Liberties Committee, established in 1951, although representing itself as a non-Communist group, actually operates as a front for the Communist Party. It has repeatedly assisted, by means of funds and legal aid, Communists involved in Smith Act violations, and similar legal proceedings. One of its chief activities has been and still is, the dissemination of voluminous Communist propaganda materials."

The citation continues with further details, but that's all we have time for tonight. I'll pick up the rest of it tomorrow night, but it is interesting to know that this Norman Redlich, is being hired as legal consultant at $100 a day by Chief Justice Earl Warren's Commission investigating the assassination of the late President John F. Kennedy, some of the information in which investigation may never come to public light during our lifetimes for security reasons. Was there no other lawyer in the country the Commission could find for this job except Professor Redlich?

NEWSCAST BY FULTON LEWIS, JR., MUTUAL BROADCASTING CO., MARCH 6, 1964

Last night, I reported to you on the fact that the Warren Commission, investigating the assassination of the late President John F. Kennedy, has on its staff as a legal adviser at $100 a day an individual named Norman Redlich, who, according to records of congressional committees has been or is presently associated with two officially cited Communist front organizations, specifically the Emergency Civil Liberties Committee—the so-called ECLC—and the National Committee To Abolish the House Un-American Activities Committee.

Unfortunately, I did not have time to give you the full record on that occasion so I promised to finish it up this evening.

I should note, perhaps, that Representative EDWARD J. GURNEY, of Florida, said he is also connected with a third organization, the Youth Committee To Abolish the House Un-American Activities Committee, and that Mr. J. Lee Rankin, staff director of the Commission of which Chief Justice Earl Warren is chairman confirmed, according to Representative GURNEY, that Redlich has been associated with all three. Mr. Redlich himself admits being a member of the National Council of the ECLC, but denies any connection with the other two organizations. Actually, the Youth Committee To Abolish the House Un-American Activities Committee is merely the youth adjunct of the main committee of the same name, so technically, it would appear that if he is associated with one he is also associated with the other.

As for his denials that he is associated with either one, the records show that in December 1961, Norman Redlich, who is an associate professor of law at New York University Law School, was among the speakers who appeared at a rally at Manhattan Center, New York City, sponsored by the New York Council To Abolish the House Un-American Activities Committee, which is the New York area chapter of the national organization and they also show that in June of 1962, this same New York council circulated a form letter which asked for volunteer workers and contributions of money to be used during the summer months of that election year to help elect Members of Congress who would pledge themselves to vote for abolition of the House Committee on Un-American Activities. The letterhead, on which the appeal was sent out, listed Prof. Norman Redlich, as a member of the advisory committee of the New York Council To Abolish the House Un-American Activities Committee.

The official House publication entitled "Guide to Subversive Organizations and Publications," dated December 1, 1961, contains the following citation on page 115:

"NATIONAL COMMITTEE TO ABOLISH THE UN-AMERICAN ACTIVITIES COMMITTEE

"Cited as a new organization set up in the summer of 1960 to lead and direct the Communist Party's Operation Abolition campaign. Seven of the national leaders of this group have been identified as Communists."

So much for Mr. Norman Redlich and the National Committee To Abolish the House Un-American Activities Committee. Now let's go on to the question of the other organization—the ECLC—the Emergency Civil Liberties Committee. On this score, I cited to you last night a number of specific associations from the record which Mr. Redlich had with that organization, plus the fact that he admits being a member of the national council of the organization, but there is other material that I did not have time for.

For one thing, as late as April 13 of this year, a paid advertisement was carried in the New York Times, and I understand it was also carried in the Washington Post here in behalf of the ECLC, appealing for funds, carried the name of Norman Redlich

as one of the sponsors and there is an interesting association he had several years ago.

It concerned a man named Harry Magdoff, who had been identified by Elizabeth Bentley, the confessed former espionage agent, as being a member of the Soviet espionage group which was active in the early 1940's and was headed by Victor Perlo.

The records show that Magdoff was called to appear before the House Un-American Activities Committee on May 31, 1961, in answer to a subpena in connection with the Fund for Social Analysis, of which organization Magdoff was president. Magdoff, in his appearance before the committee was accompanied by his counsel Norman Redlich. Magdoff, when asked to produce the documents called for in the subpena, said that he had no such documents. He took the fifth amendment to several questions asked him by committee counsel which included whether he had been a member of the Communist Party, who the officers of the Fund for Social Analysis were, and the source of income for this fund.

Now, getting back to the ECLC, of which he admits being a member of the national council, let me again read to you from the same publication which contained the other citation, page 69:

"EMERGENCY CIVIL LIBERTIES COMMITTEE

"1. The Emergency Civil Liberties Committee is an organization with headquarters in New York, whose avowed purpose is to abolish the House Committee on Un-American Activities and discredit the FBI. * * * The committee finds that the Emergency Civil Liberties Committee, established in 1951, although representing itself as a non-Communist group, actually operates as a front for the Communist Party. It has repeatedly assisted by means of funds and legal aid, Communists involved in Smith Act violations and similar legal procedures.

"One of its chief activities has been and still is the dissemination of voluminous Communist propaganda material.

"Frank Wilkinson (the active field director of the ECLC) was called as a witness when he appeared in Atlanta as a representative of the Emergency Civil Liberties Committee to propagandize against the Committee on Un-American Activities and to protest its hearings. In 1956, Wilkinson was identified as a Communist Party member by a former FBI undercover agent within the party. Summoned at that time to answer the allegation, his reply to all questions was 'I am answering no questions of this committee.' This also became his stock reply to questions when he appeared during the Atlanta hearings. * * * Wilkinson has since been convicted of contempt of Congress and sentenced to 1 year in jail.

"Disputing the non-Communist claims of the organization, the Committee finds that a number of other individuals connected with the ECLC also have been identified under oath as Communists.

"2. To defend the cases of Communist lawbreakers, fronts have been devised making special appeals in behalf of civil liberties and reaching out far beyond the confines of the Communist Party itself. Among these organizations are * * * the Emergency Civil Liberties Committee. When the Communist Party itself is under fire, these fronts offer a bulwark of protection."

I should explain that the first of those citations was by the House Un-American Activities Committee and the second was by the Senate Internal Security Subcommittee.

That pretty well wraps up the story on Mr. Norman Redlich who works at $100 a day as a legal advisor on Chief Justice Warren's Commission to investigate the assassination of the late President Kennedy. Representative BEERMANN, of Nebraska, on the floor of the House, called the situation one of the greatest miscarriages of appointive judgment in the history of American Government, and demand that he be fired and that a full investigation be made as to how he ever got hired.

Mr. MUNDT. Mr. President, among other things, we find that one of the paid staff members of the Emergency Civil Liberties Committee, with which Mr. Redlich is connected, is Mr. Philip Luce. Luce was one of the organizers of the student tour of Cuba.

Last week Luce signed an advertisement in a newspaper which is an arm of the Communist Party. The advertisement stated that if drafted into the armed services, he would not fight in Vietnam. This advertisement was also signed by several others.

I submit that the American public is entitled to know why this type of individual, connected with un-American associations, has crept into the Warren Commission.

How can Americans possibly accept as valid, objective, and unbiased, a report prepared under such conditions? I hope that before holding further hearings—certainly before making a report—the Warren Commission will either purge itself of employees and advisers of this type, so that we may have the understanding that we should have, or explain to the public the purpose of including this kind of personnel in its Commission activities. The whole world will read this report avidly and we must be assured no un-Americans influence has had any influence in preparing it.

I think this is a great disservice to President Kennedy's memory. We want a report from the Commission which Americans will accept as factual, which will put at rest all the ugly rumors now in circulation and which the world will believe. Who but the most gullible would believe any report if it were written in part by persons with Communist connections?

Mr. President, this sad situation becomes all the more significant and unfortunate in view of the statement by Chief Justice Warren some time ago that matters were coming before the Commission so sensitive in nature that they might not be made public for a generation. I cannot conceive what such testimony might be but it can be assumed with certainty that Communist leaders around the world will have a detailed report on such testimony long before it reaches the American public since once a Government body is infiltrated by one with Communist sympathies or connections, history has shown that the pipeline to Moscow is fast and it is filled with classified material.

It would seem to this Senator that complete security clearances should be obtained on all personnel on the Commission staff before further evidence is taken and before even a start is made on writing the report on this awesome and tragic assassination of an American President.

GENERAL CONFERENCE OF THE METHODIST CHURCH STATEMENT ON CIVIL DISOBEDIENCE

Mr. SPARKMAN. Mr. President, on Monday, May 4, 1964, the general conference of the Methodist Church, meeting in Pittsburgh, Pa., adopted by a narrow margin a statement by the church's committee on social concerns sanctioning "in rare instances" the disobedience by individuals of civil laws in the name of Christian conscience.

I am a Methodist, but I am in complete sympathy with a statement issued by the delegation of the north Alabama and Alabama-west Florida conferences regarding a section of the report on the Methodist Church and race, adopted at the general conference of the Methodist Church meeting in Pittsburgh, that the two delegations issue a brief statement condemning any idea of a church conference advocating opposition to established law and advocating lawlessness in their zeal for so-called civil rights legislation.

I think we must all condemn it. I ask unanimous consent that there be printed at this point in the RECORD a news release that was issued by the delegation to the north Alabama and Alabama-west Florida conferences.

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

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

STATEMENT FROM THE DELEGATES OF THE NORTH ALABAMA AND ALABAMA-WEST FLORIDA CONFERENCES REGARDING A SECTION OF THE REPORT ON THE METHODIST CHURCH AND RACE, ADOPTED AT THE GENERAL CONFERENCE OF THE METHODIST CHURCH MEETING IN PITTSBURGH

On Monday, May 4, 1964, the general conference of the Methodist Church, meeting in Pittsburgh, Pa., adopted by a narrow margin a statement by the church's Committee on Christian Social Concerns sanctioning "in rare instances" the disobedience by individuals of civil laws in the name of Christian conscience.

The delegations of the north Alabama and Alabama-west Florida annual conferences wish to make it clear that we vigorously opposed this action, which was adopted by a close margin in both committee and on the conference floor.

The statement as adopted suggests that such disobedience should be preceded by "the best available legal and religious counsel," and should be subject to the following limitations: "In rare instances, where legal recourse is unavailable or inadequate for redress or grievances from laws or their application that, on their face, are unjust or immoral, the Christian conscience will obey God rather than man."

We do not feel that the Methodist Church should encourage civil disobedience in behalf of racial justice or any other cause. We view with deep concern this implied sanction of possible lawlessness by our church.

And to the best of our ability, we opposed its inclusion in the statement of the Methodist Church and Race, though this is not a part of the mandatory law of the church in The Discipline.

Our position was strongly shared by a large number of our fellow delegates from other areas of the church.

We reaffirm our devotion and loyalty to the Methodist Church.

BUSINESS OUTLOOK IS TERMED BRIGHT

Mr. SPARKMAN. Mr. President, in the Wall Street Journal of last Friday, there was an article which I think should be most encouraging to all of us. I think

it does nothing more than to firm the idea that we already had. It is entitled "Business Outlook Is Termed Bright."

The opening paragraph states that the article comes from Hot Springs, Va. It states:

A group of the Nation's leading corporate executives expressed almost unqualified confidence today in President Johnson and in the prospects for continued business expansion.

It further states:

About 100 presidents and board chairmen of giant corporations make up most of the membership of the Business Council.

That is the group that was holding the meeting. I quote a paragraph from the article:

The Business Council is an organization of executives in business and finance that was formed in 1956 at the suggestion of President Eisenhower. Its predecessor, the Business Advisory Council, served as adviser to the Commerce Department during the administrations of President Roosevelt and President Truman. The Business Council is a private business group, but it does offer advice and research services to the Government—on its own terms.

Mr. President, this is an encouraging article which comes from a group of leading businessmen and business executives throughout the country. I ask unanimous consent that the article entitled "Business Outlook Is Termed Bright," published in the Wall Street Journal of May 8, 1964, be printed at this point in the RECORD.

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

BUSINESS OUTLOOK IS TERMED BRIGHT—GROUP OF CORPORATE LEADERS SIGHTS STEADY EXPANSION FOR NATION'S ECONOMY—JOHNSON IS APPLAUDED—CONFIDENCE IN ADMINISTRATION EXPRESSED BY EXECUTIVES—PRICE RISE DOUBTED

HOT SPRINGS, VA., May 8.—A group of the Nation's leading corporate executives expressed almost unqualified confidence today in President Johnson and in the prospects for continued business expansion.

The business leaders, members of the Business Council, said they saw no reason why prices should rise in the near future unless wages went up first.

They did not blame President Johnson for the one problem they feel they have at the moment—excessive regulation by too many different Government agencies.

The theme of confidence in the Johnson administration ran through the formal sessions and informal conversations held by the council.

ONE HUNDRED BUSINESSMEN IN GROUP

About 100 presidents and board chairmen of giant corporations make up most of the membership of the Business Council.

The Business Council is an organization of executives in business and finance that was formed in 1956 at the suggestion of President Eisenhower. Its predecessor, the Business Advisory Council, served as adviser to the Commerce Department during the administrations of President Roosevelt and President Truman. The Business Council is a private business group, but it does offer advice and research services to the Government—on its own terms.

"He understands business," W. R. Murphy, president of the Campbell Soup Co., said of Mr. Johnson. Mr. Murphy is chairman of the council's committee on domestic economy.

AGREEMENT EXPRESSED

Frederick R. Kappel, chairman of the American Telephone & Telegraph Co., was among the many businessmen who expressed agreement with Mr. Murphy's statement. Mr. Kappel is chairman of the Business Council.

It is the general opinion of the group, Mr. Kappel said, that the present business expansion will continue through this year and into 1965.

While estimates of the Nation's total production this year differ slightly, the general feeling among the businessmen is that the Government is about right in forecasting that the gross national product will reach $623 billion this year. The figure offered by the council's economists was $620 billion, but Mr. Kappel said the difference was not significant.

The businessmen generally foresaw few difficulties ahead for business in the opening session today of the council's quarterly meeting, Mr. Kappel indicated. But he said there was one problem that kept coming into the discussion as the group attempted to "take inventory" on what lies ahead. That problem, Mr. Kappel described variously as the "massing of Government regulatory power," "the multiplying of governmental regulatory bureaus" and "an overdose of (Government) investigation."

"The problem could be solved" Mr. Kappel said "if the heads of the Government's regulatory agencies would pay attention to President Johnson." He indicated his belief that the President opposes any sort of Government interference or regulation which would "impede the progress of business."

FEW CLOUDS ON HORIZON

Mr. Murphy mentioned as an example of expanding Government regulation of business the pending legislation, endorsed by Mr. Johnson, which would impose strict limitations on the packaging and labeling of various products. This legislation "bothers every single food manufacturer," Mr. Murphy said.

Mr. Kappel indicated that he does not feel that Government regulation is particularly more extensive or harmful to business now than it has been at other times in the recent past.

He seemed to be indicating that Government regulation was simply the only major cloud on the horizon now for business, since there were so few others.

"None of the business leaders present here expressed any fear that the tax cut which went into effect this year would overheat the economy and cause inflation or a recession later on" Mr. Kappel said. This fear has been widely expressed by Republican Members of Congress and by some economists.

Mr. Kappel said that the corporate chiefs do not expect to be raising prices unless wage increases occur first.

"I don't know anyone who thinks there is a price increase problem unless costs are pushed out of shape by wages," he said. Mr. Murphy added that "this group is not interested in price increases."

Neither man would, however, say that he expected any price reductions—something that President Johnson has repeatedly urged in recent weeks.

THE MARKETING OF FOOD

Mr. McGEE. Mr. President, almost everyone knows what a bargain the American housewife receives for her food dollar and almost everyone profits from the increasing quality, quantity, variety of foods now found on the market shelves except the person who produces that food—the American farmer.

Mr. President, I was greatly pleased to read in the Washington Post this morning an editorial in support of President Johnson's proposal to establish a 15-member National Commission on Food Marketing. This proposal, which I had the honor to introduce in the Senate, is now under consideration by the Committee on Comerce. This editorial very clearly spells out the issues involved and I ask unanimous consent that it be printed in the RECORD.

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

THE MARKETING OF FOOD

Few of the housewives who are collectively responsible for retail purchases of food, which run to about $70 billion a year, have the time or inclination to reflect upon the striking changes in food production and distribution that have occurred in the last two decades. In moving from the corner grocery store to the vast supermarket and from bins of unpackaged foods to such highly processed products as the frozen TV dinner, the American family has been the beneficiary of impressive economies of large-scale production and distribution as well as of advances in the agricultural sciences.

Food purchases today account for less than 19 percent of take-home pay, and in relation to income and variety of foods consumed, the average American family now probably eats for less than those in any other country of the world. But in creating this splendid cornucopia, the traditional relationships between farmers and food processors and between food processors and retailers have undergone radical changes, and it is feared that the benefits to consumers have been conferred at the cost of injury to producer groups.

The proximate cause for alarm, especially in congressional circles, is the decline in the farmer's share of the food dollar. In 1947, 47 cents of the food dollar went to the farmer, and today he receives only 37 cents. A part of this decline, just how much is not known, is ascribable to the trend toward greater processing. The string beans which are frozen in packages are first cleaned, cut and partially cooked; poultry is now commonly plucked and eviscerated; and completely prepared foods, in which the raw materials constitute only a part of the basic production costs are winning increasing favor.

But not all of the decline in the farmers' share of the food dollar is ascribable to the higher degree of processing or the shift in consumers' preferences. Food producers and processors may be the unwitting victims of changes that have taken place in the marketing structure. Many changes have occurred as a result of the rise to prominence of the vertically integrated retail food chain, the supermarket organization that operates its own farms and packing plants. In dealing with independent farmers, cattlemen and food processors, these companies are in a position to drive hard price bargains, to specify quality standards and delivery dates.

Secretary of Agriculture Orville L. Freeman has suggested that these changes in the marketing structure will, through the aggregation of great market power, pose a threat to the family farm as well as to the consumer. But not enough is known about what the Secretary calls the food "marketing revolution" to make any firm judgments. President Johnson has therefore asked Congress to authorize the establishment of a National Commission on Food Marketing. This bipartisan body, with five members appointed by each Chamber of the Congress and five by the President, would have at its disposal a professional research staff to assist in the important task of distinguishing between fact and fancy, between the genuine

economies of large-scale operations and the improper use of market power, between efficiency and a nostalgic attachment to tradition. The cost of the investigation would be $2.5 million, and in view of the important issues involved, we hope that Congress will go along.

RUMANIAN INDEPENDENCE DAY

Mr. DODD. Mr. President, wars great and small have torn the earth since time immemorial, redrawing boundaries, reshaping nations, destroying the existing order, and dictating the destiny of many persons.

No area in modern history has experienced greater turmoil and struggle than Eastern Europe. The peoples of the heartland, as it is called by geopoliticians, have been subjected to the aggressive designs of great powers for hundreds of years, have been overrun countless times, and have had to struggle throughout history even to maintain their ethnic identity.

Rumania is one of these nations which has suffered centuries of subjugation and oppression by foreign powers. Although she gained her independence and stood as a free nation for a period of almost 70 years, she again became a victim of aggression and is now a captive subject of the Soviet Union.

Today, May 10, Rumanians and persons of Rumanian descent throughout the free world are celebrating the anniversary of this independence and expressing their hope for and belief in the future of a free Rumania. We of the free world join them in their tribute to the past and their pledge to the future.

It is both paradoxical and tragic that the 87th anniversary of Rumanian Independence Day is not celebrated or even acknowledged by the present Government of that state. It cannot be openly observed by the people of Rumania because this would invite harsh retaliatory measures from the Communist authorities.

Nonetheless, this is a significant date in the history of Rumania. For 400 years the country was ruled by Turkey, having been overrun and conquered by the mighty Ottoman Turks in the 15th century. The Rumanians, comprising one of the largest ethnic groups of the Balkan Peninsula, refused to submit wholly to the invaders. They sought repeatedly to oust the Turks, but were unsuccessful in these efforts.

It was not until the Crimean War, in the mid-1800's, that the Rumanians achieved some measure of autonomy. Then, with the aid of Napolean III, the two provinces of Moldavia and Wallachia were united under Prince Charles in 1866, and the union was finally recognized by the Turks.

All ties with Turkey were broken in 1877, when Rumania declared its complete independence and entered the Russo-Turkish War as a Russian ally.

Even though Russia attempted to take control of Rumania after the war, and did succeed in usurping the area of Bessarabia, Charles I was crowned king of the independent state of Rumania in 1881.

From that time until World War II, a united Rumania enjoyed economic and political stability and occupied an independent position among the nations of the world.

This freedom, like that of many other East European nations, was all too short-lived. The Second World War saw Rumania as an unwilling ally of the Germans. Then, in 1945, she joined the struggle against Hitler and the Nazi forces.

But soon after this, Rumania became a victim of the same invidious tactics which the Communists used to take over much of eastern and central Europe at the close of the war.

The Rumanian monarch and government leaders were forced out and a puppet regime was installed by the Soviets. This was the death knell for independent Rumania.

Today Rumania and the other captive European nations suffering a similar fate are dominated, controlled, and oppressed by the Soviet Union. Religious freedom, political freedom, and individual rights exist no longer.

Despite the hardships history has dealt them, the people of Rumania and other East European nations have not lost their love of liberty and their desire for national independence. We in America share their hopes and ideals, and on this Rumanian Independence Day we join them in rededicating ourselves to true liberty and freedom for the captive nations and all oppressed peoples of the world.

The PRESIDING OFFICER. Is there further morning business?

If not, the morning business is closed.

CIVIL RIGHTS ACT OF 1963

The PRESIDING OFFICER. The Chair lays before the Senate the unfinished business, H.R. 7152.

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

CALL OF THE ROLL

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

The PRESIDING OFFICER. The clerk will call the roll.

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

[No. 210 Leg.]

Aiken	Carlson	Fong
Allott	Case	Gruening
Anderson	Clark	Hart
Bayh	Cooper	Hartke
Beall	Curtis	Hickenlooper
Bennett	Dodd	Hill
Boggs	Dominick	Holland
Burdick	Douglas	Humphrey
Inouye	McIntyre	Prouty
Jackson	McNamara	Proxmire
Johnston	Metcalf	Randolph
Jordan, Idaho	Miller	Ribicoff
Keating	Monroney	Robertson
Kennedy	Morse	Saltonstall
Lausche	Morton	Sparkman
Long, Mo.	Moss	Walters
Magnuson	Mundt	Williams, Del.
Mansfield	Muskie	Yarborough
McCarthy	Nelson	Young, N. Dak.
McClellan	Neuberger	Young, Ohio
McGee	Pastore	
McGovern	Pearson	

The PRESIDING OFFICER. A quorum is present.

TRIBUTE TO J. EDGAR HOOVER

Mr. DODD. Mr. President, I ask unanimous consent that I may be allowed to proceed for 30 minutes and that the rule of germaneness be waived.

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

Mr. DODD. Mr. President, yesterday, May 10, was the 40th anniversary of the appointment of J. Edgar Hoover as Director of the Federal Bureau of Investigation. This significant milestone has already been appropriately acknowledged by the President and by a congressional resolution on May 8. But since May 8 was "President Truman Day" in the Senate, I feel that today should be a day of tribute to another very great American, J. Edgar Hoover.

I first met J. Edgar Hoover when I was a young man and when he was already becoming a national legend. I had just finished Yale Law School and was visiting in Washington with Attorney General Homer Cummings, who suggested that I give serious thought to entering the Federal Bureau of Investigation. He introduced me to Mr. Hoover that very day and I had a discussion with him which still lingers in my memory.

I felt the glow of inspiration, of competence, of zeal for public service which Mr. Hoover generates like some electric current, and I decided then and there that I wanted to go into the FBI.

That meeting with Mr. Hoover and my subsequent joining the Bureau opened for me one of the most enriching, exciting and beneficial experiences of my life.

Those were the early days of the FBI, the days of the Dillinger case, the Bremer kidnaping case, and other kidnaping cases. All of us who served under Mr. Hoover then, just as those who serve now, learned priceless lessons.

He demanded absolute dedication to the job. Hours meant nothing; inconvenience meant nothing; he instilled by precept, by example and by insistence, qualities of self-sacrifice, self-discipline, and dedication to excellence in those who served under him.

It is fair to say that J. Edgar Hoover revolutionized both the fields of law enforcement and the protection of our national security.

Through his genius for administration, his perception of the present, his vision into the future, his adherence to the highest personal code of integrity and competence in himself, and his insistence on it in others, he has developed the Federal Bureau of Investigation into an indispensable instrument for the protection of the personal safety of every

American and the security of the Nation as a whole.

The innovations he has made are already universally accepted milestones in law enforcement. He founded the FBI Identification Division, which aids in ferreting out fugitives and in identifying missing and unknown deceased persons; the FBI Laboratory, which affords scientific crime detection in the battle against crime; and the FBI National Academy, which instills professional techniques and stature into the police ranks. Over the years he has eloquently espoused adequate pay, public support and proper training for the men and women in the police ranks who guard the lives and property of our communities. Under Hoover's leadership, law enforcement has been raised to the level of a profession, a science. But that is only the beginning.

The contribution of J. Edgar Hoover to our national life has been far greater than that of developing the most efficient and effective law enforcement agency in history, important as that achievement has been.

He has developed the ethics of law enforcement along with its science and organization, and this will prove to be his greatest achievement.

He has established a spirit in American law enforcement which is just as interested in establishing innocence as in proving guilt. And he has been at once the foremost exponent of effective measures to protect the national security and the greatest protector of civil liberties in the pursuance of that goal.

Mr. Hoover once stated the philosophy of the Federal Bureau of Investigation in these unforgettable words:

> Law enforcement is a protecting arm of civil liberties. Civil liberties cannot exist without law enforcement; law enforcement without civil liberties is a hollow mockery. They are parts of the same whole—one without the other becomes a dead letter.
>
> Democratic law enforcement is loyal to both the state and the individual. It is obligated to uphold the sovereignty of the Government, yet, at the very same time, to protect the rights of the citizen.
>
> Law enforcement ethics must rise to prevent abuses, such as third degree techniques, unlawful arrests, unreasonable detentions, illegal searches and seizures. These practices are anathema to civil liberties, destroying the very heart of the American democratic system. They represent law enforcement at its worst.
>
> Here is the very heart of the problem; the vital necessity of having men and women in law enforcement who hold inner allegiance to the principles of democracy and perform their duties in a completely legal manner.

The Federal Bureau of Investigation is dedicated to the belief that adequate protection against crime and subversive activities can be obtained without violation of civil rights; that crime and subversion can be dealt with within the rule of the law if there is a greater amount of work, a greater mastery of detail, a greater employment of the tools of science than any law enforcement agency has ever before exhibited.

It means longer hours; it means selfless dedication by individual agents. But the object is worth the effort, for these are the substitutes for police state methods which freemen must use.

The results, in terms of both law enforcement and civil liberties, have been worth the mighty effort. Students of American history must sadly acknowledge that in times of national danger we have frequently thrown the Bill of Rights overboard. This was true in the era of the Alien and Sedition Acts, during the Civil War, during World War I, and during the "Red scare" of the twenties.

During the 1940's we faced the greatest challenge to our devotion to civil liberties in our entire history. For we were the targets of the two greatest aggressive subversive movements of all time: The Nazi conspiracy and the Communist conspiracy.

If there was ever a time when panic and hysteria might have swept through the land and turned our cherished concepts into a mockery, it was during this period. But it did not happen. And one of the reasons why it did not happen was that the Federal Bureau of Investigation under J. Edgar Hoover had anticipated the danger and was prepared to combat it with the methods of freedom. The FBI was capable of doing the job and the public had confidence in this capability. Therefore, there was no hysteria, no pretext for meddling with precious rights.

On Pearl Harbor Day, the Bureau advised the Attorney General of the basis for authorizing the arrest of 16,000 suspects. But this was no return to the mass indiscriminate arrests of World War I days.

A prominent lawyer in the civil liberties field, Morris L. Ernst, took some of these suspects as clients. He defended his clients before hearing boards and was able to help free some of them. He has written that in every case there were fair hearings, with every consideration being shown to the defense. Mr. Ernst said that even in the case of those suspects who were acquitted, the FBI had a justification for picking them up. There was cause for suspicion, but the rights of the suspects were so rigidly observed that no injustice was done.

The civil liberties record of our country during World War II, except for the sad episode concerning Japanese-Americans on the west coast, was a splendid one.

It was a vindication of the belief that internal security and the rule of law can go hand in hand even in times of greatest crisis if the means of law enforcement are adequate.

And during the cold war period, the FBI has insisted that the same standards be applied in combating the Communist menace.

From the earliest days of Communist subversion in America, J. Edgar Hoover has perceived it for exactly what it was, an attempt to destroy the free institutions of this country, to wipe out our system of philosophy and religion and morality, and to subject us to the rule of an alien despotism, making us a nation of slaves.

While others have had their illusions and disillusionments about communism over the past half century, J. Edgar Hoover zeroed in on it from the very beginning and has never deviated from his opposition to it, nor shrunk from his responsibility in informing the American people of its dangers.

Naturally he has been the target, perhaps the prime target, of the domestic Communist conspiracy. But so impeccable has been his performance, so correct has been his position, so steadfast has been his refusal to be drawn either into anti-Communist extremism or pro-Communist vacillation, that all attempts to discredit him have uniformly failed. Within the means at his disposal, and these means are limited, he has actively countered the Communist conspiracy in America. But he has done so without sacrificing or compromising the integrity of our system of civil liberties.

This is Mr. Hoover's greatest achievement. His contributions to developing and perfecting the science of law enforcement will live on in the organizations and mechanisms through which we combat crime and subversion; but his elevation of civil liberties and his steadfast defense of them in times of great national upheaval and potential panic will live in the hearts of the people and will strengthen the very fiber of freedom in America.

And so all honor to J. Edgar Hoover on his 40th anniversary.

He is the architect of the present stature and greatness of the Federal Bureau of Investigation.

He has drawn the blueprints and set the standards.

He has limited the membership of the FBI to the best men the Nation has to offer.

He has protected these men from any outside interference which would have hindered their effectiveness or lessened their dedication.

He has encouraged them by a system of advancement based on merit.

He has toughened them by a rigorous discipline.

He has perfected them by a rigid insistence on complete mastery of detail.

He has inspired them with his example and with his insistence on integrity, patriotism, and devotion to duty which pervades the entire Bureau.

He has shunned involvement in party politics.

He is one of those few men who, because of personal ability and force of character, leave an indelible mark on the history of their country.

I am honored today to join a grateful nation in paying tribute to him.

Mr. McCLELLAN. Mr. President, will the Senator from Connecticut yield to me, so that I may make some remarks on the same subject?

Mr. DODD. I am happy to yield to the distiguished Senator from Arkansas.

Mr. McCLELLAN. Mr. President, I should like to associate myself with the remarks of the distinguished Senator from Connecticut regarding Mr. Hoover. I was proud and happy last Friday, along with other Senators, to vote for Senate Resolution 325, which was unanimously adopted by the Senate, praising and commending Mr. Hoover for his remarkable record.

The situation which prevailed in the Senate last Friday did not afford many Senators an opportunity at that time to speak on the resolution while it was pending. Therefore, on the following day I sent Mr. Hoover this telegram:

MAY 9, 1964.

Hon. J. EDGAR HOOVER,
Director, Federal Bureau of Investigation, Department of Justice, Washington, D.C.:

On this your 40th anniversary as Director of the Federal Bureau of Investigation, I join with your multitude of friends and admirers in extending heartiest congratulations on your outstanding achievements and enviable record in this vitally important position of public trust and responsibility.

During my many years in the Congress, I have not known or observed a more able, dedicated, and faithful public servant. Through the years, you have performed your duties with qualities of integrity, courage, and competency that are unexcelled and seldom equaled by highly placed administrative officials of our Government. You have earned the deepest gratitude and esteem of the American people.

I am happy and proud to salute you today and wish you many more years of fruitful service to your country, continued good health, and personal happiness.

Sincerely,

JOHN L. MCCLELLAN,
U.S. Senator.

In this morning's mail I received a copy of a letter which Mr. Jimmie Edwards, mayor of Blytheville, Ark., one of the finest cities of Arkansas, sent to President Lyndon B. Johnson. In it he commends the President for having decided to ask Mr. Hoover to continue his services and not retire at this time.

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

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

OFFICE OF THE MAYOR,
Blytheville, Ark., May 9, 1964.

Hon. LYNDON B. JOHNSON,
President of the United States,
Washington, D.C.

DEAR MR. PRESIDENT: I have recently heard of your decision to have J. Edgar Hoover remain as Director of the FBI, as long as his health will permit. I, and my fellow Americans, feel this is a noteworthy action in the best interest of our country. Mr. Hoover has, with loyalty and great dedication, served our country in a manner surpassed by none.

I did not want to miss this opportunity to praise you for a wise and popular decision.

With kindest personal regards, I am,

Very truly yours,

JIMMIE EDWARDS,
Mayor.

Mr. McCLELLAN. Mr. President, when the history of our era is written, the name of J. Edgar Hoover, the eminent Director of the Federal Bureau of Investigation, will be recorded as one of the truly great public servants of all time. Therefore, it is with profound admiration and enthusiasm that I join the multitude of people, at home and abroad, who pause today to pay tribute and homage to this distinguished American on his 40th anniversary as head of the world's foremost investigative agency—the FBI.

The advent of Mr. Hoover on the enforcement scene in 1924 was to professional law enforcement what Doubleday was to baseball. Taking over the helm of a bureau which was shackled by political appointees and snarled by ineptness, he began to steer a new course. He made it abundantly clear to those within and without the agency that the Bureau's days of inefficiency, substandard investigations, and partisanship were over.

Mr. Hoover instituted a policy which has become a hallmark in the annals of law enforcement. He insisted that the FBI be completely divorced from politics, that new appointments to the service be based strictly on merit, and that promotions be made on the employee's record and proven ability. The new Director established a career service in which vacancies in the higher positions would be filled exclusively from within the ranks. From the outset, Mr. Hoover let it be known that the FBI would function only as an investigative agency—not as an accuser, prosecutor, jury, or judge. It is to his everlasting credit that there has been no deviation from this position over the years. Accordingly, the threat of a national police force, as far as the FBI is concerned, has never been a problem.

Under the skilled leadership of this young lawyer, the FBI became a feared enemy of the underworld and a champion of the American public. However, Mr. Hoover knew that the task of fighting crime was too great for any one man or agency. He began to work for and support incessantly, and in that order, the elevation of all law enforcement to a professional status. In striving for this goal, Mr. Hoover adopted a theme which has been universally accepted as the guideline to effective police administration—"cooperation is the backbone of law enforcement." And today, the expert, cost-free services of the FBI Laboratory, the Identification Division, and FBI training facilities represent the epitome of cooperation.

Mr. Hoover is a man of courage, vision, ability, and integrity. His incorruptible reputation has been built on a record of honor, dedication, and loyalty unsurpassed in the field of public service. A true patriot in the best traditions of our democracy, Mr. Hoover possesses a vigorous and active devotion to American principles and ideals and has set a standard for all to emulate. He has the unique capacity of combining tenacity with dynamic action without overshadowing his great personal charm.

Due to my own experience in the field of fighting crime I am well aware of Mr. Hoover's great work in this regard.

I know I speak for all Mr. Hoover's admirers and friends in the State of Arkansas when I say this tribute to him is not only for what he has done for our country but also for what, God willing, he will do in the future. I wish to extend my warmest congratulations to Director Hoover and the FBI on this significant occasion, and my fervent hope is that God will always shower His richest blessings on this great American.

Mr. JORDAN of Idaho. Mr. President, will the Senator yield?

Mr. DODD. I yield to the Senator from Idaho.

Mr. JORDAN of Idaho. Mr. President, I am pleased to join my colleagues in the Senate this morning in paying tribute to a great American, J. Edgar Hoover. I thank my distinguished friend, the Senator from Connecticut, for yielding to me for this purpose.

In the modern times in which we live today, notable historic achievements are being made on an almost daily basis. Yet, seldom are these events singled out and brought to the attention of the public for suitable acclaim.

May 10, 1964, marks an historic milestone for a truly dedicated public servant. Because of his unselfish, devoted service to our Nation throughout his life, our great country, and its citizens have benefited greatly. The man to whom I am referring is that outstanding American, J. Edgar Hoover, who is presently celebrating his 40th anniversary as Director of the world renowned Federal Bureau of Investigation.

When Attorney General Harlan Fiske Stone appointed 29-year-old Attorney J. Edgar Hoover as head of the investigative arm of the Department of Justice, then known as the Bureau of Investigation, little did he know that Director Hoover would build it into the most respected law enforcement agency in the world. The task which Mr. Hoover accepted in 1924 would have made most men shudder, for he was taking over the leadership of an organization known to be corrupt, staffed by an overwhelming majority of misfits, and an agency which frequently violated more laws than it was responsible to enforce.

With dexterity and foresightedness belying his 29 years, Mr. Hoover weeded out those despoiling the Bureau and making a sham of the oath they had solemnly taken to uphold the laws of this Nation. He increased the requirements for those seeking to qualify as special agents and set the standards high for employees in the performance of their work. No longer could a Bureau employee receive a promotion through influential friends. Mr. Hoover instituted a policy that advancement would be based solely on merit—a policy which is still stringently followed today.

Even while Director Hoover was performing the tremendous task of reorganizing and building the FBI as we know it today, he still found time to set into motion a number of programs which not only benefited his agents, but all law enforcement as well. He established the FBI Identification Division in July 1924 and founded the famous FBI Laboratory in November 1932. The facilities of these divisions and their highly skilled technicians are available to all duly constituted law enforcement agencies free of charge to assist them in their investigative responsibilities.

Convinced that law enforcement should be placed on a professional level, Director Hoover in 1935 opened a specialized school, the FBI National Academy, for handpicked officers from communities throughout the United States to furnish them with information on the current methods of police administration and the science of crime detection. This educational program has expanded through the years to the point where each year thousands of local and some

foreign law enforcement officers attend FBI-sponsored schools.

Through Mr. Hoover's efforts, a law enforcement officer today is a much better trained man than he was in the 1920's or 1930's. He is better qualified to protect our lives and our property. He is truly a professional man, and this is due in no small measure to the many opportunities provided the law enforcement officer in his everyday work by J. Edgar Hoover and the FBI.

So I would like to add my voice to the many thousands who are extending their congratulations to J. Edgar Hoover for his 40 years of exemplary service to our Nation. It is my sincere hope that he continue in his adroit leadership of the Federal Bureau of Investigation for many years to come. His name is synonymous with the FBI for he is the FBI—a proud and noble organization.

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

Mr. DODD. I am glad to yield to the Senator from North Dakota.

Mr. BURDICK. I thank the distinguished Senator from Connecticut for yielding. He has made an important speech today. I should like to add my voice and speak about an area in which Mr. Hoover, the Federal Bureau of Investigation, and the Senator from Connecticut have made notable contributions.

It was my good fortune and honor to be assigned to the Committee on the Judiciary. It was my further good fortune to be assigned to the Subcommittee on Juvenile Delinquency, of which the distinguished Senator from Connecticut [Mr. DODD] is chairman. I have served with him for some time and have found him to be a man of outstanding ability, one who pursues a subject with zeal. I feel he is making most important contributions to studies in this field. It is a field which, I am sure, the Senator from Connecticut failed, through modesty or inadvertence, to mention. The Federal Bureau of Investigation also is doing outstanding work in this area.

I have enjoyed working with Senator DODD and have profited much by the work he has done in this field of juvenile delinquency. Such work is extremely important to the future of the country.

Mr. DODD. I am deeply grateful to the Senator from North Dakota for his remarks.

Mr. COOPER. Mr. President, will the Senator from Connecticut yield?

Mr. DODD. I am pleased to yield to the Senator from Kentucky.

Mr. COOPER. Mr. President, I join the Senator from Connecticut in congratulating J. Edgar Hoover upon the completion of his 40th year as Director of the Federal Bureau of Investigation. Because of his leadership, that agency has been made into one of the great investigatory agencies of the world. It has done much to maintain our system of law and justice. We are all conscious of the fact that Mr. Hoover and his organization have contributed greatly to the security of the country in seeking out and discovering those who would subvert our country.

We should also congratulate the men and women who have been trained and who work in that organization, who have contributed to its success, and are always ready to be of assistance.

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

Mr. DODD. I yield.

Mr. KEATING. Mr. President, in my work on the Committee on the Judiciary in both the House and the Senate, it has been my privilege to have rather frequent contacts with J. Edgar Hoover over a period of many years. He has rendered outstanding service to his Nation and I commend the President for making it possible for Mr. Hoover to continue as Director of the FBI.

He is one of those rare public officials who has strongly opposed efforts to build up a huge bureaucracy under him. No law enforcement agency in the world has higher standards and the record of the FBI is a great tribute to the leadership and skill which J. Edgar Hoover has provided.

The Senator from North Dakota [Mr. BURDICK] referred to juvenile delinquency. I know of no man who has done more to assist and to set an example for young American's than has Mr. Hoover both in an official and private capacity.

J. Edgar Hoover is a man of sterling character. He is truly a fine citizen, one who, we all hope, will be serving our country for many years to come.

Mr. HILL. Mr. President, will the Senator from Connecticut yield?

Mr. DODD. I am pleased to yield to the Senator from Alabama.

Mr. HILL. Mr. President, it has been most gratifying to hear the fine, richly deserved tributes that have been paid to Mr. J. Edgar Hoover by the distinguished Senator from Connecticut [Mr. DODD] and the other Senators who have joined him. I wish to add my tribute to Mr. Hoover for his highly efficient, exceptionally able, and dedicated service to our country and the rest of the free world.

Mr. DODD. I thank the Senator from Alabama.

Mr. ROBERTSON. Mr. President, will the Senator from Connecticut yield?

Mr. DODD. I am pleased to yield.

Mr. ROBERTSON. I was privileged, together with a group of members of the Senate Committee on Appropriations, to visit Greece in the fall of 1949, when we were studying the Marshall plan, and were worried about the possibility that money was being wasted. Of course, we found that it was being wasted.

However, one of the memories with which I came back from Greece was a trip I took from Athens out to the birthplace of one of the world's greatest orators—Demosthenes.

Strange to say, the Greeks who had erected great temples—even a temple to the unknown god to which St. Paul referred—neglected to do this in the case of a monument to their greatest orator. It is nothing but a small bust on a small pedestal. But it carries a vital inscription. That inscription reads:

He warned us against Philip.

That was Philip of Macedon, the sworn enemy of Athens. They ignored the repeated warnings of Demosthenes against Philip, until Athens was destroyed and overrun by their more warlike neighbors.

J. Edgar Hoover has warned us of communism; and, all too frequently, I fear we have not paid enough attention to his warnings. The threat is not yet over. We owe a deep debt of gratitude to this dedicated public servant, who has done so much to develop the materials used both by the Office of the Attorney General and the House Committee on Un-American Activities, which I so vigorously supported when I was a Member of the House.

He warned us against communism; and I, for one, wish to join the distinguished Senator from Connecticut in giving thanks both for myself, and for the people of the great State which I represent, for the services of a man like J. Edgar Hoover.

Mr. DODD. I thank the Senator.

Mr. SALTONSTALL subsequently said: Mr. President, I always respected President Calvin Coolidge, a fine public servant with distinguished service at both State and National levels, and a personal friend of mine. One of the many fine things he did was to appoint J. Edgar Hoover as Director of the Federal Bureau of Investigation. Mr. Hoover has continued in that job ever since, serving seven Presidents and more than a dozen Attorneys General. When he accepted the position, he did so on two conditions: that there would be no outside interference and that politics would be removed from the Bureau. In his 40 years as Director, the Bureau has been untouched by scandal and has become recognized as a highly competent organization characterized by high standards and efficiency.

A man of the utmost integrity, J. Edgar Hoover has been motivated by a strong sense of public service and has performed his duties conscientiously and effectively. I am pleased that an Executive order will make it possible for the Nation to continue to have the benefit of his wisdom, his experience, and his leadership in the very important position he holds. As the President has said, he is "a household word, a hero to millions of citizens, and anathema to evil men." I hope that the Nation will continue to benefit from his counsel for many years to come.

Mr. McCLELLAN subsequently said: Mr. President, on behalf of the junior Senator from Nebraska [Mr. CURTIS], and at his request, I ask unanimous consent to have printed in the RECORD at an appropriate place, a statement by him on the subject of Director J. Edgar Hoover, of the Federal Bureau of Investigation.

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

The statement presented by Mr. McCLELLAN is as follows:

STATEMENT BY SENATOR CURTIS

It is a real pleasure to join in paying tribute to J. Edgar Hoover and to congratulate him upon the 40th anniversary of service as Director of the Federal Bureau of Investigation.

Probably no other individual in public life today so truly exemplifies genuine dedication to public service. Probably no other individual in public life today has been so

highly honored, or so viciously vilified. Perhaps no other individual has been quoted—and misquoted—so widely.

J. Edgar Hoover's task is not an easy one. It would break a lesser man. While often glamorized in the public press, his job is replete with mundane details, subject to extraordinary frustrations.

Through the years, Mr. Hoover has earned the unswerving devotion of the thousands of men who have served as FBI agents—G-men, as they became known in the turbulent 1930's. These men have lived with danger in the knowledge that their chief would not send any one of them where he himself would not go. In their more routine investigative chores, they knew their chief was no stranger to drab routine himself. He had taught them that even the most innocent-appearing fact could lead to information of vital importance.

J. Edgar Hoover has often triumphed over those who would destroy him. On many occasions, wrongdoers who have felt the hard fist of the FBI have screamed for his scalp. But right is might, and J. Edgar Hoover has remained a bulwark for right and justice.

The American people owe a profound debt of gratitude to this man who, through the years, has been ever vigilant against those who have conspired against them. J. Edgar Hoover's job has gone beyond tracking down and apprehending bank robbers and kidnapers. He has kept watch over our security as a nation, guarding against real and potential saboteurs. His has been the voice of doom for many who would take away our American freedoms and liberties and reduce us to servitude.

The United States is most fortunate, that J. Edgar Hoover has been requested to stay at his desk after he reaches the mandatory retirement age. We prayerfully hope that he will.

Mr. THURMOND subsequently said: Mr. President, I am pleased to join my distinguished colleague from Connecticut [Mr. DODD] in paying tribute to Mr. J. Edgar Hoover on his 40th anniversary of dedicated and most remarkable service to his country as Director of the Federal Bureau of Investigation of the U.S. Department of Justice. The Senator from Connecticut can speak as a voice of authority and experience as one who has actually served under the leadership of this great American patriot, having been at one time a special agent of the FBI. I feel, however, that I can likewise speak as one who understands and respects the unique record of service which Mr. Hoover has compiled as the No. 1 crime and Communist buster in this country because his record speaks for itself.

Forty years ago, 29-year-old John Edgar Hoover was given a mammoth job. He was made Acting Director of the Bureau of Investigation so he could have an opportunity to put into effect some of his ideas for improving the Bureau to make for efficient operations and to rid it of political influences. Soon after the reorganization job was completed, Mr. Hoover was made Director of the Bureau, and the greatest and most efficient investigative agency the world has ever known began to take shape.

Since that time, great strides have been made in improving law enforcement and investigative techniques in this country. Most of these improvements have been initiated and demonstrated to law enforcement officers all over the United States by the Federal Bureau of Investigation under Mr. Hoover's efficient direction. During these 40 years, there have been many suggestions that a national police force be established under Mr. Hoover, increasing his powers and influence—if increasing his influence is possible. All these suggestions have been turned down by Mr. Hoover, however, because of his dedication to the important principle that law enforcement is a local responsibility and that centralization of such power in one place would pose far more dangers to freedom in this country than any good which an all-powerful and efficiently run national police force might ever provide as protection against crime.

Mr. Hoover has not only earned unparalleled fame as the most efficient crime buster in this country, but he also has been appropriately recognized on many occasions as a leading patriot and fighter in the battle to protect our Nation against Communist efforts to subvert our Government and our American ideals and institutions. He has warned Americans over and over again on the insidious operations of the Communists and their aims to dominate and communize the world. His contributions to the fight against communism extend far beyond his duties to keep tabs on the Communist Party, U.S.A. In many speeches and articles and in his two outstanding books, "Masters of Deceit" and "A Study of Communism," Mr. Hoover has attempted with eloquence and logic to alert the American people as to the menace of communism and the many facets of Communist operations.

In addition to his many contributions in providing protection to the American people against crime and communism, Mr. Hoover has set a splendid example in personal ideals and living for all Americans. A man of deep personal convictions, Mr. Hoover's impeccable character is bottomed on a firm belief in God. In his writings and his speeches and his personal life, he is constantly contributing to the development of good moral character in young Americans, and this in itself is a great contribution to our country.

America and the cause of freedom owe a great debt of gratitude to this devoted public servant who has served his country so capably for so long and with so much distinction. I know I speak for practically every American except the criminals and Communists when I express to President Lyndon Johnson my appreciation for recognizing Mr. Hoover's unique and distinguished service by issuing an Executive order which permits his continuation in the office of FBI Director. I am glad that the President has such a high regard for Mr. Hoover, and I am confident that he will find that his faith in this great American will be rewarded many times over in continued outstanding, efficient, and devoted service to his country.

Mr. President, I ask unanimous consent to have printed in the RECORD at the conclusion of these remarks an excellent editorial from the Columbia Record of Columbia, S.C., dated May 9, 1964, entitled "America Needs Mr. Hoover."

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

AMERICA NEEDS MR. HOOVER

Forty years ago tomorrow, J. Edgar Hoover took over as director of the Federal Bureau of Investigation. In the intervening four decades, he and his agency have established a record unique in the annals of America. The record of nonpolitical service to all Americans has not been happenchance.

With admirable determination, Mr. Hoover has fought to maintain the FBI as a nonpartisan arm of the Federal Government, protecting the rights of all, challenging the rights of none.

His agency, as Mr. Hoover well knows, contains the seeds of terrible destruction, capable of robbing the individual American of intrinsic independence. Under political domination, the FBI could become a channel of control similar to those operative in foreign lands.

Sturdily, Mr. Hoover has protected all Americans by protecting his agency from partisan domination. Most elected and nonelected officials of power-conscious Washington applaud him, knowing that Mr. Hoover's design never has been—nor ever will be—either personal power or personal grandeur.

Unfortunately there are a few critics who grumble that the FBI Director should be more subservient to the Attorney General. "Critics think it is wrong in principle to have a chief investigator so largely free of control by Justice Department officials" one nationally influential newspaper has reported.

These critics ignore a simple truth: Official Washington, through its tripartite power structure, would long ago have reined Mr. Hoover, or any other FBI Director, had he not scrupulously avoided personal empire-building and image creation.

Mr. Hoover and his agency have served the people well in the past 40 years, sensibly guarding against internal communism, rationally restraining attempts to transform the agency into a national police force, honestly aiding local law enforcement, and—without fear or favor—serving Presidents as nonpolitical creatures.

We hope that President Johnson will decide to waive the compulsory retirement age of Mr. Hoover (he turns 70 on next January 1) and allow him to continue as Director.

America needs him.

Mr. MECHEM subsequently said: Mr. President, it is indeed a privilege to speak, as a former employee of Mr. J. Edgar Hoover, of what must be considered a great and outstanding record in the history of American public life.

His tenure of service, continuing uninterrupted through the administrations of seven Presidents, has done more to inspire confidence in our Nation's system of law enforcement than that of perhaps any other individual.

Of particular merit—of great worth—are the law-enforcement schools Mr. Hoover has sponsored. These sessions have brought together representatives from municipal, county, and State police departments from every area of this country.

They have been given the benefit of the latest techniques in our war on crime. They have been provided with the sum and substance of a devoted agency's study and research.

Enforcement efforts everywhere are vastly better because of Mr. Hoover's

concern and attention, because of his knowledge that cooperation means high performance—and because he has the ability to cooperate.

Mr. Hoover has constantly advocated and practiced the strengthening of local law enforcement agencies to maintain competence where the basic problems lie—on the streets of America.

It is indeed reassuring to know that direction of the Federal Bureau of Investigation will continue to remain in Mr. Hoover's uniquely capable hands.

Mr. BOGGS subsequently said: Mr. President, I am happy to join my colleagues in paying tribute today to the heroic labors in behalf of justice performed over the past 40 years by J. Edgar Hoover, Director of the Federal Bureau of Investigation.

Chiefly through his efforts, the name of the FBI has become synonymous with integrity. Through changing times, Mr. Hoover's agency has remained a steadfast symbol of devotion to duty.

All the people of this country are in his debt. May he have many more years of good health in the service of his country.

Mr. PELL subsequently said: Mr. President, I am very glad indeed to join with my colleagues in congratulating J. Edgar Hoover on his 40th anniversary as Director of the Federal Bureau of Investigation.

This great American has done a truly exemplary job of building up the Federal Bureau of Investigation from its modest beginnings until its present state of excellence. He has done this without ever succumbing to Parkinson's law of seeking personnel for the sake of personnel, of seeking expansion for the sake of expansion, of seeking appropriations for the sake of enlargement per se. Throughout his leadership of the Federal Bureau of Investigation, he has always maintained a meticulous regard for the rights of individuals. In fact, his agency is one of those few offices of Government from whence leaks, official or unofficial, do not emanate.

I am very glad indeed to hear that President Johnson has arranged to continue him as head of the Federal Bureau of Investigation and wish him many more successful and fine years in this post of great responsibility.

NEW YORK GETS BIGGER SHARE BUT LESS MONEY IN DEFENSE WORK—NEEDS REGIONAL AND INDUSTRYWIDE SEARCH FOR ALTERNATIVE JOBS AND PRODUCTS

During the delivery of Mr. MCCLELLAN'S speech,

Mr. KEATING. Mr. President, the latest figures released by the Department of Defense on defense procurement show a paradoxical situation for New York. Compared with other States, New York has somewhat increased its percentage share of work over the first three-quarters of this fiscal year. In fiscal 1964 to date, New York received 9.2 percent of defense procurement dollars, compared with 8.9 percent for the first 9 months of fiscal 1963.

But the catch in those figures, for defense workers who are looking for jobs, is that New York's improved rating does not mean additional work in New York State. Dollar and cents wise, New York firms have $8 million less in prime defense contracts than they did in the comparable period last year, even though New York gets a higher percentage of the total. Overall military buying was down by about $500 million from the same period last year, and buying in New York was down from about $1.587 to $1.579 million for the period July 1963 to March 1964.

What it means is that New York firms are doing a better job competitively in getting contracts, but there are simply not as many contracts to go around and not as many jobs as there used to be in aircraft, missiles, electronics, shipbuilding, and other military activities.

This does not mean the United States is on the verge of disarmament, but it does mean that the defense picture is changing. Our stockpiles of weapons are very large indeed. Although there is a continuing need for research and development, there is less need for thousands of production line jobs.

This is a problem that many defense industries, defenseworkers, and defense-oriented communities are facing today. How to turn the production lines to consumer needs or national benefits and how to provide the jobs we need for full employment—that is the issue.

There is certainly no easy solution and probably no single answer to fit every circumstance. But just as research and development gets the attention when the Pentagon moves in, so research and development ought to get at least as much attention when the Pentagon moves out.

The problem of alternative products and markets is difficult for any one firm to solve, but it deserves attention. To meet some of the problems that Long Island industries face, for instance, I have proposed a Long Island Economic Commission to assess the economic assets of the island and make the very most of them and at the same time to admit the economic weaknesses and set about eliminating them. Regional commissions in western New York to promote jobs along the Niagara frontier, and in the Mohawk Valley to counterbalance defense closings, could also be very useful.

Another possibility is research and development efforts by trade associations, in the field of electronics, aerospace, and other predominantly military fields, particularly. These associations could play a big role in pointing their members toward new opportunities and creating a demand for improved products. They often have a know-how and sophistication that individual firms, especially small ones, lack. A definite research and promotion effort by trade associations could hasten the growth of new opportunities. If the many excellent trade associations and trade publications acknowledged and pursued a responsibility to assist their firms in diversifying or promoting new, nonmilitary products, it would increase the already substantial contribution which they make in American business life. Perhaps the giant firms do not need this help, but other outfits and small businesses frequently could benefit from research and development, marketing, promotional, and other survey assistance.

Mr. President, those who have been following this situation closely for many years will interpret these figures not as cause for complacency in defense industries, but as a challenge for new efforts to deal with a changing defense procurement situation. Now is the time to devise methods and approaches to meet these problems through local consultations and through discussions and aggressive technological developments by the industries which are most affected.

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

Mr. KEATING. I yield.

Mr. MAGNUSON. The Senator from New York points up a very serious situation, involving not only a fewer number of defense jobs, but a shift in various types of defense. Looking ahead 10 years, one of the most important jobs for the Government would be to ascertain how it could phase into certain aspects that have been suggested.

As a result, several bills have been introduced. I believe several Senators suggested some months ago that we look at this problem, so we are starting some preliminary hearings in the Commerce Committee the 25th of this month. I hope that the Senator from New York will give us the benefit of his views.

I say "preliminary hearings" because it is a formidable task. It is not one which can be accomplished quickly, or cured by legislation. Some of the interested companies have made plans in anticipation that cutbacks may or may not be made. Others have not done so, particularly the smaller businesses—the subcontractors.

I am very glad that the Senator has brought this matter to the attention of the Senate today.

Mr. KEATING. I am grateful to the distinguished Senator from Washington [Mr. MAGNUSON]. I am delighted to hear that his fine committee is going into this whole problem which is becoming increasingly urgent. It is especially difficult for small businesses to adjust to defense cutbacks.

I should like to inquire of him if the hearings will relate to any specific bill, or whether a general survey will be held at this time?

Mr. MAGNUSON. There is one bill under consideration. Also a Federal commission which was appointed some time ago—I do not know why, but it has not accomplished much. One bill arousing a great deal of attention was introduced by the Senator from South Dakota [Mr. MCGOVERN]. There are three or four other bills of that type, I believe, but we shall have to take a good, long look at the situation and see whether we think a bill would be desirable. I do not know whether legislation would be the answer, but anything that we wish to explore or to study, we shall do. We have in mind no one particular bill.

Mr. KEATING. I am delighted to hear that, and certainly will plan to try to appear before the Senator's committee, to be of whatever assistance I can be.

Mr. MAGNUSON. We wish to call in as many business people as we can in areas such as Long Island, where businesses have concentrated on defense projects, to get the benefit of their thinking on this problem, and learn what they are actually doing. It is not an easy thing for a company to change. It cannot go from one thing to another overnight. Plans have to be made beforehand.

Mr. KEATING. The Senator is correct—many plans must be made.

Mr. MAGNUSON. There might be a plant which could do a certain job on a new commercial product but someone else might have been marketing the product for years and might already have a plant.

Mr. KEATING. In many areas and communities, jobs are dependent upon defense-oriented industries. It is a matter of deep concern to the communities when defense spending is shifted or cut back.

Therefore, as the defense picture changes from time to time, we should try to see what function the Federal Government can serve in assisting these areas and what functions should be left to local communities, States, and individual firms. Working together, all those concerned can meet this problem with a minimum of individual and economic dislocation.

As I look into the future, I believe it is one of the greatest and most intricate problems that we shall face. As we hopefully get further and further away from putting so many of our economic eggs into the defense basket, we must find other baskets and new nest eggs for economic growth.

Mr. MAGNUSON. As the Senator from New York points out, the mere fact that there may be many cutbacks does not mean that America's defenses will be impaired. The whole concept may change. It may call for another type of activity, or it may call for less activity. Conceivably, we could carry on without most of the so-called defense jobs and still have an adequate defense. Someone may walk out of the laboratory this afternoon with ideas which could change the whole concept of our defense system. This might disrupt the economies of some areas, which is what we must consider. I am happy with our prosperity now, politically and otherwise.

Mr. KEATING. The Senator should say otherwise than politically.

Mr. MAGNUSON. Otherwise than politically; but I believe that in the future this problem will be serious for the United States, because even though we keep our defenses together—as great as they are—or make them even greater—in the future the number of workers necessary to accomplish that end will be fewer and fewer.

Mr. KEATING. I am grateful to the Senator for his comments. I shall follow the hearings with great interest.

Mr. MAGNUSON. I do not know that we shall have an answer, but at least the Congress—the Senate in particular—might be a medium to alert the people—especially those in Long Island and other places—so that they will start thinking about the problem. I know that once American business starts to think about a problem, it usually comes forth with very good answers.

Mr. KEATING. I have been endeavoring to alert some of the communities in New York to the long-range problem. As I stated, I have suggested the formation of the Long Island Economic Commission. It could work creatively along these lines. It would include, as I see it, representatives of business and labor, and other community leaders and it should devise methods of meeting this very problem in that particular area. I envision a similar situation developing in other areas because frequently the problems are different in different parts of the country, as the distinguished Senator realizes.

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. ROBERTSON. Mr. President, in January 1916, I took office as a member of the Senate of Virginia and I have held public office continuously ever since. Only one Member of the Senate has held public office continuously as long and that is our honored and beloved colleague from Arizona, Mr. HAYDEN. So the distinguished senior Senator from Arizona and the junior Senator from Virginia can both say with Ulysses of old "Many things have I seen—a part of which I was." Neither the distinguished Senator from Arizona, Mr. HAYDEN, nor I ever dreamed in our early days, first in the House and then in the Senate, that we would ever live to see the day when both the Congress and the President of the United States would be threatened by a pressure group with reprisals unless Congress passed a bill which provides for criminal punishment without a jury trial.

Last evening on the "Meet the Press" program, James Farmer, head of a pressure group called Committee on Racial Equality, demanded prompt acceptance by the Senate of the civil rights bill without amendments. He did not recommend the pending bill; he did not request the pending bill; he demanded it and he accompanied that demand with a time limit for performance. Failing to pass the civil rights bill, and without amendments, within the prescribed time, he threatened political reprisals against the President and physical violence against the Senate. The amendment to which he most seriously objects is the Talmadge jury trial amendment.

Farmer demands that the Senate pass a bill under which a defendant on a charge of criminal contempt could be imprisoned for an indefinite period and fined an indefinite sum of money, by what could be a biased and hostile judge. His demand discloses the real essence of the problem with which the Senate is now wrestling, namely, shall the Senate, when a colored man brings a charge of discrimination against a white man give to the colored prosecutor an unconstitutional and unconscionable advantage, namely, the denial to the white man of a jury trial in those criminal proceedings?

I am proud to say, Mr. President, that on every occasion when this issue has been presented to the Senate I have united with the able Senator from Arizona, Mr. HAYDEN, in voting for the preservation of what each of us knows in our heart of hearts is a cherished right of all freemen—trial by jury.

Senator HAYDEN's first knowledge of the meaning of jury trials was as a sheriff in the territory of Arizona. My knowledge came first as a young lawyer whose principal practice was representing defendants in criminal cases. Then, for 6 years as a prosecutor, called in Virginia, Commonwealth's attorney, I became familiar with jury trials from the viewpoint of the State. Consequently, as a State legislator and for the past 31 years as a national legislator, I have never wavered in my firm and deep conviction that—call it a constitutional right or just the fundamental right of every freeman—trial by jury is an essential safeguard against tyranny and must be preserved.

It was not until August of 1957 that the Senate really came to grips with this serious issue. Pending was a civil rights bill far less drastic than the one now before us, but it created new crimes to be tried before a Federal judge without a jury. The distinguished Senator from Wyoming, Mr. O'Mahoney, who will go down in history as a great constitutional lawyer as well as an able exponent of true liberalism, offered an amendment to that civil rights bill providing for jury trials in all criminal contempt cases. In conference that was thrown out and a substitute was recommended by the conferees affecting jury trials in voting cases only, and providing for jury trials if the sentence of the district judge exceeded a specified amount of confinement. In its eagerness to recess, the Senate adopted that conference report but would not have done so had it been possible for a conference report to be amended.

Last week, to my surprise and genuine distress, the Senate, by a vote of one, turned down the Morton jury trial amendment which would have limited jury trials to criminal contempt cases arising under the civil rights bill.

Incidentally, I remind the Senate of the fact that the language of the Morton amendment is stated in the exact language which the great Committee on Commerce wrote into what is now called title II, or the accommodations section of the bill, last year, by a unanimous vote. But it is not in the bill the Senate is considering. All charges of criminal contempt should be tried in the same manner as all other criminal charges are tried.

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

Mr. ROBERTSON. I yield.

Mr. HILL. Is it not true that as recently as September of 1959, Congress wrote into the Landrum-Griffin Act, which is commonly known as the bill of rights for organized labor and its members, a provision for the right of a trial by jury which is exactly as is provided in the amendment that the Senate voted down last Wednesday?

Mr. ROBERTSON. It certainly is. Previous to that, it was placed in the Norris-La Guardia Act, because the labor unions asked, "Is it fair to us to be hauled in on injunction proceedings before a judge who was recommended for his office by some big corporations, who had been a corporation lawyer before he became a judge, who never had been friendly to labor or labor unions, to let him punish us without a jury on a charge of contempt?" The Congress said, "No; it would not be fair. In such contempt cases we will give you the right of trial by jury."

Mr. HILL. Is it not true that labor then had the example of the treatment that had been accorded to Samuel W. Gompers, who was the great leader of the American Federation of Labor—indeed, the great leader of labor in his time—when he had been railroaded to jail by a judge without being accorded the right of a trial by jury?

Mr. ROBERTSON. The Senator is absolutely correct. The Congress said, "We do not wish to see that happen again with respect to members of a labor union."

Now, we are discussing the Morton amendment.

Mr. HILL. Mr. President, will the Senator yield at that point?

Mr. ROBERTSON. I yield.

Mr. HILL. Is it not difficult for the Senator from Virginia to understand how some of the leading labor leaders of this country are now supporting the bill without a provision for the right of trial by jury, and insisting that the bill be passed without such a provision, when in the past the labor unions had suffered so much when they had had no right of trial by jury; throughout the years they have insisted that they be given the right, and now they have been given the right by Congress.

Mr. ROBERTSON. That is true. There is nothing about the bill that the Senator from Virginia can understand and explain in language which under the rules of the Senate, he is permitted to use. He must speak in terms according to what the State Department would call protocol.

Returning to the language of protocol, I was about to mention the fact that 48 Members of the Senate were on record as favoring the preservation of jury trials in criminal contempt cases when the Senate voted on the Morton amendment. The distinguished senior Senator from Kansas [Mr. CARLSON], who at that time was on his way home from an important trade conference in Geneva, told me if he had been present he would have voted for the Morton amendment.

Mr. President, I have indicated that my legislative experience covers the major part of the current century, and likewise covers our experience with the Volstead Act, under which Congress prohibited the sale of all alcoholic beverages. That act was passed by an overwhelming vote of both the House and the Senate. It was enacted pursuant to what was equivalent to a national referendum on the subject—namely, the 18th amendment. By more than three-fourths of all the States in the Union—as a matter of fact all except two—the 18th amendment had been ratified. But at that time there was a small but very vocal minority, headed by a distinguished New York Governor named Al Smith, who challenged the propriety of the Federal Government undertaking to legislate in this field of morality and to promote temporance by law and physical force.

In a relatively few years the inability of the Federal Government to change established mores, to regulate the details of men's lives and to tell them when they gathered together what they could do and what they could not do, became so repugnant that when the Congress submitted a resolution to repeal the 18th amendment every State in the Union voted for repeal as quickly as the issue could be reached.

Now we are asked to repeat that legislative blunder in a more drastic form and one in which we propose to create more law violators than were ever created under the Volstead Act. That too, in spite of our experience with State laws on this subject. Thirty-five States have enacted some type of civil rights laws—twenty-nine like New York, have some form of FEPC laws. Did those State laws create more jobs? They certainly did not. But they did create plenty of animosity and racial friction. Before a single school was desegregated in Virginia, by court order, Virginia was employing in her public schools more colored teachers than the total employed in the public schools in all of the States which had passed State desegregation laws. Extreme civil rights laws are not endorsed by the rank and file of the citizens of those States and that illustrates a familiar legal maxim "No law can rise above its enforcement." Evidently, the proponents of the pending bill now believe that if they can put the Federal Government into this program in a big way and enough people are intimidated by the threat of imprisonment without a jury trial, new jobs can be created, and through the expansion of Government by injunction we can expand the application of the second greatest of all commandments—"Thou shalt love thy neighbor as thyself." Many church leaders believe that such a program is in keeping and accord with the Sermon on the Mount.

In almost every phase of our daily lives the pending bill seeks to tell free American citizens on what basis they may choose their associates; and for any violation of this legislative formula for human conduct a man can be sent to jail by what could be a biased and unfair judge for an indefinite term and fined an indefinite sum of money. That is the bill, Mr. President, that we were told early in the year we must swallow without any change. But, Mr. President, all the efforts of the White House and all the efforts of racial pressure groups and all the efforts of misguided ministers have so far failed to force the Senate to swallow such a deadly potion.

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

Mr. ROBERTSON. I yield.

Mr. HILL. The Senator has spoken of the White House. Is it not true that when the O'Mahoney amendment, which was identical with the Morton amendment, which was rejected by one vote last Wednesday, was adopted by the Senate in 1957, it was supported by the then majority leader of the Senate, the then Senator from Texas, who is now the President of the United States?

Mr. ROBERTSON. That is true, except that the O'Mahoney amendment went beyond the Morton amendment. The Morton amendment would apply only to civil rights questions. The O'Mahoney amendment was designed to apply to all criminal contempt cases.

Mr. HILL. The O'Mahoney amendment was even stronger than the Morton amendment, and was supported by the present President of the United States. Is that not true?

Mr. ROBERTSON. That is true.

Mr. HILL. Is it not also true that the O'Mahoney amendment was supported by the late lamented President of the United States, who in 1957 was a Member of this body—President John F. Kennedy?

Mr. ROBERTSON. That is true.

Mr. HILL. Was it not also supported by the present distinguished majority leader of the Senate, the Senator from Montana [Mr. MANSFIELD]?

Mr. ROBERTSON. That is true.

Mr. HILL. All supported this amendment?

Mr. ROBERTSON. That is true.

Mr. President, we are told that, while it would be far better to pass a civil rights bill without any changes, a few changes might not be too bad, especially if, in return for those changes, enough votes could be secured to invoke cloture and force through the Senate a legislative program that to me and to many others is highly obnoxious and repugnant to all of our previous convictions on the subject of States rights and American private enterprise within the framework of American constitutional liberty.

Mr. President, one of those facesaving and assumed vote-getting amendments is known as the Mansfield-Dirksen jury trial amendment. Last week I said that amendment was nothing more than dust in the eyes, that might blind some without technical knowledge of what is involved but certainly it could not fool any Member of this distinguished body.

That sentiment is confirmed by a letter that I received today from Hon. David J. Mays of Richmond, Va., whom I regard as one of the ablest constitutional lawyers in the Nation. He not only is a member of one of the largest and most prominent law firms in the State, but is chairman of the Virginia Commission on

Constitutional Government. He is likewise an author of national reputation, having been awarded the Pulitzer Prize for his outstanding biography of Virginia's great colonial statesman, Edmund Pendleton.

This is what Mr. Mays said about the Mansfield-Dirksen amendment:

MAY 8, 1964.

Hon. A. WILLIS ROBERTSON,
U.S. Senate,
Washington, D.C.

DEAR WILLIS: You have asked me for an opinion respecting an amendment offered by Senators DIRKSEN and MANSFIELD, in the nature of a substitute for an amendment offered by Senator TALMADGE respecting trial by jury in criminal contempt cases. It is my opinion that the practical effect of this amendment would be to place the Senate's stamp of approval upon a provision which specifically denies the right to trial by jury in criminal contempt cases under the Civil Rights Act.

My opinion is based upon the clear language of the amendment, that "at the discretion of the judge, the accused may be tried with or without a jury." This is certainly strange language to find in legislation which purports to guarantee trial by jury.

The effect of this amendment would be to limit the maximum punishment in cases tried without a jury to a $300 fine and 30 days in jail, rather than the maximum of a $1,000 fine and 6 months in jail if the defendant is convicted by a jury. I am not aware of any provision in our Constitution or Bill of Rights which says that it is proper, in a free nation, to imprison a person accused of crime summarily without a trial by his peers, for 22 days, while it is improper to imprison such a person for 32 days. Merely to state such a proposition is to reveal its absurdity.

The entire concept embraced by this amendment is one of sacrificing principle for expediency. If it were not for my great respect for the dignity of the U.S. Senate, I would be inclined to think that the amendment is being offered to that body simply for the purpose of telling the American people that they will be guaranteed a jury trial, while in fact no such guarantee is present.

Aside from my objections to this amendment on principle, there is a very practical objection. If the owner of a restaurant should incur the wrath of a group of people who elect to proceed against him by court action under the Civil Rights Act, he will find that he can be imprisoned periodically, without trial by jury, for an indefinite length of time, and can be fined many thousands of dollars. For example, if the restaurant owner refuses service to Mr. Smith, and Mr. Smith brings an action, the owner may be imprisoned for 30 days and fined $300 without trial by jury. Upon his release from jail, if he returns to his restaurant and subsequently is found by a judge to be guilty of refusing service to Mr. Jones, the owner then may be imprisoned for another 30 days and fined another $300. This could go on indefinitely and, under the provisions of the Civil Rights Act of 1963, the major expense and difficulty involved in bringing these actions against the restaurant owner would be borne by the Justice Department.

I think it should be made crystal clear that the Virginia Commission on Constitutional Government has no quarrel whatsoever with those who attempt, through lawful and voluntary means, to bring an end to social practices which they deem undesirable. However, when the full force of governmental power is sought to be invoked against private citizens in violation of our Constitution, the Virginia Commission on Constitutional Government is compelled both by inclination and by its duty to oppose such an unconscionable usurpation of power. In my opinion, the effect of the amendment offered by Senators DIRKSEN and MANSFIELD would be to further such a usurpation of power. It follows that I am unalterably opposed to this amendment and to the harmful and unconstitutional forfeitures which it would work upon the liberties of our citizens.

Sincerely yours,

DAVID J. MAYS.

Mr. President, it was a source of genuine distress and disappointment to me when the Senate, by a majority of one vote, refused to go on record last week in behalf of the Morton amendment to the so called civil rights bill which would have preserved the hallmark of a free citizen since the days of King John and which, through the intervening centuries, has been justly and properly regarded as one of our most cherished civil rights; namely, the right of trial by jury in all criminal cases.

In a previous address, I pointed out how a ruthless parliament in the early part of the 18th century attempted to exact heavy and unfair taxes from 3 million colonists on this continent who had no representation whatever with respect to their imposition. I pointed out how that British Parliament, when the collection of those taxes became more and more difficult, resorted to chicanery and provided that the new crimes of failure to pay the import duties on sugar, the stamp taxes on tea, and so forth, should be punished in a court of admiralty, where the defendant was, of course, denied a trial by jury.

That is what we are now attempting to do with respect to the violation of all charges of discrimination in the pending bill. And, of course, the Mansfield-Dirksen substitute for the Morton jury trial amendment, which was defeated last week, is nothing more than what I said it was last week—dust in the eyes that might blind some without technical knowledge of what is involved, but certainly could not fool any Member of this distinguished body. Continuing that thought, I asked the following questions last Thursday of the distinguished Senator from Florida [Mr. HOLLAND]:

Mr. ROBERTSON. Very well. Then how, I ask the Senator, can any Senator stand on the floor of the Senate and say that he will support putting a person in jail for 30 days by a hostile and prejudiced judge, but that he is not denying that person his constitutional right of trial by jury? Can the Senator answer that question?

Mr. HOLLAND. I hope no Senator will rise in his place and take that extremely difficult to understand position.

Mr. ROBERTSON. It astounds me that I should be told that when the vote comes, we are expected to ratify a most astounding proposal; namely, that being confined for 30 days by a hostile and prejudiced judge is not being committed for a crime, and that it does not violate constitutional rights; but if the judge goes beyond a certain point, the accused can demand the right of trial by jury. Is not the distinguished Senator astounded that sensible Members of the Senate should be asked to accept a proposal of that kind and be asked to call it protecting the right of trial by jury?

Mr. HOLLAND. The Senator from Florida cannot understand how anyone would do so, especially when by so doing he would be winking at the fact that this is probably the closest controversy the Supreme Court has had in a long time, the decision being 5 to 4 with the so-called liberal members of the Court on the side of the four who insisted that there shall be jury trials, and with five members of the Court, in a rather weak decision, issuing what amounts almost to an invitation to a legislative body to take action to get away from a situation which they have made for themselves. I hope that invitation will be accepted.

Mr. President, to return to the underhanded action of the British Parliament of which our colonial ancestors so bitterly complained—namely, to provide for the prosecution of criminal cases without trial by jury—I wish to remind my colleagues of what Thomas Jefferson had to say about that in his immortal Declaration of Independence:

He has combined with others to subject us to a jurisdiction foreign to our Constitution, and unacknowledged by our laws; giving his assent to their acts of pretended legislation; for quartering large bodies of armed troops among us; for protecting them, by a mock trial, from punishment for any murders which they should commit on the inhabitants of these States; for cutting off our trade with all parts of the world; for imposing taxes on us without our consent; for depriving us, in many cases, of the benefits of trial by jury.

Far be it from me, Mr. President, to take from Thomas Jefferson any of the credit due him for his contribution to one of our most cherished documents, the Declaration of Independence but, with all due deference, in the preparation of that document, Jefferson drew liberally upon Virginia's Declaration of Rights which had been prepared largely by George Mason and adopted nearly 3 weeks before Jefferson drafted his famous document.

Mr. HILL. Mr. President, will the Senator from Virginia yield for a question?

Mr. ROBERTSON. Mr. President, I ask unanimous consent that I may yield to the distinguished Senator from Alabama for a question, without losing my right to the floor.

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

Mr. HILL. The distinguished Senator from Virginia has spoken about the British, and what the Crown had done, and how our Founding Fathers brought about a revolution in order to break away from the injustices and the inequities of the acts of the British Crown. Does not the distinguished Senator agree with the immortal statement of Sir Winston Churchill, who, in his book, "History of the English-Speaking Peoples," declared:

Trial by jury of equals, only for offenses known to the law, if maintained, makes the difference between bond and free.

Mr. ROBERTSON. That is true. The two greatest statesmen that I have been privileged to know were Woodrow Wilson in this country, and Sir Winston Churchill of Great Britain.

Mr. HILL. Does not the Senator also agree with that great commentator of the law, Blackstone, who declared:

The trial by jury ever has been, and I think ever will be, looked upon as the glory of the English law. And if it has so great advantage over other in regulating civil property, how much must that advantage be

heightened when it is applied to criminal cases.

It is the most transcendent privilege which any subject can enjoy, or wish for, that he cannot be affected either in his property, his liberty, or his person, but by the unanimous consent of 12 of his neighbors and equals.

Mr. ROBERTSON. Blackstone was possibly the greatest commentator upon the common law. Everyone familiar with colonial history knows that we operated under the common law until it was changed by statute.

When I was a law student, we read Blackstone's commentaries. In recent years, the statutes have changed so much of the common law, and statutory pleadings are so much simpler and less technical that they have so far supplanted the old common law writs and declarations that Blackstone has ceased to be widely read. But he does not cease to be the authority on this particular point—namely, that in the common law under which our forefathers came to this country, it was well recognized that when the Crown was a party to a proceeding against a man in any kind of court for criminal contempt, he was entitled to a trial by jury, because Blackstone said that was a crime. That was the way the framers of our Constitution interpreted those proceedings. That is the reason they fully believed, when they provided for jury trials in all crimes, that they had covered the crime and criminal contempt.

I hope that Senators will read the excellent speech delivered by the junior Senator from Alabama [Mr. SPARKMAN] last Friday. Only a handful of Senators were present in the Chamber at the time. Almost everyone except myself, was gone, but I had to remain here to get some scattered thoughts together for my speech today. I doubt if many Senators have read the speech by the Senator from Alabama, in which he showed, from every authority, including law dictionaries, Webster's, and all the other dictionaries, that when a man is put in jail he has been convicted of committing a crime, and that it could not be called anything else. If it is a crime, then I shall show the Senate, that, not only based upon the common law, but the Virginia Bill of Rights, on which Jefferson built his Declaration of Independence, on which Madison and others built the Constitution, on which the Congress adopted the first 10 amendments which we call our Bill of Rights, nothing was emphasized more than the right to trial by jury. I shall come to that point in a few moments.

Mr. HILL. Does not the Senator also agree with Lord Camden, one of the great jurists of all times, who declared:

Trial by jury is the foundation of the British Constitution; take that away, and the whole fabric would soon molder into dust.

Mr. ROBERTSON. Undoubtedly, it goes back to the days of 1215 and King John at Runnymede. The nobles had complained, among other things, that King John had taken the best hunting away from them—for which I do not blame them—they wished a share of the good hunting, too; but King John would not let them have it. He would grab them and bring them before a judge whom he had appointed and who held office at the pleasure of the King, and who could get preferment by carrying out the wishes of the King.

That judge would give the nobles "the works." They said they had had enough of that; they were going to fight it out along those lines. King John said, "Wait a minute. Don't be too unreasonable. I will make some concessions to you."

One of the concessions laid the foundations of what we now call the right of a man to be proceeded against by indictment, which told him what his offense was, and gave him the right to call his witnesses, the right to interrogate the opposing witnesses, and also the right to have the facts thus developed passed upon by a jury of his peers. If he was of the nobility, nobles passed on the charges. If he was a mountaineer, as I am a mountaineer, a jury of mountaineers would pass on the case.

Mr. HILL. Mr. President, is it not true that under a provision in the pending bill a man could be denied the right of trial by jury, and might be taken hundreds of miles, and even thousands of miles, away from his home to be tried?

Mr. ROBERTSON. Certainly. Notwithstanding the fact that so many of the judges have recently been appointed, the bill provides that the Attorney General could have the prosecution anywhere in the circuit he wanted to have it. That means that a man could be taken hundreds of miles from his home to be tried.

I shall point out how we complained about Britain carrying our people to hostile shores to try them where they would not have a friend to come to their aid.

Mr. HILL. Is it not true that an officer of a company could be charged with violation of the act and might be hauled off to where the main office of the company was located? The corporation might have its main office in Michigan or New York or Massachusetts, with operations in Florida, Alabama, Texas, Arizona, or New Mexico. Yet, instead of trying the accused in the locality where he lives, he could be taken hundreds of miles to where the head office of the company was located?

Mr. ROBERTSON. That is one of the disadvantages contained in the bill which I had not thought of. It is certainly implicit in what the bill provides.

Mr. HILL. It is contained in the language of the bill, is it not?

Mr. ROBERTSON. It certainly is. Undoubtedly that could be done. That is another objection to the bill. We shall never get through, even if it takes all summer, mentioning all of them. I shall mention a few of them today.

Mr. HILL. We have been speaking of some very great English statesmen and English authorities. The Senator may recall what the eminent French philosopher, deTocqueville had to say. He visited in the United States and studied our institutions, our government, and our laws. Then he wrote a treatise well known in history, entitled "Democracy in America." In the treatise he said:

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 * * *. He who punishes the criminal is * * * the real master of society * * *. All the sovereigns who have chosen to govern by their own authority, and to direct society instead of obeying its directions, have destroyed or enfeebled the institution of the jury.

Mr. ROBERTSON. He was eminently right. He more or less paraphrased the objection which Patrick Henry voiced in the Virginia convention of 1788 which ratified the action of the Philadelphia convention of 1787. Among other objections, he said that the power of government goes with the sword, and that when we provide the Federal Government with a great standing army, the States will wind up becoming impotent.

That was one reason why George Mason wrote into the Virginia Declaration of Rights the fact that it is far better to have a State militia than a big standing army.

They were afraid of the power of the sword. They were afraid of the tyranny of the judge who was beholden to the topman, instead of to a man's neighbors, who wanted to see justice done.

They tried to write safeguards into our form of government, to protect us from those types of tyranny.

Yet it is proposed, with one fell blow, to wipe out many of the safeguards and go back on what our ancestors fought for 10 years before they finally declared their independence and started a war which ended successfully for them at Yorktown.

Mr. HILL. Mr. President, will the Senator yield further?

Mr. ROBERTSON. I yield.

Mr. HILL. The bill would destroy the very foundation stone of what all history shows is the basis of all free people, would it not?

Mr. ROBERTSON. There is no doubt about it.

The settlement at Jamestown was made in 1607, and became the first permanent English settlement in this country. The Spaniards came to St. Augustine and other places, but ours became the first permanent English settlement, even though it was almost wiped out. In 1618 the first legislative body met at Jamestown. Then we wanted to establish a school. We appealed to the King of England to give us a charter. He went hunting, and paid no attention to our request. Harvard was started ahead of us. Otherwise, we would have been the first. William and Mary was started second. Incidentally, it was a church school. There is no doubt that it was a church school. Large subscriptions were made to the London Co. in England for churchmen, with the provision that they should carry the Christian religion to the Indians in the new land. One of the first buildings of brick at Jamestown was a church. The remnants of it are still there. I hope Senators will visit it. It is a wonderful reminder of the fact that we started as a Christian nation, from that small beginning. Some wonderful men were trained at William and Mary, a great school. One of the greatest who was trained there was Thomas Jefferson.

I take no credit away from him. However, he had the privilege of drawing on what the Virginia convention did when it adopted Virginia's Declaration of Rights, which had been prepared by an older man than Jefferson, and in many respects his equal as a political philosopher, although he declined high office and subsequently never had the ranking in our history of the great Thomas Jefferson.

On June 12, 1776, the Virginia Convention, assembled in Williamsburg, adopted a declaration of rights which had been prepared by a senior statesman and one of the ablest of the Revolutionary leaders, George Mason. Included in the convention that voted for the adoption of that declaration were Edmund Pendleton, Edmund Randolph, James Madison, Patrick Henry, and most of the other Virginia leaders of that period.

Students of Virginia history will recall that the declaration of rights contained 16 paragraphs. I will not discuss the origin and meaning of all of them since the first two sections stated the essence of the form of government that members of the convention sought to establish and the other 14 were merely corollaries explaining in greater detail the fundamental principles of personal freedom and the right of self-government.

George Mason, the author of our Bill of Rights, knew the Bible, the original source of all law that recognizes human rights, the principles of democracy as enunciated by Pericles some 450 years before the birth of Christ, and the principles of natural law as enunciated by Cicero some 60 years before the birth of Christ. He also drew liberally upon established British principles of freedom commencing with the revision of the Magna Carta in 1215. Referring to the sources of the Virginia Declaration of Rights, a distinguished Virginia scholar and historian, Dr. Lyon Gardiner Tyler, son of President John Tyler, said in his "History of Virginia," published in 1924:

> As regards the Virginia Declaration of Rights, it not only contained all that was valuable in Magna Carta in 1215, the Petition of Rights in 1628, written by Sir Edward Coke, and the Bill of Rights in 1689, written by the great Lord Somers, but it constituted also the most complete statement of the principles of government. Thus its first and second sections expressed the idea of the democracy which lay at the bottom of the whole Revolution, the first declaring "the equal rights of all men, by nature, to freedom and independence" and their inalienable claim to the "enjoyment of life, liberty, property, and happiness;" and the second, declaring that "all power is vested in, and consequently derived from, the people; that magistrates are their trustees and servants, and at all times amenable to them." While these sections really stated nothing that had not been tacitly recognized ever since the dethronement of James II by people of English descent everywhere, the old form, depicting the king as "the fountain of authority" had been kept up in all legal and political literature in England and America. Now for the first time, fact and form were brought together in official papers. Rights began with nature, and not as concessions of the monarch, and the people, not the king, became the open and acknowledged source of authority.

Section 1 of the Virginia Declaration of Rights reads as follows:

> That all men are by nature equally free and independent—

Mark you, Mr. President, this was the forerunner of our Declaration of Independence. This was the declaration that carried through the meaning of the Declaration of Independence. This is a declaration we can better understand:

> That all men are by nature equally free and independent, and have certain inherent rights, of which when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.

The fundamental principles of the sacredness of human life and of the right to acquire and possess property are to be found in the Ten Commandments which God gave to Moses on Mount Sinai some 1,500 years before the birth of Christ. Moses in Deuteronomy enlarged upon those 10 fundamental principles including this instruction to the judges of the courts which he established:

> Hear the causes between your brethren, and judge righteously between every man and his brother, and the stranger that is with him. Ye shall not respect persons in judgment, but ye shall hear the small as well as the great; ye shall not be afraid of the face of man.

Mr. HILL. Mr. President, will the Senator from Virginia yield?

Mr. ROBERTSON. Mr. President, I ask unanimous consent that I may yield to the Senator from Alabama without losing my right to the floor.

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

Mr. HILL. The Senator from Virginia spoke of Woodrow Wilson and also of George Mason, the author of the Virginia Bill of Rights. Is it not true that Woodrow Wilson said that he would rather have been the author of the Virginia Bill of Rights than of any other document ever penned by the hand of man?

Mr. ROBERTSON. That is true. In my judgment, next to Thomas Jefferson, Woodrow Wilson was the greatest scholar and greatest political philosopher who has ever occupied the White House.

Mr. HILL. I am sure the distinguished Senator from Virginia is familiar with the address delivered by Dr. Edwin A. Alderman, at that time president of the University of Virginia, at the memorial exercises held by the two Houses of Congress after the death of Woodrow Wilson.

Mr. ROBERTSON. I certainly am.

Mr. HILL. Anyone who will read that address will agree with the statement the Senator from Virginia has just made. Dr. Alderman made clear what a towering figure Woodrow Wilson was, particularly in his championing of the rights and the freedom of man everywhere.

Mr. ROBERTSON. I wish that some foundation dedicated to the preservation of the Constitution and of what we call the system of competitive enterprise—private enterprise—would republish and distribute on a national basis that wonderful address by Dr. Edwin A. Alderman, of the University of Virginia.

I knew Dr. Alderman for many years. Not only was he a brillant educator; but in his day and time, I thought he was the most brillant orator in Virginia, comparable to any in the Nation.

Mr. HILL. Mr. President, will the Senator yield further?

Mr. ROBERTSON. I yield.

Mr. HILL. I was privileged, as a Member of the House of Representatives, to hear that address by Dr. Edwin A. Alderman in tribute to Woodrow Wilson. I have always thought that it was the greatest address I have ever been privileged to hear, magnificient in its thought, in its logic, and in its language. The whole content was magnificent.

Mr. ROBERTSON. I was not a Member of Congress at that time, but I was active in politics in Virginia. I remember the incident very well.

I remember the great pride I had, as a member of the 3d Infantry Company, of the Second Officers' Training Camp, Fort Myer, in parading down Pennsylvania Avenue in World War I, when Woodrow Wilson was seated in the reviewing stand at the White House grounds. I shall always cherish my memory of that great statesman.

And all students of the Bible are familiar with the frequent references in both the Old and the New Testaments to property rights—condemnation by the prophet of the illegal taking by King Ahab of Naboth's vineyard being an outstanding example.

Among exponents of freedom and equality, none had a greater influence upon Mason than the eminent English philosopher, John Locke.

Locke was the political theorist of the Martin Luther Reformation. He strongly objected to the doctrine of royal prerogatives based upon the so-called divine right of kings. Instead, Locke expounded the belief that individuals, by means of a social compact, formed a body politic, giving up their personal rights to interpret and administer the law of nature in return for a guarantee that their natural rights to life, liberty, and property would be preserved. When injustices became obvious, the people might resist the civil authority. There was need of rebellion, Locke stated, whenever the government endeavored to invade the property of the subject and to make itself the "arbitrary disposer of the lives, liberties, or fortunes of the people." This right of revolution he qualified in two ways. Force was not to be used except in the most serious cases. And only the majority could overthrow the government.

I repeat that statement, in view of what James Farmer said on the "Meet the Press" program last night. Locke said about the cause of the revolution, when people thought the government was not being administered in their interests, that only the majority could overthrow the government.

But if I correctly understood what Mr. Farmer was trying to put across last night, it was this: He represented a group that was dissatisfied with the Government of this country. He was demanding changes in the laws of this

country. He threatened political reprisals against the President unless he had such laws passed promptly.

But Farmer did not stop at that. He made what amounted to a threat of revolution if Congress did not act promptly. Revolution? By whom? A majority of the people of the Nation? Oh, no. A revolution by the nonwhites, 10 percent of the population, against the whites, 90 percent of the Nation. I could not construe his threat in any other way.

Mason also drew upon the Greek conception of equal rights when he wrote into the first section of our Bill of Rights:

All men are by nature equally free and independent and have certain inherent rights; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property and pursuing and obtaining happiness and safety.

All the members of that convention knew that the equality referred to in the Virginia Bill of Rights related to the inherent rights that were specified—life, liberty with a means of acquiring and possessing property, and pursuing happiness and safety. It was only 18 days after the adoption of the Virginia Bill of Rights that Jefferson presented his draft of the Declaration of Independence to the Continental Congress in Philadelphia, to members of which copies of the Virginia draft of Mason's Bill of Rights had been sent. He shortened and paraphrased the Mason statement but, in the opinion of John Adams, the Continental Congress did not intend to change its meaning. That great son of Massachusetts, Jefferson's opponent for the Presidency, but in later years his warmest friend, was on the committee selected to draft the Declaration of Independence.

When his wife in Boston heard that he had signed a declaration saying, "all men are created equal," she promptly wrote him that he knew that was not true, to which Adams replied:

You don't understand what we meant. All we meant to say was that all men are born men and not some men and some whales.

Years later, after observing the excesses of the French Revolution, Adams wrote John Taylor of Virginia:

Inequalities are a part of the natural history of man. I believe that none but Helvetius will affirm, that all children are born with equal genius.

That all men are born to equal rights is true. Every being has a right to his own, as clear, as moral, as sacred, as any other being has. This is as indubitable as a moral government in the universe. But to teach that all men are born with equal powers and faculties, to equal influence in society, to equal property and advantages through life, is as gross a fraud, as glaring an imposition on the credulity of the people, as ever was practiced * * * by the self-styled philosophers of the French Revolution. For honor's sake, Mr. Taylor, for truth and virtue's sake, let American philosophers and politicians despise it.

Now think of what the professional civil rightists, in the name of equality, are trying to do to us.

The action of the Supreme Court in the public school segregation cases of 1954, the multiplicity of so-called civil rights bills introduced in the Congress all testify to the current misconception of the term "equal."

In commenting on the word "equality," Hon. R. Carter Pitman, of Georgia, a distinguished constitutional authority, said:

No one who helped to write it or who voted to adopt it ever asserted the doctrine of human equality either before or after July 4, 1776, but the Declaration of Independence, like the Constitution, has taken on new meaning by the application of new philosophy and modern authority.

Such, for instance, as the Swedish Socialist Myrydal. The influence which Locke's philosophy had upon Mason is evident not only in the first section of the Declaration of Rights but also in the second and third sections. They are as follows:

II

That all power is vested in, and consequently derived from, the people; that magistrates are their trustees and servants, and at all times amenable to them.

III

That government is, or ought to be, instituted for the common benefit, protection, and security, of the people, nation, or community; of all the various modes and forms of government that is best, which is capable of producing the greatest degree of happiness and safety, and is most effectually secured against the danger of maladministration; and that, whenever any government shall be found inadequate or contrary to these purposes, a majority of the community hath an indubitable, unalienable, and indefeasible right, to reform, alter, or abolish it, in such manner as shall be judged most conducive to the public weal.

Although the writings of Locke and of other noteworthy men greatly influenced Mason, the Declaration of Rights was, by no means, a mere repetition of another's ideas. Admittedly, Mason was not a discoverer in a wholly unexplored field. However, according to a former Member of Congress from Fairfax County, Hon. R. Walton Moore:

No one will deny that he exhibited astonishing originality in what cannot be regarded as other than a great creative achievement.

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

Mr. ROBERTSON. I yield.

Mr. HILL. I was privileged to serve in the House of Representatives with Judge R. Walton Moore. He was one of the ablest men I have ever known. He had one of the most profound and analytical minds. No man could express himself with more eloquence than Judge Moore.

He was, as the Senator has said, one of the ablest and most accommodating men I have ever served with in the House of Representatives or in the Senate.

Mr. ROBERTSON. The Senator from Alabama is correct. I was not privileged to serve in Congress with Judge Moore, but I knew him well. He was a real Virginia gentleman. He was polished, courteous, cultured, and highly educated. He was, as the Senator from Alabama stated, an outstanding Member of Congress. He reflected great credit upon the legal profession. He reflected great credit upon Congress itself.

Mason was familiar with the English Bill of Rights of 1689. But that instrument was largely retrospective. The English Bill of Rights contained little or no thought of popular government, for it left the prerogatives of the Crown unimpaired and the authority of Parliament beyond any great control by the people.

The work of Mason applied the principles of freedom, equality, and the social compact to local politics and gave them a new meaning in the American application of a Government, to which the people had delegated certain powers, reserving all others to themselves or to their sovereign States.

A fundamental principle of a representative democracy is contained in section 4, which reads:

That no man, or set of men, are entitled to exclusive or separate emoluments or privileges from the community, but in consideration of public services; which, not being descendible, neither ought the offices of magistrate, legislator, or judge, to be hereditary.

Such thinking derives its origin from Pericles who in his famous "Funeral Oration" stated this principle as follows:

If we look to the laws, they afford equal justice to all in their private differences; if to social standing, advancement in public life falls to reputation for capacity, class considerations not being allowed to interfere with merit, nor again does poverty bar the way; if a man is able to serve the state, he is not hindered by the obscurity of his condition.

Mr. President, I wish some Senator who desires to make a rip-roaring speech in behalf of title VII of the bill—the title which is called the antidiscrimination or "FEPC" title, which really will wind up by forcing a quota system on employers on the basis of population figures—would tell us how he can reconcile that proposal with the Athenian Pericles principle, which goes back some 600 years before Christ; on what basis should a man be entitled to preferment in politics, socially or in business?

Mason, like our other forefathers, had seen the numerous abuses which resulted from hereditary political offices, notably the succession of kings. These early Americans, many of whom like James Madison and Patrick Henry, were not large landowners, were determined that the elevation of anyone to a position of authority must depend not on ancestry but on merit. And who should be the judge of merit but the people themselves?

The precautions which Mason insisted upon were later incorporated by Madison in article I, section 9, of the Constitution:

No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them, shall, without the consent of Congress, accept of any present, emolument, office or title, of any kind whatever, from any king, prince, or foreign state.

Section V required separation of powers between the legislative and executive branches of the government with election by the people for fixed terms.

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

Mr. ROBERTSON. I yield.

Mr. HILL. The idea was to have what is termed a system of checks and balances.

Mr. ROBERTSON. Absolutely. One would not be elected to office and hold that office for the rest of his life. Members of the House were given terms of 2 years; Senators were given terms of 6 years. At the end of those terms, the Members of Congress had to account to the people as to their stewardship; and if the people did not like what their representatives had done, they could put others in their places.

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

Mr. ROBERTSON. I do not believe the Senator from Alabama has finished yet.

Mr. HILL. A Federal judge does not have to run for office. He has what amounts to life tenure. Is that not true?

Mr. ROBERTSON. Congress made that provision. I am not sure that Congress was too wise about it. The provision was modified in Virginia. We elect our judges for a term. Some are elected for a term of 8 years, and some for 12 years, but none are elected for life.

Congress provided that once a man was placed on the Federal bench, he would be there for life unless he did something bad, such as committing a crime, that would result in his impeachment. Federal judges do not pay anything into a retirement fund, but if they serve at least 10 years and are at least 70 years of age when they retire, they receive full salary for the remainder of their lives.

When I first became a member of the Committee on Ways and Means, judges said, "You cannot tax us, because the Constitution provides that you cannot reduce our pay during our term of office, and that is for life." But we did tax them, and they did not dare to declare that provision unconstitutional, because we could in turn have legislated a little about that term of office. We could also have passed on their jurisdiction. Federal courts have two classes of constitutional jurisdiction—one is in relation to treaties, the other in relation to actions between States. All the rest of the jurisdiction of the Federal courts is based upon what Congress has allowed them to do.

Mr. HILL. Speaking about the system of checks and balances, is it not true that under the bill, in instances in which the judge would pass on cases the right to trial by jury would be denied the accused party? The judge would be the accuser. He would try the case, and he would fix the judgment. He would conduct the entire procedure, would he not?

Mr. ROBERTSON. There is no doubt about it. The proceeding would not be different from a star chamber proceeding or a court of admirality, under which colonists were punished for failure to pay the import duties on sugar, or the stamp tax on tea.

I now yield to the Senator from Pennsylvania.

Mr. CLARK. I thank my friend. I intended only to comment on a statement made earlier. Earlier in the colloquy something was said about serving in office for life. Two of my favorite Senators, who certainly are serving in the Senate for life, are the Senator from Alabama and the Senator from Virginia.

Mr. HILL. Will the Senator repeat his statement?

Mr. CLARK. I was complimenting my two friends on the fact that they are serving in the Senate for life.

Mr. ROBERTSON. I appreciate that compliment, if it is a compliment, and it was so intended. I did not know that I would be here for life. I shall be frank with my distinguished friend from Pennsylvania and tell him what I have frequently observed to some former distinguished Members of the Senate who no longer could qualify, as it was said of Jacob in Egypt, that "his eye was not dim and his natural forces were not abated," but, I said that if the time ever came when the junior Senator from Virginia was unable to hunt and fish any more, he would begin to think that he was not able to keep up the standard of vigor that he has tried to maintain for the people of Virginia, and it would not be necessary for them to tell him to come home, because a younger man would take his place.

Mr. CLARK. May that time never come.

Mr. ROBERTSON. I thank my friend. That was a real tribute, and I appreciate it.

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

Mr. ROBERTSON. I yield.

Mr. HILL. Our friend from Pennsylvania has just risen to the heights of statesmanship; and I wish to join him in that tribute.

Mr. ROBERTSON. It was a real statement of friendship, and I appreciate it.

We have covered five sections of this great declaration of rights.

Section 6 provided for the right to vote for representatives of the people by—now listen, please—"all men, having sufficient evidence of permanent common interest with, and attachment to, the community." Incidentally, no better interpretation of the right to vote has ever been prescribed.

Section VII would prohibit the executive branch from repealing or nullifying laws passed by the legislative branch.

Section VIII is the key section relating to the immediate issue confronting us now—the right of trial by jury. It states as follows:

> That 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 favor, and to a speedy trial by an impartial jury of his vicinage, without whose unanimous consent he cannot be found guilty, nor can he be compelled to give evidence against himself; that no man be deprived of his liberty except by the law of the land, or the judgment of his peers.

I repeat that language, because it applies so strikingly to the proposal and the suggestion that it ought not to make so much difference if a man is put in jail for 30 days of less. This is what was said on June 12, 1776: "that no man be deprived of his liberty"—it did not say for more than a month; it covered 1 day, if he were unjustly deprived—"except by the judgment of his peers."

That provision was referred to in the Declaration of Independence, it was written into the Constitution, and it was repeated in the Bill of Rights to the Constitution.

Section IX prohibits excessive bail.

Section X protects a man's home from search or seizure without a warrant.

Section XI relates to trial by jury in civil cases.

Section XII to freedom of the press; and

Section XIII to a State militia in preference to a large standing army.

The 14th section of the Declaration of Rights is not the work of Mason, but was added by the Virginia Convention. It reads:

> That the people have a right to uniform government; and, therefore, that no government separate from, or independent of, the government of Virginia, ought to be erected or established within the limits thereof.

Apparently this section resulted from the efforts of those delegates who were concerned over the situation in Virginia's western territory. It extended to the Mississippi River, and Virginia claimed title to the Northwest Territory.

It is interesting to note the relationship between section 14 and the thinking of those delegates in the Virginia Constitutional Convention of 1788 who objected to the Constitution on the ground that the Federal Government thereby created would engulf the States with a tyranny not dissimilar to that of George III. The foresight and determination of men like Mason and Madison established our Central Government as one of limited powers and emphatically affirmed this position with the 10th amendment, which provides that—

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

In section 15 Mason contends:

> That no free government, or the blessing of liberty can be preserved to any people but by a firm adherence to justice, moderation, temperance, frugality, and virtue, and by frequent recurrence to fundamental principles.

Here, perhaps, we find his strongest emphasis upon the principles of morality which are expressed in the Bible. And evidently Mason had the Bible in mind when he called for a "frequent recurrence to fundamental principles."

Finally, the 16th section declared:

> That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violation; and, therefore, all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance, love, and charity, toward each other.

Last week I received a statement that listed 600 Presbyterian ministers and leading members of the Presbyterian Church urging me to accept the so-called civil rights bill without any amendments. I have just pointed out the history of trial by jury, a cherished right. I pointed

out how it was set forth in the Virginia Declaration of Rights, referred to in the Declaration of Independence, put in the original draft of the Constitution, and then incorporated in one of the amendments, the sixth amendment, to the Constitution.

I do not question the sincerity of the preachers who think there are some social injustices, but I ask them how they can justify a program which they say would promote certain constitutional rights for a small minority—only 10 or 10½ percent. I say that all those rights are now guaranteed by State and Federal Constitutions. It is perhaps tedious to enforce some of them, but those rights are now all guaranteed. But assuming it is necessary to legislate, how can they reconcile their proposal to promote constitutional rights for 10 percent of the people with denying trial by jury and other constitutional rights to 90 percent of the people?

I also wish them to explain to me how they can answer a prescription of how to promote brotherly love and good will among the people which is framed in this manner, "Religion can be directed only by reason and conviction."

It may be religion, but I do not call it anything but politics. Some wish to call it religion, but they wish to do it by force. They wish to do it by arresting a man and putting him in jail without a jury trial, to make him more religious.

The Virginia declaration said all men "are equally entitled to the free exercise of religion."

Think of that.

I had an ancestor who split off from the Church of England and preached the principles of the Baptist Church to his people through the bars of the jail in Orange County, Va., where he had been imprisoned for his religious beliefs.

Suppose the views of George Mason, James Madison, Thomas Jefferson and the others who had helped to frame the 16 resolutions to which I have referred, including the fundamental right of religious freedom, had not prevailed. If their views on jury trials had not prevailed, they would not have prevailed on religious freedom. It all went together. Suppose they had failed? What would we probably be facing today? What would be the established church? The Church of England. One would have to contribute to it, whether one wished to belong to it or not. One might prefer to worship in a Catholic cathedral, a Jewish synagogue, or the Little Church by the Wildwood, but he would be arrested if he did.

That was the fundamental principle of religious freedom, and it was said that it could be promoted only by reason and conviction. The Virginia declaration says, "It is a duty to practice Christian forbearance, love, and charity toward each other." But some of the ministers today would put us in jail if we do not do their bidding. This bill, it is said, must be the formula for virtue. As I have tried to indicate previously, such a principle is not in keeping with the Sermon on the Mount.

I wish some of the ministers who are advocating this extension of government by injunction, and this prosecution of criminal contempt before a hostile judge without the protection of trial by jury, would tell me how they reconcile that program of force—force by an imperial Caesar—with the teachings of the Prince of Peace who gave us the greatest sermon that has ever been preached, which no man since that day has ever lived up to, but which still remains the ideal of Christian conduct. How can those two doctrines be reconciled?

Mason's original wording had provided for religious toleration. We owe it to the efforts of James Madison, who, at but 25 years of age, suggested that Mason's wording in the original draft should be broadened into a statement asserting freedom of conscience.

George Mason's Declaration of Rights is particularly significant because its principles, in large measure, serve as the basis for the Declaration of Independence, the Constitution, and its Bill of Rights, and most State constitutions.

Drawing upon the Bible, and the experience in government of civilized nations and applying those precedents to a new theory of government "of the people, for the people, and by the people," George Mason and his coworkers provided for us the priceless principles of constitutional liberty in a unique system of private enterprise. In a brief span as compared to the 900 years of the city-state of Athens, 400 years of the Roman Empire, we have become both the richest and the freest Nation of the world.

All this heritage is now threatened—from without by the forces of communism, armed with nuclear weapons, and at home by those who would abandon the ancient landmarks, set by our fathers, and take us down the road to dictatorship. Under the specious plan of protecting the alleged constitutional rights of 10 percent of our population, we are asked to nullify and run roughshod over the constitutional rights of 90 percent of our population. We may survive a nuclear attack. But we cannot survive, any better than Athens and Rome, moral degeneration and the abandonment of the fundamental principles of self-government and protection from tyranny.

The Mansfield-Dirksen amendment as a substitute for jury trials strikes a vital blow at constitutional liberty.

The immortal George Washington, to whom more than any other one man we are indebted for constitutional liberty, expressed in his Farewell Address the fervent hope:

> That the free Constitution, which is the work of your hands, may be sacredly maintained—that its administration in every department may be stamped with wisdom and virtue—that, in fine, the happiness of the people of these States, under the auspices of liberty, may be made complete, by so careful a preservation and so prudent a use of this blessing as will acquire to them the glory of recommending it to the applause, the affection, and adoption of every nation which is yet a stranger to it.

George Washington had great respect and warm affection for his brilliant staff officer, Col. Alexander Hamilton, but stoutly resisted Hamilton's effort at the Constitutional Convention of 1787 to draft the Constitution of a limited monarchy of which George Washington was to be the first king. Washington, with great understanding of human nature, and foresight of what would best promote the happiness and prosperity of the 13 struggling colonies, insisted that the new Government be a Republic with a written Constitution; a government of laws and not of men. Washington, a deeply religious man, wanted that Government to be based upon the teachings of the Bible which recognizes the dignity of the individual; a government that would be the servant and not the master of the people.

The first governmental document of our Nation, the Declaration of Independence, proclaimed the principle of individual importance and inalienable rights. It is presented again by Thomas Jefferson in his first inaugural address. This address looks not only to the rights of man but to the means of attainment. The will of the people, said Jefferson, "is the only legitimate foundation of any government."

Constitutional government is not solely a matter of draftsmanship. England has had constitutional government for centuries, without a written constitution. The fine phrases concerning freedom in the Russian constitution did not save the millions who were liquidated to insure the continuation of dictatorial power. Other countries have drawn up and adopted what would appear on the surface to be very satisfactory written constitutions, but they have not been able to make them live as working instruments reflecting the realities of the Nation for which they were drawn, to make them live in the hearts of the people.

Constitutional government is based upon the recognition that the governors of a nation are not themselves supreme and cannot act arbitrarily; they are trustees for the people and they are bound by the general rules laid down by the people. And this must be recognized both by the governors and by the governed. Constitutional government must be so devised as to enable the people to give effect to their needs and desires, and it must provide for doing this in an orderly fashion, without permitting passing fancies to upset the foundations of the government, and without unduly restricting changing demands arising from changing circumstances.

The Constitution of the United States exemplifies the principles of constitutionalism which I have mentioned. In the Constitution, the people of the United States, acting through their State representatives in the Constitutional Convention and the ratifying conventions, created a unique system of government embodying two basic constitutional principles designed to insure that the government created would be in fact a government of laws and not of men and would in fact be the servant and not the master of the individual.

The first of these great principles is the principle of federalism. The States which sent representatives to the Constitutional Convention and which ratified the Constitution, continued as sovereign States of the United States and became integral and essential parts of the new United States, as such.

The second of these great principles embodied in the Constitution of the United States is the separation of powers between the legislative, executive, and judicial branches of the Government, each coordinate with and equal to each of the others but not entirely independent of the others.

James Madison in No. 51 of the Federalist, speaking particularly of the division of the Central Government into three departments, used language applicable to the separation of powers between the States and the Central Government, as well as to the separation of powers within the Central Government. He said:

> The great security against a gradual concentration of the several powers in the same department consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the others. The provision for defense must in this, as in all other cases, be made commensurate to the danger of attack. Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place. It may be a reflection on human nature, that such devices should be necessary to control the abuses of Government. But what is Government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: You must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions.

Mr. Justice Brandeis, in 1926, also expressed this principle when he said:

> The doctrine of the separation of powers was adopted * * * not to promote efficiency but to preclude the exercise of arbitrary power. The purpose was, not to avoid friction, but, by means of the inevitable friction incident to the distribution of the governmental powers among three departments, to save the people from autocracy.

The separation of powers between the Federal Government and the sovereign States, in order to provide an automatic check upon oppression and arbitrary government, did not come into being in its constitutional form until after it had been considered again and again at the Constitutional Convention.

Before the Convention, James Madison considered giving the Federal Government "a negative in all cases whatsoever on the legislative acts of the States, as heretofore exercised by the kingly prerogative."

The Committee of Detail, at one point in the Convention's deliberations, recommended that the Constitution should authorize the Congress to provide for the management and security of the general interests and welfare of the United States, with only the general limitation that such power should not interfere with "the government of individual States, in matters which respect only their internal police, or for which their individual authority may be competent."

These proposals do not appear in the Constitution. Instead of such broad and general powers, the Constitutional Convention decided to give the Federal Government only the limited powers specifically enumerated in the Constitution.

The 9th and 10th amendments were added to the Constitution, as parts of the Bill of Rights, in order to make it abundantly clear that the Constitution was a limited document, delegating to the Federal Government only those powers enumerated in the Constitution and reserving to the States or to the people all remaining powers.

In 1819, in the famous case of McCulloch against Maryland, Chief Justice Marshall declared that, while the 10th amendment did not take away from the Federal Government those powers which the Constitution delegated to it, it was an express and explicit reiteration of the principle that the Constitution was a grant of enumerated powers, not an unlimited delegation.

There are, of course, a number of powers granted to the Federal Government in fairly explicit terms. Much of the expansion of these powers since 1789 has been incident to the changes in our civilization. Jefferson once wrote of a trip from Charlottesville to Washington, during which his fastest speed was 3 miles per hour. He would be fascinated by an airplane trip today in 40 minutes. I am sure he would agree that the power in the Constitution to regulate commerce among the several States and with foreign nations extends to railroads, automobiles, airplanes, radio and television, even though these were unknown to the framers of the Constitution.

Much of the expansion of the power of the Federal Government has resulted from enlargement in the construction of certain clauses of the Constitution, some of which were originally intended only as limitations upon the power of the Federal Government.

The Bill of Rights, adopted at the beginning of our national history, contains the guarantee that no person shall be deprived of life, liberty, or property without "due process of law." In his great treatise on the Constitution, Justice Story considered this phrase as a requirement of orderly procedure, in other words a procedural limitation rather than a grant of substantive power to the Federal Government.

The phrase was given no real substantive content until after its adoption in the 14th amendment providing that no State shall deprive any person of life, liberty, or property without due process of law. The opportunities for interpretation of these four words, "due process of law," are tremendous. Under judicial interpretation the words have developed from a requirement of fair procedure to the status of a broad veto power over both State and Federal action. Perhaps as good a statement as any of the power assumed by the Supreme Court under the due process clause of the 14th amendment is that the Court can set aside any State action which it considers too bad. As Mr. Justice Douglas said in a recent dissent:

> Due process under the prevailing doctrine is what the judges say it is; and it differs from judge to judge, from court to court.

One clause of the Constitution which has been expanded greatly is the power of Congress to spend money in aid of the general welfare. The Supreme Court has adopted Hamilton's view of the meaning of the power "to lay and collect taxes, to pay the debts and provide for the common defense and general welfare of the United States" and has stated, in effect, that it would impose virtually no restriction on expenditures which might be made by the Federal Government.

Mr. Justice Cardozo expressed this view in 1937 when he said:

> The conception of the spending power advocated by Hamilton and strongly reinforced by Story has prevailed over that of Madison, which has not been lacking in adherents. The discretion belongs to Congress, unless the choice is clearly wrong, a display of arbitrary power, not an exercise of judgment. This is now familiar law.

The power of the Federal Government has also been increased by what Justice Story called the doctrine of "resulting powers." This is that vague but inclusive power which is said to result from the very fact of the creation of the Federal Government.

Thus, both in the extension of national power by interpretation of express grants such as the extension of the commerce clause to include intrastate business and in converting limitations on Federal powers into grants of Federal judicial power over State action, there has been a manifest shift in our constitutional structure not foreseen by the framers.

The tremendous expansion and development of our Nation in the past 170 years emphasizes the necessity for a division of powers between the Federal Government and the States. The United States today includes a tremendous area and a very wide variety of soils, climates, and physical resources. This diversity was increased greatly by the admission of Alaska and Hawaii to statehood. The United States contains people of widely differing interests and abilities. Some of these variations have been diminished by improvements in transportation, communications, and education, but there are still wide differences in the characteristics of our geography, economy, and our people, not least by reason of their differing abilities and interests. In No. 10 of the Federalist, Madison gave particular emphasis to this as the source of differing interests and parties or "factions" as he called them. He said:

> As long as the reason of man continues fallible, and he is at liberty to exercise it, different opinions will be formed. As long as the connection subsists between his reason and his self-love, his opinions and his passions will have a reciprocal influence on each other; and the former will be objects to which the latter will attach themselves. The diversity in the faculties of men, from which the rights of property originate, is not less an insuperable obstacle to a uniformity of interests. The protection of these faculties

is the first object of government. From the protection of different and unequal faculties of acquiring property, the possession of different degrees and kinds of property immediately results; and from the influence of these on the sentiments and views of the respective proprietors, ensues a division of the society into different interests and parties.

Even though the population of the United States in 1787, at the time of the Constitutional Convention, was less than that of Virginia today, approximately 3,800,000, the framers of the Constitution thought it wise to preserve a division of the Nation into 13 States of varying area and population. Nearly 4 million people could best be governed under a decentralized Federal system, instead of a single centralized authority.

A single unified government for the entire United States would not have given proper scope to the wide differences among the people and their State governments and would have been all too likely to have resulted in oppressive dictatorship. Madison in No. 10 of The Federalist, from which I have quoted, pointed to two elements of the Federal Government which would minimize the undesirable effects of "factions." These two elements were first, the Federal nature of the Government, with a limited Federal Government and many powers reserved to the States and the people, and second, the representative nature of the Federal Government itself.

The representative nature of the Federal Government finally agreed upon gave additional protection to the variety of interests within the Nation.

In the Congress, Senators, being chosen by States, were to be primarily responsive to their States. Until the adoption of the 17th amendment in 1913, they were actually chosen by the legislatures of the States, and, therefore, represented the people of those States only indirectly. Representatives were to be chosen from the districts within States and to speak for the interests of their particular districts.

The President was to be elected by the electoral college under a system, which, as it has developed, gives particular importance to the large States. A candidate who carries New York by one vote receives a huge block of electoral votes which outweigh overhelming losses in a number of smaller States. This system, and the developments which have occurred in party machinery in the national political conventions, have given the large States a particularly strong voice in the selection of the President.

Thus, we see that representative government in the United States is the product of forces and influences which, while they do not necessarily always conflict, do arise from basically different systems of representation.

Of course, all these Representatives should cooperate and work together, and under our two-party system, they do so in the vast majority of matters. But not in all matters. When the interests of a particular State represented by a Senator, or the interests of a particular district represented by a Member of the House, do not coincide with the views of the President or the majority of the Senators or the Representative's party, then the Senator or the Representative must carry out his responsibility to represent the interests of his State or district, in contrast to the other views presented. It is to his own system of representation that he owes his allegiance when these conflicts occur.

In this way the manifold interests of the country, or "factions," are reasonably assured of an opportunity for a hearing for their point of view, an opportunity to make their views known, before legislation is enacted.

To summarize, constitutional government in the United States was framed so as to provide an effective government and at the same time to prevent this effective government from becoming so overwhelming, so oppressive, that the liberty of the individual, and his initiative and enterprise, would be obliterated. These devices include the separation of the powers of the Federal Government into the three great departments, the division of governmental powers between the Federal Government and the several State governments, and the reservation of powers to the States and to the people. These devices, which are basic to our constitutional government, pose many problems, problems which may appear to be completely insoluble in theory.

But the framers of the Constitution, as my quotation from James Madison shows, rose above the theories of political science and organization charts. Instead, they concerned themselves with human nature, with all its potentialities of good and evil. And the successful result of their efforts is a tribute to their wisdom and foresight.

The problems caused by the division of powers—the division between Federal and State Governments and the division between the three departments of the Federal Government—obviously raises questions which are difficult and even irreconcilable in theory. How can both the Federal Government and the State governments be sovereign? How can the executive branch, the legislative branch, and the judicial branch each be supreme and yet each be subject to the control of the others? The answers to these questions do not lie in neat and precise organization charts. The answers to these questions lie rather in the good judgment, discretion, and restraint of the officials who make the Government work and who have made the Government work.

Mr. Justice Holmes, in 1908, expressed the basic problem posed by these divisions of power, when he said:

All rights tend to declare themselves absolute to their logical extreme. Yet all in fact are limited by the neighborhood of principles of policy which are other than those on which the particular right is founded, and which become strong enough to hold their own when a certain point is reached. The limits set to property by other public interests present themselves as a branch of what is called the police power of the State. The boundary at which the conflicting interests balance cannot be determined by any formula in advance, but points in the line, or helping to establish it, are fixed by decisions that this or that concrete case falls on the nearer or farther side.

These kinds of distinctions, these kinds of practical adjustments, cannot be drawn arbitrarily. They must be drawn on the basis of specific cases, and at times on the basis of trial and error. For this reason the Founding Fathers were wise to limit the authority of the Federal judiciary to cases and controversies. We can understand principles better when they are applied to the specific facts of a specific case.

Legislators, just as much as courts and the executive branch, must bear in mind the need for mutual toleration and discretion and self-restraint. The Federal Government must also bear this need in mind with respect to State powers, and the State governments with respect to Federal powers.

Let me illustrate this need for toleration, discretion, and self-restraint by reference to two broad powers of the Federal Government. These are the money power and the war power. I have already referred to Mr. Justice Cardozo's statement regarding the virtually unlimited power to spend money in aid of the general welfare. Also involved in the money power is that which was expressly granted to the Congress in the Constitution, to coin money and regulate the value thereof. In the gold clause cases decided by the Supreme Court in 1935, and in subsequent cases in 1937 and 1939, the Supreme Court has made it entirely clear that the money powers are for all practical purposes limitless.

The war power, that virtually endless power under which all materials and facilities may be allocated in the interests of national defense, prices may be fixed and rents may be controlled, and men, materials, and land may be drafted, requisitioned, or condemned, is subject to little or no judicial review. Even in the case of President Truman's seizure of the steel mills in 1952, the action of the President was invalidated by the Supreme Court, not on the grounds that Congress could not have granted this power, but on the basis that the President was acting contrary to the decision of Congress.

Mr. Justice Jackson has expressed vividly the dangers to the Nation which arise from these great powers:

"Two of the greatest powers possessed by the political branches, which seem to me the disaster potentials in our system, are utterly beyond judicial reach," he said. "These are the war power and the money, taxing, and spending power, which is the power of inflation. The improvident use of these powers can destroy the conditions for the existence of liberty, because either can set up great currents of strife within the population which might carry constitutional forms and limitations before them.

"No protection against these catastrophic courses can be expected from the judiciary. The people must guard against these dangers at the polls."

I deplore the effort in the pending bill to promote what is claimed to be liberalism at the expense of constitutional government. Conservatives share the aims and ambitions of liberals to promote the

welfare of the individual but differ as to methods. The liberals of the 18th century have become the conservatives of the 20th century, endorsing the principle of constitutional government expressed by Thomas Jefferson when he said:

I consider the foundation of the Constitution as laid on this ground: That "all powers not delegated to the United States, by the Constitution, nor prohibited by it to the States, are reserved to the States or to the people."

Referring to the 10th amendment then pending before the States, Jefferson went on:

To take a single step beyond the boundaries thus specially drawn around the powers of Congress, is to take possession of a boundless field of power, no longer susceptible of any definition.

It seems that Jefferson felt that any broader interpretation would reduce the instrument to a single phase, that of instituting a Congress with a power to do whatever would be good for the United States; but as the Congress would be the sole judges of the good or evil, it would be a power to do whatever evil they please.

Let us, therefore, constantly keep in mind the principles on which our constitutional government has been based—the division of powers between State and Federal Governments, with final power reserved to the people and to the States, the division of powers between the three great departments of the Federal Government, and the basic principle underlying these constitutional arrangements—the conviction that the State is created by the people in order to serve the people's needs and in order to enable the people to achieve their maximum potential. If we keep these principles clearly in mind and judge all proposed policies and legislation, such as the pending civil rights bill, in the light of them, acting with discretion and restraint, our constitutional government will continue to make possible in the future, as it has in the past, the greatest freedom and the greatest possibility for development, of the individual for whose benefit constitional government is created.

We are disturbed by the threat to our freedom of the military power of the Soviet Union. We should be no less concerned by the threat to our cherished institutions by the growing number at home who believe progress will be promoted by the substitution of the welfare state for constitutional government. May our Nation never forget that in the same Bible, from which our Founding Fathers drew inspiration for the drafting of "the most wonderful work ever struck off at a given time by the brain and purpose of man," it is written:

Remove not the ancient landmark, which thy fathers have set.

The denial of the right of trial by jury in criminal contempt cases is not the only ancient landmark that the civil rights bill seeks to remove. There are other ancient landmarks, including the fifth amendment, which is a protection against a person having to testify against himself.

At a later date, I shall discuss some other phases of the bill which I think do harm and which would remove an ancient landmark.

Mr. SPARKMAN. Mr. President, will the Senator from Virginia yield?

Mr. ROBERTSON. I yield to the distinguished Senator from Alabama. When the Senator was not present, I praised the speech which he delivered last Friday, in which he made it clear that criminal contempt is a crime, and that when a man is placed in jail for criminal contempt, he is convicted of a crime, and that it could not be viewed otherwise.

I yield.

Mr. SPARKMAN. I thank the Senator for those kind words. In speaking of the removal of the ancient landmark, the Senator is correct when he says that there are rights other than the right of a trial by jury. Does not the Senator agree with me that perhaps the basic right of every American citizen is the right, which is guaranteed to him by the Constitution, of a trial by jury when he is accused of a crime?

Mr. ROBERTSON. Undoubtedly. It has come down to us through 700 years. The Senator from Virginia went to great length to call attention to the fact that in article VIII of the model Virginia Bill of Rights, framed by Mason, it was clearly set forth. The amendment was referred to by Thomas Jefferson very briefly. The Senator could not enumerate all of the details in the Declaration of Independence. It was placed in article III of the Constitution. It was then carried forward into article VI of the first 10 amendments.

Mr. SPARKMAN. The Senator has referred to the first 10 amendments, which constitute the Bill of Rights. They had to be agreed to tacitly before the States would vote for the Constitution itself. Is that correct?

Mr. ROBERTSON. There is no question about it. At least four States raised the question—Virginia, Carolina, New York, and one other State.

Mr. SPARKMAN. I believe Pennsylvania.

Mr. ROBERTSON. They all insisted that certain points must be cleared up. Among the points to be cleared up was the right of a trial by jury. There was also the issue of the limitation of the power of the Federal Government.

The bill seeks to expand—beyond any bill which has ever been considered—the powers of the Federal Government. It seeks to expand the powers in a way that was so hostile to our Colonial ancestors that they went to war over it.

It seeks to take away from the people the right of a trial by jury. It seeks to place new crimes before a Federal judge, who could put people in jail without a jury trial.

Mr. SPARKMAN. Is it not significant in the mind of the Senator from Virginia that in the 10 amendments the people insisted upon—which constitute the Bill of Rights—3 of those amendments were devoted to the right of trial by jury?

Mr. ROBERTSON. That is true. They even included the right of a trial by jury in a civil case.

Mr. SPARKMAN. Yes. The Constitution, when it refers in those amendments to the right of a trial by jury, does not read "in certain criminal cases." The language is "in all criminal cases." To me, that seems a point which should be emphasized. Does the Senator from Virginia agree?

Mr. ROBERTSON. That is the exact language.

Mr. SPARKMAN. In another place the language is "in all criminal prosecutions."

Mr. ROBERTSON. The original language was "all crimes."

Mr. SPARKMAN. That is correct. In one place it is "all crimes." In another place, it is, "in all criminal prosecutions."

Mr. ROBERTSON. That is correct.

Mr. SPARKMAN. Is it not provided that the trial, first of all, should be a jury trial; second, that the defendant should be confronted with witnesses who testify against him; that the defendant shall have the right of subpena in order to bring in his own witnesses; and that there be an open and public trial?

Has the Senator thought how many of those rights are disregarded in the proposals of the bill?

Mr. ROBERTSON. Practically all of them.

Mr. SPARKMAN. They are the provisions of the Constitution itself, including the amendments.

Mr. ROBERTSON. That is what our ancestors went to war for in 1776.

Mr. SPARKMAN. Yes. In the Declaration of Independence Thomas Jefferson stated that one of the main causes was that the king had taken away the right of a trial by jury, and had caused writs to be issued that would force the accused to be tried in an area outside his own home district.

Mr. ROBERTSON. What a misnomer it is to call the bill a bill of civil rights.

Mr. SPARKMAN. Are not the basic civil rights contained in the first 10 amendments to the Constitution?

Mr. ROBERTSON. That is correct. I stated before the Senator came to the Chamber that I could not think of any basic constitutional right that anyone could claim, regardless of race, color, religion, or condition of previous servitude, that is not now provided for in the Constitution and in State laws. It may be a little tedious to enforce them all. But they are there.

As I pointed out, and as the commentator on "Meet the Press" tried to point out last night the bill seeks to give to 10 percent of our population rights over and above the rights possessed by the other 90 percent. And one of those so-called rights is that when a nonwhite charges a white with discrimination, the right of a trial by jury is to be taken away from the white.

Mr. SPARKMAN. I thank the Senator from Virginia.

Mr. ROBERTSON. Mr. President, I yield the floor.

HOW THE CIVIL RIGHTS BILL WOULD AFFECT KANSAS

During the delivery of Mr. ROBERTSON's speech,

Mr. CARLSON. Mr. President, as the Senate continues to debate the civil rights bill, it must be evident to every Member that because of the gravity of the charges against the bill, and because

of its sweeping provisions, the bill deserves and will receive a most thorough analysis before final action. The bill is probably the most significant proposal to be considered by the Congress in this generation.

It is difficult to legislate in the field of civil rights because of the emotional nature of the issues involved. The views on this proposed bill—by both proponents and opponents—are extreme. Many of the citizens who write me from Kansas are either adamantly for or against the bill, although they have never read it. To them I say the bill is not as bad as its enemies claim, nor would it produce the benefits which the proponents anticipate.

My own State of Kansas has had nondiscrimination laws on its statutes since 1894. The penalty provisions for enforcement of these laws are even stronger in Kansas than in the pending legislation, because they have been made a part of our criminal code.

We in Kansas have always supported the principles of civil rights. These rights are provided by the Constitution. They are not new. I support the principles in the pending bill, but I shall support some amendments that I believe are necessary to secure a constitutional and effective civil rights bill. In the final analysis, governmental coercion through legislation will not of itself bring an end to discrimination and insure equality of treatment to every citizen. The end of discrimination and inequality of treatment among our citizens will come only when all of us are willing to lay aside bigotry and prejudice and give full credence to the Golden Rule.

In view of the intense interest in Kansas in the pending civil rights legislation, I asked outstanding legal authorities to give me a factual analysis of how the civil rights bill would affect Kansas when it is enacted into law. This analysis deals with every title of the bill, including voting, public accommodations, Government facilities, public schools, Civil Rights Commission, Federal financial assistance, employment, and other provisions of the bill.

I urge everyone interested in the effect of the pending legislation to read and study the summary statement.

I ask unanimous consent that the analysis of the effect of the civil rights legislation in Kansas be made a part of my remarks.

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

EFFECTS OF CIVIL RIGHTS BILL IN KANSAS

The Civil Rights Act of 1964 was passed by the House of Representatives on February 10, 1964, by an overwhelmingly bipartisan vote of 290 to 130. It is now pending in the Senate. The bill contains 11 titles designed to remedy inadequacies of existing law in the field of civil rights and to provide appropriate, effective, and necessary solutions to pressing problems.

The bill seeks to protect every American's freedom to vote, to go to public schools, to use public parks, libraries, and playgrounds, to make a decent living, and to be served in public places, without regard to the color of his skin, his religion, or his national origin. It will provide legal means for resolving the just grievances of Negroes and other minorities and will aid in settling disputes that have caused tension, bitterness, and outbreaks of violence throughout the Nation. It will help to end unconstitutional and immoral injustices that have been tolerated far too long.

Because Kansas has both a public accommodations law and a fair employment practices law, as well as a statutory prohibition against discrimination in the schools, the bill will have little effect in Kansas.

Here is a summary of what each of the 11 parts or titles of the bill would do in the State of Kansas:

VOTING

Title I: This title deals with voting rights. It eliminates opportunities for the application of racially discriminatory practices in voting and would expedite voting rights cases.

Effect: Since there is no known restriction on voting in the State because of race, religion, or national origin, title I would have no meaningful application in Kansas.

PUBLIC ACCOMMODATIONS

Title II: This provision would ban discrimination or segregation on grounds of race, color, religion, and national origin, in designated places of public accommodation if the operations of such places affect commerce or if the discrimination or segregation is supported by State action. This title would be enforced by civil suits for injunctive relief; neither criminal penalties nor recovery of damages is provided.

The establishments covered by title II are hotels, motels, restaurants, lunch counters, gasoline stations, sports arenas, movie theaters, concert halls, and the like. Most retail stores, professional and service establishments, bars, barber shops, beauty parlors, funeral homes, bowling alleys, and similar places are excluded from coverage, as are all private clubs.

Effect: Since discrimination in public accommodations is already barred under State law, title II would create practically no new rights or duties in Kansas. In fact, the Kansas law is probably broader than the proposed Federal statute. The Kansas statute prohibits discrimination on the basis of race, color, religion, national origin, or ancestry in hotels, restaurants, public conveyances, and any places of public amusement or entertainment which are required to have a State or local license. In addition, the State law, unlike title II, imposes criminal penalties by making violation of the statute a misdemeanor.

Enactment of the Federal provision would in no way impair existing rights and duties under Kansas law.

GOVERNMENT FACILITIES

Title III: This portion of the bill covers public facilities (other than public schools) owned or operated by State or local government units. First, it authorizes the Attorney General to bring suit, when private parties cannot, to desegregate Government facilities which are operated on a discriminatory basis. In addition, it permits the Attorney General to intervene in private suits in the Federal courts seeking relief from unconstitutional actions of officials who discriminate on grounds of race, color, religion, or national origin.

In many areas, Negroes are excluded from public parks, libraries, golf courses, and other State or municipal facilities paid for or operated with tax dollars collected from all citizens without regard to race, color, or religion. Enactment of title III would aid in ending these practices, which are clearly unconstitutional under present law. It would, however, create no new rights or duties.

Effect: Title III would probably have no significant application in Kansas since there are no known instances in which use of publicly owned or operated facilities has been denied because of race, color, or religion.

PUBLIC SCHOOLS

Title IV: This title seeks to aid in elimination of unconstitutional racial segregation in public schools. It would provide for Federal technical and financial assistance to local authorities who are trying to comply with constitutional obligations to desegregate. The assistance given would be wholly voluntary and the administering agency could not require local school officials to do anything they didn't want to do.

Title IV would also authorize the Attorney General to bring school desegregation suits where the parents or students involved are unable to do so. The authority to bring suit would be limited to enforcing constitutional requirements.

Title IV would give no power to deal with de facto segregation resulting from neighborhood living patterns or to require or finance busing of children in order to overcome such de facto segregation or racial imbalance in schools. Similarly, there would be no power to control local education practices.

Effect: Since Kansas law already makes it a misdemeanor for schools to discriminate on the basis of race, creed, or national origin, title IV would seem to have no application in Kansas.

CIVIL RIGHTS COMMISSION

Title V: This part of the bill would renew the life of the Commission on Civil Rights for 4 years and give it new authority to serve as a national clearinghouse for information on denials of civil rights and to investigate charges of fraud or discrimination in Federal elections.

Effect: The Commission has no enforcement functions and is limited to collecting and disseminating information. Thus, title V would have no specific application within the State.

FEDERAL FINANCIAL ASSISTANCE

Title VI: This provision declares a policy of nondiscrimination in programs or activities receiving Federal financial assistance. It directs appropriate Federal agencies to take action to see that the benefits of Federal funds to which taxpayers of all races contribute are not denied because of race, color, or national origin. Termination of assistance is allowed as a last resort, only when all else fails and local officials resist voluntary approaches and insist on continuing to discriminate against Negroes in giving federally financed benefits. All actions under this title are made subject to detailed and extensive protective limitations designed to prevent any abuse. Implementing regulations must be specifically approved by the President and, before any aid may be terminated, full notice must be given the Congress. Final review authority would rest in the courts.

Social security and veterans pensions would not be affected by title VI; neither would FHA and VA mortgage insurance or guarantee programs or Federal insurance of bank and savings and loan deposits. Agricultural subsidies and other farm benefits would not be subject to termination because of discriminatory employment practices by farmers. Aid could not be terminated in one program because of discrimination in another—thus, for example, highway aid could not be ended because of school segregation. Similarly, aid could not be ended in an entire State, simply because of discrimination by officials in one town within the State.

Effect: Since title VI is aimed mainly at discriminatory administration of Federal assistance programs by State and local officials, it is expected to have little effect in Kansas. State policy, as expressed by statute, is against discrimination in public works,

of State and local governments. By law, a nondiscrimination clause must be included in all such public contracts. In light of this State policy, it is doubtful that Kansas practices any form of discrimination covered by title VI.

EMPLOYMENT

Title VII: This title seeks to eliminate discrimination in employment on account of race, color, religion, national origin, or sex. It covers discrimination by employers, employment agencies, and labor unions in industries affecting interstate commerce. The title establishes a Federal Equal Employment Opportunity Commission. The Federal Commission would have no authority to issue orders and would be limited to seeking voluntary compliance. Should voluntary efforts fail, the Commission could bring suit in the Federal courts and would have the burden of proving discrimination. Individual suits could be brought only if the Commission failed to sue and, even then, only if one member of the Commission gave his written consent. There would be no authority to require quota hiring to achieve racial balance or to order firing of whites to create jobs for Negroes. Union seniority would not be affected and employers would remain wholly free to hire or fire on the basis of job qualifications.

Effect: Since Kansas already has a fair employment law barring discrimination on account of race, color, religion, national origin, or ancestry, title VII would have little impact in the State. The Kansas law is broader than the proposed Federal law in that it covers all agencies of the State and local government, employment agencies, unions, and employers of eight or more persons. The act is administered by the Kansas Commission on Civil Rights which is authorized to investigate complaints, to offer conciliation, to hold hearings, to issue cease and desist orders, and to fashion positive relief orders, such as reinstatement with back pay. In addition, the commission is to conduct an educational program on civil rights in the Kansas schools.

In view of the extensive coverage of the Kansas law, it is doubtful that title VII would have any significant impact in the State. Since the Federal law would cover discrimination based on sex, an area not covered by Kansas law, there may be some application of title VII in this area. However, there is no available evidence to indicate that sex discrimination in employment presents any problem in Kansas.

Title VII preserves the rights and duties of individuals under State fair employment laws such as Kansas, and specifically directs the Federal Commission to seek written agreements with State fair employment agencies whereby neither the Commission nor any private party could bring an action under title VII as long as the State agency was effectively exercising its power to eliminate and prohibit discrimination covered by title VII. Thus, it is to be expected that discrimination in employment would be handled by State officials under the State law and that title VII will have but little effect within Kansas.

OTHER PROVISIONS

The remaining titles of the bill, titles VIII through XI, deal with procedural, technical, and other matters and would have no significant consequences in Kansas.

TITLE VIII

This title directs the Secretary of Commerce to conduct a survey to compile registration and voting statistics by race, color, and national origin.

TITLE IX

This is a technical provision, amending existing law to provide for appeal from orders of remand in civil rights cases removed from State courts to Federal courts.

TITLE X

This title would establish a Community Relations Service in the Department of Commerce. The Service would be authorized to help in the resolution of racial disputes on a voluntary basis and to cooperate with State and local agencies. The Service would seek to conciliate disputes relating to racially discriminatory practices "which impair the rights of persons in such communities under the Constitution or laws of the United States or which affect or may affect interstate commerce." The Service would have no powers of compulsion or law enforcement functions and would treat as confidential any information it received.

TITLE XI

The final title of the bill contains four sections dealing with technical matters. The first preserves existing authority of the Attorney General. The second preserves consistent State laws. The third authorizes the appropriation of funds necessary to carry out the provisions of the act. The final section stipulates, as is usual in comprehensive statutes, that the invalidity of any portion of the act shall not affect the validity of the remainder.

Because many false and misleading claims have been made about the bill, it is most important to note what it does and does not do.

The bill does not affect homes or apartments.

The bill does not take away anyone's right to jury trial. To the extent it deals with jury trial at all, the bill gives a right to jury trial where it would not otherwise exist.

The bill does not tell businessmen that they must serve, or hire or fire any particular individual; retailers remain wholly free to refuse to serve the drunk, the disorderly, the unkempt, etc., and employers remain wholly free to hire, fire, and promote on the basis of ability and qualifications. All that is prohibited is discrimination on grounds of race, religion, or national origin.

The bill does not cover all retailers. It applies only to certain designated places—hotels, motels, restaurants, lunch counters, gasoline stations, movie theaters, concert halls, and the like—all public commercial establishments which are established to serve, and invite the patronage of, the general public.

The bill does not cover private clubs, professions, or service establishments.

The bill does not create any hiring quotas.

The bill does not affect union seniority.

The bill does not require the firing of whites in order to hire Negroes.

The bill does not affect social security or veterans' pensions or bank deposit insurance.

The bill does not permit massive or wholesale cutoffs of Federal assistance.

The bill does not give the Attorney General any unusual powers; he is authorized merely to sue in the Federal courts to enforce constitutional and other basic rights.

The bill does not give great powers to the Federal Government—in every instance, first reliance is placed on State and local authorities to deal with illegal discriminatory practices.

In short, all the bill actually does do, even in areas in which discrimination is most prevalent, is to try to assure for all of our citizens the rights and opportunities which most of us take for granted.

Mr. ROBERTSON. 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. 211 Leg.]

Bayh	Burdick	Clark
Beall	Carlson	Cooper
Boggs	Case	Dodd
Douglas	Long, La.	Pearson
Ellender	Mansfield	Prouty
Ervin	McCarthy	Proxmire
Fong	McClellan	Ribicoff
Gruening	McGovern	Robertson
Hickenlooper	McIntyre	Russell
Hill	McNamara	Saltonstall
Humphrey	Metcalf	Smith
Inouye	Miller	Sparkman
Jackson	Monroney	Talmadge
Johnston	Morse	Walters
Jordan, Idaho	Morton	Williams, N.J.
Keating	Mundt	Williams, Del.
Kennedy	Nelson	Yarborough
Lausche	Neuberger	Young, Ohio
Long, Mo.	Pastore	

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

Mr. McCLELLAN. Mr. President——

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. McCLELLAN. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. McCLELLAN. Has the time for germane discussions expired?

The PRESIDING OFFICER. It has.

Mr. McCLELLAN. I thank the Chair.

Mr. President, on last Tuesday, I devoted several hours to preliminary remarks on the history, development, and importance of trial by jury. In the course of those remarks, I made special reference to the role of the jury trial in the early days of our Nation.

Today, I shall discuss the views of the leading judges, lawyers, statesmen and scholars as expressed by them during the past 200 years, regarding the subject matter that is at issue today in the Senate.

Much of this material is contained in the valuable and informative volume entitled, "Civil Justice and the Jury," written by Charles W. Joiner, associate dean of the University of Michigan Law School.

Dean Joiner, who is a scholar of unusual capability, is also a member of the Advisory Committee on Civil Rules to the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, chairman of the Special Committee on Uniform Rules of Evidence for Federal Courts of the American Bar Association, chairman of the State Bar Commission of Michigan, the Committee of Civil Procedure, and the Joint Committee on Michigan Procedural Revision.

Mr. President, with that background, it is not only appropriate, but also informative and instructive to Senators to review this excellent book, written by Dean Joiner. He has written other books, including "Introduction to Civil Procedure," published in 1949, "Jurisdiction and Judgment," in 1963, and "Trials and Appeals," in 1957.

His latest book, the volume to which I have referred, "Civil Justice and the Jury," which was published in 1962 under the auspices of and in collaboration with the International Academy of Trial Lawyers, carries a foreword by the Chief Justice of the United States, Earl Warren, and a preface by Mr. Edison L. Haines, chairman of the Continuing Education Committee of the International Academy of Trial Lawyers.

At the very outset I thus indicate to my colleagues in the Senate, and for the record, that I shall not be quoting from an unrecognized author, but, rather, from one who has attracted the attention of the Chief Justice of the Supreme Court, who thought enough of the book and its contents to write a foreword to it.

Mr. President, in citing and reviewing the previous profound observations, opinions, and utterances of some of our distinguished jurists, students of our legal system, and legal historians, I believe it is most important and necessary to make complete the record of this historic debate. In my judgment, this is a historic debate, not only on the bill as a whole and on the separate titles of it, but on the one issue now pending before the Senate, the jury trial issue.

The past few days have been occupied with debate and discussion by many Senators with respect to the right—I emphasize that—the right of a trial by jury.

Tragically, a few days ago, by a margin of one vote, the Senate ill-advisedly sanctioned the bill as now written, which would deny to an accused in a criminal contempt proceeding the right to trial by jury.

As we consider further this afternoon the immediate issue before the Senate, I should like to have Senators keep in mind the right—not the guarantee to trial by jury, but the right—the right of whom? The right of the accused—to have a trial by jury.

Mr. President, notwithstanding the fact that the hour of germaneness has expired, as I am advised by the Chair, and I could discuss almost any subject and still be within my rights on the floor of the Senate and under the rules of the Senate, I do not propose to discuss anything this afternoon except the pending bill.

For the next 2 or 3 hours I propose to discuss only the jury trial issue which is the pending issue before the Senate.

Everything I shall cite, quote, or discuss will be pertinent and germane to the immediate issue which the Senate is now considering—the right of trial by jury.

After I have spoken on this issue for 2 hours or longer, I may then, if I elect to do so, discuss some other aspects of the bill.

The jury issue is one of the most far-reaching, revolutionary proposals that the bill contains. If I did not think so, I would not dwell upon it at such length. By the narrow margin of one vote the Senate, a few days ago, failed to adopt an adequate jury trial amendment. Before that action of the Senate becomes final and irrevocable, so far as the pending proposed legislation is involved; and before this body reaches the point where it will have no further opportunity to do anything about it, I believe we should continue to discuss it. I shall do so in the hope that, perchance, there may be one or two Senators among us who had some doubt about their position when they voted a few days ago, who will yet see the light and recognize what denying the right of trial by jury, as guaranteed by the Constitution, may ultimately lead to, and what some of the evil consequences of it may be.

I shall read some of the most profound announcements in American history, and also in English history, on the right of trial by jury. But before I begin my discussion of the materials contained in Dean Joiner's volume, to which I have referred with some emphasis already, I desire to quote from the Annals of the American Academy of Political and Social Science of May 1953, an article written by Hon. Curtis Bok, for many years president judge of the court of common pleas, No. 6, of Philadelphia County, Pa. That is a trial court. According to the information I have, Judge Bok passed away a few years ago.

Mr. CLARK. Mr. President, will the Senator yield for a brief observation?

Mr. McCLELLAN. Yes; I am happy to yield to the Senator from Pennsylvania, upon the conditions of the unanimous consent order previously entered.

Mr. CLARK. Judge Bok was a law partner of mine from 1934 until 1936, when he was elected as a Democrat to the court of common pleas, No. 6, in Philadelphia County. He was the first Democrat elected to that office in this century. He was reelected and served as presiding judge of that court. He then ran successfully and was elected to a 21-year term on the Supreme Court of Pennsylvania. Unfortunately, before his term expired, he died of a heart attack. He was a close and dear friend of mine, and was one of the most eminent jurists in my State.

Mr. McCLELLAN. I thank the distinguished Senator from Pennsylvania. I did not have this background on the distinguished jurist from whom I am about to quote. What the Senator from Pennsylvania has said adds prestige and power, in my judgment, to the remarks which I shall now quote. They are found at page 95 of the publication to which I have referred. I wish every Member of the Senate could hear this statement. The title of the paragraph is: "The Right to Trial by Jury." Judge Bok said:

> The point lies in the constitutional guarantee of the right to trial by jury. It is the right, and not trial by jury, that is guaranteed.

Everybody is not guaranteed a trial by jury. What is guaranteed is the right of the accused to have it. It is the right to ask for it and the right to have it granted. That is the issue before the Senate.

The bill as now written disregards that right. It makes no special provisions for that right to be observed, respected, and granted upon the request of the accused. Therefore, what the Senate is dealing with at this time on this issue is the violation of a right guaranteed by the Constitution, a right of the accused to have a trial by jury.

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

Mr. McCLELLAN. I yield.

Mr. HILL. Is it not true that the bill not only makes no provision for the accused to have the right of trial by jury, but that in its provisions it takes away from the accused the right to have a trial by jury?

Mr. McCLELLAN. It is the intention of the proponents of the bill to take away that right.

Mr. HILL. To deny the accused his right.

Mr. McCLELLAN. To deny the accused his right. A few days ago, the Senate, voted, 46 to 45, to deny the accused that right. It is still not too late to correct that error. If we do not correct it while there is yet time, we shall make a second mistake that will confuse the first. The tragedy is that without such a provision, the bill will become the law of the land, insofar as Congress can deal with a constitutional provision by legislative act. That is what it amounts to. I hope Congress will not do so.

Judge Bok further wrote:

> Had trial by jury been guaranteed, we could easily get rid of it, and probably would have done so long since. It would be crippling if every trial had to be before a jury, since the march of progress has shown many kinds of disputes to be too complex and difficult to be solved by an assortment of the neighbors, and has created many other kinds that are solved apart from the legal system entirely.

At that point, Judge Bok was writing primarily about the right of trial by jury when the amount involved was $20.01 or more. Of course, if every civil case involving many considerations or values had to be tried by jury, no doubt we would long since, as he indicates, have made some provision to remedy a condition that might have developed under such a constitutional provision. Then Judge Bok said:

> The public seems willing to experiment with different ways of settling litigation, as long as it has the right to use the old one when it feels the need.

What is the "old one"? The old one is the right.

The public is willing to make arrangements about waiving trial by jury and to experiment in other ways to avoid burdening court dockets and the courts by having all trials before juries.

But, he says, the public seems willing to experiment with different ways of settling litigation so long as it has the right to use the old one when it fears it is needed. And he is the one who feels the need.

It is not necessarily the court. The court could say many times that it could pass on it, or a three-judge court could pass on it, as some statutes provide. But it is not left up to the court in the Constitution. It is a right. It is a right to whom? It is a right to him who is accused. In the Constitution the court is not given discretion to grant or not to grant it. The accused has a right to have it.

I quote further:

> It felt the need very urgently during the days of prohibition, when the neighbors rather than the judges could be counted on to acquit, even in the face of the tightest evidence.

We say that that is not what we want. We do not want any acquittals in the face of the tightest evidence. Is that what is motivating the insistence upon

denying the right of a trial by jury? As this learned judge said:

It is the existence of the right to a trial by jury that makes possible experiments with other methods.

Without that right being preserved, it might be very difficult to get the opportunity to experiment as we now have the opportunity to do.

That is only one of many authorities whose remarks I shall cite on this issue. But I doubt if there has been any change in the situation with respect to our courts and the trial of criminal issues since the learned judge wrote these statements.

I doubt that there have been any changes since, up to this hour, that would have prompted him to modify or change in any way, or temporarily withdraw the emphatic statement that he makes about the right of a trial by jury.

I quote from the work of one recognized as one of America's greatest legal scholars, Judge John F. Dillon, Storrs professor of law at Yale University in 1891 and 1892.

When we quote these learned jurists of other generations, there are those who may contend, "That is all outmoded. We have a different social order today. We have made great progress. Therefore, the views of those great men of that time are now antiquated and outmoded. They do not fit the needs of modern society today. Their logic and the principles that they espoused do not enable us to deal with the social and economic problems of our time. Therefore, it is necessary to disregard them and modify or amend them according to our own thinking, so as to make them serve our purposes today."

Judge Dillon, during those years, delivered a series of lectures at Yale University which were published in 1894 under the title, "The Laws and Jurisprudence of England and America," in which work he makes some very pertinent observations concerning trial by jury.

This gentleman is the same Judge Dillon who had previously served as chief justice of the Supreme Court of Iowa, circuit judge of the United States for the eighth judicial circuit, and who was also the author of one of the great definitive volumes entitled, "Commentaries on the Law of Municipal Corporations," popularly referred to as "Dillon on Municipal Corporations."

I shall quote from the book entitled "The Laws and Jurisprudence of England and America," a book of which he was the author. I begin my quotations on page 120, under the title of "Trial By Jury":

I am not able to state how the trial by jury is regarded in its practical workings at the present time—

And, that was 70 years ago—

I am not able to state how the trial by jury is regarded in its practical workings at the present time by the lawyers, the judges, and the public, in England, or whether it there maintains its ancient popularity. Probably it does; for there judges of ability and experience preside in the courts and have not been shorn of their power so to control the course of trails as to prevent unjust verdicts or the miscarriage of justice. But in this country, I think it is not too much to say that its favor in civil causes has much declined.

I quote further:

Many of our best lawyers, of the largest experience, in their lighter moods openly ridicule it, and in their more serious moods, openly denounce it. This state of opinion is deeply to be regretted; for no institution can long survive its usefulness, or flourish, when it ceases to cling about the popular heart and to draw life from the popular favor.

I emphasize that he is talking about jury trials in civil causes, not criminal.

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

Mr. McCLELLAN. I yield to the distinguished Senator from Louisiana, under the previous unanimous consent order.

Mr. LONG of Louisiana. Does not the Senator recognize that there is a great distinction between the jury function in a criminal case and the jury function in a civil case? Would it not be fair to say that in a great number of civil cases the judge is more appropriately qualified to decide the case than would a judge deciding upon the innocence or guilt of someone accused of crime?

Mr. McCLELLAN. That could well be true; and it has been so recognized. The burden which would be imposed on a court in requiring that all civil cases be heard by a jury would be so great that we have devised, as I pointed out in an earlier quotation, ways and means to lighten that burden of the court and to make it possible to have litigation resolved without a jury trial in civil cases. But under the bill we are not discussing a civil action. We are talking about criminal contempt. The word "crime" carries with it the connotation of the infliction of punishment upon a defendant if he is convicted of the offense charged. Certainly we have not abandoned the right of trial by jury for people who could be imprisoned upon conviction of a law violation. That is the real issue.

Mr. LONG of Louisiana. Is it not fair to say that in civil cases, usually two people are engaged in a controversy over some amount of money or some thing of value, the controversy being whether one is indebted to the other; and usually money damages or a piece of property is sought—but not the criminal kind of case about which we must worry as to the possibility of tyranny on the part of Government, because in cases of that sort the defendant is subject to the loss of his liberty?

Mr. McCLELLAN. I do not believe there is any question about that. In the bill we are not dealing with money considerations; we are dealing with freedom, personal liberty, the individual's right to remain free. We are dealing with the power of Government to incarcerate a person. That is the burden of the whole problem. The man who is subjected to trial on an accusation against him, may, if he is found guilty, be incarcerated; his liberty may be taken from him for a time, and in effect he is branded as a criminal. Yet he would be denied a right which the Constitution guarantees to him—the right to trial by jury. He could waive that right, but under the Constitution, the framers of our Constitution never intended that proposed legislation should be passed to abrogate that right. That is what it is now proposed to do.

Judge Dillon said:

I have given some thought and reflection to this subject, but have only time, on the present occasion, to state shortly the conclusions reached—

He refers to some complaints and some ridicule of trial lawyers—civil lawyers—with respect to this constitutional provision, but then he reaches conclusions of his own, which he records.

I shall not read all of them, but I should like to read one or two. Judge Dillon said:

I consider the trial by jury an essential part of our judicial system. It is a cherished tradition. It is more. Its roots strike down deep into the experience, the life, and the nature of the people who have developed and perfected it. It gives an individuality to our legal system. It is a vital part of it. Its shortcomings are not inherent. If judges will do their full duty, jurors will do theirs. I have tried literally thousands of cases with juries, and the instances are few where I had reason to be dissatisfied with their verdicts.

I recall with interest the views of the late Mr. Justice Miller and the change of opinion on his part on the subject of trial by jury. His opinions are of value, for by general consent he ranks among the ablest judges who have ever held a seat on the bench in this or in any country. He said to me at one time that his notion of an ideal trial court was a court composed of three judges to try all civil issues of law or fact. Some years afterwards, as the result of more observation and experience, he told me he had changed his views, and that he thought juries better judges of fact than judges. We have to lament the recent death of this great magistrate; but not long before that event he wrote a paper on "The System of Trial by Jury," in which he expressed his deliberate and final appreciation of the worth and value of trial by jury. It is a cherished right. It is protected from legislative overthrow by the National and by all of our State constitutions.

I hope that statement will prove true in the enactment of the bill. I hope that the right will be protected, that we shall recognize that it is protected, and that we have not the power. The power has not been granted to the Congress of the United States to overthrow and abrogate that right. That is not merely my opinion of which I am speaking now, though I share it; I endorse it; I approve it; I express it. Those were the words of more learned men in the profession than I.

He said further:

It is a historical and essential part of the free institutions of England.

If that be true, how much more is it a historical and essential part of the free institutions of the United States? There was long debate on this question by the framers of our Constitution. As I pointed out in my remarks a few days ago, our Constitution probably would not have been adopted except for the fact that those who fought for it were able to obtain a guarantee of right of trial by jury.

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

Mr. McCLELLAN. I shall yield in a moment.

He said, as I said, but he said further:

It equally belongs to our own free institutions. It springs out of them, and tends to support and perpetuate them.

What we are about to do today is to remove one of the pillars and towers of strength that perpetuates the freedom and liberty of the American people.

I now yield to the distinguished Senator from Louisiana on the conditions of the previous consent order.

Mr. LONG of Louisiana. Is there any doubt in the Senator's mind that had the framers of the Constitution foreseen certain efforts by various groups in the Department of Justice or any other department of this Government to make it easy to obtain convictions by bypassing a man's right of trial by jury, and using a judge as a vehicle to enforce the law by issuing court orders and finding defendants in contempt of such orders, they would have provided in the Constitution that this type of procedure could not be used?

Mr. McCLELLAN. The Senator is correct.

I should like to read from Francis X. Busch, "Law and Tactics in Jury Trials," contained in the book by Dean Joiner, to whom I referred earlier. He said:

The draft of the Federal Constitution, as submitted to the various State legislatures for approval, contained but one section (art. III, sec. 2, clause 3) relating to juries. That section provided: "The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crime shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed."

It is stated in the book that there was no provision in the draft for a grand jury or for jury trials in civil cases. Under "Opposition to the Submitted Draft," the author states:

These omissions precipitated one of the bitterest attacks that was made upon the draft. Thomas Jefferson and Patrick Henry were prominent in the opposition. Jefferson's criticism was general, i.e., that the draft contained no "bill of rights." He repeatedly stressed the inadequacy of the document as respected trial by jury.

Since Jefferson is regarded as the father of the Democratic Party, it makes me shudder to think that modern Democrats now, in a matter so vital to the life and liberty of the citizens of this Nation, would repudiate the declarations of principles entertained with the deep convictions expressed by men like Jefferson. I continue to read:

In a letter to Madison (Jefferson) proposed an amendment providing for "trial by juries in matters of fact triable by the law of the land." Jefferson continued his opposition to the Constitution until it was adopted by Massachusetts with definite instructions to her delegates in Congress to insist upon the Bill of Rights (the first 10 amendments) which had then been drafted. Justice Story, writing at a later period, expressed the universal sentiment of the colonies: "It (the seventh amendment) is a most important and valuable amendment and places upon the high ground of constitutional right the inestimable right of trial by jury in civil cases—a privilege scarcely inferior to that in criminal cases, which is conceded by all to be essential to political and civil liberty."

If it is conceded by all in criminal cases, why is it not conceded and admitted by all today? Is there some element of expediency involved, that is a driving force toward the abrogation of this right?

I say to Senators that the end does not justify those means, however sincere, however devoted, however deep the conviction that this bill ought to be passed, and that its general objectives ought to be achieved. This attack and assault upon a basic, fundamental part of our liberties, and one of the most cherished rights guaranteed to our people, is unwarranted.

Judge Dillon further stated:

It is my firm conviction that the love of liberty—of liberty regulated by law—and a general and habitual reverence for and obedience to the Constitution and the laws, are the only ties which can surely hold together our vast Republic.

We sometimes use the term "eroding away of our liberties and the fundamental principles upon which our liberties rest." This is what Judge Dillon said:

A general and habitual reverence for and obedience to the Constitution and the laws, are the only ties which can surely hold together our vast Republic.

We are tampering with something sacred. This tampering could do injury that could not be easily repaired. If we tamper in one place, it creates a temptation to tamper in others, and such tampering will occur. It is best not to begin to try to override and abrogate express provisions of the Constitution.

Judge Dillon further said:

These are the sources of our greatness and the foundation of our hopes. Let us never forget the truth so nobly expressed by Burke: "Justice is itself the great standing policy of civil society; and any eminent departure from it, under any circumstances, lies under the suspicion of being no policy at all."

This is what Judge Dillon said about criminal cases; and I invite careful attention to this statement on the part of those who may read the RECORD. Again I remind our colleagues that we are making a record on this issue for history and for posterity. We can write a good record by respecting the Constitution and by protecting its provisions. If we do not reverse the trend of this body, we shall write an evil record and a record of wreckage and a record of destruction.

Reading again:

Let us never forget the truth so nobly expressed by Burke.

Then he said:

In criminal cases, there is no substitute for the jury that would be acceptable to the profession or endured by the people.

I do not know that I have any wisdom that would warrant trying to predict what will happen if we deny this right to a trial by jury, as the bill proposes. I am not sure that the people would long endure this imposition upon them. It would be hoped that they would find some way to obtain relief from such a burden and such an imposition by resort to the courts.

I have one lingering hope left that even, if the Senate places its sanction upon a denial of the right to trial by jury, if this body does again, as it did a few days ago by the narrow vote of 1 majority; and undertakes to abrogate this constitutional right, when the issue next goes before the Supreme Court, one judge will have a change of heart and rectify the mistake the Court made when it held—by the margin of one vote—that a defendant is not entitled to a jury trial in a criminal contempt proceeding.

Judge Dillon stated further:

In the solemn act of passing upon the guilt of those charged with offenses against the public, the jury represent the majesty of the people as a whole; and when acting under the guidance of a capable judge their verdicts are almost always right.

Mr. President, there is one phrase in that quotation which I like. It has a noble ring:

The jury represents the majesty of the people as a whole.

The majesty of the people.

This is a people's government, wherein rights and powers repose in the people themselves. Those rights were granted to them by express provisions written into the Constitution. One of those rights was retained by the people, the right of trial by jury.

Yes; "the jury represents the majesty of the people as a whole."

Mr. President, Judge Dillon further stated:

In the occasional cases where the offender has been almost more sinned against than sinning, but which cannot be anticipated or expected from the criminal code, and where the offender is consequently technically guilty and a judge would feel bound so to decide, the jury administer an irregular equity, not capable of being defined and formulated, nor of a nature to be expressly sanctioned by the lawgiver, but which satisfies the judgment and conscience of the community without overturning the criminal statute which still stands intact.

Mr. President, he who would reform or revise that procedure, to deny or prevent such verdicts from being made, would not add strength to our system of judicial restraint and justice.

I referred to Thomas Jefferson a moment ago and quoted some of his remarks. This is from the book "Democracy," edited by S. K. Padover. Thomas Jefferson said:

Trial by jury acts as the only anchor ever yet imagined by man by which a government can be held to the principles of its constitution.

Are we going to do away with that anchor? I hope we are not.

Mr. HILL. Mr. President, will the Senator from Arkansas yield?

Mr. McCLELLAN. I am glad to yield to the Senator from Alabama under the same conditions as before.

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

Mr. HILL. In connection with the thought the Senator just quoted from Thomas Jefferson, did not Thomas Jefferson also say:

Trust no man. Bind all men by the chains of the Constitution.

Mr. McCLELLAN. The Senator is correct. The question arises, Has the Constitution bound all men? It is so intended. Its words bind them. Its spirit binds them. But will the action of men on this issue now conform to the letter and the spirit of that Constitution? Shall we seek to strive for some avenue of evasion? Is that what we are doing?

Mr. President, we cannot do such a thing. We cannot do it in one instance without inviting it in others. If it has become intellectually smart, or a form of modern wisdom and intellectualism, to find ways and means to circumvent, abrogate, abandon, and disregard the plain letter and spirit of the Constitution, and if we have reached that stage in the Halls of Congress and in the chambers and on the benches of our judicial system, tragedy is not far down the road.

I should like to read what Chief Justice Warren said in his foreword about the book from which I am quoting, written by Charles W. Joiner. I am not reading what some crackpot has written. These are not the ideas of inferior, less-known, inexperienced members of the American bar. These are the leading lights. This is what Chief Justice Warren said:

> The men and women who are called upon to serve in juries in both our Federal and State courts have maintained a standard of fairness and excellence throughout the history of our country. They have demonstrated a vision and a will toward the administration of justice that is a wellspring of inspiration.

If that be true, what prompts us now to try to do away with it in cases that may arise out of the proposed legislation? There is no sound reason for it. There may be a motive, but there is no sound or logical reason for doing it, and no just reason, in my judgment, for doing it.

The Chief Justice continues:

> It is, therefore, with confident anticipation of their continued service as jurors, and with the highest respect for our jury system, that I welcome this further analysis and study of the history and operation of the civil jury in our country.

That, in my judgment, is a very good endorsement of the book.

Mr. Edison L. Haines, chairman of the Continuing Education Committee of the International Academy of Trial Lawyers, wrote the preface for Dean Joiner's book. He said this in his closing paragraph:

> If the civil jury is to survive, it will be because of the faith of the American citizen in a system of justice that brings his independent fellow citizens into the resolution of his disputes.

Mr. President, we may improvise on that, and we may, by statute, in violation of the Constitution, in my judgment, vest that power to resolve these disputes in three judges or in one or more judges, but we shall not be improving the system; we shall be impairing it.

In the introduction of his book, Dean Joiner said:

> The jury is one of our oldest and most deeply rooted institutions. To many it is the most revered of all. Like legislative government and the court system, the jury is protected in most constitutions and antedates all of these constitutions by centuries.

The jury system is not something new. It is one of the stalwarts of our liberties.

Dean Joiner says:

> It has been eulogized by judges and lawyers in terms more glowing than have been applied to any other institution; yet in the 20th century it is under severe attack from many sources.

I regret that in the Senate today this great institution of ours is under attack by men who have taken an oath to defend and preserve it.

I quote from the last two sentences of the introduction of Dean Joiner's book:

> This book, then, is first a critique of the jury today, and second, a collection of thoughtful statements about various aspects of the jury made by observers during the past 200 years. It is not, nor does it purport to be, based on new research or new facts. Its purpose is limited: To help laymen understand and think about issues involving the jury—issues with which they may soon have to grapple.

Mr. President, today Congress is grappling with them. The book was published in 1962, a little less than 2 years ago.

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

Mr. McCLELLAN. I am glad to yield to the distinguished Senator from Alabama upon the conditions of the previous unanimous-consent order.

Mr. HILL. The distinguished Senator from Arkansas has made such an able speech on the right of trial by jury that I hesitate to interrupt him. But he has quoted some fine, compelling authorities in behalf of the right of trial by jury. I have one before me, written by Ronald L. Goldfarb, of the Department of Justice. Mr. Goldfarb is the author of a book entitled "The Contempt Power," published by the Columbia University Press. That press is operated by the great Columbia University, in New York City, an institution that gave us the former dean of its law school, the late Harlan F. Stone, to be a Justice of the Supreme Court of the United States and afterward Chief Justice of the Supreme Court. Mr. Goldfarb, of the Department of Justice, makes this statement:

> It could well be suggested that, most peculiarly, in contempt cases the jury has a valuable role. First, it brings the public's attention and interest to a dispute which is usually an official, governmental one. Public enlightenment, even if only through jury representation, has been characterized as an "indispensable element in the popular vindication of the criminal law." This participation hopefully encourages popular understanding and acceptance of the administration of justice. Second, the jury may serve as an insulation between the alleged offender and the offended party, who is sometimes the judge and sentencer.
>
> This conservative deliberation in an otherwise unlimited, uncontrolled situation allows the jury to function as a wall against possible abuses by governmental powerholders upon individuals. The general public may look with skepticism upon a judicial process which allows one man to be judge, prosecutor, victim, and jury, but as Justice Black aptly pointed out there is inclined to be less false martyrdom where a jury convicts.

I am sure the distinguished Senator from Arkansas agrees with that statement.

Mr. McCLELLAN. I very much agree with it. I thank the Senator for reading it. It is appropriate to have it appear at this point in the RECORD.

Again, I say we are making history, whichever way the decision on the jury trial proposal ultimately goes. The opinions, the comments, and the expressions of convictions that have come down to us from the highest and ablest jurists during the past two centuries, which I am today placing in the RECORD and commenting upon, will be a part of the history of this debate. Future generations looking back to this day—the day when those of us apparently in the minority were fighting this proposal, so as to preserve the right of trial by jury—will see the support and the verification we had for our argument, and the persuasion we were able to use, that had come down to us from the wisdom of the ages.

On the other hand, if, unfortunately this great deliberative body should ultimately place its stamp of sanction upon the abolition of jury trials in criminal contempt cases, those who read the RECORD, looking back to this day, will see with regret and disappointment, that a tragic error was made by their representatives in Congress, in that at least an attempt was made by statute to take away from them that great right.

This is a historic debate. The record now being made will be referred to for generations to come, regardless of how the vote finally goes. These are not idle hours. Call it a filibuster. Who cares? It was called a Revolution when our forefathers went out, and fought, and died to establish liberty in this land. They may call it what they will. I am happy to be associated with those who have a conviction and who are willing to stand here, with all of their might, and all of their strength, and who try to protect reverently the Constitution of the United States, and preserve it for posterity.

Who would apologize for it? Ridicule it. Make the most of it. Contribute to the destruction of one of the cherished rights guaranteed by the Constitution. Do it, and look down the vista of years for another decade. Then turn and look back upon our action and see if we are proud of it.

I will stay with the Constitution, that sacred document, the most sacred ever struck off by pen in the hand of man. I do not propose to dilute it, to abrogate it, to destroy it, to abandon it, or to nullify it.

If our Founding Fathers had not had convictions that they were willing to fight for and to die for; if they were not willing to ignore the taunts, and the ridicule of the critics of their time, there would not be this institution today—the U.S. Senate. If there is not a sufficient number of Senators who are willing to stand in the Chamber and be accused of being filibusterers, if there is not a sufficient number to stem the tide that threatens to sweep away the constitutional rights of our citizens, the Constitution with its liberties and guarantees, will not long endure. Make the choice. This is no idle hour in the history of

America. This is the hour of decision; and Senators will make that decision.

I do not ask people to write their Representatives and Senators. That is not my practice. But, it is time for the American people to become conscious, to become informed, and to recognize what is about to happen to them.

Some say, "We merely want it for civil rights." We are talking about the basic fundamental of liberty, and the right of him who is accused. Are we willing to pay that price to mollify, satisfy, and placate a group or an element who are now saying openly, on television, on the radio, and in the newspapers: "If you don't pass the bill we want, we will engage in civil disobedience and violence"? Is that the America we love? If it is, yield to them. Let Senators be afraid. Let them shiver in their boots. Let them bow in submission to the threats and intimidation, if that is the kind of America they want. I do not want it. I will not bend my knee to them.

There are some great doctrines of truth in the quotations I am placing in the RECORD today. They are truths. They are pillars of truth upon which the destiny of our Nation rests. Remove those pillars and the foundation will not sustain the liberties that we cherish.

I am not the only one. I have been taught to express some thoughts of my own. But every thought that I have expressed is fortified and reinforced by the most learned jurists in the history of the Nation.

In 1830, Justice Storey wrote:

> The trial by jury is justly dear to the American people. It has always been an object of deep interest and solicitude, and every encroachment upon it has been watched with great jealousy. * * * One of the strongest objections originally taken against the Constitution of the United States, was the want of an express provision securing the right of trial by jury in civil cases. As soon as the Constitution was adopted, this right was secured by the seventh amendment of the Constitution proposed by Congress; and which received an assent of the people so general as to establish its importance as a fundamental guarantee of the rights and liberties of the people.

Justice Storey was talking about the right of a trial by jury in civil cases. If the right is that important in matters involving money, how much more important and sacred is it when a man's life and liberty are the issue being tried?

The American people, if given the opportunity to answer this would not quibble about it. But some Senators are willing to arrogate to themselves the right to tamper with the Constitution.

In commenting upon what Justice Storey wrote, Dean Joiner, carrying further the thought which he quoted from Justice Storey, said:

> Do thoughtful lawyers and laymen still feel this way?

That is, is it still dear to the American people? Do they still feel that it is vital to their liberty and to the preservation of freedom in our Republic? Do thoughtful lawyers and laymen still feel this way?

He said further:

> It seems fitting to conclude this paper with an examination of the opinions of others about the jury. The opinions of contemporary trial lawyers are reported in this chapter, while in the subsequent portion of the book the opinions of scholars, lawyers, and judges are recorded.

As I pointed out a moment ago, that is primarily a discussion of the right of trial by jury in civil actions. I shall not take time to read all of the comment and the quotations from others, because we are not dealing with a civil process. But what is involved is a criminal prosecution, a prosecution for criminal contempt.

As I said a moment ago, the Constitution guarantees the right of trial by jury in litigation involving material things where the value is more than $20. The citizen has a right to demand a jury to resolve the issues in such a case. How much more sacred is it if, as in this case, it is proposed that in a criminal proceeding, the judge shall have the right to incarcerate the defendant for 45 days in jail and fine him $300?

Mr. President, the amendment which is pending would not do anything except to cut down the term of the jail sentence from 45 days to 30 days. That is a wonderful remedy, is it not? Is that a compromise? It would be very comforting to the man who might be unjustly accused and who under the Constitution would have the right to a jury trial to be told, "We are going to cut down the penalty. We will let the court put you in jail for 30 days rather than 45 days. You are not to complain any more about not having the right to a jury. We have made a great concession to you."

Mr. President, others may regard that proposal as a great concession, but I join with the individual citizen who might be unjustly accused. I share his sentiments about it. I do not believe that it is any great concession. If I were convicted and sentenced, although I might be innocent, I would rather get the 30 days than the 45 days. That would be human nature. But I would be branded as a criminal just as much with the 30-day sentence as I would under a 45-day sentence. My character would be stained. My reputation would be impaired to the same extent whether the term of imprisonment were 30 days or 45 days.

I should like to revert now to further statements by the author of "Civil Justice and the Jury," by Dean Joiner.

There are those who contend that the proceeding for criminal contempt that would be authorized under the pending bill would be a civil proceeding; but I maintain that a civil proceeding that carries with it criminal punishment and is more criminal in consequences is more related to the consequences of criminal law than it is to that of civil procedure. So I should like to quote this author's version of trial by jury with respect to civil proceedings and civil disputes, if by any process anyone concludes that these proceedings under criminal contempt would involve a civil issue. Under the paragraph headed: "Judge and Jury," the distinguished author writes:

> This double-headed agency is the method commonly accepted in this country for resolving civil disputes.

The double-headed agency to which he refers is the judge and jury. He states further:

> Its long history, dating back more than 500 years, provides its stability and acceptance by the public as a means of dispute resolution. The jury is selected on an ad hoc basis from the public at large, participating in dispute resolution as the agency which decides what the facts are and applies to those facts the legal doctrine stated by the judge. The advantages of this form of dispute resolution are many. (1) It is generally accepted by the public; (2) The division of authority between judge and jury provides a system of internal checks and balances within the trial process itself.

Mr. President, one of the great safety valves or safety bulwarks of our system of government is the system of checks and balances that has been provided in the internal mechanism of our republican form of government. I continue to read:

> (3) It is more accurate and fair in the application of general standards or rules of law; (4) There is less chance of background prejudice to the factfinding process; (5) It permits citizen participation in government; and (6) It lessens the chance of undoubtedly expanding bureaucracy in the dispute resolution process.

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

Mr. McCLELLAN. I am glad to yield to the distinguished Senator from Alabama.

Mr. HILL. As I said before, the Senator from Arkansas is making such an able speech and is so compelling in his arguments that I hesitate to interrupt him. But in connection with what he has just said, I should like to call attention to a part of the opinion by Mr. Justice Black in the case of *Green* v. *United States*, 356 U.S. 165, handed down in 1957.

> 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 bound to punish as he sees fit. It seems inconsistent with 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 government 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, 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.

I am sure the Senator from Arkansas would join the Senator from Alabama in strongly commending this declaration of what the law should be.

Mr. McCLELLAN. On that occasion Justice Black rose to the heights and stature of judicial dignity, prestige, and majesty. I salute him for it. It is exactly in line with what the author from whose work I have been reading stated in the six points I read with respect to judge and jury, the system that operates in civil cases. Dean Joiner, after mentioning the six specific advantages that flow from the jury system in civil cases, continues:

Of these methods, the judge and jury is the method having the longest history and the greatest acceptance in the United States. The civil jury is enshrined in the Constitution of the United States and in most State constitutions. The seventh amendment to the Constitution, for example, is couched in these terms:

"In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law."

Similar language is found in State constitutions. Truly the civil jury as a means of resolving civil disputes is an American institution.

Whatever its term, whether it be a civil proceeding with a criminal penalty attached, or a criminal proceeding from the beginning, in which a man is tried and his liberty is placed in jeopardy, the right to trial by jury is sacred. Our Founding Fathers thought so, and so declared. Who are we, of this body, not only to resist it but to attempt, unconstitutionally, to change it, to abrogate it, to nullify it?

Mr. President, I wish to read further statements from the book entitled "Judge and Jury," by the distinguished author Dean Joiner, that emphasizes the sacredness of the right of trial by jury, and which discuss various aspects of such proceedings. Dean Joiner said:

When a jury case is ready for trial, it is assigned to a particular court. Under the guidance of a judge, names of jurors originally chosen from a cross section of the community are drawn by a court officer, and the jurors are questioned by the lawyers or the judge to determine their fairness and lack of bias. Those who appear biased, are challenged and excused from the case. Twelve are finally accepted as the jury and are sworn to try fairly and impartially the issues in the case.

Mr. President, I pause to emphasize the protection which is afforded to litigants in a civil case. They have the right of peremptory challenge of some who may be called as jurors to try the issues involved in the litigation. That same statement is true in cases in which one is accused of crime and is permitted to have a jury trial. He does not have to accept every juror who may be called and who may qualify from the standpoint of being eligible and qualified to serve in a particular case. He is permitted to exercise a number of peremptory challenges. He participates in that way in selecting those who are to judge his case and those who are to be entrusted with the power to inflict punishment if he is found guilty.

But if we deny that right of trial by jury, the defendant or the litigant, even in civil cases—and the defendant particularly in a criminal case, or in a civil proceeding, which involves a criminal penalty, as some would argue on the particular issue here—would be denied the choice of a judge. He would have no choice. He would be compelled to accept whoever happened to be the judge.

He has no protection. The judge may be prejudiced. There are just as many reasons to assume that a judge may be prejudiced as there are to assume that a jury of 12 may be prejudiced. So the victim—and in some instances he would actually be a victim, an innocent person charged with an offense—if he had no right of trial by jury would be at the mercy of one man, and could very well be—and we know from human experience sometimes he would be—at the mercy of a prejudiced judge. On the other hand, if he is entitled to a jury trial, and is granted one, as the Constitution says he has a right to have, it is not likely that the 12 men accepted on the jury, the 12 men that he and his counsel participated in choosing or accepting, would all be prejudiced against him.

Assuming one or two might be, he would have the opportunity to get rid of those who might have a prejudice against him. Even if there should remain on the jury one, two, or more who entertained such a prejudice, and who would be guided by prejudice, and would render their verdict accordingly, still he would not be convicted. There would be a hung jury, because all 12 must agree before a judgment of guilty can be accepted. Thus, he has that protection.

The strangest thing about what is happening in this body is that those who classify themselves as liberals with a measure of pride, with the words "I am a liberal," are those who want to take away this great protection that has been handed down to us as a bulwark of freedom. Why? Is the pressure that great? Is it that irresistible? Does it have that much power and influence upon the decisions and actions of Members of this body?

Mr. President, I can find no other logical reason.

Are we saying now that we cannot trust juries in this character of case? If we say it in this instance, in the next instance there will be another character as to which Congress will be asked to make an exception with regard to jury trial because a jury cannot be trusted in that character of case. Where will it end? Are we by our actions triggering into motion forces that will ultimately wipe out trial by jury for our children and future generations?

This is an important hour. Some of the press and others may ridicule it as the hour of the filibuster. But again I assert that this is an hour of decision that involves the very pillar of a freedom we have enjoyed, the right of trial by jury, which our Founding Fathers made sacred by explicit terms, by the letter and spirit of the Constitution. It has given us life as a nation, and has given us the greatest progress that civilization has ever known. It has brought to the individual the greatest measure of protection, freedom, and liberty, that has ever been vouchsafed to any citizen under any form of government.

I do not propose to be a party to setting in motion forces that would ultimately destroy this liberty and take away the rights that have made our liberties secure.

This eminent author continues:

Both lawyers are permitted to explain to the jury and the judge what their case is all about. This is called an opening statement.

Many of my colleagues are lawyers. How we like to get up before the jury and, having faith in our clients' cause, lay the foundation in the opening statement and alert the jury as to what to look for and expect. I do not say that cases are won by an opening statement, but he who can present to the jury clearly what the issues are, and alert them as to what to expect to find in the testimony, and explain the issues and state what the facts of the case will be, frequently sets in motion the process which results in victory for his client, if he does not mislead the jury as to what the facts will be.

I have regarded the opening statement as very important, because it is the first time the lawyer stands before the jury. It is the first time he makes an impression. If he makes a bad impression, he is handicapped throughout the proceedings. If he makes a good one, if he gains the confidence of the jury, he has an easier row to hoe in the process of presenting evidence, arguing objections, and dealing with the technical aspects that often are involved.

I continue to read from the book:

It serves the basic function that the picture on the cover of a jigsaw puzzle serves for the person attempting to fit the pieces together. The opening statement gives a relatively complete picture of the facts of the case as seen by the lawyer describing them. This permits the jurors to have an organized look at the case in advance. When the evidence is introduced, the jury will be able to fit together the various bits and pieces into an intelligible whole. After the opening statements, the lawyers are permitted to introduce their evidence.

First the evidence for the plaintiff is produced, mainly through the interrogation of witnesses who tell what they know about facts relevant to the issues of the case. In addition to this, documents or other exhibits having a bearing upon the issues may be produced. The defendant's lawyer may cross-examine each witness or challenge the documents as a means of testing the correctness of the assertions or the validity of the documents. It is the judge who determines whether or not the evidence shall be received.

That is where legal training is essential to the trying of cases.

After the plaintiff's evidence is produced, the defendant's lawyer follows a similar procedure. The plaintiff's lawyer is given the right to test by cross-examination.

After all the evidence has been submitted to the jury for their consideration, each of the lawyers is permitted to summarize his contentions in a final statement before the jury. Each lawyer attempts to demonstrate why his witnesses should be believed, why his theory of the case has been proved, and the logic of his contentions. In other words, the lawyers at this point are assisting the

jury in analyzing and sifting all of the various evidential pieces that have been brought before them.

Following these final arguments, the judge instructs the jury on the law either by reading or speaking extemporaneously to them the rules of law applicable to the issues in the case and the facts as brought out by the parties to the dispute.

It is from these instructions that the jury is finally apprised of each issue to which it must direct its attention and is told of the applicable standards that must be used in deciding these issues.

Having heard the facts, having been assisted by the lawyers, and having been instructed on the law, the jury retires to a private room to consider its verdict. The jury's obligation at this point is to resolve the fact disputes, apply the legal doctrines which the judge has mentioned in relation to them, and bring back a verdict in favor of the plaintiff or the defendant. This verdict is the basis of the court's final decision which is called a judgment.

Mr. President, the procedure is not substantially different in the prosecution of a person for crime.

The significant differences between a trial before a judge and jury and a trial before a judge alone are these:

These are the differences as envisioned and declared by this learned author.

One, when a trial is before a judge alone and there is no jury impaneled, the public is not brought into the case and the obligation of decision rests upon the judge's shoulders.

How much more true, that is, Mr. President, when a man is charged with a crime and we fail to bring the public into the case. We try him by a judge alone, instead of bringing in the public—a jury of his peers—as required by the Constitution.

We let the responsibility fall upon the shoulders of one man, someone who may not be prejudiced—and most often, of course, he is not prejudiced—but who may be prejudiced against the defendant. Under those circumstances, the defendant has no remedy. He is charged with a crime. He is brought before a tribunal of one person. He is compelled to stand trial. He is compelled to accept the verdict on the facts. Whatever the judge finds to be the facts, the defendant is compelled to accept them.

2. In a trial before a judge alone there is no adequate way to detect unconscious bias or prejudice on the part of the judge and to challenge him for it since lawyers cannot conduct a "voir dire" examination of the judge, as they do the jury.

The defendant, through his attorney, cannot question the judge and ask, "Have you any prejudice?" He cannot go into the judge's background to inquire with respect to those things which might throw some light upon his present state of mind. The judge is immune from that. For a lawyer to undertake so to examine the court would in itself be an insult, or an act of contempt, for which he might be subjected to summary punishment.

Mr. President, we are dealing with people's liberty, with their right to trial, in such a manner that we are now attempting and threatening, by the action proposed to be taken in this body, to say, "Notwithstanding the fact that your liberty will be placed in jeopardy, you will have an escape from that threat only if you can get one judge to believe you and to release you from the charge."

Under the established procedures and under the constitutional trial of a person for a crime, it requires not 1 person to convict of guilt, but 12 citizens—12 men tried and true, who must find beyond a reasonable doubt that the defendant is guilty of the crime as charged.

Shall we abandon that principle?

If today, by the bill now before the Senate, we can circumvent the Constitution which provides that a man shall have the right to a trial by jury, and do that legally, constitutionally, and legitimately, I do not see why we cannot provide by statute, by an act of Congress, that guilt beyond a reasonable doubt no longer needs to be proved, that if we can prove only a strong suspicion we shall be justified in finding guilt.

I say to Senators that we shall be unlocking a Pandora's box in the rights and guarantees and liberties of the American people if we enact the proposed legislation in its present form. What will follow, no one knows. Much can follow—and legitimately—upon the precedent that this bill would set, if the proposed action should be made constitutional and legitimate.

He goes on to say, the third significant difference:

When a trial is before a judge alone, he is not obliged to state publicly the propositions of law on which he relies in determing the case as he must do when he instructs a jury.

The judge does not have to say why. He can say, "I find you guilty and I assess your penalty." If the judge wishes to say why, he can do so. But there is no law to require him to do so. A jury cannot convict, inflict, or impose a legal and constitutional convention without the court having publicly declared the law which is applicable to that decision to the jury's deliberation as it weighs the facts in evidence. But a judge does not have to do that.

The fourth reason:

The decision by a jury on the facts is reached after deliberation and discussion, whereas a decision by a judge is by a single man without the evidence of discussion with others.

It was intended, before men were convicted of a crime, that their fellow citizens—12 of them, as the case may be—should have the right to hear the same evidence, to weigh the same evidence, and to discuss it with one another.

How many times has it occurred in the jury box that men and women of good will have sat through a trial with different opinions about it, and yet when they met to consider the verdict and reasoned together, and each heard the others' points of view and the reasons therefor, they were able to reach the right decision; whereas one judge may be prejudiced, or may have a phobia along a certain line, or he may have such strong convictions that do not necessarily yield—honest convictions though they may be—to the weight of evidence in a particular case.

Mr. President, there are many hazards in the one-man jury system proposed in the civil rights bill.

The fifth reason given by this distinguished author is:

The decision of a jury is made by persons usually representing a cross section of the community, and this a judge cannot do. There are differences that may be significant to discerning persons in dictating a choice in modes of trial.

The relationship between the judge and the jury in the trial of civil cases should be examined in terms of, one, the process of decision, fact, and law; and, two, the process of checking and balancing each other.

Mr. President, if that is required, if that is standard, and of the highest order in the trial of civil cases, how much more imperative it is to the cause of justice, under processes of justice, to have it apply in criminal cases, even in criminal contempt proceedings, if we will, where a conviction carries with it, as in this case under the present bill, as much as a 45-day jail sentence and a $300 fine, or under the present amendment a 30-day jail sentence and a $300 fine.

He mentions checks and balances. What are the checks and balances? The jury system is one of the checks and one of the balances. We certainly have a more wholesome check and balance if 12 men reach a decision of guilt than we have when it is reached by only 1 man. Certainly the decision of 12 men, finding a fellow citizen guilty of a crime, after due process of law and a fair and impartial trial, carries with it more conviction of justice having been meted out than when only 1 man makes the decision, however great and unquestioned the integrity of that 1 man may be.

I am not condemning judges. We must have them. They are absolutely indispensable. I am in no way reflecting upon their character and integrity. I am merely presenting an argument in this cause as to the reasons why the Founding Fathers believed in the jury system, and the reasons why we not only have no right constitutionally to try to change it, but also should not, even if we mistakenly believe we have the right constitutionally to do so.

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

Mr. McCLELLAN. I yield.

Mr. HILL. In line with the thoughts so eloquently and forcefully expressed by the distinguished Senator from Arkansas, I invite attention to further remarks of Mr. Justice Black in the Green case, which has been adverted to earlier in the debate.

Mr. Justice Black said:

When the responsibilities of lawmaker, prosecutor, judge, jury, and disciplinarian are thrust upon a judge, he is obviously incapable of holding the scales of justice perfectly fair and true and reflecting impartially on the guilt or innocence of the accused.

He truly becomes the judge of his own cause. The defendant charged with criminal contempt is thus denied what I had always thought to be an indispensable element of due process of law—an objective, scrupulously impartial tribunal to determine whether he is guilty or innocent of the charges filed against him. In the words of this Court: "A fair trial in a fair tribunal is a basic requirement of due process. Fairness, of course, requires an absence of actual

bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness. To this end no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome. * * * Fair trials are too important 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, 136–37. Cf. *Chambers* v. *Florida*, 309 U.S. 227, 236–237; *Tumey* v. *Ohio*, 273 U.S. 510; In re *Oliver* 333 U.S. 257.

Mr. McCLELLAN. Under the proposed legislation it would be the trial judge who would issue the process for contempt, the charge of contempt. The same judge would sit in judgment, and would decide whether the defendant should have 45 days in jail or 10 days in jail, and whether he is to have a $300 fine imposed upon him or a $10 fine. Those who would be charged, who would become the subjects of the proposed legislation, whose actions would come within the scope of the legislation, and whose actions would be adjudicated as to whether they are criminal—or are criminal contempt, if we wish to insist on that wording—would be unable to free themselves from the shackle of being tried by their accuser, and having sentence passed on them by the one who initiated the proceeding against them.

That is what is wrong with the bill. When something is done in the court's presence, and within the court's knowledge, which is calculated to obstruct the process of justice, the judge has the power summarily to deal with the contempt committed in his presence. That is necessary in order to uphold the dignity of the court and to prevent obstructions of justice by the willful action of a person.

That is not what we are discussing. We are talking about a situation in which it has been reported to the judge that someone has violated an order that he has issued, or that someone has failed or refused to comply with it, and the judge issues a contempt process against that person, charging him with having committed the offense of contempt. That is what is involved in the proposed legislation.

Thus we are dealing with people accused of a crime in every respect, except that the extent of the punishment may be greater for other statutory crimes. The principle of finding guilty and incarcerating an individual and in taking from him his liberty is the same. There is no difference. The question is, Are we now ready to sacrifice that which has been preserved to us until this day as one of the greatest protections of liberty and one of the greatest assurances of justice in the trial of criminal cases?

I do not think we should be. I doubt if the press will print this, because it seems not to be concerned. All it says is that this is a filibuster. Let it be called a filibuster, if that is what is desired. However, this is a battle to preserve and defend and to make secure a right which is cherished by freemen everywhere. The press calls it a filibuster. That is all it can think of. It is either blind or so indifferent to the consequences that would flow from the oppression of the Constitution which is proposed that it will not even print the real issue and discuss it. I make no apology for the side I am on. I am proud of it.

I only hope that we shall be able to command the persuasion that is necessary to influence Senators who may be wavering today, those who, upon reexamination, are not proud of or satisfied with the vote they cast a few days ago to deny jury trial. I hope we can persuade one or two of them to turn the balance in the scales of justice to preserve for the American people the right of trial by jury.

It may be said that this proposal does not interfere with that right in any other area of criminal prosecution. It does not do so now. But set this precedent, make this exception, and the chain reaction will begin. There will be other days later. There will be other just as compelling reasons to make another exception, and still another. I do not propose for a moment to countenance such exceptions. There is no end that justifies the abortion of the Constitution to bring about such a result. I do not believe we can emphasize too strongly or too often what is immediately involved at this hour in the Senate.

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

Mr. McCLELLAN. I yield.

Mr. HILL. I should like to conclude with the final words of Mr. Justice Black, whose opinion confirms so fully what the Senator has so eloquently and beautifully stated. Justice Black said:

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 citizens and citizen or citizen and state.

Mr. McCLELLAN. I thank the Senator from Alabama.

I have just begun to make this record. In the book from which I have been quoting, the author of which is the distinguished dean of the University of Michigan, Charles W. Joiner, are some 20 quotations which I have marked to place in the RECORD. I have used only five of them. So I am one-fourth through with the great declarations of principle with respect to trial by jury that are contained in this volume.

I have another volume from which I expect, before the debate is concluded, to take some quotations and discuss them; but I wish to conclude in 20 or 30 minutes. Before I do so, I should like, in the course of this address, to move away from the issue of trial by jury for the moment and to discuss briefly the proposed legislation as a whole. I do so because I wish to place in the RECORD an editorial that I believe every Member of the Senate should read, an editorial that I think should be a part of the permanent RECORD of the debate, for the enlightenment of those who may read and reread it in the future, as they try to find an explanation for the action the Senate will take on the proposed legislation.

The editorial was published in the Arkansas Democrat of Sunday, May 3, 1964. The Arkansas Democrat is one of the leading newspapers in my State. Like other large publications, it frequently editorializes on current public affairs and the great controversial issues of our time.

During the 21 years I have served in the Senate, I have read, and I may say profitably so, practically all of the editorials that it has published during those years. I am convinced that there is no other paper, including the largest dailies of our great metropolitan centers, whose editorials are more enlightening and consistently sound than those of the Arkansas Democrat. And, especially is this true with respect to its editorials on such subjects as taxes, economy in government, national defense, and foreign policy.

It has also published some profound and convincing editorials on the current civil rights issue, and I shall presently quote from one of its most recent, "Civil Rights Bill a Huge Deceit."

Before reading and commenting on this editorial, however, I wish to pay tribute to this great newspaper of my State and to say that the people of Arkansas are most fortunate to have a publication whose editorial policy reflects such capacity for correct analysis, maturity of judgment, vision, and wisdom as that possessed by the editors of the Arkansas Democrat.

Mr. President, this editorial is most persuasive. To the impartial reader or listener, it should, and I believe does, carry conviction. I quote it.

CIVIL RIGHTS BILL A HUGE DECEIT

We have come to a strange pass in free America. We see an all-out effort by the President in Congress with his civil rights bill to slip a noose of almost boundless Federal power on the citizen's neck.

The bill is a colossal deceit. It is a civil rights bill only to the small extent of appeasing the leaders of a demanding minority who too often take their followers into defiance of law, order, and peace.

Essentially, the bill would restrict the rights of all citizens—

That is what I have been talking about with respect to one area in which that right is restricted. But I read on:

would deeply impair our priceless heritage—personal, business, and industrial liberties. It is appalling that a national administration would strive to thrust such an offense on the Nation.

Opposition is ignored. The South is in protest against this raw, naked grasp for Federal power. Much of the North resents it and increasingly so as the bill is better understood.

But the administration has its ears cupped to the agitating minority leaders. It insists on ramming this obnoxious power grab down the Nation's throats. When in free America, has our Government, of, by and for the people ever so ignored them before?

The National Government is spending billions of our taxes to keep communism from snuffing out the light of freedom in faraway lands. All the wisdom and resourcefulness it can muster are urgently needed to insure our own national preservation without the ghastly alternative of an atomic war.

In ordinary good sense, the Federal administration should be fostering national unity and awareness of the perils that loom over us.

But this civil rights monstrosity distracts attention from the Nation's precarious situation. It works against unity by encouraging minority disrespect of order and authority. It rouses anger and resentments.

Happily, Senate resistance to the bill persists. It should be encouraged to hold out. The bill should be defeated. A compromise measure would only open the door to restoring its evil features later.

I wholeheartedly agree with the editorial. I remind Senators that the passage of the bill, as I have said in the Chamber before, would not appease the minority groups who are clamoring for it. We are told frankly that they will continue to demonstrate; they will continue to demand more. We cannot appease them. Give them every power they want, and then see how they use it. We are dealing with fire when we undertake this sort of approach to a resolution or solution of the problem.

I understand that only yesterday two of the leaders—I heard only one—predicted that there would be a continuation of the demonstrations of the character which we have heretofore witnessed, and that they would start soon. The passage of the bill would not prevent them. They will continue to advocate civil disobedience. Yet, we are expected to be men in this Chamber. Are we men or mice? What shall we do? Yield to intimidation? Tremble, or submit? God forbid.

We ought to legislate like statesmen, like Americans, and put it on its merits. If it is right, do it. If it is wrong, let us not be intimidated into doing it. That is the issue that we confront. Make no mistake about what is behind it. Make no mistake about being able to compromise with them and satisfy them. Give them the right to try citizens without a jury, and they will want more. Give them everything that is in the bill, and they tell you that it is totally inadequate to give them the rights that they want, the rights that take away the rights of others, the rights that they claim, the privileges that they want which subvert the rights of others and destroy them.

Mr. President, I am proud to be alined in the effort—with all of the power and resources that are reposed in me by reason of the position I hold—against forces designed to distort and abort the Constitution in order to appease a minority who are clamoring for privileges that would destroy the rights of their fellow citizens.

I shall read one more editorial. This is from the Arkansas Democrat of Friday, May 8, 1964. I shall read this editorial without comment. But I hope that those who will read the RECORD will lend ear, and maybe lend their judgment to what the article says. There are those who may laugh it off, or try to, but it will not be laughed away. The editorial reads:

ANOTHER WARNING TO CIVIL RIGHTERS

Civil Rights agitators got another warning in Indiana's presidential primary Tuesday that they're going too far and too fast. Alabama's Governor Wallace racked up about 30 percent of the Democratic votes, following a similar feat in Wisconsin.

Wallace was running against Indiana's Governor Matthew W. Welsh, just as he opposed Wisconsin's chief executive. Welsh poured it on Wallace. Ministers, church groups, educators, newspapers denounced Wallace.

Yet some 30 percent of Indiana Democrats voted for the Alabama Governor. President Johnson reportedly made little of this. Wallace got, he said, less than 20 percent of the total vote.

Johnson knows better than that. He knows that 5 percent of the voters can often swing an election. And 20 percent of defecting Democrats in Indiana has special significance. For Indiana went for Nixon over Kennedy by the largest percentage of any State.

Grant that Governor Welsh, who won only a squeak victory 4 years ago, has lost popularity since because of his signing a sales tax law. Grant, too, that there's always a disgruntled element of "aginers."

But Indiana is a conservative State, predominantly peaceful and orderly. And it has seen the tumult and violence roused throughout the North by reckless civil rights leaders, defying law and authority.

Indiana voters knew of the young white minister killed in a demonstration in Cleveland—

I hear comments on the radio and television about another incident in the South. This one is not mentioned.

I continue to read the editorial—

of the schoolchildren led into the streets of Nashville to taunt and mock the police, because, as one of their leaders said, their parents were "scared" to go. Indiana knew that FBI Head Hoover has said there is some Communist influence in the Negro movement.

The civil righters and the U.S. Senate will be smart to heed Wallace's vote. It's big enough to give them serious trouble at the polls in November.

If we want further proof of that, let us look to our left in Maryland. What is happening there? I do not know what the outcome will be. I am not saying what Maryland should do. That is its business. But what was to be something that would be simple to ignore has now become so formidable and dangerous that we are calling upon everybody we can get with any prospect of influence in Maryland to come over there and help stem the tide against what is called an intruder.

Why? Mr. President, the reason why is in the hearts of the people. We cannot gainsay it. That is where the trouble is. There is resentment because we are going too far and too fast.

Aside from political considerations, it would be well for the country, it would be in the best interests of our Nation, and in the interest of preserving our great institutions of freedom and the liberties that have been our heritage which we have cherished, to examine the bill closely.

Mr. President, I have completed only one-fifth of the remarks that I have prepared and which were available to me today. If we wish to keep the jury issue open, I am ready. I have only begun to fight.

"SHORT COURSE IN JURY TRIAL 'GUARANTEES' IN CONTEMPT CASES"

During the delivery of Mr. MCCLELLAN'S speech,

Mr. CLARK. Mr. President, will the Senator from Arkansas yield for a brief insertion, with the understanding that he will not lose his right to the floor?

Mr. MCCLELLAN. Mr. President, upon the conditions of the previous unanimous-consent order, I am happy to yield to the Senator from Pennsylvania.

Mr. CLARK. Mr. President, every day since the filibuster on civil rights began on March 9, of this year, a so-called bipartisan civil rights newsletter has been published. The one today includes a topic entitled "A Short Course in Jury Trial 'Guarantees' in Contempt Cases." I ask unanimous consent that this excerpt from the bipartisan civil rights newsletter may be printed at this point in the RECORD. I believe it is a sufficient, short answer to the speeches that have been delivered today by both the able junior Senator from Virginia [Mr. ROBERTSON] and the able senior Senator from Arkansas [Mr. MCCLELLAN] upon the subject of jury trials.

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

6. A short course in jury trial "guarantees" in contempt cases:

"The trial of all crimes, except in cases of impeachment, shall be by jury." (Art. III, sec. 2, cl. 3.)

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial." (Sixth amendment.)

"In suits at common law, where the value in controversy shall exceed $20, the right of trial by jury shall be preserved." (Seventh amendment.)

"It is urged that those charged with criminal contempt have a constitutional right to a jury trial. This claim has been made and rejected here again and again * * *. It has always been the law of the land, both State and Federal, that the courts—except where specifically precluded by statute—have the power to proceed summarily in contempt matters." (*U.S.* v. *Barnett*, 1963.)

"The issue we are dealing with is whether a jury shall be empowered to refuse to allow vindication of the authority of the court and of the judgment it has entered after a trial on the merits * * *. The broad Talmadge amendment—applicable to contempt trials of every kind in the Federal courts—by interposing another tribunal—the jury—between a court and enforcement of its orders weakens the enforcement of Federal law throughout the country. Such a proposal strikes at the integrity of the Federal courts and the respect which the country has for their decrees. What is a court which has not the power to compel obedience to its orders? It is for this reason that in practically all the States—including all the States of the South—the courts are empowered to punish for contempt without convening juries. The States don't leave their courts powerless. Why should the Federal courts be without sufficient authority? (Department of Justice memo.)

AMENDMENT NO. 582

During the delivery of Mr. MCCLELLAN'S speech,

Mr. STENNIS. Mr. President, I ask unanimous consent that I may submit an amendment to H.R. 7152, the Civil Rights Act of 1963, and ask that it be read, to provide for the appointment of counsel, at the request of a defendant, in certain actions instituted under authority of that bill.

I ask unanimous consent to submit this amendment out of order.

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

Mr. STENNIS. Mr. President, I ask unanimous consent that the amendment

may be considered as read, instead of actually being read.

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

Mr. STENNIS. I do this to comply with all the rules of the Senate.

Mr. CLARK. Mr. President, reserving the right to object—and I probably shall not object—I regret I did not hear the Senator's original request. Does it have anything to do with the civil rights bill?

Mr. STENNIS. Yes; I have submitted an amendment to the civil rights bill.

Mr. CLARK. I have no objection.

Mr. STENNIS. I thank the Senator from Pennsylvania.

Mr. President, I wish to make a very brief statement.

Mr. President, numerous provisions of the so-called civil rights bill authorize the Attorney General to institute and prosecute, for and in behalf of the United States, legal proceedings against defendants accused of violating the provisions of H.R. 7152. In such cases, the entire resources of the Federal Government will be arrayed against the defendant, and it is only right and just that in such cases the defendant be assured of an opportunity to properly make a defense.

I therefore submit this amendment to provide that in any proceeding instituted under the provisions of title I, and in any proceeding commenced by the Attorney General under the provisions of titles II, III, IV, and VII, the court shall, upon request of the defendant, appoint counsel learned in the law to represent the defendant. Upon the appointment of such counsel, the defendant shall be entitled to receive a reasonable attorney's fee.

Only by providing this protection can all defendants who may be haled into court under the many provisions of this act be guaranteed an opportunity to present a proper defense.

The PRESIDING OFFICER. The amendment will be received, printed, and lie on the table; and will be considered as having been read.

The amendment (No. 582) is as follows:

On page 3, line 19, immediately after "(b)" insert "(1)".

On page 4, between lines 5 and 6, insert the following new paragraph:

"(2) Insert at the end of subsection (c) the following new sentence: 'In any proceeding instituted under this subsection, the court, upon request therefor by the party defendant, shall assign counsel learned in the law to represent the party defendant at every stage of the proceeding, in which case a reasonable attorney's fee shall be allowed as of course to the party defendant.'."

On page 9, line 24, immediately after "(b)", insert "(1)".

On page 10, between lines 3 and 4, insert the following:

"(2) In any action commenced pursuant to this title by the Attorney General, the court, upon request therefor by the party defendant, shall assign counsel learned in the law to represent the party defendant at every stage of the action, in which case a reasonable attorney's fee shall be allowed as of course to the party defendant."

On page 13, line 11, immediately after "Sec. 303.", insert "(1)".

On page 13, between lines 13 and 14, insert the following new paragraph:

"(2) In any action or proceeding instituted under this title by the Attorney General, the court, upon request therefor by the party defendant, shall assign counsel learned in the law to represent the party defendant at every stage of the action or proceeding, in which case a reasonable attorney's fee shall be allowed as of course to the party defendant."

On page 18, line 17, immediately after "Sec. 408." insert "(1)".

On page 18, between lines 19 and 20, insert the following new paragraph:

"(2) In any action or proceeding instituted under this title by the Attorney General, the court, upon request therefor by the party defendant, shall assign counsel learned in the law to represent the party defendant at every stage of the action or proceeding, in which case a reasonable attorney's fee shall be allowed as of course to the party defendant."

On page 43, line 8, immediately after "(h)" insert "(1)".

On page 43, between lines 10 and 11, insert the following new paragraph:

"(2) In any action or proceeding commenced under this title by the Commission, the court, upon request therefor by the party defendant, shall assign counsel learned in the law to represent the party defendant at every stage of the action or proceeding, in which case a reasonable attorney's fee shall be allowed as of course to the party defendant."

AMENDMENT NO. 583

During the delivery of Mr. MCCLELLAN's speech,

Mr. TOWER. Mr. President, I send an amendment to the desk and ask that it be printed.

This amendment is designed to exempt journalists from title VII of the civil rights bill. In so doing, it protects the constitutional principal of freedom of the press by precluding any bureaucrat from being in a position to order the hiring or paying of any writer or commentator on public affairs.

The amendment provides that the term "employees" in this bill will not include "any individual who is employed in an editorial capacity involving the preparation, selection, or presentation of the news, including, but not limited to, editors, editorial writers, reporters, journalists, photographers, announcers, and commentators."

Mr. President, it has been said by proponents of this bill that the bill does not intend to endanger the right of freedom of the press. Therefore, I doubt that any will have objection to a careful spelling out in the bill of that intention.

I must say that I do not agree with the proponents of the bill. I see some real dangers to freedom of the press therein. But, since we all seek to preserve freedom of the press, I am certain we can reach agreement.

I feel equally certain that our President, who has been interested in the field of journalism, seeks to preserve freedom of that profession.

May I point out, Mr. President, the danger I see?

It is apparent that under the present title VII of this bill any newspaper or broadcasting station with 25 or more employees eventually will be subject to Federal supervision of hiring practices. That 25 would include, I suppose, all newsboys and country correspondents thus bringing almost every small daily and almost every weekly newspaper and almost every radio station, and almost every television station, and almost every magazine within the purview of this bill.

We already have the example of the Motorola-Illinois FEPC case which indicates how an equal employment commission may approach enforcement.

Consider what might happen if a newspaper or station, or magazine, turns down an applicant for an editorial writing position who happens to be a minority group member. Quite aside from the fact that the individual may not agree at all with the newspaper's editorial policy, a Federal commission could decide that the newspaper discriminated in refusing to hire him on the basis of race, color, religion, sex, or national origin.

This bill admits very clearly that the guilty employer—in this case a newspaper entitled by freedom of the press to express its views—could be required to hire this individual. Or the newspaper could be required to pay him backpay; or to train him in some way.

And, if an FEPC could reach the unusual point of ordering a businessman to withhold or change the tests by which he picks employees, it also might reach the unusual point of ordering that a newspaper print or a station broadcast the editorials of an unwanted editorial writer.

This bill does other things to small newspapers, Mr. President. It would subject small papers and broadcasting stations to added recordkeeping quite beyond their financial capabilities. It could subject them, upon the decision of a single investigator, to legal costs beyond their financial means.

I have noted on this floor several times that I regard title VII of this bill to be a field where State action is constitutional but Federal action is not. This principle applies to the journalism professions, too.

As a practical matter, action of the States in supervising employment could subject only a few journalistic media to regulation and investigation. But, it is quite another thing to contemplate Federal regulation which could extend to every news media in the Nation, perhaps simultaneously. The political power granted to the Federal Government over news media by such a law could be devastating.

All of this deeply concerns me, Mr. President, and I therefore hope that action can be taken via my amendment to exempt from title VII those employees in an editorial capacity on our Nation's vital news media.

Freedom of the press is a right for which Americans fought even before our Declaration of Independence. It is a freedom that perhaps more than any other illustrates and preserves the difference between our society and the societies of Asia and Africa. It is the first freedom suppressed by those with dictatorial designs.

All Americans would agree that freedom of the press must be preserved at any cost and at any effort. I offer here

today a chance to guard that right which will require little effort on the part of this Senate. But, it is an effort of which both the Senate and the Nation can be deeply conscious and deeply satisfied.

Let us, therefore, carefully provide and specifically spell out in this bill that it is not intended by this Senate to restrict the right of American journalists to comment in any way they like upon public affairs. A constitutional principal made virtually total by the recent Supreme Court decision on libel.

Let us, therefore, carefully provide and specifically spell out in this bill that it is not intended by this Senate to restrict in any way the hiring, promotion, or utilization of any person who may be involved in reporting of or comment on public affairs and indeed upon the affairs of this very Senate.

It is the right of American journalists to comment about us public officials in any way they want. If they wish to attack us on the ground of race, color, religion, sex, national origin, or for any other reason, they have the right to do so. If it is their editorial policy to do so, they have the absolute right to employ anyone they want who writes with whatever bias they want.

With their wisdom we can argue; but with their freedom to comment we can have no dispute. Neither have we any right to restrict or dilute that freedom of the press.

The PRESIDING OFFICER. The amendment will be received and printed, and will lie on the table.

RESOUNDING SUCCESS OF THE PEACE CORPS—THE SCHOOL-TO-SCHOOL PROGRAM

During the delivery of Mr. McCLELLAN'S speech,

Mr. LONG of Missouri. Mr. President, one of the resounding successes of the Peace Corps has been to bring home the fact that U.S. foreign policy is not just a job for diplomats and soldiers. Through the Peace Corps we have discovered that every willing citizen in every community can play some role in advancing our struggle for international understanding and peace.

The latest addition to the American people-to-people, community-to-community effort is the Peace Corps school-to-school program. Just a few weeks old, this program is receiving widespread popular response. Some 250 American community organizations—PTA's, Rotary clubs, college fraternities—have volunteered to participate in the school-to-school operations.

Mr. President, a recent editorial published in the Washington Missourian points out the value of the school-to-school idea. Therefore, Mr. President, 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:

A NEW PEACE CORPS PROGRAM

The Peace Corps, which has been such a great success in so many countries of the world, this week announced plans for a school-to-school program in foreign nations. The plan is to build 3,000 schools around the world in the next 3 years.

Any school in this country or parent-teacher association can become a part of this program. The sponsoring group merely raises $1,000. This money is used to buy construction materials in the foreign village where the school is to be constructed. The villagers themselves will furnish the labor. They will be under the supervision of a Peace Corps worker.

The $1,000 will be sufficient to put up a nice school with several classrooms. Materials in most of these underdeveloped countries are cheap, and labor will cost nothing at all.

One of the first of these schools is nearing completion in Casa Blanca, Columbia, a country which has a shortage of 40,000 classrooms. There are many, many others like it around the world. In many of these countries the children do not even have an opportunity to finish the first grade.

The idea for the school-to-school program was suggested to the Peace Corps by the president of the Rosedale, N.Y., PTA. While attending a meeting of Government officials he mentioned that the Rosedale PTA raised $750 last year, and wondered how the money could be used.

The reply was "build a school."

And that's how the program was started with the first of these schools going up in Casa Blanca.

This school-to-school program is the sort of foreign aid that the common people will understand, and deeply appreciate. This is a program that helps the people of these developing nations do what they have not been able to do for themselves. We feel sure that if only a small fraction of the foreign aid money we have handed out in the years past had gone into projects of this sort, we would not have to worry about the Communists taking over this or that country, and making gains here and there.

The three most effective weapons against communism are education, food, and opportunities for people to get ahead on their own. Our foreign aid in the past has provided very little of this. The people in Panama, Colombia, Chile, Brazil, Java, Borneo, and scores of other nations are just as hungry today as the day our foreign aid started.

These people are no different than we. They want food for themselves and their families, and they want an opportunity to earn what they get. They are not interested in handouts. For years and years now we have promised them a better life to come, but our promises have come to nothing. That is one reason why so many of these people have fallen for the Communist line. Their old masters have failed them. Maybe the new masters will do better. You can't argue with a hungry and hopeless man, whose children and wife are starving, about freedom and independence. He wants something to eat, and an opportunity to earn a living.

"We are not interested in your Government giving our Government millions of dollars," a teacher in Thailand told the writer, "but we are interested in your Peace Corpsmen, who are showing us how to help ourselves. Our people have fallen into deep ruts, and need help to get out. Show us how to do that, teach us how we can move ahead by ourselves, and we will do the rest. Your help and know-how is far more important to us than your dollars."

The Peace Corps has been one of our strongest weapons in the fight against communism, and the school-to-school program will be an even stronger one if carried out as planned.

THE PRESIDENT'S WAR ON POVERTY

Mr. LONG of Missouri. Mr. President, recently an editorial, published in the Washington, Mo., Citizen, commented on the President's war on poverty. As the editorial correctly surmised, poverty can be defeated only by the concerted efforts of each and every citizen. It is not enough for the Government alone to help; the unfortunate need the assistance of their friends and neighbors throughout the country.

I ask unanimous consent that this excellent editorial published in the Washington Citizen, on April 27, 1964, may be printed in the RECORD.

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

POVERTY AMIDST PLENTY

Last Tuesday noon we had the privilege of listening to President Johnson in the rose garden at the White House. He had a prepared speech, but several times he drifted off to one of his favorite subjects—war on poverty in this country.

We left the White House with the impression that President Johnson is a man with an enormous heart, a good Christian, a believer in the Golden Rule, and above all, a man who suffers with the depressed.

After coming home we ran into a few people who had a feeling that the President really wasn't sincere in his war against poverty, and that there was a lot of politics mixed up with it. These people take the position that "nobody ever starved in this country," and that we have more food than we can use.

We have never known of anyone who ever starved in this country, but we do know that some people right here in our own area do not always have enough to eat. We do not have many, but we do have some.

President Johnson said there were parts of 10 States in the Appalachian Mountain region where untold poverty exists, where many people live in shacks, where jobs are almost unheard of, where modern conveniences are nonexistent, and where hunger and want are rampant.

It's hard for the average American to visualize this.

And what's even more disheartening is that many of these people have never had the opportunity to learn to read and write. They have no skills of any kind and up to now have had no opportunity to learn skills for certain trades.

One of the Government officials cited the case of a family in eastern Kentucky. The man was out of a job, hadn't had one for years. The family was asked if it held out hope for a better day. The answer was "No." He no longer had any hope. Nor did his wife.

The man of the house was asked if he had ever considered leaving this area for some other place where he might be able to get a job.

"Yes," he replied, "twice my wife and I talked about it. But we could not go—we could not read the road signs to show where we were going. We cannot read. We never went to school."

This example, the official pointed out, could be multiplied a thousand times over. There were many people in this distressed area, who have found it necessary to live on next to nothing, who have given up hope of anything better coming their way.

It cannot be said these people are lazy and shiftless. Many of them would gladly work 10 or 12 hours a day for enough to buy bread and butter for their families.

They are not lazy and shiftless. They are not asking for much—only enough to keep body and soul together.

President Johnson said when the late President Roosevelt took office in the 1930's, a third of the population of this great and rich country did not have enough clothes, not enough food, and only bare shacks to live in.

Today, he said, this number has been reduced to one-fifth of the population of this country of around 190 million people. That means there are close to 38 million people in this country today who lack even the bare necessities for existence.

What President Johnson hopes to do is to bring education to these people. That is the very first thing that must be done. The adults must be trained to do skilled jobs, while schools must be provided for the younger ones.

There was a time in this country when a first grade education was enough. More recently a high school education was considered above average. But today a bachelor's degree from a college is ordinary, and masters' and doctors' degrees are becoming common.

The Appalachian Mountain region, however, does not have a sole monopoly on poverty in this country. There is plenty of it all over the country. Every city has its slums with people digging around in garbage for something to eat, and living in shacks and hovels.

Later that same Tuesday afternoon, in talking about this matter with Senator STUART SYMINGTON and Stanley Fike, his administrative assistant, it was pointed out that St. Louis County was one of the richest in Missouri, yet it also had untold poverty in the little community of Kinloch, one of the poorest and most poverty-stricken areas in Missouri, and the Nation.

And then we wonder how communism can make any gains, and how strife and discontent can become so rampant in a country with so much. These approximately 38 million people, undernourished and living in shacks with all hope long since gone, provide a very fertile field for any system of government that promises something better.

The promises we have made to these people no longer mean anything to them. They have lived with them too long and have become hopeless. A man wants something more substantial than promises when he is hungry and has been for a long time, particularly so when his wife and little children also are hungry and in rags.

One of the moves to get cheap food on the tables of these hopeless people is the new food stamp plan, which has long been advocated as a means to serve that end, but which has never gotten anywhere. Maybe it will this time. We sincerely hope it does.

In the meantime, it might be well to point out that not all men in rags, who have been forced to accept charity, are bums—too lazy to work and earn a living.

The majority of these people would gladly work, if only given the opportunity.

We have always prided ourselves in being great Christians, but we do not always act like good Christians to our fellow man, and usually blame him for something completely beyond his control.

We hope President Johnson wins his war against povery, and we also hope the people of this Nation will give him all the support possible in this fight.

They will if they know the conditions that exist. Only the ignorant will remain critical.

NEGOTIATIONS WITH RUMANIA

During the delivery of Mr. MCCLELLAN'S speech,

Mr. PELL. Mr. President, in the current rosy glow of good feelings with the Soviet bloc, we must not lose sight of lingering vestiges of a harsh Stalinist past.

At this time, for example, we are confronted by an outstretched hand of economic friendship from Communist Rumania, while at the same time that country uses its other hand to suppress a minority group—some members of which have been mouldering in Rumanian jails for many years as political prisoners. There have been some indications that we are so happy over the new look in satellite policy that we may tend to disregard what still goes on behind the facade of friendship.

I believe that we in the West should take advantage of the opportunities presented in this situation; we should act and not react diplomatically. It seems to me that Rumania should be required to lift the heavy hand of oppression, before we clasp her proffered hand of friendship. What more appropriate time for us to secure this concession than in this season of Rumanian Independence Day, May 10, the anniversary of Rumania's declaration of independence from Turkish rule in 1877.

Recent press accounts have informed us that the Rumanians now are sending a special delegation to this country to attempt to negotiate the purchase of a synthetic rubber plant, and that the U.S. Government has indicated its intention to give friendlier consideration to this request than it has to others in the past. According to the press, we are taking a more receptive approach in recognition of Rumania's determination to stand apart from the Soviet Union.

This is all well and good, and I support the State Department's new policy as far as it goes. I applaud this emergence of autonomy within the Soviet bloc and believe that U.S. policy should be receptive to the current trend. We should stimulate this new spirit of independence in the satellite nations. And one way of doing this is by assisting them in their understandable quest for economic independence.

At the same time, however, speaking as a former Foreign Service officer who served behind the Iron Curtain and who visited Rumania for several weeks, I must hasten to reassert the principle that we should not give away something for nothing. Rumania in this case wants and needs our exports in order to achieve her own separate economic status. In reorienting our policy and reopening our doors to accommodate her interests, it seems to me that we can and should attach some rather specific conditions that would go beyond Rumania's economic self-interest.

I believe that we now have an excellent opportunity to promote within Rumania a measure of social and political liberality that would correspond to that nation's new attitude of liberality and expansion in the economic realm.

There could be no better way for Rumania to demonstrate this new spirit of liberality than by taking steps to reform her domestic policies toward political minorities, and in particular toward the ethnic Hungarian minority residing in the western sector of Rumania known as Transylvania.

There have been persistent and disturbing reports that the Rumanians are still practicing outright oppression of Transylvania Hungarians for alleged or threatened political crimes committed during the revolution in neighboring Hungary in 1956. At that time, there were sympathetic uprisings across the border in Transylvania, with young Hungarian students taking an active role. In addition, the Rumanian Government reportedly rounded up and imprisoned many other Hungarians in Transylvania in the fear that the revolt would spread. Just how many people were involved is not clear; it is probable that the total ran at least in the hundreds; it is possible that thousands may have been involved.

I am informed that many of these people are still in jail, serving sentences of as much as 15 years at hard labor for their part in the uprisings of 1956. There have been reports that some of them, who were schoolchildren in their teens at the time of the revolt, have been held in complete isolation from their families and under conditions that have led to deterioration in their health.

What lends particular irony to the Rumanian situation is the fact that in Hungary, where the 1956 revolutions all began, there has been a general amnesty so that vast numbers of persons who participated in the uprising in that nation are now free. We in the West can only ask why Rumania has not seen fit to do the same.

It seems to me that the United States should take this occasion to exact a degree of humanitarian reform as a condition for normalizing to any degree our economic relationships with this Communist nation. Our terms can be plain and simple: I urge that U.S. negotiators in the pending trade talks with Rumania insist on a decree of general amnesty for all political prisoners in that country as a minimum condition to the granting of U.S. export licenses.

Mr. President, I ask unanimous consent for inclusion in the RECORD, at this point, of articles entitled "United States and Rumania To Discuss Trade and Other Issues" from the New York Times of May 10, and "United States Studies Bid of Red Rumania" from the New York Times of April 24; editorials entitled "American Talks With Rumania," from the New York Times of May 11, and "Rumania's Discreet Turn" from the Washington Post of April 30; and articles entitled "Rumania Builds Billion-Dollar Steel Mill" from the Washington Post of April 12, and "Parley With United States Seen as New Step in 'Quiet Revolution' in Rumania" from the Washington Post of May 10.

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

[From the New York Times, May 10, 1964]

UNITED STATES AND RUMANIA TO DISCUSS TRADE AND OTHER ISSUES—HARRIMAN AND BUCHAREST'S ECONOMIC CHIEF TO OPEN WASHINGTON TALK MAY 18—INDEPENDENT LINE CITED—COMMUNIST REGIME SEEKING TO PURCHASE EQUIPMENT FOR CHEMICAL INDUSTRY

(By Tad Szulc)

WASHINGTON, May 9.—The United States and Rumania will open high-level economic

and political discussions here on May 18 in what may become the most important development affecting Washington's relations with Eastern Europe since World War II.

The announcement that the two Governments had agreed on wide-ranging talks was made by the State Department here and simultaneously by the Communist government in Bucharest.

The U.S. announcement said "these talks will deal primarily with economic subjects, especially trade, but will also cover other matters which affect relations between the two countries."

The importance attached by the United States to the discussions was seen in the choice of W. Averell Harriman, Under Secretary of State for Political Affairs, to lead its delegation. Mr. Harriman helped negotiate the treaty for a limited nuclear test ban with the Soviet Union 10 months ago in what represented the starting point in the slow but continuing improvement of East-West relations.

RELATIVE INDEPENDENCE NOTED

The Rumanian delegation, due to arrive in Washington, Friday, will be headed by Gheorghe Gaston-Marin, chief economic planner who is a Deputy Premier and chairman of the state planning committee.

U.S. officials sought to emphasize that the political effects of the negotiations should not be "exaggerated" at this time but they readily conceded that the talks might establish a pattern in relations with Eastern Europe, "provided that developments in all those countries are appropriate."

Rumania's policies of relative independence from the Soviet Union and the country's often stated desire to improve relations with the United States were described as the type of "appropriate developments" that had encouraged the Johnson administration to agree on opening a new relationship with the Bucharest regime.

Officials specifically noted Rumania's refusal to accept the economic policy dictates of the Council for Mutual Economic Assistance (Comecon), the Soviet bloc's economic organization, as the first example of the Rumanian independent policies.

They recalled that Bucharest refused to go along last year with Comecon's judgment that, as Rumania's part in the sharing of labor in the Communist bloc, she should concentrate on petroleum and farm production.

Instead, the officials stressed, the Rumanians decided, against initial Soviet wishes, to go ahead with intensive industrialization, and notably with the work on the huge Galati steelmill. This is being constructed in part with the aid of West European concerns.

Rumania's effort last month to mediate in the Soviet-Chinese ideological quarrel was cited as another key example of her independent policies, quite aside from the fact that the mediation apparently failed. The point is, the officials said, that Rumania is not fully accepting either the Soviet or the Chinese line but seeks to advocate an independent course for Communist countries.

In defining Rumania's policy, attention was called to a statement last month by the Rumanian Workers (Communist) Party that "there are not and there can be no unique patterns and recipes," for Communist countries and that "nobody can decide what is and what is not correct for other countries or parties."

"It is up to every Marxist-Leninist party, it is a sovereign right of each Socialist state to elaborate, choose or change the forms and methods of Socialist construction," the statement added.

"The strict observance of the basic principle of the new-type relations among the Socialist countries is the primary prerequisite of the unity and cohesion of these countries and of the world Socialist system performing its decisive role in the development of mankind."

Officials here indicated that such policies of independence, as exemplified by Rumania, along with a stated desire for improving relations with the United States, would be the yardstick used by Washington in determining whether similar high-level discussions could be initiated with the other East European countries.

What the United States was doing, in effect, was inviting the countries once regarded as Soviet satellites to imitate Rumania's example and embark on a new road of independence that would further shatter the former monolithic unity of the Communist camp.

The desirability of establishing better relations between the West and Eastern Europe was one of the key points in the recent Washington talks between Secretary of State Dean Rusk and the British Foreign Secretary, R. A. Butler.

The whole question of East-West relations, and particularly of the East European relationships, is to be taken up by the Ministerial Council of the North Atlantic Treaty Organization at its semiannual meeting opening in The Hague on Monday.

European countries are increasingly active in East European trade, and the United States has apparently decided that it must not be completely left out in the developing new situation in Eastern Europe.

Officials here said that since Rumania has shown her interest in good relations with the United States, "we are responding." But, they made it clear Bucharest's political acts of independence were a leading factor in the decision to make the response.

[From the New York Times, Apr. 24, 1964]

UNITED STATES STUDIES BID OF RED RUMANIA—BUCHAREST SEEKING TO BUY A SYNTHETIC RUBBER WORKS

WASHINGTON, April 23.—The United States is considering the sale of a synthetic rubber works to Communist Rumania, authoritative sources reported today.

Should the sale be made, it will represent a major change of course in U.S. relations with Communist-bloc countries, going outside usual trade patterns.

Rumanian requests for various kinds of industrial equipment have been reaching Washington for several years. The inquiry for a complete synthetic rubber plant was received after top members of the administration made it clear that the United States would give careful consideration to requests from Rumania in view of that country's efforts to gain greater independence from the Soviet Union.

RUSK'S SPEECH RECALLED

Secretary of State Dean Rusk said in a speech in February that Rumania recently has "asserted a more independent attitude and has expanded its trade and other contacts with the West."

"It has taken steps to improve its relations with the United States," he added. "We are responding accordingly."

No decision has been made on whether to grant the Rumanian request and license the export of the plant, officials stress.

Gheorghe Gaston-Marin, Deputy Premier of Rumania, and chairman of the State Planning Committee was invited to come to Washington for direct negotiations, probably in the near future.

Expert sources firmly dismiss any suggestion that basic national or international controls of strategic trade with the Communist world would be affected by an eventual rubber plant deal.

Rumania is considered a leading example of a Communist country trying to loosen its ties with Moscow. In the economic field the Rumanians made it clear they want to expand their industry, disregarding the blueprints of Comecon, the Communist bloc's Council of Mutual Economic Assistance.

Politically, too, Bucharest has manifested independent thinking; it volunteered to seek reconciliation between Moscow and Peiping, and made overtures for closer relations with President Tito's Yugoslavia.

Rumania is busily pursuing trade with other Western nations. At present, Britain, France, West Germany, and Austria are bidding for the construction of the vast Galati steel plant, a project which Rumania is undertaking despite reported objections by Moscow.

[From the New York Times, May 11, 1964]

AMERICAN TALKS WITH RUMANIA

The decision of the United States and Rumania to hold political and economic talks next week is dramatic evidence of the significant recent improvement in relations between Washington and Bucharest. It is also a remarkable indication of the ferment now taking place in the Communist world.

A year or more ago such talks would have been inconceivable. The United States then regarded Rumania as simply another Soviet satellite; the Rumanians, for their part, would hardly have dared risk Soviet displeasure by such a bold move as independent participation in major negotiations with the United States.

The agreement to hold talks implies that Washington no longer regards Rumania as a supine Soviet satellite, while Bucharest is apparently unworried about its giant neighbor's reaction. The Rumanians presumably believe that Moscow is now too entangled in its political war with Peiping to desire any simultaneous serious political conflict in Eastern Europe.

It took courage for the Johnson administration to agree to these negotiations in an election year. The State Department is no doubt fully braced for the criticisms likely to be voiced by the rightwingers in Congress and elsewhere who think that complete hostility is the only appropriate American policy toward any Communist-ruled state.

But the essence of American policy toward Eastern Europe for almost two decades now has been to encourage the forces of national independence. Today Rumania stands as one of the chief supporters of the concept that a Communist state must be sovereign, not a mere vassal of either Moscow or Peiping.

Premier Gheorghe Gheorghiu-Dej first demonstrated his independence by refusing to bow to Premier Khrushchev's idea on Communist-bloc economic integration. More recently, the unsuccessful Rumanian effort to mediate between the Russians and the Chinese culminated in Bucharest's publication of what already looms as a historic manifesto of national communism—a document that gave public notice of the unwillingness of Rumania's rulers to accept dictation from any other country.

American support for greater national independence in Eastern Europe can be shown effectively at the forthcoming negotiations by steps to increase economic, cultural, and other ties between the United States and Rumania. The goal is not to foment enmity between Rumania and the Soviet Union, but rather to encourage all the nations of Eastern Europe to assert their own right to seek friendlier relations with the West.

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

RUMANIA'S DISCREET TURN

Yugoslavia broke with the Soviet bloc in 1948 and Moscow bellowed, but Rumania is slipping out so smoothly that Moscow can hardly say a word. This remarkable turn has been confirmed by the subtle but strong declaration of independence which Bucharest

issued and broadcast to the world the other day.

Coolly, the Rumanians staked out the middle ground between Moscow and Peiping and asserted their national right to occupy it. On the watershed issue between themselves and the Russians, that of integration into an economic unit dominated by Moscow, they explained their refusal on the candid grounds that integration would "turn sovereignty into a notion without any content."

The Rumanian statement was phrased largely in terms of the international Communist movement, not of specifically national interests; thus it had the look of a platform on which other countries, if they chose, could stand, not of a banner waved by one country alone. The statement also made the self-flattering suggestion that Rumania mediate the Sino-Soviet dispute. Bucharest, one concludes, is feeling its oats.

The slow Rumanian pivot would seem to suit well the American policy of offering a helping hand to Communist countries which display an interest in limited independence. In its acts, though, in contrast to its sophisticated words, Washington has been slow to accept the opportunities that Eastern Europe has provided. It is one thing to supply aid under the dramatic circumstances of a Yugoslavia in 1948 but it is another under the discreet conditions of a Rumania in 1964. It is equally important, too.

[From the Washington (D.C.) Post, Apr. 12, 1964]

RUMANIA BUILDS BILLION DOLLAR STEEL MILL

(By Anatole Shub)

GALATI, RUMANIA, April 11.—The billion-dollar steel complex which wrecked Kremlin plans for East European integration, and inspires Rumania's current bid for political independence, is rapidly taking shape in this Danube Delta port.

A Franco-British team is already at work on a 2-million ton hot rolling mill, one of six key installations in the metallurgical complex which, when completed in 1970, will have a steel production capacity of 5 million tons—one of the largest in Europe.

The H. K. Ferguson Co., of Cleveland, Ohio, is competing with French, British, West German, Austrian, and Swedish firms for the right to build the steel works which is the heart of the project. American coking coal, of which some 30,000 tons recently arrived in this country, may contribute largely to the success of the project.

Rumania's lack of substantial iron and coal deposits was the principal cause of objections to the Galati project on the part of Communist Poland, East Germany, Czechoslovakia, and the Soviet Union. In sessions of the Soviet-bloc Council for Mutual Economic Assistance (Comecon) 3 years ago, these countries as well as others demanded that Rumania drop the project and leave Communist steelmaking to them.

Although Russia threatened to renege on 1960 promises to build key installations and supply coal and iron, Rumanian President Gheorghe Gheorghiu-Dej refused to back down and turned to the West for aid.

Now Rumania appears to have succeeded in persuading the Russians to honor their commitments. Bucharest announced February that the Soviet Union would, between 1965 and 1967, deliver the promised equipment for a hot rolling mill and a blooming-and-slabbing mill.

Observers consider that this new commitment to Galati was the price Russia paid for the 100,000 tons of grain which Rumania shipped during last fall's Soviet wheat crisis. "Comecon," however, remains a dirty word in Bucharest.

The Rumanians have already completed most of the project's infrastructure—administrative buildings, workshops, road, rail-sidings and the like. The focus is on the rolling mill, being built in cooperation with P. Schneider and Davy, United, the French and British firms, and on assuring future sources of iron and coal. Although the Soviet Union has promised substantial deliveries of both raw materials, Rumanian officials are currently active in promoting alternate sources—iron from Brazil and India, and coal from Britain and the United States.

The U.S.S.R. is out of the picture completely as far as the contract for the key steel works is concerned. According to Galati engineers, Russia's newest oxygen-converter steel process is not available for export—even to "Socialist" countries—while older Soviet installations are not up to Western standards.

An indication of the fierce Western competition for the contract, which is to be awarded this year, is the coming visit of Austrian Vice Premier Bruno Pitterman on behalf of the Voest steel firm, which is a nationalized industry. The Ferguson Co. has had a high-level representative visiting here regularly since September 1962.

The project at Galati, which is not far from the birthplace of President Gheorghiu-Dej, symbolizes Rumania's efforts to attain economic growth and independence—efforts which Western observers consider have been largely successful thus far. In addition to the giant steel combine, Rumanians are currently at work, in many cases with Western assistance, on major aluminium, paper, fertilizer and chemical installations. Oil, timber and grain continue to earn the necessary foreign exchange.

[From the Washington (D.C.) Post, May 10, 1964]

PARLEY WITH UNITED STATES SEEN AS NEW STEP IN QUIET REVOLUTION IN RUMANIA

(By Murrey Marder)

The United States and Rumania will begin a groundbreaking round of talks here May 18 in the "quiet revolution" of growing independence among the Communist nations of Europe.

President Johnson yesterday announced the conference, with the State Department filling in some important details.

The President said in New York that the meeting was "another * * * effort to increase peaceful contact with the people of Eastern Europe * * * in pursuit of a lasting peace."

What the United States is embarking upon could have long-range impact upon East-West relations.

Unusually high-level delegations have been named on both sides.

W. Averell Harriman, Under Secretary of State for Political Affairs, will lead the American negotiating team. Gheorghe Gaston-Marin, economic planning czar, is to head Rumania's delegation. He is vice chairman of Rumania's Council of Ministers and chairman of the State Planning Committee.

The United States will test the possibility of encouraging more Rumanian ties with the West and more independence of what used to be monolithic, Soviet-imposed policy in Eastern Europe.

This Nation encouraged the same trend in Yugoslavia after its break with the Soviet bloc in 1948, and in Poland, after its partial show of independence in 1956.

Rumania already has taken several steps toward the diversity and independence of policy among Communist nations that the United States wants to foster. The Soviet Union has been obliged to acknowledge the equality of Communist nations, while it too seeks more trade with the West.

Bucharest's leaders have used the opportunity of rivalry between the Soviet Union and Communist China to resist centralized Soviet block attempts to dictate Rumania's economic development.

Rumania adheres to the Soviets' peaceful coexistence line. But it also has tried to operate as a mediator in the Sino-Soviet rift, to enhance its own preference for Communist diversity. Rumania has set out to increase its trade and associations with the West for the same reason.

The Rumanians have curbed their general obeisance to Moscow, to escape the satellite stigma, by eliminating compulsory teaching of Russian in their schools, by changing street and theater names, and by similar acts.

Trade and other matters, meaning political matters, will be the subject of the exploratory United States-Rumanian talks, the State Department announced.

Diplomatic relations between the United States and Rumania are now at the level of legations headed by ministers, rather than embassies directed by ambassadors.

Trade between the two is almost insignificant, and there are many American legislative barriers against its expansion.

Rumania does not have most-favored-nation trade rights with the United States, as do Poland and Yugoslavia. It is possible, however, to lift some trade bars by administrative action and Presidential interpretations, and perhaps in the future by legislation.

U.S. exports to Rumania dropped from $1.8 million in 1959 to about $800,000 last year. U.S. imports fell from $1.2 million to about $600,000 in the same period. The United States exported such items as steel, machinery, antibiotics, coal, and agricultural products, and imported walnuts, molasses, and glassware.

The Rumanians are anxious to buy synthetic rubber production equipment and other supplies in this country.

Rumania has launched a billion-dollar steel complex that was a major blow to Soviet plans for East European economic integration. A Franco-British team is now at work on the huge installations, with American and other Western firms competing for shares in the project.

Mr. McCLELLAN. Mr. President, will the distinguished Senator from Rhode Island yield?

Mr. PELL. I yield.

Mr. McCLELLAN. I did not understand the number of people who were incarcerated.

Mr. PELL. At least hundreds, perhaps thousands; and through my own relationship with the International Rescue Committee, I know that the conditions of those prisoners are deplorable.

Mr. McCLELLAN. Does the Senator from Rhode Island know whether they had a jury trial?

Mr. PELL. I believe they did not have a jury trial.

Mr. McCLELLAN. I thank the Senator.

THE ROAD TO ANOTHER DIENBIENPHU

During the delivery of Mr. McCLELLAN'S speech,

Mr. GRUENING. Mr. President, last Thursday, May 7, which was the 10th anniversary of the French disaster in southeast Asia—the defeat and loss of control at Dienbienphu—I placed an article in the RECORD written by Bernard B. Fall, which gave the history that led up to that tragic event.

I pointed out that if we were wise, we would profit by France's mistake and not fall into that tropical trap in which France succumbed. I warned that if we did not disengage ourselves from the undeclared war—a civil war—in which

we are participating with a steady and increasing loss of American lives in South Vietnam—we would have another Dienbienphu.

It is a coincidence that my thought was echoed quickly by the distinguished columnist of the New York Times, C. L. Sulzberger, who, 2 days later, ran his column in the Saturday, May 9 New York Times, under the heading "The Road to Another Dienbienphu."

I ask unanimous consent that his column be printed at the conclusion of my remarks, as well as an article summarizing the present situation in Vietnam, entitled "The Tragedy of Vietnam: Where Do We Go From Here?" written by Helen B. Lamb, a longtime student of Asian political and economic problems.

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

(See exhibit 1.)

Mr. GRUENING. Mr. President, as a further bit of background information on Helen B. Lamb, she received her Ph. D. from Radcliffe College in 1943, thereafter working as a research analyst for the Foreign Economic Administration on the U.S. Government guide program for the American occupation of Japan. Subsequently, she joined the Center for International Studies at Massachusetts Institute of Technology, where she did research on India. For the last 2 years she has been making an intensive study of Vietnam in preparation for a book on the present crisis there. She went to Paris in 1963 to interview Vietnamese political exiles in that city, summarizing her findings in an article that was published in the Nation entitled "The Paris Exiles," on August 10, 1963. Dr. Lamb has taught economics at Black Mountain, Bennington, and Sarah Lawrence Colleges, and I feel she is most eminently qualified to discuss the situation in Vietnam.

Mr. President, we not only have no business in the civil war in Vietnam, but we have been there for a decade and we are doing a poor job. The equipment we are sending is defective, and obsolete. Not only are American boys dying, and no boys of our SEATO allies are fighting and dying, but it also appears that some of our boys are dying needlessly—although I would say that any who die in that remote jungle civil war are dying needlessly. They should not be there at all.

Today, on the front page of the Washington Daily News, is published an article entitled "How Obsolete Planes Are Killing Our Pilots." This article is by Jim G. Lucas, a veteran, experienced Scripps-Howard staff writer, and it is written under the dateline of Soc Trang, South Vietnam, May 11.

The article reads:

The Communist Vietcong didn't kill Jerry Shank.

His plane did.

Nor did they kill Bob Brumet of 9211 Shelton Street, Bethesda.

His plane killed him.

Here we are, the most powerful nation on earth, boasting every day of our superiority in modern arms, and we send our young men out to fight a ruthless, determined foe with equipment long past its prime.

Jerry Shank and Robert N. Brumet died because they were ordered to fly planes that might better have been consigned to the scrap heap.

TRAINERS

They were T–28's. The "T" stands for "trainer," and that's all it was intended to be.

It was outmoded in 1953. It is practically the last two-seated propeller-driven craft in the Air Force's inventory.

Yet out here we've loaded this antiquated trainer's wings with 500-pound bombs and napalm so that if one is flown long enough it's inevitable that its wings will drop off. The men who fly them know that.

Politically, of course, the T–28 has its points. No one, including the Reds, could seriously object to it.

By using it, we're respecting the armistice terms of the 1954 Geneva convention, in that we're not introducing new equipment into Vietnam.

BODY FOR PROOF

Also, we can put a Vietnamese in the rear seat, contending he's a student pilot.

Actually, few of them even speak English and instruction is nonexistent.

But if a T–28 crashes, there will be a Vietnamese body in the wreckage, and apparently that's important in this game of hide-and-seek we're playing here.

I'm glad I don't have it on my conscience.

As for Jerry Shank and Bob Brumet—every time they put their planes into a dive they must have wondered if they would come out.

On April 9, Capt. Robert Brumet, 36, put his craft into a dive and it didn't come out.

His buddies, flying nearby saw the wings fall off and watched in horror as the plane plowed into the paddies.

They called over their radios for the choppers to come in and pick up what was left. The choppers didn't get there soon enough. The Vietcong got there first.

TORTURE

I hope Bob was dead when they found him, because these are the same people who ceremoniously broke the arms and legs of a district leader's wife at Kien Long recently and then killed her. That is the kind of enemy we face.

We need equipment we can count on to keep us out of their hands.

Captain Brumet was full of love of living and as fine a fighter pilot and a man as you could want.

On March 24, Jerry Shank put his ship into a dive between Soc Trang and Back Lieu and its wing separated from the fuselage.

Jerry was Capt. Edwin G. Shank, 27, from Winamac, Ind. When they shipped his body back, every shop and office in his home town closed for the day.

Jerry was liked by everybody, and most everybody felt the same way about him. He left a wife and four children.

MATS PILOT

Before he came to Vietnam, he was a MATS transport pilot. He graduated from Notre Dame in 1959 with a degree in architectural engineering.

He did his stint in the Air Force Reserve, liked it and decided to make flying his career.

Jerry had one consuming ambition: He dreamed of being the first American to land on the moon. Maybe he could have done it. He had all the qualifications.

It makes you wonder what kind of official thinking justifies taking the lives of two such young men—and there have been at least two others—and you make up your mind you will find out when you get home.

Such decisions may be easy to come by in Washington, where men are statistics and casualty rates are a wavering line on a weekly chart.

But they are harder to take when you know the brave men who honestly fear their planes—because they can not trust the craft to do the job they are asked to do in their country's name.

REPLACEMENT

The Pentagon says it is replacing the T–28 with a Navy carrier plane, the AD–6, more adaptable to dive bombing. And that is good. But why wait until now?

Moreover, the Pentagon did not say when this would be done. And every day brave fighting men take off from Soc Trang in their T–28's, hoping the wings will stay glued until those new jobs get here.

One of the things which Jim Lucas did not tell relates to the utter hypocrisy which sends these men into combat when they are supposed to be there as advisers. That is the official version. Eighteen thousand Americans are there. They are on the firing line. I wish that Mr. McNamara, who has accepted the title which the Senator from Oregon [Mr. MORSE] bestowed upon the war, when he said he was glad to have it called McNamara's war, would explain why, after he has been in charge of the war for 4 years, our men are not better equipped and why they are sent to their death in obsolete planes that come apart in the air.

I also have an editorial, published in today's Washington News, based on the article which Jim Lucas wrote. The editorial reads as follows:

BRAVE MEN BETRAYED

Air Force Capt. Jerry Shank is one of 131 American fighting men who have lost their lives in combat since the United States began its program of massive assistance to South Vietnam in December 1961. In common with the rest of these brave men, Jerry Shank left a legacy of heartbreak, of a widow's empty, endless loneliness, of little children for whom a smiling photograph must forever be the inadequate substitute for a father's strong arms and loving counsel.

But Jerry Shank left something more than that. He was an articulate, angry man, and he left behind a poignant recital of how courageous young Americans are being betrayed by ancient equipment that is no longer equal to the demands of modern aerial combat.

Jim G. Lucas, a combat correspondent who has shared danger and despair with American troops in three wars, tells Captain Shank's story that no reader will soon forget. He tells it, we think, with cold indignation that is wholly justified. Letters written to his wife by Captain Shank have been published in Life magazine and in U.S. News & World Report. With Jim's story, written from the Soc Trang airstrip in the steaming, guerrilla-infested Mekong Delta, they give a shocking account of American men whose courage and devotion is being made a grisly mockery by obsolescent equipment.

Captain Shank died in a T–28, an aging, propeller-driven trainer that was never designed for combat. Loaded with 5,000-pound bombs and napalm tanks, it cannot indefinitely endure the stresses of repeated dive-bombing runs. Eventually the wings come off. That happened to Captain Shank's airplane on March 24. On April 9 it happened to the T–28 piloted by Capt. Robert Brumett.

Nor is the T–28 the whole story of courageous young American pilots being betrayed by war-weary, obsolescent aircraft. The B–26, a World War II attack bomber, was outmoded on V–J Day. Until recently it was flying combat sorties in Vietnam and, as Jerry

Shank's letters have made brutally explicit, still killing American men. The H–21 (Flying Banana) helicopter has done yeoman duty in Vietnam, but it is old and slow and is by no means the Nation's best combat-lift chopper. It, too, imposes unnecessary risks on the men who fly it.

Attempts to obtain an explanation of why we are asking our men to fight with inferior equipment have elicited no coherent reply. Some sources habitually insist the T–28 is ideal for anti-guerrilla warfare because it is slower than modern aircraft. But no one would suggest that its habit of shedding wings fits it for anything other than a flying coffin.

Captain Shank and Captain Brumett are a symbol of much that is wrong with our war in southeast Asia. The prevailing opinion of the men who are fighting it is that we are losing. Jim Lucas' sorrowing account of young Americans dying in the flaming wreckage of obsolete airplanes gives a tragic insight into one of the reasons we are losing.

Our men deserve better of those of us who remain safe back home.

Mr. President, I repeat my view, which I have stated before, that all of Vietnam is not worth the life of one American boy. It is not our war. We cannot win it. We should never have gotten in. We should never have stayed in. We should get out now on the best terms possible. But get out we should. Not another American boy's life should be sacrificed.

EXHIBIT 1

FOREIGN AFFAIRS: THE ROAD TO ANOTHER DIENBIENPHU

(By C. L. Sulzberger)

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—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.

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.

Counterguerrilla 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. 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.

THE TRAGEDY OF VIETNAM: WHERE DO WE GO FROM HERE?

(By Helen B. Lamb)

President Lyndon B. Johnson in a speech to a labor conference in Washington, D.C., on March 23, 1964:

"The people of the world, I think, prefer reasoned agreement to ready attack. And that is why we must follow the Prophet Isaiah many, many times before we send the Marines, and say, 'Come now and let us reason together.'

"And this is our objective—the quest for peace and not the quarrels of war. * * *

"In every trouble spot in the world this hope for reasoned agreement instead of rash retaliation can bear fruit."

Why are Americans fighting and dying in faraway Vietnam? Are we anxious to protect American investments there? Does South Vietnam have strategic raw materials which our Government thinks we need? Is the country within the perimeter of U.S. defense and security? The answer to all these questions is "No." Then why have we poured first billions of dollars and now 18,000 American troops into South Vietnam?

The official U.S. position, as expressed repeatedly by President Johnson, Dean Rusk, and others, has been that we are there because we want to "help" South Vietnam, we want to preserve "freedom" in South Vietnam, stop "aggression" against South Vietnam, and that our troops were "invited" to come to South Vietnam as "advisers" by the duly recognized Government of South Vietnam.

These reassuring bromides emphasizing our noble intentions cannot conceal certain stubborn facts. We are taking sides in a strictly Vietnamese civil war. We are the only foreigners directly engaged in this war. The South Vietnamese Government which we are so eager to protect is virtually our own creation, as Senator WAYNE MORSE, Democrat, of Oregon, has recently pointed out. The Government of Ngo Dinh Diem which "invited" our military forces into South Vietnam was thoroughly exposed to the entire world as one which did not represent the will of the South Vietnamese people, but the power-grabbing proclivities of Diem's own family clan. Since the execution of Diem by his own officers, rival military factions have fought for power—that is, for American largesse, which keeps the generals in power and the war going.

American public opinion is beginning to question the huge outlays of funds and the sacrifice of American boys for the sake of propping up unpopular "strongmen" who cannot defend themselves from their own people and so cling desperately to us. Senator ERNEST GRUENING, Democrat, of Alaska, addressed the Senate on March 10, concerning U.S. military involvement in South Vietnam, and concluded: "This is a fight that is not our fight into which we should not have gotten in the first place. The time to get out is now before the further loss of American lives." Senators ALLEN J. ELLENDER, Democrat, of Louisiana, and MORSE have expressed substantial agreement with him. Others, including Senator E. L. BARTLETT, Democrat, of Alaska, and Majority Leader MIKE MANSFIELD, have urged that we welcome President de Gaulle's effort to bring about a negotiated settlement.

HOW THE WAR STARTED

How did this endless Vietnamese civil war start? The successive beleaguered governments of South Vietnam have been challenged by the revolutionary forces of Vietnamese nationalism. These forces are intent on the overthrow of any and all rightwing governments which are tied to America's apron strings. We call the guerrilla fighters Communists (Vietcong). Actually, the overwhelming majority of these revolutionary fighters are not Communists and the program they are fighting for is not a program to establish a Communist regime.

Originally, back in 1945, when the war started, it was not a civil war but a revolutionary war of liberation from French colonialism. The Vietnamese were led by the great revolutionary, Ho Chi Minh, Vietnam's leading Nationalist and Communist. He organized the Viet Minh, a coalition of different Vietnamese political parties and interests commanding widespread support among the Vietnamese, conservatives as well as radicals. Even the Vietnamese Catholic hierarchy in North Vietnam supported Ho's revolution.

From 1947 on, the United States tried to convert this struggle for independence from French rule into an ideological war between rival rightwing and leftwing Vietnamese factions. To do this, the United States evolved a double strategy. We tried simultaneously both to help the French defeat the revolutionary Viet Minh and to force the French to grant formal independence to a conservative Vietnamese faction. This faction was built around the reinstated Vietnamese Emperor, Bao Dai, who had obligingly served as puppet head of Vietnam under the French colonial regime, as well as under the Japanese occupation during World War II, but had abdicated in favor of the revolutionary Viet Minh in 1945. Our dou-

ble strategy was bound to fail because it was contradictory. The more we helped the French against the Vietminh the less likely were the French to relinquish their hold on Vietnam.

VIETNAM'S GEORGE WASHINGTON

In the end, the French were forced out of Vietnam but not by our preachments. They were defeated by the Vietminh at Dienbienphu because the Vietnamese people agreed with the Vietminh that the war was a war of national liberation from French domination. And they did not believe the United States-French-Bao Dai claims that France would give Vietnam true independence or that Bao Dai was a genuine Vietnamese patriot to whom all Vietnamese should rally. Instead of turning against Uncle Ho, as Ho Chi Minh is affectionately called, very many Vietnamese loved and revered him as their great national hero, fought for him, worked for him, and carried on their backs the supplies for his army. He is the Vietnamese George Washington. To the end, Bao Dai was regarded as a French puppet and whatever concessions were grudgingly made to his government by the French were attributed not to the magnanimity of the French but to the strength of the Vietminh.

Following several years of struggle with no outside assistance Ho Chi Minh finally, after 1949, got some help from Communist China, but it was a tiny trickle compared to the avalanche of aid that the French and Bao Dai got from the United States. The United States poured over a billion dollars worth of military aid and defense support into the war at that time, thus making the French—Bao Dai army infinitely better equipped than Ho Chi Minh's peasant troops. This American aid merely prolonged the agony and greatly added to the casualty lists for both France and Vietnam. It did not alter the outcome.

As the war dragged on, the French became weary and reluctant to continue the fighting. They were alienated by what some Frenchmen suspected were America's efforts to displace them in Indochina. The French press questioned why French lives should be lost in America's anti-Communist crusade. To keep the war going, the United States offered a greatly expanded military aid program. But the French will for peace prevailed and a peace conference was finally scheduled in the spring of 1954 at Geneva, attended by all the great powers, even intermittently by the United States, though the Eisenhower administration hoped it would fail.

HO MAKES CONCESSIONS

It did not fail. Ho Chi Minh, a past master at negotiation and compromise, made significant concessions in order to achieve a settlement. These concessions were the provisional partition of Vietnam at the 17th Parallel, an important facesaving device for the French as it allowed them to regroup their troops temporarily in South Vietnam rather than surrender to the Vietminh. No Vietnamese wanted this partition. Even the Bao Dai delegation was against it. Two reasons impelled Ho Chi Minh to make this concession. First, the United States was threatening to expand the war and had offered France the use of the atomic bomb. And second, the partition itself was supposed to be temporary.

The Geneva accords stipulated that within 2 years French troops had to withdraw from South Vietnam; and that the provisional governments of the two zones, the north under Ho and the south under Bao Dai and his Prime Minister, Diem, had to give way to a new all-Vietnamese Government, freely chosen in a nationwide election supervised by the International Control Commission set up to police the agreements. The United States alone among the great powers refused to endorse the Geneva accords, though we did at that time go on record as opposing the overthrow of these agreements by force.

WHAT PARTITION MEANS

After Geneva, it soon became apparent that the United States planned to subvert the Geneva accords by subtle, indirect means such as the formation of SEATO (Southeast Asia Treaty Organization), and to continue the struggle under a different guise. We refused to accept the verdict of history. Our side, the French-Bao Dai team, had lost. But we did not let them settle down peacefully to carry out the agreements.

How would we Americans have felt if at the end of our own Civil War between the States, a foreign power had said to the defeated southern leaders, "We will support you; we will help you get ready to fight again; you can ignore the peace terms and we will back you up. With our help you can get your secession after all; the South should be a separate country because its institutions and ideology are fundamentally opposed to those of the North." This is precisely what we have done in South Vietnam.

This American policy of insisting that Vietnam be permanently cut in two at the 17th Parallel with no intercourse, not even trade, between the anti-Communist south and the Communist north, outrages Vietnamese patriotism because it violates the integrity of Vietnam and threatens its very survival as an independent state. Instead of one strong country it creates two weak ones, neither of which is viable. North Vietnam needs the surplus rice from the south, and South Vietnam needs coal and industrial raw materials from the north. Thus the total divorce of North and South Vietnam has forced each half to turn elsewhere for trade and aid, North Vietnam to the Communist bloc and South Vietnam to the United States.

This precarious dependence on great powers, which belong to different power blocs, and are locked in conflict with each other, fills thoughtful Vietnamese, whatever their politics, with great anxiety for the future of their nation. Vietnam is a small country at best and suffered in the past a thousand years of Chinese domination. The Vietnamese expelled the Chinese in A.D. 939 and maintained their independence except for short interludes until the French conquest beginning in 1858 and ending in 1954 with the country's partition. This division, so frought with danger for the Vietnamese people, is like a time bomb.

WHAT PRICE CONFRONTATION?

The American policy of maintaining tension in this area through a hostile confrontation between North and South Vietnam has created in South Vietnam a country which cannot possibly stand on its own feet. South Vietnam has a smaller population than North Vietnam. The role the United States assigned to South Vietnam was that of virtually declaring war on North Vietnam. South Vietnam cut off all trade and normal relations between the two zones, making it necessary to build a military establishment way beyond the capacity of South Vietnam's own slender resources. South Vietnam has thus become chronically dependent on the United States. In consequence, the leaders of South Vietnam, from Ngo Dinh Diem on, have had to bear a double cross, the cross of being called American puppets and the cross of being held responsible for the continued partition of their country.

In addition to everything else that is wrong with a policy that insists on creating a sanitized anti-Communist bastion of the free world out of South Vietnam, this policy of the United States made civil war in the south inevitable. Why? Because it involved a vigorous effort to root out all pro-Ho Chi Minh sentiment in the south where he had and still has much support. In fact, before 1954 large areas of the south had been governed by the Vietminh, which had already put through agrarian land reforms. Diem's government tried to turn the clock back. With Diem's army, sent into the countryside to purge all those who had helped the Vietminh or benefited from Vietminh reforms, marched the landlords demanding back rents. There were protest demonstrations and brutal police repression until finally many in the rural areas, including members of the Cao Dai and Hoa Hao religious sects, fled to the jungles to organize an armed resistance.

A GRASSROOTS WAR

This current revolution was made in South Vietnam.

* * * * *

Both sides use terror in this dirty war, but the Government side has more terrible means for the mass extermination of people, livestock, and crops. It has used poison chemicals, nepalm bombs, and long-range artillery supplied by the United States. Powered by American planes, death and destruction rain from the sky on a village's entire civilian population—on guerrilla fighters and passive bystanders, the rich as well as the poor peasants, the Catholics and the Buddhists, women, children, and old men. These tactics suggest that the Government gave up long ago any hope of winning the people to its side.

WHAT IS LIBERATION FRONT?

By the crucial year 1960 the Diem tyranny was under attack from all sides. A group of 18 prominent South Vietnamese intellectual and political figures issued a manifesto April 26 criticizing the Government for its total failure to bring freedom, justice, democracy, and prosperity to South Vietnam. Even the military were disaffected. On November 11 a coup-d'etat, staged by dissident army officers, was suppressed by General Nguyen Khanh, the present dictator. The failure of these efforts to bring about changes in the Government and the repression which followed led more and more Vietnamese to join the guerrillas, either from dislike of the Diem regime or fear for their personal safety. On December 20, 1960, the guerrillas organized the National Liberation Front to coordinate the fighting against the Diem regime and to get some consensus on possible peace terms.

Like the former Vietminh, the Front is a coalition of many groups—religious, ethnic, and political—with several political parties, of which the Communist Party of South Vietnam plays an outstanding role. The main support for the Front comes from those South Vietnamese who have suffered most under the Diem rule—the poor peasants, certain Buddhist sects, the Cambodian minority, and the ethnic tribes who live in the high plateaus. The Front's program reflects the needs and wishes of its present members as well as their desire to get more adherents. This means it is the typical program, not of a class war, but of a liberation movement against the tyranny of the overbearing South Vietnamese Government and its foreign sponsors. Therefore it has something for everyone and postpones really difficult controversial issues until freedom has been won.

At the head of the Front is Nguyen Huu Tho, a noted civil liberties lawyer, who during French rule had defended Vietnamese patriots arraigned before the courts of Saigon for their political activities on behalf of Vietnam's freedom. In 1950 he organized demonstrations against American arms shipments to Saigon, for which he was jailed by the French. After 1954, he became vice president of the Peace Movement of Saigon-Cholon, working for the full implementation of the Geneva Accords. Considered subversive by the Diem government, he was arrested in September 1954, and held without trial until the guerrillas freed him in 1961. With no political affiliation himself, he heads the Front's committee of leaders

from different political parties, religious sects and ethnic minority groups as well as representatives for different sectors of the population—students, women, peasants, and so on.

WHY THE FRONT HAS GROWN

The Front has grown in a short time into a large organization, estimated to contain some 300,000 full- and part-time fighters and from 4 to 5 million supporters, according to Associated Press Correspondent Malcolm Browne (Providence Journal, Feb. 9, 1964).

The Vietnamese people are attracted to the Front's program and propaganda. The Front makes peace proposals instead of war proposals. It advocates neutralism as a means of stopping the war and insuring Vietnam's independence. It demands that normal trade relations be resumed between North and South Vietnam and that ultimately negotiations take place between the two areas looking toward the reunification of Vietnam. It outlines a postwar program of economic development and social and political reform. It calls for a great extension of freedom by the removal of all restrictions which have been imposed by the South Vietnamese Governments since 1954 on groups, local communities and individuals. Let us analyze the content of Front propaganda and compare it with the South Vietnamese Government's own propaganda line.

The most effective propaganda is of course the propaganda of deed and example. What is the tone of life in Saigon, controlled by the Government, and in the countryside that is controlled by the Front? In Saigon there are increasing extremes of wealth and poverty; new building is mostly luxury apartments. There are many signs of high life and Western influence—gambling and prostitution; and the twist, American jazz, American movies and American soldiers with a lot of money to spend. Everywhere there is evidence that the South Vietnamese Government depends heavily on the United States—$3 billion worth of American aid since 1954, mostly in the form of imported goods and weapons. Corruption and graft have become matters of common knowledge. According to the reports in the American press, the Saigonese appear to be either cynical or indifferent as to the succession of military coups.

Out in the rural areas where the Front is strong, equality is the keynote; all are poor. There is no corruption and no luxury. Life is difficult, austere, and rigorous. People work hard and become fanatically dedicated to the cause of the Front. Instead of being dependent on handouts from abroad, they are very self-reliant and even improvise primitive weapons of their own. There are no foreigners in their midst. In consequence, their movement is an all-South Vietnamese movement and their cause that of patriotically ridding their country of all foreign—that is, American—interference.

WHAT ABOUT NORTH VIETNAM?

American commentators assert repeatedly that North Vietnamese troops have commited aggression by invading the south. If this were so, it would not be a matter of foreign aggression, as North Vietnamese are still Vietnamese. But is it so? New York Times Reporter David Halberstam reported on March 6, 1964, "No capture of North Vietnamese in the south has come to light."

To be sure, former Viet Minh soldiers are now fighting in South Vietnam, but they are South Vietnamese according to U.S. officials (New York Times, June 18, 1963). These are the Vietminh regulars who had to regroup in North Vietnam under the Geneva agreement of 1954. They thought they would be returning to their families in the south in 1956 after the promised elections. When Diem and the United States blocked these elections, many of these South Vietnamese filtered homeward over the famous Ho Chi Minh trail through the jungle of Laos. The front does not need soldiers from North Vietnam. It is an insult to the South Vietnamese to imply that they do not make as dedicated, competent, and militant fighters as their northern compatriots—when they are on the side of Vietnamese freedom. As to their supply of weapons, the United States made an official breakdown of a cross section of weapons taken from the Vietcong and only 1 in 50 came from the Communist bloc, as reported in the Baltimore Sun, October 14, 1963, by its Far Eastern correspondent, Louis R. Rukeyser.

The whole rationale of guerrilla warfare presupposes that success depends on the support of the people, on raising local issues meaningful to the people, on local leaders and local self-reliance, with weapons either homemade or captured from the enemy. Peasants fight because they are defending their homes. So the Front stations its recruits in their own locale, whereas the Government, fearing its soldiers may defect, stations them far away from their home base. The guerrillas destroy roads and bridges because these are the means of supplying the Government troops, not the guerrillas' own forces.

The guerrillas fighting courageously in South Vietnam against such great odds know, however, that they have the unqualified moral support of all the Socialist countries. Many student and peace organizations in non-Socialist countries, even including the United States, have passed resolutions condemning the war and proposing an international conference to bring about peace through compromise and negotiation. The members of the Front have naturally the greatest sense of solidarity with their North Vietnamese compatriots who have a very special interest in the victory of the Front. This victory would mean not only the end of American interference in South Vietnam, but also the resumption of normal trade relations between North and South Vietnam looking toward ultimate reunification of Vietnam. These goals mean as much to a North Vietnamese as to a South Vietnamese. But the concrete aid that the North has provided for the struggle in the South seems to be slight, aside from educational and training facilities accorded South Vietnamese who manage to get to the North.

COUP FOLLOWS COUP

While the Front has grown stronger since 1960, the Government of South Vietnam has grown weaker, and its dependence on the United States has consequently increased. The attempted coups d'etat in 1960 and 1962 failed, but were followed by others in 1963 and 1964 which were successful. These self-appointed military cliques kill or jail their predecessors, so that the only real thread of continuity in South Vietnam today is the American presence and American power, to effect American policies. Each clique clutches for our favor and announces that it wholeheartedly supports the American position. As long as the United States continues to pour men and money into South Vietnam, there will always be some Vietnamese who, with hands outstretched for more aid, will parrot the U.S. line on the war.

The relationship of all these governments to the United States has been basically that of a parasite to its host—with certain surface differences in the relationship being registered from one regime to the next. Diem and his brother Nhu wanted American money but not American advice. Diem was an obstinate, proud man, absolutely sure he knew what was best for Vietnam, and so inevitably collided with American advisers who were equally sure that only they knew what was best for Vietnam. Diem and especially his smart brother Nhu became increasingly exasperated with American interference in how to win the war against the guerrillas, how to run the Government, and how to handle the Buddhist crisis. Their growing hostility to America tended to veil the Government's dependence on the United States and thus took some of the curse off the Front's charge that Diem was nothing but an American puppet. Friction mounted with the continued failure of the joint United States-Diem effort to destroy the guerillas.

Finally, in the summer of 1963, the United States decided that the Diem regime had to go. We called for a "change in personnel"—just as if South Vietnam were the Ford Motor Co. and we its leading stockholders. Then by quietly discontinuing the commercial aid program, ultimate source of the military budget, we stirred the generals to act. We sloughed off Diem because he was not sufficiently puppetlike. With this "lesson" before them, the successors to Diem are not likely to get out of line.

The United States has leaped to recognize each new government in turn, and American officials solemnly announce on each occasion that this government represents the will of the South Vietnamese people. When our protege, Diem, was overthrown, the population of Saigon went wild with joy and showered the military junta with flowers and kisses. But this demonstration represented relief over the end of the Diem tyranny rather than support for the generals who succeeded it. Three months later when the junta was itself overthrown, no one, Vietnamese or American lifted a finger in its defense. For the new dictator, General Khanh, there were neither flowers nor kisses. The weary Saigonese merely asked, "General Khanh—who is he?" On the evening of his coup and the next day, General Khanh spent his time not in rallying the population to his leadership but, closeted with U.S. Ambassador Lodge, arranging for the continuation of American aid, which was quickly granted.

KHANH ACQUIRES A FORTUNE

Shortly thereafter, General Khanh boasted that he had $10 million and could therefore flee the country and lead a life of ease if he wanted to (New York Herald Tribune, Feb. 3, 1964). So far, he has chosen to remain and becomes the hero of Life magazine, which quotes an American "adviser's" description of Khanh as follows: "He is a hell of a fighter. He is the kind of leader who goes out into the field with his men and kicks them in the rear." (Feb. 14, 1964.)

American officials and General Khanh are still in the honeymoon stage. We praise him to the skies and he reciprocates. He asks our advice and he follows it, even to dispensing candies to the kiddies. According to newspaper reports he admits that the anti-Communist cause has no chance of survival without the most wholehearted U.S. support, and says, "Unfortunately, he (Ambassador Lodge) is the No. 1 man in Saigon." (New York Times, Mar. 13, 1964.)

Whenever General Khanh travels into the countryside, he is flanked by American army men or diplomats. It looks as if we were trying desperately to sell Khanh as our man to the doubting Vietnamese public. How can American officials be so naive? As the London Times pointed out last September 3, "* * * anyone put into power by the Americans, or any other foreign power, would almost automatically forfeit any hope of gaining mass backing." The American embrace may well be the kiss of death for General Khanh in this sense.

Unquestionably the general is overdoing his puppetry. One wonders if he is not a veritable agent of the Front. For hasn't each new Government clique accused its predecessor of working for neutralism and an accommodation with North Vietnam, i.e.,

of being a "traitor"? Perhaps the next dictator will so accuse General Khanh.

CIVIL LIBERTIES FOR WHOM?

Freedom is a great slogan used by both sides to rally people to their cause. Freedom from American intervention is the goal of the front; freedom from communism is the slogan of the Government. In the realm of specific civil liberties both sides claim to stand for the basic freedoms: freedom of speech, of religion, of assembly, of the press, and of political and trade union organization. The Front has the advantage of being the party not in power in Saigon. Government spokesmen cannot obscure their own very bad record on individual and group liberties. None of these basic freedoms have been respected.

General Khanh and the junta before him inherited the whole Diem apparatus of tyranny and have not yet cleaned house. There are today some 28,000 political prisoners who are still in jail and who have never even been brought to trial. Under Diem the elections were rigged. Since Diem, there has been an out-and-out military dictatorship, with no elections in sight. General Khanh, the leader of the moment, brands all who disagree with him as either Communist or neutralist traitors. Even South Vietnam's top generals are held under house arrest, though no evidence has been presented against them.

General Khanh thus demonstrates a total disregard for due process of law in contrast to Nguyen Huu Tho, the head of the Front, whose efforts on behalf of civil liberties are well known. General Khanh's "freedoms" tend to be of the never-never-land variety, since they wait on final victory and unconditional surrender, conditions which appear daily to be more remote. In the meantime, General Khanh advocates not more freedom but more repression, reviving Diem's secret police and the hated strategic hamlet program renamed "new rural life program."

GOVERNMENT BY THREAT

The people of South Vietnam have been uprooted from their homes, impressed into forced labor, the peasants herded into "strategic hamlets" long distances from their fields. Here they live under police surveillance and under constant fear of reprisals because of their relatives in the Front. More and more hamlets have gone over to the Front, which besides the abolition of these practices advocates a return to village autonomy. The Front wants to accede to the villagers' desire to elect their own officials instead of having an army of Government civil servants foisted on the village from above.

The freedom that is denied to individuals likewise is withheld from private enterprise. True, business firms cannot be driven into concentration camps, but can be and are subject to blackmail, as they were under the other anti-Communist governments of South Vietnam. Import licenses have been canceled because the importer's politics were distasteful to one or another dictator. Now the Government has threatened to confiscate French investments in South Vietnam—banks, rubber plantations and a few industrial plants—unless these firms not only subscribe to the Saigon government's present politics, but also put pressure on De Gaulle to make France do likewise. (New York Times, Jan. 23, 26, 1964.)

In contrast to the Government's threats to private investment and enterprise, the Front has offered protection to business interests, even foreign concerns, provided they play a productive role in the future economy of Vietnam. This is in line with its desire to obtain the broadest possible support, passive if not active, for its struggle against United States domination of South Vietnam. The rubber planations have been forced to pay double taxes—to the Front in the countryside and to General Khanh's government in Saigon. No wonder business wants a peace settlement.

The propaganda of the various South Vietnamese governments, one suspects, has been pitched to win not the Vietnamese, but American audiences—and assistance. Each ruling clique tries to make the issue Western capitalist democracy versus communism. Both these concepts are abstractions which have very little meaning to the average Vietnamese. The people, save for a few Western-educated intellectuals more at home in New York than in Vietnam's rural districts, have had no experience with Western political institutions. They have experienced, however, the South Vietnamese Government's curious amalgam of extolling freedom in theory but denying it in practice, and they are against it.

FREEDOM IN FACT

Let us take, for example, the Montagnards, tribesmen who live in the mountains of South Vietnam, and whose culture, language, and economy are entirely different from those of the lowland Vietnamese. They do not want rhetoric about the virtues of a two-party system. They want concrete safeguards for their distinctive way of life—and these the Front has promised. They want the right to dress as they please, wear long hair, live in the tribal long house instead of single family dwellings, use their own language in schools and courts, keep their old land-holding relationships and their inheritance of property laws. In all this they seek ethnic and cultural autonomy as it has already developed in North Vietnam where the Government, unlike that of the South, allows cultural diversity. The North has retained some of the old safeguards which the French provided against the ruthless Vietnamization of these primitive people.

The one great positive freedom which the Vietnamese do understand and have fought to achieve is not individual freedom—this is a Western import—but group freedom, especially the freedom from foreign domination. In the Vietnamese struggle against French colonialism, the Communist, Ho Chi Minh, was the great national hero and leader. Therefore, people associate national fulfillment and freedom with Communist leadership. No comparable leader to Ho Chi Minh has emerged in South Vietnam—Diem saw to that. Ho is admired and honored by millions of Vietnamese, both in the North and in the South, whether they are or are not Communist.

In areas where subject peoples have had to fight to win independence from their colonial masters, a term in jail becomes a badge of patriotism and an essential ingredient of the claim to leadership in the country's future. Nguyen Huu Tho meets this specification. None of the leading figures of any of the governments of South Vietnam since 1954 can qualify in this respect. They all either worked as administrators for the French or fought in the French colonial army against their own compatriots.

U.S. OBJECTIVE: WHAT IS IT?

To the war-weary general public in Vietnam, peace is the paramount issue and the Front has captured it. The Front proposes an immediate cease-fire and a negotiated peace between contestants. The successive South Vietnamese governments, though unable to defeat the Front, have talked belligerently of fighting to the bitter end. Nothing less than total victory and unconditional surrender will do. The United States, which is the power behind General Khanh's shaky throne, has never proposed an over-all settlement. It is unclear for what goals we are urging the Vietnamese to fight so bitterly. As Stanley Karnow pointed out in the Herald Tribune (March 1, 1964): "What constitutes a satisfactory solution is something Washington will have to define just as it has yet to describe clearly its ultimate objective in Vietnam."

Why have we made no proposals for a settlement? Why is there no urgency to restore peace to this war-torn land, no suggestion of willingness to negotiate, no hint that we would be willing to make compromises if the other side did likewise? The United States is using South Vietnam as a guinea pig for trying out and testing under fire new weapons, equipment and tactics with which to fight guerrilla uprisings everywhere. If the war ended we would cease to have our laboratory. Is this why there is no American urgency for peace?

Why are the Vietnamese generals so reluctant to formulate peace proposals? Generals everywhere are trained to make war, not to negotiate settlements; the latter is the diplomat's job. Peace has certain very real hazards for the Vietnamese military. The generals would have to relinquish their power to civilian authorities. General Khanh says he would like to do this but would he? The end of the war would bring a drastic cut in the military budget because American aid would cease or be much reduced and because a truly civilian government would want to use most of South Vietnam's meager resources for economic development. Peace would thus mean that the power, prestige, and pocketbook of the military clique would suffer. Is this why General Khanh offers mobilization for total war to the war-weary Vietnamese, and threatens to shoot or jail for life all those whom Khanh considers to be slackers? (New York Times, Mar. 19, 1964.)

FRONT URGES NEGOTIATIONS

In contrast to the Government's reluctance to discuss peace, the Front has consistently advocated a negotiated settlement. Many Vietnamese welcome the Front's peace proposals, irrespective of their merits, simply because the people are so anxious to have peace. Actually, the proposals do have the great merit that they are based on a true estimate of the facts. The main reality in South Vietnam is that the war is a stalemate, with the power of people and numbers on one side, and the power of superior material on the other. In the present contest there is a striking parallel with the former war between the Vietminh and the French; today the Front controls most of the countryside at night, as the Vietminh did formerly, while by day the Saigon Government controls the cities and the main roads, much as the French did. This stalemate is endless because if the United States tries to upset the balance by attacking North Vietnam, the war will be extended to a higher level of horror, since both sides can play the deadly game of escalation. The stalemate means that no one is going to win an unconditional surrender. If ever there is going to be peace, it can only come by a negotiated settlement in which both sides make compromises and adjustments.

The Front has proposed as a compromise the setting up of a new coalition government composed of representatives of the existing Government, the Front, and other Vietnamese organizations. General elections would follow, the franchise to be universal. The idea of compromise is spelled out further in the middle-of-the-road character of the program for economic development. The Front proposes that it be neither capitalist nor Communist, but a mixed economy which permits private enterprise and promotes agrarian reform and economic planning.

It is vital to end this war by compromise, either the Front's or some other growing out of the peace negotiations which must come sooner or later. After a civil war, the soldiers do not retreat behind different national barriers; they have to settle down and live with one another in their own war-torn country.

Compromise suggests self-respect and face saving for all. It is the very antithesis of the "arrogance of victory and the venom of defeat," to use E. M. Forster's phrase, which could poison the atmosphere for generations to come. Therefore the quality of the peace, as well as the possibility of peace, depends on a negotiated settlement.

NEUTRALISM IS FAVORED

Neutralism is tremendously popular in South Vietnam as the means for ending the war and safeguarding the peace. The Front has proposed it as part of its overall compromise. As a neutral, South Vietnam would treat all countries alike—Communist as well as non-Communist. Neutralism means keeping all governments at arm's length, not allowing South Vietnam to be caught up in any nation's suffocating embrace. This would not preclude American aid or trade in moderation. It would preclude the stationing of troops by the United States, China, or any other foreign country on South Vietnamese soil. Neutralism would commit South Vietnam to independence and self-reliance. If South Vietnam's neutralism were guaranteed by the great powers, those powers would be committed to observe and honor this independence, and to check one another.

The desire for neutralism in South Vietnam is very strong and has existed for some time. It requires the withdrawal of American troops from the entire area. This is ardently desired even by some Vietnamese who are opposed to a formal commitment to neutralism by South Vietnam. They believe this American withdrawal would help to get the South Vietnamese Government—whichever general is in power at the moment—to the conference table. Ho Thong Minh, who runs the influential Paris journal, Pour le Vietnam, stresses this point particularly: that if only the Vietnamese are left alone, they can resolve their differences whether within South Vietnam or between North and South Vietnam. The American military presence stiffens the South Vietnamese Government clique to the point where it is unwilling to entertain any thought of compromise and negotiation.

Neutralism is also valued in South Vietnam for its own sake. After all, neutralism is not an exclusively Vietnamese phenomenon, but rather represents a widespread longing of countries everywhere to steer clear of power politics and war. The alternative to neutralism is membership in a bloc. But for small, weak countries newly emerged from colonialism, this bloc membership means not partnership between equals but dependency, and evokes the specter of colonialism.

Furthermore, a neutralist foreign policy represents the nation's best chance of survival, in the considered judgment of the leaders of many countries in Asia and Africa. Neutralism means offending neither side. Because little wars are safer than big ones, the great powers tend to work out their rivalry with each other via the small, weak countries which thus sink to being mere pawns. This is what neutralism tries to avoid.

The United States should understand this desire of new nations to avoid entangling alliances. When our country was young and weak we adopted this same foreign policy. But now our officials take the patronizing view that countries espousing neutralism are misguided and do not understand their true self-interest. By inference, only we know what is best for them. Despite U.S. pressures, most of the peoples of Southeast Asia have already adopted a neutral stance—Burma, Indonesia, Laos, and Cambodia. Even Thailand (Siam) has a strong neutralist minority. Neutralism is in the Thai blood; Siam alone avoided becoming a colony in the 19th century, and achieved this feat by being a buffer between rival colonial powers, the French and the British.

GOVERNMENT FEARS NEUTRALISM

As the front has grown, so has the desire for neutralism, both within and outside the front. The sentiment for neutralism has been very strong in the Vietnamese exile community in Paris, a community small in numbers and representing the well-educated business and professional people who were able to escape from the Diem tyranny. The leaders in this community have had political careers in Vietnam. Some of these have formed the influential Committee for Peace and the Reconstruction of South Vietnam under Tran Van Huu, former Prime Minister in Bao Dai's regime. This committee is working for the neutralization of South Vietnam. The repression of free speech and the press was so great under Diem that this Vietnamese exile community in Paris represented about the only opposition voice of the Vietnamese people other than that of the Front. While not all the Paris exiles are of one voice, a neutralist South Vietnam has become the dominant note.

After the coup d'etat in the fall of 1963 the repression in South Vietnam lifted temporarily and new viewpoints were allowed expression. Leading Buddhists, especially those from Central Vietnam where Buddhism is strongest, spoke out in favor of neutralism. So did some representatives of the Cao Dai religious sect. A new newspaper appeared, advocating neutralism, and was quickly suppressed. Alarmed at the widespread growth of neutralist sentiment, General Khanh cracked down and on February 14, 1964, published a decree stating that anyone advocating neutralism would be subject to a military trial. The United States likewise grew jittery over the spreading enthusiasm for neutralism. We sent the armored missile cruiser, *Providence,* up the river to Saigon to quell the rising tide of neutralist feeling. As if this show of American force could undermine Saigon's longing for peace. Now, since the ruling dictator equates advocacy of neutralism with treason, neutralism again has no voice in Saigon. But it has many silent followers.

U.S. OPPOSES REUNIFICATION

Apparently the U.S. Government is opposed to the neutralization of South Vietnam for fear that it would soon lead to the peaceful unification of all Vietnam under Ho Chi Minh. Some form of federation between North and South is likely to take place eventually, whatever our fears, and the issue will be decided by the Vietnamese people themselves, not by Americans. United States insistence on partition (we call it the sovereignty of South Vietnam) is viewed by many Vietnamese as a typical colonial tactic of divide and rule. Long before us the French had insisted on the partition of Vietnam into three zones. As a result, one of the slogans of the long struggle for independence from French imperialism was the reunification of Vietnam.

Both North and South Vietnam taken separately, as well as Vietnam taken as a whole, have suffered from the American policy of permanent partition, trade embargo between the two zones, and their perpetual confrontation. The two zones have been weakened, but in different ways. North Vietnam has stressed self-reliance and self-sufficiency—using the limited Communist bloc aid largely for industrial development—so it has had to tighten its belt and convert an undue proportion of resources to food production. South Vietnam, on the other hand, has chosen the path of increasing an already overwhelming dependence on the United States—some 75 percent of its annual budget is derived from American handouts. Foreign trade figures show this same total dependence on the United States. Year after year South Vietnam imports goods, mostly consumer goods, valued at 3 or 4 times the value of South Vietnam's exports. This may be good for American business, but it is bad for Vietnamese independence and economic development and has reduced South Vietnam to a nation of mendicants.

But it is idle and frivolous to compare and contrast North and South Vietnam. Americans committed to the policy of permanent dismemberment of Vietnam like to play this game of pitting the North against the South from every vantage point, economic, social, and political. But to Vietnamese nationalists, whether they are conservative or radical, Vietnam should be one country, not two. It is just a question of how this reunification is going to be achieved—by peaceful negotiation or by war.

EVEN KHANH WANTS REUNIFICATION

The Front proposes the reunification of Vietnam by stages, beginning with the establishment of normal relations between the North and the South, that is, the resumption of trade and visiting back and forth. Later, after a coalition government has been set up representing all of South Vietnam, not just the military clique now controlling Saigon, negotiations can take place between the Governments of the North and the South. The reunification could be worked out to the extent and at the pace that the South Vietnamese Government desires. Many Vietnamese not in the Front want to explore these proposals, since they represent what the great majority of the South Vietnamese people want, according to Le Quang, a leading spokesman for the large Cao Dai religious sect in South Vietnam (La Tribune de Génève, Dec. 27, 1962).

Even General Khanh is now proposing the reunification of Vietnam, not by peaceful negotiations but by force of American arms. His government-inspired demonstrations feature school children bearing aloft placards reading "We Want To March North." (New York Times, Mar. 13, 1964.) Any effort by the United States to extend the war by bombing or blockading North Vietnam would not reunify Vietnam but destroy it, and could unleash World War III.

WE NEED NEW VIETNAM POLICY

As Senate Majority Leader MIKE MANSFIELD has urged, the United States needs to reappraise its Vietnam policy. The world of 1964 has moved a long way from the world of 1954 when John Foster Dulles launched the futile and arrogant policy of treating South Vietnam as an outpost of the United States of America. Any new policy for Vietnam should help the Vietnamese to meet their own needs as they see them, instead of attempting to manipulate these long-suffering people for our purposes. Rather than opposing their deepest aspirations for a negotiated peace, let us work toward a conference between representatives of both sides to arrange a cease-fire.

Instead of opposing neutralism as a Communist plot, let us accept it as representing the longing of the Vietnamese people to live at peace with each other and with the outside world. Let us call an international conference of all the great powers and the countries in southeast Asia to explore the possibilities of Vietnamese neutralism and what contributions we and others can make, so that this neutralism can be as stable and viable as possible. To what acts of omission as well as commission could and should the great powers commit themselves to help Vietnam and other aspirants to neutralism attain their dream of nonalinement? Instead of trying to substitute ideological confrontation between Vietnamese factions for Vietnamese nationalism, let us accept the reality of Vietnamese nationalism and of its corollary, the reunification of Vietnam. Why not work with Vietnamese nationalism instead of against it?

Accepting Vietnamese nationalism means letting the Vietnamese decide on their own what kind of economic system they want and what type of relationship they want between

North and South Vietnam. The famous domino theory, which regards the countries of southeast Asia not as independent entities but as faceless dominoes doomed to fall in unison if any one of them alters its position, violates Vietnamese nationalism and the principle of self-determination. It says, in effect, the Vietnamese cannot decide what they want for themselves since whatever they do has repercussions elsewhere. (The assumption that Vietnam alone holds the dike for an anti-Communist southeast Asian bloc is of course a myth, since most of the countries of southeast Asia have already gone over to neutralism.) A policy of neutralism and the reunification of Vietnam should not be regarded by Americans as a defeat for America, but as a victory for the Vietnamese—since this is what they want.

President de Gaulle has done a great service in outlining the goals for a stable settlement—neutralization of southeast Asia, reunification of Vietnam, agreement of southeast Asian countries to respect one another's boundaries and consent of the great powers to respect the neutrality of the area. De Gaulle may also be able to help in working out the concrete means of achieving this goal. He can be a broker between the rival superpowers of China and the United States, as well as between hostile factions within Vietnam. France has great knowledge of the area and its people. France has an important stake in the area—substantial foreign investments, schools, and religious and cultural missions. The Vietnamese middle class speak French, not English, and value French culture and education. In France itself there are many influential Vietnamese who are identified neither with the Front nor with the Government of South Vietnam.

LOOSE FEDERATION FAVORED

Two peaceful ways of reuniting Vietnam have been proposed so far. The Geneva Accords provided for an internationally supervised election. In 1962 a new proposal was made by the National Liberation Front and seconded by the Government of North Vietnam. This program recommends a conference between North and South Vietnamese Governments. It gives South Vietnam equal weight with North Vietnam, even though South Vietnam's population is smaller. Reunification by a conference between the two Governments could result in a different kind of relationship between the North and South; namely, a loose federation as opposed to a unitary state which would result from overall elections. The conference plan appeals to many South Vietnamese middle class elements. A federation also appeals to many Vietnamese intellectuals, those in the Front as well as those outside it, who want South Vietnam to pave the way for parliamentary democracy in Vietnam.

Because this conference proposal presupposes that a new government will be set up in South Vietnam, a government which represents a united South Vietnam instead of one torn apart by civil war, it implies two stages for the fulfillment of any stable settlement. For this reason it evokes the ghosts of past failure. The Geneva Agreements also were supposed to be fulfilled in two stages, but the second stage, that of the elections, never took place. Anxiety over fulfillment of the second stage can be dispelled if this time the United States signs the agreement, American troops are withdrawn, and the coalition government set up in the South is one of broad representation. This is a difficult course. Is there any reason, however, to believe that it will become any less difficult the longer negotiations are postponed?

HO NEEDS A SETTLEMENT

As the civil war intensifies the peasants become more politically aroused—both by the Front's activities and by the war itself—the population of Saigon more war weary, the Government soldiers more rebellious and Ho Chi Minh more uneasy. The strains of war decrease his ability to remain neutral between the U.S.S.R. and China. By stepping up the war in South Vietnam and threatening to expand it to North Vietnam, the United States is doing its utmost to push North Vietnam into increasing reliance on the power of China. Then we turn around and accuse North Vietnam of veering toward China.

An end of the war and restoration of trade between North and South Vietnam would not only enable South Vietnam to live, but would give Ho some ability to maneuver in his delicate and skillful game of balancing Russian and Chinese aid and influence, thereby maintaining Vietnam's independence. When Ho's relations with the West are resumed, he will be even better placed to build and strengthen the true independence of Vietnam so that it may evolve toward political nonalinement. In this connection, it may be recalled that Vietnamese Communists are strong nationalists. Like the Yugoslavs, they made their revolution on their own initiative and by their own efforts.

THE WAR MUST STOP

Whatever the outcome of negotiations, the killing in Vietnam must stop. By interfering on the losing side, our country has doomed Vietnam to a continuing civil war which would have been over long ago save for our massive transfusions of money, material, and men, to the faltering governments of South Vietnam. The terrible suffering of this dirty war is on our conscience. All the homeless, all the orphans, all the widows, all the tortures by the Government's soldiers to extract information and by the guerrillas to punish the informers, all the excruciating pain of burning human flesh from napalm bombs, all the thousands of Vietnamese dead, whichever side they were fighting for—all these horrors are being multiplied by the Johnson administration's insistence that the war must go on.

And the American dead. As this is written, the latest figures are 31 killed in the first 103 days of 1964. Americans killed, wounded, and missing since January 1, 1963, totaled 812. (Jacques Nevard in the New York Times, Apr. 14, 1964.)

Not a single additional American boy should die in this dirty, undeclared war that violates America's own highest ideals, the United Nations Charter and the basic rights of peoples everywhere to self-determination.

As Senator GRUENING declares, "Let us get out of Vietnam on as good terms as possible—but let us get out."

Senator GRUENING has declared, "Let us get out of Vietnam on as good terms as possible—but let us get out." If you agree with the Senator, write President Johnson, your Senators and Congressman and your local newspapers, asking that an international conference be called to work out a genuine peace settlement for Vietnam and her immediate neighbors and that American troops be withdrawn from Vietnam.

KHRUSHCHEV'S LITTLE JOKE

During the delivery of Mr. MCCLELLAN'S speech,

Mr. GRUENING. Mr. President, in hailing Nasser as a great leader, Khrushchev, during his present visit to Egypt, said:

We fight together for the complete eradication of imperialism.

The old boy has a sense of humor. For the one great imperialism in the world today remaining intact, monolithic, and ruthless, is that directed by Boss Khrushchev from the Kremlin in Moscow. It has enslaved the people of the Ukraine, of Lithuania, Estonia, Latvia, Poland, Czechoslovakia, Bulgaria, East Germany, and Hungary.

We can well remember of helpful Russia's boss when the Hungarians, in the fall of 1956, sought to eradicate Moscow's imperialism. They were mowed down by Khrushchev's tanks and machineguns.

If there is another imperialism in the making, it is one that Gamal Abdel Nasser would like to be boss of, stretching from the Atlantic across northern Africa and southern Asia to the Persian Gulf.

I ask unanimous consent that the news article from the New York Times of May 11, entitled "Khrushchev Hails Nasser As Leader," be printed at the conclusion of my remarks.

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

KHRUSHCHEV HAILS NASSER AS LEADER—RALLY OF 100,000 IN CAIRO CHEERS SOVIET PREMIER

(By Jay Walz)

CAIRO, May 10.—Premier Khrushchev congratulated Egyptian youth tonight on following the Arab Socialist leadership of President Gamal Abdel Nasser.

He said the United Arab Republic and the Soviet Union were progressing along parallel lines.

"We fight together for the complete eradication of imperialism," the Soviet Premier declared.

Mr. Khrushchev addressed a rally of more than 100,000 people in a new Cairo stadium. He was introduced by Mr. Nasser "as a man who has stood by our side."

Mr. Khrushchev told his young audience: "Our country was the first to follow the path of Socialism under the Communist leadership of Lenin. Our country built a Socialist society.

"When we started our reforms there were those who tried to convince the people that ours was an impossible mission. But now we are an example of constructive welfare and culture."

In his 45-minute address Mr. Khrushchev emphasized the distinction between communism and socialism, but repeated the theme he has stressed since his arrival in Egypt yesterday: that "peace-loving people" must live together regardless of their different political systems.

"The liberation movement will gain strength," he declared, "but there is a big fight ahead. We must join efforts to achieve our objectives."

Mr. Khrushchev spoke in Russian and his remarks were translated paragraph by paragraph into Arabic. The crowd cheered him without waiting for translations.

The Soviet Premier said Egypt was making "rapid strides to social progress."

Mr. Khrushchev told the youths that the younger generation in Egypt enjoyed the benefits of the success of President Nasser, whom he hailed as a "great leader" of the liberation movement.

"You may now apply your talents not for the benefit of foreigners but for the good of your people," he declared.

Mr. Khrushchev and Mr. Nasser had the first of three scheduled official talks this afternoon at Kubbeth Palace. Aids said the conversations could be informal, following no set agenda, with the two leaders exchanging views "frankly and freely" on world problems and tensions, as well as on matters of immediate concern to their countries.

In public remarks since his arrival yesterday, Mr. Khrushchev has said more about signs of peace than about tensions. In an

after-dinner speech last night in Abdin Palace the Premier pointed to "certain relaxations of international tensions" resulting from the "elimination of the Caribbean crisis," the limited ban on nuclear tests and agreement of the United States, the Soviet Union and Britain to reduce production of fissionable materials.

Mr. Khrushchev took his family on a typical sightseers' tour of Cairo museums today.

Accompanied by President and Mrs. Nasser, the Khrushchevs heard guides narrate the story of Egypt's 5,000-year history, dramatized by Pharaonic and other relics, including the famous collection of pieces from Tutankhamen's tomb.

AIR SAFETY

During the delivery of Mr. McCLELLAN's speech,

Mr. BOGGS. Mr. President, I share the widespread concern that maximum safety precautions be taken with regard to air travel, and for that reason I call attention to the consideration now being given to installation of runway arresting gear at commercial airports.

The principle of stopping planes quickly by means of a cable has long been used. Aircraft carriers, for example, stop fighter planes this way.

The arresting gear concept has, in recent years, been installed at many Air Force and Navy landing bases as well.

As yet this idea has not been adopted for commercial airfields, although in 1958 the Federal Aviation Agency began a program to test and demonstrate the feasibility of using runway arresting gear. The All American Engineering Co., Wilmington, Del., was the FAA contractor for this work, and much of the testing was done at All American facilities in Georgetown, Del.

On May 7, the Wall Street Journal carried an article which sums up the current situation very well in regard to runway arresting gear, and because the problem of air safety is such an important one, I ask unanimous consent that this article be printed at this point in the RECORD.

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

AIRLINE INDUSTRY MAY INSTALL ARRESTING GEAR TO AVERT ACCIDENTS—SYSTEM PREVENTS 300 CRASHES AT MILITARY FIELDS BUT COST COULD DETER COMMERCIAL USE

(By Richard P. Cooke)

As an Air Force jet hurtled toward a landing at Bentwaters Airfield north of London recently, the pilot suddenly realized he was in trouble. One wheel had locked in a down position and the other remained stuck inside the wing.

One-wheel landings in fast jets often have ended in fatal accidents. But, in this case, the F–101 fighter touched down smoothly on a single wheel at 160 miles an hour, and a hook under the fuselage almost immediately caught a cable stretched across the runway. The cable mechanism slowed the plane so quickly it remained upright until it stopped; then it dipped to one side, damaging the wingtip slightly but leaving the pilot unhurt.

Such dramatic accident prevention, now becoming routine at military fields, may also be commonplace someday soon at commercial airports. The Federal Aviation Agency today is convening a meeting in Washington of commercial airline officials, airport operators, builders of jet airlines and people who oversee flight safety. Their goal: To explore whether airports should be equipped with emergency runway arresting gear.

Such equipment already has been credited with saving about 300 military planes from accidents, many of which might have been fatal. But thus far no commercial airliners or airports use the arresting devices. Some airline officials foresee an urgent need for the quick-stopping gear when the new generation of supersonic jet liners comes into service in the 1970's; they'll be heavier and may land at higher speeds than present jets, increasing the hazards of a miscalculation or malfunction when landing or taking off.

INTO A SWAMP

But even now, some say a quick-braking device would increase safety. A Pan American World Airways jet overshot a runway while landing at New York's Kennedy International Airport April 7, sending the broken plane and its frightened passengers into a swamp. The next day two other "overshoots" occurred at New York airports.

None of these resulted in any deaths but some of the 40 or more reported overshoots in the past decade did kill people. And the companion of the overshoot, the aborted takeoff, has taken many lives. The worst was the death of 130 people, 121 of them from Atlanta, when an Air France jet crashed taking off from Paris' Orly Field in June 1962.

A key point at today's FAA meeting: The cost of the quick-stop equipment. "We know such gear is feasible; now we've got to see whether it is practical," says an FAA spokesman. The Agency has indicated it might be willing to ask Congress to contribute up to 75 percent of the cost of installing the runway cables and other gear. Airport operators may be asked to put up the rest. The airlines would probably have to bear the expense, which could be substantial, of installing hooks beneath the planes.

Estimates from the two main manufacturers of arresting gear show a range of costs. All American Engineering Co., whose equipment has been tested by the FAA, estimates that each cable and supporting gear would cost about $150,000. To place the gear at both ends of two runways thus would cost $600,000. E. W. Bliss Co., which has installed its gear at about 200 military fields, puts the tab at about $500,000 a unit, or $2 million for 2 runways.

COST COULD BE $100 MILLION

To equip the approximately 50 major U.S. commercial airports which handle 80 percent of traffic thus would cost at least $30 million and perhaps close to $100 million.

All American Engineering estimates it might cost the airlines up to $20,000 per plane to put hooks on them. A representative of one large airline figures the bill might be closer to $100,000 a plane, based on figures provided by Boeing Co. The cost is high because the planes must be reinforced to take the stress of the cable stop. Even at the lower figure of $20,000 a plane, it would cost airlines about $8 million to equip the 400 planes in their domestic jet fleet, and the fleet is growing fast.

The airlines appear divided on whether arresting gear would be worth while—from their viewpoint, anyway. United Air Lines has shown the most interest. In its specifications for the new Boeing 727 jets, it asked that a strong point be built into the fuselage which could take the stress of a landing hook. American Airlines also has shown interest and at least wants to explore the idea of arresting gear with others in the industry and the FAA. But one or two other large carriers have been cool to the proposal.

Proponents, who include the Flight Safety Foundation, a nonprofit group sponsored by the industry, argue that the cables not only would stop planes from rolling off runways on icy or wet days but also would reduce "undershoots" on landing. "When it's icy or wet, the pilot tries to touch down at the very start of the runway to give himself an extra safety margin," notes an ex-pilot now with one of the arresting gear makers. "A slight miscalculation can cause him to strike the ground in front of the runway. But if he knows he's got an arresting mechanism to stop him safely, he won't make the dangerous approach to the very edge of the runway."

In 1962 there were several incidents involving pilots who undershot a landing approach; the worst accident occurred when a Flying Tiger Line cargo carrier hit the ground in front of a runway at Adak, Alaska, killing eight.

EASIER EVACUATION

Arresting gear has another advantage, according to its proponents. When the cable stops a plane, the craft is on firm ground where firetrucks can get at it easily and passengers can be evacuated more safely.

Skeptical airlines raise some questions, however. They ask whether the cables will stop the aborted takeoff of a fully loaded, 320,000 pound jet at 170 miles an hour when they're designed principally to stop a jet landing at perhaps 100 miles an hour weighing 100,000 pounds less due to fuel consumed. Some airline men think two hooks and cables would be needed to stop a large jet. The military's experience thus far is largely with smaller aircraft.

They also wonder how long traffic will be stopped every time the gear is used and then disengaged to put it back in position. The cables remain permanently on the runway and can be used anytime a pilot elects to drop his plane's hook to catch the cable. On normal landings and takeoffs, the plane merely rolls over the cable.

The FAA in tests has halted a Boeing 720 jet weighing up to 175,000 pounds and test sleds weighing up to 350,000 pounds. But it wants to explore industry objections further.

OPTIMISTIC MANUFACTURERS

The equipment makers are optimistic about their ability to do the job. E. W. Bliss' equipment uses a cable made of steel and flexible nylon which, when it contracts a plane's hook, activates an efficient brake-drum type of energy absorber. It says its equipment can be scaled up to any size required by aircraft speeds and weights.

All American Engineering has two systems. One uses a long cylinder filled with water through which a piston is dragged by the arresting cable to absorb energy. It's known as a "water squeezer." A more compact new system known as a "water twister" attaches the cable ends to a disk with blades which are immersed in water. As the cable is pulled out by the plane, the whirling blades dissipate the energy into heat and slow the craft. Both the All American and Bliss cables can be put back in operation in a few minutes by means of electric or gasoline motors which rewind the cables.

THE NORTHEAST AIRLINES CASE

During the delivery of Mr. McCLELLAN'S speech,

Mr. KENNEDY. Mr. President, last Friday, the U.S. Court of Appeals in Boston set aside the CAB's order terminating Northeast Airlines as a trunkline air carrier, and sent the the matter back to the Board for further study. This decision capped a long and bitter struggle for Northeast to hold on to its position as a major eastern carrier, and to preserve its rights under the law.

Although not the final victory, the court's summary repudiation of the Board is indeed a giant step toward putting this Northeast problem into proper perspective, and in obtaining a realistic

solution in the public interest—something which up to now has not been done.

By way of background, Senators may remember, Mr. President, that the CAB, in 1956, selected Northeast to be a third competitive airline between east coast cities and Florida. Those of us from Massachusetts, and particularly from the Boston area, were very enthusiastic. We were proud to have our home-based carrier take its place as one of the Nation's major trunklines. We looked forward to the contributions which such a carrier would make to our area's economy—in jobs, in increased revenues, in new facilities, and in attracting business. We were delighted with the opportunity for improved airline service between New England and east coast cities and the Florida area. Indeed, Mr. President, the selection of Northeast was a needed "shot in the arm" to a New England struggling for rehabilitation and business growth.

Last August, Mr. President, the very organization which created and encouraged Northeast as a trunkline competitor, turned on it mercilessly, and sought to destroy it as a significant carrier. In a close decision—two members dissenting—the Civil Aeronautics Board found, among other things, that there was no present need for a third carrier on the east coast-Florida route, and therefore it declined to renew Northeast's trunkline authority and ordered it back to the status of a local service carrier.

Because we believed this decision of the Board to be so manifestly unfair and so lacking in logic and factual basis, many of us from the Massachusetts congressional delegation, from the State government, from commerce and labor, brought our complaints to the Senate Aviation Subcommittee, which was most kind in granting us 2 days of hearings. At these hearings, I criticized the Board for letting down the 10 million citizens of New England who had a direct interest in the continuance of this airline, and I urged the passage of a bill which would provide the opportunity for Northeast and other temporary certificated carriers to obtain permanent status by meeting reasonable criteria. I stated at this time with respect to the Board's decision:

> Our economy and our people face the prospect now that they will be at the mercy of large trunk carriers whose main interest is in other parts of the country. There is a grave danger that if Northeast is reduced to regional status, or if its routes are parceled out to other carriers, the development of much of our economy will cease.

Those of us who attacked the Board's decision received a certain amount of criticism, particularly along the lines that we were not experts, and not sufficiently familiar with CAB policy and procedure to render any responsible judgment. We were accused of indulging in political platitudes, failing to recognize progress, and losing faith with the CAB. Although the Board's decision was quasi-legislative in nature, many thought we had no business interfering with it.

This court of appeals decision repudiating the Board completely vindicates the good people from Massachusetts and New England who stood by Northeast in its precarious legal battles for survival. It confirms that the many questions which we asked, and the fears which we expressed, as inexpert laymen, appear to have been important after all.

The court reiterated what we wondered many times. It could not understand the basis on which the Board rested its decision against Northeast.

> When we know what the Board decided and why—
>
> Said the court:
>
> the time will be ripe to consider the legal sufficiency of the evidence.

It then went on to attack the Board's findings. The court held "irrelevant" the Board's findings that Northeast's operations had not been successful, and that there was no prospect of future success. It found "difficult to understand" the Board's finding that the east coast-Florida market had not grown materially, in order to support three-carrier competition. It stated that the Board "did not go far enough" in merely holding that two existing carriers were adequate to meet the needs of the market but that it should have also taken into consideration "the statutory need for competition as a stimulous to provide good service to the public and to develop a sound air transportation system." It found particularly questionable the Board's argument that Northeast had to be sacrificed "to aid in the rehabilitation" of Eastern Air Lines, Northeast's major competitor.

Judge Aldrich, concurring in the decision, termed part of the Board's findings as "an example of administrative fiat, which frankly, shocks me." He summarized the Board's findings as follows:

> What the Board has done was to find in 1956 that, because of the deficiencies of the then two carriers, additional competition would be to the public benefit; then, when these benefits have been, concededly, conferred at the cost of a necessarily enormous commitment, the Board's response is that you satisfied our doubts about your ability to compete and you accomplished much of what was wanted, but now we find that three carriers are not needed after all.

Mr. President, the Northeast Airlines case raises vital issues which should be of substantial importance to every Member of Congress, and especially to those whose areas are dependent on airline service and operations as a part of their business and social growth.

With the CAB's handling of this case, we can well wonder what our airline transportation policy is. A major trunkline with a potential for growth and the chance for amalgamation with other lines is being struck down. The second largest—and growing—airline market in the United States has been reduced to a duopoly. A vigorous competitor has been sacrificed for the "rehabilitation" of a monopolist. Indeed, the Northeast experience could well be a prelude to things to come in many other parts of the airline industry.

In my book, the Board should now admit its mistakes and, with reason and understanding, renew Northeast's certificate on a permanent basis, and provide sufficient subsidies in order to rehabilitate Northeast's local service in New England. The Board should be more concerned with promoting competition, and greater feeder services, not with shrinking our competitive system and permitting inferior local service. These are the teachings of the Northeast case.

Mr. President, I think it would be most helpful to those interested in this matter if there were printed in the RECORD the CAB's majority and minority decisions, my statement before the Senate Aviation Subcommittee, and the circuit court of appeals decision. I ask unanimous consent that these be printed following my remarks.

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

CIVIL AERONAUTICS BOARD—NEW YORK-FLORIDA RENEWAL CASE—DOCKET 12285 ET AL.

(Decided August 15, 1963)

Public convenience and necessity do not require the renewal of Northeast's authority to serve Philadelphia, Pa., Baltimore, Md., Washington, D.C., or Jacksonville, St. Petersburg-Clearwater, Tampa, Fort Lauderdale, or Miami, Fla., on its route 27.

Appearances: Same as in the examiner's initial decision and, in addition, the following:

Arthur G. Coffey for the city of Boston, Mass.

Louis H. Riter for the city and chamber of commerce of Jacksonville, Fla.

Frank E. Hancock for the State of Maine.

Crocker Snow for the Massachusetts Aeronautics Commission.

R. J. Crowley, Jr., for the State of New Hampshire.

OPINION OF THE BOARD

(By Boyd, Chairman)

In 1956, the Board, in the *New York-Florida Case*, 24 C.A.B. 94, extended the route of Northeast Airlines, Inc., beyond New York to Miami, via Philadelphia, Baltimore, Washington, Jacksonville, St. Petersburg, and Tampa. That authority expired in November 1961. This proceeding was commenced in June 1961 (Order E–16931) to determine if the public convenience and necessity require renewal of that authority.[1] The Board is here required to review the reasons for the grant in the first instance and to reexamine the public convenience and necessity in the light of the conditions that exist today.

Northeast was temporarily certificated on the New York-Florida route with the expectation that the New York-Florida market would continue to grow substantially as it had in the past, that Northeast would become a subsidy-free and profitable carrier as a result of its operations to Florida, and that significant improvements in service to the traveling public would occur, particularly with respect to services between New England and points south of New York.

At the time of the temporary award to Northeast in 1956, Eastern Air Lines, Inc. (Eastern), and National Airlines, Inc. (National), were serving these same markets and, unlike Northeast, their authority to serve

[1] In addition to Northeast's application for renewal of its Florida authority on a permanent basis, the present proceeding includes applications of Braniff, Delta, and Pan American for authority to operate directly between East Coast cities and Miami in the event Northeast is not renewed; an application of Delta for removal of the certificate restriction which prevents it from providing single-plane service between northeast points and Miami, via Atlanta, and an application of Allegheny for nonstop authority in the New York-Washington, New York-Baltimore, and Baltimore-Philadelphia markets.

these markets was permanent. The critical question before us, therefore, is whether under the present circumstances, there is a need for a third carrier in the New York-Florida market. We find that no such need exists.

Examiner Walter W. Bryan, in his initial decision, concluded that Northeast's New York-Florida authority should not be renewed.[2] The examiner's conclusion rested upon his finding that Northeast does not meet the statutory requirement that the recipient of certificate authority be "fit, willing, and able." Upon consideration of the record and the contentions of the parties, we also conclude that Northeast's New York-Florida authority should not be renewed, although our reasons differ from those of the examiner.[3] We find that the public benefits anticipated when Northeast was certificated have not materialized, that the future prospects for the operation of Northeast's system on a profitable basis are remote, and that there is no present need for a third carrier in the East Coast-Florida markets.

At the time the original New York-Florida case came before the Board, Northeast operated a short-haul route system north of New York, primarily providing local services within New England. Northeast was then the smallest and one of the weakest, of the original air carriers granted certificates under the "grandfather" provisions of the act and was still receiving subsidy. The record in the original case showed that the East Coast-Florida markets had been experiencing outstanding traffic growth, and gave reasonable expectation that the high rate of growth would continue.

Against this background, the Board decided that Northeast should be given an opportunity to participate in the long-haul high-density East Coast-Florida markets as a means of providing the much needed strengthening of the carrier. The Board anticipated that Northeast's Florida operations would be profitable; would enable the carrier to become self-sufficient; would improve its services in New England; would give a substantial number of passengers moving between New England and points south of New York the benefits of one-carrier service; and would produce operating economies through the seasonal integration of equipment and personnel. In that decision the Board said:

"While we have confidence in the undertaking, we recognize that in extending the carrier to Florida, we are in substantial measure changing the character of this carrier's operation. Accordingly we shall not make the route extension permanent but shall limit its duration 5 years, after which we can again review the matter and consider further the requirements of the public convenience and necessity."

On reconsideration Northeast made no objection to this limitation.

Seven years have elapsed since the original award, and the anticipated benefits have not materialized. Instead of the profitable operations predicted in 1956, Northeast incurred heavy losses each year, completely depleted its own resources, and by the fall of 1961 was unable even to meet its daily operating expenses. The carrier's 1956 earned surplus of $831,000 had been converted into a retained loss of approximately $43,900,000 by the end of 1962. During the same period its stockholders' equity decreased from a positive $11.9 million to a negative $32.8 million.

The carrier has existed in almost constant state of acute financial crisis, and but for the assistance of Hughes Tool Company (Toolco) and the forbearance of its creditors could not have survived. The facts regarding Northeast's worsening financial condition since its extension to Florida are set forth in detail in both the Toolco-Northeast Control Case[4] and the examiner's decision here and need no further elaboration. Suffice it to say that the record clearly establishes that the primary reason for the award of the Florida route to Northeast—its need for strengthening—has not been accomplished.

Northeast has not improved its services within New England to any substantial extent as had been expected. While the use of large four-engine equipment instead of the DC–3's previously used undoubtedly constituted a service improvement for some New England cities in terms of passenger comfort, Northeast has reduced frequencies in many of its New England markets and provides less service in some of them today than it did in 1956. Nor have Northeast's one-carrier services between its exclusive New England cities and Florida developed any significant number of passengers. In 1961 the total single-carrier traffic in these markets amounted to only 7,070 passengers, or 10 passengers a day in both directions.[5]

It is also apparent that the Florida extension did not improve Northeast's seasonal problem, but rather aggravated it. The competitive types of equipment—jets, DC–6B's, and Viscounts—which Northeast needed in the Florida and the short-haul commuter markets were not suitable for its local service routes in New England. Instead of the anticipated seasonal integration of its services in New England with its Florida operations so as to achieve better utilization of equipment and more economical operations, Northeast has used large four-engine equipment in its local New England services thereby resulting in an even more costly local operation for the carrier.

We recognize that the carrier since 1959 has operated its system without subsidy as it indicated it would do when it originally sought the Florida route. However, the nonsubsidy operation has been accompanied by a continuing deterioration of the company's strength and financial fortunes, and the public benefits have not approached those that were anticipated. It is clear that Northeast's operations have not produced the anticipated broad-scale benefits that led the Board to extend the carrier to Florida.

The record also shows that the future holds no prospect that a Florida renewal would enable Northeast to achieve and maintain financial stability. We are aware that many factors adversely affect Northeast's operations and that some of them could be viewed as nonrecurring in nature. For example, it could be argued that Northeast's difficulties in expanding from a local, short-haul noncompetitive operator into a long-haul, competitive carrier; its financing problems; and its delay in acquiring competitive jet equipment were transitory. However, in our judgment, there are basic and fundamental factors that stand in the way of the carrier's achieving and maintaining profitable operations over an extended period of time.

During the Florida off-season, Northeast has no other adequate sources of traffic revenues or other markets in which to make proper use of its jet equipment. Although Northeast's operations in New England have a peak summer season, the total traffic in this area is too small to compensate for the loss of revenue due to the traffic imbalance of the East Coast-Florida route.[6] Northeast's route system north of New York and its Florida routes do not afford seasonal traffic compatibility, and the jets required for the long-haul operation are clearly unsuitable for New England service with its short hops and small airports.

The Board's conclusion in the original New York-Florida case that Northeast's operations would be profitable rested on the rapid growth the Florida markets had been experiencing and the expectation that the historic growth would continue. The record there showed that traffic in the Florida markets had more than tripled during the previous five-year period, and the Board estimated that the traffic would total 3 million passengers in 1956. The anticipated growth did not, in fact, materialize. Even with the addition of a third carrier, which should have been a stimulating factor, both the East Coast-Florida markets as a whole, and the all-important New York-Miami market, which accounts for 55 to 60 percent of all of the East Coast-Florida traffic, experienced only slight growth during 1957–62 period.[7] The total market in 1962 was still substantially below the Board's earlier estimate for 1956. Various reasons have been advanced for the behavior of the markets in recent years and it is impossible to predict with accuracy what the future may hold in terms of traffic growth. However, this much is clear. The record in this proceeding affords no basis for renewing Northeast on the expectation that the substantial growth of the years preceding the original award will resume.

In the present proceeding, Northeast predicted a 1963 system operating profit of some $3.9 million. That forecast was based on a total East Coast-Florida market of over 2 million passengers; a New York-Miami market of over 1.2 million passengers; and a Northeast participation of 25.7 percent in the total market and 22.1 percent in the New York-Miami market.[8] The Bureau, using a total Florida market of 1.9 million passengers; a New York-Miami market of 1.1 million passengers; and a Northeast participation of 23.4 percent overall and 20 percent in New York-Miami; estimated a

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[2] The examiner also found that continuation of three-carrier East Coast-Florida service is required, but that Braniff's, Delta's and Pan American's applications should be denied; that an investigation should be instituted to consider the air service needs within New England and between New England points and New York, Philadelphia, Baltimore, and Washington; and that Allegheny's application for nonstop authority between Boston and Philadelphia should be deferred for consideration in that proceeding and the carrier's request for nonstop rights between New York and Washington and New York and Baltimore should be denied.

[3] Although the examiner's findings on the fitness issue are amply supported by the record in the proceeding, our later findings on other issues are dispositive of the renewal question and make it unnecessary to pass on the technical question of fitness. Those portions of the initial decision with which we agree and adopt as our own, except as modified herein, are attached hereto as Appendix A.

[4] Order E–18470, June 19, 1962.

[5] BER–201A. This figure does not include any passengers that were ticketed at Boston but may have originated at other New England points.

[6] For example, in 1962 Northeast operated 39,231,280 revenue passenger miles in the New England peak third quarter and an average of 24,008,460 revenue passenger miles per quarter for the remaining quarters or a difference of 15,222,820. Yet, Northeast's Florida traffic dropped from 150,378,930 revenue passenger miles in the peak first quarter of 1962 to 114,909,200 revenue passenger miles in the third quarter (Competition Among Domestic Air Carriers Survey for 1962).

[7] While some of the Florida markets, such as Boston-Tampa, Boston-Jacksonville, Philadelphia-Tampa, and Philadelphia-Jacksonville, have experienced a high average rate of growth they are not large traffic producing markets, accounting for a total of only 99 one-way passengers a day in 1962.

[8] NEA–1003, 1008 (revised).

$2.9 million loss. The examiner prepared two estimates based on different predicted direct operating costs. Using Northeast's experienced revenue passenger miles for 1962, as increased to reflect growth, he estimated a 1963 system operating loss for Northeast of $3.7 million under one computation and $4.8 million under the other.[9]

We agree with the examiner that Northeast's forecast is unrealistic.[10] The actual traffic for the 12-month period ended March 31, 1963, indicates that the East Coast-Florida markets not only will not begin to approach Northeast's forecast of over 2 million passengers, but may well fall short of the examiner's more conservative estimate. In addition, it is questionable whether Northeast will carry 22.1 percent of the important New York-Miami market in 1963 as it predicts. Northeast's highest share of this market previously was in 1961 when it carried 19.7 percent, and that declined to 18.6 percent in 1962 even though Eastern was partially or completely shut down during several months of that year. Although Northeast carried 23.7 percent of the New York-Miami traffic in the first quarter of 1963, this period is too short, in the light of past experience, to serve as a reliable indicator of probable future results over an extended period of time.

It obviously is unreasonable to expect that Northeast, which has lost millions of dollars each year since its Florida extension, and which as recently as 1962 incurred a system operating loss of over $6.3 million, could so drastically reverse experienced results in 1 year as to turn these losses into an operating profit of nearly $4 million. Both past experience and the overly optimistic nature of Northeast's forecasts throughout this proceeding preclude our acceptance of the carrier's predictions.[11] In its original exhibits in this case, which were based on a 1962 forecast year, Northeast predicted a system operating profit of $4.6 million. That forecast was later revised in the light of actual operating results for the first 6 months of 1962 to a forecast operating loss of $4.2 million.[12] Reported 1962 year-end results revealed the $6.3 million loss referred to above.[13]

As to 1963, during the hearings and on brief to the examiner, Northeast attempted to show that its projected operating profit of nearly $4 million was attainable. On brief to the Board, the principal thrust of the carrier's argument was not that its 1963 estimate of profitable operations is reasonable, but rather was that the examiner's estimated operating loss of $3.7 million is overstated.[14]

Northeast, using an annualization of its reported results which reflect the higher traffic participation and lower operating expenses during the first quarter of 1963 as compared to its historic experience, and after adjusting downward the examiner's estimated costs to reflect his lower predicted traffic volume, argued that the examiner's estimated 1963 operating loss of $3.7 million should be reduced to $2.2 million.[15]

We cannot accept Northeast's contention that the examiner's forecast should be reduced to the extent contended by Northeast. We recognize that Northeast's direct aircraft operating costs and its indirect expenses as reported for the 12-month period ended March 31, 1963, are somewhat less than the experienced costs for the 12-month period ended September 30, 1962, used by the examiner.[16] But, as we have already indicated, we do not believe that the favorable results and the changes that may have occurred in a short period afford a sound basis for reaching results on projections that are contrary to Northeast's long-term historic experience. In addition, none of Northeast's proposed adjustments have been tested by cross-examination and there has been no exploration of other adjustments which they might call for that could affect the overall forecast.

Although we agree that some downward adjustment should be made in the examiner's projected expenses to reflect the lower volume of traffic he forecast, the recent overall Florida traffic results of the three carriers combined would indicate that his revenue estimate for Northeast may in fact have been overstated.

In any event, the fact remains that even under Northeast's adjustments the examiner's forecast would still produce another year of large operating losses. Although it is impossible to predict what the precise losses will be the record supports the conclusion that they will be substantial. Moreover the examiner's forecast was directed to Northeast's operating profit or loss from the Florida route and did not include Northeast's heavy nonoperating expenses such as interest on debt. None of the carriers presented forecasts extending beyond 1963, but we find nothing that in our judgment would warrant a conclusion that Northeast's Florida operations over a longer period hold any reasonable prospect of success.

The record, which shows seven years of unprecedented losses, continual financial crises, and deteriorating services in New England, leads us to the conclusion that Northeast cannot achieve self-sufficiency from its Florida routes. Northeast is wholly dependent upon the Florida markets for survival as a long-haul operator. But the carrier lacks the back-up traffic support, the strong, seasonally balanced system, and the financial stability which are essential if a carrier is to rely on the Florida vacation markets, with their erratic traffic ups and downs, for the major source of its strength. Past industry experience would indicate that a carrier, with a limited route system and access to traffic confined to multicarrier and unpredictable seasonal markets such as these, cannot operate as economically as those with a more extensive system. Since there are no immediate prospects of any resurgence of Florida traffic growth, we conclude that Northeast cannot achieve self-sufficiency or economic stability. We are, therefore, compelled to find that the renewal of Northeast's Florida authority would be contrary to our obligation to maintain and develop a sound air transportation system.

Northeast stated that a merger was probably the most practical of all solutions available to solve its financial and operating problems. However, no merger proposals were submitted to the examiner or the Board. It has also been suggested that the Board should renew the Florida route and grant subsidy for the New England operations as a possible means of placing Northeast on a sound footing. It would be contrary to the public interest to renew a certificate that was initially issued for the purpose of strengthening a carrier in order to allow that carrier to sell the certificate on the open market. We cannot conclude from the record that Northeast would be able to achieve successful operations over its present system even with the assistance of subsidy for the New England services. However, in view of our ultimate finding that there is no need or economic justification for a third carrier on the East Coast-Florida route, it is unnecessary to give further consideration to those two possibilities.

A major factor in the Board's original determination to establish a three-carrier East Coast-Florida route network was the record of substantial and sustained historic traffic growth in the Florida markets, and the expectation that comparable growth would continue in the future. Those growth prospects were relied upon, not only in the Board's basic conclusion that there was a public need for a third carrier, but also in its findings that the new carrier could operate the route profitably, and that the substantial diversion of revenues from the two carriers already in the market that would result, would largely come out of future traffic growth. In 1956 when the Board certificated a third carrier between New York and Miami it was the foremost travel market in the country, generating about 33 percent more passenger miles than the next largest market, Los Angeles-New York. This is not true today and a dramatic indication of the lack of growth in this market is the fact that for the twelve months ended December 1962 New York-Los Angeles now generates 19 percent more passenger miles than New York-Miami.

As we have previously indicated, the anticipated traffic growth has not, in fact, occurred. In the original *New York-Florida* case (24 CAB 94, 222) the Board estimated traffic would increase at a minimum market growth figure of 15 percent annually. Based on the Board's estimate the 1962 traffic would have been 213 percent larger than 1956 traffic. Actually 1962 was only 15.8 percent greater than 1956. In other words, in six years the traffic increased about as much as the Board assumed it would increase in one year. In 1957, the Florida markets totaled 1,671,863 passengers. Five years later they totaled 1,762,670—a five-year increase of 5.4 percent, or an increase of about 1.0 percent annually compounded rather than the 15 percent growth that the Board, in 1956, expected to come about in a single year. Growth in the New York-Miami market, which is the key to successful operations by New York-Florida carriers, has been even more dismal and has shown an annual average growth rate of only 0.9 percent for the 1957–1962 period. The virtual traffic stagnation in that market is illustrated by the fact that 1962 New York-Miami traffic was only

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[9] There was controversy in the proceeding as to whether the aircraft block hours upon which Northeast's expense exhibits rested included revenue as well as nonrevenue hours. The examiner accepted as reasonable the Bureau's position that only revenue block hours were included, and we agree. However, even if a different conclusion were reached, the examiner's forecasting would still show a staggering $3.7 million loss.

[10] In order to reach Northeast's estimate of 2,111,902 passengers in 1963, traffic would have to increase about 19 percent over 1962. Reported figures for the first quarter of 1963 showed that traffic was down from the same period in 1962, with New York-Miami traffic decreasing some 16,216 passengers or 4.1 percent.

[11] Even though Northeast has increased its participation in the Florida markets in 1963, it still reported an operating loss of some $879,000 for the first 5 months and a loss of over $1 million for the month of May alone.

[12] NEA–1000, 1001.

[13] Form 41.

[14] Northeast contended that the examiner's forecast loss of $4.8 million was based on the erroneous assumption that the figures in Northeast's expense exhibits included only revenue aircraft block hours and was therefore invalid.

[15] The examiner in constructing his estimates adjusted Northeast's revenue forecasts downward to reflect the lower traffic he anticipated, but used, without adjustment, Northeast's revenue plane miles which were keyed to the carrier's estimate of the volume of its operations under its own traffic forecast.

[16] We also note, however, that Northeast's experience for the 12-month period ended March 31, 1963, reflects a lower yield per revenue passenger mile than the yield per revenue passenger mile used by the examiner—6.49 cents as against 6.54 cents.

15,000 passengers above the traffic of 1957.[17] Over the six-year period (1957–1962) the growth in the Florida markets fell far behind industry levels. The domestic trunklines' passenger miles increased approximately 30 percent in that period as contrasted to the 5.4 percent growth in the Florida markets.

Northeast, in urging continuation of the three-carrier service, argues that normal traffic growth was inhibited by temporary factors, such as recessions, inclement weather, and labor disputes, and that growth will resume in the future. Undoubtedly, these factors may have influenced the behavior of the markets. But there can be no assurance that these or other unfavorable factors will not continue to influence these markets. Certainly, long-range influences, such as the accessibility of other and more distant vacation spots made possible by the speed of jet aircraft and the diversion of traffic that formerly moved through the Miami gateway to direct nonstop services to Caribbean and South American points that are now available will continue.[18] These attempts to explain away the declining traffic growth trends of 6 years do not provide a basis for authorizing a third carrier now.

Also of significance are the substantial technological changes that have occurred since the Board's original award of third-carrier Florida authority. The impact of the reequipment of the domestic trunklines with large numbers of jet aircraft is well known. The seating capacity of these aircraft, the productivity made possible by their high speed, and the desire of management to make productive use of its huge investment in the aircraft, not only makes possible the offering of capacity far in excess of that visualized only a few years ago, but imparts pressures to do so. This, in turn, tends to drive down load factors and to create capacity that must be met by traffic growth.[19]

Whereas in 1956 and 1957 three DC–7's could produce three round trips in 8 hours between New York and Miami, the same number of round trips can now be performed with two DC–8's carrying two and one-half times as many passengers. Conversely, the addition of a single jet schedule can produce capacity capable of meeting substantial public demand. Further, the large number of seats in each plane means that at a given load factor a jet offers considerably more available space to meet unexpected traffic demands than does a smaller, piston aircraft.

Under existing conditions, we find that Eastern and National can, and will, accommodate the Florida traffic now carried by Northeast. The examiner, on the basis of 1962 data, concluded that the high load factors which would have existed on flights then operated by Eastern and National in some of the markets, had Northeast not been operating, indicated a need for a third carrier. However, he made the unwarranted assumption that Eastern and National would maintain the same level of frequencies in the future in two-carrier markets that they did in the past in three-carrier markets.[20] Further, he failed to take into account the fact that the overall load factors upon which he relied embraced periods during which Eastern, the predominant carrier in these markets, was totally or partially shut down by strikes and that National was phasing in its newly acquired DC–8 equipment.

Data on actual operations during the 1962–63 peak Florida season show that had Northeast not been operating during that season, Eastern and National, without the addition of a single flight, could have accommodated the traffic of the major Florida nonstop markets, with the single exception of Boston-Miami, and would have needed only 20,603 additional seats to accommodate that market. This would have required less than the capacity of one-daily jet round trip.[21] We also note that during Eastern's strike, National and Northeast, which together previously had carried less than 50 percent of the traffic in the markets, had the responsibility of providing, and did provide, all of the Florida service for several weeks. If National and Northeast alone could meet the needs of the market last summer, Eastern and National can do so now.

In passing upon the public convenience and necessity, the Board must look toward the overall development and maintenance of an adequate air transportation system. This requires that its consideration not be limited to the effects of its decision on a particular applicant or applicants, but that it extend to the effects, beneficial or harmful, on other carriers that make up our airline industry. For a substantial period of time, Eastern Air Lines, one of our major carriers, with the responsibility for providing important services in many markets, has been in serious financial straits. The carrier had net losses of $3.7 million in 1960, $10 million in 1961, and $13.5 million in 1962. Its equity position deteriorated approximately $14.7 million between March and December 1962, of which $11.6 million was reflected by the dissipation of working capital.

The East Coast-Florida markets have long been, and are today, the backbone of Eastern's system. At the time of the Board's decision to authorize a third New York-Florida carrier for a temporary period, Eastern was making profits and appeared to be in a strong financial position. Further, as already noted, the Board in reaching that decision anticipated that the diversionary impact on Eastern and National of a third carrier in the New York-Florida markets would be substantially offset by future traffic growth. The growth has not occurred and it is clear that the traffic of the third carrier has been derived principally from diverted traffic formerly carried by Eastern and National. This is evident from the fact that in 1961, five years after the original Northeast award, Eastern and National carried some 2 million passengers less than they carried in 1956. The loss of this sizeable amount of traffic obviously has had a marked economic impact on Eastern.

We need not go into the question which was explored at the hearing of whether, under the three-carrier New York-Florida route pattern, Eastern's Florida operations, standing alone, have been profitable; and no one would suggest that Eastern's current difficulties stem solely, or even in major part, from the three-carrier competition in these markets. Nonetheless, the inescapable fact is that the New York-Florida route constitutes Eastern's major source of strength and that more favorable operating results in that market should contribute materially to an improvement in its position. Since Eastern and National can provide more than adequate service to the public, the opportunity that a two-carrier East Coast-Florida route structure offers for the rehabilitation of Eastern and its return to a sound financial position is a significant factor weighing against the authorization of a third carrier.

The unsuccessful nature of Northeast's operations to date, the lack of any substantial evidence that it will become successful in the future, the failure of the expected East Coast-Florida traffic growth to materialize, the fact that Eastern and National can meet the present needs of the market, and the opportunity afforded us here to aid in the rehabilitation of Eastern, persuade us that the public convenience and necessity do not require the present authorization of a third New York-Florida carrier. We cannot accept Northeast's argument that established Board policy favoring multiple competition requires the continuation of three-carrier service in the East Coast-Florida market. The amount of competition that should be authorized in a given market does not turn on the number of carriers the Board may have authorized in some other markets, but depends upon the specific facts and circumstances affecting the markets under consideration. We here find only that a third carrier is not needed at the present time in the East Coast-Florida markets. The question of whether an additional carrier might be required on these or other routes at a different time and under different conditions is not an issue before us.

Our decision not to renew Northeast's Florida authority has been a difficult one. Northeast has risked its capital and has lost millions of dollars in providing unsubsidized service in New England for many years. Its management has worked hard and diligently to develop its Florida route. Its services have undoubtedly provided benefits to the traveling public. Additionally, Northeast has greatly expanded its organization and increased the number of its employees. Termination of the carrier's Florida route will inevitably have adverse effects on its employees, the New England communities in which those employees reside, its creditors, and its stockholders.[22]

Consequences of this nature are a matter of great concern to this Board. It has been such concern that has led the Board over the years to make every effort to assist Northeast in finding a solution to its difficulties

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[17] In the light of experience in the Florida markets as a whole and in the New York-Miami market in particular, we obviously cannot accept the examiner's conclusion that "healthy growth has been made." Actually, the examiner's conclusion is negated by another conclusion elsewhere in his initial decision that "these markets are reaching maturity, leveling off around 1 to 5 percent annual rate of increase or decrease, depending on usual circumstances affecting traffic."

[18] Passengers moving between New York and Miami as part of international trips declined 27 percent between 1956 and 1960. NEA–191 (Rev.). While New York-Miami growth rate has been low, travel between the northeast and Caribbean points increased 77 percent between 1955 and 1960. BER–109.

[19] In 1956, overall trunkline industry load factor was 64.1 percent whereas in 1963 it had declined to 52 percent.

[20] Northeast's contentions that there would again be serious service deficiencies in these markets, in the event Northeast were not renewed, also rest on the unwarranted assumption that Eastern and National would not key their schedules to traffic demands. Nor is there any persuasive showing in this record that Eastern will be unable to acquire whatever additional equipment might be needed to serve these markets.

[21] Eastern's and National's load factors, without Northeast and without additional schedules, would have been 76.4 percent in New York-Miami, 64.9 percent in New York-Jacksonville, 85.4 percent in Philadelphia-Miami, and 103.2 percent in Boston-Miami. An additional flight would be essential in Boston-Miami and desirable in Philadelphia-Miami. At a 76.4 percent load factor in the New York-Miami market, Eastern and National would have operated 118,668 empty seats in the 151-day period—786 empty seats per day.

[22] Although certain labor associations, representing Northeast's employees, urged renewal to avoid harm to the carrier's employees, no specific proposals for protective labor conditions were made and the parties did not explore the question of whether the Board could properly impose such conditions. We have grave doubts that the Board would have the legal power to impose employee protective conditions under the circumstances of this case.

through such steps as continued payment of subsidy for 2 years after the Florida route was awarded, and the unprecedented procedures followed by the Board in approving first, an agreement to make possible emergency relief for Northeast by Toolco and, later, the acquisition of the carrier by Toolco. However, as regrettable as the consequences of our action may be, they do not counterbalance the overall public interest factors which dictate a decision not to renew the temporary authority.

In view of our finding of no need or justification for a third New York-Florida carrier, we will deny Braniff's, Delta's and Pan American's applications requesting New York-Florida authority in the event Northeast's Florida route is not renewed. We will also deny Delta East Coast-Florida authority even on a one-stop basis. Delta is presently prohibited from providing through-plane service in these markets. The carrier is seeking modification of the prohibition to make possible single-plane service between Florida and Northeast cities, with a mandatory stop at Atlanta.

As Delta claims, relaxation of the restriction might provide Delta greater flexibility in rotating and scheduling its flight equipment into its Miami maintenance base. However, we do not believe that any operational advantages that might accrue to Delta from the termination of the restriction are sufficient to justify Delta's entry into the Northeast-Florida market at this time, even on a one-stop basis.

We find unpersuasive Delta's contention that, because of the circuity involved, its single-plane East Coast-Florida service would be noncompetitive with the direct Northeast-Florida carriers and that the small amount of traffic it would be able to capture would not harm those carriers. Admittedly, Delta's one-stop service would not attract many passengers in nonstop markets like New York-Miami. But many of the other East Coast-Florida markets cannot sustain nonstop service and can only support a limited number of frequencies. A one-stop flight by Delta between Florida and the Northeast via Atlanta could well pose a competitive threat to existing one-stop Northeast-Florida operations.

We find unrealistic Delta's argument that it does not contemplate establishing through-plane northeastern area-Florida schedules on the basis of traffic moving between the two terminal areas. Delta would be free to change or increase its proposed schedules at any time.

We agree with the examiner that Allegheny's request for nonstop rights in the New York-Washington and the New York-Baltimore markets should be denied. Although Allegheny objects to the examiner's failure to consider its nonsubsidy proposal, the fact that Allegheny offered to provide these services on a nonsubsidy basis does not affect the examiner's conclusion that the carrier's proposed services are not required.

However, rather than deferring Allegheny's application for Boston-Philadelphia nonstop authority, as would the examiner, we will deny it. Allegheny serves between Boston and Philadelphia on a one-stop basis and it proposes three daily nonstop round trips with Convair 440's in addition to its other intermediate Boston-Philadelphia flights. These schedules would offer a first-class reservation and a low-fare no-reservation service on the same aircraft.

Four trunkline carriers, in addition to Northeast, are already authorized between Boston and Philadelphia. Frequent nonstop service, with turboprop and turbojet equipment, is being provided and an additional nonstop carrier is not necessary to provide adequately for the local traffic demands in this market. Nor has Allegheny demonstrated that, even without Northeast's service, those needs will not be met by the remaining carriers. The record does show, however, that Eastern intends to offer additional frequencies and that it may schedule Boston-Philadelphia "air shuttle" flights if Northeast's route south of New York is not renewed. Under such circumstances, we can see no justification for adding Allegheny as the fifth Boston-Philadelphia nonstop carrier.

Although we have concluded that Northeast's temporary Florida authority should not be renewed, it is clear that the public interest requires a continuation of the services which Northeast alone provides in New England. To this end, we will restore the carrier to subsidy eligibility under section 406 of the Act in order to permit continuation of the required services in that area. Viewed realistically, Northeast's New England operations are in fact local service comparable to the services provided by local carriers over route networks in other parts of the country. New England is entitled to the same treatment as the remainder of the Nation, and, hence, to such subsidy support as may be required to make possible the continuation of adequate air service. Should there be disruptions in Northeast's services, the Board will exercise its full authority to provide and maintain an adequate level of local service in that area.

One further matter requires comment. On July 30, 1963, Northeast filed a letter with the Board requesting the Board, if it issues an order denying Northeast's renewal application, to make any such order effective on (a) the sixtieth day after the entry of such order, (b) the sixtieth day after final order by the Board disposing of any petitions for reconsideration, reargument, or rehearing that may be filed, or (c) the date of final court action dismissing any petition for judicial review that may be filed, whichever shall last occur. The Board, in its orders issuing amended certificates, normally makes those certificates effective no earlier than 60 days after the effective date of that order. That procedure will be followed here. Northeast's request for a further delay in the effectiveness of any Board order denying Northeast's applications is premature and will be dismissed.

We have given due consideration to all of the exceptions filed by the parties and find that, except to the extent previously indicated, they should not alter our decision herein.

Accordingly, in view of the foregoing and all the facts of record, we find:

1. That the public convenience and necessity do not require the renewal of Northeast's authority to serve Philadelphia, Pa., Baltimore, Md., Washington, D.C., or Jacksonville, St. Petersburg-Clearwater, Tampa, Fort Lauderdale, or Miami, Fla., on route 27.

2. That the applications of Northwest Airlines, Inc., in Docket 12709, and Riddle Airlines, Inc., in Docket 12706, should be dismissed.

3. That, except to the extent otherwise indicated, Northeast's request of July 30, 1963, should be dismissed.

4. That, except to the extent otherwise indicated, all applications consolidated herein should be denied, and all investigations involved herein should be terminated.

An appropriate order will be entered.

Gurney and Gillilland, members, concurred in the above opinion. Murphy, vice chairman, and Minetti, member, filed the attached concurring and dissenting opinion.

THE DISSENTING OPINION

(Murphy, Vice Chairman, and Minetti, member, concurring and dissenting)

We would permanently renew Northeast's route south of New York and deny all other applications.

The New York-Miami market is the second largest passenger-mile market in this country; it is one of the heaviest traveled markets in the world. The East Coast-Florida run is among the richest routes in the world generating nearly two million passengers and two billion passenger-miles a year. In 1956, a veteran Board Examiner plus a unanimous Board found an immediate urgent need for added competition on this route because of the failure of Eastern and National to adequately serve the needs of the traveling public.

The market has grown since 1956. It continues to grow at a healthy pace. It has enjoyed vastly improved service since the entry of Northeast. Benefits to the traveling public have resulted from the competitive spur furnished by Northeast at great expense to its investors.

Properly applying accepted administrative standards, another experienced Examiner has again found a continuing need for three carriers in the flourishing, heavily-traveled East Coast-Florida markets. This finding is supported by practically all parties to the case except Eastern and National, both of whom have enjoyed profits on this segment of their large route systems even since the entry of Northeast. Our Examiner's finding is consistent with past and recent decisions of this Board. Civic parties from various Florida cities as well as New England together with representatives of travelers and shippers in Philadelphia, Baltimore and New York have underscored the need and requirement for continued third carrier service. Accordingly, we respectfully differ from the judgment of our colleagues. We would renew Northeast's Florida certificate on a permanent basis. We think the public interest requires it. We believe that long-range policy considerations relating to the development of a sound, adequate national air transportation system likewise require it.

As we have noted, the air transportation market here involved constitutes one of the greatest in the world. The record in this case as well as the record in the original proceeding fully supports the conclusion that the welfare of millions of air transportation consumers cannot be committed to Eastern and National alone. We agree with our Examiner that:

"To set aside a market involving nearly 2 million annual passengers for two carriers could well be considered a protected market for the few." (Initial decision, p. 24.)

There are two issues in this case:

1. Do the public convenience and necessity require a third East Coast-Florida carrier?

2. If so, what carrier should provide the service?

The majority equivocates in answering both questions. It finds no need for a third carrier "at this time" but implies that at some not too distant time a third carrier will be required. Such a finding is less than satisfactory to the carrier, the parties, civic intervenors, and the public, and is stated in a rather unique fashion.

And rather than meet the need issue in terms of public service and the service improvements effected by Northeast, the majority speaks of Northeast's financial difficulties, a subject irrelevant to the issue of need for a third carrier. Although the opinion considers the financial difficulties of Northeast at great length within the framework of the need for a third carrier issue and, in effect, finds Northeast unfit, the majority as a technical matter does not reach that issue. The two issues, public need and selection of carrier, are separate and distinct and must be so treated.

In the *New York-Florida* case, 24 C.A.B. 94 (1956), a unanimous Board [23] found: "The service provided by the existing carriers has not fully met the needs of the traveling public." (24 C.A.B. 99.)

[23] Chairman Durfee, Vice Chairman Adams and Member Minetti found a need for a third carrier and selected Northeast. Members Gurney and Denny found a need for a third carrier but would have selected Delta.

The record in the case disclosed that: "during the prime winter season when travel to Florida is at its high point, it is necessary to obtain New York-Miami reservations as much as 3 or 4 weeks in advance of a planned departure in order to obtain the traveler's choice of service and departure time, that extended wait lists are not uncommon, and that the carriers' efforts to meet space demands by too tight scheduling of aircraft has resulted in an impairment of on-time reliability with a consequent inconveniencing of the traveling public. In addition, there is no doubt that Eastern and National have concentrated heavily on the New York-Miami market, and have not provided comparable quality or quantity of service to many other markets here involved. These factors of passenger inconvenience are at least comparable to those found in recent cases to warrant additional air service." (24 C.A.B. 99.)

The Board said further:

"However, in our judgment the needs of the traveling public for service between the Northeast and Florida cities are not now being fully met by Eastern and National, and in these circumstances it would not be consistent with our statutory obligations under the Act and the course of our decisions thereunder, to merely maintain the status quo, and rely upon the carriers' assurances as to their willingness and ability to remedy the situation. The present shortcomings in service have been shown to exist over a substantial period of time, and the existing carriers have not demonstrated their ability to overcome them. Moreover, as we have on a number of occasions pointed out, the Congress in adopting the Civil Aeronautics Act, clearly considered competition to hold the greatest prospect for vigorous development of our national air route system 'with the fullest improvements in service and technological developments'." (24 C.A.B. 99.)

In his Initial Decision, in the present case, Examiner Walter W. Bryan found a continuing need for the third East Coast-Florida carrier based on his careful analysis of traffic growth and service improvements in the markets since Northeast entered the scene. We adopt fully the Examiner's conclusions in this regard which are attached to our opinion as Appendix A. The Examiner supported his conclusion by a number of telling statistical tables attached to his decision which we have updated in certain instances and are also attaching hereto.

We need refer only to a few highlights from the attached tables which tell the Northeast service story so dramatically.[24] The Florida market has had its ups and downs and reflects slow downs of the economy and the impact of strikes and weather. However, lumping the traffic experience data together produces an overall average annual 1.6-percent growth rate. In a market approaching 2 million annual passengers, a 1-percent increase means 20,000 additional passengers—a significant increase when viewed in terms of the absolute number of passengers added each year.

The markets which had been so badly neglected by the authorized carriers before the 1956 decision show an amazing rate of growth.

1957–62 average annual traffic growth

	Percent
Boston to—	
Tampa-St. Petersburg	6.6
Jacksonville	12.7
Miami-Fort Lauderdale	5.8
Philadelphia to—	
Tampa-St. Petersburg	27.4
Jacksonville	21.4
Miami-Fort Lauderdale	4.7

These traffic growth factors permit only one conclusion; but for the third carrier authorization, the Boston and Philadelphia/Florida markets would have remained dormant.

The arguments concerning the leveling off or "stagnation" of the East Coast-Florida markets are unimpressive. All the markets show growth. We do not agree with the prophecy of gloom and doom with respect to the growth of New England and Florida which is implicit in the majority view of this case. We have confidence in the growth of New England as we do in the growth of Florida and we recognize our public responsibility to both areas and to the promotion and development of a sound air transportation system for meeting the needs of commerce and post between them.

It must be kept in mind that this case involves decertificating a third carrier—not the certification of a new entrant on the scene. In our view the 1956 authorization of a third carrier was justified to bring an end to the then existing service deficiencies so apparent from the record in that case and need not have been tied to the sanguine traffic forecasts included in the Board's opinion as additional assurance of its prudence. To charge the failure of the traffic to develop to the level estimated by the Board in 1956 against Northeast is unreasonable. The various markets have shown growth however.

We also note that traffic is presently increasing at an excellent rate generally. The November 1962–June 1963, rate of growth is equivalent to 16.3 percent annually.[25] We are also impressed with Examiner Bryan's findings, attached hereto, as to the continuing growth of population and industry in Florida. The majority's failure to give consideration to the needs of the future and its limited finding as to needs "at this time" are contrary to the statutory injunction to promote, encourage and develop air transportation—all words requiring consideration of future needs—and the decisions of the courts. *City of Pittsburgh* v. *F.P.C.*, 237 F. 2d 741 (1956). We agree that the 1956 case showed a need for a third carrier then. We think the record in this case shows a need for a third carrier now. And we believe the record in this case shows a need for a third carrier in the future.

The additional service on the East Coast-Florida markets provided by Northeast, the third carrier, and the additional service spurred from National and Eastern by the Northeast competition is dramatically illustrated in Appendix F.

Examiner Wrenn analyzed the situation in the 1956 case as follows:

"The exhibits do establish the point that at peak periods it is difficult to get reservations over the east coast route for the time and the class of service desired unless such requests are made at least 3 or 4 weeks in advance. The alternative for many travelers is the adjustment of travel plans to the abilities of the airlines by acceptance of alternate accommodations at a later date or of accepting the uncertainties of a wait-list or of a period of waiting at a standby counter for an opening caused by a 'no show.' The unavailability of seats to a traveler who must depart on short notice frustrates the fulfillment of a public need for fast transportation which is one of the primary commodities air transportation has to sell. * * * Despite the claims and statistics on unused space, including testimony that during the month of March 1955 there were 470 empty seats daily on Eastern's nonstop flights between New York and Miami, the record shows that during the winter season wait lists are set up * * * and are frequently as lengthy as the number of passengers ultimately carried; that overbookings are not uncommon; that passengers are frequently forced to use other than the desired class of service and are often required to use multistop services. In the period January 1–March 7, 1955, 56 percent of Eastern's flights from Miami to New York were closed out 1 day or more before departure, 26 percent were closed out 2 days or more before departure, and some were closed a week or more in advance. * * * The evidence also shows that Eastern and National have concentrated their efforts in the New York-Miami market and have not provided the same vigorous competition and class of service in other competitive segments, such as New York-Jacksonville, Washinton-Tampa and Washington-Jacksonville and between Philadelphia and Florida, as well as between Baltimore and Florida points. The latest and fastest equipment are not in these markets, nor are there frequent and convenient nonstop and one-stop schedules operated at desirable times. The development of traffic in these segments has not approached that of New York in terms of Miami passengers per 1,000 population. The record also supports the charge that Eastern and National have not devoted the same efforts and quality of service to their exclusive markets along the east coast, such as Boston-Miami and New York-Tampa." (24 C.A.B. 193–4.)

The competitive spur furnished by Northeast contributed substantially to improving service in the Florida market. By once again entrusting it to two carriers we are turning back the clock, downgrading the needs and convenience of the traveling public and risking the loss of those improvements of service resulting from Northeast's entry in the market.

The December 1962 figures are in sharp contrast to those recited by Examiner Wrenn:

Scheduled nonstop flights, December 1962 [1]

	Flights	Seats [2]
Boston:		
Tampa/St. Petersburg	10	9,079
Miami/Fort Lauderdale	202	162,211
New York:		
Tampa/St. Petersburg	144	177,736
Miami/Fort Lauderdale	1,424	1,689,425
Philadelphia: Miami/Fort Lauderdale	269	277,872
Baltimore/Washington:		
Tampa/St. Petersburg	124	----------
Miami/Fort Lauderdale	290	----------

[1] We have attached a table showing the increase in seats over the years since the greater capacity of jets makes "number of flights" comparisons somewhat misleading.

[2] Seat figures are annual totals.

That a service situation similar to that prior to Northeast's certification could well arise again in the absence of the competitive spur of a third carrier is suggested by the fact that National provided no nonstop Boston-Miami service in recent years until the 1962–63 season—the period which could be expected to be closely scrutinized for purposes of decision in this proceeding.[26] Passengers have forcefully brought Eastern's

[24] The majority conclusion of no need for the third carrier is surprising in light of such isolated and interesting, but typical, statistics as Examiner Wrenn's references in the 1956 case Initial Decision to over 5 million annual tourists visiting Florida and Examiner Bryan's reference to 11 million tourists visiting Florida in 1959, a 100 percent increase. Examiner Wrenn also referred to 1,800,000 domestic passengers arriving at and departing from the Miami International Airport in 1954. The 1961 count of domestic passengers boarding aircraft at Miami amounts to 1,528,013.

[25] Preliminary reports for July show a continued strong growth in trunkline traffic.

[26] A carrier's belated efforts to improve its service are not considered in determining whether additional awards are required. *Dallas to the West Service* case, 29 C.A.B. 23, 27 (1959), and cases cited therein.

overbooking practices to the Board's attention during the past several months.[27]

The conclusion is inescapable that the 1956 competitive authorization is the sole reason the public has been able to enjoy markedly improved service over the East Coast-Florida routes since that time and that the public has no assurance of convenient, adequate service in the future now that a majority of this Board has reversed the unanimous 1956 Board findings that a third carrier is required.

The anomaly effected by the majority is illustrated by the fact that National which was extended to Boston in the 1956 decision will continue in the Boston-Miami market even though it provided no nonstop service until last season whereas Northeast which has been carrying over 60 percent of the traffic is eliminated. If we are to revert to two carrier service, application of historic selection of carrier criteria would point to the elimination of National, which in 1962 carried slightly over 5 percent of the market, not even enough to be considered a competitive carrier. In the same 1956 decision, National received New York-Washington turn-around authority and, here again, its participation has never exceeded 10 percent whereas Northeast carried over 18 percent of the traffic in 1960 and 1961.

Eastern was authorized to provide nonstop turn-around service between Boston and Washington in the 1956 decision and took slightly over 16 percent of the market in 1962 and slightly over 37 percent of the market in the first quarter of 1963. However, the majority of the Board is eliminating Northeast, the carrrier which took in excess of 70 percent of the market in 1962 and over 52 percent of the market during the first quarter of 1963. As the following résumé indicates, the majority is eliminating the carrier which has consistently ranked second in the commuter market:

Traffic distribution in commuter markets[1]

[In percent]

	1962	1st quarter, 1963
Eastern	51.0	67.6
Northeast	20.5	15.5
National	6.4	5.0
American	14.6	7.7

[1] Includes Boston, New York, Philadelphia, Baltimore, and Washington.

The Board followed a wise and judicious policy in recent years in relying on competitive awards to insure adequate public service in major markets.[28] Competitive service is an important statutory objective and the benefits therefrom will not be withheld from the public merely because existing carriers may be rendering a legally "adequate" service. *Tucson Airport Authority, TWA Certificate Amendment,* 23 C.A.B. 772, 776 (1956).[29]

The jet transition, overscheduling, and general economic conditions brought financial problems for all carriers over the past years, and many bemoaned excess competition. However, these problems are dissipating, and the trunk carriers are entering a period of excellent profits and significant traffic growth. Domestic trunk revenue passenger miles increased 16 percent June 1963 over June 1962, and 6 percent for the 12 months ended June 30, 1963, over the previous year. As previously noted, the November 1962 to June 1963 growth rate is equivalent to 16.3 percent annually. None of the trunks, other than Northeast, are in difficulty. All survived the sometimes painful jet integration including Northeast Airlines. And despite financial worries on the part of the carriers, the traveling public has been the beneficiary of excellent service in competitive markets.

In the New York-Florida case, the Board said: "There can be little question that the markets here involved are, in material aspects, more than comparable to those for which in recent cases we have authorized service by more than two carriers." (24 C.A.B. 98.)

Cases to which the Board referred were *New York-Chicago Service* case, 22 C.A.B. 973 (1955); *Denver Service* case, 22 C.A.B. 1178 (1955); *Southwest-Northeast Service* case, 22 C.A.B. 52 (1955). And in subsequent cases involving markets of lesser traffic density than the Florida markets, the Board continued to rely on competitive authorizations to insure the quantity and quality of service required by the traveling public. *Great Lakes-Southeast Service* case, 27 C.A.B. 829 (1958), *St. Louis-Southeast Service* case, 27 C.A.B. 342 (1958); *Southern Transcontinental Service* case, Order E–16500, March 31, 1961. In *Transpacific Route* case (Domestic Phase), Order E–16285, December 7, 1960, presently stayed, a unanimous Board found a need for a third California-Hawaii carrier. Unrestricted third carrier operations have been authorized between New York and San Francisco.

An interesting comparison of the relative traffic volume in various multi-carrier markets is set forth in Appendix K. The Board has found a need for four carriers in the New York-Chicago market and the Los Angeles-San Francisco market and for three carriers in twelve other major markets, namely, Chicago-Miami, Chicago-Tampa, Chicago-Atlanta, New York-San Francisco, New York-Detroit, Chicago-San Francisco, Chicago-Denver, New York-Atlanta, New York-Birmingham, New York-New Orleans, and New York-San Juan. New York-Miami tops all these markets in passenger miles except New York-Los Angeles.

One of the purposes of a competitive national air transport system is to provide the advantages of competitive ferment which brings with it a diversity of managements, experimentation, a variety of approach to traffic development, handling and servicing and a conflict of new ideas in advertising and business administration. The 1956 award to Northeast has provided some of these advantages.

In this connection, the wonderful improvement in commuter service brought about by Eastern's shuttle may well not have occurred but for the competition of Northeast. It is interesting to note Eastern's participation in the New York-Washington market over the recent years. Eastern's participation amounted to 35 percent in 1957, 31 percent in 1958, 36 percent in 1959 and 35 percent in 1960. During those same years, Northeast's participation was 2 percent in 1957, 3 percent in 1958, 11 percent in 1959, and 18 percent in 1960. In 1961, Eastern's percentage was 43 percent, 56 percent in 1962 and up to 75 percent in 1963. During this later period, with the shuttle, Northeast's percentage dropped off sharply to the point of no participation for all practical purposes. This Eastern service which has meant so much to the public convenience and necessity is in part attributable to Northeast's competitive presence in the market. We welcome such service improvements which competition brings.

As indicated by the traffic participation tables attached hereto, Northeast has dropped out of the New York-Washington-Baltimore markets. However, this factor does not constitute a black mark against Northeast and does not justify canceling the carrier's license to provide these services. The authorization in and of itself insures adequate service to the public. As the Board said in the *Fort Worth* case, 27 C.B.A. 260, 266 (1958):

"Where the public has ample service between the same two points by another carrier, what might be deemed grossly inadequate service by the carrier authorized to provide competing service were it the sole carrier in the market, may in fact be adequate under the circumstances. This may be true even if the Board has originally issued the competitive authorization with the expectation that it would be vigorously exercised, as it did to Braniff for Fort Worth-New York service, at least where it appears that the holder has attempted to provide effective competition in the market but has curtailed its efforts in the face of the success of other carriers in dominating service and absorbing the available traffic. Such a chain of events does not necessarily represent a frustration of the Board's objective in authorizing the competitive service, for the maintenance of a dominating position in such a market is no longer protected but is subject to a continuing pressure more fully to satisfy the desires of the public lest the latent competitor be afforded a practical opportunity to capture the traffic. In this manner the presence of a competitor free to act if established carriers lag is in itself of value to the public, and will normally tend to insure that adequate service to the public will be provided in the market in question."

Much is made of the fact that during part of 1962 Eastern was on strike and that, therefore, Examiner Bryan's various load factor comparisons are invalid. However, the point of the matter is that strikes are a part of the transport economy and one of the purposes of competitive authorizations is to insure that despite service stoppages, the public can be assured of a reasonably adequate service during such stoppages.[30]

We believe it is in the national interest that as many airline entities exist as can reasonably be supported. This provides for more improved operations, provides a pool of trained, experienced personnel available in time of defense need[31] and is entirely in keeping with our American tradition of free enterprise—a tradition which depends upon competition in the market place to provide the best possible service for the buyer rather than the establishment of a few carriers subject to the minute, rigid and more detailed government regulation which would then be required to insure good service to the public.

Competition in the air transport industry has brought about great improvements in

[27] Our files indicate that for many recent months Eastern outranked all other carriers as the subject of service complaints. Field investigation revealed intentional overbooking on a planned basis to insure maximum load factors. This inconvenienced hundreds of passengers last Christmas and New Year's alone. Corrective action has been taken by Eastern.

[28] Size and importance of a particular market have been held to justify a competitive authorization in such cases as *Dallas to the West* case, 28 C.A.B. 590 (1959); *Southwest-Northeast Service* case, 22 C.A.B. 52, 61 (1955); *New York-Chicago Service* case (Northwest Restriction), 23 C.A.B. 943, 945 (1956).

[29] The Board said essentially the same thing in its 1956 New York-Florida case opinion as quoted supra, p. 4.

[30] Also, it can be expected that the total tariff was depressed during Eastern's strike which would, of course, be reflected in load factors. Despite the criticisms, the table speaks very eloquently for itself. Further as indicated in appendix O, neither Eastern nor National has any four-engine long-range jet aircraft on order at the present time. Thus their ability to absorb Northeast's traffic is not free from doubt.

[31] It is well to recall Northeast's vital 4-year wartime service transporting priority personnel and materiel over a New England-North Atlantic-Scotland route which it developed and fully supported with its own personnel.

service to the public. If the public is to enjoy good service and improved service over the East Coast-Florida routes, third carrier competition must be continued.

With respect to the second issue in this case, selection of carrier, all criteria applied by this Board in past cases call for the renewal of the Northeast license, e.g., participation in the markets, single plane and single carrier service, etc. The only element among the selection of carrier criteria on which there is doubt is Northeast's financial fitness. The majority overlooks, however, the obvious fact that despite its financial problems, Northeast has provided the bulk of the service in many of the Florida markets and has operated a full pattern of service. That providing this service has not put Northeast in the black cannot be permitted to becloud the fact that it carried over 25 percent of the total Florida markets and over 15 percent of the commuter markets in the first quarter of 1963. During 1962, Northeast carried over 22 percent of the Florida traffic and over 20 percent of the commuter markets. Detail of the carrier's performance is set forth in the appendices. They indicate Northeast can compete.[32]

There is no doubt whatever that Northeast is a willing carrier. It has furnished services in markets hitherto neglected. We are convinced that it is an able carrier. It has survived the perils of fierce competition without interruption of its constantly improving service. It has demonstrated, beyond cavil, its operational fitness. Its financial fitness, of such concern to the Examiner as to constrain the withholding of a permanent certificate in the absence of a sound managerial plan for its future, is now assured by the proposal of Toolco to reorganize its entire debt and equity structure and guarantee availability of jet aircraft and other equipment for long- and short-haul operations. With subsidy, to which we all agree Northeast is entitled for loss local service rendered at its own expense in certain areas of New England, any serious doubt as to its ability to continue as an independent, sound, viable carrier is completely dispelled.

In considering elements of fitness and ability it is important to note that Northeast is not a new applicant. It is a grandfather carrier. It is no stranger to the markets here involved. It is an existing carrier operating pursuant to a certificate of public convenience and necessity and, hence, its case differs radically from that of a new carrier seeking entry for the first time. Factors in addition to balance sheet figures must be considered. As the Board stated in the *Transpacific Air Renewal* case, 21 C.A.B. 253, 257 (1955): "for purposes of 'fitness and ability', an existing carrier is on a different footing than a new company seeking entrance into the air transportation industry. For an existing enterprise we appraise its operating experience as well as its balance sheet."

We have also said that: "Continued performance of operations is convincing if not conclusive proof of the ability to operate satisfactorily, in the absence of proof to the contrary." *Large Irregular Air Carrier Investigation*, 28 C.A.B. 224, 238 (1959).

Certain equitable factors in favor of Northeast cannot be ignored. It has borne the burden of unsubsidized service for many New England communities for many long years, thus saving the Federal Treasury more than fifteen million dollars while similar services were being and are now being heavily subsidized in all other areas of the United States. We note that our colleagues recognize the duty of the Government to afford these New England communities equal subsidy treatment, but would withhold it unless Northeast surrenders its one and only long-haul route. No standard of public interest requires this. No provision of any law compels it, and we would pay subsidy promptly.[33]

Northeast has not requested subsidy in this case. But it is plain to us that it is entitled to subsidy for its local services—a view to which the majority subscribes—and such revenues coupled with profitable operations over the New York-Florida route would assure the carrier of a solid future and secure its survival without a promiscuous merger.

Profits from the New York-Florida route would diminish or offset the subsidy requirements for Northeast's services and, thus, accord with congressional and executive policy to hold subsidy within reasonable bounds. The cost of certificating a substitute local service carrier in New England cannot now be approximated but, obviously, would be substantial if Northeast is forced to cease operations.

In passing, it is interesting to note that in 1948 National was in such desperate financial condition that the Board instituted proceedings which came to be known as the "National Dismemberment Case" (National Airlines Investigation, 10 C.A.B. 8 (1949)). Subsequently, the Board deferred such adverse action until National regained its financial integrity and later dismissed the proceeding. 12 C.A.B. 798 (1951). Also, the record losses of Eastern over the past few years have not impaired the confidence of this Board in its basic fitness and ability. This is dramatically underscored by the decision of the majority in this case. We note that Eastern, like Northeast, is maintaining satisfactory operations while it attempts to work out its transitory financial problems.

We cannot ignore the fact that unlike a carrier applying for a major new route, or a new entry into the industry, Northeast already has the equipment, facilities and personnel to provide effective competitive service in the East Coast-Florida market. It has had years of experience in this market and its organization is fully geared to serving it. This company has successfully completed a vast organizational transformation and has invested $53.1 million in flight equipment alone. In contrast to Riddle Airlines, for example, which the Board certificated in the North-South cargo market despite grave balance sheet drawbacks, Northeast has never abandoned its certificated route obligations.

The public acceptance of Northeast's service is an impressive demonstration of its fitness, willingness and ability. Its participation in the total traffic in the market increased from 5.6 percent in 1957 to 25.5 percent in the first quarter of 1963 and its volume of patronage grew from 93,000 passengers in 1957 to 402,000 in 1962. In the side markets its record of achievement is even more impressive.

Rarely does the Board restrict domestic trunk route grants to a temporary award since we have properly opined that carriers should not be "tied with the uncertainties attendant upon temporary authority"—uncertainties which, in Northeast's case, have taken their toll. *Great Lake-Southeast Service* case, 27 C.A.B. 1053. Little, if any, weight has been given to this factor by the majority. The transcript is replete with evidence that the Board's action in granting a temporary rather than a permanent certificate in 1956 has directly and substantially contributed to some of Northeast's financial difficulties upon which the majority dwells at length.

The record indicates that no sooner had Northeast acquired its jet fleet when, at the end of the 1960—61 winter season, it reached a stage of acute financial crisis, primarily as a result of the great cost of acquisition and introduction of its jet fleet. Importantly, this occurred at a time when the entire domestic trunkline industry was reacting to an economic recession which contributed to the reduction of operating profits for all carriers. In financial straits, Northeast was the target for adverse publicity stimulated by its competitors seeking to force Northeast out of business. Among other things, Northeast was forced to curtail nearly all its advertising. Northeast's efforts to obtain further financing during this period met the determined opposition of Eastern and National in moves which were characterized by counsel for the Board and the Department of Justice as "an attempt to bring about the demise of a competitor." (Brief for respondent, *National Airlines, Inc.* v. *C.A.B.*, 306 F. 2d 753 (D.C. Cir. 1962) p. 21 n. 22).

Finally, Eastern increased its nonstop New York-Miami jet schedules in February 1962, from 10 to 14 and its capacity by nearly 87 percent over its 1961 capacity. The Examiner correctly found that the effect of "the addition of the 'fighting ships' by Eastern at that particular time was to reduce the load factors of all carriers in the market just prior to the hearing in this proceeding and further to weaken Northeast's position." (Initial decision, p. 36.)

Despite these unprecedented obstacles, Northeast's traffic continued to grow. Northeast carried more Florida passengers in 1961 than it had carried in any previous year. It achieved a participation of 23.5 percent of the market, for an improvement of more than 50 percent over the highest previous year. Despite a progressive worsening of its financial situation, Northeast maintained its traffic and participation in this same range in 1962—22.8 percent of the market. In the first quarter of 1963, Northeast, with the financial assistance of Toolco, increased its participation to 25.5 percent. In the second quarter of 1963, Northeast increased its share of the New York-Miami market to 20.5 percent as compared to the 16.6 percent participation in the second quarter of 1962. Further, that market increased 4.4 percent in the second quarter 1963 over second quarter 1962.

Under all the circumstances, therefore, we believe that Northeast's achievements have been outstanding; the performance of this carrier has exceeded expectations which could be reasonably demanded of it.

The collapse of Northeast, virtually dictated by cutting off its one trunk route, will set in motion a train of most unfortunate and tragic consequences. Since this is the first time in Board history that such has been done, we cannot truly foresee all of them. The liquidation of Northeast will be detrimental to its creditors, to its stockholders; but, of particular concern to us, is the crippling effect which this decision will have on its large pool of skilled employees, and on the public in the hard-pressed New England area which is already suffering from a deteriorating railroad transportation system. These were factors which we recognized in the *Toolco-Northeast Control Case* (Order E–18470, June 19, 1962). At that time the Board determined that the public interest would not be served through an abrupt and chaotic collapse of this grandfather carrier. We continue to adhere to that view. We also recognize that this Board is enjoined by law to give weight to the impact of its actions on employees. *United*

[32] As one example, in April 1963, Northeast ranked first among all trunks in on-time performance. Its record on the Miami-New York route was 89.75 percent on time, compared to 77.97 percent for Eastern and 71.32 percent for National.

[33] See, for example, Pan American World Airways, Inc., Latin American Division, Mail Rates (Provisional Statement), Order No. E–7650, August 19, 1953, pp. 14–17 (Final Order), Order No. E–7673, September 1, 1953, 17 C.A.B. 775 (1953). In that case we provided subsidy for a portion of the carrier's Latin American system, but we concluded that the operating characteristics of the New York-San Juan segment were such that, under economical and efficient management, it should not require subsidy support.

States v. *Lowden*, 308 U.S. 225 (1939); *Western Air Lines* v. *C.A.B.*, 194 F. 2d 211 (1952).

The magnitude of the impact on employees and the local economy can only be approximated. Some 150 pilots fly south of New York. Dismissal of 150 pilots from the bottom of the seniority list would involve an annual payroll in excess of $1,725,000. The cutback could involve a mechanical personnel payroll approaching $2 million annually. What may happen to Northeast's employees is of course unknown at this point; however, some general idea can be gleaned from the attached appendices showing total Northeast employees and payroll. Whatever the dollar impact on employees may be, it will be multiplied in its adverse effect, throughout the local economy.[34]

While the majority would proffer subsidy and expressed willingness to take corrective action in the event of any major disruption in service, the measures available for such action are unspecified and untested and, at best, speculative. We fail to see the necessity for creating such a risk or depriving this area of the benefits of Northeast's continued services.

The majority holds out a vain hope that Northeast can successfully revert to its small route system north of New York. Such a possibility, in our view, ignores the realities of the airline industry. Northeast would be cut back to a route system far smaller than that of many of the local service airlines. Moreover, this Board has extended, on a permanent basis, two local service airlines into the New England area since choosing to make Northeast a hybrid carrier in 1956. Allegheny, which receives a subsidy of $6.5 million per year for all its route system, was extended to Boston, Providence, Hartford, New Haven, New London, and Bridgeport. It furnishes multistop services from these points to New York and points south thereof on a subsidized basis. When Eastern was relieved of its responsibilities in the New York-Vermont area, its entire local route system there was transferred to Mohawk which had been previously extended to Boston, Providence, Hartford, and Keene. These local service carriers have their principal origin outside of New England. Neither of them has the identity or affinity with New England as has Northeast which is the area's only home-based carrier. To expect that Northeast can revert to the status quo prior to 1956 is, therefore, impossible and has been made impossible by intervening Board action.[35]

Northeast is the only carrier serving Maine; it is the only nonlocal service carrier serving New Hampshire and Vermont; it is the only carrier serving Fall River-New Bedford, Mass., and the important vacation area of Cape Cod and Nantucket. It is the only carrier in the entire industry rooted in New England.[36] At its home base at Boston it is a substantial contributor to the local industrial economy, not only in terms of payroll, but in terms of purchases and promotional activities. No other trunk airline has ever offered or now desires to serve any point north of Boston on a permanent basis. The future destiny of this area, therefore, is interwoven with that of Northeast, for better or for worse; it is our duty, we believe, to make it better rather than worse.

Toolco has kept every commitment made to the Board, to the public and to Northeast. It has done so without complaint. It has offered to do more. Until the appeal taken by National from our decision in the Control case was finally dismissed by the Court of Appeals—an event which did not occur until July 3, 1963, several months after the filing of the Examiner's decision herein, there was a cloud hanging over any reorganization plan. If the Board order were not approved by the Court, Toolco could reasonably anticipate further vexations. It is understandable that Toolco would be reluctant to act prematurely. We think, therefore, that severe penalties upon not only the carrier, but also its employees and the public, ought not to be exacted simply because the Toolco proposal, in the view of some, came too late. There is every reason to believe, in our opinion, that Northeast has turned an important corner and under the Toolco reorganization has every hope of a sound financial future. Since Toolco's support has been available, Northeast's share of the markets has increased significantly.

On July 23, 1963, Toolco submitted a proposal for the immediate rehabilitation of Northeast. In sum, it provided for a dramatic recast of the carrier's finances. If such a plan were feasible and if offered to the Examiner it would have supplied relevant and vital evidence on the issue of financial fitness—the one factor upon which his adverse conclusion as to Northeast was predicated.

Because of these significant developments and our conviction that a third carrier is required, we would permanently renew Northeast's Florida route or as an absolute minimum reopen the record in this case for development of further evidence on the all important financial fitness issue.

Certain further observations on the disposition of this vital proceeding are required. We note the solicitude for the well-being of Eastern which constitutes such a major factor in the majority decision. Concern for the welfare of this large carrier as well as for all others in the industry is one which we commonly share. But our duty is to promote long-range air transportation goals rather than to wrest short-term objectives, particularly by requiring the sacrifice of one carrier for the benefit of another. We would invite attention, in this regard, to the tremendous boon bestowed upon National as well as Eastern. It is impossible to favor one without favoring the other and both will substantially share the valuable estate inherited upon the demise of Northeast.

Special protection for National is not justified by a scintilla of evidence in the record. This Florida-based carrier is enjoying its greatest era of prosperity on a recently enlarged route system extending from Boston Harbor to San Francisco Bay along segments embracing rich markets and great population centers. If anything, we should be considering removal of National from the Boston terminal to which it was extended on a permanent basis at the same time that Northeast was extended south of New York on a temporary basis so as to preserve a modicum of balance and opportunity. The public in the New England area has benefited little if any from this valuable route grant to National in 1956.

On the record in this case there is no evidence that either Eastern or National has suffered any economic loss on their East Coast-Florida routes because of competition from Northeast. Our Examiner properly disposed of Eastern's contention that it needed protection on the Florida route by stating that such an argument "cannot seriously be considered. The public needs on the Florida routes should not be required to suffer for lack of adequate service because another route on the carrier's system may not be as productive in revenues." (Initial decision, pp. 27, 28.)

Eastern's sharp deterioration in earnings is a concomitant of the recurrent work stoppages grounding its air fleet for long periods of time during the past 4 years. But for the cumulative effect of these strike-torn years profitable operations might have been attained in 1962. Sharp declines in Eastern's equity and working capital in 1962 are attributable to noncash charges, e.g., depreciation and reclassification of debt payable in 1963 and were not due to cash outlays. Unlike its far smaller competitor, Northeast, Eastern has adequate resources to serve as security for the extension or refunding of its present debt, and will, with this decision, become the dominant East Coast-Florida carrier.

Eastern is moving forward and can expect a return to its former profit position in the near future. Importantly, as we have noted, the record in this case does not indicate that Eastern has lost money on its East Coast-Florida route since the entry of Northeast therein. We cannot accept the dictum that the interest of one airline, important and worthy as it may be, requires the surrender of the lifeline of another.

It goes without saying that trunkline carriers should be able to operate a full system-wide pattern of service with an adequate return over the long run and that certain loss services must be cross-subsidized by the more lucrative segments. However, it is appropriate to recall the Board's statement in *Great Lakes-Southeast Service* case, 27 CAB 829, 831–2 (1958):

"We wish to reiterate one of our basic points as to the benefit of third carrier competition in a market of the size of the Chicago-Miami market. Such a market is of great economic importance to Delta and Eastern, as they allege; however, this fact in and of itself is not sufficient to insure provision of the quantity and quality of service such as a large market requires of its continued growth and development are to be fostered. Despite the carriers contentions to the contrary, it is a fact that their past services have not fully met the reasonable demands of the traveling public. Even though the carriers may be able to provide a full pattern of competitive services now, we believe the authorization of a third competitive carrier is necessary to insure that result * * * the presence of a third competitive carrier will operate to guarantee that ample service of the highest quality is always available."

This language is equally pertinent in the present case—in fact more so since a larger market is involved. The Board has consistently indicated that its decisions must rest on the public interest rather than the private financial or corporate interest of any particular air carrier, *Louisville-New York Nonstop Investigation*, 21 C.A.B. 794, 797 (1955); *New York-San Francisco Nonstop Service* case, 29 C.A.B. 811, 863 (1959).

The majority also refers to renewal of the Northeast-Florida route as an invitation for the carrier to sell its certificate. In our view, with subsidy for New England and implementation of the Toolco financial restructuring proposal, Northeast could continue in the future as an independent carrier. Moreover, the Board has previously indicated that trafficking in licenses is a matter completely controllable by the Board. Order E–15328, June 3, 1960.

Finally, we understand the majority decision not to rest on any major policy grounds. It does not go beyond holding that Northeast shall not be permitted "now", and "now" only, to furnish services in the Boston-New York-Florida markets. It establishes no guidelines, which the industry has

[34] Present total Northeast annual payroll amounts to $19,454,048. See app. M.

[35] Both Eastern and National have received valuable new route awards since the 1956 decision. For example, Eastern was given a New York-Washington-Mexico City, and Toronto-South routes. National was extended to the West Coast. Northeast has received nothing. Thus, in addition to new local service carrier entry into New England in recent years, Northeast has had no opportunity to grow in relation to its trunk competitors.

[36] The record includes numerous references to service improvements Northeast has provided points north of Boston. To cite but one here, the present Bangor-Washington single-plane service will no longer be available under the majority's decision.

a right to expect, as to the degree of competition which the Board will be prepared to consider seriously tomorrow or in the days thereafter. In this connection, we note that Pan American, while urging to the Examiner that a third carrier was needed and that Pan American should be selected, on appeal to the Board, modified its position and urged that we "not recertificate Northeast, reduce the present degree of competition, and select the new carrier or carriers in a subsequent proceeding." (Transcript of oral argument, p. 67) Pan American argued: "The existing carriers can handle the traffic until a new third carrier is selected." (Tr. p. 69.) The candidates for the future award were designated by Pan American as itself, Delta and Braniff, all carriers operating in United States-South America markets. (Tr. p. 69–70.) Pan American conceded that: "Added competition can be justified in markets such as New York-Miami if it is of the type which will produce improved public service by better accommodating through traffic and seasonal peak demands." (Tr. p. 68.)

National likewise recognized that the Board could not justify restricting this market to two carriers for long, that a third carrier might be required within a short period of time and urged that the selection be made in the pending United States-South America Route Case, akin to the Pan American recommendation (Tr. p. 103; brief to the Board, pp. 39–40). Such a postponement, at the expense of Northeast and the public, National contended, "would give Eastern and National a breathing spell.* * * Two years should allow Eastern to regroup in order to face the future. Two years would allow Eastern possibly to modernize their system." (Tr. p. 104; brief to the Board, p. 39.) In the meantime, National realistically noted that as a consequence of nonrenewal of Northeast, * * * the Board must face the possibility, the probability even, that Northeast will collapse." (Tr. p. 104; brief to the Board, p. 41.)

On appeal, Eastern likewise tacitly recognized that the market demands might not long justify two-carrier service and that public inconvenience might result and that the decertification of Northeast would possibly bring about its abrupt collapse. Consequently, it made two rather extraordinary proposals, for the first time at oral argument, later formalized in a joint agreement with National, filed with the Board under section 412 on June 28, 1963. In sum, these unusual propositions provided, (1) that: "Eastern and National agree that for a period of 5 years, or for such time as they are the competitive carriers authorized to serve the East Coast-Florida markets, that they will comply with any order of the Board entered upon notice, but without hearing, requiring any additional daily capacity in the markets"; and (2) upon cessation of operations south of New York by Northeast, Eastern, and National, on a 60-40 basis,[37] will provide goods, equipment and services in a total amount of $1 million for maintenance and continuance of New England services to keep Northeast or some other carrier going for at least 1 year on a reduced subsidy cost to the Government. (Tr. pp. 85E–85G.)

Referring to the New York-Miami market alone, Braniff argued that "This market, above all others, not only can support but demand[s] three-carrier service." (Tr. p. 43.) Braniff asserted that "This fact is not in substantial dispute * * *. Only Eastern and National dispute it. Considering their particular self-interest, this is quite understandable. However, Bureau Counsel and the Examiner agree with Braniff that the New York-Miami market can support three carriers, and that the public convenience and necessity require such competition." (Brief to the Board, p. 6.) Thus, even Northeast's rivals recognize the inevitable need for a third carrier.

In light of all the facts and the reasonable inferences to be drawn therefrom, together with apposite Board precedents, and in accordance with the policy requirements of section 102 of the Act, we would renew Northeast's certificate here involved on a permanent basis. Additionally, we recommend immediate subsidy for its New England operations for so long as required, not only because of entitlement thereto, but to avoid the unnecessary risk of a breakdown of our national air transportation system there, threatening irreparable injury to the public interest.

[37] National estimated that elimination of Northeast south of New York would enhance its net profit in the East Coast-Florida markets by almost $4 million; Eastern estimated an increase in its operating profit of $6 million. (I.D. pp. 9–10.)

TESTIMONY OF SENATOR EDWARD M. KENNEDY, DEMOCRAT, OF MASSACHUSETTS, BEFORE THE AVIATION SUBCOMMITTEE OF THE SENATE INTERSTATE AND FOREIGN COMMERCE COMMITTEE, AUGUST 15, 1963

I am very grateful for the opportunity to appear before your committee this morning to discuss the recent decision of the Civil Aeronautics Board on Northeast Airlines and the grave consequences this decision has for New England.

I speak today not only for myself, but for hundreds of thousands of citizens of New England who are directly affected by the kind of air service we have in our area—affected as travelers, as farepayers, and as citizens of communities whose economic growth and development depends on frequent, consistent air transportation.

Not since I have come to the Senate have the people of my State—and all the New England States—been so concerned about a single action of the Government. They are confused and discouraged. They feel that the Board that determines our National aviation policy has cut them off—have submerged the welfare of their local airline in favor of other considerations less related to the public interest.

The Civil Aeronautics Board is not a part of the executive department of our Government. It is a quasi-legislative and judicial body which is not accountable to the administration in power for the decisions it makes in the domestic aviation field. When it makes a decision, the only recourse is to the courts.

But this does not relieve the Board of its responsibility to the citizens of New England. The statute which creates the Board commands it to base its decisions on the public interest. And the 10 million people of the New England States are a significant part of that public whose interest must be served.

We have no wide open spaces in New England. For an airline, our region is full of short hauls and frequent stops, which is the least economical type of operation. Nevertheless, since it obtained the certificate to fly to Florida in 1956, Northeast Airlines has made a substantial contribution to the growth and development of New England and to the traveling convenience of its people.

In 1956, 940,000 passengers emplaned and debarked through Logan International Airport. Last year the total was 1,720,000. Fifty percent of this increase was aboard Northeast Airlines. The availability of air transportation has increased the development of industry. It has enhanced travel. It has helped make the tourist industry the third largest industry in Massachusetts, and the mainstay of the summer economy of Maine, New Hampshire, and Vermont.

In serving the public interest in this way, Northeast Airlines has lost money. But I do not believe that the Civil Aeronautics Act requires a carrier to make money on all its operations in order to get favorable consideration from the Board. If the choice must be between profit and the public interest, does not the act indicate that the public interest should win out? Should not the Board try to make those arrangements which will allow a carrier to make a reasonable profit while maximizing the traveling public and the communities that are served?

It is the feeling of many in New England that Northeast Airlines was able to make the contribution it has because it is a locally based carrier. It was our hope that Northeast, with the profits of the Florida route and the subsidies it deserves, would be able to gradually increase its service to the medium sized and smaller cities of New England. But the Board rejected this course.

Our economy and our people face the prospect now that they will be at the mercy of large trunk carriers whose main interest is in other parts of the country. There is a grave danger that if Northeast is reduced to regional status, or if its routes are parceled out to other carriers, the development of much of our economy will cease.

What will be the effect on the State of Maine, which does not now have even rail service north of Portland, if their air service is eliminated as uneconomical? What will be the effect on the ski resorts of Vermont and New Hampshire? How can a depressed textile city in New England expect to attract branch plants of large companies despite its skilled labor pool and other advantages in order to get to the cities to do business, if executives of the companies must land at an airport 60 miles away?

It has been said that New England has good highways, and because of this less air service is needed. We have good highways. But we often have snow which can make these highways hazardous. And in this world of 1-day business trips and weekend vacations, more, and more people fly rather than drive. They will not go to a region that cannot be reached by air in 1 or 2 hours.

Nor does the decision of the Board affect adversely only the New England region. Cities up and down the east coast have a stake in this. Elimination of Northeast from the Florida route will cut service from Philadelphia to Miami by 40 percent. It will cut service from New York to Tampa by 25 percent. It will have an adverse effect on the Florida tourist trade. It may well mean higher prices and poorer service between New York, Washington, and Boston as that commuter market becomes monopolized by one carrier.

All these results would occur even if the decision made by the Board had been unanimous. But in this case, they flow from a 3-to-2 decision, the majority opinion of which is, on its face, contrary to the policy of the Civil Aeronautics Act and the past practice of the Civil Aeronautics Board.

This is the first time in history that the Board has taken a major route away from an established carrier. It is the first time that the Board, by its own action, has delivered into the hands of one carrier 70 percent of the passenger traffic in the second largest market in the country. It is the first time the Board has, after approving a change in ownership in an airline in order to help the line with its financing, turned around, and refused to take notice of the major refinancing actions taken by the new ownership.

While I have not had a chance to study the opinion of the majority, which I understand is only to be released today, I would like to go into the three reasons stated for the decision in the press release.

The majority of the Board, reversing the finding of the hearing examiner, stated that the remaining two carriers are capable of meeting the requirements of this market. This directly reverses the longstanding policy of the Board in favor of multiline competition on all major routes. Under this policy, the Board has added a third competitive car-

rier to 13 routes in recent years, all of them smaller markets than this one.

To cite just one example, Northwest Airlines was allowed entry into the Chicago-Miami market, even though it has less than 18 percent of the traffic; yet Northeast has been denied entry in spite of the fact that it generates 26 percent of the traffic.

The decision also contradicts the policy of the President's Interagency Group on Transportation, which just this year called for the greatest preservation of competition where traffic density can support it.

Secondly, the majority states that the public benefits anticipated when certification was granted Northeast have not materialized. Yet it is a matter of proven record that there are more nonstop flights than when Northeast was certified; that there are more cities served along the route; and that the competition of Northeast has forced the other carriers to double their schedules and thus allow thousands more people to fly to the South at a time that is convenient and at a price they can afford.

Finally, the Board says that the future prospects for profitable operation by Northeast are remote. The financial problems of Northeast are not unique.

In fact, they have been shared and are today shared by one or both of the carriers that are competing with it on the Florida route. When National Airlines was permanently certified to fly to Florida, it did not have the cash on hand to meet its current debt, and it needed $2½ million more operating revenue to break even. Eastern Airlines today, like Northeast, has yet to attain a profitable level of operations. It needs to find new sources of financing and persuading its creditors to cooperate in its rehabilitation.

Just last year the Board approved the acquisition of Northeast by the Hughes Tool Co. precisely because it would improve the airline's financial prospects. This acquisition took place. The tool company has cancelled $26 million of Northeast's debt.

Mr. Chairman, I believe this unusual decision and its effects require careful examination by the committee. I hope, in addition, the committee will direct itself to answering these questions:

1. Why has the Board reversed its traditional policy of advancing the public interest by encouraging multiple carriers on major lines in accordance with its statutory mandate to encourage competition wherever possible?

2. Does the Board's refusal to grant permanent certification to Northeast, when it did grant such certification to other lines when they were in similar financial circumstances, constitute favoritism on the part of the Board as between competing carriers?

3. What is the relationship between this decision and the decision in the American-Eastern merger case? Is one carrier being sacrificed as a trunk carrier so that another, larger carrier can improve its position?

4. Should not the Board, prior to making this decision, have ordered a special investigation into the real economic impact of this proposed reduction of airline service to the New England area?

5. Is the decision of the Board an attempt to make into Board policy the so-called "Bluestone report," which seeks to reshape our carrier structure into a series of two-carrier and monopoly networks of airlines?

6. Did the Board have time to take into account in its decision the elimination of $26 million in debt by the Hughes Tool Co. that took place just before the decision was released?

7. What plans does the Board have to maintain and increase service to New England?

The people of New England desire the answers to these questions because of their stake in this decision. Insofar as this decision reverses previous policy, and tends to monopoly and duopoly of our air routes, the people of the entire country have a stake in it. They do not want to be paying higher and higher fares to bigger and bigger carriers to have service on routes that belong to the public.

I believe that the Board, instead of summarily bringing about the demise of Northeast, should consider, at the very least, the much greater wisdom of renewing Northeast's Florida routes and at the same time granting some subsidy for its New England loss operations. With renewal plus subsidy there is strong likelihood that the Northeast problem would, in a short time, solve itself.

Northeast has improved its earnings picture over the Florida routes every year. Within a relatively short time, its Florida earnings should be sufficient to permit termination of the New England subsidy. This approach would certainly be preferable to terminating Northeast's Florida service now to committing the Federal Treasury—which means the taxpayer—to a permanent New England air service subsidy.

I hope these hearings can explore these issues in the public interest, which is the touchstone of our regulatory policy as well as the main responsibility of Congress.

[In the United States Court of Appeals for the First Circuit]

No. 6220: NORTHEAST AIRLINES, INC., PETITIONER, *v.* CIVIL AERONAUTICS BOARD, RESPONDENT; AND No. 6233: SAME *v.* SAME

(Petitions for review of orders of the Civil Aeronautics Board, before Woodbury, Chief Judge, and Hartigan and Aldrich, Circuit Judges)

Clarence I. Peterson, with whom Henry E. Foley, Chester C. Davis, Foley, Hoag & Eliot and Wilmer, Cutler & Pickering were on brief, for petitioner.

O. D. Ozment, Associate General Counsel, Litigation and Legislation, Civil Aeronautics Board, with whom John H. Wanner, General Counsel, Joseph B. Goldman, Deputy General Counsel, and Robert L. Toomey, Peter B. Schwarzkopf, Mordecai B. Braunstein, David A. Heymsfeld, and John M. Stuhldreher, Attorneys, Civil Aeronautics Board, were on brief, for respondent.

Francis V. Hanify, Edward J. Hickey, Jr., James L. Highsaw, Jr., Tyler & Reynolds and Mulholland, Hickey & Lyman on brief of Master Executive Council of Northeast Pilots and International Association of Machinists as amici curiae.

Joseph P. Rooney, William A. Nelson, Andrew T. A. Macdonald, Gaston, Snow, Motley & Holt and Cross, Murphy & Smith on brief of National Airlines, Inc., as amicus curiae.

E. Smythe Gambrell, Harold L. Russell, Robert Proctor, Richard Wait, James H. Bratton, Jr., Jackson Cook, Gambrell, Harlan, Russell, Moye & Richardson and Choate, Hall & Stewart on brief of Eastern Air Lines, Inc., as amicus curiae.

OPINION OF THE COURT, MAY 8, 1964

WOODBURY, chief judge. Prior to 1956 Eastern Air Lines, Inc., and National Airlines, Inc., Eastern and National hereinafter, were established "grandfather" air carriers over the "East Coast-Florida" route and Northeast Airlines, Inc., Northeast hereinafter, had "grandfather" authority over a route system consisting of short-haul segments extending north from New York to Boston and fanning out over New England. It was the smallest of the domestic trunk line carriers and the only one still receiving Federal subsidy. In 1956 in a proceeding involving applications for new and additional air services along the eastern seaboard of the United States from Maine to Florida entitled the *New York-Florida* case, 124 C.A.B. 94, the Civil Aeronautics Board, hereinafter the Board, at page 98 stated the issue before it and the majority's decision as follows:

"A principal question in this proceeding is whether the public convenience and necessity require additional air service between the Northeast and Florida, and, if so, the selection of the carrier to provide it. We agree with the examiner's conclusion that an additional service should be authorized from New York to Miami via Philadelphia, Baltimore, Washington, Jacksonville, and Tampa-St. Petersburg/Clearwater ('Tampa'). However, we would select Northeast rather than Delta to provide the service."

In deciding the underlying question of need for additional service over the East Coast-Florida route the Board considered the present and prospective traffic over it, the adequacy of the service provided by Eastern and National, and the Congressional policy embodied in § 2(d) of the Civil Aeronautics Act of 1938, 52 Stat. 973, 980, favoring competition between air carriers to the extent necessary to assure the sound development of an air-transportation system properly adapted to the needs of foreign and domestic commerce, the Postal Service and the national defense.

The Board first pointed out that the New York-Miami market was the foremost travel market in the country generating about 33 percent more passenger miles than the next largest market, Los Angeles-New York, from almost three times the number of passengers, and that the market had enjoyed outstanding traffic growth in recent years which showed no signs of having reached a plateau. The Board forecast that traffic growth would continue at a high rate in the future and said that "there can be little question that the markets here involved are in material aspects more than comparable to those for which in recent cases we have authorized service by more than two carriers."

The Board next observed that while the service over the route provided by Eastern and National was not inadequate within the meaning of § 404 of the Act, their service did not fully meet the needs of the traveling public. It found that during the peak winter season it was necessary to make New York-Miami reservations 3 or 4 weeks in advance to obtain the service desired, that the carriers' efforts to meet demands for space by too tight scheduling of aircraft had impaired on-time reliability and that Eastern and National had concentrated heavily on the New York-Miami market and had not provided comparable quality or quantity of service to many of the other markets involved. It said: "These factors of passenger inconvenience are at least comparable to those found in recent cases to warrant additional air service."

Finally on this issue the Board turned to the need for additional competition. It noted benefits already conferred by "vigorous competition" between Eastern and National and the promise of future benefits from the same source in the way of elimination of space shortages, but it said that in view of the fact that the needs of the traveling public were not now being fully met "it would not be consistent with our statutory obligations under the Act and the course of our decisions thereunder, to merely maintain the status quo, and rely upon the carriers' assurances as to their willingness and ability to remedy the situation." Observing that present shortcomings in service had existed over a substantial period of time and that the carriers had not demonstrated their ability to overcome them, the Board pointed to the Congressional policy favoring competition as a stimulus to "vigorous development of our national air-route system" and said: "In the present case, we are convinced that a third carrier is required."

The Board divided on the issue of the selection of the carrier to provide the additional service required over the route. Three

members of the Board disagreed with the examiner's choice of Delta and selected Northeast. They expressed the belief that extending Northeast's authority to Florida would eliminate its need for subsidy, and they pointed out that Northeast was the smallest of the trunk line carriers, that it had received less in the way of strengthening route awards than any of the original "grandfather" carriers, that all other regional air carriers had "achieved self-sufficiency largely as a result of the Board's policy of authorizing these carriers to expand their services into the long-haul high-density markets," and that this case provided the "last opportunity to accord similar treatment for Northeast."

The Board majority said it had "no doubt" that Northeast could compete "effectively" with Eastern and National, noted that only Northeast could provide one-carrier service from New England points north of Boston to points south of New York, particularly to the Nation's Capital, and said: "If its prospect for growth in the South is denied in this proceeding, it seems clear that its operations will be frozen in its present pattern, and that it will continue to be a drain on the Federal Treasury. Extended as we propose, it should become a self-sufficient trunk." The majority forecast an increase in northern New England traffic with improved service to that area as a result of one-carrier, one-airport connecting service in New York to points south and expressed the view that Northeast to some extent could integrate its operations in terms of seasonality, not so much in terms of transfer of aircraft from the Florida run in the winter to the New England run in the summer as in avoiding "peaks and valleys" in its personnel needs by using the additional employees needed for the New York-Florida peak season in the winter to meet the demands of the New England peak season in the summer. Expressing confidence in the ability of Northeast's management and the adequacy of its financial backing to effect the radical transformation necessary to convert Northeast from an essentially regional carrier to a trunk line carrier, the majority turned to the impact of added competition upon Eastern and National.

The majority recognized that an award of the run to Northeast would divert "substantial revenues" from Eastern and National. But the majority said that it "may be expected" that Northeast, at least initially, would divert less traffic from the two established carriers than any of the other passenger trunk line applicants for the route and prophesied that "Northeast's diversion will largely come out of future traffic growth in the markets involved." In further elaboration the majority said:

"The record clearly requires the conclusion that, in addition to the high overall traffic growth to be expected along the New York-Florida route, there are long-haul markets, such as New York-Tampa, Philadelphia-Miami, Baltimore-Miami, and Boston-Tampa, which have not as yet received the same measure of service and exploitation as the New York-Miami market, and which might be expected to respond favorably to more vigorous efforts for traffic development. Exploitation of these markets, which is an important byproduct to be expected from the addition of a third carrier to this route, should go far to offset traffic lost to Northeast. We are also in this proceeding granting Eastern and National additional operating rights which will provide them with additional traffic opportunities and growth."[1]

[1] The majority removed restrictions on Eastern's operations north of New York to New England points allowing it to provide "turn around" service between Boston and Washington, and allowed National to extend its route system to Boston and also to several additional southern cities.

Turning to the duration of the authorization to be awarded Northeast the Board majority said: "While we have confidence in the undertaking, we recognize that in extending the carrier to Florida, we are in substantial measure changing the character of this carrier's operation. Accordingly, we shall not make the route extension permanent but shall limit its duration to 5 years, after which we can again review the matter and consider further the requirements of the public convenience and necessity."

The two minority members of the Board wholeheartedly agreed with the majority as to the pressing need for a third air carrier on the route. They disagreed, however, as to the majority's selection of Northeast. They thought, although for somewhat different reasons, that Northeast, though willing, was neither fit nor able to render the service needed by the public, that it was not in the best interest of either the traveling public or Northeast for it to undertake the route and that with its inexperience and lack of resources it could not be an effective competitor with the two experienced, well equipped and established carriers already serving the route. They would have selected Delta as the third competitor.

The present proceeding began on April 3, 1961, with an application to the Board by Northeast for amendment of its certificate to delete the expiration date. The Board's examiner found continuing need for three-carrier competition on the route, but reviewing Northeast's experience found it unfit to remain as the third carrier. He did not select the carrier to take Northeast's place.

The Board again divided three to two.

The majority said: "The critical question before us, therefore, is whether under the present circumstances, there is a need for a third carrier in the New York-Florida market" and then announced: "We find that no such need exists." Following this the majority noted that the examiner's conclusion that Northeast's authority should not be renewed rested upon his finding that it did not meet the statutory requirement that it be "fit, willing, and able" to provide the additional service he thought the route required, and said: "Upon consideration of the record and the contentions of the parties, we also conclude that Northeast's New York-Florida authority should not be renewed, although our reasons differ from those of the examiner. We find that the public benefits anticipated when Northeast was certified have not materialized, that the future prospects for the operation of Northeast's system on a profitable basis are remote, and that there is no present need for a third carrier in the East Coast-Florida markets." In a footnote appended to the end of the first sentence quoted above the majority said: "Although the examiner's findings on the fitness issue are amply supported by the record in the proceeding, our later findings on other issues are dispositive of the renewal question and make it unnecessary to pass on the technical question of fitness."

In the next eight pages of the decision as reproduced in the petitioner's record appendix the majority recounted in detail Northeast's losses in recent years and its ensuing financial difficulties which it summarized as follows:

"The record, which shows seven years of unprecedented losses, continual financial crises, and deteriorating services in New England, leads us to the conclusion that Northeast cannot achieve self-sufficiency from its Florida routes. Northeast is wholly dependent upon the Florida markets for survival as a long-haul operator. But the carrier lacks the back-up traffic support, the strong, seasonally balanced system, and the financial stability which are essential if a carrier is to rely on the Florida vacation markets, with their erratic traffic ups and downs, for the major source of its strength. Past industry experience would indicate that a carrier, with a limited route system and access to traffic confined to multicarrier and unpredictable seasonal markets such as these, cannot operate as economically as those with a more extensive system. Since there are no immediate prospects of any resurgence of Florida traffic growth, we conclude that Northeast cannot achieve self-sufficiency or economic stability. We are, therefore, compelled to find that the renewal of Northeast's Florida authority would be contrary to our obligation to maintain and develop a sound air transportation system."

The majority then mentioned either renewing Northeast's East Coast-Florida route with subsidy for its New England operations or a merger of Northeast with another carrier as possible solutions for its financial and operating problems, but said that "in view of our ultimate finding that there is no need or economic justification for a third carrier on the East Coast-Florida route, it is unnecessary to give further consideration to those two possibilities."

Turning to the growth of the market the majority noted that New York-Miami was no longer the foremost travel market in the country, it having been exceeded by New York-Los Angeles which generated 19 percent more passenger miles, said that the examiner's conclusion that the East Coast-Florida market had made "healthy growth" could not be verified, and noted that with the advent of jet aircraft with higher speed and greater seating capacity coupled with the pressure to use such expensive aircraft to maximum capacity "Eastern and National can, and will, accommodate the Florida traffic now carried by Northeast." The majority then mentioned Eastern's current financial difficulties, which it said no one would suggest stem solely or even in major part from three-carrier competition in its "major source of strength," the East Coast-Florida market, but said: "Since Eastern and National can provide more than adequate service to the public, the opportunity that a two-carrier East Coast-Florida route structure offers for the rehabilitation of Eastern and its return to a sound financial position is a significant factor weighing against the authorization of a third carrier." Summarzing, the majority said:

"The unsuccessful nature of Northeast's operations to date, the lack of any substantial evidence that it will become successful in the future, the failure of the expected East Coast-Florida traffic growth to materialize, the fact that Eastern and National can meet the present needs of the market, and the opportunity afforded us here to aid in the rehabilitation of Eastern, persuade us that the public convenience and necessity do not require the present authorization of a third New York-Florida carrier."

The majority brushed aside the need for three-carrier competition in the East Coast-Florida market, which the Board in 1956 thought the size of the market clearly warranted in view of three and more carrier competition authorized by the Board in smaller markets, with the comment: "The amount of competition that should be authorized in a given market does not turn on the number of carriers the Board may have authorized in some other markets, but depends upon the specific facts and circumstances affecting the markets under consideration. We here find only that a third carrier is not needed at the present time in the East Coast-Florida markets." In the next breath, however, the majority said that Northeast's management had worked "hard and diligently" to develop its Florida route and that the services provided by Northeast on the route had "undoubtedly provided benefits to the traveling public." Then, noting that Northeast had greatly expanded its organization, the majority recognized that termination of its Florida route would "in-

evitably have adverse effects on its employees, the New England communities in which those employees reside, its creditors, and its stockholders," but said: "However, as regrettable as the consequences of our action may be, they do not counterbalance the overall public interest factors which dictate a decision not to renew the temporary authority."

Finally, stating it to be "clear" that the public interest required continuation of the services which only Northeast provided in New England, the majority said it would restore Northeast to subsidy eligibility and that should there be disruptions in Northeast services it would "exercise its full authority to provide and maintain an adequate level of local service" in the New England area. Wherefore the majority held that the public convenience and necessity did not require renewal of Northeast's East Coast-Florida authority.

The two minority members of the Board dissented vigorously. They pointed out that the New York-Miami market was the second largest passenger mile market in the country and the East Coast-Florida run was "among the richest routes in the world generating nearly two million passengers and two billion passenger-miles a year." They found that the market had grown since 1956 and "continues to grow at a healthy pace" and said that they agreed with the Board examiner that: "To set aside a market involving nearly two million annual passengers for two carriers could well be considered a protected market for the few."

The minority posed the issues as: (1) "Do the public convenience and necessity require a third East Coast-Florida carrier?" and (2) "If so, what carrier should provide the service?" and said: "The majority equivocates in answering both questions. It finds no need for a third carrier 'at this time' but implies that at some not too distant time a third carrier will be required." Characterizing this finding as "less than satisfactory to the carrier, the parties, civic intervenors and the public" the minority said that the finding is stated "in a rather unique fashion" and continued: "And rather than meet the need issue in terms of public service and the service improvements effected by Northeast, the majority speaks of Northeast's financial difficulties, a subject irrelevant to the issue of need for a third carrier. Although the opinion considers the financial difficulties of Northeast at great length within the framework of the need for a third carrier issue and, in effect, finds Northeast unfit, the majority as a technical matter does not reach that issue. The two issues, public need and selection of carrier, are separate and distinct and must be so treated."

The minority then analyzed traffic data to show a "significant increase" in the number of passengers carried over the route in general, in particular from Boston and Philadelphia on one end, to Tampa/St. Petersburg and Jacksonville on the other, markets "badly neglected by the authorized carriers before the 1956 decision," and expressed the conviction that the record showed traffic enough for a third carrier now and in the future. Turning to the need for three-carrier competition in the market, the minority noted that competitive service was an important statutory objective,[2] expressed the view that the competitive "spur" furnished by Northeast has "substantially" improved service in the market and said: "The conclusion is inescapable that the 1956 competitive authorization is the sole reason the public has been able to enjoy markedly improved service over the East Coast-Florida routes since that time and that the public has no assurance of convenient, adequate service in the future now that a majority of this Board has reversed the unanimous 1956 Board finding that a third carrier is required."

With respect to the qualifications of Northeast as the third competitor the minority said there was no doubt that it was a "willing" carrier, expressed the conviction that it was an "able" carrier and then turned to the question of its "fitness." Carefully analyzing a number of factors on this score the minority pointed out that without curtailing its service Northeast had weathered the expensive transition to jet aircraft at a time when the entire domestic trunk line system was reacting to an economic recession, and that its traffic had continued to grow in spite of its financial straits and "adverse publicity stimulated by its competitors seeking to force Northeast out of the business." In further elaboration the minority continued:

"Among other things, Northeast was forced to curtail nearly all its advertising. Northeast's efforts to obtain further financing during this period met the determined opposition of Eastern and National in moves which were characterized by counsel for the Board and the Department of Justice as 'an attempt to bring about the demise of a competitor' (Brief for Respondent, *National Airlines, Inc.* v. *C.A.B.*, 306 F. 2d 753 (D.C. Cir. 1962), p. 21 n. 22).

"Finally, Eastern increased its nonstop New York-Miami jet schedules in February 1962, from 10 to 14 and its capacity by nearly 87 percent over its 1961 capacity. The examiner correctly found that the effect of 'the addition of the "fighting ships" by Eastern at that particular time was to reduce the load factors of all carriers in the market just prior to the hearing in this proceeding and further to weaken Northeast's position.' "

The minority characterized Northeast's achievements under all the circumstances as "outstanding."

The minority then said that the collapse of Northeast was "virtually dictated" by the cutting off of its one trunk route with consequent detriment to its creditors and stockholders and more particularly with "crippling effect" upon its employees and on the public "in the hard-pressed New England area which is already suffering from a deteriorating railroad transportation system." Liquidation of Northeast was forecast because it could not revert to its status quo ante 1956 by reason of the entry of Eastern into the New England area under the 1956 decision and intervening Board action authorizing the entry of new local service carriers into the area. Finally the minority noted the "solicitude for the well-being of Eastern which constitutes such a major factor in the majority decision" but said that although sharing that solicitude: "We cannot accept the dictum that the interest of one airline, important and worthy as it may be, requires the surrender of the lifeline of another." Wherefore the minority concluded that on all of the facts and reasonable inferences therefrom, together with Board precedents and in accordance with statutory policy favoring competition, Northeast's certificate should be renewed on a permanent basis.

On petitions for rehearing both the majority and the minority wrote further opinions, each side adhering to the views it had previously expressed. There is no need to analyze these later decisions in detail. It will suffice to say that the majority again rejected the contention that it was bound by precedent to authorize three-carrier competition in the market involved because it had authorized three or more carrier competition in smaller markets,[3] that the majority said that its original decision was not "a decision to aid Eastern at the expense of Northeast," and said: "Moreover, as our original opinion shows, our denial was based on the lack of need for a third carrier, and not on the lack of fitness of Northeast or the superior qualifications of another applicant." To this sentence, however, the majority appended the following footnote:

"In this connection it should be noted that Northeast contends that its 'financial experience and expectations' are relevant on the question of carrier selection, but not on the issue of the need for a third carrier. We are unable to agree. In evaluating the need for a third carrier, be it Northeast or some other carrier, it is clearly incumbent on the Board to consider very carefully the financial and other results of Northeast's past operations over the route. Moreover, Northeast's past operations are particularly relevant to the disposition of Northeast's own application. To avoid misunderstanding on this score we find not only that there is no need for a third carrier, but also that irrespective of need for some third carrier the grant of the application of Northeast is not in the public convenience and necessity."

We have analyzed and quoted the opinions below at length, perhaps at too great length, to highlight what we consider vital flaws in the Board's decision. First and foremost, while we know that the Board refused to extend Northeast's certificate, we cannot be sure of the basis on which the Board rested its refusal. Northeast and the amici supporting its position, the Master Executive Council of its pilots and the International Association of Machinists, assert that the Board eliminated Northeast as a competitor in the market solely on the ground that the market did not require service by three carriers. Counsel for the Board, however, contend that the Board denied Northeast's application not only for lack of need for a third carrier in the market but also, irrespective of need, "on grounds peculiar to Northeast's own application." The amici supporting the Board, National and Eastern, do not agree with Board counsel. In their briefs they concede that actually all the Board decided was that there was no present need for a third carrier in the market, although they emphasize the Board's statement that the examiner's findings of Northeast's unfitness are amply supported by the evidence.

There should be no room for this dispute. Courts ought not to have to speculate as to the basis for an administrative agency's conclusion. Indeed, to prevent just such speculation section 8(b) of the Administrative Procedure Act, 5 U.S.C. 1007(b), provides that all agency decisions shall include not only the appropriate rule, order, sanction, relief or denial thereof, but also findings and conclusions "as well as the reasons or basis (emphasis added) therefor, upon all the material issues of fact, law, or discretion presented on the record."

However, we are not required to accept Board counsels' post hoc arguments at face value. *Burlington Truck Lines, Inc.*, v. *United States*, 371 U.S. 156, 168 (1962).

It rests primarily upon the last two sentences of the footnote to the Board's opinion on rehearing quoted in full above. Those sentences do indicate that the majority passed on Northeast's fitness as well as on the need for a third carrier in the market. But in doing so the sentences contradict repeated categorical assertions in the bodies of both Board opinions that all that was being considered was the need for a third carrier in the market and a categorical assertion in

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[2] The congressional policy favoring competition between air carriers stated in § 2(d), supra, of the Civil Aeronautics Act of 1938 is restated in § 102(d) of the Federal Aviation Act of 1938, 72 Stat. 731, 740.

[3] The majority said: "Should our decision here seem to reflect a more restricted view of the need for multiple competition than the Board has taken in past cases, it nonetheless represents our judgment that under existing conditions as reflected by the facts of record here, this decision is best calculated to achieve the over-all objectives of the Act."

a footnote to the Board's original opinion that it was not passing upon Northeast's fitness. We can hardly believe that the Board would contradict previous clear statements, in its opinions and assert an alternative ground for its decision in two sentences of a footnote explaining a collateral point in an opinion denying reconsideration. We agree with Northeast and its amici that lack of need for a third carrier in the market was the sole basis for the Board's conclusion not to extend Northeast's temporary certificate.

Turning to the Board's summary quoted hereinabove it appears that there were five reasons why the Board was persuaded "that the public convenience and necessity do not require the present authorization of a third New York-Florida carrier." The reasons given are: (1) The "unsuccessful nature of Northeast's operations to date," (2) the "lack of any substantial evidence that it will become successful in the future," (3) the "failure of the expected East Coast-Florida traffic growth to materialize," (4) the "fact that Eastern and National can meet the present needs of the market" and (5) the "opportunity afforded us here to aid in the rehabilitation of Eastern."

Once again we are confronted with a needless dispute as to the true import of these findings. Northeast and its amici contend that the Board rested its conclusion upon the sum or totality of its findings so that if any one of them cannot stand the case must go back to the Board as in *Carey* v. *Civil Aeronautics Board*, 275 F. 2d 518 (C.A. 1, 1960). The Board and its amici on the other hand contend that the findings are alternative so that if any one of them is sound the decision of the Board must be sustained.

In *Carey* it was clear that the Board reached its conclusion to suspend an airman's certificate for the sum total of several reasons. In this case we cannot say with assurance whether the Board found lack of need for a third carrier in the market for the reasons it gave added together or whether it would have reached its conclusion for any one of the reasons it gave standing alone. Not having made it clear that its reasons were alternative, perhaps we might assume that the reasons are cumulative. At any rate, from the extended discussion of the reasons in its opinions and from the further fact that in its original opinion the Board said that aid to Eastern was a "significant" factor in its decision but downgraded the significance of that factor in its opinion on reconsideration, we must assume that the Board gave at least some weight to each of its reasons, how much, of course, except with respect to aid to Eastern, we cannot tell. Viewed in this light the decision of the Board cannot stand.

The first two reasons given by the Board, the unsuccessful nature of Northeast's operations to date and the lack of prospect for success in the future, are irrelevant to the issue of need for a third carrier on the route unless it is found that Northeast's lack of success and prospect of success are attributable to the inability of the market to support three-carrier competition. But the Board did not make any such finding. On the contrary, it found that Northeast's lack of success was caused by factors peculiar to itself such a lack of back-up traffic support, lack of a seasonally balanced system and lack of the financial stability essential if a carrier is to rely on the Florida vacation markets with their erratic traffic ups and downs.[4]

The third reason given by the Board, failure of traffic growth in the market to materialize, although disputed by the minority, has bearing on the majority's result. It is, however, difficult for us to understand why traffic found sufficient to support three-carrier competition in 1956, which has admittedly grown to some extent since, cannot support three-carrier competition now, and why traffic in the second largest market in the country cannot support three-carrier competition when many smaller markets support the competition of three or more carriers.

The Board's fourth reason, that Eastern and National "can meet the present needs of the market" is adequate as far as it goes, but it does not go far enough. Two needs are involved: the physical need—for seats to carry the traffic and the statutory need for competition as a stimulus to provide good service to the public and to develop a sound air transportation system. The Board's finding covers the first need. No doubt Eastern and National could commit enough equipment to the route and hire sufficient personnel to move the traffic. Perhaps one of them alone could do so. But need for the spur of competition to prod Eastern and National into providing good service to the public, which the Board found necessary in 1956, is put aside with a general conclusion of lack of need for a third carrier in the market and the assertion that the amount of competition in any particular market depends upon the specific facts and circumstances of that market and not upon what the Board might have done at other times with respect to other markets. We agree that the amount of competition required is to be decided by the Board with respect to the specific market involved. And we concede that the Board has wide latitude with respect to the amount of competition needed in any market to meet the statutory requirement. But, particularly in view of the Board's finding in 1956 and the majority's statement in this case that Northeast's advent as a competitor had "undoubtedly provided benefits to the traveling public," we think the Board ought to give reasons for its conclusion differentiating the market involved from many smaller ones and explaining why competition between Eastern and National will meet the statutory requirement now when it did not in the past. We cannot pass upon the legal sufficiency of the bare conclusion that there is no longer any need for three-carrier competition as a stimulant to achievement of the statutory policy.

The fifth reason given by the Board for its conclusion of no present need for a third carrier in the market is the opportunity afforded "to aid in the rehabilitation of Eastern." The Board does not disclose the source of Eastern's financial troubles or give reasons why Eastern should be aided at Northeast's expense. All we know is that the Board did not find that Eastern's need for aid arose from losses resulting from three-carrier competition in the markets involved. It said: "We need not go into the question which was explored at the hearing of whether, under the three-carrier New York-Florida route pattern, Eastern's Florida operations, standing alone, have been profitable; and no one would suggest that Eastern's current difficulties stem solely, or even in major part, from the three-carrier competition in those markets." We do not say that strengthening Eastern is not a legitimate consideration. We do say that good and sufficient reasons ought to be given for robbing Peter to pay Paul.

We do not undertake to catalogue all the deficiencies in the Board's decisions. It will suffice to say to bring this opinion to an end that while we know that the Board's ultimate conclusion was to deny extension of Northeast's certificate, we are not sure of the basis on which it rested that conclusion. Moreover, taking at face value the Board's repeated statements that the basis for its conclusion was lack of need for a third carrier in the market, we find the reasons given for that finding either irrelevant or inadequately developed. The case must go back to the Board for further study followed by an explicit statement of the issue or issues actually decided and a statement of relevant bases for its decision supported by intelligible findings of fact. We must know what a decision means before the duty becomes ours to say whether it is right or wrong." *Secretary of Agriculture* v. *United States*, 347 U.S. 645, 654 (1954), citing *United States* v. *Chicago, M., St. P. & P.R. Co.*, 294 U.S. 499, 511 (1935). When we know what the Board decided and why, the time will be ripe to consider the legal sufficiency of the evidence to support the Board's findings. In the meantime we shall retain our jurisdiction.

Decree will be entered setting the orders of the Board aside and directing it to take further proceedings not inconsistent with this opinion.

ALDRICH, circuit judge (concurring). I share in the court's criticism of the Board's failure to express itself adequately, and concur in the court's ultimate conclusion, but I take a somewhat different approach. It seems to me, too, with all deference to the Board, that the deficiencies in its opinion, particularly in the light cast by the minority opinion which not only invited a better answer, but should have dictated it, indicate lack of developed thought. In a case as important as this the greatest attention should have been given to a careful demonstration of the issues, an analysis of the underlying relevant considerations (with a corresponding exclusion of the irrelevant ones) and a reasoned conclusion. The more I review the Board's opinion, the more I believe that it justifies the minority's charge of equivocation. However, I disagree with my brethren that lack of need for a third carrier was the sole basis for the Board's conclusion not to extend Northeast's certificate. To me it seems that in the last sentence of the quoted footnote in its opinion denying rehearing the Board stated sufficiently explicitly, as an alternative ground, not that Northeast was unfit, but that the selection of Northeast would not be in the public interest. But the announcement of that ground in such a manner, with no seeming recognition that it was a complete contradiction of the apparent tenor of, and, indeed, express statements in, its opinion, is an example of administrative fiat, which, frankly, shocks me. Even if I am correct in thinking that the court erred in discounting this as a basis for the Board's decision, I would quite agree that as attempted patchwork afterthought[5] it is unworthy of present attention.

Turning to the Board's denominated "ultimate finding" that three carriers are not needed on this route, the first question is whether this represents a fundamental change in policy, and means that the Board proposes to reduce its emphasis on competition. The Board is free, of course, to make changes in policy, but the seriousness of this one, if that is what it is, would call not only for deep and mature thought, but for the assembly of the most cogent reasons. In the Board's opinion I find neither. If, on the other hand, the opinion is viewed as limited to a single case it seems no more illuminating. Faced with a consistent practice of authorizing three or more carriers on less demanding routes, the Board emphasizes that this one has not increased to the degree expected. That scarcely serves to answer the fact that it is still one of the world's richest and heaviest. Nor is it an answer that the

[4] Perhaps significantly the majority did not refute the minority's attribution of Northeast's financial difficulties to the cutthroat tactics of its competitors with specific reference to Eastern or to the obvious disadvantages of operative under a temporary certificate.

[5] That it was an afterthought seems candidly admitted by the Board's use of the present tense "we find." It was not too late to rewrite its opinion, but that is not what the Board did. See, e.g., footnote 2, infra.

remaining carriers are physically capable of handling the traffic. Presumably two carriers, or even one, could be capable of handling all the traffic anywhere. In so reasoning I agree with the court that the Board has said nothing.

The only matter I find of special moment is the Board's discussion of Northeast's lack of financial success. If the Board had considered this on the issue of Northeast's fitness, it would have been undoubtedly relevant. (So, also, would a number of other factors which the Board did not consider, and justifiably, in the light of its disclaimer.) As a demonstration that this route cannot support three carriers, it is unimpressive. The Board adopted the examiner's finding that "[p]erhaps no other carrier in the history of the industry has been plagued with more adverse circumstances in its operations than Northeast * * *." Northeast's peculiar vicissitudes in no way indicate that this highly traveled route cannot support three carriers. Significantly the Board, for all its attempt to avoid the implication of its 1956 decision by outlining Northeast's failure to become self-sufficient, does not criticize the examiner's finding of economic capacity of the route. All of its discussion of Northeast's financial difficulties comes to naught in the course of its opinion, because instead of facing up to what should be the consequences, so far as Northeast is concerned, the Board says it is "unnecessary" to do so "in view of our ultimate finding that there is no need or economic justification for a third carrier." [6]

The Board's reason that Eastern needs strengthening, calls for no further comment. However, I think there is one important consideration which has not been dealt with in the court's opinion. It is true that Northeast had only a temporary certificate. To an extent it obviously took its chances, not only with respect to the inherent financial difficulties of operating under a temporary certificate referred to in the court's opinion, but to what would be the circumstances at the time of renewal. But if anything seems clear in this case, it is that the reason that Northeast's certificate was originally made temporary was the question in the minds of the then minority members of the Board of its ability to compete. The Board is not estopped from changing its views. At the same time I feel there should be some recognition of the fact that the single, express burden which it placed upon Northeast in 1956 was to demonstrate an ability as a competitive trunkline carrier, an undertaking which, at least as of the moment, we must take as accomplished. Certainly from the standpoint of national policy the present decision of the Board, if affirmed, will exist as a serious warning to anyone contemplating accepting a temporary certificate.

What the Board has done was to find in 1956 that, because of the deficiencies of the then two carriers, additional competition would be to the public benefit; then, when these benefits have been, concededly, conferred at the cost of a necessarily enormous commitment, the Board's response is that you satisfied our doubts about your ability to compete and you accomplished much of what was wanted, but now we find that three carriers are not needed after all. Not only has the Board done this, but, as the court has pointed out, it has left Northeast in a worse position competitively than before, because to compensate Eastern and National for Northeast's intrusion into their area it allowed them to extend into Northeast's. I agree that it would overdignify Northeast's status to say that it is entitled to "security of route," but in this overall situation I would have thought the Board would have recognized a special burden to justify non-renewal of Northeast's certificate on the particular ground that its competition was not required. If it did feel that burden it has given no indication of it beyond an expression of regret.[7]

[6] On that broad basis it was, of course, unnecessary. But correspondingly, it should have become necessary when the Board adopted its new position expressed in its final footnote.

[7] The Board's brief is equally unsatisfying. Stating that this is "not the first time" that the Board has denied renewal applications because of a carrier's "inability to conduct profitable operations," it cites two cases, in both of which the ground for refusal was that the route itself was uneconomical and did not warrant a subsidy. That counsel should be reduced to such citations speaks for itself.

Mr. SALTONSTALL. Mr. President, will my colleague from Massachusetts yield?

Mr. KENNEDY. I am glad to yield.

Mr. SALTONSTALL. Mr. President, I commend my colleague for the statement which he has made. I believe that Northeast Airlines is essential to our industry and to the people in Massachusetts and in New England. Now that the Court has reached the decision on the question, I hope the CAB may give the subject its thoughtful and careful consideration and do everything within its power to grant a permanent certificate to Northeast Airlines.

I commend my colleague for his statement.

Mr. KENNEDY. I express my appreciation to my senior colleague. When I mentioned the members of the congressional delegation who had brought their profound experience to bear on the question, I had in mind my senior colleague from Massachusetts, who has been in the forefront of this fight. The people of Massachusetts appreciate his great concern and his leadership in the undertaking.

Mr. SALTONSTALL. I know that feeling is mutual with respect to the junior Senator from Massachusetts.

CLOSING THE GATES AT GLEN CANYON DAM

Mr. MOSS. Mr. President, I am pleased to advise the Senate of a most important decision made today by Secretary of the Interior Udall to close the gates immediately at Glen Canyon Dam so that Lake Powell will fill to its minimum powerhead level this summer. This is a most desirable decision for Utah, for the Colorado River Basin States, and for reclamation in the West. River basin development is the accepted practice now in arid areas. The costs of water development in the basin are financed largely by revenues from hydroelectric power generation. Glen Canyon revenues are needed for the upper basin fund to finance other water projects for our cities and farms. Glen Canyon must "go on the line" this year and we must move forward on central Utah and other lifegiving water projects without delay.

To more clearly outline the problem and today's action, I ask unanimous consent to have printed in the RECORD following my remarks the following:

First. Story from the Albuquerque Journal written by Paul Weik.

Second. Statement made today by Secretary Udall on the Colorado River Basin situation.

Third. A statement of Senator CARL HAYDEN, of Arizona.

Fourth. A press release of Senator GALE MCGEE, of Wyoming.

Fifth. A release on this subject from my office.

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

UTAH SENATOR WANTS WATER RETAINED IN DAM

WASHINGTON.—Utah's hard-pressed Senator FRANK E. (TED) MOSS is making a spirited bid to get Secretary of the Interior Stewart Udall to reverse his March decision to release water from Glen Canyon in order to keep Hoover Dam at its rated powerhead.

He feels he has a "good chance" of succeeding.

It is a big issue in Moss' home State, where the first-term Senator is in a tight race for reelection.

He feels he has been hurt—and quite badly—by the Glen Canyon decision and is anxious to have it reversed.

DECISION SOON

Secretary Udall has promised a final decision May 11.

By that time, the Interior Department chief will have the results of a May 1 snow survey of the upper Colorado River watershed on his desk along with an analysis of the offer of four private power firms to supply power to Hoover Dam users if the water level at that dam falls below the rated powerhead.

Senator Moss' hopes center around two possible courses:

1. A decision by Secretary Udall that the May 1 snow survey shows the runoff will be such that he can keep Hoover Dam (Lake Mead) at its rated head and still fill Glen Canyon (Lake Powell) to its minimum rated head this year as originally scheduled.

2. If this is not feasible, Senator Moss hopes Secretary Udall will accept the offer of four upper basin power companies to supply power to Hoover Dam power customers.

INDICATIONS OF IMPROVEMENT

There are indications the runoff picture has improved.

March and April precipitation in the watershed was above average and the Weather Bureau forecasts a cool and wet May.

Meanwhile, Senator Moss has been pressing his case.

He met with Secretary Udall Friday afternoon in the Senator's office on the top floor of the New Senate Office Building to go over the problem.

TO PRESIDENT

And, if necessary, he is apparently ready to carry his case to 1600 Pennsylvania, the residence of President Lyndon B. Johnson.

Why has the Udall decision hurt in Utah?

For several reasons.

First, it has upset the sportsmen along the heavily populated "Wasatch front" running from Ogden down through Salt Lake City to Provo.

This is an emotional reaction based on dreams of a sportsmen's paradise at Glen Canyon, a dream that will be postponed if the dam can't be filled on schedule this year.

Second, Senator Moss has pitched his bid for reelection on the claim that a Democratic Senator serving under a Democratic administration can do more for Utah.

If the Glen Canyon decision isn't reversed, Moss' Republican opponent will throw this back in his face.

But Moss has powerful friends in Washington, D.C.

SUPPORTED JOHNSON

He was a preconvention supporter of President Johnson in 1960 and went down the line for the President at Los Angeles, where he lost to John F. Kennedy.

In addition, Moss is a favorite of New Mexico's Senator CLINTON P. ANDERSON, Democrat, one of the more influential men in the Senate and a man close to the White House.

Senator ANDERSON has gone out of his way to help Moss in the past.

For instance, early in the session, the New Mexico lawmaker stepped aside as chairman of the Irrigation and Reclamation Subcommittee so Senator Moss could take over the chairmanship, an important post for a western Senator.

INCREASE ASKED

In order to clear the way for a reversal by Secretary Udall, Senator Moss has asked the Senate Reclamation Appropriations Subcommittee to up the Bureau of Reclamation budget by $5 million.

This would give the Bureau of Reclamation $6 million to buy replacement electricity in case Secretary Udall decides to fill Glen Canyon on schedule and start the production of electricity there late this summer.

Senator Moss maintains it would cost no more to buy replacement electricity for Hoover Dam than would be lost to the Glen Canyon fund if production of power there is postponed a year.

This is the prospect if Secretary Udall continues to release Glen Canyon water to Hoover Dam.

UNDER FIRE

The Udall decision has come under fire throughout the upper basin.

Both Senator ANDERSON and Senator EDWIN L. MECHEM, Republican, have criticized the Interior Department head for his action and would like to see it reversed.

Glen Canyon Dam is in northern Arizona but Lake Powell, the reservoir connected with the dam, backs far up the Colorado River into Utah.

STATEMENT BY SECRETARY OF THE INTERIOR STEWART L. UDALL ON THE COLORADO RIVER BASIN WATER SITUATION, MAY 11, 1964

At noon today, on my order the gates at Glen Canyon Dam were closed. This was one of the most difficult decisions I have had to make as Secretary, and I have called this conference to discuss its ramifications with you. The gates were opened temporarily in March to maintain elevation 1,123 at Lake Mead. This action was taken because the March 1 forecast of runoff indicated too great a risk of substantial expense to the upper basin if the April–July runoff of the river turned out to be substantially less than the then mean forecast of 4,700,000 acre-feet.

The extremely dry winter made it likely that an even lesser actual runoff would actually occur. Any program other than that adopted could easily have resulted in destroying the power operation at Hoover without achieving the objective of gaining minimum operating level at Lake Powell.

As promised at that time, I have maintained close surveillance of the precipitation situation in the Upper Colorado Basin. March precipitation was average. The May snow surveys and Weather Bureau records disclose that the April precipitation was somewhat above average. The Weather Bureau's long-range forecast for May—"cooler than usual; wetter than usual"—is also favorable.

The mean forecast for April-July now stands at 5.1 million acre-feet. The minimum forecast is 3.6 million. This forecast itself does not, of course, provide the assurance of 5.1 million acre-feet of actual runoff because we do not know what the precipitation will be for May, June, and July. In terms of assured runoff it means that there is a 90-percent chance that we will get at least 3.6 million acre-feet.

The hazards are now reduced to a point where I have concluded that the calculated risk involved in resumption of storage in Lake Powell is warranted under certain conditions. These assure that, in attempting to bring Lake Powell to minimum power operating level in what is still a year of very poor runoff, the objectives of the filling criteria will be fulfilled.

This can be done by acquiring and furnishing replacement capacity and energy to the Hoover power allottees in the same quantities and having the same characteristics they would have obtained from Lake Mead operating at elevation 1,123. The objectives of the criteria can be met by substituting capacity and energy for water in Lake Mead between elevations 1,123 and 1,083 by following the plan set out in the attached statement entitled "Operation of Lake Mead Below Elevation 1,123 by Reason of Resumption of Storage Operations at Lake Powell."

The Bureau of Reclamation has reviewed all power replacement proposals that have materialized.

The city of Los Angeles and the Southern California Edison Co. have made proposals to sell or exchange power with the Bureau growing out of exploratory talks undertaken by the Bureau as far back as mid-February in anticipation of the possibility of a Hoover power replacement program. At that time, the Bureau of Reclamation naturally turned to the closest available suppliers.

Four private utilities in the upper basin, in combination with the Arizona Public Service Co. in the lower basin, made a proposal, first submitted to the Upper Colorado River Commission, to furnish certain limited quantities of capacity and energy on an exchange basis. The Arizona Public Service Co. also made a separate proposal whereby capacity and energy would be sold directly to the Bureau.

Under the upper basin utilities' proposal as presented, the Bureau of Reclamation would have to take capacity in blocks of 50,000 kilowatts. Capacity in such large blocks could not be fully used under some circumstances and in others would require certain complicated switching arrangements at the Hoover powerplant. These arrangements would have varying technical and economic disadvantages and would pose some very difficult problems of arrangement.

Another aspect, which I am sure you realize but which is nevertheless of such importance as to be mentioned specifically, is that even an exchange of the nature proposed would not eliminate the cost burden to the upper basin fund. The cost would be one of loss of revenues from power which must be paid back rather than sold, rather than one of outlay of cash, but it would nonetheless affect the basin fund.

Taking all of these factors into account, the Bureau of Reclamation determined that a direct purchase program with the lower basin utilities would be less costly, less complicated, and would provide needed flexibility.

A decision to resume storage at Lake Powell is not without hazards and risks. By mid-July, we will know with reasonable assurance what the actual runoff will be for this season.

All of the technical experts, both those of the Hoover power allottees and those of the Bureau of Reclamation, advise that to attempt to operate the Hoover units below elevation 1,083 is too risky.

In the event these units would have to be shut down by water dropping below this level, a power replacement program in the magnitude of 1,340,000 kilowatts of power would be required. This kind of capacity is simply not available. If it were available, costs would obviously be prohibitive. For this reason alone, maintenance of elevation 1,083 at Lake Mead is a must even though this would require drawdown of Lake Powell to be resumed in Mid-July.

If it appears in July that while Lake Mead can be maintained at elevation 1,083 but Lake Powell nevertheless cannot reach operating level, the question of retaining in Lake Powell the water then in storage in that reservoir or of releasing it to restore the level of Lake Mead will have to be faced. The cost to the upper basin fund might well be less if, under those circumstances, Lake Mead were to be restored and the power-purchase program terminated or reduced.

Another hazard involved here is that, even though Lake Powell may go into operation at its minimum level, the runoff next spring could be so low as again to require the lowering of Lake Powell beyond the minimum operating head in order to keep Lake Mead at even a minimum level. In this event, the Government may well be obligated to buy power at the expense of the upper basin fund to supply its upper basin power sales contracts as well as the Hoover power allottees.

While, in view of the present forecast, it may now appear likely that Lake Powell can reach minimum operating level this summer, resumption of filling should be undertaken only with everyone's eyes wide open. If the expected runoff does not materialize, it would, of course, be folly to continue storage at Glen Canyon Dam, and not produce power at either dam.

This Department and the States of the Colorado River Basin are entering a new era of water management. The free and easy days of water use are over and the era of water conservation must now begin. The Colorado is but a single river, and from this point forward every acre-foot of water saved anywhere on the system is water saved for all.

Consequently, a major topic of discussion at my meeting with the upper basin Governors and water officials in Salt Lake City on Friday will be water conservation. And at Las Vegas, on Saturday, I hope to be in a position, with the cooperation of lower basin users, to announce and implement a voluntary water conservation program which should produce water saving that will amount to a half million acre-feet in 1964.

Prudence demands that all of us assume, at this point, that the drought conditions which have prevailed during the past 2 years will continue in 1965. If this happens, all of us face the choice that further emergency conservation measures will be imperative. We must instill in all of our waters users that idea that new water conservation practices must be instituted wherever possible and actions must be taken which will stretch our existing supplies to the limit.

We are working with the Department of Justice to curb illegal diversions on the lower reaches of the river. However, I am informed that the amount of water that can be saved by this means probably will not exceed an annual consumptive use rate of 45,000 to 60,000 acre-feet.

OPERATION OF LAKE MEAD BELOW ELEVATION 1,123 BY REASON OF RESUMPTION OF STORAGE OPERATIONS AT LAKE POWELL

The "General Principles To Govern, and Operating Criteria for, Glen Canyon Reservoir (Lake Powell) and Lake Mead During the Lake Powell Filling Period" (27 F.R. 6851, July 19, 1962), herein referred to as the "Filling Criteria," provide that until Lake Powell attains minimum power operating level (about elevation 3,490) any water stored in Lake Powell is to be available to maintain Lake Mead at elevation 1,123 (rated head at Hoover powerplant).

In order to resume filling operations at Lake Powell under runoff conditions which would necessitate drawing Lake Mead below elevation 1,123, the Hoover allottees must be maintained in the same position that they would have been in had Lake Powell storage not been resumed. By so doing, water in

Lake Mead may be drawn down below elevation 1,123 consistent with the objectives of the filling criteria. The following conditions will therefore be observed effective upon announcement by the Secretary of the Interior:

1. Outflow from Lake Powell will be reduced to not less than 1,000 cubic feet per second.

2. Under no circumstances will Lake Mead be drawn below a minimum power operating level of elevation 1,083 as a result of storage of water in Lake Powell. Any storage in Lake Powell will be used to avoid drawing Lake Mead below elevation 1,083.

3. In addition to the allowance for deficiencies in firm energy generation determined pursuant to the filling criteria, the United States will replace deficiencies in Hoover powerplant capacity and energy available to the Hoover allottees which result from the lowering of Lake Mead below elevation 1,123 by reason of storage of water in Lake Powell. The United States will also relieve the allottees of costs of extraordinary maintenance of the Hoover turbines and generators resulting from such lowering. Costs incurred by reason of this paragraph will be charged to the Upper Colorado River Basin fund and will not be subject to reimbursement from the separate fund identified in section 5 of the act of December 21, 1928, or otherwise charged against the Boulder Canyon project.

4. Until Lake Mead is returned to elevation 1,123 and subject to condition 2 above, Lake Powell will be permitted to exceed minimum power operating level only to the extent inflow exceeds turbine capacity, or as required to assure operation at not less than minimum power operating level.

5. When actual runoff through the month of June becomes known, early in July, the likelihood of attaining minimum power operating level at Lake Powell, in calendar year 1964 will be reasonably determinable. A decision will be made at that time whether to continue storage at Lake Powell or to release water stored therein in order to raise the elevation of Lake Mead. In arriving at that decision, consideration will be given to a comparison of estimated costs to the Colorado River storage project and the decision will be made after consultation with appropriate interests of the Upper and Lower Colorado River Basins.

Pertinent statistics, Lake Powell filling

	Lake Mead		Lake Powell	
	Elevation	Content	Elevation	Content
		Million acre-feet		*Million acre-feet*
Normal high water	1,222	27.3	3,700	28.0
Rated head on powerplant	1,123	14.5	3,600	15.0
Minimum power pool	[1] 1,083	10.7	3,490	6.1
Nevada pumps (minimum level)	1,050	8.0	-------	-------

	Acre-feet
Lake Powell:	
Mar. 26, 1964	3,120,000
May 8, 1964	2,576,000
Additional storage needed for minimum power head at Lake Powell	3,600,000
Colorado River, Lee Ferry, April–July runoff forecast, May 1, 1964:	
Minimum	3,600,000
Mean	5,100,000
Maximum	6,600,000

[1] Elevation below which turbines vibrate, excessive cavitation takes place.

NOTE.—With a recurrence of the lowest recorded precipitation during the last 50 years for May, June, and July, the April–July runoff this year could be as low as 3,000,000 acre-feet. A corresponding maximum could be 8,400,000 acre-feet.

(Charts omitted from printing in the RECORD.)

STATEMENT OF SENATOR CARL HAYDEN ON THE CLOSING OF THE GATES AT GLEN CANYON DAM, COLORADO RIVER STORAGE PROJECT

I was deeply concerned by Secretary Udall's announcement of March 26 that Lake Powell was to be evacuated. Today I am reassured, pleased and relieved that the physical situation in the high watershed of the Colorado River now permits him to order the gates at Glen Canyon Dam closed, thereby to proceed with the filling of Lake Powell. I join with my friends of both basins in the hope that the present favorable forecast will materialize into actual runoff. With the runoff in excess of 5 million acre-feet forecasted and with 2,600,000 acre-feet plus in storage, it should be possible to reach minimum generating head this summer to start another of the cash registers of the great Colorado River storage project—Glen Canyon's powerplant—to ringing.

The decision to proceed with the filling of Lake Powell should do much to answer the critics of further development of the river. It should help lift the load in getting work like the central Arizona project authorized and underway. The decision has my full support. With it must come the realization on the part of all water users in both basins that they, too, are recruited in the cause of conservation and must exercise maximum economics in the use of this precious resource.

This is a decision that every sincere proponent of basic resource development in the country has earnestly hoped would be possible. A $400 million Federal interest-bearing investment laying idle is something that no one wants to happen and I endorse fully the decision the Secretary has made.

I also applaud his courage in making it, as there will be those who will feel that their interest would have been better served had the gates been left open. In the long run, however, the best interest of all of the American people will be served by putting this complex, costly, and highly productive resource to work.

TELEGRAM OF PRESS RELEASE OF SENATOR GALE MCGEE

WASHINGTON.—Senator GALE MCGEE, Democrat, of Wyoming, said today he was greatly pleased that Interior Secretary Stewart Udall had seen his way clear to close the gates on Glen Canyon Dam and resume filling Lake Powell.

"A great deal of the credit for this decision," said MCGEE, "must go to Senator FRANK MOSS, Democrat, of Utah, the chairman of the Senate Irrigation and Reclamation Subcommittee, who kept the pressure on the Interior Department."

MCGEE remarked that Moss' incessant pressure on the Department was instrumental in bringing about the desired action while other representatives of the Upper Colorado River Basin States "just talked."

MCGEE had conferred with Moss and Interior officials several times on the matter since the Glen Canyon gates were opened in March, he said.

MEGEE said it was encouraging to the upper basin to hear that present estimates indicated Moss was right in contending Lake Powell can be filled to its minimum head this year so that power generation can begin when its generators are ready.

In the meantime, MCGEE noted that Hoover Dam power allottees would be fully supplied through direct purchase of replacement energy by the Bureau of Reclamation.

But the Senator noted there was still the possibility that by mid-July further upper basin releases might be called for to maintain Lake Mead at elevation 1,083—considered the minimum safe level for power generation.

"Thus," said MCGEE, "there remains the possibility of further drawdowns at Lake Powell, and possibly at Flaming Gorge, if runoff does not meet expectations."

MCGEE said, however, that he had assurances that Flaming Gorge would not be drawn on to the extent that its power generation capacity would be affected.

FROM THE OFFICE OF SENATOR FRANK E. MOSS

WASHINGTON.—Senator FRANK E. MOSS, Democrat, of Utah, Monday lauded the decision of the Secretary of the Interior to close the gates at Glen Canyon Dam on the Colorado River and continue the filling of Lake Powell.

Moss said: "This is a great day for Utah. Our beautiful and spectacular Lake Powell will fill this summer, power will begin to flow from Glen Canyon Dam, revenues will begin to accrue to our basin fund to underwrite the central Utah project and other water developments so urgently needed in our arid western land.

"I congratulate Secretary Udall for his decision to fill Lake Powell this year and I appreciate the good work of all who labored to bring about this situation."

Senator Moss is chairman of the Senate Subcommittee on Irrigation and Reclamation. During the critical 3-week period preceding today's announcement, he has conferred almost daily with the Secretary and the Bureau of Reclamation.

Moss said that cutting the outflow at Lake Powell is expected to result in a drop at Lake Mead to elevation 1,083. The drawdown of Lake Powell—which was stopped by today's action—would have kept Lake Mead at elevation 1,123. And he said: "This is a victory for Utah and the upper basin. While the lower basin is understandably disappointed, I believe that we have worked out an arrangement which will not injure either water or power interests in the lower basin."

Senator Moss said that fish stocking is going forward at Lake Powell. The Fish and Wildlife Service has informed him that, today and tomorrow, 2 million rainbow trout will be flown from Alchesay and Williams Creek National Fish Hatcheries in Arizona to Lake Powell.

Another 2 million rainbow fingerlings will be stocked on May 14 and 15 from Willow Beach National Fish Hatchery, Arizona; and on May 22, 1 million black bass fingerlings will be flown to Powell from hatcheries at Tishomingo, Okla., and Fort Worth, Tex.

And Moss said: "Secretary Udall's decision is based on a mean runoff forecast of 5.1 million acre-feet for the April–July period.

"We have been favored with an April precipitation above average and with a long-range forecast of a wetter than usual and cooler than usual May.

"The Hoover Dam power allottees will be furnished replacement energy in the same quantities as they would have had from Lake Mead operating at elevation 1,123."

FOREIGN SERVICE DIALOGS

Mrs. NEUBERGER. Mr. President, the office of the Community Advisory Services of the State Department has a service which arranges for officers of our Foreign Service Department to meet with community groups and to exchange information. An article which appeared recently in the Christian Science Monitor tells of the work of Mrs. Katie Louchheim's group, which I believe will be of interest to Senators. 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:

FOREIGN SERVICE DIALOGS

(By Josephine Ripley)

Like armchair generals, Americans tilt back, scan their daily newspapers and take a whack at foreign policymaking.

"Well, if I were Johnson—or Rusk—or McNamara, I'd do this * * * or that * * * I'd tell Khrushchev a thing or two. Or General De Gaulle. All this country needs is a firm hand on the throttle."

Don't be afraid. Speak out. Your Government may be listening.

Secretary of State Dean Rusk says, "Foreign policy is about you. It is about your home, your community, your safety. Foreign policy is not a game played by 'those people in Washington' with other players from far-off distance places."

Americans are expressing a growing interest in world affairs. They want to debate, question, and challenge.

The State Department welcomes that. So pull up that armchair, general, and fire away. A Foreign Service officer fresh back from far-away posts may take you on.

It is a new program. Its purposes: "To strengthen the dialog between the Foreign Service and the American people through personal contacts between individual Foreign Service officers and their hometown neighbors.

Heading it up is the Office of Community Advisory Services, under Deputy Assistant Secretary of State Katie Louchheim.

Her job is to bring the American people and Foreign Service officers together for this "dialog." Not that she can bring a Foreign Service officer from there to here at your request.

You wouldn't want to pay the bill. Neither does any other taxpayer. So it has to be arranged when Foreign Service officers come back on home leave. About 300 or more return each year.

After touching base at the State Department, they usually head for their hometown, visit relatives and friends.

That is when Deputy Assistant Secretary Louchheim goes into action. She arranges for the Foreign Service officer to speak to various club and school or college groups.

Mrs. Mary Carmichael, a Foreign Service officer just back from Brussels, Belgium, and about to leave for the Congo at Léopoldville, told this reporter of her dialogs.

Mrs. Carmichael went home to Billings, Mont., and on to Spokane to visit a sister.

She spoke mainly to school and college groups. At one university she spoke for 50 minutes, and the question-and-answer period went on for 50 minutes after that. "This was typical," she said "of the interest in and the desire to understand foreign affairs.

"One cannot help but be stimulated to see how interested and how bright they are. A great deal of interest in the Foreign Service has been generated this way."

Mrs. Louchheim has arranged for some 50 speeches or public appearances by Foreign Service officers since the first of the year. Pinpointed on the map, they would span the country. Requests for speakers are picking up in volume as the program is becoming known.

The publisher of a daily newspaper in the Midwest, after hearing a talk by Mrs. Louchheim, suggested that speakers would be welcomed by civic and college groups in the area.

Then he added, "My interest in this is not 100-percent altruistic. I have some unasked questions from last Saturday (when Mrs. Louchheim spoke) that I would like to propound."

A school principal, after reading in the local newspaper about a speech given by a Foreign Service officer, asked if someone was available to address his high school pupils.

"These students would enjoy hearing a Foreign Service man informally, who could then come to 'grips' in a question-answer and give-take period."

Such speakers do not accept honorariums on such assignments. However, they may be reimbursed for travel expenses.

There are at present 3,745 Foreign Service officers stationed at embassies and legations in 111 countries around the world, and in the State Department here.

As home leave itineraries make it possible, Americans will be hearing more from these foreign policy missionaries, and the State Department will be hearing more from Americans through these beneficial exchanges.

MENTAL HEALTH ATTITUDES

Mrs. NEUBERGER. Mr. President, the problem of mental illness has received in recent years a deservedly greater share of attention from the Congress and the administration. In 1955 the senior Senator from Alabama guided through the Senate legislation creating the Joint Commission on Mental Illness and Health. This was followed by the Alaska Mental Health Act and the Federal Employees Health Benefits Act providing coverage for the mentally ill, two legislative battles in which my late husband took a leading role. And now we have the Mental Retardation Facilities and Mental Health Centers Construction Act. The last decade has seen enormous progress in this field, but much more needs to be done.

One of those who has done much to promote public understanding of mental illness and who has fought hard and long for adequate facilities and care for the mentally ill is Mr. Mike Gorman, executive director of the National Committee Against Mental Illness. In a recent provocative address before the American Psychiatric Association, Mr. Gorman raises some interesting questions about the inadequate training of doctors in the social sciences and also about the role that the average citizen can play in stimulating desirable change in the present approaches to mental health.

I ask unanimous consent that a portion of the address by Mr. Gorman be printed in the RECORD.

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

THE ROLE OF THE CONSUMER IN DETERMINING MENTAL HEALTH SERVICES

(The 120th annual meeting, American Psychiatric Association, May 4, 1964, Biltmore Hotel, Los Angeles, Calif., by Mike Gorman, executive director, National Committee Against Mental Illness and member, National Advisory Mental Health Council, USPHS)

The physician of today has an unusual place of esteem in our society. It was not always thus. Those of you who are familiar with the history of medicine know that, for many centuries, the physician was regarded as a necessary but incompetent evil, and the hospital as a house of death. The advent of asepsis began to change all this and, in the last half century, the introduction of antibiotics and other wondrous medications has somewhat vitiated Professor Henderson's famous observation in 1910 that a random patient seeing a random physician had only a 50–50 chance of benefiting from the encounter. Today the odds are much better—maybe 60–40.

It is a most interesting phenomenon that the major medical historians of recent decades—Castiglioni, Garrison, Major, Sigerist, et al.—write glowingly of the scientific triumphs of modern medicine, but quite sparingly of the contributions of physicians to the shaping of our society.

You rightfully celebrate the eminence of Dr. Rush, not only as the father of American psychiatry, but as a leading citizen of his day—a member of the Continental Congress, a signer of the Declaration of Independence. and a guiding light in the movement known as rational humanitarianism.

Many historians of medicine have commented upon the unwillingness of the medical profession to see itself as a service profession in roughly the same category as the law, or engineering, or journalism. I suppose it shocks the average doctor when one tells him that the broad mass of people in our society must make the ultimate and hard decisions as to just how much medical care they are willing to pay for, and under what conditions it should be rendered. This inability of a doctor to see himself as an integral part of the aspirations of our society somewhat puzzles me, since a doctor must be licensed by a civil authority before he has the right to practice, and the conditions of his practice are set by healing-arts statutes.

The physician-historians of medicine whom I have previously cited are in remarkable agreement upon the function of the doctor as a highly skilled servant of his society. In "Civilization and Disease," the greatest of medical historians, Dr. Henry Sigerist, writes:

"The goal of medicine is not merely to cure disease; it is rather to keep men adjusted to their environment as useful members of society, or to readjust them when illness has taken hold of them. The task is not fulfilled simply by a physical restoration, but must be continued until the individual has again found his place in society, his old place if possible, or, if necessary, a new one. That is why medicine is basically a social science. Medicine is merely one link in the chain of social welfare institutions that every civilized country must develop. If we have a maladjustment today, it is to a large extent due to the fact that we have neglected the sociology of medicine. For a long time we concentrated our efforts on scientific research and assumed that the application would take care of itself. It did not, and the technology of medicine has outrun its sociology.

It is a truism that nature frequently cures the patient despite the physician; all of us are aware of the merciful concept of self-limiting disease. You know the old saw about a cold—without treatment it lasts 2 weeks, with treatment, a fortnight.

In a beautiful essay in the "American Character Series," Dr. Herbert Ratner, of the Stritch School of Medicine, observes that most physicians in America today are rather inadequately educated, or as he puts it, "are sitting ducks for the canned speeches of drug-house detail men."

In a sobering deflation of the God complex of modern medicine, he points out that of all the babies born in taxicabs on the way to the hospital, he has not heard of a single fatality. Rubbing salt in the wound, he cites the remarkable record of the midwives in the hills of Kentucky over several decades in achieving a far lower mortality rate than the doctors in nearby hospitals. In these words, Dr. Ratner recognizes the responsibility of the citizen, along with that of the doctor, in improving the condition of medicine and expanding the social conscience of the doctor:

"We have to remember that the physician is a human being with all of the strength,

weakness, virtues, and vices of a human being. He will tend to be materialistic and activist if the culture and society are materialistic and activist. But he does have a responsibility to rise above the culture and to influence it. Improvement of the condition of medicine is a shared responsibility; the public shares it with the medical profession. And the condition of medicine needs a great deal of improvement."

The formation of the Group for the Advancement of Psychiatry signalized the beginning of the end of psychiatry's isolationism. The bold and courageous GAP pronouncements on the deplorable conditions in our State mental hospitals served as a tremendous catalyst in the burgeoning revolt against the dead hand of the past.

The creation of the central office of the American Psychiatric Association in Washington, D.C., in 1948, with a full-time medical director, was another gigantic step forward.

While bowing my head respectfully in the direction of certain professional developments, I still hold firmly to a conviction I first stated 16 years ago: "Since colonial times, the citizens of this country have been the major motivating force in whatever improvements we have achieved in the care and treatment of the mentally ill."

Almost two centuries ago, in a moving statement of social responsibility that has few peers in the English language, Francis Fauquier, the Royal Governor of the Colony of Virginia, exhorted the House of Burgesses to make proper provision for the care and treatment of the insane:

"It is expedient that I should also recommend to your consideration and humanity a poor, unhappy set of people who are deprived of their senses and wander about the country terrifying the rest of their fellow creatures. It is a measure which I think could offend no party, in which I was in hopes that humanity would dictate to every man as soon as he was acquainted with the call of it."

In the early decades of the 20th century the citizen fight was carried on by Clifford Beers. For 35 years, until his death in 1943, Beers stormed at the barricades of indifference and apathy, arousing the people to action on behalf of the mentally ill.

However, the great and sweeping reforms which have come about in our lifetimes would not have been possible without the magnificent crusading of the American press.

Towering above all the rest was Albert Deutsch. His classic, "The Mentally Ill in America," published in 1937, laid the foundation for the modern reform movement, and his "Shame of the States," published only 16 years ago, shook the American conscience with its searing portrayals of the human warehouses which passed for mental hospitals.

In the ensuing years, scores of newspapermen followed in the tradition of Deutsch. They penetrated the walls surrounding the feudal baronies of the mad, and they exposed the twin conspiracies of silence and distance which had cut the mentally ill off from their brethren for so many agonizing decades.

I was involved to some degree in these activities. I would be remiss in my duty if I did not remind this medical audience that those of us who were trying in our limited fashion to follow the Biblical injunction—"Great is truth, and mighty above all things"—received very little cooperation from the medical profession. The resistance of the keepers of the keys—the uncertified "Emperors" who ruled over the baronies of the mad—was somewhat understandable. They had much to hide, and much to atone for—they who believed with the captain in Joseph Conrad's "Seawolf" that "it is better to reign in hell than serve in heaven."

But the indifference and hostility of their medical brethren beyond the walls was something else again. While indignantly denying any kinship with the mental hospital medical staffs—"they are just asylum doctors"—the leaders of organized medicine at the county and state level bitterly resented and fought the efforts of the press and the people to clean up the Augean stables. After all, medicine was their business and what right did we have to write about suffering people—we who were not even versed in professional indices of acceptable and tolerable suffering?

The Governors of the several States, ears cocked to a rising crescendo of protest from their citizen followers, began to move.

In the summer of 1949, Luther Youngdahl, of Minnesota, persuaded his fellow Governors to authorize a sweeping inquiry into conditions in State mental institutions by the Council of State Governments. On Halloween of that very same year Governor Youngdahl, no advocate of "the decent moderation," presided over a burning at Anoka State Hospital near Minneapolis—he lit the torch to hundreds of straitjackets, leather wristlets, and camisoles while several thousand mental patients cheered themselves hoarse.

The council survey, a corrosive indictment of the existing snakepits, was released early in 1951. At the national Governors' conference later that same year, Youngdahl, Gov. Earl Warren, of California, and Gov. G. Mennen Williams, of Michigan, guided to unanimous passage a resolution authorizing a second council study—this one directed toward possible alternatives to the weary, tradition-encrusted State institutions.

These surveys led to two precedent-shattering special National Governors' Conferences on Mental Health—one in Detroit in 1954, and one in Chicago in 1961. The major resolutions coming out of these conferences called for greatly increased financial support for psychiatric research, a vast expansion of programs designed to train desperately needed psychiatric personnel, and heightened emphasis upon intensive treatment of the mentally ill in community facilities.

All of this was citizen action at its finest—a refreshing counterpoise to dreary professional committee meetings and temporizing surveys of State mental hospital systems by the U.S. Public Health Service.

As one who has been accused of being action prone—I deny this; I am much more addicted to prayer and meditation—I commend to you the words of Dr. Adolf Meyer, a past president of this association and a founding member of the National Committee for Mental Hygiene: "Thought at its very best is only a link in a chain of events leading to some final achievement. Its real and lasting fulfillment is found only in action." All of these activities of the Governors, the press, an aroused citizenry, and an awakened American Psychiatric Association finally coalesced in a demand for intensive psychiatric services in the heart of the community.

And in this ferment all was not new; as we groped toward a precise articulation of our revolutionary objectives, we drew heavily upon the words and deeds of a few pioneer spirits who had challenged the status quo many years ago.

I shall never forget a visit to Colorado in 1945. After a disheartening tour of a medieval warehouse at Pueblo, which confined more than 6,000 patients in indescribable horror, I journeyed to Denver in hopeful search of the wave of the future. There I found Dr. Franklin Ebaugh, a gallant soul who in 1924 had departed the hub of the universe—Philadelphia, of course—to journey to Colorado to found an intensive treatment hospital supported entirely by citizen money raised through a public bond issue the year before. Dr. Ebaugh gave me my first real glimpse of things to come in these carefully measured words: "Our State hospitals are monuments to the failure of our communities to create the necessary conditions for the full, healthy adjustment of individual minds."

A decade later, in a talk delivered to some good souls assembled in the hub of the universe, I was emboldened to state that what I had often referred to as "The age of banishment" was coming to a close, and that "we were on the threshold of a great new era—the treatment of mental illness in the heart of the community. As we have over the past several decades built a magnificent hospital and medical care system for the treatment of physical ills within the confines of our communities, so shall we in the next several decades do the same for mental illness."

In that very same year—1955—Senator LISTER HILL, the greatest congressional champion of the mentally ill, delivered a ringing speech in the well of the Senate advocating congressional support for a sweeping investigation by a Joint Commission on Mental Illness and Health of our shabby treatment of our suffering brethren. "We in the Congress have become increasingly aware, over the years, that we have no rational, comprehensive plan for a medical attack upon an illness which fills more than 50 percent of all hospital beds in this country," Senator HILL told his colleagues.

The recommendations of the Commission's 6-year study served as the foundation for President Kennedy's magnificent mental health message to the Congress on February 5, 1963. The essence of the major mental health legislation proposed by the President, and enacted by the Congress last October, is that isolation and warehousing of the mentally ill is no longer acceptable in our society. In proposing mental health centers in general hospitals and in other community locations, it dramatizes the concept that the mentally ill are to receive equal time with the physically ill.

In recent months, I have traveled to a number of States where the mental health planning process is in full bloom, and I must confess that the jurisdictional jostling and general sound and fury is not always conducive to tranquillity. But change is never easy, particularly when a traumatic break is being made with patterns and traditions which have persisted for almost two centuries. In a very real sense, all of us face a very difficult period of trial and decision in the next few years.

Of course, the problem of ability to pay for psychiatric care is still very much with us—as much so as in the days of Sigmund Freud. I suppose it is now safe to mention Freud here—most of you have gotten over the shock of Dr. Percival Bailey's academic lecture to this association 8 years ago, in which that eminent neurologist lamented the fact that Freud had abandoned his promising research on the sex life and nervous system of the crayfish for a latter-day career of "chirographic ruminations."

Freud was acutely aware of the limitations of the sacred 1 to 1 therapeutic relationship, with its ping of transference and its pong of countertransference. Toward the close of a life dedicated to the relief of suffering humanity, Freud wrote that "at present we can do nothing for the crowded ranks of people who suffer exceedingly from neuroses."

In 1919, in a passage remarkable for its insistence that the problem of the availability of psychiatric care is one for "the conscience of the community" rather than for lordly pronouncements by individual doctors, he stated the case for the primacy of the citizen quite forcefully: "Now let us assume that by some kind of organization we were able to increase our numbers to an extent sufficient for treating large masses of people. Then, on the other hand, one may reasonably expect that at some time or other the conscience of the community will awake and

admonish it that the poor man has just as much right to help for his mind as he now has for the surgeon's means of saving his life; and that the neuroses menace the health of the people no less than tuberculosis and can be left as little as the latter to the feeble handling of individuals."

Some 40 years later, Drs. Fredrick Redlich and August Hollingshead produced a remarkable volume, "Social Class and Mental Illness," based upon an 8-year study designed to answer the key question they posed at the outset: "Are expenditures for psychiatric care linked to the class status of the patients?"

The answer was a 400-page, documented "yes." Contrasting the availability of psychiatric treatment for upper income groups as against its almost total absence for lower income groups, the authors conclude that "the differences add up to deep social fissures in psychiatric treatment, such as we do not encounter in the rest of medicine with the possible exception of peacetime cosmetic surgery."

The painstaking Cornell surveys in midtown New York City have further documented the point that private psychiatric care is far beyond the reach of low-, and even middle-income groups.

At the 1957 convocation of this association, Mrs. Edith Alt of the Health Insurance Plan of Greater New York, reported the results of a survey of HIP subscribers which revealed that only 10 percent of the group could afford even 1 hour of psychiatric treatment a week. Concluded Mrs. Alt: "It is probably no exaggeration to acknowledge that this challenge of providing psychiatric care, particularly on an ambulatory basis, for low- and middle-income groups will head the list of unresolved health service problems facing the country."

I say with all the conviction at my command that the leadership of American psychiatry had better face up to this burning issue of ability to pay, and that it ought to familiarize itself with the aforementioned studies, and many others, before making questionable statements which tarnish its public image.

At your annual convention in Toronto 2 years ago, my good friend Dr. Walter Barton, in his presidential address, urged all of you to take clear stands on social and political issues. In the next breath, he urged you to oppose the King-Anderson bill providing medical care at age 65 under the social security mechanism on the grounds that it would "foster dependency" and, furthermore, that the bill excluded coverage of psychiatric care.

He was egregiously wrong on both counts. King-Anderson, as most of our citizens know, covers psychiatric illness on the same basis as physical illness—for 90 days in any year in a general hospital, and for longer periods in nursing facilities and in home treatment services. This is, to put it mildly, a whale of an improvement over the coverage now extended for mental illness by most Blue Cross plans. King-Anderson does not cover long-term psychiatric illness in a State mental hospital—its proponents argue that this would make contributory costs under the plan prohibitive.

As to the dependency issue, Senator CLINTON ANDERSON answered that one in a bristling wire to Dr. Barton, which was fortunately printed in the New York Times: "It does just the opposite by enabling individuals to contribute during their working years so as to receive benefits as a matter of earned right after 65," Senator ANDERSON informed Dr. Barton.

Things quieted down for awhile but I notice that the March 1964 APA newsletter puts your organization on all fours with that great band of progressive medical philosophers, the American Medical Association, on this issue: "If you believe it proper for an individual to pay for his medical treatment if he is able, you should express your opposition to the bill (King-Anderson). If you believe certain hospital and nursing home expenses should be federally financed through the social security mechanism regardless of financial need, you should express your support of the bill," the newsletter contends.

The very point of King-Anderson—explained time and time again—is that most elderly people are unable to pay for medical expenses in the twilight of their lives. If they cannot pay for routine medical expenses, how in God's name can they pay for expensive psychiatric care? They don't want charity—they don't want dependency—they want the right to prepay for their care during their working years.

Because a few old people can afford cake—well, no bread for the other 95 percent. If this line of attack is followed to its logical conclusion, we should made the AMA happy by scrapping social security altogether, since there is admittedly a small percentage of millionaires who draw earned social security benefits.

I want to remind you of one more fact. The Federal Government today provides superb insurance coverage of psychiatric illness—in both basic and major medical policies—for its 2½ million employees and their dependents. Participants in this plan, which is the largest and finest in the country, contribute through payroll deductions for its support. Senator Richard Neuberger led the fight for this comprehensive coverage, including psychiatric care; those of us who battled alongside of him for this broad coverage against some powerful spokesmen from the insurance industry were not aware of any great support from the American Psychiatric Association, that stanch foe of "dependency."

Those of us who participated in the drafting of the Kennedy mental health legislation were careful to place the greatest emphasis upon limited Federal support in the initial staffing of these centers. We envisioned these centers as primarily serving the low- and middle-income groups not now receiving adequate psychiatric care. We knew that patient fees could not support these centers, and we knew quite well that many of these people did not have health insurance.

We expressed our hope to the Congress that the health insurance industry would someday broaden its coverage to include the ambulatory mental health center patient, but those of us who have been struggling for the past 15 years to persuade these same insurance carriers to cover the hospitalized mental patient for an adequate number of days, knew what a time-consuming battle we faced. In the interim, how could we ask the local community, or private organizations, to finance both the matching money for construction of these centers in addition to 100 percent of the operating costs from day 1, when the centers opened. We therefore opted for brains over bricks.

As a consequence, the Kennedy administration bill, guided by LISTER HILL to a fantastic 72 to 1 victory in the Senate, provided $2 in Federal staffing aid for every $1 of construction money.

When the bill moved over to the House, the gutting process started. The board of trustees of the AMA had, in June of 1962, endorsed the major recommendations of the joint commission in a strong statement supporting "multiple source financing of community mental health services." In October of that same year, the American Medical Association held its first National Congress on Mental Illness; all of us who attended that conclave were convinced that the AMA had finally dipped its toe into the waters of the 20th century.

When the Council on Mental Health of the AMA came forth with a ringing endorsement of the Kennedy legislation, everything seemed to be coming up roses. But the house of delegates of the AMA, standing on its collective head in Atlantic City in June 1963, decided to preserve its old bete noire, socialized medicine, by voting in essence for a perpetuation of State psychiatric medicine and against limited Federal support for the staffing of community mental health centers operated by the private sector of medicine.

The AMA conducted a most effective campaign against the staffing provisions of the Kennedy legislation. Most of it was not visible—local politicomedicos worked quietly on their individual Congressmen via the telephone and direct personal visitations.

We did not have the strength to counteract this. A few mental health associations performed valiantly, but in many of the crucial big States, the citizens' movement lacked power.

As the summer of 1963 waned and the leaves began to turn on the trees along the banks of the Potomac, those of us manning a thin line in the Federal City waited in vain for reinforcements. As Woodrow Wilson said during the sad, closing days of his second term: "Things get very lonely in Washington sometimes. The real voice of the great people of America sometimes sounds faint and distant in that strange city."

The American people were solidly behind President Kennedy on this issue, but as so often happens in this great country where a little democracy is a dangerous thing, we were defeated by a "a little group of willful men representing no opinion but their own."

We lost a battle, but not the war. We will be back, but we will not prevail in the Congress of the United States, or out at the forks of the creeks, until an aroused citizenry gets behind us in this fight. I cannot put it any better than Dr. William Menninger did a few years back: "Further progress in the difficult field of mental illness and mental health will come only when millions know enough, care enough, and are willing to work together hard enough to make it come."

We need your help, your counsel, and your guidance, but ours is the responsibility to win the victory.

In 1955, speaking to my fellow citizens in the City of Brotherly Love, I said: "Many of these community mental health services look very good in the blueprint stage but they become effective only when you, the citizens, participate in them and give them your full support. No community psychiatric unit, whether it be in a general hospital or in a school, can be really effective unless it is constantly challenged by an enlightened citizenry. In the final analysis, you will decide the services you want for yourselves and your children, and you are in no position to criticize the professional groups for not providing these services."

I stand on that statement today.

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

The PRESIDING OFFICER (Mr. NELSON in the chair). The clerk will call the roll.

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

[No. 212 Leg.]

Allott	Holland	Metcalf
Anderson	Humphrey	Miller
Bayh	Inouye	Monroney
Boggs	Jackson	Morton
Burdick	Jordan, Idaho	Moss
Case	Keating	Mundt
Clark	Kennedy	Nelson
Dodd	Long, Mo.	Neuberger
Dominick	Magnuson	Pastore
Douglas	Mansfield	Pearson
Fong	McCarthy	Pell
Gruening	McClellan	Prouty
Hayden	McGovern	Proxmire
Hill	McIntyre	Ribicoff

Smathers	Williams, N.J.	Yarborough
Smith	Williams, Del.	Young, Ohio

The PRESIDING OFFICER (Mrs. SMITH in the chair). A quorum is not present.

Mr. NELSON. Madam President, I move that the Sergeant at Arms be directed to request the attendance of absent Senators.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Wisconsin.

The motion was agreed to.

The PRESIDING OFFICER. The Sergeant at Arms will execute the order of the Senate.

After a little delay, Mr. DIRKSEN, Mr. LONG of Louisiana, Mr. MCGEE, and Mr. MCNAMARA entered the Chamber and answered to their names.

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

CIVIL RIGHTS ACT OF 1963

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

Mr. LONG of Louisiana. Mr. President, I call up amendments No. 577 as perfecting amendments to the Talmadge amendment now pending.

The PRESIDING OFFICER. The amendments will be stated.

The legislative clerk read the amendments (No. 577) as follows:

On page 2, beginning with line 1, strike out all through line 9 on page 3.

On page 3, between lines 9 and 10, insert the following:

"'TITLE XI—CRIMINAL CONTEMPT PROCEEDINGS; PENALTIES; TRIAL BY JURY"

On page 3, line 10, immediately before "In", strike out the single quotation mark and insert in lieu thereof "SEC. 1101."

On page 3, line 10, beginning with "for willful", strike out all through line 16, and insert in lieu thereof the following: "arising under the provisions of this Act, the accused, upon conviction, shall be punished by fine or imprisonment or both: *Provided, however,* That in case the accused is a natural person the fine to be paid shall not exceed the sum of $1,000, nor shall imprisonment exceed the term of six months: *Provided further,* That in any such proceeding for criminal contempt, the accused, upon demand therefor, shall be entitled to a trial before a jury: *Provided further, however,* That in the event such proceeding for criminal contempt be tried before a judge without a jury the aggregate fine shall not exceed the sum of $300 nor any cumulative imprisonment exceed thirty days. If the trial is by a jury, the procedure shall conform as near as may be to that in other criminal cases."

On page 3, line 17, strike out the single quotation mark before "This".

On page 3, line 19, immediately after "justice", insert the following: "or to place the integrity of the court in direct and immediate jeopardy".

On page 3, beginning with line 22, strike out all through line 4 on page 4.

On page 4, line 5, strike out "1103." and insert in lieu thereof "1102.(a)".

On page 4, strike out line 7 and insert in lieu thereof the following: "amended by striking out the second and third provisos to the first paragraph thereof, and inserting in lieu thereof the following: "'*Provided further,* That in any such proceeding for criminal contempt, the accused, upon demand therefor, shall be entitled to a trial before a jury, which shall conform as near as may be to the practice in other criminal cases: *Provided further, however,* That in the event such proceeding for criminal contempt be tried before a judge without a jury the aggregate fine shall not exceed the sum of $300 nor any cumulative imprisonment exceed thirty days.'

On page 4, between lines 7 and 8, insert the following material in double quotation marks:

(b) Section 151 of part V of such Act is hereby further amended by inserting, immediately after "justice" in the second paragraph thereof, the following: "or to place the integrity of the court in direct and immediate jeopardy,".

The PRESIDING OFFICER. Does the Senator from Louisiana wish to have these amendments considered en bloc?

Mr. LONG of Louisiana. I ask unanimous consent that the amendments be considered en bloc.

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

Mr. LONG of Louisiana. Mr. President, the general purpose of these amendments is to place the decision on the defendant as to whether or not to ask for a jury trial and thereby subject himself to greater penalties that could be imposed for criminal contempt than if he declined to ask for a jury trial, and in so doing protect himself from the severe penalties that could be imposed for contempt of court.

These are the amendments that were drafted and sent to the desk by the Senator from Florida [Mr. SMATHERS] as perfecting amendments to the Talmadge amendment.

Mr. SMATHERS. Mr. President, will the Senator from Louisiana yield?

Mr. LONG of Louisiana. Mr. President, I ask unanimous consent that I may yield to the Senator from Florida without prejudice to his rights or to mine.

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

Mr. SMATHERS. Is it not a fact that the amendments are similar to the Dirksen-Mansfield amendment, except that rather than leave discretion in the judge as to whether the defendant should have a trial by jury, they would leave discretion in the mind of the defendant either to ask for a trial by jury or to take his chances and be tried by the judge; in other words, it virtually means a demonstration of confidence in the people in the jury trial system rather than giving absolute authority to the judge to fine the accused or jail him merely on his own authority; is that not correct?

Mr. LONG of Louisiana. The Senator is correct. That is the general idea of the amendments. I shall explain them in greater detail at a later date. I wish to protect my rights by offering them at this time.

Mr. President, I was somewhat surprised last week by the votes taken on the jury trial amendment offered by the distinguished Senator from Kentucky [Mr. MORTON]. We who oppose forced racial integration were very much encouraged by the administration's lack of solid strength on this jury-trial test vote. Despite claims to the contrary, the administration leaders were also very much surprised. This may be the prelude to more things to come. For the sake of our rights of property, privacy, and free enterprise, let us hope so.

The reason behind this trend of opposition in the Senate is, of course, due in direct proportion to the parallel trend of opposition which is evident in the country as a whole. I have stated in previous addresses to the Senate that slowly but surely the national trend of opposition is catching up with this radical bill. My colleagues here in the Senate are practical politicians, and it is my hope that they will react to this trend of opposition toward forced integration.

We have seen resounding defeats of so-called open-housing ordinances in almost every place where the people have been given a chance to vote on the question. The most recent and least publicized, of course, has been the vote in the Rhode Island Legislature where an open housing bill was overwhelmed by a vote of 61 to 32. The people will simply not go along with a proposal merely because some racial extremist has labeled it civil rights. Similarly, there appears to be quite a number of Senators who are no longer willing to go along with anything and everything that has been dumped into this bill. Like the public they represent, these Senators are at last beginning to take an objective look at the bill. What they see in these proposals might not be quite the rosy picture they originally thought was there.

The people are beginning to think far more clearly on this matter than they were doing a month or two ago. This is a good sign in a democracy. At first, the people had not been given both sides of the argument on this bill. For a long while, they were discouraged from engaging in the mental process of differentiating and discriminating between the two, in order to see which was correct. But lately, millions of people have been opening their eyes and their minds to the dangers which lie so cleverly hidden in this bill. Fortunately, too, for the future of the Nation, many Senators who support this bill are not supporting it with their eyes closed. They are struggling very conscientiously with the many pros and cons of this bill. I am confident that in the end these men will come up with intelligent answers to the questions they have been asking themselves. If this is the case, we may be having many more votes which do not produce the results desired by the floor leaders for this bill.

At times it appears that many of the bill's uncompromising supporters have failed to review the constitutional provisions on the question of jury trial now before us. It appears to be a simple case of ignoring those several constitutional

provisions which protect our fundamental rights to trial by jury. Proponents seem to ignore the language of article III of the Constitution which states that "all crimes" shall be tried by jury. They also ignore the even broader language of the sixth amendment which states that "all criminal prosecutions" shall be by jury trial if the defendant so desires.

Under this bill, the crimes of "discrimination" and "criminal contempt" would be denied a hearing before a jury. What the people should realize is that, once we deny trial by jury for this particular type of crime, or in this particular type of criminal prosecution, the cancer may then spread to other areas. Other classes of crimes, and other classes of criminal prosecutions, may then be classified as not requiring trial by jury; and in the end, we might well become subject to the worst sort of courtroom tyranny imaginable.

Our Constitution was designed to protect us against just this sort of usurpation of power. The supporters of this bill should wake up to the real fact that what they are suggesting is that we should simply bow to the militant minority groups and abandon our Constitution whenever we talk about racial integration.

This is precisely the sort of thinking which can eventually turn this Government into a dictatorship.

Mr. President, all except one of the amendments which have been offered to the jury trial provisions of this bill have failed to face up to the standards set forth in our Constituion. As it turns out, they ignore, to some degree, the language of the Constitution which requires that "all crimes" and all "criminal prosecutions" shall be tried by jury.

The proponents, by stretching a point to the extreme, contend that a criminal contempt proceeding does not involve the trial of a "crime." They likewise contend that criminal contempt proceedings are not "criminal prosecutions."

Though they may mince words about it, proponents are now contending for a system of government in which the Congress could pass a law on any subject authorizing summary trial of those who have violated court injunctions issued pursuant to the legislation. In other words, pursuant to the precedent laid down in this bill, Congress could pass a law stating that murder, rape, grand larceny, malfeasance in public office, arson, medical malpractice, and horse betting are all Federal crimes and that persons who defy court injunctions rendered in prohibition of such crimes may be held in contempt and tried without benefit of a jury. A price tag either might or might not be set on defendant's rights to trial by jury. The precedent for placing no price tag whatever on defendant's jury trial rights can be found in titles III, IV and VII of the bill as it passed the House and as it reads today. In these titles, defendants would have no right to trial by jury—regardless of the amount of the penalty. This Senator hopes that this outrageous concept will be cut out of all sections of the bill because, if not, we shall be off on an unconstitutional adventure in which undermining and stultifying the Constitution could become the national sport.

On the question of jury trial and several other matters covered by this bill, the proponents are not only reading the relative constitutional provisions out of context; they are not reading the Constitution at all. They are thinking only of the situation which they seek to remedy and not at all about the consequences which they would create.

Not the least important among these consequences is the psychological effect which would result in the American people when they realize how little trust and how little respect this bill holds for them. It will be the sad discovery of the American public that its Government has decreed that the people are in many ways not to be trusted in governing themselves. Such a discovery is bound to produce a most unpleasant reaction and a resistance to the particular law which announces this undemocratic edict to the people.

Mr. President, there is no getting away from the fact that this bill proposes that American citizens shall be tried in Federal courts for violations of rules laid down neither by State law nor by Federal law, but by some single Federal judge—rules which, in all probability, did not originate with that judge, but originated either with the Attorney General of the United States or one of his subordinates, or with a so-called Commission on Civil Rights in Washington, or with the FEPC.

If this bill becomes law, the Attorney General can go into Federal court and file a legal document; and on the basis of that paper the Federal judge would have authority to lay down detailed rules of conduct which will have all the force of law, except that violations of those judge-made rules will be tried, not by a jury, but by the judge who made the rules. Thus, one man will decide what the rule is; he will decide what constitutes a violation of it; and he will decide what the punishment for that violation should be.

In most instances, the rules laid down by some single Federal judge under the provisions of this law would probably parallel State law. Quite possibly the judge-made rules would be more restrictive. In any event, as soon as the judge-made rules have been issued, they will supersede both State and Federal law. Actions which would otherwise be tried only as violations of applicable Federal or State law will become punishable as contempts of the court. The right of jury trial on the question of whether those alleged actions were in fact performed will have been lost; it will have been taken away by the enactment of this bill.

If the Congress thinks it has the right to tell the people of the South that they are not fit to serve on juries, to tell the men and women of my State and other States that they are to be deprived of their constitutional right to a jury trial in connection with certain offenses, that their State courts are to be deprived of jurisdiction with respect to such offenses, then the Congress ought, in all honesty, to do this openly and directly, instead of trying to do it indirectly, as this bill does. I do not believe, Mr. President, that a majority of this body wants to insult the people of the South, or deprive them of their right of trial by jury in any instance, or wants to divest State juries of their jurisdiction and deprive State courts of their authority under State law. Mr. President, if that is what Congress wants to do, let us do it honestly and openly, and not through a device such as this bill.

Is it proponents' hope that they can get the bill through the Congress before the public finally realizes what these proposals do to their freedoms?

A significant comment on the influence of jury trials on the national character and political institutions can be found in Alexis de Tocqueville's excellent book on "Democracy in America."

De Tocqueville warned that a jury system limited to criminal trials always is in peril because the people see it in operation only at intervals in particular cases. They are accustomed to dispense with it in the ordinary affairs of life and look upon it merely as one means, and not the only means, of obtaining justice. But this French statesman and writer, a keen observer of our American experiment, who predicted that the two great powers of the world would be Russia and the United States, said that when jury trials embrace civil actions they are constantly before the eyes of the people and affect all their interests. The jury then becomes associated with the very idea of justice.

He said the jury, and especially the civil jury, serves to imbue the minds of the citizens of a country with a part of the qualities and character of a judge, and this is the best way of preparing them for freedom. It spreads among all classes a respect for the decisions of the law; it teaches them the practice of equitable dealing. Each man in judging his neighbor thinks that he may be also judged in his turn. So, said De Tocqueville, the greatest advantage of the jury is its use as an instrument for the education of people who will govern themselves.

This writer went on to say that the jury also is a political institution of the highest value.

The jury—

He wrote—

Is emphatically a political institution. The man who judges in criminal cases is, then, really a master of society. The institution of the jury places the people themselves, or at least one class of citizens, upon the seat of the judge. The institution of the jury, then, actually places the direction of society in the hands of the people or of this class.

Mr. President, let us not mistake the fact that what we are being asked to buy in this bill is a future of government by injunction.

Government by injunction is government according to the personal convictions, inclinations, or notions of individual judges rather than government by certain and uniform laws applying alike to all men in like situations.

This being true, it is no wonder that Lord Camden, one of England's greatest lawyers, declared:

> The discretion of a judge is the law of tyrants; it is always unknown; it is different in different men; it is casual and depends upon constitution, temper, and passion. In the best it is ofttimes caprice; in the worst, it is every crime, folly, and passion to which human nature is liable.

Edmund Burke, the great English statesman, used somewhat milder language in pointing out the dangers inseparable from government by injunction. He said:

> The spirit of any sort of men is not a fit rule of deciding on the bounds of their jurisdiction; first, because it is different in different men and even different in the same at different times, and can never become the proper directing line of law; and next because it is not reason but feeling and when once it is irritated it is not apt to confine itself within its proper limits.

Government by injunction is abhorrent to those who love our constitutional and legal systems for these reasons:

First. Government by injunction denies to litigants the right to invoke for their protection basic constitutional and legal safeguards created by the Founding Fathers and Congress to protect all Americans from tyranny.

Second. Government by injunction reduces the courts from the status of judicial tribunals to the status of administrative agencies of the executive department of the Government.

Third. Government by injunction inevitably tends to bring the courts into disrepute.

Fourth. Government by injunction may extend beyond prohibitions of lawless acts to make crimes of innocent acts and to coerce community conduct.

The powers of equity are thus perverted, the first principles of equitable jurisdiction are those repudiated, and the powers of the State are thus usurped to establish government by injunction in place of government by law in the field of civil rights, and to insure that the government by injunction so established is not to be subject to any limitation whatever except that unknown and unpredictable quality called judicial discretion.

In this atmosphere and under these circumstances, the single judge must decide, in the first instance, whether or not to issue an injunction and, in the second instance, whether or not to cite for contempt. In many cases he must so decide on the basis of affidavits drawn by partisan lawyers and executed by witnesses who are not subject to cross-examination.

In any proceedings for contempt for any alleged violation of the injunction, the judge is compelled to enact the varied and conflicting roles of lawmaker, injured party, prosecutor, judge, and jury.

Other subtle factors are present, factors which may, consciously or unconsciously, influence the judge's decision. One is the very human danger that the judge may view an alleged violation of his own injunction as a personal insult to himself. Another is that the judge, as a Presidential appointee, may interpret his role as that of furthering the particular policies of Government or even of his party.

Surely no judge ought to be compelled to act under such circumstances; and surely any decision which he may make under such circumstanes will be suspect by considerable portions of the public as having been induced by some unworthy motive, especially when we know that, in many cases, the suit has been gerrymandered into his court by the Attorney General who wants and needs a verdict that the defendant is guilty. It is truly difficult to see how civilized people can stand for such treatment when, for generations, they have prized so highly their fundamental rights to trial by jury and to the several other procedural safeguards which must accompany any criminal trial.

Mr. President, if by some misfortune Congress should reject the amendments proposed by the Senator from Georgia [Mr. TALMADGE] and finally pass the bill as it now reads, it would stamp with its seal of approval the following queer result:

First. When the Attorney General elects to extend the benefit of the novel procedure to one citizen, he automatically nullifies State statutes prescribing administrative remedies in respect to such citizen, thereby freeing such citizens from the operation of the salutary, sensible, and long-settled rule of judicial administration that no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy is exhausted.

Second. But when the Attorney General withholds the benefit of the novel procedure from another citizen, State statutes prescribing administrative remedies remain in full force, and such citizen cannot resort to the courts for judicial relief for a supposed or threatened injury until the prescribed administrative remedy is exhausted.

Such a preposterous situation would create unparalleled resentment on the part of Americans once they found out exactly what this bill had done to their rights of trial by jury and to those other procedural rights which go hand in hand with it.

Mr. HILL. Mr. President, will the Senator from Louisiana yield?

Mr. LONG of Louisiana. I yield.

Mr. HILL. The Senator speaks about other procedural rights. Is not one of the fundamental principles in our due process of law that the person accused shall be tried not only by a jury of 12 of his peers, as the Senator has so well and eloquently emphasized, but also within the district in which the accused lives?

Mr. LONG of Louisiana. The Senator is entirely correct; and that is often fundamental to the rights of a citizen to be tried by a fair and impartial jury. In some instances, the fact that a man is being tried in his own community tends to operate as a benefit by reason of his good reputation as a citizen of that community, perhaps not directly, but indirectly, because the people of the community may very well know the man for the kind of person he is and consider, from their point of view, that he is responsible and well regarded in that community.

As the Senator so well indicates by his question, that is one of the rights that a person could be denied by operating under the contempt procedure rather than under the so-called criminal process.

Mr. HILL. Is it not true that on page 41 of the bill, H.R. 7152, in title VII, we find this language:

> Such actions may be brought either in the judicial district in which the unlawful employment practice is alleged to have been committed or in the judicial district in which the respondent has his principal office.

It might be that the unlawful act was committed in Louisiana, but that the head office of the concern that the man might be representing was in Detroit, Mich. So he could be hauled off from where he lived in Louisiana and taken more than 1,000 miles to Detroit, to be tried there without a jury, and out of the district in which he lived.

Mr. LONG of Louisiana. The Senator is entirely correct. That is a procedural right of the citizen that should be protected. As the Senator so well points out, the bill denies a citizen much more than the right of jury trial. The other procedural safeguards, such as the right of cross-examination, are important in themselves. In some instances, they might be of as great importance as the right of trial by jury.

Mr. HILL. Is it not true that in the original Constitution the Founding Fathers provided that there should be a trial in all criminal cases?

Mr. LONG of Louisiana. Yes; they provided exactly that.

Mr. HILL. Is it not true, too, that the 6th amendment to the Constitution, in what we know as the Bill of Rights—the first 10 amendments—which was really adopted as the part of an agreement to insure the adoption of the Constitution, provides:

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

Mr. LONG of Louisiana. The Senator is entirely correct. The Senator knows as well as I do that we who are opposing the bill suspect that much of what it contains under the name of "civil rights" is actually a device or an attempt to bypass the most fundamental civil rights that Americans were guaranteed and for which their forefathers fought and died in a bloody revolution. As hard as free men fought, when such rights as those under the name of "civil rights" are proposed to satisfy marching mobs in streets, it seems to me that it would be the worst legislative folly to pass a bill that would undermine and destroy the

very rights which have seen this Nation through its trials and tribulations, in good times and bad, in peace and in war.

I appreciate the Senator's remark in that respect, because there is no doubt that the rights which would be denied Americans under the bill are, for the most part, far more valuable than the so-called rights that would be conveyed to some minority group.

I thank the Senator from Alabama.

The bill would be hard enough to enforce and would create hard feeling and resentment without adding this additional burden. The situation here is perhaps parallel to another of some years ago, when George W. Norris, the great liberal Senator from Nebraska—a man who might be regarded by many of us as being one of the greatest Senators of all times—proposed the Norris-La Guardia Act, which severely restricted the issuance of injunctions and provided for jury trials in cases of indirect contempt, as the most efficacious means for restoring confidence in the Federal courts.

It was the Norris-La Guardia Act and the right of jury trial which the act conveyed which, from the point of view of liberals and from the point of view of labor groups, redeemed the Federal courts and restored them to the dignity that everyone hoped those courts would hold. Prior to that time, many people had the feeling that Federal courts were the tools of the wealthy, the tools of the vested interests, and that Federal judges in the districts were altogether too much disposed to use the injunctive power and the contempt power to deny workingmen the rights that were properly theirs.

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

Mr. LONG of Louisiana. I yield for a question.

Mr. HILL. Is it not true that there was the example of Samuel P. Gompers, who was a great leader in the labor movement? He was the head of the American Federation of Labor. He was railroaded into jail by a Federal judge. He had no right to a jury trial.

Mr. LONG of Louisiana. The Senator is entirely correct. The Senator knows what the situation was, insofar as labor was concerned. It was about the same problem that we have when we are talking today about the rights of some of our people—and, I might say, some of the best citizens of our beloved Southland.

Back in those days when someone wanted to break a strike, or to keep anybody from picketing, or to deny labor the right of collective bargaining, the most useful tool available was the weapon used against Gompers. He was put in jail by reason of the judge's contempt power. It was well known that if that man were given the right of trial by jury in the community where the alleged crime occurred, he would have been turned loose by a fair and impartial jury.

Mr. HILL. Was it not such action by such judges that brought about the Norris-La Guardia Act?

Mr. LONG of Louisiana. The Senator is correct. The Norris-La Guardia Act is one of the great monuments to two great American statesmen. George Norris was one of the greatest liberals, and in some respects, one might say he was one of the greatest conservatives who served in the Senate. Liberalism in George Norris' day tended to support what I believe is good conservatism in accordance with the definition that a conservative is one who seeks to preserve the better things about the existing order.

George Norris was trying to preserve something that was always intended to be a part of the American scene; and so was Fiorello La Guardia. Those men came from different parts of the country—one from Nebraska, and one from the city of New York—one from a metropolitan area and the other from the wide-open country.

The two great statesmen combined to gain for labor the right of trial by a jury, and the right to be freed from the tyrannical abuse of power by a prejudiced Federal judge. Even if the judge were not prejudiced, the manner in which those powers were exercised produced the same result as if the judge had been prejudiced.

Mr. HILL. The right of a trial by jury is a right which our Founding Fathers thought they were guaranteeing for every American citizen—whether he was a laboring man, a businessman, a professional man, or any other kind of man—when they wrote the provisions of the Constitution of the United States, and followed it with the Bill of Rights. Is that correct?

Mr. LONG of Louisiana. The Senator is absolutely correct.

Mr. HILL. Is it not true that Senator Norris in his advocacy of the Norris-La Guardia made this statement:

> 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.

May I say that Senator Norris was a judge before he came to Congress and then later was elected to the Senate.

Mr. LONG of Louisiana. I was unfamiliar with the fact that George Norris was a judge before he came to Congress. I suppose his judicial background is one of the qualifications which helped to make him one of the greatest Senators of all time.

What George Norris was saying about a judge being biased and prejudiced is something that lawyers and judges know as a practical matter to be true in many cases.

There are a great many cases in which a judge has his mind made up—particularly in cases in which a judge has signed an order and is bringing someone into court on the ground that the accused has failed to carry out the order signed by the judge.

Mr. HILL. Is not the judge the prosecutor, and does he not hear the case, sit in judgment, and then fix the penalty?

Mr. LONG of Louisiana. The Senator is absolutely correct. The kind of cases that will come before the judges in many instances will be cases in which the judge is personally involved. An example of such a case was just given, but we could give a thousand. I have in mind a judge in New Orleans, in my own home State, who issued certain orders. The question arose as to whether certain persons had complied with the judges' orders. There was a man in the case who had been very critical of that judge, critical of the judge's capacity to serve, and critical because of the fact that he did not think the judge was doing the job properly, that the judge was not using the proper judicial attitude, and was treating the community unfairly. The man had been very outspoken about the judge.

Senators know that a judge is only human. He tends to resent the attitude that a defendant has been known to display in the community. He tends to resent everything about him. And when such a defendant comes before the judge on a question of fact as to whether he carried out the order the judge issued to him, or did not carry out the order, if the judge is human, he is predisposed to find the man guilty, to begin with. The only fair way to see that the man has a fair trial is to insist that there be a jury, and thus impose an impartial group between the judge and the defendant.

As Senators well know, when the case develops, there will be someone like Mr. Katzenbach in the Justice Department, who has the responsibility of prosecuting the case. Mr. Katzenbach would feel that he had a much better chance to persuade the judge to put the man in jail than he would have to persuade a jury to put the man in jail.

We know that the lawyer from the Justice Department, Mr. Katzenbach, and his group, come up to the Hill and confer with Senators who favor the bill. And when the question of whether they should agree to an amendment like that offered by the Senator from Kentucky [Mr. MORTON], arises, we know that he says, "Oh, no. We must not accept this. This would undermine the whole procedure and give the courts all kinds of trouble." The prosecutors believe that it would give them some trouble to be confronted by a fair and impartial jury in the hometown of the accused. The little bevy of extremists in the Justice Department, in the civil rights section, dedicated as some of them are to the question of racial integration, racial amalgamation, and every other kind of racial question, would like to have it the easy way. Every time that someone wants some rights, while they are obtaining for the colored man some new rights, they want the power to put a

man in jail, if need be, without the benefit of a jury trial.

That is the kind of thing out of which tyranny is made. The official in the Justice Department who is drunk with power has more importance than the public would ever give him in a free election, more importance than he could perhaps justify. He has the opportunity to advise and consult about law, to bring about school integration, and the obtaining of additional rights for some citizen who he thinks is being deprived of certain rights. He has the opportunity to consult about the salt and pepper integration at a lunch counter. He is trying to do his job; and the first thing he wants to do is to get rid of the jury so that he will not have to be confronted with it.

I can understand how those people would feel. That would be a true impediment for them. Those people say, "Think of what we could do for you if we did not have to be confronted with a jury." They do not propose the idea, because it could not be achieved. But I say to the Senator, in all fairness, that if those lawyers had their own way, they would say, "Do it our way or we will put you in jail. If you do not do it, we will call out the Federal marshals and the airborne troops and put you in jail because, we think you have not done it in the way we believe it should be done." That is a part of the problem.

The little group that has achieved power far beyond their ability to handle it under present law would nevertheless see an opportunity to advance their power in Government, their stature, and perhaps have themselves appointed to the Federal bench after they had left the civil rights section of the Department of Justice. While they are in the Department of Justice advising on the question of jury trial in such cases, and talking about who the next district judge will be in a certain district and who the next appellate justice will be in a certain area, they might have an opportunity to maneuver in politics and see if they cannot have themselves appointed as Federal judges. They might say, "What a great victory it would be for our Department to have things so arranged that we could not only name the judges, but would also not have to be confronted with juries."

That is the kind of thing that tends to undermine and destroy the fundamental freedoms for which Americans fought and established a free government, and three times wrote into the Constitution as a guarantee of the right of all citizens to be protected against a tyrannical government. They feared that that would be the greatest danger to confront freedom once it had been won for the American people.

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

Mr. LONG of Louisiana. I yield for a question.

Mr. HILL. I wonder if the Senator would not wholeheartedly agree with the opinion of Mr. Justice Black in the case of *Green* v. *United States*, 356 U.S. 165, in which he stated:

> 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 bound to punish as he sees fit. It seems inconsistent with 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 Government 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 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.

Does not the Senator agree thoroughly with that statement by Mr. Justice Black?

Mr. LONG of Louisiana. I agree with that statement. As a Member of this body, and one who has been highly critical of the Supreme Court, I have been making a study of the various Supreme Court decisions, including the minority views, to see the extent to which the various judges have tended to subscribe to the views of one contending group or another. I was pleased to see the minority views of Justice Black as well as those of the Chief Justice, Justice Goldberg, and Justice Douglas. They gave me real cause to feel that the kind of constitutional law in which I have always believed is beginning again to emerge from the Court. It was a fine day for the American system of justice when four judges who had no sympathy with Governor Barnett nevertheless sought to protect his constitutional right to trial by jury. There is no doubt that, those four judges had no sympathy for Governor Barnett or his cause. They well knew the prejudice in Washington—certainly the prejudice in the executive branch—against Governor Barnett. When confronted with the question, "Was this man entitled to the right of a trial by a jury?" Those four Justices stanchly stood for him and said, "Yes; he is entitled to a jury trial."

It seems to me that in that decision the words of Justice Black were especially eloquent. I believe that when on this issue he wrote an opinion which had great eloquence and great logic as well, his words may be marked in history as one of the best of judicial performances.

I suspect that that particular minority view will find such great appeal among Americans that eventually it will become the law, as some of Justice Holmes great dissenting opinions and some of Justice Brandeis' great dissenting opinions were destined eventually to become the law. Thoughtful men reading them down through the years have said, "That man was a prophet."

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

Mr. LONG of Louisiana. I yield.

Mr. HILL. Is it not true that the opinion of the majority in the Barnett-Johnson case really is an invitation to Congress to grant the right of trial by jury? Denial of the right of trial by jury grew up, as we know, in the Clayton Act, which contained a provision that if the Government of the United States were a party to the suit, there would be no trial by jury. That is why Congress had to enact the Norris-La Guardia Act.

That is why in September 1959, when the Landrum-Griffin Act was enacted we inserted in that measure the express provision that there should be a right of trial by jury. A careful reading of the majority opinion in the Barnett case will show conclusively that that opinion was based on the idea that the statute is in the code today, providing that when the Government of the United States initiates or is a party to the suit, there shall not be a jury trial. A careful reading of that opinion would persuade anyone that what Court was doing was inviting the Congress to change the statute so that everyone under every condition would have the right which the Founding Fathers intended for us to have, namely, the right to a trial by jury.

Mr. LONG of Louisiana. The Senator makes a strong point. In my judgment, the question which he asks answers itself. Even in the majority portion of that opinion, one can find much to support the theory that the Court was inviting the Congress to enact a statute that would convey to the defendant a right which it said he does not have at the present moment. That is what five Justices said. The other four Justices said, "He has it right now and cannot be denied it, now or ever."

There is no doubt in my mind that anyone who reads and studies those opinions would find his sympathies and his heart on the side of the right of jury trial, having read what both sides had to say. That is true, unless he were carried away with the passions of the moment and persuaded by some group, such as the street demonstrators, and would look at the politics of the problem rather what would be the saving grace of our country.

I wish to quote what George Norris said on February 23, 1932, after the passage of the Norris-La Guardia Act. He said:

> Is it any wonder that there has grown up a feeling of resentment against some of the actions of some Federal judges? Is it any wonder that there has gradually grown up in the minds of ordinary people a feeling of prejudice against Federal courts? Is it surprising that there should develop a sentiment against life tenure for Federal trial judges? Can anyone doubt that such action on the part of the Federal judiciary has gradually developed in the minds of ordinary people a fear that where a system of jurisprudence prevails which enables one man, endowed with a life tenure of office,

to write a law and then order its enforcement, and then, refusing a jury, to try alleged offenders and punish them at his own sweet will, it will eventually lead us to the common knowledge and belief that where such things exist, as Blackstone says, "There can be no public liberty."

It is difficult to see how any civilized people would indefinitely submit to such tyrannical treatment, and indeed, it would undoubtedly be true that there would not have been submission if this procedure were general and applied to all classes of people.

George Norris made a point which I think it would be fair to make here. If we were talking about a general law and said, "Let us try everybody this way. Let us deny to everybody a trial by jury. Let us take it away from labor. Let us take it away from people accused of an offense. Let us treat everybody on the same basis," I would say that some of the most stanch supporters of the bill would stand up and defend the right of the laboring man and labor leaders, or some conservatives who are for the civil rights bill would defend the right of a businessman to have their case heard by a jury, particularly if the Government had their backs to the wall.

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

Mr. LONG of Louisiana. I yield.

Mr. HILL. That is one of the difficult things for me to understand. I cannot understand why certain labor leaders are today supporting the pending bill, knowing that it contains a denial of the right of trial by jury, when they know the history of how labor was treated in the past. They know about the trial of Samuel Gompers and other labor leaders who went to prison. They know how labor fought to have the Norris-La Guardia Act and how it insisted on the right of trial by jury being written into the Landrum-Griffin Act, which is generally referred to as the bill of rights for organized labor. Yet labor leaders support this bill, which would deny the right of trial by jury.

Mr. LONG of Louisiana. I have many friends in the labor movement. They have been supporters of mine in the past, and I hope they will be again. I have tried to support them in advancing the legitimate aspirations of the labor movement. While I have not been able to support them in every instance, I think they would admit that I was with them 75 or 80 percent of the time when they were advocating something to advance their cause. I have the highest regard and the warmest feelings for labor leaders in my State. Generally speaking, I am on a good basis of understanding with practically all of them. I do not believe they know that the bill contains this provision. I do not believe they know that the right to which they themselves subscribe and for which they fought so hard and faithfully in years gone by would be denied to their neighbors, and in some instances to themselves, because they would eventually be subject to charges of discrimination. If they knew it, I am sure they would be opposed to that section of the bill and would be for taking it out of the bill and putting in the Talmadge amendment, which would guarantee the right of trial by jury.

My guess is that I could persuade not only most of the workingmen, but their leaders, that this is fair and right and as it should be. If they did not go along with that proposal 100 percent, I am sure they would go along with it 90 percent, and that they would recognize the merit of the argument which we have been advancing, which has been in favor of the same right of jury trial which in the past labor demanded and which had been denied them.

Still, Mr. President, the proponents unwisely suggest that the Attorney General be clothed with autocratic power whereby he can virtually convert Federal district courts into administrative agencies of the executive department of the Federal Government for the management of schools, elections, business, employment, and other similar activities of a local nature in the civil rights field.

In addition, they propose that Federal district judges be placed in a position identical to that described by Senator Norris in the quotation set forth above. Under H.R. 7152 the Federal district judge, acting as both judge and jury, will be projected into the middle of the civil rights controversy whose issues are highly charged with emotionalism and partisanship. On one side of the controversy will be ranged the legal and financial might of the Federal Government and on the other the State or local official who performs governmental services for little or no compensation out of a sense of public duty. Regardless of the merits of the particular case, the controversy will be viewed and interpreted as a conflict between the Federal and State Governments.

In a real sense of the word this is what it would be, for H.R. 7152 is deliberately designed to vest in the Attorney General the autocratic and despotic power to nullify State laws duly enacted by State legislatures in the undoubted exercise of the legislative power reserved to the States by the 10th amendment. As a consequence, H.R. 7152 is wholly incompatible with the constitutional doctrine of the sovereignty and indestructibility of the States. Even apart from this consideration, H.R. 7152 is inimical to proper Federal-State relations because it proposes to place in the hands of the Attorney General a legal club by which he can browbeat State and local officials into submission to his will and thus assume control of what are essentially State or local government matters.

Inasmuch as the advocates of the proposal under consideration assure Congress that it is ideally adapted to prevent any State from denying "to any person within its jurisdiction the equal protection of the laws," the singular legal result which would flow from the enactment and operation of the proposal seems peculiarly ironic and paradoxical. This is true because the phrase, "equal protection of the laws," implies, when it is used in a procedural sense, that all persons may appeal to courts for both relief and defense under like conditions with like protection and without discrimination. *Sexton* v. *Barry*, 233 F. (2d) 220).

Happily for America, one may search the legislative annals of our country without finding anything corresponding to the monstrous proposal that a single Federal executive officer, to wit, the Attorney General, should be given the autocratic and despotic power to nullify valid State laws in particular cases to be selected by him.

But, unhappily, that is what is proposed by this legislation. Even if there were no possibility that the law could ever be misused or abused, it would still be a terribly dangerous thing. But consider the consequences if there were an unscrupulous Attorney General at the controls.

Of course, the notion that the occupant of the office of the Attorney General could not exert the tremendous power embodied in H.R. 7152 without first obtaining a decree from a Federal court is nonsense.

If the occupant of this office should happen to be a pragmatic politician, or a so-called civil rights zealot, or a person susceptible to coercion by pressure groups, he could employ H.R. 7152 as an intimidating club, and thereby demoralize State and local government in such vital areas as elections and public education.

Here is how the Attorney General could operate in the case of a State or local election or school official, who denies registration to an applicant for voting rights on the gound that he does not possess the qualifications prescribed by State law "for electors of the most numerous branch of the State legislature," or who declines a parental request for the assignment of a schoolchild to a particular school on the ground that the requested assignment is not calculated to promote the educational interest of the child, or who is alleged to have discriminated in a place of public accommodation, or in his practice of hiring and firing employees:

The Attorney General, acting through a subordinate, could politely threaten the State or local official in this wise:

If you don't register this man or assign this child to that school, I'll put the law to you in an action or proceeding under H.R. 7152 in which all the legal and financial might of the Federal Government will be arrayed against you and in which you will be denied such basic safeguards as the right of trial by jury.

The State or local official could do one of three things. He could submit to the threat, and thus permit a Federal officer to dictate how the functions of a State or local office are to be discharged. He could relinquish his State or local office, and thus escape further harassment and hazard. And, finally, he could stand up and fight for his convictions, even to the point of defending a lawsuit in a Federal district court, which might sit in a place far removed from his home. If he should pursue the last course and win, he could conceivably bankrupt himself in defraying the cost of his successful defense. If he should pursue the last course and lose, he could conceivably wind up with a virtually unlimited fine or a virtually un-

limited jail sentence simply because his convictions as to how the duties of his State or local office should be performed might differ from those of the Attorney General and a one-man Federal court.

Congress would commit an unspeakable folly if it should enact a bill whose provisions are susceptible to such grave abuses in the field of Federal-State relations.

It is evident from what I have been saying that usurpation by the Federal Government would be twofold. There would be a clear invasion of the right of individuals to a trial by jury for crimes they are alleged to have committed; and there is the equally obvious invasion of States rights in the provision which allows administrative and State remedies of various kinds to be bypassed.

We should ask ourselves, Mr. President (Mr. METCALF, Acting President pro tempore in the chair), if power can be conferred upon Federal courts to suppress crimes in the civil rights field by injunctions and contempt proceedings in trials without juries, there is really no good reason why power cannot also be conferred upon such courts to suppress in like manner any and all crimes in the whole catalog of crimes. The same mistaken arguments which are being used in behalf of this bill could be used to achieve that sort of ridiculous extension of the principle.

An interesting criticism of the same arguments of expediency now being used in behalf of H.R. 7152 appears in the decision of *ex parte Mulligan* (4 Wall. 1, 120). It may be of interest to Senators for it bears rather directly on the mistaken standards by which some lawmakers would justify this bill's invasion of our constitutional right to trial by jury.

After stating that the founders of our Government inserted the constitutional guarantee of indictment by grand jury, trial by jury and confrontation of adverse witnesses in the Constitution because wisdom and experience had demonstrated them to be necessary to protect those accused of crime from tyrannical rulers and "the clamor of an excited people," the Supreme Court said:

> Time has proved the discernment of our ancestors; for even these provisions, expressed in such plain English words, that it would seem the ingenuity of man could not evade them, are now, after the lapse of more than 70 years, sought to be avoided. Those great and good men foresaw that troublous times would arise, when rulers and people would become restive under restraint, and seek by sharp and decisive measures to accomplish ends deemed just and proper; and that the principles of constitutional liberty would be in peril, unless established by irrepealable law. The history of the world had taught them that what was done in the past might be attempted in the future.

And now, Mr. President, after the lapse of more than 90 additional years, history repeats itself. The proponents of H.R. 7152 attempt again "what was done in the past." They seek to avoid and evade in respect to State and local officials and other Americans involved in civil rights disputes basic constitutional and legal safeguards "expressed in * * * plain English words" for the security of all Americans.

The proponents offer H.R. 7152 and justify their advocacy of its astounding provisions by laying to their souls the Machiavellian unction that the end they have in view excuses the method they propose. They solicit the support of others for their proposal by these arguments: That the Federal Government is compelled by existing laws to depend solely on criminal prosecutions in cases involving alleged deprivations or violations of civil rights; that criminal prosecutions are "cumbersome," "slow," and "often unduly harsh"; that "jurors are reluctant to indict and convict" defendants in criminal prosecutions for alleged deprivations or violations of civil rights; that H.R. 7152 is merely designed to lodge in the Federal Government an additional power to bring civil actions of an equitable nature in which the comparatively mild injunctive process is to be employed to redress or prevent deprivations or violations of civil rights; and that the proposed injunctive process is superior to criminal laws because it would afford the Federal Government means of preventing the commission of crimes in the civil rights field.

The argument that criminal prosecutions are "often unduly harsh" on defendants in civil rights case and that such defendants would be benefited by subjecting them to "the comparatively mild injunctive process" instead of criminal prosecution is rather intriguing because of its source. This argument is advanced by Government attorneys, who confess their fear that they might lose some of the civil rights cases they wish to win if they are required to convince jurors of the truth of their allegations by the oral testimony of cross-examined witnesses according to the practice prescribed by the Constitution. Congress would do well to beware of Government attorneys when they profess to bear gifts to those whom they propose to prosecute.

The arguments that criminal prosecutions are "cumbersome" and "slow," and that "jurors are reluctant to indict and convict" are identical with those given for the establishment of the court of star chamber, the enactment of the acts of Parliament depriving American colonists of the right of trial by jury, and the congressional opposition of former days to the jury-trial provisions of the Clayton and Norris-La Guardia Acts.

In commenting on this subject in his famous dissenting opinion in *Hopkins* v. *Oxley Stave Co.* (83 F. 912, 924, 925), Judge Henry Clay Caldwell, who served with rare distinction as presiding judge of the U.S. Circuit Court of Appeals for the Eighth Circuit, said:

> It is said by those who defend the assumption of this jurisdiction by the Federal courts that it is a swifter and speedier mode of dealing with those who violate or threaten to violate the laws than by the prescribed and customary method of proceeding in courts of law; that is a shortcut to the accomplishment of the desired object; that it avoids the delay and uncertainty incident to a jury trial, occasions less expense, and insures a speedier punishment. All this may be conceded to be true. But the logical difficulty with this reasoning is that is confers jurisdiction on the mob equally with the chancellor. Those who justify or excuse mob law do it upon the ground that the administration of criminal justice in the courts is slow and expensive, and the results sometimes unsatisfactory. It can make little difference to the victims of shortcut and unconstitutional methods whether it is the mob or the chancellor that deprives them of their constitutional rights. It is vain to disguise the fact that this desire for a shortcut originates in the feeling of hostility to trial by jury * * *. A distrust of the jury is a distrust of the people, and a distrust of the people means the overthrow of the Government our fathers founded.

Happily for liberty and justice in America, the founders of our Government hated judicial tyranny more than they loved judicial haste, and for that reason spurned the argument that criminal prosecutions are cumbersome and slow. Believing, as they did, that all persons ought to be weighed in the same legal balance, they likewise rejected the argument that Justice ought to descend from her pinnacle in particular cases for fear that jurors might acquit some persons who, in the opinion of Government lawyers, deserve punishment.

The bill, in seeking to provide a quasi-criminal remedy for chosen beneficiaries, seeks to circumvent the fundamental guarantee of a trial by jury. This purpose is not expressed in the provisions of the bill, but, when the applicable sections of the United States Code are read together, there is no doubt that the swift, summary power of punishment in contempt proceedings, without the right of trial by jury, is the chief coercive force which would be brought against citizens and public officials throughout a large section of our country.

When Federal officers come in—with all deference to them as individuals—armed with power of the type provided in the bill, seeking to modify, reform, change, or turn upside down the local institutions, habits, and customs of those people, such Federal officers move in on them where they really live, and take from them their very life. Few of them would be able to withstand pressure from such authority. Such offices would then fall into the hands of an inferior type of persons, and stagnate the movement forward of those people.

The history of the practical and useful benefits of the jury system need not be fully reviewed here. To many English-speaking peoples, the jury system has insured individual freedom for more than a thousand years. Such peoples have made contributions to others.

It has not been so much the great judges through the centuries who have kept open the lanes of freedom, although they have made a valuable contribution. It has been the mandatory use of the jury system. Whatever exceptions are necessary they should be sparingly made, and should never extend to a vast field of social activities, as provided in the bill.

Of course, Mr. President, no one can expect to make such a flagrant departure from the ordinary procedure without

paying the cost. That cost has appeared in the form of what one columnist has called "the worst mess in American history." Here is what he had to observe about the consequences which have followed our failure to have committee hearings on this bill. I quote:

There's a real "mess in Washington"—probably one of the worst in American history. For the Congress of the United States, intimidated and frightened by street demonstrations and pressure groups, has abandoned law and order in respect to certain legislative procedures. It looks now as if the civil rights legislation will be bogged down in a morass of hundreds of proposed amendments and changes.

The Senate, instead of sending the House-passed bill to a committee to consider all the amendments and then recommend a bill to the whole body, adopted an entirely different strategy—to try to amend the bill during the debate itself. Originally, this was planned in order to avoid delay in the Senate Judiciary Committee, because it was feared by the advocates of the bill that the measure would be tied up there indefinitely. But now it turns out that amending the bill on the floor of the Senate means a far more lengthy process than ever was envisioned if the bill had gone to the committee.

The majority in the Senate could at any time have organized a select committee of its own to consider the bill and let hearings be held so that all sides could give their arguments for and against the bill as well as the proposed amendments. But it seems now that the Senate has committed itself to the long drawn out procedure of trying to write a bill while every one of its hundred Members is given the opportunity to offer amendments. It may take months to deal with that kind of legislative mess.

When the House of Representatives, in order to avoid lengthy committee hearings, permitted amendments to be made on the floor, the bill was changed materially. When it passed the House, the proponents of the measure in the administration and in Congress insisted that the bill was a perfect measure and did not need further amendment. But as the American people became aware of some of the bill's drastic restrictions on private life in this country, public opinion began to assert itself. Now even the proponents of the civil rights bill are beginning to say that certain amendments are necessary.

What is most disturbing is the utter indifference to constitutional questions. It is puzzling to read the bill passed by the House, which says that, if a motel or lodging house rents only five rooms, the owner can discriminate. The Constitution does not make any such distinction as to whether racial discrimination begins with five guests or any other fixed figure. It refers only to equal protection of the laws.

Mr. President, the article was written by one of the Nation's outstanding columnists, whose columns are read thoughtfully from one end of the Nation to the other. He points out that the procedure was completely improper and how we would have made much better progress if we had pursued the usual, standard legislative approach. I continue to quote from the article:

Senator HUMPHREY of Minnesota, one of the Democratic leaders, says that there ought to be something in the bill against any job-quota guarantees and that this would reduce the concern of some of the bill's opponents. But will it satisfy the Negro pressure groups?

Senator DIRKSEN of Illinois, the Republican leader who in general favors the House civil rights bill, has been struggling with the phraseology of amendments for the last several weeks and is trying to get some kind of agreement among Republican Senators so as to reduce public opposition to the bill.

Since the amendments are coming from both the northern and southern Senators, it is estimated that the total number proposed might reach 1,000. It's a fantastic situation, and just when the Senate is going to get through with the bill is anybody's guess. It is being freely predicted that the confusion will get to be so extensive that when the Senate bill is completed it will really be unsatisfactory to everybody. It would then have to go to conference between the two Houses and be virtually rewritten. When this happens, President Johnson may be expected to intervene with his own version of a bill, and perhaps defer some controversial sections for further consideration in another bill next year.

So far as the general public is concerned, it has been given the impression that some kind of filibuster is going on in the Senate itself. While the southerners have been making lengthy speeches, the sad truth is that the civil rights bill is not yet ready for consideration by the Senate and will not be until amendments have been submitted for further debate later on.

Meanwhile, Senator MCCLELLAN, Democrat, of Arkansas, has warned that the passage of the "civil rights" bill may produce "greater discord, more hatred and strife among our people, and will create graver problems than any of those it is intended to solve." He adds:

"There are always grounds for improvement, progress, and some reforms, but those improvements will not be attained by compulsion or coercion."

Senator LAUSCHE, Democrat, of Ohio, who was five times Governor of his State and previously was mayor of the city of Cleveland, has sounded a sober note of warning over the extremes of the pressure groups. He has spoken particularly of the recent disorder in Cleveland. He favors the objectives of the "civil rights" bill, but he says:

"Candidly, I state that the cause of the Negroes in Cleveland and in the Nation has been markedly harmed by the recently practiced violence and threats of violence."

The "civil rights" legislation therefore deserves careful consideration even if it takes another year to do it.

The article appeared in the Evening Star edition of April 15, 1964. It was written by Mr. David Lawrence.

Mr. President, I have grown almost weary of hearing proponents list how many pages of testimony were taken by this committee and that committee on the general subject of civil rights during 1963. It is their thesis that since we have available to us hundreds of pages of testimony and cross-examination of witnesses from several committees, we obviously do not need more of the same. But they persist in ignoring the painful fact that on this particular bill, on the bill now before us, there have been no hearings whatever.

The argument which the proponents have made in this regard speaks poorly indeed of the cause they seek to promote and of the means by which they seek to promote it. If I were to follow the same logic, I could properly suggest that, since the Senate has access to several hundred pages of testimony from 1963 hearings on the subject of foreign aid, we obviously have no need for a repetition of such hearings this year and should dispense with them, lest they bring about an unconscionable delay in our proceedings.

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

Mr. LONG of Louisiana. I yield.

Mr. HILL. Is it not true that the right of petition is guaranteed in the first amendment to the Constitution?

Mr. LONG of Louisiana. Yes.

Mr. HILL. It is really exercised, so far as the legislative branch—Congress—is concerned, through committee hearings, is it not? When a committee has considered a matter, permits witnesses to appear, takes testimony, and permits interested parties to present their views, people enjoy the right of petition which is guaranteed to them by the Constitution.

Mr. LONG of Louisiana. The Senator is entirely correct. That is our right of petition.

Mr. HILL. But when there are no committee hearings or when there is no committee consideration, is it not true that the right of petition is denied to the people?

Mr. LONG of Louisiana. The Senator is entirely correct. With regard to some of the hearings to which reference has been made, it is fairly clear to me, merely from looking at them, that only one side had been heard. As I recall, the hearings on the FEPC bill were extremely one sided. They contain mostly the testimony of proponents who had given such testimony in years gone by. But from those who could have given many reasons why such a law would impede the operations of their businesses, and who could have spoken on behalf of other people in the communities, there was very little testimony. It appeared to me that the overwhelming bulk of the testimony—almost all of it—was from groups that have always been known as being rather extreme in their views on that kind of legislation.

Mr. HILL. Is it not true that when the late-lamented President Kennedy sent his message to Congress for a civil rights bill, he did not include any recommendation or request for an FEPC title or provision?

Mr. LONG of Louisiana. The Senator is entirely correct. When President Kennedy sent his message to Congress, it appeared as though he had been persuaded by the demonstrations and the other activities conducted mainly by the extremists that something would have to be done; and that if he were to do something, he did not want to be accused of being against anything that could be labeled as "civil rights." So he left an invitation to include in the bill anything anyone wanted to place in it.

I do not speak in criticism at all, because I respected the right of the late President Kennedy and I respect the right of President Johnson to differ with me on these questions. I do not question the sincerity of their views. But I am reminded, in some respects, of the occasion some years ago when Senator Lyndon Johnson, who was the majority leader, called up the Stella School District bill. He said, in effect, "I told you, gentlemen, that you would be given an

opportunity to vote on civil rights. I invite you to bring in your bills on civil rights and offer them as amendments to the bill to provide relief for the Stella School District."

That bill related to providing for a school district a surplus building. The bill that was to enable the Stella District to use a Government surplus building became the civil rights bill. The majority leader fulfilled his commitment to the civil rights advocates. He had said they would have an opportunity to make their views known and to offer amendments. I recall that as being the case. They came in with numerous amendments, many of which had never been considered in committee. One Senator had at the desk as many as 50 amendments that he intended to call up.

Mr. HILL. Is it not true that when the Senate was considering the civil rights bill of 1957, the late Senator from Wyoming, Mr. O'Mahoney, offered an amendment which was in exactly the same langauge as the Talmadge amendment now pending; that the former Majority Leader Johnson, now President of the United States, and former Senator Kennedy, later President of the United States, both voted for that amendment; and that the present distinguished majority leader, the Senator from Montana [Mr. MANSFIELD], also voted for the amendment? Did not all of them vote for the O'Mahoney amendment, which was verbatim, ad litteram, the same as the Talmadge amendment now pending before the Senate, to which the distinguished majority leader and the distinguished minority leader [Mr. DIRKSEN] have offered the wholly inadequate Dirksen-Mansfield substitute?

Mr. LONG of Louisiana. The Senator is correct. I cannot say, from a close study of it on a word-for-word basis, that the Talmadge amendment is verbatim the same as the amendment offered by the late Senator from Wyoming, Mr. O'Mahoney, but I accept the Senator's assurance that it is. I know that the intention is exactly the same as the intention of the jury trial amendment offered in 1957.

The support of that amendment by former Majority Leader Lyndon Johnson and by the former Senator from Massachusetts, John F. Kennedy, was an act of political courage, because it could have been expected that both those men might possibly offer themselves as candidates for the Presidency someday. We observed the great ability of those two men in this body and knew that they were potential presidential timber. It required great courage for them to incur the wrath of some of the minority elements, who could not see any of these measures except in one way. It took strong political courage for the former Senator from Texas and the former Senator from Massachusetts to support the very amendment that is now pending before the Senate, an amendment to assure the right of jury trial for all citizens.

I believe the RECORD will show that had we been able to prevail exactly as the Senate voted on that day, no harm would have come to the American Government. The courts could have had carried out any orders they found it necessary to enforce. Nothing in the Talmadge amendment seeks to prevent them from enforcing their orders in cases that are referred to as civil contempt, when a person is told he must do something or else he will be put in jail. That is the situation in which he, in effect, carries the key to the jail in his own pocket. The judge can put him in jail, but in effect the judge makes the defendant his own jailer.

But if a person is accused of violating a court order and must be punished after the fact, that is something that does not occur in the presence of the court, and in such a situation the person is entitled to a jury trial.

That was the kind of thing that would have done no harm to the civil rights of anyone. It would have protected the fundamental rights of all Americans, had the position then taken by the Senate, and the position taken by the majority leader, the then Senator from Massachusetts, John Kennedy, prevailed at that point. The freedom and liberty of the people would have been safer. I am sure the Senator will agree to that.

Mr. HILL. I agree thoroughly with the Senator. Is it not true that when the Committee on Commerce at the previous session of Congress considered the bill which embodies that which is now known as title II of the bill, H.R. 7152—title II being the so-called public accommodations provision of the bill—the committee held hearings, received testimony, and let people exercise their right of petition? And after all the testimony was in, after giving the bill due and proper consideration, as a committee should, the committee reported that bill, the right of a trial by jury having been voted unanimously by that committee?

Mr. LONG of Louisiana. That is true. The committee voted by an overwhelming vote to report the public accommodations section. Confronted with this very problem, the Committee on Commerce heard all sides, considered all sides, and, as I understand from those who were present, that committee unanimously agreed to the amendment which would protect a man's right to a trial by jury.

Mr. HILL. If a citizen of this country has his right to a trial by jury protected in three different places in the Constitution, if it is guaranteed to him under the Norris-La Guardia Act, if it is guaranteed to him under the Landrum-Griffine Act, if the Senate acted in 1957 to give him that right, and if the Committee on Commerce acted at the last session unanimously to give him that right, why should he not have the right given to him under the Talmadge amendment to the bill?

Mr. LONG of Louisiana. The Senator from Louisiana sees no reason whatever. I cannot conceive of Congress denying a man the right of trial by jury which has been so fundamental all through our history.

Mr. HILL. Earlier in his remarks, the Senator referred to Blackstone. Is it not true that Mr. Blackstone made the following statement about a trial by jury:

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

Mr. LONG of Louisiana. The Senator is correct. I appreciate the contribution of the Senator.

Mr. HILL. Could there be a stronger statement by this man, who has been recognized down through the years as a great student of Anglo-Saxon law, Anglo-Saxon procedures, and of what we know as Anglo-Saxon liberty, freedom, and justice?

Mr. LONG of Louisiana. The Senator is entirely correct in his statement about Blackstone. He succinctly points out how important the jury trial is to all American people.

Mr. HILL. Lord Camden, one of the great English jurists, stated:

> Trial by jury is the foundation of the British Constitution; take that away and the whole fabric will soon molder into dust.

If that be true as to the British Constitution, would not exactly the same situation apply as to our Constitution?

Mr. LONG of Louisiana. The Senator is correct. It is just as fundamental to the American process as to the British process. As the Senator so well knows, the fight for the right of a freeman to be tried before a jury has been one of the classic struggles all through English history, just as it has been in the United States.

Mr. HILL. The Senator speaks of the battle for the freeman. I invite the attention of the Senator to the declaration of Winston Churchill, to my mind the foremost man of all the world today, who, writing in his book, "English Speaking Peoples," declared:

> Trial by jury of equals, only for offenses known to the law, if maintained, makes the difference between bond and free.

There is a freeman. Shall he be free, or shall he be a bondsman? If he is to be free, he must have and enjoy the right of a trial by jury.

Mr. LONG of Louisiana. Mr. President, I thank the Senator. I thoroughly agree with him.

Such an attitude would result in my being laughed right out of the Senate; it would win for me nothing but scorn and ridicule. And yet, this is exactly the standard and the logic by which proponents of this bill have succeeded in denying it hearings in committee.

Proponents in both Houses have seemed determined to make this measure as outstanding in point of bad procedure as it is revolutionary in content. They seek to remake the face and backbone of the American free enterprise system and to dilute our rights of privacy and property, but call it an "unconscionable" delay when 34 of us propose to study the matter here on the floor before taking this giant step into a new sociogovernmental order.

It will be a totally new system that we are giving ourselves. We should make

no shallow-minded mistake about that. I trust that proponents do not have the misimpression that their denying jury trials under this bill will constitute the full extent to which this particular invasion of fundamental freedoms will be carried. They should realize, if they are itellectually honest about it, that they are setting a precedent for more similar things to come. They should realize that, on this subject of the right to trial by jury, we now stand at a crossroads. We cannot go in two directions at once, so the path we choose now will determine our course for the future. We must either choose a future of trial by jury or we must embark upon a system of government by injunction. The choice is a plain one and the probable consequences should not be clouded in legislative gobbledygook. This will only confuse the issue. The American people should be told the facts of the matter and should be warned of the consequences this bill may bring them. Then, if this is what the people want—what they really want—the proponents should have their way. But, as long as I and my colleagues remain convinced that the public does not yet understand what this bill is all about, we intend to see to it that proponents do not have their way. Furthermore, let me make it clear that our efforts will not stop with the final passage or the final defeat of this bill. It is our feeling that the American public has a continuing and a constant need for protection from proposals such as the ones found in H.R. 7152. If they are made law, we shall continue to wage war on them; we shall continue in our efforts to expose them; we shall do all in our power to undo those who persist in efforts such as this to bring havoc to our basic American freedoms of privacy, property and free enterprise. The inclusion in this bill of so un-American a provision as the jury trial compromise will make it all the easier to round up support against this bill and against those who seek to use it as a blackjack over the heads of our people. Our citizenry has not yet awakened for the full import of this bill, but one day a majority of our people will become educated to the truth of this matter.

Fortunately for proponents, the public is still in the dark on many of these issues. But, eventually, they will prove themselves to be worthy of their democratic traditions by educating themselves to the booby traps and pitfalls which are hidden in these 56 pages. When that day comes, woe be to those who have allowed themselves to be stampeded blindly into supporting this bill lock, stock, and barrel.

Under these circumstances it is to the advantage of the proponents to keep the public in the dark as to the fine points of this bill. The press plays a helping hand in this regard by telling mostly one side of the story and by printing very little of the substantive arguments made by the bill's opponents. It goes without saying that this effort to suppress the truth about these proposals is closely linked to the recent efforts to find a means of railroading this bill through the Senate. Each is calculated to get the bill through before the public has an opportunity to voice its disapproval.

Frankly, Mr. President, on first impulse it was a bit of a mystery to this Senator as to exactly why there was such a rush to get this proposed legislation through the Senate. Why this hectic scuffling to get the bill quickly past the Senate even at the expense of committee hearings?

The simple answer is that any uncompromising proponent of this bill must get it through the Senate before he is forced to face the fact that the majority of his constituents are opposed to it—or would be if they knew what was in the proposed legislation. Until recently, proponents were very comfortable in their support for this sort of legislation; but the past few weeks have seen a decided trend against this particular proposal, and now many Senators are somewhat less comfortable than they were previously in their role as proponents of H.R. 7152. They would like to see the bill disposed of before the trend among their own constituents makes it evident that they are supporting a thoroughly unpopular cause. Like many of their counterparts in the House, they want to get this unpleasant job over with and to forget about the whole affair. But when we take time to realize the importance and the far-reaching consequences of this proposed legislation, it is very evident that they will not be able to forget about this affair for many, many years to come, for if there are mistakes and inadequacies and shortcomings in the bill, it will be the proponents who will least be allowed to forget about them. The blame will be on their backs and rightly so.

Indeed, Mr. President, it is very evident that people all over the country are waking to the realization that this public accommodations section could be used to put any legitimate operator of any legitimate business at the mercy of any small group who might seek to destroy his business by driving away his regularly established customers, and his regularly established clientele which he may have built up over a long number of years, simply because a group of demonstrators might desire to put this man out of business. Then when they had succeeded in their intention and their purpose of driving away his regular customers, they would desert him. His business would be destroyed, it would be gone, and he might never be able to rebuild it in the manner in which he had operated it for the convenience of the public which he had previously served. This is only one of the five titles in which the defendant could not even rely on trial by jury to protect his basic rights.

Besides this, the provision on fair employment practices will, in this Senator's opinion, go a long way toward destroying our system of free enterprise in America. The average businessman has a hard enough time trying to build up goodwill and making a living for himself and his employees and pay his taxes without additional Government interference. We might as well have socialism in this country, if we pass a bill which permits any government, whether Federal, State, or local, the power to go into a man's business and tell him whom he can employ, whom he can fire, whom he can promote and then sends him to jail for a month without benefit of trial by jury.

I am sure that, if this proposed legislation becomes law with these many obnoxious sections in it, many businesses will be forced to close because of it. The administrative and courtroom tyranny will be too much to bear.

Still, this is not the most tragic part of it; the greater wrong is that, in the process, the whole pattern of American rights and freedoms, both substantive and procedural, will be permanently damaged. Senators should realize that they are treading on very dangerous ground when they talk about a public accommodations section of a civil rights bill which would give to the Federal Government—with its strong arm and its might and power to enforce the provision without even resorting to trial by jury—the power to step into a man's business when, under no stretch of the imagination, that business could be considered to be directly engaged in interstate commerce.

Yet, under the broad, ambiguous wording of this bill, virtually every business will be considered within the scope of title II. If it is not there now, the courts will waste little time in putting it there. The Supreme Court Justices will classify virtually all businesses as being covered by the bill because, like so many of the proponents of this bill, they are interested in legislating social equality to this land. But I repeat, Mr. President, no new Federal law can legislate social, intellectual, or cultural equality. This is a matter that only the people themselves—in our churches, civic clubs, schools, libraries, public meeting places—can find a satisfactory answer.

Two titles of this proposed legislation, H.R. 7152, Title II: Injunctive Relief Against Discrimination in Places of Public Accommodations, and Title VII: Equal Employment Opportunities, concern me greatly, because in them I find discrimination against the private property rights of all people, including colored as well as white. In combination with the jury trial provisions to which they will be subject, these provisions will bring tyranny to the American public.

We must clearly understand that there can be no real distinction between property rights, procedural rights, and human rights. There are no rights but human rights, and what are spoken of as property rights are only the human rights of individuals to property and to privacy on that property. Certainly the Bill of Rights of the U.S. Constitution recognizes no distinction between property rights and other human rights. The ban against unreasonable searches and seizures, for example, covers persons, houses, papers, and effects without differentiation.

The Founding Fathers realized what some present-day politicians seem to have forgotten: A man without property rights—without the right to the product of his labor and without the procedural rights by which to protect himself—is not a free man. Unless people can feel

secure in their abilities to own fully the fruits of their labor and to protect themselves from tyranny, there is little incentive to save to expand the fund of capital—the tools and equipment for production and for better living. So let us not confuse constitutional rights with the creation of special privileges of various sorts, at the expense of our substantive rights of privacy and property, and at the expense of our procedural rights to trial by jury.

I would like to briefly discuss the so-called human rights that are represented as superior to property rights. By these, I mean the right to a job, the right to a standard of living, the right to be served by a certain person in a certain place, the right to deprive a fellow citizen of his constitutional right to trial by jury in criminal prosecutions.

Those who wrote our Constitution would have been astonished to hear these things spoken of as constitutional rights. They are not immunities from governmental compulsion; on the contrary, they are demands for new forms of governmental compulsion. They are not claims to the product of one's own labor; they are, in some, if not in most cases, claims to the product of other people's labor. They are claims which challenge both the substantive and the procedural rights of all citizens.

As I have counseled in previous speeches before this great body, we need to be very mindful of some basic and fundamental definitions if in the end we are to work justice for all the American people. We must realize that there is a basic and everlasting difference between publicly owned and operated facilities and the Government's duty thereunder, and privately owned and operated facilities. The mere fact that the latter have been called "public accommodations" in no way makes them public facilities. Instead, they remain private in nature and should always be treated as such by our laws. To define such property as "public" in its basic aspects is tantamount to erasing forever the definition of "private property" itself.

There is also, in this Senator's opinion and in the opinion of most Americans, a very fundamental difference between rights and conveniences. The fact that the proposals before us attempt to equate the two does not change the fact that rights and conveniences are not and should not be even remotely equal in their treatment under the law—especially when the granting of such a convenience results in damage or destruction of someone else's rights.

Certainly, I could list at great length the constitutional rights which belong to the people of this country. There is the right to trial by jury. There is the right to freedom of speech. There is the right against improper search and seizure. There is a right to due process of law. And so on and so forth. These things, Mr. President, are not mere conveniences; they belong to a select classification known as constitutional rights.

But the privilege of stopping at a certain hotel or theater or restaurant, even though understandably important to people, is quite another thing. The guest has no direct interest in these privately owned facilities. While the Government has the unquestioned authority and duty to enforce the protection of constitutional rights, the Government has no duty with respect to such properties, other than to protect the owner's exclusive title. In this area, every so-called right conferred upon so-called minority groups is by the same token a deprivation of the ancient rights of others.

The practical question we face in connection with the amendment is whether one man's desire for a speedy decision of the issue should be allowed to deny his legal adversary the fundamental right to trial by jury in criminal prosecutions.

Proponents suggest that the element of expediency weighs very heavily in the balance of justice. They suggest, therefore, that the constitutional terminology which says that "all criminal prosecutions shall be tried by jury" be read very narrowly. They suggest that we interpret criminal contempt proceedings as being outside the meaning of criminal prosecutions. In that case, a defendant up for criminal contempt would not be due a jury trial, for his case would not involve a criminal prosecution.

Of course, if the American public understood what this line of reasoning could lead us to, they would rise up in great numbers to protest this sort of hoax. They would rise up against those who seek to pervert the terms of our Constitution by extreme interpretations. This reaction would come not only among the people of the Southern States but among all peoples from all sections of this country.

Certainly, my people feel very strongly that these proposals which seek to abridge their rights to trial by jury were not born from the pages of the Constitution. They object violently to this imposition on their freedoms.

Mr. President, as an indication of what the people of my State think about the manner in which their constitutional right to trial by jury is being trampled on, I should like to quote briefly from two excellent editorials from two of our leading newspapers, the New Orleans Times Picayune and the Shreveport Times.

The editorial from the Times-Picayune reads as follows:

JURY TRIAL IN RIGHTS CASES

As floor manager for the civil rights bill, Senator HUBERT HUMPHREY says he is willing to go part way with southern demands for jury trials in criminal contempt proceedings. He would extend the jury trial right to all sections of the bill authorizing injunctions to prevent discrimination.

The wrong with the Humphrey concession is that it does not go far enough. Right to jury trial in criminal prosecutions is guaranteed, and double guaranteed, in clear language by the Constitution. It is less a civil rights bill matter than a basic legal safeguard in our system of justice for all individuals. Senator HUMPHREY would do better if he were to go all the way by advocating the Talmadge amendment which asserts the jury trial right generally rather than to try to shape that right to suit the political needs of the hour.

Contempt in the presence of a judge is excluded from the jury trial proviso in the Talmadge bill. Obviously a court cannot comply with another provision of the Constitution requiring a fair trial if it cannot compel order and respect by instantly available means. Moreover, summary action in such cases may not precisely fit the "criminal prosecution" the Constitution makers described provided heavy penalties are not involved.

The right to jury trial for those accused in criminal proceedings is stated not once but twice without qualification or equivocation in the Constitution. Article III says "The trial of all crimes except in case of impeachment shall be by jury." In the Bill of Rights, article VI says: "In all criminal prosecutions, the accused shall enjoy the right of speedy and public trial by an impartial jury."

The U.S. Supreme Court ruled 2 weeks ago in a 5-to-4 decision that former Gov. Ross Barnett and Gov. Paul B. Johnson, Jr., of Mississippi were not entitled as a matter of right to a jury trial on the criminal contempt charges growing out of the Meredith case. That was a close decision in which the majority supported its findings by citing a group of other decisions, involving mostly minor or petty cases.

In dissenting with three other members of the Court from the majority, Justice Black averred it was time "to wipe out root and branch the judge-invented, judge-maintained notion that judges can try criminal contempt cases without a jury." While the majority said that "no jury" contempt trials were allowable, it evidently doubted that a majority of the whole Court would agree that heavy penalties after convictions were legal. For it attached a footnote (as if advising the lower courts), saying that "some members of the Court" thought that penalties in judge-tried contempt cases are constitutionally limited to what could be imposed for petty offenses.

Of course, the courts cannot be clogged with jury trials for truly petty cases even when these cases are labeled "criminal." But clearly a contempt case is not "petty" if conviction calls for a substantial jail sentence or a large fine.

American justice contemplates that a person charged with a criminal act of a serious nature shall be judged as to his innocence or guilt by a jury of citizens in the community where the offense was supposedly committed. That right should not be compromised either in the name of more efficient procedures or by a contention that the U.S. Government has any superior right as prosecutor. It seems to us that Mr. HUMPHREY or any other Senator should be glad to defend with clear statutory language an individual right as clearly stated as this is in the Constitution.

Mr. President, the Shreveport Times article is similarly well worth the Senate's attention:

MOCKING THE CONSTITUTION

The jury trial for contempt amendment to the so-called civil rights bill as offered by GOP Senate Leader DIRKSEN, of Illinois, with the Johnson administration seemingly ready to accept it—is merely mockery of the Federal Constitution.

As Senator RUSSELL LONG, of Louisiana, says, it opens the door to "Government by arbitrary [court] powers of injunction."

And, as Senator RICHARD RUSSELL, of Georgia, says, "This amendment puts a price tag on constitutionalism," by providing for jury trial where a judge imposes contempt penalties of more than $300 and more than 30 days in jail, but bars a jury trial if the judge issues what might be called a cutrate sentence of less than $300 and less than 30 days.

In other words, the Dirksen amendment would mean that judges could convict by the thousands or tens of thousands in so-called civil rights contempt cases at the rate of a $300 fine and 30 days in jail per case without permitting the accused the right of jury trial provided in the Federal Constitution.

The Supreme Court already has ruled against jury trial in one particular contempt case—that of Gov. Ross Barnett, of Mississippi. The ruling was a 5-to-4 decision and the outstanding opponent to it was that outstanding liberal, Justice Hugo Black, who said: "It is high time, in my judgment, to wipe out—root and branch—the judge-invented and judge-maintained notion that judges can try criminal contempt cases without a jury. It will be a fine day for the constitutional liberty of individuals in this country if that at last is done."

As the bill stands now before the Senate, no form of jury trial is provided for the accused in any case. The southern bloc has presented an amendment whereby a jury trial would be compulsory, if the defendant called for it, in all cases covered by the bill; another version of this is for jury trials except in the case of contempt actually committed in the presence of the Federal court, meaning in the courtroom itself.

The Dirksen amendment is aimed at a jury trial compromise which the Johnson administration would accept and which presumably would overcome opposition of a number of nonsouthern Senators to the bill in its present form.

The insistence on jury trial in some form comes from both North and South in the Senate, but the northern objectors seem willing to accept the Dirksen compromise even though it literally does, as Senator RUSSELL said: "place a price tag on constitutionalism" and, as Senator LONG stated, directly contradicts both article III and the sixth amendment of the Constitution. As to the price-tag angle, Senator LONG put it this way:

"This [the Dirksen amendment for jury trials where the sentence is not more than 30 days and $300] is like saying that a man accused of robbery is allowed a jury trial only if he is alleged to have stolen more than $300 [proponents of the measure] would like to embark on a scheme of government by injunction which literally millions of people [without recourse to jury trials] could be coerced and harassed by threat of $300 fines and 30-day prison terms.

"In many contempt proceedings the judge is compelled to enact the varied and conflicting roles of lawmaker, injured party, prosecutor, judge, and jury.

"No defendant should be subjected to such circumstances; and no judge should be compelled to act under such circumstances, especially in suits which have been gerrymandered into his court by an Attorney General who wants and needs a friendly verdict."

Mr. HILL. Mr. President, will the Senator from Louisiana yield?

Mr. LONG of Louisiana. I am glad to yield to the Senator from Alabama.

Mr. HILL. With reference to these two articles and the right to a trial by jury in criminal contempt cases, does not the Senator agree with Ronald L. Goldfarb of the Department of Justice who, in his book entitled "The Contempt Power," published by Columbia University Press, makes this statement:

It could well be suggested that most peculiarly, in contempt cases the jury has a valuable role. First, it brings the public's attention and interest to a dispute which is usually an official, governmental one. Public enlightenment, even if only through jury representation, has been characterized as an "indispensable element in the popular vindication of the criminal law." This participation hopefully encourages popular understanding and acceptance of the administration of justice. Second, the jury may serve as an insulation between the alleged offender and the offended party, who is sometimes the judge and sentencer.

This conservative deliberation in an otherwise unlimited, uncontrolled situation allows the jury to function as a wall against possible abuses by governmental powerholders upon individuals. The general public may look with skepticism upon a judicial process which allows one man to be judge, prosecutor, victim, and jury, but as Justice Black aptly pointed out there is inclined to be less false martyrdom where a jury convicts.

Does not the Senator from Louisiana agree with that statement?

Mr. LONG of Louisiana. I certainly agree with that statement. It is apt and succinct and highlights the problem. I thank the Senator for his contribution.

An even more complete and more hard-hitting commentary on the subject appeared in the pages of the one local paper which is speaking up for our continued rights to jury trial. I speak, of course, of the Washington Star. In its issue of May 4 was an article by Mr. David Lawrence which merits study by my colleagues. It begins by asking the question:

What's the jury trial amendment to the civil rights bill all about? On its face it seems to be a question of whether a person who could be put in jail on a charge of contempt of court should have the right to trial by jury. Would a person prefer to have judgment passed on him by a jury of 12 citizens or by just one individual—a judge?

This is not an easy question to answer. For sometimes a jury is not able to understand the fine points of the law and may make a mistake, whereas a judge who is familiar with all the intricacies of the statutes presumably would do a better job—though often some judges seem to be politically minded.

Basically, the whole controversy arises now in connection with civil rights because of a fear that juries in the South may not administer justice as it should be. But the legislation pending in the Senate is designed to cover citizens in all parts of the country and to secure justice for everybody—not just people in one section.

What constitutes "contempt"? It involves disobedience of an order issued by a court or misbehavior inside a courtroom. There seems to be universal acceptance of the idea that any disorder inside a courtroom should be punished by the judge without any jury trial. There is a distinct difference of opinion, however, as to what should be done with respect to disobedience of a court order outside the courtroom.

The issue, as it is being debated in Congress, is a very serious one. It is something that ought to be given many months of deliberation. It strikes at the root of the American system of justice. The Constitution says plainly in three separate provisions:

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

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

3. In suits at common law, where the value in controversy shall exceed $20, the right of trial by jury shall be preserved.

But the courts arbitrarily have tried to define a "crime" in different ways. As recently as last month, in the proceedings for criminal contempt against Gov. Ross Barnett of Mississippi, the Supreme Court by a 5 to 4 vote, decided against the request for a jury trial. Chief Justice Warren and Justices Black, Goldberg, and Douglas dissented. In his opinion, Justice Black wrote:

"I think that this doctrine that a judge has inherent power to make himself prosecutor, judge and jury seriously encroaches upon the constitutional right to trial by jury and should be repudiated."

But, in spite of these views expressed by the "liberal" justices, most of the "liberals" in the Senate will vote instead to repudiate the words of the Constitution.

There is a popular impression that jail sentences are imposed only in the case of "criminal contempt," but actually an individual may go to jail in a "civil contempt" case as well.

Criminal contempt usually results in punishment of the defendant by a fine or imprisonment, in a definite amount and for a definite time. Under the "civil rights" bill passed by the House, the judge would be able to try a criminal contempt case without a jury and impose sentence in certain instances where the fine was to be $300 or less or where the imprisonment is 45 days or less.

But an individual also can be jailed in a civil contempt case. Whether a person is in jail for civil contempt or for criminal contempt, it is just as much a punishment or disgrace. One prominent lawyer wrote to this correspondent the other day:

"It will make little difference to the defendant whether he is in jail on a charge of civil or criminal contempt as long as he is, in fact, in jail. The court can simply leave him there until he complies with its order. Or it can levy a conditional fine which he will have to pay if he does not comply and still be in contempt. Or it can fine him so much a day until he does comply. Or it can do all of these things. These are examples of civil contempt cases where a jury is not available.

"Decisions of American courts make it clear that there is no right to trial by jury in civil contempts. That will continue to be the law until some statute changes it.

"The jury trial amendment, whatever its form may take, is an illusion as long as it is confined to criminal contempt. If the proponents of the bill want to make a concession, the amendment must include both civil and criminal contempt. This, of course, should not include contempts committed in the immediate presence of the court."

So it is evident that neither side is all wrong or all right on this issue and that serious consideration should be given to the whole matter because it involves a precedent of far-reaching importance. It is just one of a number of civil rights measures being rushed through Congress because of political pressures and intimidation by threats of violence or street demonstrations. This is not the proper way to enact legislation dealing with fundamental principles of justice.

Mr. President, let me repeat my assertion that what we have been offered by the leadership is not a compromise in any real sense of the word. What we have instead is a situation in which the South—the whipping boy for this outrageous bill—has been handcuffed to a tree with its back stripped bare in preparation for a good lashing and a good beating. Proponents approach with the bullwhip and generously offer a compromise; they say, "Well, now, Mr. Whipping Boy, if you agree not to yell too loudly for your fundamental constitutional rights and for your freedom from tyranny, we'll graciously reduce the number of lashes we give you from 45 to only 30. It irks us to give away this much of our authority over you; but we are afraid that, if we allow you to yell too long or too loud, you may stir up the interest and the sympathy of the people in the North. You may get them to take too close a look at what is being done to their fundamental freedoms under this bill."

The question I ask is what justification do proponents have under the

Constitution of the United States to give us and our fundamental rights this sort of beating. This is no compromise, Mr. President; it is little more than a hoax on the American public, an attempt to give the people of this Nation a false impression that it is the opponents rather than the proponents who are uncompromising in their attitude. Actually it is the proponents who refuse to make a reasonable compromise.

Let me say that, on the question of compromise in the matter of trial by jury, there is only one sane way to act. We must look to what the Constitution says concerning trials by jury. If we fail to do this, we are not compromising the bill but the Constitution instead. This is the one thing which this Nation cannot afford, yet this is precisely what the jury trial provisions in this bill propose to do.

It is at times like this that we should remind ourselves that the most important event in the history of this Nation—and the most fundamental hope for the future of this Nation—was the adoption of our Constitution over 175 years ago.

For it was that Constitution which established the form of government under which we, as a people, have been able to achieve liberty, justice, and progress.

To form a more perfect union, to establish justice, to insure domestic tranquillity, to provide for the common defense, to promote the general welfare and to insure the blessings of liberty to ourselves and our posterity—these were the high aspirations of men who authored the document. They knew enough of human history to fear the mob as well as the king.

They were wise enough to know that no man or set of men could safely be trusted with excessive power. They set out to establish a new system of government under which all men would rule, yet all would obey.

The result of their endeavors—the Constitution—was the greatest compact for freedom known to history. It guaranteed against tyranny by dividing and limiting the powers of government, establishing a representative republic, and by concentrating on the dignity and freedom of the individual rather than the collective needs of society.

Adoption of the Constitution and establishment of the form of government it prescribed were a turning point in recorded history. For the first time, all of the tremendous resources and energies of individual mankind were released, sparking a worldwide revolt against the medieval concept of collectivist economies and feudal subjugation of the individual.

Those who today cry out that, in the name of "progress," the Constitution must be amended or discarded, ignore the fact that the very progress with which they identify themselves would not have been possible without the Constitution. They fail to understand that the Constitution, more than anything else, has been responsible for the tremendous progress to which they claim we must now adjust.

It is wise to remind that our constitutional system which many believe to be outmoded is actually the most modern and progressive form of government ever devised.

Most of the up-to-date remedies proposed as substitutes for that system are, in reality, the same old doctrines which were in force for centuries before the Constitution lit the spark of liberty and progress.

But the greatest threat to our constitutional system comes not from those who attack it directly, but from those who are changing this system little by little and from those of us who fail to speak out against this gradual erosion.

Daniel Webster warned:

> If the Constitution be picked away by piecemeal, it is gone, and gone as effectually as if some military despot had grasped it at once, trampled it beneath his feet and scattered its loose leaves in the wild winds.

Proponents claim that this is a moderate bill, but I suspect that the only logic behind this claim is that the bill establish a system of executive and judicial tyranny in this country "moderately fast."

We all know very well how the forced integration bills treat property rights, and there is nothing moderate or half-hearted about its language on that part. It maps out very clearly indeed the plans to scuttle much of the institution known as private property, and no amount of camouflaging or beating around the bush will change that shocking fact a bit. The more the distinguished Members of the Senate consider this claim, the more they will recognize the truth in it, and the less enthusiasm they will feel for having these bills enacted. As I have said before, I think that many of the cosponsors of these radical proposals would like to withdraw their names from the list of cosponsors, if only they could backtrack to the day on which they loaned their support to the proposals and have the opportunity of making a more educated, more well-considered evaluation of the matter than they were capable of in the heat of the passions that we experienced in early summer.

Many Senators have only recently become aware of the fact that the great majority of the American people are reacting adversely to the prospect of both the practical and the constitutional aspects of forced integration. They are reacting adversely to the dilution of their and their neighbors' property rights, and to the prospect that their right to trial by jury is being squandered away.

After so much emphasis by me and by many other opponents of these bills on the subject of property rights, it might be good to take a brief look into another area, which has not gotten its proper share of attention.

As my distinguished friend, the Senator from Alabama [Mr. HILL] commented so accurately in the 1957 debates on this topic:

> We are fortunate indeed that those who adopted the Constitution and the Bill of Rights embodied in those precious documents their determination to protect trial by jury. They were doubtless aware that memories fade and they sought to avert the necessity of having to fight again and again the same old hard-won battles for individual freedom. And after having heard some of the debate by advocates of the denial of trial by jury, I am constrained to observe how singularly accurate was the awareness on the part of the Founding Fathers that memories do indeed fade. For despite their efforts to secure forever such cherished liberties as the right to trial by jury, here in the Senate in recent days we have found ourselves once again fighting the battle for individual freedom. We have had to fight that battle against those who would seem to regard trial by jury as a thing of another day, another year, another age; as a ragged old relic of bygone years that perhaps has served its purpose well but has no place in the fast-moving, dynamic America.
>
> They are willing, perhaps, to shed a tear at its passing in loving memory of its former greatness in protecting against tyranny. But they could not let affection for tried and true institutions quell the tempest generated by powerful pressures or miguided zeal. Thus they are willing to say to the constitutionally ordained institution of trial by jury: "Up to a point you did your job well, and we are grateful. * * * But when you do not serve our purposes you must get thee off to other realms where people still cherish this ancient bastion of human liberty, and so we bid you a fond farewell."

Mr. President, this is not what the American people want and if I have anything to say about the final outcome of these debates it is certainly not what they will have.

Mr. President, I should like at this point to quote a brief excerpt from the speech of a former Member of this body, a person who at the time he spoke was without question one of the foremost of the Senate's proponents of racial integration but who at the same time spoke out against a bill which would have undermined the right of Americans to a trial by jury. Only after I have read his wise and well-considered comments will I indicate who it was who spoke them.

The Senator began by saying:

> I speak not as a lawyer, but as one interested in seeing to it that there is adequate protection for the voting rights of all citizens. I have followed in detail and with consuming interest the arguments of my colleagues in this body who are trained in the law. Moreover, I have consulted privately with a number of lawyers for whose competence I have the greatest respect, including several who have been notably identified with the fight for the extension of civil liberties. Each of them has given close study to this legislation and pending amendments. All of my studies and inquiries lead me to the conclusion that there is not a serious legal or constitutional problem raised by requiring a jury trial in criminal contempt cases. * * * What we must decide here is whether or not the requirement of a jury trial in criminal contempt cases poses a real obstacle to the guarantee of voting privileges. * * * I do not believe it does.

Mr. President, I should like to point out that one of the men who objected most strongly to the removal of trial by jury in civil rights cases was none other than John F. Kennedy. But now many of his disciples and closest friends seem to feel that legal edict by injunction is wiser than decisionmaking by juries. Once more it seems to me that the old adage that "the end justifies the means" is being brought into play.

This, to me, is a dangerous trend in a democracy and one that the American people will resent to the utmost. To

abandon the institution of trial by jury as suggested by this bill would mean that we have entered an era of "government by injunction."

It is something that the labor union successfully fought until they got relief from Congress in the Norris-La Guardia anti-injunction law. But this is a special privilege granted only to individuals involved in labor disputes. Now it is intended to punish without jury trial any citizens who become involved in any way in disputes over "civil rights."

This, of course, would result because the suits in "civil rights" cases would be prosecuted in the name of the "United States," and such a device automatically bars any jury trial.

Mr. President, emotionalism has brought a state of tension that is not going to be cured by any provision of law denying jury trials merely because the institution has been or might be abused.

While contempt committed inside a courtroom has always been punishable by a judge without a jury trial, and attempts to violate directly the terms of an injunction are ordinarily within the power of a judge alone to punish, the real issue is whether the judge's injunctions can be stretched to cover crimes committed outside the courtroom itself that normally are tried by juries.

It is my opinion that it is far better for Congress to err on the side of caution and to continue to repose its faith and trust in the people of this country, rather than to assume that they cannot be trusted in the jury box.

To apply such faith is to follow the path of reason as against emotionalism, for the racial questions we face today are far from settled; and those persons who think that, by the order of any court, the people of the South or of any other section will approve an edict which they honestly believe is not constitutional just do not understand the workings of human nature.

The crusade, for instance, against the 18th amendment on prohibition, and the willful disregard of the provisions of the law by tens of millions of Americans, showed clearly that a reform which is not sold to the people in advance by thorough understanding is not accepted by them simply because it has solemnly been proclaimed as the "law of the land."

It is a condition rather than a theory which confronts the Nation in dealing with the racial question which now has begun to present problems in all parts of the country, and not just in the South. Violence will not solve it, nor will coercion by broad injunctive orders of the courts. An adjusted society has to come voluntarily out of the processes of reason.

But as concerns the matter of trial by jury under the forced integration bill, all semblance of reason seems to have disappeared. Only yesterday I saw Martin Luther King and James Farmer on national television, each saying in effect that there will be a continuance of demonstrations whether or not the bill passes. Immediately on its passage the mob will take to the streets to pressure for the enforcement. The professional integrationists will not be satisfied to leave the matter to the courts. They will continue to take the law into their own hands as long as we sit idly by and allow them to do so. They will continue to terrorize, to harass, to coerce, and to endanger the lives of the great majority of our citizens.

The activities of these people, encouraged as they are by the press and by the proponents of this bill, are plainly un-American. This Nation has never had the tradition of mobocracy. In fact, we have looked down on nations which have allowed themselves to be ruled and coerced by perennial street demonstrations whose demands will not be and cannot be satisfied.

It has become apparent to this Senator that a number of his colleagues are paying undue homage to the philosophy being expounded by the radical leaders of the forced integration movement. Many are doing so for political reasons or in fear of political reprisal from racial pressure groups. For instance, I have a clipping here from the Miami Herald dated Monday, February 17, which is entitled "CORE Aid Warns Senators." It issues a political warning and then goes on to say that, even the passage of the bill will not affect the continuance of demonstrations. I quote:

WASHINGTON.—A Negro leader said Sunday that direct action may be used against any Senator who fails to try to choke off a southern filibuster against the civil rights bill.

"The exact nature of the direct action has not been determined," said James Farmer, national director of the Congress of Racial Equality.

Farmer said he did not expect another mass march on Washington but action could take the form of protest marches in the hometown of any Senator who does not vote for cloture. He also said his group planned to have even more lobbyists on hand for the Senate civil rights debate than it has in the House.

The bill, banning discrimination in voting, employment, education, public accommodations, and use of Federal funds, was approved overwhelmingly by the House last week. The Senate is expected to take it up late this month or early next. A southern filibuster is certain.

Farmer said that passage of a strong civil rights bill would not mean any lessening in Negro demonstrations.

"We will have to be in the streets demanding its enforcement," he said. "Laws do not enforce themselves. We will have to go from restaurant to restaurant in Mississippi and Alabama."

Farmer said President Johnson had not asked the help of his group but as American citizens we have the responsibility to provide help.

What Mr. Farmer is saying is that he intends to take the law into his own hands. This is what he means by "providing help." He and his kind are not willing to let the law prevail and the courts handle the law. Instead they seek to place themselves above the courts and above the law. This is the type of philosophy numerous proponents are embracing.

Of course, Mr. President, there is no secret that there is a great deal of political heat and pressure behind this forced integration bill.

Votes have been promised at election time to those who toe the line on this proposal. But, Mr. President, there are some things which should rank above the giving or receiving of a few votes on election day.

It would be well to remember that the constitutional rights of the very minorities, whose tendency toward mob violence threatens to panic the Congress into taking this unwarranted step toward the destruction of our free-enterprise system, could eventually be circumscribed and undermined by such a law.

All of us who are willing to observe what is going on around us have at least some understanding of the pressures that have been brought to bear force on this unwise action. I know that pledges have been made in high places that this bill will be rammed through this House in much the same form as it came to us from the other House.

The consideration for these promises will of course come in the form of votes. Now, Mr. President, I have many times been a candidate for public office and I can easily sympathize with the anguish in the souls of those who are up for reelection in the near future who think that their success at the polls will depend on how successful they have been in railroading this bill through the Senate.

However, Mr. President, I have good news and good tidings for my colleagues. I take pleasure in offering them comfort and assurance with the assertion that the vast majority of their constituents are waking up to the dangers presented by this bill and will not hold them to their pledge to support this bill lock, stock, and barrel.

These people back home in the constituencies of those Senators who are supporting this bill are saying both to themselves and to their distinguished representatives that we should all slow down a bit and do some second-looking at the provisions that are found in H.R. 7152. They would not favor any action on the part of the Congress which would either directly undermine their freedoms of privacy and property or which would serve as a precedent for any such thing in the future.

Such ill-considered pressure as was brought to bear by many people who acted before they had any real appreciation of the merits and demerits of this particular bill has been disappearing in the last few weeks. Oh, I know, Mr. President, that the more extremist groups are still making as much noise as ever, but I think it is obvious that the great masses of American people are no longer interested in the all-or-nothing procedure by which this bill has been denied hearings and generally railroaded through our legislative halls.

This trend which is taking place in the country today is excellent proof to this Senator that this bill has not been able to stand the light of careful examination. Many of the bill's supporters, while maintaining their interest in reasonable measure to help the Negro improve himself, have become disillusioned with the particular and ruthless manner in which this bill seeks to accomplish those ends. The provisions concerning jury trials demonstrate this as well as any. At this point, I should like to quote a very interesting article telling of

such a change of heart by one of the bill's original supporters in the other House. It is not about the average man on the street. It is about a Congressman. But it is not about just any Congressman. It is about a Member of the House Committee on the Judiciary who was one of the official authors of the civil rights bill but who had the honesty, the fortitude, the intelligence and the patriotism to reverse his stand once he had seen through the facade of the bill and recognized its evils. The editorial reads:

[From the Jackson (Miss.) Clarion-Ledger]

AUTHOR ADMITS CIVIL RIGHTS BILL VICIOUS

(By T. M. Hederman, Jr.)

Although the House of Representatives overwhelmingly passed the administration's tough "civil rights" bill, it is probable that not 1 man in 100 really understands its meaning. Northern editors have not explained this legislation to their readers, nor "liberal" Congressmen to their constituents, so how can the editors and Congressmen explain it when not all understand it themselves?

This pertinent question is raised by the Montgomery (Ala.) Advertiser in commenting on the belated admission by Congressman FRANK CHELF, a Kentucky "liberal" Democrat. His is an almost unbelievable story, which we quote herewith:

As a member of the House Judiciary Committee, Representative CHELF is officially one of the authors of the civil rights bill. He signed the committee report recommending that it be passed.

But last week CHELF uttered these astonishing words: "I'm against everything in this bill in its present form. It's an awful bill. I hadn't realized how bad it is."

Representative CHELF hadn't even read the bill when he signed it. He said he did it as a favor to the late President Kennedy. The bill is loaded with fangs but CHELF, a senior member of the committee, signed up in ignorance—as a favor.

CHELF was man enough to admit his error. He told the House about the good relations between white and colored people in his hometown and contrasted that with civil rights leaders who "have either forgotten or unfortunately have never been told that persons of good breeding, first, never seek invitations and, second, they do not go where they are not invited and, third, do not remain where they are not wanted."

Of the far-reaching bill he signed, Representative CHELF said: "It will, in my opinion, extend Federal domination over business, industry, and over individual citizens in a manner never before attempted since the Constitution of the United States was adopted.

"It will destroy the constitutional checks and balances between Washington and the States."

Since the apologetic Kentucky "liberal" was admittedly in the dark, it seems proper to ask how many other Congressmen shouted "Yes," to passage of the bill without any real knowledge of its pitfalls and injustices.

The U.S. Senate, which has often proved more responsible and intelligent than the House majority in major issues, faces an opportunity for great public service by watering down this infamous legislation or, better still, by killing its patently unconstitutional and un-American provisions.

Hitler, Stalin, or Khrushchev were never holders of more naked power than would be given the Federal Government if the legislation now pending in the Senate is allowed to become law.

This article refers to Congressman FRANK CHELF, of Kentucky who signed the House committee's majority report recommending passage of the bill. But he has since said, after having had time to study the bill in detail:

I am against everything in this bill in its present form. It is an awful bill. I hadn't realized how bad it is.

He said further:

It will, in my opinion, extend Federal domination over business, industry, and individual citizens in a manner never before attempted since the Constitution of the United States was adopted. It will destroy the constitutional checks and balances between Washington and the States.

In this Senator's estimation, this is the mood literally of tens of millions of people in this country today. Mr. President, anyone who has studied this bill in detail and who has attempted to understand and to evaluate its farflung ramifications and overtones is likely to react just as Congressman CHELF did. He is likely either to change his position completely on the bill or at least to change the tone of his feelings on the matter. In other words, he will want to see the bill either defeated or substantially amended.

Or, if this appears more than the average proponent could risk under the political circumstances, at least he might speak out against some of the extremism which has been taking over the integrationist movement. One of our colleagues who was and who still is a stanch proponent of this bill has had the courage to speak out in criticism of racial extremists. I should like to applaud his courageous action by reading for the RECORD a brief editorial from the Washington Star of April 15 concerning his remarks on racial violence. It is entitled "Blunt Warning" and reads as follows:

Senator LAUSCHE, Democrat, of Ohio, is not a racist by any stretch of anyone's imagination. On the contrary, he supports the efforts by Negroes to achieve their rights "within the law." But he is a plain-spoken man, and his comments on the recent "demonstrations" in Cleveland should be heeded.

Before coming to the Senate, Mr. LAUSCHE had been mayor of Cleveland and Governor of his State. He knows Ohio and its people. Thus, there is reason to believe him when he says that "foreign elements" having no roots in the city have been at work in Cleveland, inciting trouble for the sake of trouble. In his recent remarks in the Senate, however, he was not addressing himself to these people. That would be futile. Instead, he was warning of the grave consequences which will result from following this kind of leadership. He put it in these words:

"The achievement of civil rights must come within the processes of law and not by trespass, riot, and flagrant defiance of the rights of others.

"Candidly, I state that the cause of the Negroes in Cleveland and in the Nation has been markedly harmed by the recently practiced violence and threats of violence.

"The organization of rifle clubs throughout the country and in Cleveland, with the avowed purpose of using the rifles and the trained riflemen to settle racial differences, is shockingly and indefensibly wrong. In fact, it is criminal in spirit and purpose. For the good of all the people of our democracy, those of us who occupy public office should and must be firm in the performance of our obligations that there shall be no surrender of government to trespassers, rioters, and insurrectionists."

Perhaps some civil rights leaders will scoff at this. But they must be blind indeed if they do not see that Senator LAUSCHE's remarks are merely an echo of a rising tide of resentment in this country against the extremists and their tactics. Furthermore, it is inevitable that this resentment, given time, will gravely damage the cause of civil rights. Those who are responsible for the abuses must know it.

Obviously, the Senator from Ohio [Mr. LAUSCHE] sees grave dangers in the sort of militancy and mob tactics that have built up behind this bill and is courageous enough and intellectually honest enough to speak his mind on the matter. I am sure that the Senator from Ohio realizes that the actions of the extremists do not represent the will or the mood of the vast majority of American Negroes, who are good and patient people. But, while the extremists are allowed to "rule the roost," the average Negro will never be heard. He will be called an "Uncle Tom" and a traitor to his people, when actually it is the militant professional integrationist who is the traitor to the Negro race. He is the one who is stirring up the sort of resentment, hard feeling and distrust which can do nothing but bring great harm to the American Negro.

At present the nationwide ferment that threatens the safety of our country is left too largely in the hands of a few rival national Negro organizations which are trying to outdo each other's demands, with the result that moderate Negroes are crushed underfoot and whites are developing attitudes of hardness and resentment that could make things worse for the Negro than they have been in the past 20 years.

Such vague and impossible demands as Martin Luther King's "all, here and now" are bound to nothing but disillusion and violence.

Yet these radicals and extremists are prepared to go on with their violence because they feel that in no other way can they obtain their special privileges and their forced integration.

Frank van der Linden put his finger on the vital point when he reported in July of last year that:

Five of the Nation's top Negro leaders in the civil rights movement agree on one thing: The American public would vote down their cause by a 2 to 1 margin if a general referendum were held today.

"I would not be prepared at the moment to put our cause to a general referendum in this country," said James Farmer, head of the Congress of Racial Equality (CORE) in a special telecast for 72 educational TV stations. "I don't think we'd win it," he added.

Dr. Kenneth Clark, psychology professor at City College of New York and moderator of the program, went a step further, saying "I think I could almost predict what the figure would be: 2 to 1 against you." That brought quick assent from Farmer.

The hour-long telecast also brought the admission from the Negro leaders that they will not be satisfied with equal rights, but instead want special privileges. Also on the program were Roy Wilkins, executive secretary of the NAACP, Whitney Young, executive director of the National Urban League, the Reverend Martin Luther King, of the Southern Christian Leadership Conference, and James Forman, of the Student Nonviolent Coordinating Committee.

Young admitted he is pushing for "indemnification, reparation" in the civil rights field.

Young added that the Negro must "call not just for equal schools, but better schools and better teachers, and provisions for housing, and conscious recruiting at the level of employment. This has to be done in order to get rid of what I see too much of, and that is the feeling of despair and hopelessness."

Typical of the comments on this approach by Mr. Young, even by many pro-Negro, integrationist newspapers, was the following reaction:

Disguised in a new costume, the old enemy racial discrimination is suddenly being clasped to the bosoms of people who have devoted their careers to fighting it. The spectacle is deeply distressing, and suggests a philosophic carelessness of the most dangerous sort.

The respected and experienced executive director of the National Urban League, Whitney M. Young, Jr., declared last weekend that, in compensation for a century of deprivation, the Nation now owes Negroes "better schools, better teachers, better social workers." Better than whose? Better, Mr. Young replied, than the suburbs. If Mr. Young had said that the education of slum children, regardless of color, is more expensive and more difficult than the education of children, regardless of color, in middle-class suburbs, then he would have been quite correct. But that was not what he said. He has entangled himself in the same net already occupied by the people who argue, equally indefensibly, that white children deserve better schools. As we understand it, until this point the Urban League was attempting to abolish invidious racial discrimination in the quality of education. That position alone represents sound public policy.

Another variation on the same treacherous idea has been proposed by a group of Washington teachers in the deliberate reassignment of white children to schools that residential patterns have made almost wholly Negro. Aside from the manifest practical objections, the recommendation violates the principle that racial considerations remain irrelevant to classroom assignments. Still another viariation is the racial employment quota, the goal of some of the current demonstrations in New York City. The demonstrators apparently have not realized that the quota advancing Negroes today may impede them tomorrow.

Each of these examples is repugnant because each insists upon classifying people first of all by race, and implies that color alone means more than education, wealth, wit, or skill. Throughout our history, that pernicious doctrine has corrupted every good intention that it has touched.

So, Mr. President, I think it should be obvious that we are not dealing with the average Negro citizen who wants only to gain his place in society through honest effort and through an attitude of cooperation with his white neighbor. We are dealing instead with Negro leaders who have no real respect for the law, for our system of law enforcement, or for our American institutions of privacy, property, and free enterprise.

PRESIDENT JOHNSON'S REMARKS TO AMBASSADORS OF THE ALLIANCE FOR PROGRESS PARTICIPATING NATIONS

Mr. AIKEN. Mr. President, earlier this evening at a ceremony at the White House, an agreement was signed with 12 Latin American countries looking toward the carrying out of 13 development programs under the Alliance for Progress program.

At this ceremony, President Johnson made a short constructive speech, and I ask unanimous consent to have it printed in the RECORD.

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

REMARKS OF THE PRESIDENT TO THE AMBASSADORS OF THE ALLIANCE FOR PROGRESS PARTICIPATING NATIONS, MAY 11, 1964

I have just completed an informal review of Alliance for Progress problems with all the Ambassadors, and the distinguished head of CIAP, Carlo Sanz de Santamaria. This kind of exchange strengthens our common aim and our combined ability to advance the Alliance. I learned much that will be helpful in the days ahead. I look forward to more such meetings.

On November 18, President Kennedy spoke once again to the hemisphere. He quoted Robert Frost, saying "nothing is true except as a man or men adhere to it—to live it, to spend themselves on it, to die for it." Within a week, his life, consecrated to our cause, had been tragically ended.

It is for us, the living, to ensure 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. They will help eliminate malaria in Brazil and train farmers in Bolivia. They will establish 3 rural elecrtic 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. 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.

We renew today, as we do in the acts of every day, our dedication to the principles of development, of diversity, and of democracy.

Franklin Roosevelt, a man whom I served and loved, a man whose precepts I follow, said: "Through democratic processes we can strive to achieve for the Americas the highest possible living standards for all our people."

We will continue to pursue that 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 Fund 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.

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."

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 rewarding 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 work 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 world of the prophet "Mount up on the wings of eagles, run and not grow weary." We have reached a turning point.

The foundations have been laid. The time calls for more action not more words. In the next year there will be twice as much action, twice as much accomplished, as in any previous year. I can now say with confidence that our Alliance for Progress will succeed. And the success of our effort—of your countries and mine—will indicate the vision of those who set us on this path.

Mr. LONG of Louisiana. Mr. President, I suggest the absence of a quorum.

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

The Chief Clerk proceeded to call the roll.

Mr. MORTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

Mr. LONG of Louisiana. Mr. President, I object.

Mr. SMATHERS. Mr. President, I object.

The ACTING PRESIDENT pro tempore. Objection is heard.

The rollcall was resumed, and the following Senators answered to their names:

[No. 213 Leg.]

Aiken	Inouye	Mundt
Allott	Jackson	Muskie
Anderson	Keating	Nelson
Bayh	Kennedy	Neuberger
Boggs	Long, Mo.	Pastore
Burdick	Long, La.	Pearson
Case	McGee	Pell
Clark	McGovern	Prouty
Dirksen	McIntyre	Proxmire
Dodd	McNamara	Ribicoff
Douglas	Metcalf	Smathers
Eastland	Monroney	Symington
Fong	Morse	Walters
Hill	Morton	Yarborough
Humphrey	Moss	

The PRESIDING OFFICER (Mr. PROXMIRE in the chair). A quorum is not present.

Mr. HUMPHREY. Mr. President, I move that the Sergeant at Arms be directed to request the attendance of absent Senators.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Minnesota.

The motion was agreed to.

The PRESIDING OFFICER. The Sergeant at Arms will execute the order of the Senate.

Mr. MORSE. Mr. President, I move that the Sergeant at Arms be directed to compel the attendance of absent Senators.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Oregon.

Mr. SMATHERS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. SMATHERS. Is the motion debatable?

The PRESIDING OFFICER. No debate is in order. The question is on agreeing to the motion of the senior Senator from Oregon. [Putting the question.]

Mr. DOUGLAS. I ask for a division.

On a division, the motion was rejected.

The PRESIDING OFFICER. The Sergeant at Arms will continue to execute the order of the Senate.

After a little delay, Mr. BENNETT, Mr. COOPER, Mr. DOMINICK, Mr. JORDAN of Idaho, Mr. MCCARTHY, Mr. SCOTT, and Mr. YOUNG of Ohio entered the Chamber and answered to their names.

The PRESIDING OFFICER. A quorum is present.

CIVIL RIGHTS ACT OF 1963

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

Mr. SMATHERS. Mr. President, tonight in Washington there was held a physical fitness banquet, which I was privileged to address at 8 p.m. The able Senator from Oregon addressed the meeting this morning. I believe we are demonstrating in the Senate that there are at least 51 physically fit Senators who are willing to come out at 11:45 p.m.—not all of them stayed—in order to hear and learn more about why we should have, in the civil rights bill, a provision to protect a man by giving him the right of trial by jury.

Mr. President, I am frankly pleased that we have been able to demonstrate that a majority of Senators are physically fit, and, I am certain, mentally alert. I am certain also that after they have had an opportunity to listen to and turn over in their minds the pros and cons of why the right of trial by jury should be provided, as suggested by the Talmadge-Ervin amendment, they will come to the same conclusion about it at which the Senator from Louisiana [Mr. LONG] and I have arrived.

I should like, tonight, not to argue for the adoption or defeat of any particular amendment, but to argue most emphatically for the importance of preserving the right of trial by jury, which is granted to every citizen of the United States in the Constitution, and in the history of the development of free government.

Question is, Do we want to take away right of jury trial?

The question which every Senator must ask himself when the time comes to vote upon this measure is whether he wants to take away the right of jury trial from American citizens, not whether he wants to give it in circumstances where it does not now exist.

Let me repeat that, Mr. President,

The question is, Do Members of the Senate want to take away the right of trial by jury which now exists in cases which are within the purview of the measure before us?

Trial by jury has been a fundamental shield of liberty against the power of government and of those who sit in the seats of authority since long before the Constitution was drafted. This was the concept of the framers of our government when they drafted the Constitution and wrote into article III, section 2, clause 3, the guarantee that "the trial of all crimes, except in cases of impeachment, shall be by jury."

Mr. President, at this late hour of the evening, some of my friends, who are well aware of the fact that there is much to be said about trial by jury, have, in a moment of good humor, walked off with the manuscript of my speech.

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

Mr. SMATHERS. Mr. President, without prejudice to my right to the floor or having my ensuing remarks counted as a second speech, I yield to the Senator from Minnesota.

Mr. HUMPHREY. I wish to say in all good-fellowship to the able Senator from Florida that a short time ago I was looking through some papers on my desk, and through some miracle that was nonscientific, and I think slightly subjective and possibly a bit insidious—and I could use other adjectives—these papers were mixed up in correspondence. I found letters which were against the bill. The pile was rather thick, and it gave me a sense of shock. Then I looked inside and saw these documents.

The Senator from Minnesota can state under oath that he did not remove these documents from the desk of the Senator from Florida. I have not the slightest idea how they got into my folder, except to say that I return them untouched, unsullied, unread, and unreliable.

Mr. SMATHERS. I thank the able Senator. I would insist that were he indicted for having moved these papers from my desk, he should have a trial by jury. I should think it would be only right and fair that we stand in judgment.

Mr. HUMPHREY. Mr. President, will the Senator further yield?

Mr. SMATHERS. No presiding officer should have the right or power to say that the Senator from Minnesota should be put in jail for 30 days or fined $100. I would want the Senator from Minnesota to have his constitutional right.

Mr. HUMPHREY. In light of some of the antics I have witnessed this evening,

I am not at all sure I would want to be judged by my peers. I should prefer to have a judge take the case under consideration.

I thank the Senator from Florida for his good humor; and I thank Senators for their alacrity in response to the quorum call.

Mr. SMATHERS. I do not know that my speech will be any better for having found my notes. Anyway, I am delighted that they have been returned. My only regret is that the able Senator from Minnesota did not have an opportunity to read them.

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

Mr. SMATHERS. I yield.

Mr. HUMPHREY. I understand that these papers found their way to my desk at a time when the Senator from Florida or one of his colleagues submitted an amendment. Later, inadvertently, the papers "walked" from his desk past the desk of the Official Reporters and the staff officers and found their way up to the marble facade or barricade, and then for some peculiar reason found their way around until they were over here on this desk, and then on another desk. Now the Senator has them in good stead, in good shape, and unread.

Mr. SMATHERS. That is what is known as a "well traveled" argument.

Mr. HUMPHREY. Circuitous.

Mr. SMATHERS. Circuitous; up and back. I am pleased that some able Senator had a good sense of humor and realized that this prank might bring some relief from the tension which we feel here at 5 minutes to midnight. It has given us all an opportunity to laugh a little and let off some steam.

Whoever the culprit is, I do not think he should be indicted, I do not think he should be criticized. He should be commended. Whenever I am able to learn who the culprit was, rather than criticize him, I shall see if I cannot bestow upon him some form of accolade which will be proper in deference to his originality.

The bill goes far beyond voting rights, public accommodations, education, employment, and other rights, and attempts to place in the hands of the Attorney General of the United States the power to try citizens of the United States by the injunctive process for crimes for which they are now punishable only when convicted by a jury. Let the Senator who has any doubt on this matter turn to title 18, United States Code, dealing with the Criminal Code and Criminal Procedure. Here it will be found that section 241 of title 18 makes it a crime for two or more persons to "conspire to injure, oppress, threaten, or intimidate any citizen" in the free exercise of rights under the Constitution and the laws and that the punishment for such a crime is a fine not to exceed more than $5,000 or imprisonment for not more than 10 years, or both.

Conspiracy of this kind is a criminal offense and can now be punished only by trial by jury.

The next section of title 18, United States Criminal Code—namely, section 242—makes it a crime for any person under color of law or of custom to deprive any inhabitant of any State, Territory, or the District of Columbia of his rights, privileges, or immunities under the Constitution and the laws of the United States by reason of his color. That is a crime punishable by fine of not more than $1,000 or imprisonment for not more than a year, or both. No citizen of the United States can be convicted now of this crime or of the crime mentioned in section 241 without a trial by jury.

Mr. HUMPHREY. Mr. President, will the Senator from Florida yield, provided he will not lose the floor?

Mr. SMATHERS. Mr. President, I yield to the Senator from Minnesota, provided I do not lose my right to the floor.

Mr. HUMPHREY. Mr. President, earlier today an order was entered that when the Senate completed its business today, it would take a recess until 10 a.m. tomorrow. I wish to amend that order and ask unanimous consent that when the Senate concludes its business tonight, it take a recess until 10 a. m. on Tuesday.

Mr. SMATHERS. Mr. President, reserving the right to object, do I correctly understand that as the order now reads, if the Senate should be in session for another 5 minutes, and then take a recess until "tomorrow morning at 10 o'clock," the recess would automatically carry the Senate over until Wednesday at 10 a.m.?

The PRESIDING OFFICER (Mr. PELL in the chair). The way the order is now worded, that would appear to be the technical construction of it.

Mr. HUMPHREY. Mr. President, will the Senator further yield?

Mr. SMATHERS. I am happy to yield.

Mr. HUMPHREY. The Senator from Florida knows that when the majority leader made his request this morning, as I told the Parliamentarian, the intention was that the Senate take a recess until Tuesday at 10 a.m. On previous occasions, the Senator from Minnesota has made such a request. I am now requesting that the order be amended so that the Senate will not face a parliamentary problem tonight. I ask the Senator from Florida to accommodate the majority leader in the request he made this morning, so that the request may be clarified and there will be no problem under the terms of the parliamentary ruling.

Mr. SMATHERS. Why does not the Senator from Minnesota move that the Senate take a recess at 1 minute before 12 o'clock? Then there would be no problem.

Mr. HUMPHREY. The Senator from Florida has a point. The Senator from Minnesota may very well wish to do that. May I have a "count down" by the Presiding Officer?

The PRESIDING OFFICER. If the motion were made now, the Senate would meet at 10 o'clock a.m. on Tuesday.

RECESS UNTIL 10 A.M. TOMORROW

Mr. HUMPHREY. Mr. President, I now move that the Senate stand in recess, under the previous order, until 10 o'clock tomorrow morning.

The motion was agreed to; and (at 11 o'clock and 59 minutes p.m.) the Senate took a recess, under the previous order, until tomorrow, Tuesday, May 12, 1964, at 10 o'clock a.m.

EXTENSIONS OF REMARKS

Rumanian Independence Day

EXTENSION OF REMARKS
OF
HON. JOHN D. DINGELL
OF MICHIGAN
IN THE HOUSE OF REPRESENTATIVES
Monday, May 11, 1964

Mr. DINGELL. Mr. Speaker, yesterday was Rumanian Independence Day. We remember this day in honor of those many Rumanians who joined together in 1877 to establish their own nation.

Rumania's unification and independence came after nearly 400 years of alien rule by her neighbors and the Ottoman Empire. Never, however, during this whole time did the Rumanians cease to work for the attainment of their freedom. In 1877, with the Russo-Turkish War raging in the Balkans the Rumanians saw their opportunity and joined the Russians against the Turks. At the end of the war their efforts were rewarded when the Congress of Berlin recognized their newly won independence.

Unfortunately, the Rumanians did not retain their true independence for very long. Although this nation fought with the Allied and associated powers in the First World War, she was inevitably involved as a helpless victim in the Nazi struggle during the Second World War and by the end of the war found herself under the complete domination of the Kremlin.

For nearly two decades now, the country has been sealed off from the free world and some 17 million Rumanians live in what is practically a vast prison camp where they are continually subject to the worst excesses of Communist totalitarianism. As a result of Russian control, these sturdy peasants are forced to till their fertile land mostly for the benefit of the Soviet Union. Denied all forms of freedom, they have no choice but to obey all Communist dictates, for democracy, as we in the free world know it, is not permitted.

We, in the free world, must hope that the Rumanians will continue to retain the strength and will to fight for independence as they always have in the past. And it is on this 87th anniversary of