UNITED STATES OF AMERICA

Congressional Record

PROCEEDINGS AND DEBATES OF THE 90th CONGRESS
FIRST SESSION

VOLUME 113—PART 22

OCTOBER 18, 1967, TO OCTOBER 31, 1967

(PAGES 29209 TO 30688)

UNITED STATES GOVERNMENT PRINTING OFFICE, WASHINGTON, 1967

ate chooses the Vice President on a one-man-one-vote basis, and if the House cannot agree on a President, then the Veep becomes Prexy.

This improbable, but possible, freak could put a Reagan directly in the White House, although he runs for Vice President rather than President. At present, the strongest ticket the Republicans can field against Johnson is Rockefeller-Reagan. Should it turn out that the Senate—and not the House—chooses the President, Reagan becomes a real possibility for the Presidency, riding into the White House on Rocky's coattails.

The Southern Democrats in House and Senate would normally not bolt their Presidential candidates. But 1968 will not be normal. The election is apt to be run against a background of flaming cities, with a reactionary South discovering new allies in the North and a last best hope to run America. The year 1968 may be as abnormal as 1860, when a new party on a newly realigned base came to power. In terms of issues, 1968 could be 1860 played backwards.

Ordinarily, if Southern Democrats bolted their party they would be jeopardizing the prized seniority and chairmanships that the Dixie solons enjoy. But in a "realignment" the South could easily make a deal with GOP leadership—and the President-to-be—to "organize" both houses in an overt conservative coalition thus preserving Southern superiority in the Senate and House committees. (In the New York State Legislature just a couple of years ago, it was the Republicans—together with "Wagner" Democrats—who gave Anthony Travia and Joseph Zaretski the necessary votes to head the Legislature. There is no constitutional provision to prevent the same from happening in the U.S. Congress.)

Such an eventuality would be a bit of historic irony for liberals who have long urged party realignment. So far, the liberals have failed to convert the New Deal coalition into a "party." In Congress, the conservatives have long had such an informal "party" on Capitol Hill, voting in consistent concert. In 1968, this Congressional coalition of conservatism may have its first chance to elect its President by its own acts—with the South holding the power and mapping the strategy.

In discussions about the forthcoming elections, 1968 has been analogized with other recent contests, particularly 1948 and 1952, with pro-Johnson people pointing to the former and liberal anti-Johnson people the latter. In fact, both analogies are right—and wrong.

In 1948, Harry Truman—like Lyndon Johnson today—appeared to be in trouble. His "left" wing was being torn away by Henry Wallace and the Progressive Party; his "right" wing by Strom Thurmond and the Dixiecrats. The "left" Democrats were hitting Truman because of his cold war policy, the "right" Democrats were hitting him for his pro-civil rights policy. Americans for Democratic Action started a "dump-Truman" movement and turned to Dwight Eisenhower as an alternative, just as some individual liberals (though not ADA this time) are now involved in a "dump-Johnson" movement that seeks another General as a possible candidate, James Gavin. In the election itself, Truman came galloping up to win—with liberal backing, as may happen with LBJ.

Thus far the analogy holds, but not much farther. The support for George Wallace is much greater than that for Thurmond. If Truman had lost the whole South, he would have lost the Presidency. A Reagan is not an Eisenhower—especially if a Republican President is elected in the House with Southern aid. But above all else, the mood of the country is different: Black "revolution" is stirring white "counter-revolution," an atavistic return to a dark dead past.

The "dump-Johnson" people, such as James Wechsler, prefer to parallel 1968 with 1952. That was the year Truman decided not to run, allegedly because he was scared off by the New Hampshire primary. Anti-Johnson liberals hope to scare LBJ off from running in 1968.

If this is carried one step further, though, it becomes most unappetizing. Upon Truman's withdrawal, the Democrats named Adlai Stevenson, the liberal's dream boat, for the Presidency. He ran a bright, brittle campaign in which he restored the English language to its proper place in Western civilization. But it was not he—it was Ike and Dick—who ended up in the White House. And four years later there was more of the same, only more so.

Should the history of 1952 repeat itself, liberals would have a chance to relive the agony of the Ike age in a time of trouble and turmoil. Ike put the New Deal on ice; a Republocrat President in 1968 and beyond would put the nation on fire.

The liberal community has not, until recently, been even dimly aware of the dangerous potential. The great preoccupation has been with Vietnam—both pro and con—almost exclusively. The far greater danger arising from the political crisis *within* the country has gone almost unnoticed.

Until recently, some of the loudest voices in liberal circles spoke out for a third party. The big moment was to be the meeting of the National Conference for New Politics in Chicago over the Labor Day weekend. Whatever evils issued from that confab, it was an ill wind that blew some good. It killed a national third-party, for this year. The formal burial took place at the ADA national board meeting in September, when the organization formally went on record as opposed to a third party. Nobody spoke for the corpse, including those who—in the recent past—were for it.

With the collapse of third-partyism, some of its sponsors together with other anti-Johnson elements began to beef up a "dump-Johnson" campaign. The plan is to run anti-Johnson delegates to the Democratic national convention.

At the September meeting of ADA—the commonly alleged establishment of the liberal community—the question of a "dump-Johnson" movement was at the core of the agenda. Although the press reported this as a gathering to formulate policy on Vietnam, the ADA board was actually without any authority to act on that subject because the Spring convention of the organization had already mapped policy. The board meeting dealt with *political*—rather than *foreign*—policy, concentrating on matters such as third-party, "dump-Johnson," convention and endorsement strategy.

The heaviest blow against the "dump-Johnson" movement was struck by Joe Rauh—Mr. ADA—in a memorandum he had circulated on July 28, 1967. He opposed the movement on practical grounds; it would fail, and it would discredit the movement for peace: "Just as the Kennedy-Fulbright draft will fail to produce delegates because Kennedy will repudiate it in most dramatic form, so any other similar effort in behalf of anti-Johnson delegates will fail because no responsible people inside the Democratic party will allow their names to be connected with a drive against a Democratic President, and especially so hopeless a drive. Here, too, the net result is bound to be few, if any, delegates and a minimization of the peace strength in America to a fraction of its true proportions."

The positive alternative proposal in the Rauh document was a drive to write a peace plank into the Democratic party platform. There were several attempts to reverse the Rauh approach at the ADA board, probably the best attended in its history. The first proposal—to have ADA back the "dump-Johnson" movement—was defeated 73 to 12. Two other moves were defeated: one to allow chapters and individuals to join the dumpers in the name of ADA; the second to instruct ADA to seek an alternative candidate to LBJ.

The board decision, however, has not inhibited a handful of individuals in ADA (though without ADA authority) from going ahead with their "dump-Johnson" effort. From their view, they cannot lose: If LBJ is beaten at the convention, they will have won; if LBJ is defeated in 1968, they will also have won. They talk about 1968 but they mean 1972. They are thinking like Louis XV standing on his head: *Après le déluge, moi.*

If one must look for historical analogies for 1968, it is less in the America of the 1940s and 1950s than in the Germany of the 1930s. Then the great danger was Hitler. But to a sector of the Left—the Communists—the real enemy was social democracy. The coalition that might have halted Hitler was torn with fratricide. The Communists termed the Social Democrats "social-fascists"; they turned the "main fire" against those closest to them; they welcomed Hitler to power with the proclamation: *Nach Hitler, Kommen Wir.*

No doubt this analogy—like most historical parallels—is faulty. But in terms of long-range historic impact, what happened in Germany in the '30s may be closer to the danger we face in 1968 than what happened in America in either 1948 or 1952.

OPEN HOUSING

Mr. MONDALE. Mr. President, in the New York Times of Sunday, October 8, Mr. Fred P. Graham wrote an article concerning the Jones against Mayer Co. lawsuit pending before the U.S. Supreme Court.

The article concludes by stating that should the Court rule for the complainants, the effect would be to eliminate the need for new fair housing legislation.

This, in my judgment, does not follow. Legislation will still be necessary even should the Court declare for the complainants in the Jones against Mayer case. I ask unanimous consent to have printed in the RECORD a letter from David A. Brody, of the Antidefamation League, dealing with this subject. His letter makes very clear that legislation will be necessary, and it explains why.

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

THE COURTS MAY SETTLE OPEN HOUSING

(By Fred P. Graham)

WASHINGTON.—Events are quietly under way here that could lead to the creation of an effectual Federal fair housing law—not by an act of Congress, but by a decision of the Supreme Court.

As the Court opened its 1967 term last week with the usual round of secret conferences on pending petitions for review, two factors made this result possible.

One was the presence among the petitions of an appeal which contends that the United States already has a law against racial discrimination in housing—an 1866 statue that has been enforced once in this century as a fair housing law but has since been almost forgotten.

The other was a series of discussions that were held in the Justice Department, where some top officials are arguing that the Government should enter the case as a friend of the court and urge the Supreme Court to resuscitate the old law so that the lower courts can use it to bar discrimination in housing.

These events date back to the summer of

1965, when Joseph Lee Jones and his wife Barbara Jo picked out a pleasant lot in Paddock Woods, a new subdivision in suburban St. Louis, and offered to pay the advertised $28,195 price to have a house built on it. But Mr. Jones is a Negro and his wife is white, and their offer was rejected.

A LONG SHOT

Congress at that time had not even begun to consider the ill-fated fair housing law that succumbed to a Senate filibuster in 1966. So the Jonses' lawyer tried a long shot. He sued the developers on the theory that existing statutes and constitutional amendments, read in the light of the latest Supreme Court decisions, already add up to an enforceable fair housing law.

At the heart of the argument is the civil rights act of 1866, passed to implement the 13th Amendment, which outlawed slavery. The law said: "All citizens of the United States shall have the same right, in every state and territory, as is enjoyed by white citizens thereof, to inherit, purchase, lease, sell, hold and convey real and personal property."

This law has been recodified and blended with subsequent legislation down through the years, but it still exists on the statute books, currently in Section 1982 of the United States Code.

In 1903 a Federal judge in Arkansas did enforce it to block a landowner from refusing to lease land to a Negro, but otherwise most lawyers have assumed that a succession of Supreme Court interpretations of the reconstructions laws and amendments have made it unenforceable.

These decisions held that the 13th Amendment, which can be enforced against individuals, could be used only to stop people from treating Negroes as slaves. Efforts to eliminate racial discrimination against the freed slaves were held to be enforceable only under the authority of the 14th Amendment.

Since the 14th Amendment forbids only discrimination by state action and does not touch bias by private persons, lawyers assumed that the 1866 law could not be enforced against individuals to block racial discrimination in housing.

On these grounds the Joneses lost in Federal District Court and in the Court of Appeals for the Eighth Circuit.

PLAUSIBLE REASONS

But now the case is up on appeal to the Supreme Court, where the Joneses (and a coalition of civil rights groups that have taken up their cause) have offered the Justices a number of plausible legal reasons for upholding their right to sue.

They claim that Negroes' inability to purchase homes on equal terms with whites is a remaining "vestige of slavery" that can still be attacked under the 13th Amendment.

Further, they contend that the state was involved in the developers' discrimination in violation of the 14th Amendment, because it had the legal power to stop it but permitted it to happen.

Finally, they cite statements in opinions signed by six of the Justices in a 1966 civil rights decision to the effect that "state action" is no longer necessary in certain 14th Amendment cases.

Lawyers can differ on the relative soundness of these arguments, but most would agree that they are substantial enough to support a decision for the plaintiffs if a majority of the Supreme Court is disposed to do so. On far shakier grounds than these the Court last spring upheld California's fair housing law, despite an overwhelming vote by the people in favor of abolishing it.

Since then, the Court has acquired its first Negro Justice, Thurgood Marshall. His presence should strengthen sentiment on the Court in favor of taking the plunge on housing discrimination, as the Court did on the school segregation issue in 1954.

Congress is frozen on fair housing, as it was on school desegregation, yet political reaction against a bold housing decision might not be too severe; a majority of both Houses of Congress voted on the side of fair housing before the filibuster killed it in 1966.

If the Court should hand down the sweeping decision the Jones appeal asks, the effect would be to eliminate the need for new fair housing legislation; Federal courts could bar racial discrimination in housing—in any form, including private sales between individuals—anywhere it occurred in the country.

ANTIDEFAMATION LEAGUE,
Washington, D.C., October 11, 1967.

Senator WALTER F. MONDALE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR: As Fred P. Graham points out in his timely and informative column in the New York Times of Sunday, October 8, if the Supreme Court should agree to hear the case of *Jones* v. *Mayer Co.* and later uphold the contention of the petitioners that the 1866 Civil Rights Act bars housing discrimination by private individuals even where there is no state involvement, that decision would mean that the nation already has a national fair housing law. But, it would not, as Mr. Graham goes on to state, eliminate the need for new fair housing legislation.

If the 1866 law should be held to bar housing discrimination by private persons, enforcement of the right to equality of housing opportunity would be left to individual suits brought by the aggrieved individual. While the private law suit has accounted for many of the Court's landmark decisions in the area of racial discrimination, most notably the 1954 school desegregation cases (indeed *Jones* v. *Mayer Co.* itself may prove to be such a landmark case), it is a retail, costly, time-consuming and not too effectual approach for dealing with the still pervasive and persistent problem of discrimination.

Experience has demonstrated that if civil rights statutes are to be meaningful and more than mere wholesome declarations of policy, the responsibility for carrying out the mandate of the law must be shifted from the individual complainant to the specialized administrative agency which must have the power to initiate proceedings on its own motion without first waiting for individual complaints, as well as the power to issue judicially enforceable cease and desist orders after a full administrative hearing. Consequently, as welcome as a decision by the Court would be that the nation already has a federal fair housing law, additional legislation would still be needed. Vindication of the statutory right must not be left solely to the victim of the discrimination. What would still be required is effective administrative enforcement machinery and authority for the Attorney General to institute suits against recalcitrant builders and realtors who may continue to practice discrimination in violation of the law as provided for in S. 1358, the Fair Housing Act of 1967 introduced by you and a bipartisan group of 21 Senators. Only in this way can the right of equal housing opportunity be effectively secured.

Sincerely,

DAVID A. BRODY.

INDIA'S VIEW OF THE WAR IN VIETNAM

Mr. McGEE. Mr. President, I ask unanimous consent to have printed in the RECORD a dispatch from New Delhi, published in the Washington Post of Saturday, October 21. It gives an informed analysis of India's view of the war in Vietnam. The dispatch, by Bernard D. Nossiter, goes to the heart of the dilemma posed for India by its desire for peace but its lingering suspicion of western powers in Asian affairs.

India's concerns are, as Mr. Nossiter points out, primarily her own concerns. She wants to feel secure, and for that reason wants American forces in Asia, if not in India.

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

VIETNAM WAR POSES A DILEMMA FOR INDIA

(By Bernard D. Nossiter)

NEW DELHI, October 19.—Of all the puzzles in India's foreign policy, there are few as perplexing as this government's ambiguous stand on Vietnam.

The confusion arises because New Delhi is pulled in two directions. It has a direct interest in peace in Southeast Asia and harbors some lingering suspicion of the role played there by a Western power such as the United States. At the same time, India looks on China as its primary enemy and is not unhappy that the world's most powerful military force is present in the region to check Peking.

Today was the fifth anniversary of India's clash with China and Prime Minister Indira Gandhi reminded her countrymen:

"Whatever else has changed in the last five years, China's aggressive posture has not stopped. Indeed, China has continued to show open hostility to India . . . Let us be on guard against this continuing menace."

CROSSED SIGNALS

The twin pulls, the wish for peace and fear of China, lay behind the crossed diplomatic signals India sent out earlier this month. The Defense Minister and likeliest candidate for the Foreign Ministry post that Mrs. Gandhi now fills, Sardar Swaran Singh, told the U.N. General Assembly that he was "confident" that Hanoi would "respond favorably" to a halt in American bombing. The next day, Mrs. Gandhi observed tartly that this was just one man's opinion.

India is in constant touch with North Vietnam. Both nations maintain consuls general in each other's capitals. Indian diplomats have been pressing Hanoi to give some pledge that they will make a reciprocal response if the United States halts its bombing. New Delhi has not tried to specify what the response should be, because the talks have never gone that far.

India has gotten no assurances in reply. Instead, the North Vietnamese have repeated that they will make an appropriate response to a bombing halt.

Whether this means that Hanoi would stop sending troops south, sit down to peace talks or something else, the Indians do not know.

WORTH THE RISK

Nevertheless, New Delhi believes that there is little to lose and probably much to gain by stopping the bombing. Officials here cite American statements that bombing has not materially affected Hanoi's infiltration of the South. They believe that a cessation would lead Hanoi to peace talks, that North Vietnam would then stand up to strong Chinese pressure for continued fighting. The Indians acknowledge that this is an opinion, and that bombing halt could disadvantage the United States. The argument here is that this is a risk worth taking.

If peace was restored, New Delhi believes two important consequences would follow. North Vietnam would be free of Chinese pressure and, with aid from the Soviet Union and its own anti-Chinese tradition, would drift away from its close ties to Peking.

Both the United States and the Soviet Union would be free to invest more heavily in the development of Southeast Asia. The