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Nearly a year prior to the Mansfield report, other senators, including Church of Idaho, Clark of Pennsylvania, Bartlett of Alaska, Gore of Tennessee, and Nelson of Wisconsin, had raised pointed questions about our Vietnam policy. I believe it was this Senate floor discussion early in 1965 which finally prompted the President to make his April 7, 1965, offer at Baltimore for unconditional discussions with Hanoi. On the afternoon of the Baltimore address, the President called Senator Church and me to his office at the White House to examine an advance copy of his text and to tell us in effect that we were "getting our way" on the negotiation offer. Actually, the speech struck a shrewd balance between hawks and doves and was accompanied by an escalation of the war. It did, however, represent a partial response to Senate dissent, though I have come to think it was primarily calculated to disarm the dissenters at home and abroad without changing policy.

The 37-day bombing pause of late 1965 and early 1966 was also partially an outgrowth of Senate pressure. Sixteen senators, including Hartke of Indiana and McCarthy of Minnesota, signed a letter urging an extension of the bombing pause. These senators have individually and in groups subsequently taken issue with the official line.

To grasp both the frustration of dissenting senators and their limited impact on Administration policy, it is necessary to consider the experience of Senator Robert Kennedy. Because of the prestige of his name, the size of his state, and his possible presidential interests, any statement by the junior senator from New York is assured of much closer press coverage and attention by the Administration than the average senator could expect.

On Thursday morning, March 2, Senator Kennedy called to advise me that he expected to take the Senate floor that afternoon at 3 p.m. to discuss American policy in Vietnam. He and his advisers had been at work for weeks on a major Vietnam proposal and had been calling other senators and members of the press to alert them.

That afternoon, when Kennedy took the floor, the press gallery was jammed and a considerable number of senators were in their seats with advance copies of the speech which called for a cessation of the bombing of North Vietnam accompanied by an invitation to Hanoi to begin peace negotiations within a week.

As the senator was preparing to speak, the Administration launched a series of strenuous moves to "kill" the speech. The White House quickly called an impromptu news conference to announce that Russia had agreed to a proposal made weeks before to discuss methods of limiting the arms race. The President also reiterated his determination to continue the bombing. In a rather remarkable contrast to the days when we used to regard the war as primarily a Vietnamese conflict with our forces there simply to assist Saigon, he added: "I think the American people should know that this is a question between their President, their country, their troops, and Mr. Ho Chi Minh and the troops that he is sending in from the North. Everyone can take whatever side of the matter he wants." As *The Washington Post* observed the following day, the President was reacting as though the war were "no more than a personal vendetta between Lyndon Johnson and Ho Chi Minh." No matter the views or interests of our ally in Saigon or our principal enemy, the Viet Cong in the South, or the United States—please keep out of this private affair between the White House and Ho Chi Minh!

Kennedy's suggestions for negotiation tied to a bombing pause were further blanketed by a letter which the President had previously arranged for release through Senator Henry Jackson. Simultaneously, Kennedy's proposal was being blasted by Secretary of State Rusk and General Westmoreland—Rusk saying that we had already tried this approach and Westmoreland saying it was too dangerous to try.

The treatment given Kennedy recalled the President's sudden rush to Honolulu a year ago when Senator Fulbright's hearings were capturing mass television audiences and large news headlines.

Those of us who have observed the inability of such prestigious senators as Mansfield, Fulbright and Kennedy to influence significantly our policy can be at least partially forgiven if we conclude that our own less publicized efforts are of limited value.

It should be noted that the Senate critics have experimented with a variety of approaches "to reach the President's ear." Most of the dissenters have accompanied their criticism with positive alternatives to our present course. Their initiatives have been backed by many of the nation's most vocal citizens and private groups. Seldom in our history have so many enlightened and morally sensitive political, religious and educational leaders joined in opposing a wartime policy of our government.

Their principal satisfaction to date, however, has been the nervous, unprovable assumption that we would be involved in an even larger war had it not been for the critics both in and out of the Senate. There may be the further hope that while dissent is not likely to halt a war it serves to point up the painful lessons that we must learn if we are to avoid another such ill-advised venture in the future.

To the man who writes "Why don't you speak out, Senator?" my answer is, "We have, and we can only pray that it has served some useful purpose."

GEORGE MCGOVERN.

DEATH OF JOSEPH GOLDBERG, DEPUTY ASSISTANT SECRETARY OF LABOR

Mr. MORSE. Mr. President, on Sunday, March 12, Joseph Goldberg, the Deputy Assistant Secretary of Labor, died at the age of 53 from a heart attack.

Joseph Goldberg's death is a real loss to the people of the United States and the citizens of the District of Columbia, and it is a loss to me personally.

Joe was born in Poland, and his rise to outstanding accomplishment and service to the United States is heartwarming. I first met Joe in 1960, when he was assigned to the Committee on Labor and Public Welfare as technical adviser to the Subcommittee on Labor during its consideration of amendments to the Fair Labor Standards Act.

As almost any Member of Congress will agree, the Fair Labor Standards Act, governing minimum wages and working conditions for millions of American workers, is one of the most intricate and complex fields of the law. Joe soon demonstrated that he was an expert, but even more he demonstrated an honesty and integrity, a passion for the poor and underprivileged who were unprotected by this law.

It was not until 1961 that the Fair Labor Standards Act amendments, bringing the minimum wage up to $1.25, were adopted. Joe continued to provide valuable help to Members of Congress that year. He was in constant attendance at markup sessions of the committee and helped us with many constituent complaints.

Starting in 1963 and culminating in 1966, Joe provided expert technical advice for the enactment of a minimum wage law covering the District of Columbia. He was indeed the District Committee's principal adviser, trusted by Senators on both sides of the aisle, and a participant in every critical session of the District Committee's discussions of this legislation. It could be rightly said that the minimum wage law today for the District of Columbia is a monument to Joe Goldberg.

I know that Joe Goldberg's death will be a loss to the Department of Labor and a loss to Esther Peterson, for whom he was an immediate assistant, but most of all I know it will be a loss to his wife and children.

I hope especially that his son, Stephen, and daughters, Susan and Lucy, will grow and mature with the image of their father before them, an image of devotion to the American people, and a person of great moral character.

THE QUALITIES OF VICE PRESIDENT HUMPHREY

Mr. MONDALE. Mr. President, recently, the Washington Post commented editorially on a remark made by President Johnson to the effect that Vice President HUBERT H. HUMPHREY is an able and indispensable ally. That editorial does, I believe, a highly commendable job of evaluating the performance of HUBERT HUMPHREY as Vice President. I ask unanimous consent that it be printed in its entirety following the conclusion of my remarks.

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

Mr. MONDALE. Mr. President, as students of constitutional history know, the role and mission of the Vice President has been greatly expanded in recent years. The duties of today's Vice President require a depth and breadth of skill, experience, and judgment which could not have been imagined by the Founding Fathers who, after all, failed to define the duties of that office after considering a committee report which had been drawn up over a single weekend.

It has been said of the Presidency that the office shapes the man. While the same bit of conventional wisdom applies to the Vice Presidency, future commentators will surely note the singular contribution which HUBERT HUMPHREY has made personally in shaping that high office and in giving it new life and a very special place in the American political experience.

I am pleased to commend this editorial to the attention of Senators who, far better than most persons, know firsthand the brilliant competence of Vice President HUMPHREY.

A MODEL VICE PRESIDENT

It is good to know that President Johnson appreciates the qualities of Vice President Hubert Humphrey as a public servant. His kind remarks about the Vice President at the press conference on Thursday certainly are deserved. It would be dismaying indeed if the President did not hold these views.

The Vice President has brilliantly succeeded in an office that presents the greatest difficulty to a man of his temperament and genius. Congress has given him two special

tasks to which he devotes great attention—outer space and undersea exploration. The President has showered him with special duties and missions. He has dealth with all of them competently and quietly. History will have to disclose how valuable he has been in the inside councils of the Administration but there is reason to believe he has been very useful there.

The most important legacy that he will leave the country will be a concept of the Vice Presidency that fits both its subordinate position in the Executive Branch and the necessities of modern administration. Not for an instant has he allowed himself a word or a deed that would indicate any confusion about the place where there resides the constitutional duty and power to speak for the Government of the United States. He has rightly said, and repeatedly said, that there can be only one authoritative voice—and that is the voice of the President. He has been the President's echo on every public policy discussion of the Administration. And whenever the Vice President, under our system, tries to be anything other than that, "the trumpet maketh an uncertain sound."

No wonder the President admires his public service. The thoughtful citizens of this country also admire it and understand it. He is, in truth, the very model of a model Vice President.

SELECTION OF JURORS IN FEDERAL COURTS

Mr. ERVIN. Mr. President, the administration's current civil rights bill, like its predecessor which was defeated in the Senate last year, contains in title I extremely important proposals for a revolutionary reform of the jury selection procedures in the Federal courts. One of my major objections to this proposal has been that its merits have never been adequately analyzed—either in Congress or in the country at large. The administration's jury selection proposals have been shielded from meaningful debate by the decision to make them a civil rights issue.

To some extent this unfortunate situation has improved in recent days. I was pleased that the junior Senator from Maryland [Mr. TYDINGS] chose to introduce a series of six alternative proposals for jury selection reform and that he has scheduled these bills for hearings in his Subcommittee on Improvements in Judicial Machinery of the Committee on the Judiciary. I hope that in this way jury reform can be evaluated on its own merits.

Apparently, the editors of the American Bar Association Journal have also appreciated the fact that the 1966 debate on civil rights failed to produce much enlightened discussion of these very serious jury proposals. They recently asked the senior Senator from Michigan [Mr. HART] and me to present in essay form a summary of the arguments for and against title I. The provocative article by Senator HART is really the first thoughtful statement by the proponents of title I, and it has helped to raise the level of debate toward its proper plane.

In the interest of widening this discussion still further, I ask unanimous consent that the article entitled "The Case for Federal Jury Reform," written by Senator PHILIP A. HART, and my article entitled "Jury Reform Needs More Thought," published in the February 1967 issue of the American Bar Association Journal, be printed in the RECORD.

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

THE SELECTION OF FEDERAL JURORS

(A discussion of proposed changes by Senators PHILIP A. HART of Michigan and SAM J. ERVIN Jr., of North Carolina)

(NOTE.—On the following pages, two distinguished members of the United States Senate set forth differing views on how the names of prospective jurors should be chosen for the federal courts. The problem was before the 89th Congress as Title I of the much-debated Civil Rights Bill of 1966, and it seems certain that similar legislation will be introduced in the new Congress.

(Surprisingly enough, the question is not one that has received much attention from the organized Bar. A resolution opposing the provisions of Title I was introduced in the House of Delegates in Montreal last August and was voted down after several hours of heated debate. At that time, a former President of the Association remarked that "in some inexplicable fashion" the subject had until then escaped the attention of the legal profession.

(According to its sponsors, Title I was intended to assure that federal grand and petit jurors are selected from a full cross section of the community. The legislation contained four basic features that were meant to accomplish this.

(First, the bill specifically stated that no citizen "shall be denied the right to serve on grand and petit juries . . . on account of race, color, religion, sex, national origin, or economic status". The present law, Section 1863 of Title 28 of the United States Code, merely provides that no citizen "shall be excluded from service . . . on account of race or color".

(Next, the legislation designates voter registration lists as the exclusive source from which names of prospective jurors may be drawn. The only exception is the case where use of the registration rolls would still not produce a true cross section. In that case, the judicial council of the circuit could order the addition of other names in order to achieve a cross section. The present law, Section 1864 of Title 28, specifies that the names of prospective jurors shall be drawn from a box containing the names of not fewer than 300 persons, but it does not spell out how the names are to be obtained.

(Third, the legislation compels use of a master jury wheel from which the names of potential jurors would be selected at random. The only qualifications that could be required of jurors are ability "to read, write, speak, and understand English". No higher qualifications could be imposed, and thus the "blue ribbon jury" or the "key-man system", used in many parts of the country, would be eliminated. This is one of the most controversial features of the proposal.

(Finally, the legislation includes a challenge provision whereby any defendant in a criminal case would be entitled to dismissal or a stay of proceedings on the ground of failure to comply with the bill's provisions.

(Senator Hart urges that these proposals be adopted. He argues that the present statute allows jury commissioners too much leeway in selecting jurors and he points out that Negroes have been substantially underrepresented on juries in the South.

(Senator Ervin argues that the proposal is awkward and perhaps unworkable. He contends that the goal of juries that are a true cross section of the community is an impossible one, and he points out that the standards imposed by the legislation are at odds with the statement of the Judicial Conference of the United States that jury commissioners should select jurors of "as high a degree of integrity, intelligence, morality and common sense as possible".)

THE CASE OF THE FEDERAL JURY REFORM

(By PHILIP A. HART, U.S. Senator from Michigan)

The basic responsibilities of jury officials, federal and state, are imposed by the Constitution. "The American tradition of trial by jury, considered in connection with either criminal or civil proceedings, necessarily contemplates an impartial jury drawn from a cross-section of the community." *Thiel* v. *Southern Pacific Company*, 328 U.S. 217, 220 (1946). The Supreme Court has recognized that it is impossible to select completely representative juries. "Neither the jury roll nor the venire need be a perfect mirror of the community or accurately reflect the proportionate strength of every identifiable group." *Swain* v. *Alabama*, 380 U.S. 202, 208 (1965). But the Court has made it equally clear that the Constitution not only bars conscious discrimination, but that jury officials have a "constitutional duty . . . not to pursue a course of conduct in the administration of their office which would operate to discriminate in the selection of jurors on racial grounds". *Hill* v. *Texas*, 316 U.S. 400, 404 (1942). Other decisions make it clear that discrimination in jury selection on account of religion, sex, national origin or economic status is similarly proscribed.[1] In other words, jury officials have an affirmative duty to insure that their source lists of potential jurors substantially reflect a broad cross-section of the population of the community and that the subsequent steps in the selection process will operate in the long run to produce truly representative juries.

The fundamental defect in the present laws relating to the selection of federal juries—contained in Chaper 121 of the Judicial Code—is that they do not afford sufficient guidance to federal jury commissioners as to how they should discharge the duties imposed upon them by the Constitution. No specific source of names of potential jurors is prescribed, and the subsequent steps in the selection process are left largely to local determination. The practical consequences of this lack of statutory guidance were summed up by one of the district court clerks who submitted statements to the Subcommittee on Constitutional Rights of the Senate Judiciary Committee in the course of the subcommittee's hearings on the Administration's 1966 Civil Rights Bill:

"Faced with the lack of statutory guidelines as to an acceptable system of jury selection, and cognizant of the many directives arising out of decisions of the courts affecting jury selection generally, the Federal jury commissioners are faced with an extremely difficult task in order to perform their duties and fulfill the responsibilties of their office." [2]

The present systems for selecting federal juries do vary significantly from district to district. It may be that in most districts federal juries are more or less representative of the population. But there is considerable evidence that the varied systems now used in many areas do not produce truly representative juries.

An informal survey conducted by the Department of Justice last year with respect to the composition of jury panels and lists of qualified jurors in certain federal judicial districts in the South indicates that Negroes have been substantially underrepresented on juries in several federal courts in that area.[3]

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[1] See *Showgurow* v. *Maryland*, 213 A. 2d 475 (Md. 1965); *White* v. *Crook*, 251 F. Supp. 401 (M.D. Ala. 1966); *Hernandez* v. *Texas*, 347 U.S. 475 (1954); *Labat* v. *Bennett*, 365 F. 2d 698 (5th Cir. 1966).

[2] *Hearings Before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary on S. 3296*, 89th Cong., 2d Sess., pt. 2, at 1463–1464 (1966). These hearings are hereafter cited as *Subcommittee Hearings*.

[3] *Subcommittee Hearings*, at 238.