BILL CREEK. Thank you Senator. First of all, Hall, I think that it would be very interesting for our audience to know that Senator ERVIN has been so very kind to give me a great deal of credit for the work which has been done in this area when, actually of course, we all know that this work has been done because of his decision and under his supervision. I think that it would be interesting also for our audience to know that Senator ERVIN's interest in the American Indians is one which stems from his boyhood. I know that he won a prize as a freshman in college for writing a paper on the Cherokees. He has had an abiding interest in the American Indians and he has focused a great deal of attention on the Indians and other minority groups in this country who previously have not enjoyed the benefit of congressional scrutiny and assistance. This has been his primary motivation since becoming chairman of the Subcommittee on Constitutional Rights some 3 years ago. Well, with regard to the reservated American Indian, Senator, I think that it is fair to say that his life is regulated by the Federal Government from the cradle to the grave. For, virtually everything he does, if he stays on the reservation, from the time he is born until he dies, is under the influence or is in the hands of the Secretary of the Interior. One of the things that was most surprising to me to learn was that even today a reservated Indian can't make a will without the approval of the Secretary of Interior. If he makes a will and the Secretary disapproves of it, the will is invalid. It may take him months, even years, to obtain the approval of the Secretary of Interior. By the same token, one of the things which you have been so much concerned with is the right to counsel. The American Indian tribes who want to employ legal counsel—attorneys to represent them—cannot do so without the approval of the Secretary of the Interior.

Senator ERVIN. Don't you consider it unfortunate in many instances that the Indians have to deal with the Secretary of Interior and Bureau of Indian Affairs as their guardians and, sometimes, their views and those of the Secretary of the Bureau do not coincide. They certainly ought to have a capable spokesman to present their case.

BILL CREECH. Precisely, Senator. This is one of the great problems for the American Indians today. The subcommittee had this pointed out at our hearings here in Washington and it was very graphically described by the tribal representatives who appeared before the subcommittee in Sacaton, Ariz. At that time, one of the tribal groups presented to the subcommittee a letter which the tribe had received from a reputable law firm in that part of the country, saying that though the tribe had asked the firm to represent them some 11 months earlier, approval had not been received during that interim by the Secretary of the Interior. The letter further stated that inasmuch as they had received retainers from a number of other clients in the meantime, it could no longer entertain the possibility of representing the tribe. So the tribe had to start all over again to find another law firm to represent them, because of the delay of the Secretary of the Interior in approving their contract with this law firm. One of the bills which you have introduced, would provide a remedy for this. That bill would provide that if the Secretary of the Interior does not approve a contract between a tribe and a law firm within 90 days, that the contract is valid and the Indians may proceed with their retainer.

HALL SMITH. Bill, may I ask you a question here? Now this is the counsel for the Indian tribe rather than the individual Indian?

BILL CREECH. That's true, Hall, but of course the counsel for the Indian tribe, frequently is counsel for the individual Indian. For instance, the Navajo Tribe will furnish legal counsel to any member of the tribe any place in the United States.

Now the Indians have had a great deal of difficulty in obtaining legal counsel; this frequently is true because they are indigents—they haven't the funds to employ legal counsel. So the Navajo Tribe has a legal staff which it will send to any part of the country to represent members of the tribe who are involved in private litigation.

Senator ERVIN. Don't you think the fact that the tribal council cannot employ their own counsel without the consent of the Secretary of the Interior really deprives the tribes, in many cases, of any real right to petition the Government for redress of grievances as possessed by all other Americans under the first amendment?

BILL CREECH. Yes, Senator, I do indeed. I think that this is one of the real problems that the Indians have because, obviously, if they don't have adequate counsel to represent them, then it is going to be very difficult for them to be effective in overcoming their problems. One of the allegations which has also been made, is that the Indian tribes are being deprived of due process in pursuing their various claims, or in litigation, by the Secretary of the Interior's failure to approve counsel. If they have to wait years just to have counsel approved, during the interim their witnesses frequently die, or move on, or situations change so abruptly that it is detrimental to their case. Therefore, they are not able to pursue their cases as actively as they might.

Senator ERVIN. What do these bills do with respect to the right of the individual Indian? You mentioned the fact, on a previous broadcast, that the individual Indian is usually denied the right to be represented by counsel when he is tried before tribal courts. In this case, you not only have denial of his rights by the codes that have been adopted under the supervision of the Department of Interior, but you have a denial of his rights in many cases by the tribal council itself.

BILL CREECH. Yes, sir. Well Senator, of course, you have introduced two bills which would directly touch upon this. One of the bills which you have introduced would provide for the strictures of the Constitution on the tribal government, in that it would carry to the tribal government the prohibitions which presently exist with regard to the Federal and the State governments. These are the safeguards for the individual which the Constitution holds for every American citizen. As we pointed out earlier, the tribal governments have been held not to be subject to the Constitution with regard to individual rights. Another of the bills which you have introduced would provide that in all of the law and order codes, which must be approved by the Secretary of Interior, there shall be the provision for the same constitutional safeguards that the individual American citizen enjoys when he goes before State courts or our Federal courts. This, of course, would include the sixth amendment provision for counsel in criminal cases and would be of great assistance to the Indian who finds himself in the tribal courts and in the traditional courts where he is not permitted to have counsel of his choosing but is actually precluded by the tribal rules from having legally trained counsel represent him.

Senator ERVIN. One of these bills is designed to remove some of the imperfections in the administration and in the provisions of the Federal statutes, which a few years ago, allowed the State to assume jurisdiction over tribal lands under certain conditions.

BILL CREECH. Yes, sir; that is correct. There was a statute which was passed back in 1957, Public Law 280, which permitted the States to assume civil and criminal jurisdiction over the Indian reservated areas located within their States. This has created a great problem in many parts of the country because some States have attempted to assume piecemeal jurisdiction and as a result, the Indian community is not certain under which laws they live today. As a matter of fact, this is not just circumscribed to the Indian community, there has been testimony which the subcommittee received from district attorneys and States attorneys indicating that the local law-enforcement officers themselves are not certain whether they have jurisdiction. So as a result, we have vacuums within the law in various parts of the country in which the Indian community lives.

Senator ERVIN. Can it not be said in summary, that if these bills all pass, that the American Indian on the reservation will enjoy for the first time in our history the same rights which other Americans have under the Bill of Rights?

BILL CREECH. Yes, Senator; that is a very fair statement.

HALL SMITH. Thank you, Senator ERVIN. We would like to offer our special thanks today to our guest, Bill Creech, of Smithfield, N.C., who is the chief counsel and staff director of the Senate Subcommittee on Constitutional Rights. This is Hall Smith inviting you to join us again next week when direct from Washington, D.C., U.S. Senator SAM J. ERVIN, JR., reports to North Carolina.

AMENDMENT OF FOREIGN ASSISTANCE ACT OF 1964

The Senate resumed the consideration of the bill (H.R. 11380) to amend further the Foreign Assistance Act of 1961, as amended, and for other purposes.

The ACTING PRESIDENT pro tempore. The hour of 12:20 p.m. having arrived, the unanimous-consent agreement goes into effect. The time will be under control equally by the Senator from New York [Mr. JAVITS] and the opponents of the amendment.

Mr. JAVITS. Mr. President——

The ACTING PRESIDENT pro tempore. Does the Senator yield himself time?

Mr. JAVITS. I yield myself 1 minute.

Mr. President, I offer a modification to the pending amendment, which I send to the desk and ask to have stated.

The ACTING PRESIDENT pro tempore. The modification of the amendment will be stated.

The LEGISLATIVE CLERK. The following is the modification of the Javits-McCarthy-Humphrey amendment:

SEC. 402. It is the sense of the Congress that in any action or proceeding in any court of the United States or before any justice or judge of the United States in which there is placed in question the validity of the composition of any house of the legislature of any State or the apportionment of the membership thereof, (1) reasonable time should be accorded to such State to conform to the requirements of the Constitution of the United States relating to such composition or apportionment, and (2) in the event that a proposed amendment to the Constitution of the United States relating to the composition of the legislatures of the several States, or to the apportionment of the membership thereof, has been duly submitted by the Congress to the States for ratification, such fact be taken into consideration in framing a decree for relief.

The ACTING PRESIDENT pro tempore. Under the unanimous-consent agreement, the Senator from New York [Mr. JAVITS] has the right to modify his amendment, and it is so ordered.

Mr. JAVITS. I thank the Chair.

Mr. President, I yield 3 minutes to the Senator from Pennsylvania.

Mr. CLARK. Mr. President, there are two things wrong with the modification offered by the Senator from New York [Mr. JAVITS] and the Senators from Minnesota [Mr. MCCARTHY and Mr. HUMPHREY] to which I quite seriously object.

First, the modification of the amendment would give gratuitous advice by a coordinate body of our Government, the legislature, to the Supreme Court of the United States, which I believe is presumptuous.

Second, the parliamentary procedure under which this and the preceding amendments have been offered is a legislative monstrosity. There can be no excuse whatever, in justice and equity, in ordinary legislative procedures, for attaching a nongermane rider of this sort to the Foreign Assistance Act of 1961. I doubt if it could be done in any other legislative body in the civilized world. It is a cynical approach to perhaps the most serious of the problems which confront the country, if not the most serious, which is the proper reapportionment of State legislatures. Nevertheless, because of the pragmatic and practical situation which confronts us, I intend to vote for the amendment.

My reasons for doing so are two:

First, the amendment does not say anything that the Supreme Court of the United States would not do anyway. I am sure that in the infinite wisdom of the members of the Court, but also in their dignified reticence, they will ignore it, and I hope that to the extent that the amendment would conflict in any way with their judicial duties, they will ignore it. I do not think it would.

Second, it seems to me that the amendment represents a pragmatic, political method of getting out of the way a very difficult problem which has held the Senate unnecessarily in session for several weeks. I am a pragmatist. I like to think of myself as being practical. I would hope that by voting for the faintly ridiculous modification of the amendment, which I shall do, we shall be able to solve a parliamentary snarl which has kept the Senate in session long beyond the necessary time, and which, if adopted, could do no serious harm.

Mr. MORSE. Mr. President, will the Senator from Illinois [Mr. DIRKSEN] yield me 5 minutes?

Mr. JAVITS. Mr. President, will the Senator from Oregon withhold his request for a minute? I should like to yield myself a brief period of time. Having presented the modification, I thought I ought at least explain what the modification is about, and then perhaps what I would say would be a frame of reference for others to speak to the modification.

Mr. MORSE. Mr. President, I withhold my request.

Mr. JAVITS. Mr. President, the reason for submitting the modification is very well known. It is an effort to bring together the support of as many Senators as possible for a solution of the problem which faces the Senate.

It is impossible to suppose that men of conscience and fidelity to their principles would take positions other than those consistent with their principles. Hence the Senator from Pennsylvania [Mr. CLARK], as we have heard, thinks that the amendment could do no harm and it would be a way of resolving the parliamentary dilemma. I believe it would be a serious and meaningful expression of our desires to the Supreme Court of the United States, which the Supreme Court would listen to. I think we would make very clear what we want, and I invoke two doctrines in respect of the effectiveness of what the proposal represents.

The first doctrine is the so-called doctrine of equitable abstention under which the Federal courts in innumerable cases have stood aside upon occasion in order to let other bodies, such as State courts, interpret a State statute. We are dismissing cases in equity. Therefore, the Court could, with complete authority, based upon decided cases, state, "As this is the demonstrated intent of the Congress expressed to us, we shall now stand aside and let it operate."

Second, for those who will call the amendment—and I suspect that some will—an apparition of an apparition, or try to dismiss it as completely superficial, I point out that time and again, upon the most serious matters, the Congress has passed sense-of-Congress resolutions.

Upon a sense-of-Congress resolution the marines went into Lebanon. Upon a sense-of-Congress resolution the 7th Fleet defended Taiwan. Upon a sense-of-Congress resolution we premised action which resulted in oceans of treasure being expended and the blood of American troops being shed in various parts of the world. Even those who violently oppose the sense-of-Congress resolution have offered such resolutions, including my distinguished friend, the minority leader, upon very serious questions, because we realize that there are cases in which two branches of the Government have coordinate powers—this is such a case—and that is the only way in which coordinate bodies can really express their considered intention and desire to each other.

The ACTING PRESIDENT pro tempore. The time of the Senator has expired.

Mr. JAVITS. Mr. President, I yield myself 1 additional minute.

The ACTING PRESIDENT pro tempore. The Senator from New York is recognized for 1 additional minute.

Mr. JAVITS. Mr. President, in my judgment, therefore the amendment, as modified, would be a very meaningful act, thoroughly in accordance with the traditions of our country, juxtaposing one coordinate body to the other.

Finally, when we talk about supplication—and it has been said here that we are "supplicating" the Supreme Court—the Supreme Court is a coordinate body. It is our duty and responsibility to respect it as much as it respects us. If we have no power, the least we can do is to inform the Court of our intention. It is my judgment—and Senators must vote on the question yea or nay—that we do not have power to direct the Supreme Court to carry out a rule of the decision in pending cases. We could not now make the principle applicable merely to new cases, because the apportionment of the legislatures of 34 of the 50 States is already before the Federal courts. So we cannot backtrack on that. Hence, we cannot mandate the Court, and the proposed amendment is the only way in which two great, dignified, and coordinate bodies can express their intention and desire to each other.

The ACTING PRESIDENT pro tempore. The time of the Senator from New York has expired.

Mr. JAVITS. Mr. President, I yield myself an additional 30 seconds.

The ACTING PRESIDENT pro tempore. The Senator from New York is recognized for 30 seconds.

Mr. JAVITS. There are many things in our Government that must work by self-discipline. The Congress could sit on its hands and not give any agency of the Government a dime. We could destroy the country, and there is no provision in the Constitution which states that we must vote money. No one could draw a penny from the Treasury if we did not vote for the appropriation. The Supreme Court could do the same thing. It will not. We shall not, provided we are dignified and cooperative with each other. That is the purpose of the resolution.

Mr. MORSE. Mr. President, will the Senator from Illinois yield 5 minutes?

Mr. DIRKSEN. I yield 5 minutes to the Senator from Oregon.

The ACTING PRESIDENT pro tempore. The Senator from Oregon is recognized for 5 minutes.

Mr. MORSE. Mr. President, no matter how it is disguised nor how Senators swear to the purity of their intentions, the measure being voted on is, and is intended to be, a rebuff to the U.S. Supreme Court. Advocates of a strong proposal along the lines of the Dirksen measure are trying to accomplish something positive: They are trying to overturn the result of one of the finest decisions of the U.S. Supreme Court.

Advocates of a meaningless substitute are trying to replace it with only an insult to the U.S. Supreme Court.

I shall be party to neither. I shall vote for no proposal that in any way casts disrespect upon the Federal court system, or that in any way encourages others to show disrespect to the courts, or that expresses advice or disapproval of Congress of the way the courts do their job.

That kind of proposal is one of the key issues in this election. The confidence of the American people in their judicial system is being undermined and challenged in this presidential election, and it will continue to be challenged. No vote of mine will ever lend aid and comfort to that kind of vote seeking.

Moreover, the back seat driving that the Javits substitute represents is always an unsound disruption of our constitutional system, no matter how innocuously it may be framed. The only reason in the world it is offered, the only

reason it is voted on, is to express at least a concern on the part of Congress that the courts are not acting the way the Congress thinks they should act.

In the political context, that expression of views is of very great impact upon public opinion. In law, it may mean nothing; but among the public it means a great deal and it is the public as much as the courts to which this language is directed. Senators may say: "But it is meaningless; the courts will ignore it." The courts will ignore it, but the public will not and the politicians will not ignore it. For those who want to stir up resistance to court decisions and resentment against the courts in general, any critical advisory opinion from the Congress is a victory.

Once Congress starts to travel that road, it can lead only to the destruction of our constitutional system. We have wisely resisted it for 10 years. For at least 10 years, "court busting" bills have been on this calendar in every session. We have had bills to overturn the Nelson decision on State subversive laws; bills to overturn the passport decisions; bills to overturn the protection of persons charged as security risks; bills to overturn the Mallory rule; bills to limit the jurisdiction of the Federal courts to pass upon the right to practice law in State courts.

We have had bills to restrict the jurisdiction of the courts in habeas corpus cases; and we twice received from the House the Smith bill, H.R. 3, passed by large majorities. That "court buster" tried to instruct the Court that all Federal statutes should be construed as not affecting State laws on the same subject unless the statute specifically preempted the State laws. We had quite a fight on the Smith bill, whose sponsor in the House was the honorable chairman of the House Rules Committee. It, too, came over late in the session; a companion bill had been reported from the Senate Judiciary Committee. H.R. 3 was offered as a floor amendment to a pending bill, and the motion to table it failed by 39 to 46.

But we had a great and cherished colleague then, who served with perpetual vigilance on the Senate Judiciary Committee. I am referring to John Carroll, of Colorado. Senator Carroll wisely moved to recommit H.R. 3 to the Senate Judiciary Committee and the Senate took his advice.

The result has been that Senators will look in vain for any one of these "court busting" bills on the statute books. They have all been blocked by a small but determined group of Senators who were determined that no midnight Congresses should interfere with our judicial system and with our constitutional system.

It has always been possible for a determined majority, if there is one, to come back the next year and pass any one of these bills. But we do not hear anything any more about overturning the Nelson case, or Cole against Young, or the passport decisions, or the security risk decisions, and we do not hear anything today about H.R. 3. The habeas corpus bill is still around, and so are the Mallory rule changes, but much of the steam has gone out of them.

The PRESIDING OFFICER (Mr. NELSON in the chair). The time of the Senator has expired.

Mr. MORSE. I ask for 2 more minutes.

Mr. DIRKSEN. I yield 2 minutes to the Senator.

Mr. MORSE. If we who fought these measures had started dickering with their advocates to find something we could all agree on, most of them would have been adopted in one form or another. But it is remarkable how the American people come to understand and appreciate the function the Supreme Court performs for them as the umpire of our Constitution. But they need a little time to digest the meaning of some of these Court rulings.

And a very important function of the Senate is to give them that time. That is the only reason we have 6-year terms. We are supposed to be just enough removed from popular passions to resist snap judgments in the enactment of legislation.

Insofar as the Supreme Court is concerned, we have served that purpose very well. In the case of Brown against the Board of Education and other civil rights decisions, the long-term public reaction was in support of these decisions, and the legislation Congress passed provided for their enforcement. But it did not come until 10 years later. It did not come until the American people had digested the rulings of the Court.

But had there been any "sense of the Congress" resolutions passed calling upon the Federal courts to hold off on civil rights cases, there never would have been a Civil Rights Act of 1964, and probably not one in 1974.

Aside from the merits of these decisions and their application, I cannot, as a lawyer, accept the proposition that Congress has any business advising the courts. What would Senators say about a Supreme Court opinion that expressed the sense of the Court that Congress ought not to pass the Dirksen amendment? Or the Javits substitute? Or that Congress ought not approve a proposed constitutional amendment? Or that Congress should not pass upon a constitutional amendment until the courts had time to wind up these reapportionment cases?

The shock and outrage of Senators and members of the House would reverberate throughout the country. Would we say: "Oh, but the Court only said it was concerned about what we were about to do. It isn't binding on us?"

Of course not. We would say it was an unmitigated interference in the functions of Congress, that it was an attempt to undermine public confidence in Congress, and that the Court had plenty to do in its own jurisdiction without butting into ours.

That is exactly how I regard all resolutions and expressions of opinion telling the courts what we think they should do in given cases, and how they should handle those cases.

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

Mr. MORSE. Will the Senator yield me 1 more minute? I will try to get it back from the Senator from Montana [Mr. MANSFIELD].

Mr. DIRKSEN. I yield 1 minute to the Senator.

Mr. MORSE. The Federal courts are charged by the Constitution to consider all cases and controversies arising under said Constitution. It was not Earl Warren who laid down the theorem that the Supreme Court is the final arbiter of the application of the Constitution: it was a great Virginian, John Marshall. The decision of Marbury against Madison was not handed down by the Warren Court, or the Roosevelt Court. It was handed down by the John Marshall Court in 1803. The principle that the courts shall determine constitutional issues has served this country in good stead ever since, and I do not propose to change that principle now with any Dirksen amendment or Javits substitute.

It is always the right of the people, with the help of this Congress, to change their Constitution if they do not like its application to a given situation. Our job is not to coach the courts on reapportionment; our only job in this field is to pass upon a constitutional amendment.

If we are not going to consider a constitutional amendment, let us adjourn and go home. Let us stop interfering in the function, the duty, and the operation of the Federal courts.

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

Mr. MORSE. I ask for half a minute more.

Mr. DIRKSEN. I yield the Senator half a minute.

Mr. MORSE. If the American people are adamant in their opposition to the Court rulings on reapportionment, if they are determined to have malapportionment in their State legislatures, they will make their will known and felt in the years ahead. A constitutional amendment can always undo what the Supreme Court has already done. A constitutional amendment can permit States that have reapportioned under Court order to go back to their previous disproportionment, if there really is basic, grassroots, long-term public support for malapportionment.

The people will not need any hasty action in the dog days of the 88th Congress to permit them to have area representation in their States. It is only those who do not want to put the people to the test who want to forestall these Court orders and decisions. It is those who know that once popular representation is a fact the people will welcome it, who are trying to suspend the administration of justice.

All these reapportionment propositions are bad on their merits, and they are bad in their effect on our system of government. All should be rejected, and I shall vote against them.

Mr. DIRKSEN. Mr. President, I never cease to be astonished by how skilled debaters in this body can beg the question. Yet the question has been begged almost from the beginning of the discussion of the Mansfield-Dirksen amendment, or the Dirksen-Mansfield amendment, and

then the proposals that are offered as a substitute therefor.

I have freely conceded from the beginning that the way to go about this is by the constitutional process. Anyone familiar with the Constitution knows it. But we are up against a time factor, and in that interim period a great many things can happen to freeze something that probably would require many years to be undone.

One need only consider that there is no time in the 88th Congress to get a constitutional resolution through Congress and send the proposed amendment on its way to the States for ratification. That is a job that remains for the 89th Congress. What, then, is required to enact such a resolution and to send the proposed constitutional amendment to the people and to the States?

First. The new Congress must be organized.

Second. The committees must be appointed, and whatever gap may develop must be filled.

Third. The subcommittees must be established. Then a resolution must be referred to committee. It must go through that process both in the House and in the Senate. I presume that then would come the hearings. Then comes the discussion on the floor of the House and on the floor of the Senate. It takes time. However, we are not up against a theory; we are confronted with a condition. That is the reason for the Mansfield-Dirksen amendment, which is now before the Senate. It is designed to provide a breather until a constitutional amendment can be sent out to the country.

I do not know how much simpler the question can be put. I recognize, of course, that that power lies in the people.

People talk about court "busting." It makes an interesting phrase. However, I do not know that it has any significance or meaning. This is no attack on the Court. This is an exercise of what I think is a constitutional power that Congress possesses.

Congress can change the membership of the Court at any time, and it has done so many times in the history of the Republic. Congress can pass upon the appellate jurisdiction of the Court, and it has done so from the days of the McCardle decision when that Mississippi editor was in durance before the military authorities.

Those facts are all conceded.

All that is asked for in the original amendment is to stay the application of the Supreme Court's decision on the application of a responsible person. Who would be a responsible person?

Certainly the Governor of a State would have an interest. Certainly the attorney general of a State would have an interest. Certainly a member of the State legislature would have an interest. They are provided for as potential applicants under the Dirksen-Mansfield proposal.

It is that simple.

Now it is proposed to substitute first one proposal and then the modification that has been submitted today by the distinguished Senator from New York [Mr. JAVITS].

What appears in the substitute? It is another "sense of Congress" resolution. It provides:

It is the sense of Congress that in any action or proceeding in any court—

And so forth—

reasonable time should be accorded to such State to conform to the requirements of the Constitution relating to such composition or apportionment.

How effective is a "sense of Congress" resolution? In the international domain it means one thing; in the field of domestic policy, it means quite another. If there be any doubt about it, let us take a look at what happened in connection with the wheat controversy, when it was proposed to sell wheat on long-term credits, ostensibly to be supported by the Export-Import Bank, a Federal instrumentality. It became quite an issue.

Those who opposed it relied upon a provision in the 1961 Agricultural Act, which contained a declaration of policy to the effect that Congress looked askance upon a practice of that kind. The whole matter was thoroughly examined by the Attorney General, and he filed a brief with respect to this matter.

What did he say? Let me read from the Attorney General's opinion. He said:

I have examined the history of the declaration with care and find no indication that Congress itself viewed the amendment as more than an expression of its policy, to be given consideration by the executive in making decisions within the framework of the authorizations and prohibitions established by prior law. Representative LATTA—

Parenthetically, I add that he is from Ohio—

who offered the amendment to the 1961 act and who sponsored the declaration, himself stated that its purpose was to have the Department of Commerce know what the sense of this Congress is with respect to the transactions in question.

What did the Attorney General say? Here it is buttoned up in one sentence:

Congress could, of course, have embodied its policy in a provision of positive law, to which the executive branch would have been bound to adhere. That it did not choose to do so is significant, not only in establishing that that section is without legal effect, but in determining its proper interpretations and application as policy.

No legal effect. Congress had an opportunity to speak affirmatively and positively. It did not do so. It merely said that it was the sense of Congress, and the Attorney General chose to ignore that expression on the part of Congress.

So, Mr. President, where are we?

Incidentally, the Attorney General fortified his opinion with quite a number of cases, and thought he was standing on good ground.

I am content to take that as an expression of the intention on the part of the executive branch as to what it would do under similar circumstances.

Is it not reasonable to suppose that the Supreme Court and the three-judge courts that are set up under the Reynolds against Sims decision would do precisely the same thing? I think it is susceptible of easy proof. First, we can go back to the opinion of the Chief Justice with respect to whether or not the lower courts should give some reasonable time in order to apply the decision of Reynolds against Sims.

Let me read the language of the Chief Justice himself. It appears under title X of the Court decision, page 50. The Chief Justice said:

However, under certain circumstances, such as where an impending election is imminent and a State's election machinery is already in progress, equitable considerations might justify a court in withholding the granting of immediately effective relief in a legislative apportionment case, even though the existing apportionment scheme was found invalid. In awarding or withholding immediate relief, a court is entitled to and should consider the proximity of a forthcoming election and the mechanics and complexities of State election laws, and should act and rely upon general equitable principles. With respect to the timing of relief, a court can reasonably endeavor to avoid a disruption of the election process which might result from requiring precipitate changes that could make unreasonable or embarrassing demands on a State in adjusting to the requirements of the court's decree.

There the Chief Justice laid down the guidelines for the use of the rule of reason in applying the decision in Reynolds against Sims. Did the lower courts heed that decision? Certainly they did not. The court in Oklahoma allowed 15 days to convene a legislature and to pass a new apportionment bill. The legislature convened, it had a quorum, and then, when the legislature finished its labors, the Oklahoma Supreme Court declared the act unconstitutional.

Then the court set itself to doing the job. Here are the order, the statement, and revised order of the court in the Oklahoma case. What does the court say? On page 12, the three-judge court order reads:

Once a State's legislative apportionment scheme has been found to be unconstitutional, it would be the unusual case in which a court would be justified in not taking appropriate action to insure that no further elections are conducted under the invalid plan.

That was a three-judge court quotation from the Supreme Court decision in the Simms case. Further:

It is suggested that an unusual case is where an impending election is imminent and the State's election machinery is already in process.

Then what does the three-judge court say? They say:

If confusion and hardship result from the vacation of the primary elections, it is not of our making.

The three-judge court disclaimed any responsibility for it. They said:

Our duty is to reapportion the Oklahoma legislature in acocrdance with the established law of the land.

And in the doing, they made an unholy mess of the whole matter.

Senators ought to read the judicial apportionment of some of the districts. One in particular, district No. 35, requires three pages of single-spaced typewriting to define it. When one looks at

the map, he sees, for instance, shoestring districts, he sees squiggled districts, he sees districts running into alleys and streets. It is a phenomenal thing; in fact, it is incredible. Yet there was the Supreme Court's admonition about the rule of reason. Did the three-judge court adhere to it? Did they heed it? Did they take that admonition? Indeed, they did not. They said:

The confusion is not of our making.

So when we talk about the sense of Congress, the Attorney General said it has no validity, it has no force, it has no effect, it has no legal standing. The executive branch can proceed to do exactly what it wishes and pay no attention to the Senate or House of Representatives, or to both bodies jointly, in pursuing the application of the decision in Reynolds against Simms.

My friend the distinguished senior Senator from New York [Mr. JAVITS] comes to us with a new substitute. I have already alluded to the first part. But it is still the sense of Congress; and in that respect, it is meaningless to the extent that if a judge does not wish to pay heed to it, he does not have to do so, because the language is not binding.

But the second part of the new Javits-McCarthy-Humphrey amendment goes even further and is, therefore, even more objectionable. This is how it reads:

And (2) in the event that a proposed amendment to the Constitution of the United States relating to the composition of the legislatures of the several States, or to the apportionment of the membership thereof, has been duly submitted by the Congress to the States for ratification, such fact be taken into consideration in framing a decree for relief.

"In the event that a proposed amendment to the Constitution of the United States relating to" this matter has been duly submitted. Exactly when does that event take place?

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

Mr. DIRKSEN. I yield.

Mr. AIKEN. Does not the Senator from Illinois, the minority leader, interpret that language to mean that if any attempt is made to submit a constitutional amendment to the States, there will be a filibuster against submitting anything to the States, merely because those who are opposing the Mansfield-Dirksen amendment are evidently determined that the people of the States shall have no opportunity whatsoever to vote on what they want? Does not this language serve fair notice on us that the opponents will filibuster any effort to submit a constitutional amendment relating to the apportionment of legislatures?

Mr. DIRKSEN. I would do no injustice to any Member of this body; but on the basis of all that has been said thus far, that is not an unreasonable assumption. But I come back to the fact that in the event a proposed amendment relating to this subject has been duly submitted, that event will not take place until a new Congress is organized, committees are organized, subcommittees are organized, the proposal is referred, it is finally reported by the committees, and is finally approved by both the Senate and House. That is when the event would be reached; and who shall say when that will be?

Then, of course, it shall "be taken into consideration in framing a decree for relief."

I have set this proposal in rather vulgar terms, but to me it is absolutely meaningless. It gets nowhere. It has no teeth in it. That is what I object to. If we are to undertake to challenge the Supreme Court decision under the 14th amendment, as to whether or not under the Constitution there is the power to interfere with the States in the composition and the constitution of their legislative bodies, it is necessary, first, to stop further action by a stay of proceedings, and then to move toward the submission and adoption of a constitutional amendment. That is what we have undertaken to do from the very beginning.

Moreover, I think we must demonstrate our good faith, first, by introducing such a constitutional proposal, and second, by seeking to define what is a constitutional approach by statute to stay the application of the court order until the proposal can be presented.

We do not involve the danger of freezing a pattern which cannot be undone.

Mr. President, that is the story in brief compass. I hope, therefore, that the new Javits amendment will be defeated and that at long last we can get to a vote on the Dirksen-Mansfield proposal which is the pending business.

Mr. JAVITS. Mr. President, I yield 3 minutes to the Senator from New Jersey [Mr. CASE].

The PRESIDING OFFICER. The Senator from New Jersey is recognized for 3 minutes.

Mr. CASE. Mr. President, I thank the Senator from New York for yielding to me. I have asked the Senator from New York to allow me this time so that I may ask some questions of him in regard to the effect of his amendment in the form in which we shall vote upon it.

I am particularly concerned about that part of the amendment which comes after the numeral 2, which would express the sense of Congress that in the event "of any proposed amendment to the Constitution of the United States relating to the composition of the legislatures of the several States, or to the apportionment of the membership thereof, which shall have been duly submitted by the Congress to the States for ratification," such fact be taken into account in framing a decree of relief in any action or proceeding for the reapportionment of a State legislature.

I believe that, as a result of the modifications which have been made by the Senator from New York and his cosponsors in the amendment as it was originally proposed by him, he has eliminated some concern which I had felt in regard to the interpretation of his amendment. But I wish to get his own views from his own lips on the floor of the Senate in confirmation.

Am I right in understanding that there is no intent by the resolution, in the form in which we shall vote upon it, to have Congress express any sense that a court should be deterred from enforcing reapportionment, in any case in which under the Constitution it is necessary, by the pendency of any constitutional amendment unless such constitutional amendment is to be submitted for approval by the people, and not by the malapportioned legislatures themselves?

Mr. JAVITS. My answer to that question is "Yes." Yesterday I submitted a proposed constitutional amendment which is now lying on the table awaiting the signatures of cosponsors, carrying out the idea that the people of the State should participate directly in what happens to apportionment.

There are two ways in which the people can participate. One is by constitutional convention—that is, by approving or ratifying a Federal-type legislature by the convention method. The other way is by making the Federal method permissive only, but requiring the people of every State to vote in a referendum before there can be a reapportionment of their legislature on the Federal model.

Personally, I prefer the latter method. I do not exclude the former. The principle is the same. Therefore, my answer to the Senator can be "Yes." The people will determine what will happen. The Senator may prefer the alternative—that is, the constitutional convention method. Personally, I prefer the permissive method, by a vote of the people of each State respectively.

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

Mr. JAVITS. Mr. President, I ask unanimous consent that the Senator from New Jersey may proceed for 1 additional minute.

The PRESIDING OFFICER. The Senator from New Jersey is recognized for 1 additional minute.

Mr. JAVITS. My answer is that the people will determine, rather than the malapportioned State legislatures.

Mr. CASE. The Senator has given me precisely the assurance, which is to me essential to casting an affirmative vote on his amendment. I am most grateful to him for the explicitness of his assurance. For myself, there can be different ways—the two ways the Senator from New York has mentioned—by referendum on which all people can vote, or by the constitutional convention method; provided, in the case of a constitutional convention, that the delegates to the convention are chosen in a way which is representative of the whole population and does not reflect any malapportionment.

Mr. JAVITS. Of course, they would have to be, because the Supreme Court still has jurisdiction in respect to the composition of a constitutional convention.

Mr. CASE. I thank the Senator. I state to him and to his cosponsors that I believe he has performed a most important service to the country, now and for generations to come.

Mr. JAVITS. Mr. President, I thank the Senator from New Jersey for his comments.

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

Mr. JAVITS. I yield 2 minutes to the Senator from Michigan.

The PRESIDING OFFICER. The Senator from Michigan is recognized for 2 minutes.

Mr. HART. Mr. President, the original Javits "sense of Congress" resolution appeared to me to set a vexatious precedent. This body has no right to thwart or delay the realization of basic constitutional rights, and it seems to me that we cannot, consistent with our duty, tell the courts to delay the realization of those rights; nor should we instruct or seek to influence the courts.

The Supreme Court did not ignore the complexities of the reapportionment problem presented by its decision in Reynolds against Sims. It did not ask for precipitous action on the part of the States. It correctly recognized that it may take some time for the realization of those rights. It recognized "that legislative apportionment is primarily a matter for legislative consideration and determination—and that judicial relief becomes appropriate only when a legislature fails to reapportion according to Federal constitutional requisites—in a timely fashion after having had an adequate opportunity to do so."

The Court observed that the remedial technique be tailored to the demands of the specific case, and that the "relief accorded can be fashioned in the light of well-known principles of equity." Beyond that the Court did not, and—I believe—could not go.

Mr. President, it is with reluctance that I support this resolution as now modified and I do so only because of the greater danger involved in our failure to meet this situation. More specifically, I support it only to escape the probability or at least a high degree of possibility of a direct affront to the Supreme Court, if we fail to adopt this modified "sense" resolution. While I do not like it, in its present form it will not serve to thwart or delay the realization of basic constitutional rights, recognized by the Supreme Court.

While I do not like it, I know that many Senators who now propose to support it are also reluctant. In its present form, it will not serve to thwart or delay the realization of the constitutional rights recognized by the Supreme Court.

All Senators should express to the Senator from New York and the Senator from Minnesota [Mr. MCCARTHY] the acknowledgement that much thought and deep concern has been given to the inherent respect of the Court which is reflected in the efforts they have contributed to bring the Senate to this moment in debate.

Mr. JAVITS. I am grateful to the Senator from Michigan for his comments. Mr. President, under my agreement with the Senator from Illinois [Mr. DOUGLAS], I now suggest the absence of a quorum, the time to be charged equally to each side.

The PRESIDING OFFICER. Without objection, it is so ordered; and the clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. JAVITS. Mr. President, I ask unanimous consent that further proceedings under the quorum call may be dispensed with.

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

Mr. JAVITS. Mr. President, I yield myself 4 minutes.

The fundamental point which I believe separates us from the so-called Mansfield-Dirksen forces is a very important and critical one to the whole issue. It is simply that we do not believe that the Congress has the power to direct the Court as to what it shall do with pending cases.

Obviously, those who are opposed to us believe that Congress has such power and that, therefore, it is a question of discretion which we are arguing about as to whether Congress will exercise or withhold such power. It is true that if it were a question of discretion, I myself would urge the Congress to exercise its discretion to withhold the exercise of the power. But I do not premise my argument for the substitute presented by the Senators from Minnesota [Mr. MCCARTHY and Mr. HUMPHREY] and myself upon that ground.

It is very clear to me, from the decided cases, that if we endeavored to assert authority to require the Court in pending cases to stay its hand, which is the purpose of the Mansfield-Dirksen amendment, the Court must say, because that would be dictating a rule of decision to the Court, that it is unconstitutional; and once the Supreme Court strikes down such an enactment we would have a direct confrontation between the Supreme Court and the Congress which no responsible official in his right mind, in my judgment, would invite.

That is the very thing which constitutional lawyers, Presidents, Senators, high officials of our Government, historians, and other thoughtful Americans have always feared—that our system could break down at exactly the point where there was a confrontation between the power of a coordinate branch and that of another branch. Each could work irreparable mischief with the other if it chose. So such confrontations ought to be avoided like the plague. That is what we mean when we speak of a constitutional crisis. Therefore, Senators who believe that we do not have the power to deprive the Supreme Court of jurisdiction in the pending case and who take the view that the Court should afford more time to enable the States to conform and that there should be an opportunity for the Congress, if it chooses, to develop a constitutional amendment, should see the course of the modified amendment which we have submitted as the only course which can both practically and legally be taken by the Congress.

Mr. President, I should like to answer some of the points which were raised with respect to our argument upon the subject. In discussing the question, the Senator from Oregon [Mr. MORSE] spoke of the fact that Court "busting" bills have always failed. In my judgment, that is not quite an accurate statement, and for the following reason: Court "busting" bills which would overturn the institution of the Court and the Court as an institution have failed.

The PRESIDING OFFICER (Mr. PASTORE in the chair). The time of the Senator has expired.

Mr. JAVITS. I yield myself 2 additional minutes. So, too, have Court "busting" bills which sought to carry out the exercise of powers which we do not have. But it is not a fact that the Congress has not acted to change law in cases in which it was dissatisfied with the decisions made by the Supreme Court and the Supreme Court decision indicated that a change of law could be made by the Congress.

For example, it is a fact that we changed the law in the Subversive Activities Control Act in respect to the decision in the Yates case. It will be remembered that in the Yates case the Court raised certain problems of definition under the Subversive Activities Control Act. We found it desirable to act in respect to that subject. We redefined our definitions in order to make them more precise, and to answer what we thought were points made by the Court which would invalidate what we considered to be the proper thrust of the law.

It seems to me that that case is distinguishable from what we are contending with here, because in that case we had the power, and the Supreme Court made it very clear that we had the power, to amend the law.

The PRESIDING OFFICER (Mr. NELSON in the chair). The time of the Senator has expired.

Mr. JAVITS. Mr. President, I yield myself 1 additional minute.

The Supreme Court made it clear that we had the power to amend the law in order to deal with a situation which was presented to us by that decision. Now we are dealing with a constitutional interpretation within the inherent power of the Court as a coordinate branch of the Government. In my judgment, we are not dealing with a statute which should be enacted, because we ourselves know, or we should know, that we do not have the power to enact such a statute. Therefore, it seems to me, there is a clear distinction between the action of the Congress to the extent that it can act and the Congress withholding its hand where it cannot act; and the argument made by the Senator from Oregon [Mr. MORSE], it seems to me, bears us out for contending for the substitute rather than the contrary.

Mr. President, before I take my seat, I should like to acknowledge the great constructive and creative work of drafting the language of what is now the modified amendment before the Senate, and revising the language of the amendment which the Senators from Minnesota [Mr. HUMPHREY and Mr. MCCARTHY] and I had submitted, on the part of the distinguished present occupant of the chair, the Senator from Wisconsin [Mr. NELSON] and the distinguished Senator from

Illinois [Mr. DOUGLAS]. I understand that both Senators worked upon the language which is now before the Senate.

I also wish to pay my tribute of respect to the Senator from Montana [Mr. METCALF], our Acting President pro tempore, who was most influential in bringing about such wide acceptance of the proposed formula as the way in which to resolve the controversy.

Mr. President, again pursuant to my agreement with the Senator from Illinois [Mr. DIRKSEN], I suggest the absence of a quorum, the time taken for the call to be charged equally to each side.

The PRESIDING OFFICER. The clerk will call the roll.

The Chief Clerk proceeded to call the roll.

Mr. JAVITS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. JAVITS. I yield 1 minute to the Senator from Nebraska [Mr. HRUSKA].

APPALACHIA BEEF SUBSIDY UNFAIR TO REST OF UNITED STATES

Mr. HRUSKA. Mr. President, the Senate has followed a wise course in striking section 203 from the Appalachia bill, S. 2782.

Section 203 would provide special Federal subsidies to build up beef cattle production in the Appalachia area. The section is entitled "Pasture Improvement and Development," and, in the form reported by the Public Works Committee, would have authorized Federal grants for improving the pastures in that region.

Several weeks ago, I had made known my opposition and my intention to fight the provision on the floor of the Senate. In fact, an amendment was formally proposed and put in print on August 18, for myself and six cosponsors, to accomplish that purpose. The Senator from Iowa [Mr. MILLER] had a similar amendment. Others had likewise made known their opposition, including leading Members of the House. It is good to know that the administration apparently finally got the word. One must assume that the administration concurred, since the amendment to strike section 203 was actually offered by a member of the majority and adopted without opposition.

However, we have been told very openly by the Senator from West Virginia [Mr. RANDOLPH] that even if this pasture improvement program is not enacted this year, he intends to revive the proposal next year, or at the earliest opportunity.

His forthrightness is to be commended. We have been fairly warned. Under the circumstances it is appropriate to reemphasize some of the objections to the proposal.

Certainly it is not necessary to tell the Senate all over again about the problems of the beef industry. We have just completed a lengthy consideration of that situation. After the most extended debate and the most thorough hearings, we finally enacted Public Law 88-482 to place some restrictions on imports of foreign beef.

That legislation was passed only after a last-ditch fight against it by the administration. Secretary Freeman testified against it before the Finance Committee—he was almost the only witness who did so—and stated flatly that he was opposed to any legislation imposing quotas or other restrictions on imports.

His idea of how to solve the beef problem was a typical New Deal one—take it out of the taxpayer, and give it away to some worthy foreign recipient. It seems absurd, but the facts are that while we have permitted these tremendous quantities of beef to be shipped in here from abroad to invade our markets, at the same time the Department of Agriculture has been buying up and giving away choice American beef to countries like Egypt.

Simultaneously, the Appalachia bill was being pushed by the same Department of Agriculture, providing special Federal grants to help one section of the country build up its production of beef cattle.

The bill would authorize the Federal Government to pay 80 percent of the cost of the development or improvement of pasture for 25 acres for any landowner in the Appalachian region. The bill would place no dollar limit on the amount of Federal money that might be expended for the benefit of any one farmer.

As a matter of fact, the bill was not even very clear as to how the benefits were to be restricted so that each landowner would have not more than 25 acres of pasture created or improved at Government expense. The statement of minority views points that out clearly. For example, if four members of one family each owned 25 acres of a 100-acre farm, than all 100 acres could be improved, largely at Federal expense.

The administration program proposed that 9,500,000 acres in Appalachia be improved in this manner. At least, that is the version described by the Under Secretary of Commerce, Mr. Franklin D. Roosevelt, Jr. He spoke of an increase in the value of beef cattle production in the region amounting to $230 million annually, which would be equivalent annually to something over 1 billion pounds of livestock on the hoof, additional to our present production.

Mr. President, for weeks and months the Secretary of Agriculture went up and down the land, arguing that the real source of our troubles in the cattle industry has been domestic overproduction. Again and again, we have been told, on the basis of expert analysis by the statisticians of the Department of Agriculture, that increased imports were of only minor importance in their impact on the market price of cattle. The real problem, we have been told, is the overproduction of cattle here at home. Now, in this Appalachia bill, it was proposed to stimulate a substantial increase in beef cattle production, which would come into immediate competition with the feeders, produced by the stockmen and ranchers throughout the Middle West and West, including such areas as the Nebraska sand hills.

Mr. President, in the course of our frequent debates in the Senate on the beef import quota legislation, most of the discussion has focused around the collapse in the market prices of fed cattle. I hope that no Member of the Senate on that account was under the impression that the market for stockers and feeders had been insulated from damage. On the contrary, feeder prices have declined disastrously along with the prices for slaughter animals. Furthermore, whereas the market for fed cattle has started to improve encouragingly, that has not happened for the feeder cattle. The fact is that feeder cattle and calves today are quoted from $5 to $6 a hundred pounds below the levels of 12 months ago.

We are also told that these additional feeder calves and cattle from Appalachia would substitute for the imported feeders we now receive from Mexico and Canada. What an argument of sophistry that is. We have been importing feeder cattle from Mexico and Canada for a good many years. It is not because we could not produce enough stockers and feeders here at home. The number of beef calves and of feeder steers produced in this country has steadily increased but imports have continued to come in. In practice, Mexico and Canada will continue to send us their surplus feeder cattle and calves as long as our tariff remains low and as long as we are receptive to such imports. Any increase in numbers of feeders from Appalachia will simply add that much supply to the market and compete directly with our own feeders produced here at home.

Furthermore, it must be recognized that it is absurd to give Federal funds to landowners of one region to bring land into production, while simultaneously landowners in other regions are being paid to take better land out of production.

Mr. President, it is my earnest hope that the Federal Government will refrain from injecting itself into every situation which appears troublesome to any group of people anywhere in the United States. It is not hard to sympathize with people in Appalachia or elsewhere who are having problems that they find it difficult to solve. It is easy to say, "Let us help them," and then plunge in hastily with Federal money and Federal programs. But we have an obligation to give these problems thoughtful consideration. It is simply absurd to use Federal funds to induce more people to go into the cattle business. It is unfair and discriminatory to tax people in other parts of the country in order to give assistance to one selected region. If the people of Appalachia need help, so do the people of various other parts of the country. We have no right to play favorites, to help one area at the expense of others, to worsen the market for the cattle producers of the West and Midwest in order to help out the farmers of the East.

I ask unanimous consent that an article from the Stockman's Journal of June 24, 1964, and a release from the Department of Agriculture dated June 18, 1964, be printed at this point in the RECORD.

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