How the White House Muffed Its Chances to Defeat the South on Jury Trial, See P. 2.

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For the Civil Rights Bill, Weak As It Is

We hope the House will accept and the President will sign the Civil Rights Bill as it is emerging from the Senate. Weak and watered down though it is, the measure could still be a powerful instrument in the long hard fight to win the Negro full emancipation. The debate in the Senate illuminated the weaknesses in the position of the North, the Negro and his friends. It showed that the country as a whole was little aroused on the issue, and had little understanding of its meaning. A campaign of public education is needed to let the whole country understand how the moneyed oligarchy of the South's black belt counties controls the State governments of the South and wields vastly disproportionate power in Congress. A campaign of public education is needed to teach the whole country how cruel the white South can be in dealing with the black, and how ingenious and protean are the devices it uses to nullify every effort to improve the black man's status. The six-man bipartisan Commission on Civil Rights the bill would establish could be the means of educating the country. It would give the Negro a national forum. This alone makes the bill worthwhile, and could lay the basis for stronger legislation later.

The Jury Trial Issue Was Crucial

The strength of the South's position in the Senate debate is that it succeeded in putting the North in the wrong morally and therefore (on so fundamental an issue) politically by taking its stand on the trial-by-jury issue. The issue was simple, though deceptively so; it invoked honored symbols and stirred deep conditioned reflexes. All the answers to it were ineffective because they were complicated. How explain the intricacies of equity and the technicalities of civil and criminal contempt to a vast lay audience, especially one that was only half listening? More important, the answers at least by implication attacked the fundamental myths of our society. To say that there were issues or occasions on which juries—twelve good men and true—could not be trusted was to say that the Common Man was faulty. In no political system do men dare disparage the sovereign or his symbols; in a democratic society, no campaign can be waged successfully that is unflattering to the ordinary voter. The Rousseauist views from which the streams of both democratic and socialist thought derive deifies the Common Man. If he seems mean, spiteful or ornery, it is a temporary aberration because something extraneous—civilization, or feudal oppression or capitalist exploitation—has sullied or deformed his shining essential self. To say out loud that a plain ordinary run-of-the-mill Southern white man couldn't be trusted to deal justly with a Negro was in the final analysis to condemn ordinary people everywhere.

The Irrepressible Conflict Again

To say that the jury, chosen at random, tends to reflect the dominant views of the community and cannot rise above them was to admit that we were confronted by two distinct communities in one nation, a white Northern community prepared to concede Negro equality in theory and to accept it without too much protest in practice, and a white Southern community determined to treat the Negro as an inferior in race and status, and to circumvent every effort to enforce equality. So regarded, the problem was whether the Northern majority was to coerce the Southern majority or back down before it; the irrepressible conflict rose to the surface again. Yet to face this fully was to abandon the creative fictions with which men have sought for centuries to subdue, mold and civilize the savage within them. What happens to human brotherhood, what happens to the common Godhead, what happens to the solidarity of labor and the mission of the proletariat if we allow ourselves to look too nakedly at a situation which is race against race, with one determined to keep its foot on the neck of the other? If white workers and white tenant farmers in the South prefer to stand with their white overlords and rulers rather than with the black workers and black tenant farmers who share their economic lot, what happens to the assumptions that men act rationally, that they are basically benevolent, that they see their own real interests and act upon them, that they are perfectible and movable in progressive direction because of their economic interests, and that these interests are part of a Cosmic Plan, the old divinity disguised as Historical Materialism or Progress?

The View from Below Was Clearer

These Hamlet feelings did not bother the Negro because looked at from below, his painful vantage point, the whole argument was a white man's fraud. The realities of oppression were too overwhelming for such figments to be ponderable. To the Negro the question was simply whether he was or was not to be treated as a first class citizen. But to the white man, the good liberal white man of the North, the indispensable ally in the Negro's struggle, the question was whether he was going to be "fair." He did not like to face up to the question of whether one could be fair to the oppressor without being unfair to the oppressed. Indeed can one be fair to the oppressed without some unfairness to the oppressor? This is how the question honestly presents itself in a revolutionary period and the effort to win equality for the Negro in the South is a revolutionary enterprise. But to admit this would be to abandon the hope of coaxing and jollying the South along into obeying at last what it had resisted for 90

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The Joker in The Amendment Giving Negroes "The Right To Be A Juror"

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The President did not come to life on the civil rights issue until the fight was over, and political capital could be made by attacking the bill.

The White House is a press agent's dream. It can put a subject on the front page of every newspaper in the world. The outcome on civil rights might have been different if Eisenhower and his aides had used this power for public education.

An example: On July 24, in discussing the vote frauds in certain Louisiana parishes where the White Citizens Councils purged the rolls of Negro voters, Senator O'Mahoney, chief sponsor of jury trial in civil rights cases, laid himself open to devastating retort. O'Mahoney said it would have been "perfectly simple" for the Attorney General under existing law to indict those responsible for criminal conspiracy.

The Jury Wasn't Interested

The fact is that the Attorney General sought just such an indictment. But the Federal grand jury in Louisiana not only declined to indict but in the Bienville and Jackson Parish cases "after the evidence developed by the FBI had been outlined" to the jury it "expressed itself as not wishing to have any of the witnesses called as there was no real possibility of any indictments being returned." The words are from a letter by Assistant Attorney General Warren Olney III put into the Congressional Record by Senator Douglas just before the final vote on August 1 (see pps. 12156-7) where it went almost unnoticed. How effectively the White House might have used that letter against O'Mahoney if it had wanted to! A jury which would not even hear the witnesses! This little publicized affair could have been used to dramatize for the whole country the untrustworthiness of Southern juries where Negro rights are involved.

Another example: On July 26, Senator Case of New Jersey put into the Congressional Record (at pages 11645-7) a series of documents supplied by Warren Olney on the refusal of both State and Federal grand juries in Mississippi to indict for the brutal mistreatment of prisoners in Hinds County Jail, Jackson, Miss. One of those mistreated was a white sailor. The FBI investigated; a total of 56 witnesses was found; they were brought before a U. S. grand jury in Jackson, Mississippi, from June 4 to June 13 of this year. No indictments were returned.

Senator Case had photographs of two victims which he offered to show his colleagues. The documents and the photos elicited no reaction whatsoever. The White House could have rallied public sympathy and understanding by using this material. Jim Hagerty is no novice at using the press. The documents would have brought sharply home not only the unreliability of Southern juries but the need for Part III, which would have given the Attorney General the right to use the injunctive process to stop future brutality of this kind.

Explaining That Kasper Jury

"The conviction is understandable. First, the trial took place in Knoxville, which happens to be a hotbed of Republicans and always has been, even back in the days of the war between the States. Second, Tennessee happens to be the State that elected Estes Kefauver, traitor to the South, to a seat in the U. S. Senate. Third, Tennessee sentiment is not Southern sentiment and we can thank God for that."

—Jackson, Miss., News, P. 12145 Con. Rec. Aug. 1.

That New "Right to Serve on Juries"

Another example. The tide was finally turned in the South's favor on jury trial by the Church amendment which struck out of existing law the provision (it originated in the GOP dominated 80th Congress) that no one could be a Federal juror who was not qualified to be a State juror. This automatically barred most Negroes in the South. Senator Church (D., Wyo.) claimed that his amendment to the O'Mahoney jury trial amendment would confer on the Negro "another civil right—the right to serve as a juror." On this basis he obtained as co-sponsors four other Western Democrats, Magnuson, Jackson, Murray and Mansfield, and three Northern Democrats, Kennedy, Pastore, and Lausche. These seven alone were more than enough for victory, since a shift of five was enough to decide the issue.

But more important than the provision repealed by the Church amendment is the way Federal jury panels are made up in the South. They are drawn from lists furnished by so-called "key" business and political leaders and they include only a few token "trustworthy" Negroes. Douglas said that "without an affirmative change in the practice of selecting juries . . . the likelihood is that few Negroes will actually be called to serve." That explanation, based on the authoritative study by a respected senior Federal Judge some years ago, could also have been made effective politics by the White House, if anybody there had cared enough to use it.

Doesn't John L. Lewis Read the United Mine Workers Journal?

"The United Mine Workers of America . . . support appropriate legislation looking to the full enjoyment by all citizens of all civil rights. . . . Equally important, however . . . is the right of all men to be tried by a jury. . . . We should not and need not endanger one civil right in an effort to guard and secure another. . . . Expanding power of a central government . . . is allowable only when contemporaneous safeguards are provided for protection of all citizens alike in all parts of the country. . . ."

—John L. Lewis telegram on behalf of the United Mine Workers to various Senators backing jury trial in the civil rights bill, p. 11880, Con. Rec. July 31.

"Civil rights legislation was the big issue of debate . . . as the Journal went to press. As usual, the Dixiecrats were, in effect, fighting the Civil War all over again . . . and trying to tack on all sorts of hog-tying amendments that would make the legislation ineffective. The major amendment . . . was one that would allow jury trials of anyone accused of contempt. . . . It is obvious that no southern white jury will convict anyone on such charges. . . . The trial-by-jury amendment is as phony as a $3 bill. . . . The civil rights bill actually is a mild measure. . . ."

—Editorial, United Mine Workers Journal, June 1957 issue, Text at P. 11905, Con. Rec. July 31.