CALIFORNIA

John M. Francisco, Los Altos.
Mabel Winter, Moneta.
George P. Lovejoy, Petaluma.

FLORIDA

Marion K. Wright, Fort Lauderdale.

GEORGIA

Louis A. Mauldin, Clarkesville.
William G. Smith, Loganville.

KANSAS

George E. Corbin, Anthony.

MISSISSIPPI

Ida F. Thompson, Dlo.
Laura L. McCann, Norfield.

MISSOURI

Ulysses S. G. Evans, Farmington.

MONTANA

Leslie E. Robinson, Columbia Falls.

NEW YORK

Melvin B. McCumber, Henderson.
Clyde H. Ketcham, Islip.

NORTH CAROLINA

Felix M. McKay, Duke.
W. Sherman Daniels, Newland.
Maggie S. Cooley, Wagram.

OREGON

Adelle M. March, Myrtle Creek.

PENNSYLVANIA

Seeley F. Campman, West Middlesex.

TENNESSEE

Alonzo A. Patterson, Henryville.

TEXAS

Crave R. Davis, Bedias.
Jennie Baccus, Frisco.
George O. Buckhaults, Madisonville.
Fred Norris, Onalaska.
Bena B. Clack, Peacock.
Nellie Whitten, Waskom.

VIRGINIA

James B. Dyson, Crewe.

WASHINGTON

Harry L. Griffin, Yacolt.

WISCONSIN

Gunnil S. Peterson, Scandinavia.

SENATE

MONDAY, *March 16, 1925*

(Legislative day of Tuesday, March 10, 1925)

The Senate met at 10.30 o'clock a. m., in open executive session, on the expiration of the recess.

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

The VICE PRESIDENT. The Secretary will call the roll.

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

Bayard	Ernst	King	Robinson
Bingham	Fernald	Ladd	Sackett
Blease	Ferris	Lenroot	Sheppard
Borah	Fess	McKellar	Shipstead
Bratton	Fletcher	McKinley	Shortridge
Broussard	Frazier	McLean	Simmons
Bruce	George	McMaster	Smith
Butler	Gerry	McNary	Spencer
Cameron	Gillett	Means	Stanfield
Capper	Glass	Metcalf	Swanson
Caraway	Goff	Moses	Trammell
Copeland	Gooding	Neely	Tyson
Couzens	Hale	Norbeck	Wadsworth
Cummins	Harreld	Norris	Walsh
Curtis	Harris	Oddie	Watson
Dale	Harrison	Overman	Weller
Deneen	Heflin	Pepper	Willis
Dill	Jones, Wash.	Pine	
du Pont	Kendrick	Ralston	
Edwards	Keyes	Reed, Mo.	

The VICE PRESIDENT. Seventy-seven Senators having answered to their names, a quorum is present.

NOMINATION OF CHARLES BEECHER WARREN

The Senate, in open executive session, resumed the consideration of the nomination of Charles Beecher Warren, of Michigan, to be Attorney General.

Mr. GOFF obtained the floor.

The VICE PRESIDENT. If the Senator from West Virginia will yield for a minute, the Chair will direct the Clerk to read the unanimous-consent agreement entered into on Saturday, so that it may be in the minds of all.

The Chief Clerk read as follows:

It is agreed by unanimous consent that at the conclusion of executive business to-day the Senate take a recess in open executive session until 10.30 o'clock a. m. Monday; that upon convening Monday it resume the consideration of the nomination of Charles Beecher Warren to be Attorney General, and that a vote on the confirmation of the said nomination be had not later than 2.30 o'clock p. m. on that day; that no Senator shall speak more than once nor longer than 30 minutes; and that the time shall be equally divided between those who are opposed to and those who favor the confirmation.

The VICE PRESIDENT. The Chair will state that it has been suggested by the majority and minority leaders that the speakers be recognized alternately, for and against confirmation. The Chair will proceed in that way, the time not consumed by any Senator on one side to be left as a credit to that side. The Senator from West Virginia will proceed.

Mr. GOFF. Mr. President, the question now before the Senate, as I view it, as indicated by the action of the Judiciary Committee and the report accompanying that action, is this: Will the Senate advise and consent to the nomination of Charles Beecher Warren as Attorney General of the United States?

That question, in and of itself, involves essentially the question of the fitness of the President's nominee. That fitness has been debated during the week last past, and many things were said that would support and qualify him for this great office, and some things were said which, if they were justified by the record in this case, would tend to disqualify Mr. Warren for the great office of Attorney General.

I desire in the time which is allotted to go somewhat particularly into the question involving the fitness of Mr. Warren. I desire to say now that much that I shall refer to in the course of this discussion is based upon my personal acquaintance with Mr. Warren, my knowledge of him, and my association with him. I would be ungrateful and unresponsive to the obligations of cordial acquaintanceship and of friendly association if I did not raise my voice in witness to some of the things I know that bespeak the high quality of Mr. Warren, not only as a member of the bar but as a man and as a citizen of this our common country.

With the permission of the Chair and the consent of the Senate, because I feel that with these facts before us we will have a better understanding of this discussion, I desire to read a certain short biographical sketch of Mr. Warren.

Mr. Warren was born at Bay City, Mich., April 10, 1870, the son of Robert L. and Caroline (Beecher) Warren. His father was a graduate of the University of Michigan and founded, owned, and edited newspapers in Bay City, Saginaw, and Ann Arbor, Mich., and served in the Federal Army in the Civil War. The son was educated at Albion College and at the University of Michigan, being graduated as a bachelor of philosophy at the latter in 1891, having specialized in history, philosophy, and constitutional law, and being the first editor in chief of the university magazine founded by his class. He studied law under Don M. Dickinson, of Detroit, was graduated at Detroit Law School in 1893, and for four years was attached to Mr. Dickinson's firm.

In 1897 he became a partner in the firm of Dickinson, Warren & Warren, one of the largest law firms in Detroit, and in 1900 he organized, with John C. Shaw and William B. Cady, the firm of Shaw, Warren & Cady. Upon the death of Mr. Shaw in 1911 he became head of the firm, which is now Warren, Cady, Hill & Hamblen. Mr. Warren is an authority on international law. In 1896, at the age of 26, he was associate counsel for the United States in the Bering Sea controversy with Great Britain.

It is at this stage I desire to say that his participation in that great controversy was not that of a law clerk whose name was signed to the papers. It was that of an attorney, who not only understood the underlying issues that were then before the commission but who did, as the records indicate, examine and cross-examine the witnesses who came before that tribunal, and he did that intelligently, he did it constructively, he did it with a spirit that meant the progress of the issue and the elimination of the immaterial questions involved.

He was later one of the attorneys for the United States in the North Atlantic fisheries dispute with the British Government in 1909, and made one of the oral arguments in that connection before The Hague Tribunal in 1910.

The Senator from Pennsylvania [Mr. PEPPER] referred at length, in his very splendid and in his very fair and impartial address on Saturday, to this argument which was made by Mr. Warren, and it is unnecessary for me to add any word of detail, except to say that the argument presented by Mr. Warren before The Hague Tribunal reflected not only the mind of the student, not only the vision of the investigator, not only the ideals that actuated the United States, but it was an argument that contributed to the solution of the matters then before that great tribunal, and to the satisfaction of the countries involved. Later, during the war with Germany, he entered the United States Army as major in the Reserve Corps, Judge Advocate General's Department (April, 1917), serving as chief of staff to Gen. E. W. Crowder, Provost Marshal General. In this capacity he rendered able service in organizing the selective service law machinery and in preparing and administering the regulations under which 24,234,021 men were registered and 2,810,296 were inducted into the military service. He was promoted to lieutenant colonel on February 13, 1918; colonel in the National Army on July 19, 1918; and was awarded the distinguished-service medal by the President with the following citation:

For especially meritorious and distinguished service to the Government in connection with the administration of the selective service law during the war. In all of his varied and important duties he displayed unselfish devotion, tireless energy, and extraordinary executive ability.

Mr. Warren has served his party as delegate to Republican national conventions and as member from Michigan on the Republican national committee from 1912 to 1920. Of this body he was a member of the executive committee and chairman of the subcommittee which revised the procedure of the party organization and reapportioned the representation of the Southern States in future conventions.

President Harding appointed him United States ambassador to Japan in June, 1921, and he discharged his duties at Tokyo with ability and distinction. His term of office included the period of the Washington Conference on the Limitation of Armament, and the last and most important of his negotiations resulted in the abandonment of the Lansing-Ishii agreement of 1917, in which the United States recognized Japan's interests in the Far East. He resigned his post in March, 1923, and in the following May President Harding sent him and John Barton Payne to Mexico as special commissioners to represent the United States in the negotiations with President Obregon, of Mexico, to reestablish formal relations between the two countries. Following the recognition of the Mexican Government by the United States, President Coolidge appointed Mr. Warren ambassador to Mexico in February, 1924. He is a member of the American Society of International Law, the Michigan and Detroit bars, and of the following associations and clubs: The Phi Beta Kappa; the University Club (New York); the Metropolitan Club (Washington, D. C.); the University, Detroit, and County Clubs (Detroit). He is a director of the National Bank of Commerce, of Detroit, and in 1914 and 1915 was president of the Detroit Chamber of Commerce. The honorary degree of M. A. was conferred upon him by the University of Michigan in 1916. He was married December 2, 1902, to Helen Hunt, daughter of Charles Wetmore, of Detroit, Mich., and has four sons: Wetmore, Charles B., jr., Robert, and John Buel Warren.

At this point I desire to read, with the permission of the Chair and the consent of the Senate, certain letters passing between Mr. Warren, President Harding, and President Coolidge.

On the 2d day of March, 1923, President Warren G. Harding addressed Mr. Warren in the following terms:

MARCH 2, 1923.

Hon. CHARLES B. WARREN,
Detroit, Mich.

MY DEAR MR. AMBASSADOR: I am in receipt of your favor of March 1, in which you tender to me your resignation as ambassador to Japan. I am writing to accept your resignation, effective at once. I can not permit the occasion to pass without expressing to you my unbounded gratitude for the distinguished services which you have rendered to the Government and your country in this position of very great responsibility and importance.

I have noted with gratification the pleasing conditions of international relationship which you report, and I do not hesitate to say that you have had a very large share in bringing about this highly gratifying state.

When I asked you to accept the diplomatic post at Tokyo I was confident of your possession of that ability and personality which would tend to promote our fortunate relationships. You have more than met my expectations. It has been a matter of greatest satisfaction to note the progress of your work and the success which has attended it. Please be assured that your retirement is accepted only because your personal affairs require it, and the gratitude of those of the Government in any way associated with the Diplomatic Service will ever be yours.

Very truly yours,

WARREN G. HARDING.

I further desire, with the permission of the Chair and of the Senate, to read a letter addressed to Mr. Warren by the Hon. Charles E. Hughes, under date of March 2, 1923, as follows:

MARCH 2, 1923.

Hon. CHARLES B. WARREN,
Department of State.

MY DEAR MR. WARREN: I have received your letter informing me that you have tendered to the President your resignation as ambassador to Japan. I view with deep regret your retirement and yet I fully understand the reasons which have prompted you to this action.

Permit me to express the highest appreciation of the notable service that you have rendered to your country. You undertook the duties of your important mission at a time of special interest and you have represented this Government most effectively and contributed in the most signal manner to the advancement of our friendly relations with the great people to whose Government you were accredited.

I desire also to express my sense of personal obligation for your valuable cooperation in our mutual labors to maintain the sound traditions of our diplomacy and to promote peace and good will among the nations.

With high esteem, believe me, very sincerely yours,

CHARLES E. HUGHES.

Again craving the indulgence which has been granted me, I desire to read to the Vice President and to the Senate the letter of President Coolidge addressed to Mr. Warren under date of August 27, 1923, as follows:

AUGUST 27, 1923.

Hon. CHARLES B. WARREN,
State Department, Washington, D. C.

MY DEAR MR. WARREN: It is with the utmost satisfaction that I am taking this early occasion to express to you my great appreciation of the work performed by yourself and your colleague, Judge Payne, in conducting and successfully consummating the negotiations with Mexico. The accomplishment of this fine piece of work, looking to the guaranty of peace and stabilization of economic and political relations throughout this continent is a notable achievement at this time. It is more than the settlement of a long-standing, complex, and difficult series of differences between the Republic of Mexico and our own country. It is a demonstration that patience, good will, and the purpose of peace can overcome the most discouraging obstacles between nations which sincerely wish amicable and mutually helpful relations. Because it is all this, it is a fine thing to have had such a part as your own in making it possible at this time in a distraught world. To your skill as negotiator and wisdom as a man of affairs is due large credit for the result, which we are all sure will be of great benefit to both countries. I have all confidence that it will mark an important step in the progress of Mexico, and this assurance is among the reasons for my satisfaction in the accomplishment and for these congratulations to yourself.

Most sincerely yours,

CALVIN COOLIDGE.

It is in the light of those facts—recording, as they do, the accomplishments of Mr. Warren; reflecting, as they do, his wisdom and his brilliancy of mind; embodying, as of necessity they must, his sterling integrity and his upright, outstanding character—that there has been conceded, as I assume and understand it, that there can be no possible attack upon either the integrity, the uprightness, or the personal honesty of Mr. Warren.

It was only because Mr. Warren some thirty-odd years ago became associated with the so-called Sugar Trust in its relations to the beet-sugar companies of the State of Michigan, in the long ago, when he, a young man, started the practice of his profession, that we heard, as has been said upon the floor of the Senate and in the campaign that has closed, these issues raised.

We heard it then said that men could not be relied upon, that men could not be trusted if they had passed through certain experiences, even though they had grown away from them and left them far in the rear. Are men always to be said to be effected, especially in the profession of the law, with the different experiences through which they pass? I know it is a common reflection against the greatest of all professions that

lawyers to succeed must make their client's case their own, but no lawyer within the sound of my voice believes or indorses that principle. Men represent their clients because they are faithful to their trust. Men represent the cases intrusted to them as members of the bar, without being contaminated by the issues involved and without being blinded to the opposing principles.

It was suggested in the course of the discussion in the Senate a few days ago that a lawyer was not permitted when he took a seat upon the bench to sit in the decision of matters that have possibly been his vocation at the bar. Let me refer to the debate that occurred on Tuesday, March 10, 1925, at page 74 of the RECORD. It was during the discussion of this matter by the senior Senator from Iowa [Mr. CUMMINS]. He was asked by the Senator from Delaware [Mr. BAYARD]:

Let me suggest this to the Senator, then: Will not Mr. Warren, if he is confirmed and enters upon his office, be called upon to act in a quasi-judicial manner in so far as he must determine whether or no certain prosecutions must be put through as against people who break the Federal laws?

I have no doubt of it—

The Senator from Iowa replied. Then this question was propounded by the Senator from Delaware:

That being true, is it not also a fact that all over our country, all through our judicial operations, a man who has been a member of the bar and has advocated certain cases, when he comes upon the bench is barred from acting as a judge in that line of cases?

That is, I submit, a mistaken view of the profession. If that rule were ever entertained or invoked it would bar from judicial positions the wisest and the most experienced members of the bar. It would mean, if I may use the illustration——

Mr. BAYARD. Mr. President——

The VICE PRESIDENT. Does the Senator from West Virginia yield to the Senator from Delaware?

Mr. GOFF. I yield.

Mr. BAYARD. Does the Senator deny the general proposition that when a member of the bar has been engaged in a certain line of cases or in a certain case or has had certain clients, when he is elevated to the bench is barred by practice and morals from sitting in such a case?

Mr. GOFF. Does the Senator mean a case which he has tried in the lower court?

Mr. BAYARD. No; I did not say that. The Senator could not have misunderstood me. I said if a man has a client or is engaged in a series of transactions in his profession and thereafter becomes a member of the bench, when those matters come before him on the bench would good morals and practice under the laws and proceedings now in our country forbid him from acting as judge and would he step to one side and get some other judge to hear the case?

Mr. GOFF. I will answer the Senator's question. I do not for one moment admit the Senator's general proposition. If I did, then we would find this anomaly, that we would have sitting upon the bench—and the annals of our country are full of such cases—men prominent as railroad attorneys when they were at the bar. Does not the Senator know that such judges always sit when cases involving railroad interests and railroad rights are before the appellate court for decision, because their impartial knowledge and their intimate views acquired in the participation in the solution of those questions make them an invaluable addition to the bench? That is where the bench obtained its wisdom. It receives it from men who in their experience at the bar have risen up to the bench with that honor and that manhood which this great profession of ours trains men to possess.

Mr. BAYARD. Mr. President——

The VICE PRESIDENT. Does the Senator from West Virginia again yield to the Senator from Delaware?

Mr. GOFF. I can not yield. I have only a moment left and I can not yield.

In closing, Mr. President, I desire to say that on the 7th day of October, 1919, in the Senate of the United States, in this Chamber, Senator Chamberlain was discussing the question whether General Crowder should be commissioned a lieutenant general in the Army, and in the course of that discussion Senator Chamberlain, a man who stood out as one of the bright beacon lights of America's contribution to the jurisprudence of the war, made use of the following language:

Mr. CHAMBERLAIN. Mr. President, when the Senate went into executive session yesterday I was discussing the propriety of recognizing General Crowder by having him appointed a lieutenant general after his retirement, while ignoring the men who abroad had done the actual fighting, and men in this country who had rendered just as efficient and just as effective service in the prosecution of the war as General Crowder did as Provost Marshal General. Without any intent to minimize the service of General Crowder, but rather commending him for what he did, it seems to me he is not entitled to any higher commendation than other men who, whether at home or abroad, did their patriotic duty in prosecuting this war to a successful conclusion.

* * * * * * *

Did General Crowder come before the conferees to assist them? Not at all. It was recognized by some of the members of that committee, at least, that General Crowder was not the man to undertake to popularize that measure. The man who was called into consultation was Mr. Charles Warren.

Mr. BRANDEGEE. Charles Warren, of Detroit, Mich. He afterwards went into the service.

Mr. WARREN—

That is, the senior Senator from Wyoming [Mr. WARREN]—

Mr. President, I think the Senator will remember that Mr. Warren was in the Provost Marshal General's Department, and really was the next man and ranked next to Crowder, and came before us by direction of General Crowder.

Mr. CHAMBERLAIN. Yes; that is right.

Mr. WARREN. I think he was a lieutenant colonel.

Mr. CHAMBERLAIN. He was when he went out of the service. I am not criticizing that. I am suggesting the fact that the man who was sent before the committee for the purpose of assisting in perfecting this bill and bringing the local communities into touch with the Military Establishment was a civilian lawyer of distinction from Detroit, Mich., as I have before stated; and I want to pay him the compliment of saying here and now that there never was a man who appeared before the committee who tried harder to give to the country the best service that was in him, without fear or favor, and without any regard to what effect his course might have upon himself.

Now let us see what the conferees did in reference to that matter.

Mr. FLETCHER. Mr. President, may I interrupt the Senator?

Mr. CHAMBERLAIN. Yes, sir.

Mr. FLETCHER. The whole plan of the draft was all settled, decided on, arranged for, and prepared before Mr. Warren came to the department at all, was it not?

Mr. CHAMBERLAIN. I do not know whether that is a fact or not. The bill may have been prepared long before it was introduced on the 19th day of April, 1917, and it may be that Mr. Warren was not in the department. It may be that he did not participate in its framing. It is claimed, however, by the Secretary of War that practically all credit is due to General Crowder after consultation with him. However that may be, the man who did assist the conferees in order to try to get a tribunal that would not only be fair but whose decisions would satisfy the communities in which these young men lived was Mr. Warren.

The VICE PRESIDENT. The time of the Senator from West Virginia has expired.

Mr. REED of Missouri. Mr. President, I apologize to the Senate for taking a moment more of time, but I had not quite concluded my remarks on Saturday, and I do not now desire to make a speech. I want to read for the edification of the Senate not the eulogies, solicited or unsolicited, that may have been written to a man by his party associates, but the cold record in the case of the United States against the American Sugar Refining Co., Charles B. Warren, et al.

Let me observe that I agree that Mr. Warren has been faithful to his trust. His trust was the Sugar Trust. He was a part of it. So that I need not interrupt my reading I will also remark in advance that it requires a rather vivid imagination, in view of the facts disclosed here, to set up the claim that Mr. Warren's connection with the Sugar Trust was 30 years ago. He sat as a lawyer for the Sugar Trust in hearings that were had and which were only concluded in 1922. He appeared there for himself and I know not how many others, and examined witnesses. If he could plead nothing but the statute of limitations, he would not be able to set it up as a bar at all. He will have to get a much shorter statute than that.

With this preliminary statement, I invite the attention of the Senate for just a few moments to some of the evidence which was produced in the case to which I have referred. Mr. Charles Bewick had at the time, as a part of the contemporary proceedings, filed this letter of the Tawas Sugar Co.

After organization, Mr. Churchill (who was an associate of Mr. Warren's) forced himself on the T. S. Co. as president and general manager, claiming that he should receive a salary of $5,000 per annum. * * * However, he hired his man Orton as manager, salary $2,500. Then Messrs. Churchill and Warren stated that the T. S. Co. had to pay a promoter's fee of about $5,000 cash and $30,000 stock, of which they offered me a share.

Warren was one of the promoters.

I then refused to go any further into the T. S. Co., and pay no further assessments. * * * Mr. W.—

That is, Mr. Warren—

asked me to reconsider my refusal, stating this matter might prejudice A. S. Rfg. Co.—

That means the American Sugar Refining Co.

That the T. S. Co. was now well managed; was assured of over 40,000 tons of beets.

He further assured me Mr. Neise had improved the Kilby plans and the T. & S. Co. would have the best plant in Michigan. He also stated he had reduced the promoter's fee to about $1,500 in cash and $15,000 in stock. I finally consented and paid my subscription.

That shows where Mr. Warren was getting some of his fortune—from promoter's fees.

January 1, 1906—

This is a letter to Mr. Havemeyer by Mr. Bewick—

Last August your Mr. Warren invited me to go with Mr. Wallace to Minnesota and look over the burned-down St. Louis Park Sugar Co.—

I am making omissions in the reading, but the whole letter may go in—

Warren told me that the new company would be organized and managed direct from New York.

That takes the gentlemen into Minnesota.

At a shareholders' meeting last September, when the Tawas Sugar Co. accepted the American Sugar Refining Co.'s offer of $300,000 for the Tawas Sugar Co., machinery, etc., the offer had the provisions, first, that this $300,000 should be divided and checks sent to each shareholder; second, that then each shareholder had the privilege to take stock in new company or not.

October 9 Mr. Warren invited me to go with him to Minnesota to organize new company. During the interview it developed that Mr. Churchill also would be there to organize. October 10 I wrote Mr. Warren that I would have nothing to do with the new company whatever.

Mr. Warren is still trying to drag me into new company. All other shareholders have received their checks. He is still holding me up and has not sent check due me. He says that he had informed you I would go into the new company, and you would think it strange if I now refused to go into the new company. * * *

Conditions in Michigan are growing worse. The good farmers refuse to grow any beets. They say that they have been cheated; that Messrs. Warren and Churchill are the representatives of the Sugar Trust hired to destroy the beet industry in Michigan. If you would induce Mr. Morey, of Denver, to reorganize the Michigan sugar companies, he would soon change conditions.

I ask that the entire letter be printed at this point.

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

DETROIT, MICH., *January 1, 1906.*

Mr. H. O. HAVEMEYER,
President American Sugar Refining Co.

DEAR SIR: At a director's meeting of the Tawas Sugar Co. about a year ago we considered affairs of said company. We saw plainly that within four years this ill-managed company would be eaten up with debts and every dollar invested lost. I suggested to move plant to either Fort Morgan or Brush, Colo., and put under the entire jurisdiction and management of Mr. Morey, of Denver. I offered to keep up my $75,000 stock in said new company.

Last August your Mr. Warren invited me to go with Mr. Wallace to Minnesota and look over the burned down St. Louis Park Sugar Co.; also examine the surrounding country for a new sugar company. Our report stated that it was the best location, etc., we had ever seen in any unirrigated country.

On our return Mr. Warren asked if I was willing to become a shareholder in a new company. I replied that all would depend on the organization. If any of the officers who had the mismanagement of the Tawas Sugar Co. to make an utter failure of it went into new company I would have nothing to do with it. Warren told me that the new company would be organized and managed direct from New York.

At a shareholders' meeting last September, when the Tawas Sugar Co. accepted the American Sugar Refining Co.'s offer of $300,000 for the Tawas Sugar Co. machinery, etc., the offer had the provisions, first, that this $300,000 should be divided and checks sent to each shareholder; second, that then each shareholder had the privilege to take stock in new company or not.

October 9 Mr. Warren invited me to go with him to Minnesota to organize new company. During the interview it developed that Mr. Churchill also would be there to organize. October 10 I wrote Mr. Warren that I would have nothing to do with the new company whatever.

Mr. Warren is still trying to drag me into new company. All other shareholders have received their checks. He is still holding me up, and has not sent check due me. He says that he had informed you that I would go into the new company, and you would think it strange if I now refused to go into the new company. Of course, that is all nonsense. The American Sugar Refining Co. does not care a penny if I go in or stay out.

Conditions in Michigan are growing worse. The good farmers refuse to grow any beets. They say that they have been cheated; that Messrs. Warren and Churchill are the representatives the Sugar Trust hired to destroy the beet industry in Michigan. If you would induce Mr. Morey, of Denver, to reorganize the Michigan sugar companies he would soon change conditions.

He would come together with the farmers and restore confidence and good will. Caro and Saginaw plants should remain where they are. They are the two best plants and largest, and we would have within two years plenty of good beets for these two plants. Move the Bay City-Michigan, Croswell, and Shebawing plants. I know some excellent locations in the Northwest for these four sugar plants. Under able and clean managements all would pay fair returns. If they are left as now, every dollar in these companies will be wasted and lost. I have no ax to grind. I wish to preserve the business in our State and prevent the waste of all the money invested.

Kindly instruct Mr. Warren to send check due me from the sale of the Tawas sugar plant. Please keep this letter confidential. I wish to create no further strife and ill feeling with Churchill and Warren. There is too much already in our State.

Yours truly,

C. BEWICK.

P. S.: Every State has a grange. Every good farmer belongs to it. All the State granges have formed a national grange. This is now getting to be the strongest organization in our country. It is strong and clean, controlled entirely by country people; object, to give everybody a fair deal, no favors for rich or poor. This organization will put all the political State machines out of business. In the future they will elect our United States Senators. The sugar industry has to deal directly with this organization. We must be on good terms with it.

Mr. REED of Missouri. From page 3830 of the record I read the following:

Mr. C. B. Warren stated that if in the judgment of Messrs. Churchill and Bewick—

The latter being the man who made the comment I have just read—

the conditions warranted the investment, he was prepared to subscribe for one-half the capital stock when the other half was subscribed.

And the record shows that the half he was to subscribe was to be paid for with American Sugar Refining Co. money.

Here is an excerpt that is interesting because it brings in another familiar name to the Senate. The date is January, 1903.

The president reported to the board that, acting under the authority of the board previously granted him, he had entered into and executed in behalf of the corporation an agreement with all or nearly all of the beet-sugar companies of the State relative to the securing of acreage and the prices to be paid for beets during the next two campaigns, and had agreed to deposit in behalf of the corporation the sum of $2,500 to secure the performance by this company of its undertakings entered into in and by said agreement. After discussion of the matter, on motion of Mr. Newberry—

That is our old friend Truman H. Newberry again—

duly seconded, the action of the president in executing said agreement was unanimously approved, and the treasurer authorized and instructed to place the sum of $2,500 at the disposal of the president for the purpose of carrying out the terms of said agreement.

Now let us see about the statute of limitations. Mr. Fred P. Sholes was testifying.

Q. Mr. Charles B. Warren became a member of the board of directors about September 9, 1907, did he not, Mr. Sholes?

That is of the Continental Sugar Co., of Ohio, which was trust controlled.

A. Mr. Warren became a member of the board of directors on September 9, 1907.

Q. Mr. Sholes, I call your attention to a minute of the meeting of the executive committee of the Continental Sugar Co., held November 1, 1909, as follows: "The secretary reported that an agreement had been made between the beet-sugar manufacturers, generally represented by the Central Western States, to raise the selling basis from 4.75 to

4.85, effective at the beginning of business on this day." And I ask you whether you remember that item of those minutes, or the transactions to which it refers?—A. I don't remember the particular transactions, but recognize the minutes.

Q. Who were the beet-sugar manufacturers in the Central States referred to in those minutes, if you recollect?

Mr. WARREN. When was that?

Mr. KNAPP. November, 1901.

A. I don't remember the incident sufficiently in detail to say what it meant.

Q. Do you remember with whom that agreement was made?—A. Such a matter would naturally come from the brokers, and that is the only information in tangible form that I can suggest.

Mr. Warren remained an officer of the company until 1909; and here is a bit of light about it. Mr. Harper then was the president of the American Sugar Co., and Mr. Havemeyer was the chairman of the board of directors. On August 30, 1907, Mr. Havemeyer wrote Mr. Harper, as follows:

I have your communication of August 28. Mr. Collings presented himself and wanted to sell his stock, likewise that of Mr. Sholes. I have made an effort, but unsuccessful, and I have so advised him. I have written to you that a meeting of the directors should be called and the resignation of the two officers acted upon, which, by the way, I inclosed therewith, and you to be elected as Mr. Collings's successor.

If Mr. Collings has not called this meeting, will you have the goodness to do it, and if necessary take any other steps to bring this to a speedy conclusion?

It is important for the interests of the company that this arrangement be carried out as early as possible. I recommend that Mr. Charles B. Warren, of Detroit, be elected a director of the company to fill a vacancy, due notice of which be sent to him, when he will at once qualify in stock ownership.

On June 9, 1908, Mr. Heike, secretary of the trust, wrote Mr. Harper, president of the trust, saying (I will not read all of the letter):

We request that you consult Mr. Warren and afterwards write us.

Again on September 17, 1907, Mr. Havemeyer wrote Mr. Harper, the president of the trust:

You could not do better than to place the refined—

That is, the refined sugar—

absolutely under the control of Charles B. Warren.

That was some of the law business that qualifies him for this position.

Again, on September 5, 1907, Mr. Harper, president of the trust, wrote to Mr. Havemeyer:

* * * At that meeting your instructions will be carried out, except possibly in the case of electing Mr. Warren a director. It may be that we will be obliged to adjourn the meeting until Monday, September 9, in order to have the necessary qualifying shares of stock issued to Mr. Warren.

There is a volume of this kind of material, Mr. President.

Mr. CARAWAY. Mr. President, may I ask the Senator when has it been required that a lawyer shall be a stockholder in a company in order to transact its law business?

Mr. REED of Missouri. That is probably a rule that exists in but few States. It may be that it does exist in some States. It may be the rule in West Virginia; I do not know. I am sure that it is not in Delaware.

[A message in writing from the President of the United States was communicated to the Senate by Mr. Latta, one of his secretaries.]

Mr. GILLETT. Mr. President, I appreciate that the sentiment of this body is that new Senators, like children, should be seen and not heard; but I am a member of the committee which reported this nomination, and I will endeavor by my brevity to try to make some amends for my presumption, although I must admit that during the few days which I have spent here the deepest impression I have received is the different estimate of the value of time here and in the body at the other end of the Capitol. I hope I shall not show that I am already unduly infected by this atmosphere. [Laughter.]

The rejection of the nomination of Mr. Warren is, we all recognize, an extraordinary happening. During a period of over 50 years never has the nomination of a man for a position in the President's Cabinet been rejected. During that time both Republicans and Democrats on the stump have assailed and denounced and reviled and vituperated some of their opponents, compared with which the invective of the Senator from Missouri the other day was but as the cooing of a turtle dove; and yet when the nominations of those same men for Cabinet offices were subsequently sent to the Senate for confirmation not a word was raised against them and they were confirmed. Why? Because it is, I believe, the general opinion and conviction of the people of this country—and I would have said, until last week, the settled opinion and conviction of this body—that any man nominated by the President to be a member of his official family should be confirmed unless there are against him flagrant charges of incompetency. There are no such charges against Mr. Warren. Those attacking him admit that they would confirm him for any other Cabinet position. Why will they not confirm him for the position of Attorney General? They say it is because from 15 to 25 years ago, as a young man, he was counsel for "trusts" and probably himself acted as a member of what were called "trusts." That of itself, they do not claim, disqualifies him; but the argument is made that because in those years he acted as counsel for "trusts" he became so affected and so mentally biased and so fixed in his resolution that he could not now efficiently prosecute the law against "trusts."

I would prefer that Mr. Warren had never had any such connections. I would wish that any lawyer who is presented for Attorney General had never been on anything but the right side of every case he had ever had. I would wish he had never advised any client to do something which a court subsequently held to be illegal; but if we should take that as a test of confirmation, we would shut out a majority of the big lawyers of the country. Big lawyers are attracted to the big cities, when they are employed by big business. Big business during all the early years of this century was trying to adjust itself to the constantly changing interpretations of the trust laws, and every big lawyer who was employed by them, uncertain what the law might be next year, was trying to advise them as he thought was for their interest. The Sugar Trust was not then the object of general contumely that it afterwards became, because those scandals which turned against it the decent sentiment of the country had not then been revealed. But because this lawyer acted for the Sugar Trust and perhaps participated in local trusts as a director and president is he thereby to be shut out forever from public employment against trusts? The only question is, and that is the question which I understand is raised on the other side, Did he thereby become so mentally warped, did his attitude become so biased and so narrow that he can not now properly perform the duties of Attorney General?

As was said the other day, we have had one very conspicuous instance of the contrary, where Mr. Knox, counsel for the United States Steel Corporation and for the Pennsylvania Railroad, became, as Attorney General, the greatest "trust buster" this country has ever had. What reason have the opposition to know that Mr. Warren will not be equally successful? They can not know it. They only surmise it.

To be sure, the Senator from Michigan [Mr. COUZENS] says that 90 per cent of the people of Mr. Warren's State, where he is known, do not believe he ought to have the office. I appreciate that the Senator from Michigan believed what he said, but it is quite probable that he got his information from those who knew what information he wanted. It is quite possible that in the circles in which the Senator moves in Detroit there was such a feeling, but the Legislature of Michigan—although an effort was made to sidetrack the resolution by sending it to a committee and the opponents of Mr. Warren could not even do that—the Legislature of Michigan, whose members I contend are quite as good judges of public opinion and quite as responsive to it as the tax-ridden Senator from Michigan, say that they want Mr. Warren confirmed.

Mr. COUZENS. Mr. President——

The VICE PRESIDENT. Does the Senator from Massachusetts yield to the Senator from Michigan?

Mr. GILLETT. Certainly.

Mr. COUZENS. I should like to ask the Senator from Massachusetts if he believes that the Representatives in Congress from Michigan represent any sentiment in Michigan?

Mr. GILLETT. I do.

Mr. COUZENS. I should like to say that out of 13 Members in the House of Representatives and 2 Senators in this body I have been able to find no one who wants to have Mr. Warren confirmed. I ask the Senator if that is not an indication that there is some sentiment in Michigan against Mr. Warren, and if also the Representatives from Michigan in the Congress are not supposed to represent their constituents in Michigan?

Mr. GILLETT. Mr. President, that would be some indication if the Senator from Michigan had prosecuted his inquiries thoroughly and accurately; but I can tell the Senator from Michigan that he is mistaken; that there are Members in the delegation from Michigan who do want to have the Attorney General confirmed; and it seems to me that there the Senator

very likely has prosecuted his inquiries simply along lines where he knew the result would be what he was looking for.

I presume very likely a large part of the dominating politicians of Michigan to-day do not want Mr. Warren, but the Senator from Pennsylvania [Mr. PEPPER] the other day read to us the names of some men there who do want Mr. Warren. The president of the bar association, the leaders of the bar, think Mr. Warren ought to be confirmed. Perhaps the politicians of Michigan, headed by the influential Senator from Michigan, are opposed to Mr. Warren. I do not believe, however, that he knows about the people of Michigan any better than the legislature does, and with me the leading lawyers of Michigan carry great weight.

In my opinion the President of the United States, who is responsible for Mr. Warren's appointment, who has a greater stake than anybody else in having that appointment a good one, who will be afterwards always advised by him and held responsible for what he does, has better means, by confidential information and by personal contact, of determining whether Mr. Warren has to-day an intellectual bias which will enable him to prosecute the trust laws than have the Senators on the other side who are arguing against him.

The Senator from Montana [Mr. WALSH], who is leading this opposition, assured us that he had no spirit of partisanship in it, and I accept his assurance. Of course, the Senator is a good partisan. I do not quarrel with him for that, I have some tendencies in that line myself; but the Senator from Montana was chairman of the last Democratic convention, and presided over it with great distinction. It is reported that he was offered the vice presidential nomination. He declined it, fortunately, because it would have been pretty hard on Montana if both her Senators had been defeated for Vice President in the same year [laughter]; but the Senator from Montana, though he is a partisan, says that in this question he has no partisanship, and I accept his statement.

Mr. ROBINSON. Mr. President, will the Senator from Massachusetts yield to me for a question?

Mr. GILLETT. Certainly.

Mr. ROBINSON. While the Senator is discussing the subject of partisanship, and insisting that those who oppose the confirmation of Mr. Warren are moved by partisan motives, and is referring to candidates for Vice President, I ask the Senator from Massachusetts if he does not know that one of the leaders of the opposition to the confirmation of Mr. Warren—namely, the Senator from Idaho [Mr. BORAH]—was, at the suggestion of the President himself, offered the vice presidential nomination by the Republican convention, or representatives of the Republican convention, when President Coolidge was nominated?

Mr. GILLETT. I know that he was discussed. I think very likely he could have had the nomination if he had wanted it.

Mr. ROBINSON. Does not the Senator know that the Senator from Idaho refused to accept the vice presidential nomination?

Mr. GILLETT. I think that probably is true. I confess I think it was rather creditable to him, for——

Mr. ROBINSON. And yet——

Mr. GILLETT. Will the Senator please let me finish my sentence? For I never have known of the Senator from Idaho showing any enthusiastic support for the President.

Mr. ROBINSON And yet the President insisted upon his being tendered and upon his accepting the vice presidential nomination, and the Senator from Idaho and nearly everybody else to whom it was offered refused it. [Laughter.]

Mr. GILLETT. I do not think the fact that the Senator from Idaho declined the vice presidential nomination is a very strong argument that at the present time he is strongly addicted to what the President desires.

I did not say, as the Senator from Arkansas suggests, that partisanship was responsible for the opposition on the other side. I am going to imitate the Senator from Pennsylvania [Mr. PEPPER] the other day, and discreetly decline to state my opinion on that question. I will say, however, that there is one Senator on the other side who openly, frankly, and avowedly said that he was acting as a partisan, and only as a partisan. He had expressed himself in favor of the nomination, and yet when he found that his vote was decisive he changed his action and stated that because his side did not want to have the nomination confirmed he would vote against it. He did not dwell on those lofty heights of nonpartisanship where the Senator from Montana [Mr. WALSH] resides. I admire his frankness and his honesty more than I do his judgment and courage of conviction.

I refuse to state my opinion on the question of partisanship; but I believe that the people of the United States, when they see a solid Democratic Party voting with the Senators on this side who oppose the President, will not have much difficulty in drawing their inference. The Senator from Virginia [Mr. GLASS] the other day asked the Senator from Pennsylvania [Mr. PEPPER] if it was thought that they were voting to embarrass the President now why they could not have voted to embarrass the President in the nomination of Mr. Stone for the Supreme Court judgeship. The Senator from Pennsylvania very prudently declined to answer. I shall be less discreet. Without stating my opinion, I will say that I believe the inference the public will draw from it is not that there was any less partisanship then than now but that there was less safety then than now. They were "willing to wound, but yet afraid to strike." The argument against Mr. Stone was so flimsy that they did not dare to follow it. I suspect there was the same feeling on the other side at first as to Mr. Warren; but the arguments which have been made, associating him with that which is most repugnant to the American people, the trusts, trying to make him appear to be a representative of the trusts and of great wealth, have apparently changed the view of Senators on the other side; and, like the open avowal of the Senator from North Carolina [Mr. OVERMAN], other Senators think that here is a chance perhaps that the mortification and humiliation which was given them by President Coolidge last November can now in some way be reciprocated.

Mr. REED of Missouri. Mr. President——

The VICE PRESIDENT. Does the Senator from Massachusetts yield to the Senator from Missouri?

Mr. GILLETT. Certainly.

Mr. REED of Missouri. Does the Senator feel that he is justified in making the charge he has just made, that we are acting from partisan motives, when the record of the Democrats during all of Mr. Harding's administration and during all of Mr. Coolidge's administration has been an unbroken record of confirmation for all important offices?

Mr. GILLETT. Mr. President, in the first place I wish to disavow what the Senator imputes. I took great pains not to make the charge myself. I simply stated what I thought the country would infer. Secondly, what he asks about President Harding's Cabinet reminds me of what I saw in the New York Times, which opposed President Coolidge. The New York Times this morning says:

> What will the country think of a Senate who swallows Harry Daugherty and strains at Charles Warren?

Mr. BORAH. Mr. President, what will the country think if the Senate takes two swallows?

Mr. REED of Missouri. The philosophy of the Senator this morning seems to be that we should not only have swallowed Daugherty, but that we ought to swallow Warren because we swallowed Daugherty. We had a lesson in the swallowing of Daugherty. We also swallowed Fall. I take it that we swallowed Fall without knowing that he was going to fall.

Mr. GILLETT. Mr. President, I suggest to the Vice President that the Senator ought to use his own time for his remarks.

Mr. REED of Missouri. I do not mean to take up the Senator's time; but the Senator says now that he does not mean to charge that we are acting from partisan motives. Then why does he make the kind of speech he has been making, "That the country will believe," and so forth. What, really, is the Senator trying to impute to us?

Mr. GILLETT. Mr. President, I suspect that both Senators, and those people throughout the country who may chance to notice what I have said, will not be in great difficulty in discovering what my purpose was.

Mr. BRUCE. Mr. President——

The VICE PRESIDENT. Does the Senator from Massachusetts yield to the Senator from Maryland?

Mr. GILLETT. I am glad to yield for a question.

Mr. BRUCE. May I not ask the Senator from Massachusetts whether that is not another illustration of the desire to wound without the courage to strike? [Manifestations on the floor and in the galleries.]

The VICE PRESIDENT. The occupants of the galleries are admonished that under the rules of the Senate they must maintain order.

Mr. GILLETT. Mr. President, I admit that I am myself a good partisan. I do not pretend that I can approach such questions as this without some bias, and I do not believe that Senators on the other side can, but I will say this, that if four years from now we are punished for our sins with a Democratic President, which to-day looks as improbable as it is undesirable, if that shall come about, I promise that I will vote for the confirmation of any Cabinet officers whose names the

Democratic President may send down to the Senate if they have half the fitness Mr. Warren has, even though the whole Republican Party may be against me.

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

The VICE PRESIDENT. Does the Senator yield to the Senator from Arkansas?

Mr. GILLETT. I yield.

Mr. ROBINSON. Does not the Senator from Massachusetts think it would be more consistent with the high standard of service to which he has heretofore conformed to say that he will not vote for the confirmation of a nominee for office sent in to the Senate by any President, whether Democratic or Republican, whom he believes for any substantial reason to be unfitted to perform the duties of that office?

Mr. GILLETT. Certainly, Mr. President——

Mr. ROBINSON. Why does the Senator——

The VICE PRESIDENT. Does the Senator from Massachusetts yield further to the Senator from Arkansas?

Mr. GILLETT. I will yield under this condition, that Senators will count these interruptions against their own time. I have only a few minutes left.

Mr. ROBINSON. I will not interrupt the Senator further.

Mr. GILLETT. I do not think it is quite fair for Senators to take my time, and then when I suggest that they use their own time decline to do so.

Mr. ROBINSON. If the Senator will permit me one interruption——

Mr. GILLETT. No——

Mr. ROBINSON. The Senator was making such poor use of his time that I thought better use of it could be made.

Mr. GILLETT. If that is an illustration of the fairness and courtesy which prevails on the other side of the Chamber, I confess I am surprised.

Mr. ROBINSON. It was an effort——

Mr. GILLETT. I decline to yield.

The VICE PRESIDENT. The Senator declines to yield.

Mr. ROBINSON. I merely want to say that it was an effort——

Mr. GILLETT. I decline to yield.

Mr. ROBINSON. I merely wanted to say it was an effort to be humorous.

The VICE PRESIDENT. The Senator from Massachusetts declines to yield.

Mr. GILLETT. Mr. President, it was argued on the other side that the President had no constitutional right, after a nominee had once been rejected, to send his name back a second time. The President is given that constitutional right by the Constitution itself. It may not be wise often to exercise it, but the occasion was extraordinary. There had been a tie vote, broken by the change of a vote by one for avowedly partisan reasons. Was not the President justified in hoping that in the lapse of time that partisanship might be abandoned? A good many Senators were absent, and it was an entirely justifiable action on the part of the President, without flouting in any way the rights of the Senate.

It is said that the suggestion made within the last few days that the President will give Mr. Warren a recess appointment is an insult to the Senate. I confess that I think it is unfortunate that we are in this condition, that the cooperation which we all want to have exist between the President and the Senate seems to have been broken; but I want it to be remembered that the first blow to that cooperation was given by this body when it refused to confirm the nomination of a man to be a Cabinet officer, breaking a precedent of 50 years, and the President, I assume, had good reason for his recent statement.

In connection with this claim to "nonpartisanship" let me suggest that in the Cabinet of President Wilson there was a great, outstanding statesman, a man of ability and courage and character—Franklin K. Lane—whose delightful letters have recently been published. One of them was written to ex-Attorney General Wickersham, to whom the Senator from Montana [Mr. WALSH] paid such a graceful compliment the other day, in which I heartily concur. In that letter Secretary Lane—or Mr. Lane, as he then was—amusing himself, as we often do, by framing ideal Cabinets, suggested his candidates for the Cabinet of President Harding. A star Cabinet it was. He was not bound, as a President always is, to maintain a certain balance between different wings of his party and different localities. Whom did Mr. Lane pick out, among all the lawyers of the United States, as the best man to be Attorney General in the Cabinet of President Harding? He picked Warren of Michigan. I set up the opinion of Franklin K. Lane against the opinions of some members of the Democratic Party on the other side of this Chamber.

Mr. REED of Missouri. Mr. President——

The VICE PRESIDENT. Does the Senator from Massachusetts yield to the Senator from Missouri?

Mr. GILLETT. May I ask how much time I have left?

Mr. REED of Missouri. I will not interrupt the Senator.

The VICE PRESIDENT. The Senator has three minutes left.

Mr. GILLETT. I thank the Senator from Missouri. It is unfortunate, extremely unfortunate, for the country, and still more so for the Senate, to have such a conflict between the President and the Senate. Many years ago Andrew Jackson was censured by the Senate. Years afterwards the Senate of the United States was obliged, under the lash of public opinion, to rescind that censure, and, as Senators will remember, here on the floor of the Senate black lines were drawn around the resolution of censure, showing that it was no longer the sentiment of the Senate.

I do not claim that President Coolidge has the hold on the affections of the people that Andrew Jackson had—I neither affirm it nor deny it—but one thing I do feel certain of, that in that day the Senate had more of the respect and confidence of the people of the United States than the Senate has to-day. The President having been elected, as he was, by an overwhelming majority; standing, as he does, high in the confidence of the people, when both the President and the Senate are acting within their rights, he nominating a man and the Senate rejecting him, I think the odds of public approval are on the side of the President.

I do not think the Senate to-day stands so high in the opinion of the American people that it is wise for us to provoke a conflict, as seems to be the purpose, against the man who received the greatest majority that was ever given to any President.

Mr. BORAH. Mr. President, it was not my original purpose to take any part in this debate. As chairman of the subcommittee which had to do with passing upon the fitness of Mr. Warren to be Attorney General, I reached a conclusion to the effect that I could not cast my vote for his confirmation. I announced that conclusion and felt that in all probability I could fully discharge my obligations to the situation by simply casting my vote. But as the debate has proceeded and some phases of the controversy have been developed, and for the purpose of helping to complete the record, I have concluded to take a few moments of the time of the Senate to express my views upon some features of the controversy.

I am not very much concerned about the charges and countercharges of partisanship or of party disloyalty. It would be more fitting to discuss those matters in other bodies than in this, and they will have to be settled in another forum; but there is one feature of the subject which is of concern and which I think ought to be fully considered not only for the present case but for all future time.

The President of the United States is authorized by the Constitution to nominate men for certain public offices, and the Senate of the United States must advise and consent before the appointments take place. The powers of the President with reference to appointments to office are very limited, most circumscribed. His power to appoint obtains only and alone concerning those appointments which are necessary to fill up vacancies that happen during a recess. In this instance before us he has only the power to nominate, and the question arises, What are the duties of a Senator and what is the duty of the Senate in case a Senator or a majority of the Senate have fairly and honestly reached the conclusion that they should not advise and consent?

Is the obligation which rests upon us merely a perfunctory one? Is not the obligation a most exacting one? Have we not a full share, and an inescapable share, of the responsibility for a strong, a clean, and a patriotic Government?

The argument has been advanced here and elsewhere, and particularly in the able editorial pages of the press, that the Senate ought to yield entirely to the judgment of the President; that we ought to treat the obligation which is imposed upon us by this provision of the Constitution as nothing more than a courteous gesture, and that really no part of the responsibility for this official or for other officials rests upon us; that it rests wholly and exclusively upon the President. Such is not the Constitution. Such is not the obligation we have assumed.

I am frank to admit, Mr. President, that to a marked degree, in practice, that has been the construction of the Constitution. It has arisen very largely out of the fact that all people regardless of party respect the Presidency and all people respect the man who has become President of the United States regardless of which party places him there. Therefore no Senator and no Senate ever challenges an appointment of the President of the United States unless upon most substantial

and controlling reasons which appear to them to be guiding and conclusive reasons. In all the long history of nominations by Presidents and the confirmations which have taken place there have been but few controversies in regard to the matter. In my humble opinion if there has been dereliction of duty it has not been on the side of opposing the President but it has been rather a disposition to shirk for ourselves and to put upon the President the sole responsibility, a very large portion of which is upon the Senate, inescapably upon the Senate.

I have no doubt either that things have happened within the last few years which have not only aroused the country, but aroused the Senate to the necessity of reexamining its duty and its obligation with reference to this important part of executive duties devolving upon us. I have no doubt that incidents could be recalled, if it were not unpleasant to do so, which, even if there had never been a precedent before, would be sufficient to justify the Senate in adopting a more rigid and more exacting and more determined rule in regard to its conduct in these matters. It is not a perfunctory duty. It should no longer be considered as such. I agree, however, perfectly with those who say that only upon the most substantial grounds and the most controlling reasons should we oppose a nominee of the President.

I am not going to trespass upon the time of the Senate today—I know it would be irksome should I undertake to do so—to go back and recall the reasons why the Senate of the United States was made the confirming power. But it might be enlightening to the distinguished Senator who has just taken his seat to invade that domain of literature and inform himself concerning some of the reasons why this body was made the confirming power and why it should without hesitation and always with courage meet the obligation which was imposed upon it. I know of no source of knowledge more calculated to recall us to our task, unpleasant as it may be.

If we should care to do so and examine the arguments particularly by perhaps the greatest constructive genius who ever had to deal with the science of government, Mr. Hamilton, we would find that there was a reason, a sound reason, why they were unwilling to leave the appointing power to the President and why, as Mr. Hamilton argued, the Senate of the United States would be expected in all exigencies to meet its full share of the responsibility. When the argument was made against the adoption of this provision of the Constitution, that the President of the United States would undoubtedly have the same effect upon the Senate that he seems to have had upon the junior Senator from Massachusetts in the present case and exert his influence to such an extent as to deprive a Senator of his courage and exercise powers to such an extent as to rob a Senator of forming his own judgment, Mr. Hamilton contended that no such Senate would likely ever be assembled in the United States.

But for want of time, Mr. President, I pass from Mr. Hamilton. I do want, however, to pause long enough to read a paragraph from Mr. Webster, who almost 100 years ago gave expression to his views in regard to this particular matter. I appeal from the distinguished Senator from Massachusetts to a former Senator from Massachusetts and leave the Senate and the country to make the comparison.

Mr. Webster, in refusing to vote for the confirmation of Mr. Van Buren as minister to England, dealt with the subject, and, as usual, dealt with it to a conclusion. It will be remembered that Mr. Van Buren had been sent to England during a recess. It will be remembered that the objection to Mr. Van Buren arose out of a letter which he had written while Secretary of State to the then minister of England, in which it was believed that he had reflected upon Mr. Adams's administration and the integrity of his program, and, therefore, when his confirmation came along for consideration this letter was made the basis of an objection. Mr. Webster said:

> While I have been in the Senate I have opposed no nomination of the President, except for cause, and I have at all times thought that such cause should be plain and sufficient and that it should be real and substantial, not unfounded or fanciful.

All will certainly agree with that. Of course, it is easy to cry "partisanship" or "insurgency" or "disloyalty," but while I assume that the Senators who are supporting Mr. Warren are supporting him for substantial reasons, reasons which they believe ought to control in the discharge of their duty, I think I am entitled to contend that the class of Senators who are opposed to him may be justified in making the same claim. It is much easier in Washington to go along than it is to disagree. If there is any atmosphere in God's world that weakens a man's backbone, it is the atmosphere of Washington. The diluting process is constant and drastic. Mr. Webster continued:

> I am now fully aware, sir, that it is a serious, a very serious matter to vote against the confirmation of a minister to a foreign court, who has already gone abroad and has been received and accredited by the government to which he is sent. I am aware that the rejection of this nomination, and the necessary recall of the minister, will be regarded by foreign states at the first blush as not in the highest degree favorable to the character of our Government. I know, moreover, to what injurious reflections one may subject himself, especially in times of party excitement, by giving a negative vote to such a nomination. But, after all, I am placed here to discharge a duty. I am not to go through a formality; I am to perform a substantial and responsible duty. I am to advise the President in matters of appointment. This is my constitutional obligation, and I shall perform it conscientiously and fearlessly. I am bound to say, then, sir, that, for one, I do not advise nor consent to this nomination. I do not think it a fit and proper nomination.

Mr. President, if I should be called by chance to the White House to advise the President concerning an appointment coming from my State, what would be my plain duty? If any Senator in this Chamber were called to the White House for the purpose of advising with reference to the appointment of a Federal judge or a district attorney or a United States marshal, what would be his plain duty? If he thought the man unfit, it would be his solemn obligation to so advise the President; and if he did not do so, he would either be an intellectual coward or he would be unfit for other reasons not mentionable to advise the President or to represent a State. And now, sir, when the obligation is imposed upon me not only by the confidence which might be reposed by the people whom I represent, but when that obligation is imposed upon me by the Constitution itself and when I have taken an oath to support the Constitution, what is my plain duty when the facts are presented to me and they convince me that Mr. Warren is unfit? It is put up to me by the charter under which and by authority of which we are here. The Constitution imposes upon the President the duty to nominate. It imposes upon me the duty to advise. How shall I advise—honestly and sincerely or in deception and insincerity?

What is my plain duty? It is not a formality. It is not a matter about which I have a right to surrender my opinion. In refusing to treat it as a formality, in refusing to surrender my opinion, I challenge not at all the integrity of mind or purpose of the President of the United States; I challenge not at all his performance of duty as he sees it. I expect him, knowing him as I believe I do, to meet that obligation according to his convictions, and if I do less than meet mine here I shall quickly forfeit the respect of the President and, most of all, my self-respect.

Mr. WALSH. Mr. President——

The VICE PRESIDENT. Does the Senator from Idaho yield to the Senator from Montana?

Mr. BORAH. I yield.

Mr. WALSH. I inquire of the Senator whether President Jackson gave Martin Van Buren a recess appointment as minister to Great Britain after the adjournment of Congress?

Mr. BORAH. No; but he had him elected as President of the United States. [Laughter.]

Said Mr. Webster:

> If, in a deliberate and formal letter of instructions, admonitions and directions are given to a minister, and repeated once and again, to urge these mere party considerations on the foreign government, to what extent is it probable the writer himself will be disposed to urge them in his thousand opportunities of informal intercourse with the agents of that government?

Now, let me read just a few lines in conclusion:

> I will not pursue the subject. I am anxious only to make my own ground fully and clearly understood, and willingly leave every other gentleman to his own opinions. And I cheerfully submit my own vote to the opinions of the country. I willingly leave it to the people of the United States to say whether I am acting in a factious and unworthy part.

Mr. GILLETT. Mr. President——

The VICE PRESIDENT. Does the Senator from Idaho yield to the Senator from Massachusetts?

Mr. BORAH. I yield.

Mr. GILLETT. Does the Senator think the rejection of Mr. Van Buren by the Senate at that time was a nonpartisan action?

Mr. BORAH. Nonpartisan? I have no doubt at all that it was nonpartisan so far as Mr. Webster was concerned. The

Senator from Massachusetts is much less familiar with Mr. Webster's speeches and public works than I think he ought to be if he does not know that if there was ever a man in the Senate of the United States who when performing his service here refused to be controlled by purely partisan feelings, it was Mr. Webster. When we go through the history of that debate and his long contest and struggle with Mr. Jackson over the removal of deposits from the banks and rechartering of the bank, as intense a controversy perhaps as ever took place between a President and a Senator or a Senate, there will not be found anything in the discussion by Mr. Webster which indicates the slightest partisanship or the slightest partisan feeling. He was a bold, consistent expounder of the Constitution, and in this instance he was about his lifelong task, nobly performed to the end.

Instead of partisanship, almost with glowing praise he approved the courage, the integrity of purpose, and patriotism of Mr. Jackson and conceded that Mr. Jackson was doing as we here concede Mr. Coolidge is doing, acting along lines which he believes for the public interest. But he differed with him upon these vital questions. Mr. Webster was not partisan. He did not belong to that breed when it came to dealing with this kind of questions.

Mr. President, under present circumstances and conditions the Attorney Generalship, to my mind, is the most important office within the nominating power of the President of the United States, with the possible exception of the Chief Justiceship of the Supreme Court. That would not always be true. That has not always been true. But in the circumstances which now confront us and with which we have to deal there is no more important office in the nominating power of the President than the Attorney Generalship of this Government. He is to stand forth to enforce the laws and to administer justice through a vast machinery for 110,000,000 people. In view of the conditions which now confront the country, no more burdensome task, no task requiring greater breadth, greater courage, and finer character, can be conceived than are required in the discharge of the duties of that office. It is not, in other words, an office which is calculated to lull Senators into being disregardful of their duty in this instance, and that is particularly true when we look over what has happened in the last few years. Past events call to us to be vigilant and to assume our full share of responsibility.

Without going back to discuss individuals, I venture to say that there is no Senator here but has felt humiliated more than once and discomfited many times by reason of conditions which have prevailed in that office for the last 10 or 15 years. There have been exceptions. The exceptions are well known. Therefore, my generalization should not be regarded as an indiscriminate attack; but under the conditions which confront us the country expects us to meet, and we ought to be impelled by our own sense of duty to meet in the fullest measure our part of the obligation incident to the filling of this office.

There are those who believe that Mr. Warren is well fitted for the position, and they will undoubtedly vote for him for that reason. I have no quarrel with them. The only man with whom I quarrel is the man who, while thinking Mr. Warren unfit, yet would surrender his judgment when it comes to the vote, or those who tell us it is none of our concern who fills these positions.

If there is any one question which is of deep concern, from a domestic standpoint to the people of the United States now, it is that of enforcement of the law. It, perhaps, ought not to be said without some degree of reluctance, but the facts and figures show that at the present time we are the most disregardful people of law in the civilized world. The American Bar Association appointed a committee a year or so ago to make an investigation of lawlessness in the United States and of the disregard of law upon the part of the people of the United States. That committee submitted a report. No man can read that report without realizing that the question of enforcing the law is the most serious problem with which the Federal Government and the State governments are now confronted. May I recall some figures and facts from that report?

In 1920 there were 9,000 homicides in the United States; in 1921, 9,500.

These figures, Mr. President, sound like a report from a battle field.

During the last 10 years there have been 85,000 murders in the United States.

In 1922 there were 17 murders in the city of London; 260 in the city of New York, 137 in the city of Chicago.

In 1921 there were 121 robberies in all England and Wales combined; 1,445 in the city of New York, and 2,400 in the city of Chicago.

These statistics, Mr. President, are taken from a mass of figures and facts showing the condition of affairs in this country with reference to law enforcement, with reference to safety of human life, and security for property.

Mr. President, I trust I am not one of those who believe that because a man has property he should stand in a different or more unfavorable light under the law than a man who has not; I trust that I do not regard a man who has acquired wealth as one who should have less protection or less respect paid to him by the law than should anyone else; but, nevertheless, the figures here indicate but a small portion of that nation-wide disregard for law which now characterizes this country. There are literally hundreds of men who have acquired vast wealth, who have acquired great property, who are living in daily violation of the laws of this Government. They have more reason, in one sense, to regard the law and to obey the law than has anyone else, and yet we know that day after day illegal combinations are being formed or continue to exist, and that men are persistently pursuing methods by which they hope to escape the net of the law. Such action forms and constitutes the most menacing feature of the disregard for law in the whole Government.

Obedience to the law because it is the law is the fundamental principle upon which this Government rests, and when I read the correspondence between Mr. Havemeyer and Mr. Warren I can not draw any other conclusion than that upon the matters therein referred to Mr. Warren thought it was permissible that the men for whom he was acting should escape the law if a means could be found or a device could be provided by which the evidence could not be secured to convict them.

What Senator in this Chamber, what lawyer in this Chamber would permit Mr. Havemeyer to write the kind of letters to him that he wrote to Mr. Warren? He was a conspirator. He was a violator of the law. He was getting ready to escape punishment. A combination was being formed for the purpose of controlling the production of sugar, and another combination was being formed for the purpose of controlling the output of the product. It was open, deliberate, and unmistakable. The only question involved was whether it could be done so successfully as to enable the violators of the law to escape the meshes of the law and to escape punishment. This aspect of the question is wider than the matter which is involved in the formation of a trust. It strikes deep into the whole problem of this lawlessness with which we as a people must contend.

I am unwilling to vote for the confirmation of a man, however high may be his intellectual attainments or his capacity, who took the part that Mr. Warren did with Mr. Havemeyer in connection with a conspiracy which had for its purpose peculating from the pockets of the people of the United States concerning one of the necessaries of life. I am unwilling to accept the doctrine that the bigger the crime and the bigger the criminal, the more respectable it is to aid and advise.

So, Mr. President, how can the Senate be asked to be disregardful of the obligation which rests upon us at this time? How can it be said that this is a mere party matter or that we should be unconcerned and place the responsibility elsewhere? It is an obligation which we will either meet according to our convictions or, having failed to do so, must pass under that condemnation which justly belongs to a Senator who surrenders his convictions in a vital matter concerning his Government.

Something has been said, Mr. President—and I only wish to mention it in passing—about the President's proposed recess appointment. "Sufficient unto the day is the evil thereof." I do not propose to discuss that matter here at this time. I do not assume, unless there is full constitutional authority for it, that such an appointment will ever be made. All we have to do now, Mr. President, is to meet the issue which is before us; those who believe Mr. Warren fit voting for him and those who believe he is unfit voting against him, and let the future take care of itself. We will meet other issues when they arise and meet them, I presume, as we shall meet this, according to our light and according to our judgment.

Now, Mr. President, one other word. The Senator from Massachusetts [Mr. GILLETT] was kind enough not to refer to it, but he referred to editorials in which reference was made to there being a combination of Democrats and radicals for the purpose of wreaking revenge upon the President of the United States. I do not know why we should wish to be revengeful, but for some reason that was the intimation. What is a radical, Mr. President? I think it has come to the time when a radical is a man who believes in the Constitution of the United States. [Laughter.] If that is the charge which is laid to me and to those who believe as I do upon this side of the Chamber, no other definition could be given to it.

When the resolution proposing to call upon the President to discharge Mr. Denby from the office of Secretary of the Navy was before us I refused to vote for it, because I believed then, as I believe now, that the dismissing power belonged exclusively to the President. I may have been in error, but that was my judgment, and therefore I opposed the action of this body when it called upon the President to dismiss an officer from his Cabinet, because the Constitution, in my judgment, does not impose upon us any obligation with reference to the dismissing of public officials whom the President may have nominated and the Senate confirmed. That power belongs to the President, and therefore I was just as much opposed to encroaching upon the Executive authority as I am now to the Executive encroaching upon the prerogatives of the Senate. I do not desire ever, if I know it, to challenge his authority or question his sincerity of purpose when performing his duty. Neither do I want to be charged with factionalism, neither do I propose to be charged with recreancy to duty when I am trying to meet my constitutional obligations as a Senator.

The VICE PRESIDENT. The time of the Senator from Idaho has expired.

Mr. BINGHAM. It may seem presumptuous on my part to follow the Senator from Idaho, who is universally recognized throughout the United States as one of the ablest orators in this country. I do not remember that Connecticut has ever produced a very great orator; we are not noted for our public speakers. Only the other day when asked to vote as to what Yale could do in the way of additional courses that would be to the greatest advantage and supply the most important need, a majority of the senior class of Yale College voted for a new course in public speaking and oratory.

Furthermore, I should be the last, Mr. President, to impute to the senior Senator from Idaho any narrow partisanship. He has always in his record here shown that he makes up his own mind without regard to partisanship and acts in accordance with the dictates of his own conscience. Although I have only been here a short time, perhaps hardly long enough to have my backbone weakened by the Washington atmosphere, he has been here a great many years and has not had his backbone weakened. I desire to have note made of the fact that in nothing that I say do I refer to his action in this case or any other case; but, Mr. President, in some of the arguments that have come across the aisle I have noticed something which is inclined to make me rather suspicious.

There was once a small boy in Connecticut who was told by his mother not to go near the beehive and try to get any honey. He knew that if he disobeyed she would spank him. Nevertheless he disobeyed, got stung, and came in rubbing his shoulder. She asked, "Did you go near the beehive?" He replied, "No, mother, no." Then she laid her hand on his shoulder and he jumped, and she asked, "What makes you jump?" Now, I noticed a few moments ago, Mr. President, when the Senator from Massachusetts [Mr. GILLETT] was very delicately suggesting that the people of this country believed a certain amount of partisanship was involved, they jumped; three of them jumped; and they kept on jumping until it was noted that they were taking some of the time allotted to this side; and that was the only reason, so far as I could see, why they stopped jumping.

Mr. President, if the Senate will pardon me, I should like to relate a story of a Connecticut Yankee who was traveling on a train. Like most Connecticut Yankees, he was rather reticent; but another Connecticut Yankee, who was, like many Connecticut Yankees, consumed with curiosity, got onto the train and sat down in the seat next to him, and noticed that there was a basket on the floor in front of him which kept slightly moving and in which there was a certain amount of scratching. The curious Yankee tried to penetrate the reserve of the reserved Yankee, and asked, "What you got in your basket?" "None of your business." "Is it a dog?" "No; 'taint a dog; it is against the rules to take dogs on trains." "Well, have you got a cat there?" "No; 'taint a cat; I don't like cats." "Well, have you got a rabbit?" "No; 'taint a rabbit." "I swan; what is it, anyhow?" "Well, its a mongoose, if you got to know." "A mongoose. What do you want to do with a mongoose?" "Well," he said, "mongooses is good for snakes. That's all a mongoose is good for—to chase snakes. I don't like to disclose family secrets, but I got a brother down in the eastern part of the State that drinks more'n is good for him, and—I hate to admit it—but he occasionally gets the D. T's." "Well," said the other fellow, "but those ain't real snakes." "No," said the first one, "and this ain't a real mongoose." [Laughter.]

This opposition that is being thrown across the aisle is not a real "mongoose." The distinguished Senator from Missouri [Mr. REED], whose oratory I admire, and to whom I always listen with interest, has produced in this Chamber an impression that this opposition is genuine; that this gentleman whom the President has recommended is unfit for the position for which he has been recommended; that he is engaged in some form of business which makes him unfit. The impression has been created that he is now so engaged. On page 245 of the CONGRESSIONAL RECORD, in the debate reported from Saturday, the Senator from Missouri [Mr. REED] is quoted as saying:

> Is a man who is engaged in that kind of business the man to punish people who do that sort of thing?

"Is a man who is engaged"—Mr. President, that creates a false impression. Notwithstanding the efforts of the opponents of Mr. Warren to dig up everything that they could find against him, they have been unable to find anything in the last 10 or 12 years except what redounds to his credit—that he has been a servant of the United States in important matters; that he has been a most distinguished and successful diplomat, representing us in foreign parts with great distinction; that he has taken our part as attorney for the United States Government in special dealings with foreign countries; that he is one of the most distinguished lawyers in this country. They can not find anything else; so what do they do, Mr. President? In their anxiety to discredit this administration they go back 20 or 25 years and find things that happened in 1897, and 1902, and 1904, and 1906, and letters are read here on the floor of the Senate in such a fashion as to create the impression that they were written last week or a couple of years ago. It sounded like 1922 when some some of them were read, and the impression was conveyed that this man "is engaged in that kind of business," and so forth, whereas the actual fact is that they can find nothing since 1907, even granting, for the sake of argument, what they found before that.

In point of fact, Mr. Havemeyer, whose letters have been quoted, died in 1907. There is no evidence that I have seen presented before this body that Mr. Warren has represented the Sugar Trust recently, or is representing it now, or is now "engaged in this kind of business." In order to endeavor to discredit him his opponents have to go back long beyond what the statute of limitations would admit if he were accused of a definite crime. In our Anglo-Saxon ideas of justice and fairness, and with that spirit of fair play which we have inherited from our American ancestors, we have always taken the point of view that a man was innocent until he could be proven guilty. That is not the point of view taken in some other countries, where it is believed that an accused man is guilty until he is proven innocent. We have taken a different view, however, There is nothing in Mr. Warren's recent record, within the past 10 or 15 years, that his opponents can find to bring up against him. Why, then, is it necessary for them to go back 20 or 25 years to bring up something? The truth is that Mr. Warren is not "a real snake," and that the opposition put up against him is not "a real mongoose."

As a matter of fact, the real issue is this: The Democratic Party in the last campaign had a candidate who was a representative of big business in its best sense, a candidate for whom I have the highest regard and respect; but within their own ranks there were things said about their candidate that caused trouble. I heard nothing said against him on our side; but within their own ranks there were things said about their candidate to the effect that he was the representative of the Morgan interests; that he was the representative of Wall Street; that he was the representative of things that the Democratic Party did not stand for; and it looks to me, Mr. President, very much as though they were endeavoring to drag a herring across the trail. In order to make good with their party they come out and say that a man who was interested in a trust 20 or 25 years ago, at a time when any good lawyer would have been glad to take such business, is now engaged in such activities and is not fit for this nomination.

Mr. FESS. Mr. President, will the Senator yield for a question there?

The VICE PRESIDENT. Does the Senator from Connecticut yield to the Senator from Ohio?

Mr. BINGHAM. Certainly.

Mr. FESS. Does the Senator recall the remarkable defense of the candidate for President by the former chairman of the Democratic national convention, who is a Member of the Senate to-day, his defense of Mr. Davis on the basis that that did not disqualify him in the speech in which John W. Davis was notified of his nomination?

Mr. BINGHAM. I thank the Senator for calling that to our attention.

As a matter of fact, the people of my State—and I make no effort to speak for the people of any other part of the coun-

try—the people of my State do feel that they have confidence in the President of the United States. They gave him a larger vote than they ever gave to any other nominee for any other office in the history of the State. They believe in his honesty and integrity. Even the keynoter of the Democratic State convention last fall in his keynote speech said that he had the highest regard for the honesty and integrity of the President. Our President has gone on record, year after year, ever since anyone has known anything about him, as being interested in law and order, and in carrying out the laws. He has selected for the important position of Attorney General a man who, he believes, will do more to prosecute offenders and to carry out the laws than any other man he could find; and yet, so interested are the members of the Democratic Party in this body in seeing to it that the Republican who occupies the White House should not make a mistake in this regard, with curious and singular unanimity they vote against the confirmation of his nominee.

I do not mean to imply for a moment that there are no Senators on the other side who have personally convinced themselves that Mr. Warren is not fit; but when you see an entire body of men voting solidly one way it leads one to believe that the papers are right when they say this is a partisan issue, when they say things such as this, which has appeared in the leading Republican paper of the southern part of Connecticut, the New Haven Register. That paper says in its editorial column:

> Elected by a majority the like of which never was seen nor heard of in self-governing States before, President Coolidge starts in to do the very things he offered in exchange for those votes, and names the men he would rely upon to do his personal bidding in carrying through those pledges. Right away a few Senators, some of whom hang by an eyelash in the political spotlight, get the idea that they are bigger than the millions of the majority that voted to support the President.
>
> That there is hope for reformation is evidenced by the return of Mr. Warren's name by the President this second time. The people will watch every move of every one of these men, who have thus essayed to throw monkey wrenches into the machinery of the Coolidge governmental machine. It will be a good test, and much profit will be had by the people in the watching.

I submit, Mr. President, that that represents a very large section of the popular view in the part of the country from which I come.

The editor concludes:

> Nobody pretends that all of the votes cast for Mr. Coolidge were Republican votes. An enormous number of Democrats cast their ballots for the man from New England because they believed in him and in the safe and sane program he promised. These Democrats are just as anxious to have Mr. Coolidge given a fair chance to demonstrate his theories unhampered by petty politics as they were when they exercised the highest privilege of an American citizen in his behalf.

Mr. President, I agree with what the Senator from Idaho [Mr. BORAH] has said about the duty of this body in confirming appointments. I remember that the history of our ancestors shows that there was a time when the Kings of England appointed people who as judges or administrators were tyrannical, and that our ancestors secured the right from those Kings hundreds of years ago, hundreds of years even before our country was settled, that the King should appoint his ministers and his judges "with the consent and advice" of his counselors, in order that the people might be protected against tyranny. That has come down to us through our constitutional history; and I subscribe absolutely to the doctrine, as stated by the Senator from Idaho, that it is our duty to examine into the facts and to advise the President. But, Mr. President, here is a case in which an Executive who has received the greatest majority ever known in the history of the country, whose whole record is one in favor of law and order, has selected a man to help to carry out the laws and preserve order. Here is a man against whom not even the most brilliant Senators on the other side have been able to bring out anything recent, but they have had to go back long beyond any statute of limitations to bring up things in which they have sought to make us believe he is now engaged. Here is a man who is fitted for this post by every test that we can apply at the present time, who the President assures us is the best man he can find to prosecute those who break the law; and we find a very curious state of affairs—a desire on the part of those on the other side of the aisle to join unanimously together to see to it that the President shall not have in his council the man whom he thinks best fitted to hold the post of Attorney General.

Mr. President, I ask permission to have printed in the RECORD at the end of my remarks an unsolicited letter I have received from a representative group of Connecticut women.

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

WASHINGTON, *March 13, 1925.*

Senator HIRAM BINGHAM.

DEAR SIR: A friendly group of Connecticut women, assembled in Washington, have read with mingled feelings of dismay and disgust of the recent action in the Senate which resulted in defeating the confirmation of Mr. C. B. Warren as Attorney General of the United States.

If a political combination of Democrats and disgruntled so-called Republicans can so misread the will of the people and flout the right of the President to choose his personal advisers, it would seem a fitting time for the new voters, the women of both parties, to express their unqualified disapproval of such action.

It would gratify the undersigned if in some way this protest could be made public.

Most cordially yours,

MARY D. COLVOCORESSES (Mrs. GEORGE C.),
ALICE B. MUNROE (Mrs. HENRY S.),
MARY F. VAN WINKLE (Mrs. EDGAR B.),
KATE I. THOMAS (Miss),
ISABEL D. CURTIS (Mrs. CHARLES B.),
Of Litchfield, Conn.

Mr. HEFLIN. Mr. President, the Senator from Connecticut [Mr. BINGHAM] says that we are trying Mr. Warren for something that he did some 15 or 20 years ago. I want to remind the Senator and the Senate that Mr. Warren resigned the office of president of the Michigan Sugar Trust in January of this year, just about two months ago, and I believe that he severed his connection with it then in the hope that he would be appointed to the office of Attorney General. The chief work of his life was that of bringing into being the stupendous and dangerous thing known as the Sugar Trust. The wealth that he has accumulated, the fortune that he holds to-day, was made through his service and connection with the Sugar Trust. The Senator from West Virginia [Mr. GOFF] said that he would be "faithful to his trust," and that is why we are opposing him. We are afraid that he will be faithful to "his trust"—the Sugar Trust. [Laughter.]

The Sugar Trust has shown by its generous treatment of Mr. Warren that, while it has held up and robbed the beet-sugar producers with one hand and the beet-sugar consumers with the other, it has given many evidences of its true and tried friendship for him.

> Freeze, freeze, thou bitter sky,
> That dost not bite so nigh
> As benefits forgot;
> Though thou the waters warp,
> Thy sting is not so sharp
> As friend remembered not.

Mr. President, the Sugar Trust has been Mr. Warren's very best friend in a business way. In fact, it is his own offspring. And his fortune, I repeat, came to him as a reward for the long and skillful service rendered by him to the Sugar Trust. And I want to say right here that the Sugar Trust is one of the most stupendous and dangerous trusts that exists in our country to-day, and let us not forget that the Attorney General of the United States has it in his power to say whether or not any prosecutions shall be had against the Sugar Trust or any of its subsidiaries. Unless the Attorney General has the desire and disposition to vigorously use the power vested in him to wholeheartedly prosecute cases involving the Sugar Trust you may rest assured that there will be no prosecutions.

But, Mr. President, it has been suggested that if Mr. Warren had been nominated to be Secretary of State, where he would have to do only with our foreign affairs, that he might have been confirmed. I do not know about that. The matters under his control as Secretary of State would not have involved the rights and interests of the people in the immediate, peculiar, and vital way that they are involved in the most important and varied questions that come under the absolute control of the Attorney General. The Attorney General, if he so desires, can proceed against the Secretary of Commerce and any and everybody in his department; he can do the same thing against the Secretary of Agriculture, or any other Cabinet officer, and the employees of his department; but no other man in the President's Cabinet can proceed against the Attorney General or the employees under his control. So the office of Attorney General is fast becoming in many respects the most important appointive office in the Government. Unscrupulous, predatory interests fear it and seek to control it. The beet-sugar producers of Michigan and other States are not heard here except as we speak for them. I listened to the great speech of the Senator from Missouri [Mr. REED], describ-

ing the beet producers of the United States moving along in fields upon their hands and knees, farmers and their wives and children, pulling the weeds and grass with their hands, struggling against intolerable conditions imposed upon them by the Sugar Trust, which was seeking to deprive them of fair prices by destroying competitive buying, before they could reach the market place.

Mr. President, I believe that every Senator here who voted against the confirmation of Mr. Warren did so from a sense of patriotic duty.

The Washington Post of March 13 contained an article regarding the Senate's action in declining to approve the appointment of Mr. Charles B. Warren to be Attorney General of the United States. That article states that the President regards it as a matter of principle that he has the right to determine who shall be members of his Cabinet.

The President well knows that the Constitution of the United States imposes upon the Senate the solemn duty of carefully considering the qualifications and fitness of persons suggested by the President for positions requiring the advice and consent of the Senate.

The heads of the great departments of government, who direct and control the policies and activities of these departments, are called members of the President's Cabinet. The Constitution does not, however, give to the President the power to determine within himself who shall fill these positions. The members of the President's Cabinet are Federal officers. Their salaries are paid out of taxes paid into the Treasury by the American people.

The Senate, acting in harmony with the House, can create or abolish Cabinet offices at will. Without the consent of the Senate, Cabinet officers would not receive a dollar in salary from the Treasury of the United States. The Constitution gives the President the right to single out and name the men he would like to have in his Cabinet. But what then? The Constitution requires that the President *shall*, not *may*, submit the name of such persons to the Senate of the United States, and under the Constitution the persons named by him can not become heads of departments or Cabinet members unless the Senate agrees that they may do so.

Mr. President, if the framers of the Constitution and those who ratified it had not intended that the Senate should be consulted, and that it should have the right to accept or reject persons suggested by the President for positions as chiefs of the departments called members of the Cabinet, the Constitution would have said that the President shall have the right to appoint these Federal officers called members of his Cabinet without consulting the Senate. But no such position was taken, and no such dangerous power was conferred.

In one form or another these heads of departments or Cabinet members have to do with the rights and interests of every man and woman in the country. They direct and control practically all of the machinery of our great Federal Government, and the Constitution has wisely provided that no President can fill these important positions until the Senate, composed of representatives from every State in the Union, shall place its approval upon the persons submitted by the President. And when Senators undertake to remain true to the interests of the people who sent them here, and seek to discharge their duty under the oath they took to support the Constitution, they are not in any way interfering with the rights and prerogatives of the President. Those who put that provision in the Constitution had a noble purpose in placing it there. They had in mind the rights and interests of the American people, and it was their desire and purpose to protect and safeguard those rights and interests.

Mr. President, it is plain that the framers of the Constitution intended to place restraints and restrictions around the President so that he could not, even if he so desired, appoint to these important positions improper and undesirable persons. Those who framed the Constitution were not willing that any one man, acting as President, should have the power to determine by his own will who should be the chief officers of every great department of our Government. They no doubt felt that if the time should ever come when any one of our Presidents should be besieged and importuned by men who thought more of their particular material interests than they did of good government and the welfare of the people, and they should insist that he appoint one of their kind to a certain position in the Cabinet, the Senate, representing all the States, would be here to relieve the President of his embarrassment and to safeguard the rights and interests of the American people.

They knew how unwise and dangerous it was to place too much power in the hands of any one man, even though he were the President of the United States. They made it clear that they were not seeking to take away from the representatives of the people from the various States important rights and powers in order that they could place them in the hands of one man—the President. What they did clearly shows that they were especially concerned about the matter of keeping out of his hands the power that would enable him to build up a powerful political machine and establish in the Capital of the Nation a strong and dangerous centralized government. So, Mr. President, in order to make sure that our free institutions could and would be preserved in all their integrity, they provided in the Constitution itself that the President should consult the Senate and be required to obtain its consent in the selection of important Federal officials, now called members of the President's Cabinet.

It is our sworn duty to meet the requirements of the positions that we hold here and to protect the rights and interests of the American people. And it is our solemn duty to accept and discharge the obligation which rests upon us as United States Senators to share with the President responsibility for those who are to fill these high and exceedingly important positions in our Federal Government.

We do not intend to be discourteous, and it is not our purpose or desire in any way to offend the President when we insist upon doing our plain duty, simply and solely what the Constitution requires us to do. There is no desire or disposition on this side of the Chamber to embarrass the President in these appointments. In fact, the Senate has been not only considerate and fair but exceedingly kind to the President. No other member of his Cabinet whose name has been sent here has been held up for a single day. Hundreds of his other appointments have been speedily confirmed.

Does that record of the Senate warrant anyone in saying now, when the Senate has a well-founded and justifiable objection to Mr. Warren becoming chief law officer of the United States, that the Senate is playing politics, and seeking to embarrass the President? There is no truth in such a suggestion.

The fact is that a number of Senators who were not personally acquainted with Mr. Warren, who knew nothing about his very active and leading part in forming the Sugar Trust, had already expressed the intention of voting for his confirmation. And it is also a fact that when the undisputed testimony of his record in this regard was laid before the Senate, a majority of Senators were convinced that it was an unwise and dangerous thing to place him at the head of the Department of Justice, where he would have the power to determine what prosecutions should and should not be commenced and carried on by the great law department of our Government.

Mr. President, we have been given the power to say who shall or shall not be Attorney General of the United States. That power was given to the Senate to be used when, in its judgment, it should be used to protect and safeguard the rights and interests of the American people and preserve in its integrity the Government of the United States. The question that now confronts us is, Shall we shirk the responsibility the Constitution has laid upon us, and prove recreant to our trust as Senators from sovereign States, simply because, if we do our duty, we may displease the President?

Mr. President, it will be a sad day for this Republic, and a sad day for the American people, when any Senator thinks more of the wishes of any President than he does of his oath to support the Constitution and his obligation to love and safeguard the highest and best interests of his country.

I would like to know, and other Senators would like to know, why Mr. Warren and those back of him, in the face of what has happened in the Senate, still persist in demanding that he, and only he, shall be made Attorney General of the United States, and placed in control of all prosecutions that may be sought at the hands of the Federal Government. If more care had been taken, and more attention had been paid to the selection of the Attorney General four years ago, the country would have been spared the truckling subserviency to predatory interests, the shame and humiliation that came with the national crimes and scandals, that covered and blackened the doings of Attorney General Daugherty.

Mr. President, there are thousands of lawyers in the country courageous, clean, and capable men, who are free from embarrassing and dangerous connections, whom the President could appoint to the office of Attorney General. The Senate would gladly receive and speedily confirm such an appointment.

I have no desire to embarrass the President. I know that the President has the right to name a Republican, and I am willing to help confirm a clean and capable Republican, but I am not willing to vote to confirm for this place a man whose chief work

in life has been building up of one of the most oppressive and dangerous trusts that the country knows, and who has made his fortune out of that kind of business; to have him made the head of the Department of Justice, where he can suppress any prosecution that may be sought by the cane producers and the beet producers and the consumers of sugar in the United States.

I hold, Mr. President, that a man of that kind ought not to be placed at the head of the great Department of Justice. So far as I am concerned I am willing to remain in session week after week until the President sends in the name of some one whom the Senate will confirm. I might suggest the Solicitor General, Mr. Beck. From what I can learn he is an able and clean lawyer. I should think that there would be no serious objection to him. There are other Republican lawyers that the President could name and have no trouble in getting them confirmed. But as to this man—Warren—under the undisputed testimony submitted by the Senator from Montana [Mr. WALSH] and the Senator from Missouri [Mr. REED], our position can not in justice be assailed, it is simply unanswerable. We can not in justice to ourselves and in justice to the people of the United States in the face of these facts vote to confirm Mr. Warren for the high office of Attorney General of the United States.

Mr. BUTLER. Mr. President, at this stage of the debate it may be difficult to introduce any new matter or to make any suggestions which may alter or affect the vote of any Member of this body, but it may not be amiss in the closing moments of the debate to make a few suggestions, perhaps reiterate some of the ideas which have heretofore been expressed, and to say a word about the real situation as it confronts us.

The President of the United States, Calvin Coolidge, has made a nomination for the office of Attorney General. It is our duty under constitutional privilege to advise the President and to consent to the nomination or, if in our opinion it is an unfit nomination, to reject it. Now, what is the first thing to consider in connection with the nomination by the President?

Our friends on the other side of the aisle, it may be, do not like to have questions of party politics introduced into the debate, but party politics all the time underlies all of our discussion and can not be taken away from this discussion by the present desire of those on the other side of the Chamber. Calvin Coolidge was elected President of the United States on November 4, 1924, by an overwhelming majority of all the voters of the country participating in the election. What does that mean? It means an expression of confidence and trust in his judgment and in his honesty and in his integrity. What has he done? He has sent to the Senate the name of Charles Beecher Warren for confirmation for the office of Attorney General. Mr. President, do we believe on this side of the Chamber or on the other side of the Chamber that President Coolidge does not believe in the enforcement of the laws of his country? It is a question involving the fitness of Charles Beecher Warren, but it first of all is a question of your confidence in the appointing power. If you have faith in the President of the United States, Calvin Coolidge, how can you come to the conclusion that he has selected an unfit man knowingly and purposely and that he knows that that man is in no position to enforce all the laws of his country? That is the simple question involved.

The statement was made in the beginning of the argument by those who opposed Mr. Warren that they did not intend to impeach his character. They admitted somewhat reluctantly his ability as a lawyer, and they did not attack his fitness for the office except that by reason of his connection with the sugar business about 18 or 20 years ago his bent of mind was such that he could not be expected to enforce the laws with reference to trusts and monopolies in restraint of trade, and they cite among other things a possible question that may come up with reference to the National Sugar Co., which may again apply for a modification of a decree enabling the American Sugar Refining Co. to become the owner of more than 25 per cent of the stock of the National Sugar Co., which was denied by Attorney General Stone—a contention which is preposterous—and also that he is not competent to pass upon matters which may arise with reference to the aluminum companies, in which it has been erroneously alleged that Mr. Mellon is head. And also that he is disqualified from acting in very many suits and complaints which have been instituted and which may be instituted by the Government against alleged trusts existing in restraint of trade.

This is all there is to the case. If this is the objection, it can not consistently be made unless those who make it intend to impeach the honesty and professional integrity of Mr. Warren, and if they persist in this charge they must take the responsibility, and it is theirs alone.

This matter can not be determined upon eloquence and oratory. It must be settled on the facts and not upon pure assumption. We have not only a duty to the Government in the consideration of the approval or disapproval of Mr. Warren, but we are bound as individuals to be decent and fair to this man who, more than anyone else, is personally concerned in the outcome of this matter.

It is a singular situation. Many of the men who have taken part in the debate do not know Mr. Warren, never heard of him; they have had no opportunity to know his character, and yet they would assail him. He has not had the opportunity of stating his own case, and he must succeed or fail without hearing.

We have examined into the record of Charles Beecher Warren. It does appear that 15 or 20 or 25 years ago, when all of these matters were looked upon in a very different way than after some of the decisions of the Supreme Court, he did participate as a lawyer and also he did participate as a business man in some of the transactions connected with collecting together some of those little feeble companies engaged in the sugar business in the State of Michigan in order to make them prosperous and in order to obtain for them financial support. They were willing to take that help from Mr. Havemeyer and they did take it from him. Mr. Warren participated properly, legally, and ethically in the transaction so far as anybody understood the situation in those days.

These acts are now criticized. But a change came over the understanding of our people concerning the conduct of business by reason of the enlightening decisions of the Supreme Court on the antitrust laws. That is a very important factor to be considered in connection with the matter under discussion. The Senator from Missouri [Mr. REED] read certain letters. He did suggest the date of the letters he read, but then he went on in the fullness of his oratory, and on and on and on until he produced the impression in this Chamber that those letters were written day before yesterday. That may be a tribute to his oratory. If it is, I am glad I have paid it to him. But although these letters were written, none from Mr. Warren later than 1907, nothing appears which can in fairness or justice infer any wrongful act.

Mr. President, there have been some collateral questions raised in this matter which may be interesting but which have no practical importance. It has been claimed that the renomination of Charles Beecher Warren to be Attorney General could not properly be made, could not within the limits of the Constitution be made after a rejection. Other constitutional questions have been raised as to the right of the President to deal with this matter a second time. I have had the interest to collect a number of precedents in connection with the matter and I would submit a brief which I would like to have inserted in the RECORD. I ask permission to have these papers, both connected with the legal discussion of the constitutionality of the resubmission of Mr. Warren's name, inserted in the RECORD.

The VICE PRESIDENT. Is there objection to the request of the Senator from Massachusetts? The Chair hears none, and permission is granted.

The memoranda are as follows:

MEMORANDUM A

Is it unconstitutional for the President to resubmit to the Senate for confirmation to office the name of a person who has already been rejected by the Senate at the same session?

I

The constitutional appointing power is with the President in the first instance. As Attorney General Butler ruled in 1837 (Coxe's case 3 O. A. G. 189):

"The Senate has no power to originate an appointment; its constitutional action is confined to a simple confirmation or rejection of the President's nomination. Whenever the Senate disagrees to such a nomination it fails; and no appointment can be made, except on a new nomination to be made by the President. Suggestions as to the views of the Senate in cases where that body disagrees to the President's nomination, may, no doubt, be informally communicated to him; but should he think it proper to conform to those views, I know of no way in which it can be done, consistently with the provisions of the Constitution except by the making of a new nomination in accordance therewith."

The President is the originating power with regard to appointments. The Senate can not control the appointment of a particular person. (13 O. A. G. 516, 519.) The responsibility for the naming of a person is with the President. The Senate can not select; it must confirm or reject.

II

Suppose then that the Senate has rejected a name sent to it by the President. What is the effect to be attributed to such rejection? It

can not be argued that such rejection imposes upon the rejected nominee the stigma of perpetual disqualification from office. The action of the Senate in refusing to confirm is not res adjudicata. The doctrine of res adjudicata applies to courts of law, whose decisions are final. It has no application to legislative or executive functions. Because the Senate has rejected a man to-day it does not mean that it is forever precluded from considering his name. To hold otherwise would mean in effect that the rejection of a nomination would be more or less equivalent to a conviction on an impeachment. Rejection would then disqualify the rejected person forever from holding public office, or at least from holding the office with respect to which he was rejected. But impeachments are in the nature of judicial proceedings and require a two-thirds vote of the Senate, whereas a rejection can be made by a simple majority. It is altogether absurd to argue that the Senate is precluded from reconsidering on a new nomination the name of a person previously rejected by them. Such an argument would attribute to the action of the Senate a degree of finality which the action of legislative bodies has never been held to possess and would impose upon the rejected nominee the perpetual stigma of disqualification without trial and without the opportunity to make his defense.

III

Turning now from theory to practice we find that Presidents have again and again resubmitted to the Senate the names of rejected nominees. In many of those cases the Senate has proceeded forthwith to vote upon the name thus resubmitted. In other words, they have by their action acknowledged that there is nothing unconstitutional or wrong in such a resubmission. If the practice were unconstitutional it is only reasonable to suppose that the Senate would have ignored the resubmission. By voting upon it they have acknowledged its legality.

An example is to be found in the case of Samuel Gwin. Gwin was given a recess appointment as registrar of the land office for the district of Mississippi during the summer of 1831. When Congress met in December, 1831, the President submitted to the Senate a regular nomination for a full term. The Senate rejected it. In June, 1832, the President again submitted the nomination. On its second submission the nomination was considered and laid on the table and the Senate adjourned without taking any further steps in the matter. In pursuance of an opinion by Attorney General Taney (2 O. A. G. 525) President Jackson again gave Gwin a recess appointment. The Senate did not deny the constitutionality of the resubmission of Gwin's name, although there was some discussion on the subject.

Further examples are to be found in the cases of—

Henry A. Wise, nominated by President Tyler as minister to France in 1843, and in the case of Caleb Cushing, nominated at the same time as Secretary of the Treasury. Mr. Wise's nomination was submitted on February 27, 1843, and rejected by a considerable majority on March 3. It was resubmitted on March 3, and again rejected. It was resubmitted a third time on the same day (March 3) and was again rejected. Mr. Cushing's nomination was submitted on March 2, 1843, and rejected on March 3. It was again resubmitted twice more on the same day and was twice again rejected. (Senate Journal, 3d sess. 27th Cong., pp. 314–316.)

President Wilson several times submitted the name of Marjorie Bloom to be postmistress at Devils Lake, N. Dak. Her husband's name had been previously rejected for the same place. Marjorie Bloom was nominated on September 29, 1914, and rejected on October 13. She was again nominated at the next session on December 18, 1914, and rejected January 4, 1915. She was again nominated and confirmed on August 2, 1916. (It must be noted, however, that these successive nominations were made to the Senate at different sessions.) The Senate by several times acting upon it and by finally confirming her, notwithstanding two previous rejections, acknowledged the validity of the resubmission.

A further striking instance is to be found in the case of Walter L. Cohen, nominated comptroller of the customs at New Orleans, La., by President Harding. His name was sent to the Senate on November 23, 1922, and the Senate on December 4 adjourned without taking any action. President Harding again sent his name to the Senate at the next session on December 2[illegible], 1922. He was rejected on March 1, 1923. His name was again sent by President Coolidge to the Senate on December 10, 1923. He was again rejected for the second time on February 18, 1924. But on March 17, 1924, the Senate, notwithstanding the two previous rejections, confirmed his appointment.

These cases, and especially the last, conclusively demonstrate that the practice in the past has been to acknowledge the validity of a resubmission of a name and to act upon such resubmission. If Cohen's name is to be considered as perpetually disqualified by reason of rejection, why did the Senate, notwithstanding two rejections, confirm him?

In conclusion, therefore, I would submit that the President has an undoubted right to resubmit the name of a rejected nominee as many times as he sees fit, and there is no reason either in constitutional law or in sound sense why the Senate should not be able to consider and act upon such resubmission.

MEMORANDUM B

(Constitution, Art. II, sec. 2)

"The President shall have power to fill up all vacancies that may happen during the recess of the Senate by granting commissions which shall expire at the end of their next session."

Opinions of Attorneys General have frequently dealt with this. The following is a brief summary of the facts in each case upon which an opinion was given, so far as these facts are known. In all of the following the power of the President to appoint to a vacancy existing during the recess was sustained, regardless of when or how the vacancy first occurred, and in some instances regardless of whether the person appointed had been previously rejected by the Senate.

[1 O. A. G. 631, President Monroe, Attorney General Wirt, October, 1823]

General Swartwout's commission as Navy agent expired during a session of the Senate. The President nominated another person, but the Senate did not confirm him. It was held that the President could make a recess appointment.

[2 O. A. G. 525, President Jackson, Attorney General Taney, July, 1832]

President Jackson gave Gwin a recess appointment as register of the land office for the Mount Salus district of Mississippi in 1831. When the Senate next convened Gwin's name was submitted for permanent appointment. The Senate rejected him. The President renominated him, and the Senate adjourned without acting on the second nomination. At the ensuing recess he was given another recess appointment. The Senate requested the President to send them a copy of his commission and of the opinion given by Taney, with other opinions in point, which he did. A resolution of censure on the President was discussed, but failed to pass by a large majority.

This same opinion cites (2 O. A. G. 530) the case of Binney, which arose in the administrations of Monroe and J. Q. Adams. Binney's commission as Navy agent expired during a session of the Senate, on February 15, 1825. He was nominated on February 28, 1825, to succeed himself, and the Senate adjourned on March 4 without acting on the matter. The new Senate was convened in extra session and Binney's name was submitted again on March 7, 1825. On March 9 the Senate postponed consideration until the following December and then adjourned. On March 22, during the recess, he was given a recess appointment.

[3 O. A. G. 673, President Tyler, Attorney General Legare, October, 1841]

This was a hypothetical case, so far as the opinion goes, and I can not find the case of the particular person with reference to whom it was given. The case assumed these facts:

X is given a recess appointment. The Senate subsequently sits. The President makes a nomination for a permanent appointment. The Senate adjourns without acting upon it. Can the President then make a second recess appointment? The Attorney General said that he could.

[4 O. A. G. 523, President Polk, Attorney General Mason, August, 1846]

Here a recess appointment was made in 1845 to the deputy postmastership at Buffalo, N. Y. A nomination was later sent to the Senate for permanent appointment. The Senate rejected the nomination on August 8, 1846. On August 10 a different nomination for the same post was submitted, on which the Senate took no action. It was held that another recess appointment could be made.

[7 O. A. G. 186, 212, President Pierce, Attorney General Cushing, May, 1855]

Here the remarks in favor of the power were made obiter without reference to any particular case, in the course of an exhaustive opinion dealing with the reorganization and grading of the Diplomatic Service.

[10 O. A. G. 356, President Lincoln, Attorney General Bates, 1862]

Here President Lincoln doubted whether he could fill by recess appointment two vacancies on the bench of the Supreme Court which were existing during a recess, but which had existed during and before the last session of the Senate.

The vacancies occurred in the summer of 1861 during a recess. They continued during the winter, throughout the session, and on into the summer of 1862, when they were filled by the appointment of Mr. Justice Davis and Mr. Justice Miller. I do not know whether or not these were recess appointments originally, but they were confirmed by the Senate before the occasion arose for them to take their seats on the bench.

[11 O. A. G. 179, President Johnson, Attorney General Speed, March 25, 1865]

Peter McGough was given a recess appointment in July, 1864, as collector of internal revenue for the twentieth Pennsylvania district. This commission expired March 3, 1865. His name, by mistake, was

not sent to the Senate during the session which ended March 3, 1865, nor to the new Senate, which met in extra session on March 4. It was held that the vacancy could be filled by a second recess appointment.

[12 O. A. G. 32, President Johnson, Attorney General Stanbery, August, 1866]

Here several postmasters were given recess appointments. Their names were later sent to the Senate, which rejected some and failed to act on others. It was held that the places could again be filled by recess appointments.

[12 O. A. G. 449, President Johnson, Attorney General Evarts, August, 1868]

A vacancy occurred in the office of collector of customs at New Orleans during a session of the Senate. A nomination was submitted to the Senate and was not confirmed. It does not appear whether it was rejected or merely tabled. It was held that a recess appointment could be made.

[12 O. A. G. 455, President Johnson, Attorney General Evarts, August, 1868]

Here a new office was created by statute (collector of customs for Alaska), and shortly after the statute was passed the Senate adjourned before there was time to make a nomination.

It was held that a recess appointment could be made.

[14 O. A. G. 562, President Grant, Attorney General Williams, April, 1875]

Two vacancies were created in the grade of paymaster of the Army by act of March 3, 1875. The Senate adjourned the same day. The new Senate was summoned in extra session on March 4, 1875, and adjourned without acting on the nominations sent to it.

It was held that the President could fill the vacancies by recess appointment, and that he might fill them with the persons whose names had been submitted but not acted upon.

[15 O. A. G. 207, President Hayes, Attorney General Devens, March 17, 1877]

This merely affirms 12 O. A. G. 449 without stating any facts.

[16 O. A. G. 522, President Hayes, Attorney General Devens, June, 1880]

A vacancy occurred during a session of the Senate in the office of collector of the port of Philadelphia. The President nominated John F. Hartranft at the same session. The Senate adjourned without acting upon it. Thereupon the President gave Hartranft a recess appointment.

The Secretary of the Treasury was instructed that he might lawfully countersign the commission.

[17 O. A. G. 521, President Arthur, Attorney General Brewster, February, 1883]

The office of United States attorney for the northern district of Georgia became vacant during a session of the Senate. The President was advised that he could fill the vacancy during the coming recess.

[18 O. A. G. 29, President Arthur, Attorney General Brewster, June, 1884]

Previous opinions affirmed; no facts stated.

[19 O. A. G. 261, President Cleveland, Attorney General Miller, March, 1889]

Previous opinions affirmed; no facts stated. The question (apparently an abstract one) was this:

"Whether, when a vacancy in an office occurs during a session of the Senate, the President has power to fill it by a recess appointment."

[26 O. A. G. 234, President Roosevelt, Acting Attorney General Hoyt, April, 1907]

Here a special act was passed authorizing the President, by and with the advice and consent of the Senate, to restore Leonard Cox to the post of civil engineer in the Navy. It was ruled that the President could give Cox a recess commission, even though the vacancy occurred during the session.

[30 O. A. G. 314, President Wilson, Attorney General Gregory, November, 1914]

John H. Bloom was nominated as postmaster of Devils Lake, N. Dak. He was rejected by the Senate. It was ruled that he could be given a recess appointment, notwithstanding the rejection. (This was not done, however. Instead, Marjorie Bloom was nominated, and after two rejections, she was finally confirmed.)

[32 O. A. G. 271, President Wilson, Acting Attorney General Ames, July, 1920]

On April 30, 1920, President Wilson nominated Henry Jones Ford and James Duncan to be members of the Interstate Commerce Commission. On May 6 he nominated Mark Potter and Samuel W. McCall to be members of the Tariff Commission. The Senate adjourned without acting on them. Thereupon the President gave recess appointments to all of the above. There was no question as to the legality of the appointments, but it was held, under R. S. 1761, that they could not be paid until confirmed.

[33 O. A. G. 20, President Harding, Attorney General Daugherty, August, 1921]

This opinion considered simply the question as to what period of adjournment constituted a "recess." But the prior views as to recess appointments were affirmed obiter. No particular facts are stated; the question was general.

Total in favor of the power—16 Attorneys General in 14 administrations, extending over a period of 102 years.

This view is also supported by Mr. Justice Woods, of the Supreme Court of the United States, sitting in the Circuit Court for the Western District of Tennessee, in 1886, in the case of In re Yancey (28 Fed. 445). It is also supported by the decision of the same justice in the Circuit Court for the Northern District of Georgia, in 1880, in the case of In re Farrow (3 Fed. 112).

Attorneys General have expressed views contrary to the above in the following cases:

[2 O. A. G. 333, 334, President Jackson, Attorney General Berrien, April, 1830]

The remark in question was, however, an obiter dictum so far as the real point of the decision was concerned.

[4 O. A. G. 361, Mason, April, 1845]

Here it was held that the President could not appoint during a recess if the vacancy had arisen and was known to exist during a session of the Senate. But Mason later changed his mind and adopted the view of the other Attorneys General in favor of the power of the President in such cases. (See 4 O. A. G. 523 supra.)

The contrary view is also supported by District Judge Cadwalader in the case of the District Attorney (7 Fed. Cas. No. 3924), and by Mr. Justice Miller in Schenck *v.* Peary (21 Fed. Cas. No. 12451). Both of these cases arose under President Andrew Johnson in 1868.

There are remarks by Sergeant (on the Constitution, p. 373) and Story (on the Constitution, par. 1559) which might be taken as supporting this view (denying the power) but which are not very conclusive. There are also dicta in People ex rel *v.* Forquer, 1 Breese (Ill.), but the statute in that case was very differently worded from the Constitution of the United States.

On the whole, a very clear preponderance of legal opinion is in favor of the power. R. S. 1761 sems to assume that the power exists, but by prohibiting the payment of any salary until confirmation, the power is sought to be rendered ineffective.

Mr. BUTLER. Mr. President, it is too late to go into all of the different phases of the investigations to which allusion has been made. However, I have prepared a digest of the testimony before the Hardwick committee and now ask that that also may be printed as a part of the record.

The VICE PRESIDENT. Without objection, it is so ordered. The digest of testimony is as follows:

DIGEST OF MR. WARREN'S TESTIMONY BEFORE HARDWICK COMMITTEE

The CHAIRMAN. Who are the other executive officers of the Michigan Sugar Co.?

Mr. WARREN. The board of directors of the Michigan Sugar Co., consists of Benjamin Boutell, Bay City, Mich.; C. F. Bach, Sebewaing, Mich.; Clarence A. Black, Detroit, Mich.; H. A. Douglas, Detroit, Mich.; Benton Hanchett, Saginaw, Mich.; Watts S. Humphrey, Saginaw, Mich.; Charles H. Hodges, Detroit, Mich.; F. R. Hathaway, Detroit, Mich.; W. T. Knowlton, Saginaw, Mich.; Cyrus E. Lothrop, Saginaw, Mich.; Gilbert W. Lee, Detroit, Mich.; George B. Morley, Saginaw, Mich.; George Peck, Detroit, Mich.; Gilmore G. Scranton, Croswell, Mich.; W. H. Wallace, Saginaw, Mich.; A. W. Wright, Alma, Mich.; Charles B. Warren, Detroit, Mich. (p. 625).

* * * * * * *

The CHAIRMAN. How much as trustee?

Mr. WARREN. I never held any stock as trustee for anybody.

The CHAIRMAN. Did you ever make your return to the——

Mr. WARREN. There were stock certificates held in my name which were not transferred by the owners, perhaps; but I never held any stock as trustee for anybody (p. 626).

* * * * * * *

The CHAIRMAN. Do you hold any stock now as trustee for anybody?

Mr. WARREN. I do not, nor is there any stock in my name that I do not own.

The CHAIRMAN. There is no stock in your name that you do not own?

Mr. WARREN. No (p. 627).

* * * * * * *

Mr. WARREN. When they got to negotiating sometimes they would negotiate themselves; in general, they participated in the negotiations

at all times. I examined the legal title of the corporations and their condition and my office assisted in various work that was performed and the stock transaction was completed always with the board of directors of the company (p. 629).

* * * * * * *

Mr. WARREN. Except the Tawas; yes.

First, the following men were appointed to represent their respective stockholders: Arthur Hill, of Saginaw, and Benjamin Boutell, of Bay City, were appointed to represent the Saginaw Valley Sugar Co. stockholders, and all the stockholders of the Saginaw Valley Sugar Co. indorsed their stock in blank and delivered it to Mr. Hill and Mr. Boutell to be exchanged for such price and such consideration as, in the discretion of Mr. Hill and Mr. Boutell, they wished to receive for it.

The stock of the Sanilac Sugar Refining Co. was delivered to George Peck and G. G. Scranton under the same conditions.

The stock in the Alma Sugar Co. was delivered to A. W. Wright and W. T. Knowlton for the same purposes.

The stock in the Bay City-Michigan Sugar Co. was delivered to W. L. Churchill and N. B. Bradley for the same purposes; and the stock of the Sebewaing Sugar Refining Co. was delivered to Watts S. Humphrey and George B. Morley for the same purposes; and the stock in the Peninsula Sugar Refining Co. was given to Henry B. Joy and Gilbert W. Lee for the same purposes.

Those 12 men acted for those 6 corporations; 2 men for each corporation.

Those men are residents and business men of Saginaw Valley and Detroit. They are men, all of them, of great prominence in the State, and they were intrusted by the stockholders because they believed in them.

Those men met and agreed upon valuations which they would mutually allow the other man to receive for his property.

* * * * * * *

Mr. WARREN (continuing). Those 12 men—in conjunction with Thomas Harvey, of Saginaw; myself; Benton Hanchett, of Saginaw; William H. Wallace, who became the general manager; and F. R. Hathaway—became the organizers of the Michigan Sugar Co. (pp. 631, 632).

* * * * * * *

The CHAIRMAN. At the agreed values?

Mr. WARREN. At the values which these 12 men had agreed upon.

The CHAIRMAN. Give me the stock distribution among the companies.

Mr. WARREN. These 12 men, as I have stated, held all the stock then, it having been indorsed in blank by all the stockholders; and every stockholder in those six corporations—and there were hundreds of them—delivered their stock certificates, every one of them, without any agreements at all, simply reposing confidence in these men.

The CHAIRMAN. Oh, yes; but they were rights that could have been enforced in any court in Michigan or anywhere else?

Mr. WARREN. Certainly; but it was by unanimous consent (pp. 633, 634).

* * * * * * *

Mr. WARREN. And the 12 men who held the old stock surrendered the old stock certificates and took out new stock certificates in the names of the old stockholders in proportion to their holdings, and the new stock was delivered to every stockholder in proportion to what he was entitled to.

The CHAIRMAN. Exactly.

Mr. WARREN. No stock of the Michigan Sugar Co. was issued to anybody for promotion; no stock was issued to anybody for a bonus of any kind, character, or description to cover legal fees or any services of any kind (p. 634).

* * * * * * *

Mr. WARREN. These 12 men did; yes.

The CHAIRMAN. These 12 men were taken because they were stockholders, each two of them in the constituent companies, were they not?

Mr. WARREN. Certainly (p. 634).

* * * * * * *

Mr. WARREN. I suppose that is substantially the way they conducted the negotiations.

The CHAIRMAN. You were in it, were you not?

Mr. WARREN. I was not one of the 12. I was their lawyer (p. 635).

* * * * * * *

The CHAIRMAN. And too much competition?

Mr. WARREN. No, sir. Largely because of poor management, and some dishonesty; a good deal of it. And the Peninsula Sugar Refining Co. was not making money; had not paid dividends for some two or three years. The Bay City Co. was not paying dividends and was in debt. The Sanilac Co. had a bond issue and owed over $200,000 besides its bond issue. They were all in bad shape except the Alma and the Sebewaing (p. 637).

* * * * * * *

Mr. WARREN. All of these companies with one exception, which I will explain later, sought to have this outside money invested in their enterprise. They were not approached for the purpose of being bought out. They sought to have the money interested in it.

The CHAIRMAN. In other words, they approached Mr. Havemeyer instead of his approaching them?

Mr. WARREN. In every instance except one.

The CHAIRMAN. Whom did they approach him through?

Mr. WARREN. They approached him directly sometimes, and he would refer them to me for the legal side of it, at Detroit, saying that he would pay par for the stock. He approximately paid par for all the stock; and all I would have to do would be to say whether there was a legal corporation—whether their stock had been legally issued (p. 638).

* * * * * * *

The CHAIRMAN. Did you advise him, Mr. Warren, upon any question as to whether or not this involved possible violations of the Sherman law?

Mr. WARREN. No, sir.

The CHAIRMAN. Was your advice asked as to that?

Mr. WARREN. No, sir; not at all.

The CHAIRMAN. In other words, you were only asked for your advice as to the legal validity of the corporation?

Mr. WARREN. Yes. I never performed any legal services outside of Michigan for the American Sugar Refining Co., and had nothing to do with their general business in New York (pp. 638–639).

* * * * * * *

The CHAIRMAN. The Michigan Sugar Co. has not to-day any connection directly with that sugar company?

Mr. WARREN. The Michigan Sugar Co. has not any connection with any other company—not one dollar invested in any company except its own.

The CHAIRMAN. Do you know anything about the Continental Sugar Co.?

Mr. WARREN. I know there is such a company (p. 642).

* * * * * * *

Mr. WARREN. The Michigan stockholders own 63 per cent and the American Sugar Refining Co. owns 37 per cent.

The CHAIRMAN. I am asking you for the amount. Is four million and some odd right?

Mr. WARREN. I will have that computed.

The CHAIRMAN. Have you not got the amounts?

Mr. WARREN. Yes; I have got that.

The CHAIRMAN. Give me that. I want to see what that is. They said they owned $4,398,000 of that stock now.

Mr. WARREN. That is approximately correct.

The CHAIRMAN. They own 37 per cent and the Michigan people own 63 per cent (p. 645)?

* * * * * * *

The CHAIRMAN. Mr. Warren, do you know F. R. Hathaway?

Mr. WARREN. I do.

The CHAIRMAN. He is the secretary of the Michigan Sugar Co., is he not?

Mr. WARREN. He is.

The CHAIRMAN. Are you familiar with the evidence he gave before the Ways and Means Committee of the House of Representatives about two years ago?

Mr. WARREN. I could not say I was familiar with it.

The CHAIRMAN. You have read it, have you not?

Mr. WARREN. I would not say I have read it all; no.

The CHAIRMAN. Did you read the statement he made at that time that the American Sugar Refining Co. had no interest in the company?

Mr. WARREN. I have recently read it.

The CHAIRMAN. How do you account for that, if it is a fair question or if you desire to answer it?

Mr. WARREN. I certainly should like to answer it.

The CHAIRMAN. I thought you possibly would like to answer it.

Mr. WARREN. I should. I think what Mr. Hathaway stated—would you allow me to have the testimony?

The CHAIRMAN. Yes; I would be glad to do so. Would you like me to direct your attention to his statement on that matter?

Mr. WARREN. I will proceed without the testimony. What Mr. Hathaway stated there, as I recollect the testimony, was that the American Sugar Refining Co. was not on the books of the company a stockholder. Now, that was accurate. I have no doubt but that Mr. Hathaway, in all the years I have known him, was inclined to tell just what he knew when he gave that statement. Mr. Hathaway had been spending a great deal of time in looking up information about the tariff. He had been to the Philippines, to Cuba, and all around, working on that matter. He was not one of the men who ever signed stock certificates in the company. He had no access to the stock books of the company. His signature is not required on the stock certificates, and the Detroit Trust Co. is the registrar and transfer agent of the corporation, and Mr. Hathaway was not informed by anybody as to whether the American Co. had any interest or not, and, as a matter of fact, nobody was in position to know, even myself, because Mr. Havemeyer and his family and his associates at one time owned the stock, and later it appears he sold the stock or portions of the stock to the American Co. When the American Co. transferred its

stock holdings to his own name was after the date of Mr. Hathaway's testimony. It appears now from various things that have gone on before your committee that Mr. Havemeyer himself was largely interested in the beet-sugar business; that he had practically shifted his investments from cane sugar to beet sugar.

The CHAIRMAN. And you think the reason Mr. Hathaway made that statement was because there is no record anywhere of what the American Sugar Refining Co.'s holdings were?

Mr. WARREN. They had never appeared as a stockholder at any meeting, and they have never had any officer or anybody present in Detroit to represent them at any meeting, or sent any agent to represent them.

The CHAIRMAN. And the stock they really owned was in your name, as far as the records of the company show?

Mr. WARREN. You could not tell who owned it, Mr. Hardwick, until after they transferred it themselves.

The CHAIRMAN. But on the records of your company the stock stood in your name?

Mr. WARREN. Yes; that stock which was owned down East, or which Havemeyer owned, was in my name, but not as trustee, and there was no trust connected with it, and I had no proxies. I mean I had no agreement about what should be done with the stock and had no understanding about what should be done with the stock.

The CHAIRMAN. Mr. Hathaway, as the secretary of the company, must have known that this tremendous block of stock stood in your name?

Mr. WARREN. He certainly knew that.

The CHAIRMAN. But your proposition is that he did not know who really owned that stock?

Mr. WARREN. No; he did not know it (pp. 676–677).

* * * * * * *

Mr. WARREN. Pardon me just a moment. It is fair for me to be understood here. After 1906 I never performed any services for the American Sugar Refining Co. in connection with the industry in Michigan. After I became an officer and a trustee, as a director, for all the stockholders of that company I never received one dollar of pay from the American Sugar Refining Co. for any service of any kind, character, or description.

Mr. RAKER. You had before?

Mr. WARREN. Before I had performed services in connection with the negotiation and transfer of the stock, which I explained yesterday, and have been paid for my services as a lawyer.

Mr. RAKER. And you were representing the American Sugar Refining Co.?

Mr. WARREN. No, sir; I was not paid to represent the American Sugar Refining Co. After I performed the services I never was paid, and I never was on their salary list or anything like that (p. 680).

* * * * * * *

Mr. WARREN. In the capacity of assisting them in the negotiations for the acquisition of certain stock in certain corporations, and passing upon the question of whether they got a legal title to what they thought they were receiving, and whether it was a good title.

Mr. RAKER. Well, in what capacity?

Mr. WARREN. As a lawyer; and, of course, in a sense I say it is fair to call it still legal services. If the negotiations were started with them in the East, I might have and often did continue to negotiate on terms that I was informed about (p. 681).

* * * * * * *

Mr. WARREN. The facts are I was under no general retainer to the American Sugar Refining Co. in Michigan (p. 682).

* * * * * * *

Mr. GARRETT. I understand you to say that all of the stock which stands in your name belongs to you?

Mr. WARREN. That is right.

Mr. GARRETT. You are the——

Mr. WARREN. The bona fide owner of it.

Mr. GARRETT. The legal, equitable, complete owner of all that stock?

Mr. WARREN. I am absolutely the owner of it, and I paid for it.

Mr. GARRETT. Pardon me, but how much did you say it was?

Mr. WARREN. $445,000 worth (p. 729).

* * * * * * *

Mr. MALBY. Do you have any understanding, express or implied, with the American Sugar Refining Co. that you shall at all confine your sales within a certain radius?

Mr. WARREN. We have absolutely no understanding with them about the market price or the district in which sales shall be made or the time when sales shall be made.

Mr. MALBY. Are they your active competitors during the months in which you are actively engaged in selling?

Mr. WARREN. They certainly are (p. 743).

* * * * * * *

Mr. WARREN. There is no director of the American Sugar Refining Co. now a director of the Michigan Sugar Co. at any time who ever was a director of the Michigan Sugar Co. at any time (p. 744).

* * * * * * *

Mr. WARREN. I say this, as I said yesterday: I have never made any statement that can be used here to examine me on as to whether I ever made divergent statements. I never appeared before any committee of Congress on any subject until I came here yesterday. I never appeared before any committee of any legislature.

The CHAIRMAN. I will say to you frankly that my question was for the purpose of calling your attention to this speech of Senator Burrows, and my only object in calling your attention to that speech and to the Hathaway statement was to find out why it was that for such a long time your company apparently denied that fact, or let others deny it, in connection with this Sugar Trust.

Mr. WARREN. A magazine article was written telling what the holdings of the American Sugar Co. were in Michigan, and I answered that article over my own signature; that is, in the interview it showed on its face that it was written, whether the name was appended below or not, so that anybody accustomed to reading newspaper statements would know it was a written interview.

The CHAIRMAN. With one of the Detroit papers?

Mr. WARREN. Yes. It was an interview making a broad statement about it and telling what companies they were interested in.

The CHAIRMAN. When was that, Mr. Warren?

Mr. WARREN. I do not remember.

The CHAIRMAN. Was it before this Hathaway business or since?

Mr. WARREN. No; of course not.

The CHAIRMAN. You mean the trouble growing out of this Hathaway statement?

Mr. WARREN. Yes. I went as far as I could go.

The CHAIRMAN. I did not know that, and I am glad you told me that. Your explanation of Hathaway's mistake about it was that he simply was going on what the books of the corporation showed?

Mr. WARREN. Yes.

The CHAIRMAN. And that he did not know the real facts to be otherwise?

Mr. WARREN. He would not know the American Co. as a company—that is, a man could reasonably draw a distinction between somebody that lived down East and the American Sugar Refining Co., couldn't he?

The CHAIRMAN. Yes.

Mr. WARREN. There is a great distinction between the amount of money Mr. Havemeyer has in the Great Western Sugar Co. to-day, according to Horace Havemeyer's testimony, and the American Sugar Refining Co.'s holdings and the present attitude of the two, is there not?

The CHAIRMAN. Yes. Did Mr. Hathaway know at the time he made that statement that you held all these hundreds of thousands of shares for some eastern people?

Mr. WARREN. I think it would be a fair presumption to say Mr. Hathaway would be quite dense if he did not know that.

The CHAIRMAN. Did he know who these eastern people were?

Mr. WARREN. No.

The CHAIRMAN. Did you not think it was rather reckless of him saying right out in that way that the American had no interest in this thing when he knew the tremendous value of that stock?

Mr. WARREN. Do you think that cut any figure before that committee that had testimony given two years ago?

The CHAIRMAN. No; except they may have wondered why he said it.

Mr. WARREN. The whole matter was before them in testimony two years old anyway, at the time he said it.

The CHAIRMAN. Before the Ways and Means Committee?

Mr. WARREN. Yes.

The CHAIRMAN. The testimony of whom?

Mr. WARREN. The testimony of Watts S. Humphrey, of Saginaw, for one.

The CHAIRMAN. During the Philippine hearings, you mean?

Mr. WARREN. I guess it was in the Philippine hearings; yes.

The CHAIRMAN. As to the interest of the American Co.?

Mr. WARREN. As to the interest of the American; yes.

The CHAIRMAN. That was a supposition?

Mr. WARREN. No; he used my name and said it was supposed——

The CHAIRMAN (interposing). It was supposed to be your stock, and he was not giving a guess, but here was a man denying it, an agent of the company, was he not? But that is another matter, neither here nor there, for us to debate on at this time.

Mr. WARREN. I made a public statement about the matter.

The CHAIRMAN. Yes; I am very glad to hear that you made that statement. How soon was that after Hathaway's statement?

Mr. WARREN. I do not recall.

The CHAIRMAN. Was it shortly afterwards?

Mr. WARREN. After the magazine article was printed referring to this subject and misquoting the speech.

The CHAIRMAN. I wonder if that is the magazine article in this book here which I have?

Mr. WARREN. I do not know.

Mr. RAKER. Mr. Chairman, find out what paper that interview was in.

The CHAIRMAN. Mr. RAKER asks me to inquire what paper that interview was in.

Mr. WARREN. I think it was the Detroit Journal.

The CHAIRMAN. Could you give us approximately about how long it was after the incident?

Mr. WARREN. No; I do not know.

The CHAIRMAN. Was it a month afterwards?

Mr. WARREN. It was not very long afterwards.

The CHAIRMAN. Within the course of two or three months at the latest, was it not?

Mr. WARREN. I do not know. It was when this magazine article brought up the question, and the magazine subsequently printed the contents of my statement and gave it wide circulation (pp. 752, 753, 754).

* * * * * * *

Mr. BUTLER. Then we come to the litigation which has been referred to by the Senator from Montana [Mr. WALSH]. I introduced the fact sometime during his statement, the fact that there had been a stipulation filed which relieved Mr. Warren from any charge that after 1906 he was connected with the Michigan Sugar Co. That stipulation was made in 1915 in the course of the trial of the case at the end of the testimony with reference to the Michigan Sugar Co. and Mr. Warren.

I have noticed that whenever that stipulation has been referred to it has been the cause of some irritation on the part of Senators on the other side of the aisle, and I do not wonder. It was a stipulation freely made by reputable counsel connected with the case representing the Attorney General's office under the Wilson administration. I presume a stipulation of that kind made under such circumstances can be relied upon, especially on the other side of the Chamber.

But more important than that is the decree of the court. We have had paraded before our eyes the bill of complaint. The Senator from Montana [Mr. WALSH] made a great attempt to create an impression by reading that long document and by emphasizing from time to time as he read it the charges which were made against the defendants in that case. We all know what a bill of complaint is. The Government always charges all the high crimes and misdemeanors that the young men who prepare those documents can think of. That is a statement of the case which the Government hopes to sustain. It represents merely a charge. The conclusion of the case is in the decree, whether it is a consent decree or not. What did the court do in that case? The court did in its decree deny the American Sugar Co. the right to pursue its arrangements in the matter described in the complaint and the right to acquire more stock of the Michigan Co. It did perhaps have that effect, but what did it do with reference to the other defendants? Here is the language of the decree:

> The petition is dismissed as to all defendants other than said the American Sugar Refining Co., the National Sugar Refining Co. of New Jersey, the Great Western Sugar Co., and the Michigan Sugar Co.

One of the defendants was Charles B. Warren, and the complaint was dismissed as to Charles B. Warren, and he at that time was absolved from all the charges contained in the bill of complaint which contained the charges in the case.

There has been one other matter brought up with reference to Mr. Warren to which there has not been much emphasis given, but which I wish now to clear up. I refer to a statement that the Federal Trade Commission has recently made an investigation of the Michigan Sugar Co. and of other sugar companies with reference to certain transactions. That investigation came mysteriously after the nomination of Mr. Warren. It is peculiar that that inquiry was instituted after Mr. Warren's name was sent to the Senate and he came to the attention of the American public as the nominee of the President for the office of Attorney General. As to that matter and whatever use may have been made of it by the Senator from Montana [Mr. WALSH], any inferences derogatory to Mr. Warren are dismissed by certain answers which have been made by the Michigan Sugar Co. and the Toledo Sugar Co. These answers conclusively prove the absence of any knowledge on the part of Mr. Warren of any of the acts complained of and that its inquiry is futile.

I ask unanimous consent to have printed in the RECORD the answers of the Toledo Sugar Co. and the Michigan Sugar Co.

The VICE PRESIDENT. If there is no objection, it will be so ordered.

The matter referred to is as follows:

United States of America before the Federal Trade Commission. In the matter of Larrowe Milling Co. et al. Docket No. 1262

ANSWER OF RESPONDENT, MICHIGAN SUGAR CO.

Answering the complaint of the Federal Trade Commission as filed in the above-entitled cause, the respondent, Michigan Sugar Co., respectfully says:

That it has no knowledge or information as to the various matters and things averred in respect to the Larrowe Milling Co. and the other respondents herein.

That it has not and never has had any understanding or agreement whatsoever with any of the sugar company respondents named in respect to the sale of dried beet pulp, and it has no knowledge as to the contractual or other claimed relationships between said Larrowe Milling Co. and the other respondents named, nor has it any knowledge as to the matters and things averred against said Larrowe Milling Co. in respect to the manner in which it is claimed said Larrowe Milling Co. transacts its dried beet pulp business, nor does it own any stock or have any interest either directly or indirectly in said Larrowe Milling Co. whatsoever, nor does the said Larrowe Milling Co. own any stock or have any interest whatsoever directly or indirectly in this respondent.

That the only contract or agreement which this company has with said respondent Larrowe Milling Co. is a contract made and dated July 17, 1924, for the selling on commission for one year only of its dried beet pulp, for a brokerage of $1 per ton, which said contract was made in the ordinary course of business, and which said contract was not and never has been submitted to its board of directors or its general counsel, who was in Mexico.

That it has not and never has had any agreement or understanding directly or indirectly with said Larrowe Milling Co. or said other respondents concerning division of territory or unified plan of distribution of said dried beet pulp, nor the fixing of price of said product, but on the contrary this respondent states that the price at which its dried beet pulp is sold from time to time is determined solely by this company, said price fluctuating from time to time as does the market of other cattle food products.

That this respondent has no knowledge concerning the acts and things charged as between said Larrowe Milling Co. and the other respondents named in said complaint, but as to this respondent it specifically denies any combination, conspiracy, or unfair methods of competition by reason of any of its acts or practices or otherwise, or from any understanding or agreement with any of said other respondents, and further denies the commission of any illegal acts as averred in said complaint.

That as to this respondent, Michigan Sugar Co., it hereby consents that after due hearing on said complaint, that said commission may enter such appropriate order as may be found necessary to carry out any finding or order entered against said Larrowe Milling Co. or the respondents named in this complaint.

MICHIGAN SUGAR CO.,
(Signed) By W. H. WALLACE,
By H. S. WITHINGTON,
Its president.

Dated, FEBRUARY 12, 1925.

United States of America, before the Federal Trade Commission. In the matter of Larrowe Milling Co. et al. Docket No. 1262

Answering the complaint of the Federal Trade Commission as filed in the above-entitled cause, this respondent, Toledo Sugar Co., respectfully says:

That it has no knowledge or information as to the various matters and things averred in respect to the Larrowe Milling Co. and the other respondents herein.

That it has not and never has had any understanding or agreement whatsoever with any of the sugar company respondents named in respect to the sale of dried beet pulp, and it has no knowledge as to the contractual or other claimed relationships between said Larrowe Milling Co. and the other respondents named, nor has it any knowledge as to the matters and things averred against said Larrowe Milling Co. in respect to the manner in which it is claimed said Larrowe Milling Co. transacts its dried beet-pulp business, nor does it own any stock or have any interest, either directly or indirectly, in said Larrowe Milling Co. whatsoever, nor does the said Larrowe Milling Co. own any stock or have any interest whatsoever, directly or indirectly, in this respondent.

That it has no contract or agreement of any kind whatsoever, directly or indirectly, with the Larrowe Milling Co. relating in any manner to dried beet pulp or otherwise; that the dried beet pulp produced by this company during its last operations, which ended December 28, 1924, was sold to said Larrowe Milling Co. under a contract of sale, which was fully completed and ended on December 31, 1924, and which said contract was made and dated July 17, 1924, in

the ordinary course of business, and was not and never has been submitted to its board of directors or its general counsel, who was in Mexico.

That it has not and never has had any agreement or understanding, directly or indirectly, with said Larrowe Milling Co. or said other respondents concerning division of territory or unified plan of distribution of said dried beet pulp, nor the fixing of price of said product, but, on the contrary, this respondent states that the price at which its dried beet pulp is sold from time to time is determined solely by this company, said price fluctuating from time to time, as does the market of other cattle food products.

That this respondent has no knowledge concerning the acts and things charged as between said Larrowe Milling Co. and the other respondents named in said complaint, but as to this respondent it specifically denies any combination, conspiracy, or unfair methods of competition by reason of any of its acts or practices or otherwise, or from any understanding or agreement with any of said other respondents, and further denies the commission of any illegal acts, as averred in said complaint.

That as to this respondent, Toledo Sugar Co., it hereby consents that after due hearing on said complaint that said commission may enter such appropriate order as may be found necessary to carry out any finding or order entered against said Larrowe Milling Co. or the respondents named in this complaint.

TOLEDO SUGAR CO.,
By W. H. WALLACE,
By H. S. WITHINGTON,
Its President.

Dated, FEBRUARY 12, 1925.

Mr. BUTLER. Mr. President, without prolonging the discussion, I wish to finish by making a few observations as to my impressions received in the course of this inquiry from the time it began, I think on January 10, down to the present time. It seems to me that somehow there is a feeling on the other side of the Chamber that Mr. Charles B. Warren is not wanted in the office of Attorney General. [Laughter.] That may possibly amuse some of my friends on the other side. I am glad it does amuse them. They know that Mr. Warren is smart; that he knows his Washington; that he knows his United States; that he is able; that he is a resourceful lawyer; that he is fully informed; that he knows politics and political people; and that he is qualified to pursue his work in the great office of Attorney General with effectiveness; and that he will enforce the laws of his country.

Some people do not want a militant Attorney General; some people would prefer a complaisant individual in that office. Some people prefer an Attorney General who knows no politics, who does not know the significance of opposition. To be sure, the office should not be administered as a political office; to be sure, the office should be administered without fear or favor; to be sure, the Attorney General should be just and fair; to be sure, the office should not be made the instrument of revenge or reprisal; to be sure, the Attorney General should be judicial and fair-minded. Some people do not want all the laws enforced; some people do not want the prohibition laws enforced; some people do not want other laws enforced. I predict that Charles Warren will enforce all laws, else the President would never nominate him to that office. Does anyone believe that the President favors the nonenforcement of law? Is that his record? The people of the country have faith in the President and faith in his character and purpose.

Then, what is all this clamor against Mr. Warren? What is it all about? His opponents say he is unfit for the office because 18 or 20 or 25 years ago he was connected with the sugar business; that he acted as a lawyer in connection with transfers of stock of the little unfortunate sugar companies of Michigan seeking to obtain financial assistance from Mr. Havemeyer, and that he had certain correspondence with Mr. Havemeyer even so late as June, 1907, about the conduct of the business. What of it? Does it mean that 18 or 20 years afterwards he is to be condemned for what was then regarded as a perfectly legal undertaking? Do Senators forget his public service, always competently and patriotically done, his service as ambassador to Japan and to Mexico, his service in war time, or is the antagonism toward him some indication of some personal pique because this man years ago engaged successfully in a sparring match of words with two of the able Senators who now oppose him?

I am amazed that this opposition should develop into a party opposition which would lead the Democratic Party, as represented on this floor, to deny, first, the decency of giving to a President the choice of a member of his Cabinet, and, second, the full responsibility of the President for the conduct of the office of Attorney General. It seems to me—though perhaps I should not venture any remarks concerning Democratic politics—that such action does reflect poor party politics.

But, Mr. President, I am told that Senators are held by a gentleman's agreement to aid in the condemnation of Mr. Warren. If such is the case, I am at a loss to understand why it is that Senators would adopt such a course. There is nothing to justify it; there is no logical reason for such an arrangement. The only standard of action is an individual one. The only real question is whether we as Senators personally desire to take the responsibility of denying the President the appointment; whether we think it good policy to reverse the practice of a hundred years and oppose the President's wish in the selection of his Cabinet; whether we want to take the responsibility and relieve the President; and, finally, whether we want to decide an important matter of public concern according to a gentleman's agreement and not upon the facts, conditions, and circumstances surrounding the matter under discussion.

Mr. President, we heard delivered in this Chamber on the 10th day of March, during the first discussion of this subject, a short speech, but one which covered the ground. I am going to take the liberty, if I may, of reading that short speech, which was delivered by a good Democrat and a good friend of mine. I regret that afterwards, on account of party pressure, he changed his vote. I will read the speech delivered by the Senator from North Carolina [Mr. OVERMAN] on the occasion referred to:

Mr. OVERMAN. Mr. President, I voted in the Committee on the Judiciary to report favorably the nomination of Mr. Warren to be Attorney General. I wish to say just a few words in explanation of my vote.

Calvin Coolidge was elected President of the United States by an unprecedented majority. Congress makes the laws. The President enforces the laws. The Supreme Court interprets the laws. If Calvin Coolidge does not enforce the antitrust laws or any other laws, which he has sworn to do, he is responsible and the people will hold him responsible.

For 136 years it has been the policy of the Government to allow the President of the United States to appoint his own official family without hindrance with perhaps six rare exceptions. I took the position when Woodrow Wilson was elected President, when there was threatened a fight against two of the members of his Cabinet, that the President ought to have the right to select his official family, for the responsibility had been placed upon him by the American people, and that he would enforce the laws. I took that position then, 16 years ago, and I take it now.

That is good doctrine, and I commend the Senator from North Carolina for uttering that speech. It seems to me that is a doctrine that should control the Senate in acting on the confirmation of Charles Beecher Warren.

The VICE PRESIDENT. For the information of the Senate, the Chair desires to state the amount of time remaining which belongs to the affirmative and the negative. The time left to the affirmative is 13 minutes, and to the opponents of the nomination 50 minutes.

Mr. NORRIS. Mr. President, it is not a difficult matter to reach a fair conclusion as to just what the facts are in this case, for they are practically undisputed. Mr. Warren, quite a good many years ago it is true, was quite active in assisting the American Sugar Trust in obtaining a complete control and domination of the sugar market and sugar production in the United States. No man, in my judgment, can read the record that has been produced before the Senate during this debate and fail to reach the conclusion that, when the Sugar Trust undertook to dominate sugar production and sugar prices in the United States and started out to acquire the beet-sugar factories and control them and bring them into their illegal combination, they selected Mr. Warren as their representative, particularly in the State of Michigan.

It is said that he acted only as attorney, but, Mr. President, the evidence is abundant, and it stands practically uncontradicted, that he went much further than any attorney would ever be justified in going in the interest of his clients. He became a party at interest, he invested his own money; he became president of the corporation that was organized to take over the Michigan sugar-beet factories, and, incidentally, to those who think we are talking about ancient history, let me call attention to the fact that the record discloses that he only resigned as president in January of this year.

That was an unholy combination. Do not forget, Mr. President, that the Sugar Trust was dealing in one of the necessaries of life.

Do not forget that it was this same trust that bribed the officials, that changed the weights at the customhouses, that robbed the Treasury of the United States of millions of revenue to which it was honestly and legally entitled. Do not forget that it was the Sugar Trust of America that performed the most disreputable, the most unholy, and unpatriotic acts against the laws of our country of any trust that ever existed; and, to the shame of the United States and its officers authorized to enforce the law, as far as I know none of them were ever put behind the bars.

It was this trust, having gotten control of the sugar-refining business of the United States, controlling the refining of cane sugar, that reached out into the West to get control of the beet-sugar factories, and Charles Beecher Warren was the man they selected to go into Michigan and other States to get that control. He succeeded. He was able, in working for the American Sugar Trust, to gather together these several factories, combining them into one corporation; and after practically doubling the corporation with watered stock, much of which went into his own pocket, they gathered into one control, under the control of the Havemeyer interests of New York, all the beet-sugar factories of the West. This was done secretly, and Mr. Warren permitted the stock thus acquired to stand upon the books in his own name, when in fact it was owned by the Sugar Trust. This conduct in good morals and common honesty should disqualify him from becoming the head of the department whose duty it is to prosecute such acts when done by others.

Mr. President, it is said that that was years ago; that the statute of limitations has run against that. We are not trying Mr. Warren for a crime. If we were, he could plead the statute of limitations and make a technical defense. Do those who desire the confirmation of Mr. Warren to take place want to rely on a technicality like the statute of limitations to vindicate his character? The statute of limitations saves the criminal from the prison cell. Honest men do not defend themselves by pleading the statute of limitations. It is a guilty man's defense. He is better now, they say. That was years ago. It is practically admitted here on the floor of the Senate that he was the instrumentality, he was the agent of the gigantic trust that fastened this octopus upon the American people, because until he began operations the Sugar Trust did not completely control or dominate the American market. It controlled only cane sugar. The beet-sugar factories in those days were competitive.

It is said in Mr. Warren's defense, too, that these sugar companies of Michigan were losing money. True. When the Standard Oil Trust undertook to buy up its competitors it always saw that its competitors first commenced to lose money. That is what the Sugar Trust did. They put sugar in the markets supplied by the beet-sugar interests at less than the cost of production, and of course the beet-sugar companies lost money. It was part of the plan. It was part of the scheme, as it always is when a trust wants to reach out and grasp a competitor and take it under its wing; and when the losses had occurred they said, "Why, even these men who owned the sugar companies went to Havemeyer and tried to sell." That is natural enough. They were unable to compete. They were glad to sell to anybody. You would have done it, Mr. President; so would you, my brother Senators, when you saw yourselves powerless to compete against this great combination.

When the time was ripe, when the seed was sown, when they were ready to reap the harvest, who was the agent that they sent to gather in these companies and fasten them into one corporation under the grip of the American Sugar Refining Co.? It was Charles Beecher Warren.

Senators say now that he did not know then that it was illegal; that the courts had not yet construed the law fully. In the next breath they cry out that he ought to be confirmed because his great ability as a lawyer makes it necessary that the American people should have him in the Attorney General's office.

Mr. President, can it be argued that we ought to close our eyes, seal our lips, fold our hands, and let this nomination go through without a protest, simply because the nomination is made by the President and that we ought to acquiesce; that it is part of his official family? There is no such thing in law as a President's official family. There is no such thing in law as a Cabinet officer. The Attorney General has under his control enforcement officers in every locality under our flag. It is his duty, as a sort of general controlling an army of prosecutors and marshals and investigators and detectives all over the land, to enforce every Federal law that is on the statute books. His power, his influence for the upholding of law, for the stability of our institutions, goes into every State, into every hamlet, into every Federal court, and even before every Federal commissioner; so that the importance of the office can not be exaggerated.

It is said: "Oh, well, even if he did go into this business with a trust to control not only the production but the sale of sugar, even if he did make it impossible for the farmers of Michigan and other States to make a profit out of growing sugar beets, even if he did extort an unreasonable profit from the consumers of sugar in order to give value to this fictitious stock, this watered stock owned by him and other members of the American Sugar Trust—even if he did all that," they say, "the time has long since passed, and he will do better now. He is the man that you ought to select to enforce all the laws of the United States."

Mr. President, it must be admitted, I think, that he may do all those things. It is possible, it has sometimes occurred, that men have gone into the gambling dens to get the best gamblers there were in order to enforce the law against gambling. Is that the argument that you want to make in favor of Mr. Warren—that he will be a good fellow to enforce the law against trusts because he has had so much to do with the organization and management of this great Sugar Trust? I can not deny that argument. We may do better, when we enforce the prohibition law, if we will hunt up all the ex-saloon keepers and put them in office to do it; but that is not the way we generally think it ought to be done. We may get better United States marshals if we will go behind the prison doors and get the worst criminals that we can find, because they know all about the business and would be good enforcement officers. That may be true, but the ordinary citizen does not act in that way when he selects the officials. So, when we are coming to the time to select a man to enforce the law, we want a man who has a clean record of obedience of law himself, and who does not have to get behind the statute of limitations in order to have clean skirts, either.

The Senator from Massachusetts [Mr. BUTLER] referred to a case recently pending; and I think, therefore, I am justified in referring to that case also. He put in the answer of the Michigan Sugar Co. That was the company organized to take over and which did take over all these separate beet-sugar factories, which was organized by Mr. Warren, of which he became president, and the presidency of which he resigned only a month or six weeks ago. The Senator from Massachusetts put in the RECORD the answer of the Michigan Sugar Co. and the Toledo Sugar Co., another one of these trust companies with which Mr. Warren had something to do.

Let me state to the Senate just what that is; and that is not old, either. There is no statute of limitations about that. That answer which the Senator put into the RECORD was filed in answer to a complaint made by the Federal Trade Commission against 19 corporations, one of which is the Toledo Sugar Co., another one of which is the Michigan Sugar Co., and then there are several other sugar companies scattered all over the Northwest. The complaint was made by the Federal Trade Commission, after an investigation by that commission, charging these companies with a conspiracy, charging them with a violation of the laws of the United States; and this complaint of the Federal Trade Commission was only made on the 23d day of January, 1925. There are no gray hairs attached to that proposition. There is no statute of limitations involved there; and the answers of these defendants were required by that notice to be filed on the 14th day of March, 1925. There is nothing hoary and aged about that. What do they charge him with? I ask unanimous consent to put the entire complaint in the RECORD.

Mr. REED of Missouri. Mr. President——

Mr. NORRIS. I yield to the Senator.

Mr. REED of Missouri. The Senator stated that this Federal Trade Commission report was made on the 23d day of January.

Mr. NORRIS. Yes.

Mr. REED of Missouri. Was it not just two days after that that Mr. Warren resigned as president of the Michigan Sugar Co.?

Mr. NORRIS. I believe it was. He had two days to consider this complaint, and could not possibly have the statute of limitations ran against it within those two days.

Mr. SWANSON. Mr. President, will the Senator permit me to interrupt him?

Mr. NORRIS. I yield.

Mr. SWANSON. As I understand, then, the Federal Trade Commission—a governmental agency created to find out whether people are engaged in combinations and conspiracies in restraint of trade—found a charge against the Michigan Sugar Co., of which Mr. Warren was president, in January last?

Mr. NORRIS. Yes; January, 1925. Let me state to the Senator that that was the complaint. The trial will take place later. The Federal Trade Commission, under the law, after making an investigation either upon its own motion or as a result of a complaint, can make a complaint against defendants. That is what has taken place here. That is the investigation that has been made.

Mr. SWANSON. Which indicates conspiracy?

Mr. NORRIS. Yes; it is charged specifically as being a conspiracy.

Mr. SWANSON. Then that is sent to the Department of Justice?

Mr. NORRIS. No. Notice is served upon the defendants and they come in and answer; and this sugar company has answered and the Senator from Massachusetts [Mr. BUTLER] has put the answer into the RECORD. That is the condition, as I understand it.

Mr. SWANSON. It would be the duty of the Department of Justice to conduct the prosecution if they were found guilty of violation of law?

Mr. NORRIS. Yes.

Mr. SWANSON. Consequently, if Mr. Warren becomes Attorney General, the duty of conducting that prosecution against this company would devolve upon him?

Mr. NORRIS. Let us not get into a misunderstanding. If, upon a hearing before the Federal Trade Commission, the Federal Trade Commission find that their original investigation is justified by the evidence, then they will render what is similar to a judgment in court, and the evidence would be turned over to the Attorney General for the purpose of enabling him to prosecute the defendants.

Mr. REED of Missouri. But in the meantime, if the facts have been disclosed by the Federal Trade Commission or by any other authority or person whatsoever, and if those facts show a violation of the law, it instantly becomes the duty of the Attorney General to prosecute, regardless of the proceedings before the Federal Trade Commission.

Mr. NORRIS. Oh, yes; of course it does. I shall now read a part of one of the allegations in the complaint.

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

Mr. NORRIS. I yield.

Mr. GLASS. Since the Attorney General's own company is charged with this offense, could he not very readily delegate to some subordinate in the Department of Justice the prosecution of the case?

Mr. NORRIS. Oh, yes; and I suppose it will be argued in his favor that he could do it better himself, because he is so much more familiar with the facts. [Laughter.]

I have not time to read all of this complaint—I wish I did have; but the Federal Trade Commission say:

> The above alleged acts and things done by respondents are all to the prejudice of the public and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an act of Congress entitled, "An act to create a Federal trade commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

Mr. President, I agreed not to take all of the time——

Mr. McKELLAR. Mr. President, will not the Senator have that whole complaint printed in the RECORD?

Mr. NORRIS. I have already requested that that be done.

Mr. McKELLAR. It has not been done yet.

Mr. NORRIS. I am sure I made that request. If I did not, I ask unanimous consent now to have printed in the RECORD, at the conclusion of my remarks, the entire complaint from which I have read.

The VICE PRESIDENT. If there is no objection, it is so ordered.

Mr. NORRIS. Mr. President, can we escape our constitutional duty? It may be that the Senate ought to have nothing to say about any confirmation. It may be that our forefathers made a mistake when they provided in the Constitution that we should pass on nominations; but that is in the Constitution. Talk as we will, we can not get away from that document, and those of us who are raising our voices in protest now are doing it in accordance with the Constitution of the United States and because we respect and revere that great instrument. Those who are demanding that we do nothing except follow the President are, in effect, asking us to disregard our constitutional obligation, and when the President issues his statement and says, "Regardless of the action you may take, I will appoint this man in recess," he is practically flying in the face of the Constitution, and saying, "We will nullify that instrument."

What was the issue in the last great campaign boasted about here, at the conclusion of which Presdent Coolidge received such a wonderful majority? It was, "Follow Coolidge and save the Constitution." Now the slogan in the Senate is, "Follow Coolidge and ruin the Constitution."

One of the principal arguments in the campaign was that the opponents of our party were going to destroy the Constitution. It was not charged that they were going to destroy it by revolution, not even that they were going to destroy it by acting directly contrary to its stipulations, but it was admitted that those who were going to change the Constitution were going to do it in the constitutional way. Here we are called upon not to amend the Constitution and give this authority to the President but to say in the face of a constitutional provision that the President shall have it or that we will give it to him in defiance of the Constitution. Senators must disregard their duty and they must disobey the Constitution and do whatever they are told to do by the President.

It is no indication of disrespect for the President when we disagree with him. It shows no disrespect to a Senator if we disagree with him. There is room enough for honest men to disagree, and when the President sends in a nomination which the Senate, or any Member of the Senate, thinks is wrong, it is our duty to oppose it, and if we do not oppose it, we are violating our oaths as Members of this body to support the Constitution.

Again we hear the cry that it is the duty of a Senator to disregard his oath, to disregard his convictions, and when nominations are sent in to be a "basswood" man, to be a machine, to be an automat, to do what he is told, to vote in favor of any nomination, regardless of what he may think will be the result.

We are criticized for opposing the nomination of Mr. Warren, and in the same breath we are criticized to-day on the floor of the Senate because we did not fight Daugherty when his name was sent here by President Harding. I am inclined to think the criticism is justified. I have read many criticisms in the papers to that effect. We are told in one breath, "You must not oppose Warren because that would show disrespect for the President, but you should have opposed Daugherty, because he was unfitted for the great office of Attorney General."

Mr. BINGHAM. Mr. President, will the Senator yield for a question?

Mr. NORRIS. Yes.

Mr. BINGHAM. Was not that quotation one from a Democratic newspaper, and not the opinion of a Senator?

Mr. NORRIS. The one to which I have been referring?

Mr. BINGHAM. Yes; with regard to the Attorney General.

Mr. NORRIS. No; the particular one which I had in mind—and I have seen many—was one which appeared in the Nebraska State Journal, one of the leading daily papers of my State, which has connected with it some of the ablest editorial writers in that State. It was the most enthusiastic supporter of Coolidge and Dawes to be found among all the papers in the State, without any exception. It criticized the nomination of Daugherty when it was made, respectfully, I think very ably, and I believe rightly.

Mr. GLASS. Mr. President, suppose the comment did come from a Democratic paper; is a stupid comment any better because it comes from a Democratic paper?

Mr. NORRIS. No, Mr. President; if it comes from a Democratic paper, it shows that even a Democratic paper can be right once in a while. [Laughter.]

Mr. President, there are several other things I wanted to take up, but I do not want to consume all the time left, so I yield the floor.

APPENDIX

UNITED STATES OF AMERICA—BEFORE FEDERAL TRADE COMMISSION

In the matter of Larrowe Milling Co.; American Beet Sugar Co., Oxnard, Calif.; Columbia Sugar Co., Bay City, Mich.; Continental Sugar Co., Detroit, Mich.; Garden City Sugar & Land Co., Garden City, Kans.; Great Western Sugar Co., Denver, Colo.; Holland-St. Louis Sugar Co., Holland, Mich.; Owosso Sugar Co., Owosso, Mich.; Toledo Sugar Co., Toledo, Ohio; Minnesota Sugar Co., Minneapolis, Minn.; Michigan Sugar Co., Saginaw, Mich.; Northern Sugar Corporation, Mason City, Iowa; Iowa Sugar Co., Waverly, Iowa.; Iowa Valley Sugar Co., Belmont, Iowa; Ohio Sugar Co., Ottawa, Ohio; Menominee River Sugar Co., Menominee, Mich.; Spreckles Sugar Co., Spreckles, Calif.; Santa Ana Sugar Co., Santa Ana, Calif.; and Utah-Idaho Sugar Co., Salt Lake City, Utah. Docket No. 1262.

COMPLAINT

Acting in the public interest pursuant to the provisions of an act of Congress approved September 26, 1916, entitled "An act to create a Federal trade commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that each and all the respondents named in the caption hereof have been and are

using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent Larrowe Milling Co. is a corporation organized under the laws of the State of Ohio, with its principal office in the city of Detroit, in the State of Michigan, and a plant for the manufacture of mixed dairy feed in the city of Toledo, State of Ohio. This respondent is engaged in the manufacture of mixed cattle feed at its said plant and the sale thereof in commerce between and among various States of the United States, and is further engaged in acting as sales agent for respondent manufacturers in the sale and distribution of dried sugar-beet pulp, all as hereinafter more fully set out.

Respondents American Beet Sugar Co., Columbia Sugar Co., Continental Sugar Co., Garden City Sugar & Land Co., Great Western Sugar Co., Holland-St. Louis Sugar Co., Owosso Sugar Co., Toledo Sugar Co., Minnesota Sugar Co., Michigan Sugar Co., Northern Sugar Corporation, Iowa Sugar Co., Iowa Valley Sugar Co., Ohio Sugar Co., Menominee River Sugar Co., Spreckles Sugar Co., Santa Ana Sugar Co., and Utah-Idaho Sugar Co. are severally corporations engaged in the manufacture of beet sugar, and respectively operating plants and factories for the manufacture of such sugar at the points and in the States set out after their names in the caption hereof.

PAR. 2. The manufacture of beet sugar consists in shredding and reducing sugar beets to a pulp and of thereafter extracting the sugar content of such pulp. After the sugar has been so extracted said pulp becomes a by-product of said sugar manufacturing and is sold and distributed to stock raisers and to manufacturers of and dealers in cattle feeds as a feed for cattle, and is used as such either of itself or as an ingredient in mixed feeds. The term "beet pulp," whenever hereinafter used, refers to sugar-beet pulp sold as a cattle feed after the extraction of the sugar content as above set out. Respondent manufacturers each annually produce large quantities of such pulp, and in the aggregate produce 75 per cent, or more than 75 per cent, of the total quantity of such pulp produced in the United States.

PAR. 3. For about three years last past respondents have been and still are engaged in a wrongful and unlawful combination and conspiracy to stifle and suppress competition in the distribution and sale of beet pulp in interstate commerce. During said time respondents, to effectuate said combination and conspiracy and its said purposes, have cooperated together and with each other in doing the following acts and things:

(a) Respondent manufacturers have entered into contracts with respondent Larrowe Milling Co., by the terms whereof said milling company is given the exclusive right and privilege of selling all the beet pulp produced by the manufacturer each season over a term of years, excepting, in some instances, a limited supply of said pulp, which is retained by the manufacturer to sell directly to ultimate consumers in the immediate neighborhood of its factory.

(b) Respondent manufacturers abide by the terms of said contracts and refrain from selling their beet pulp except through respondent Larrowe Milling Co. as such sales agent, and respondent Larrowe Milling Co. sells said pulp to manufacturers of and dealers in cattle feeds located throughout the United States, causing said pulp when so sold to be transported from the plants of the respondent manufacturers in interstate commerce to the purchasers thereof located in States other than where said plants are located.

(c) Respondent manufacturers from time to time keep respondent Larrowe Milling Co. advised of the quantity of beet pulp on hand remaining unsold and of the estimated quantity of such pulp which will be produced in the future, together with other information and data of a character to enable respondent Larrowe Milling Co. to, and it does, fix prices, terms, and discounts, and maintains price levels on the entire sales of beet pulp for respondent manufacturers, and respondent manufacturers abide by and adhere to said prices, terms, and discounts.

(d) Respondent Larrowe Milling Co., acting upon the information so received, withdraws beet pulp from the market in certain localities and pushes the sale of such pulp in other localities and otherwise manipulates the market in such manner as to secure high prices for all the beet pulp sold by it.

PAR. 4. The effect of aforesaid combination and conspiracy, and the acts and practices done and engaged in by respondents in carrying out the same, all as hereinbefore set out, has had and now has the tendency to suppress and has suppressed competition in price and otherwise in the sale and distribution of beet pulp in trade and commerce between the States, and has denied to the public those advantages in price and otherwise which would obtain in said industry under conditions of natural and normal competition between respondents and in the absence of aforesaid acts and things done by them.

PAR. 5. The above alleged acts and things done by respondents are all to the prejudice of the public, and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal trade commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

Wherefore, the premises considered, the Federal Trade Commission, on this 23d day of January, A. D. 1925, now here issues this its complaint against said respondents.

NOTICE

Notice is hereby given you, each and all the respondents named in the caption hereof, that the 14th day of March, 1925, at 10.30 o'clock in the forenoon, is hereby fixed as the time, and the offices of the Federal Trade Commission, in the city of Washington, D. C., as the place, when and where a hearing will be had on the charges set forth in this complaint, at which time and place you shall have the right, under said act, to appear and show cause why an order should not be entered by said commission requiring you to cease and desist from the violation of the law charged in this complaint.

In witness whereof, the Federal Trade Commission has caused this complaint to be signed by its secretary, and its official seal to be hereto affixed at Washington, D. C., this 23d day of January, A. D. 1925.

By the commission:

[SEAL.] OTIS B. JOHNSON, *Secretary.*

Mr. SHORTRIDGE. Mr. President, deference for the wishes of others has deprived me of the privilege of expressing myself in more than two or three sentences.

The President has the power to make this nomination. We have the power to reject it. The President, in the exercise of his constitutional power and in the performance of his duty as he conceived it, has nominated a distinguished American citizen for the office of Attorney General. We, in the exercise of our constitutional power and in the performance of our duties, are to pass upon his qualification to represent our Government as its Attorney General, and to advise and consent, or refuse to advise and consent, to his appointment.

I take this opportunity to repeat what I said on March 10, premising by saying, not with feigned and pretended respect, but with sincere respect, for the opinions of others, that nothing has occurred, no argument has been advanced, no fact has been disclosed to change the opinion which I then entertained and expressed.

The people of the United States have confidence in the President. The President of the United States has confidence in Charles Beecher Warren. As a Senator of the United States, I have confidence in them both. That is sufficient.

Those facts were sufficient then, they are sufficient now, to guide me in passing upon the question we are here and again considering and must very shortly determine.

The President has performed his duty under his oath.

I have no reason to doubt that the President was conscious of that oath when he sent to us this nomination. I venture to recall to Senators that in addition to the power of nominating and appointing, to which we have so often referred, the Constitution provides that the President "shall take care that the laws of the United States be faithfully executed."

Does anyone suppose that the President took that oath with any mental reservation, or any concealed intention to escape from its legal and its divine mandate? Does anyone venture to say here, does anyone have the intellectual audacity even to think, that the President was actuated by any desire other than a desire to see to it that the laws "shall be faithfully executed"?

To advise and aid him in the discharge of his duty, the President has sought, and still seeks, the assistance of an Attorney General, and has chosen, and still chooses, the nominee whose name is before us. Is it to be supposed—and how sincerely I throw these words at my friends yonder I can not now state—is it to be supposed that the President was uninformed as to the character and the professional and other activities of the man he has chosen to advise and aid him in the enforcement of the laws of their and your and of my country.

We know the President, and the people of the United States know the President. We know that he stands for law and its enforcement. We know that he walks the path of official duty, unmoved by the clamor of volcanic oratory, unseduced by flattery, unafraid, unashamed. We know that he has walked the path of duty for over a quarter of a century, with the increasing and continuing love and confidence of the American people.

Therefore I am justified, therefore you are justified, therefore the American people are justified in believing that the President knew that in selecting Charles Beecher Warren to advise and aid him in enforcing the laws, guarding the rights of the people, and protecting the interests of the Government, he was selecting a citizen of unblemished character, of proved ability, one who would be, and, if confirmed, will be, faithful

to his oath, and one who will assist the President in taking care that the laws—not one, not two, but all the laws of this Republic—shall be carried into effect, shall be faithfully executed—fairly, justly, without fear or favor. Therefore I shall vote gladly to confirm this nomination.

The VICE PRESIDENT. The Chair should state for the information of the Senate that 24 minutes remain for those on the negative side of the question.

Mr. WATSON. How much time for those on the affirmative side?

The VICE PRESIDENT. Five minutes.

Mr. WALSH. Mr. President, in the few brief moments allowed to us on this important matter I shall attempt to do no more than refer in the most direct and concise way to some of the arguments advanced to induce the confirmation of the pending nomination.

It is said that this is a partisan attempt to embarrass the President of the United States. I remind the Senate and I remind the country that without any kind of objection of a partisan or other character, the Senate unanimously has confirmed the following nominations of the President of the United States as members of his Cabinet, namely:

Howard M. Gore, Secretary of Agriculture.
William M. Jardine, Secretary of Agriculture.
Harlan F. Stone, Attorney General.
Harlan F. Stone, Associate Justice of the Supreme Court of the United States.
Frank B. Kellogg, Secretary of State.
Harry S. New, Postmaster General.
Curtis D. Wilbur, Secretary of the Navy.

If the President of the United States is embarrassed in any wise whatever by reason of any action taken against the pending nomination, it must be because the nomination is utterly indefensible, as I have heretofore stated upon the floor of the Senate. The President of the United States can not be embarrassed by purely political reasons about his nomination. The only way he can be embarrassed is to send here a name for a high official position which can not be approved by Members of this body in consonance with their conscientious convictions of duty.

Then it is said that the President ought to be allowed to select the members of his own official family, the members of his Cabinet. It will be recalled that in opening the discussion I declared that I subscribed to the doctrine that under ordinary circumstances the President ought to be allowed to do so without any partisan or factional opposition. But I submit that this is one of the extraordinary cases. It will be remembered that in the convention which framed the Constitution of the United States it was advanced by Alexander Hamilton that the President of the United States ought to be given permission at will and without any attempt whatever to name his Minister of Finance and other members of his Cabinet. I regret that the junior Senator from Massachusetts [Mr. GILLETT] apparently is not in the Chamber. Although his erudition has been questioned to some extent here on the floor to-day, I have no doubt that he would recall that the Representatives from his great State demanded that the proposition be rejected and that the power be vested in the Senate of the United States to confirm nominees for members of the Cabinet, as well as all other officers of the United States.

But, Mr. President, the force of that combination, in view of the many precedents with which it is supported, was so great that many Members upon this side of the Chamber who were uninformed concerning the facts which have been revealed before this body declared their purpose to vote in favor of Mr. Warren. It is perfectly well known that some of them having departed without having heard the facts disclosed upon the floor declared they desired to have their votes recorded in favor of the nomination and declined to be paired against it; and yet when the information upon which the opposition has been based was laid before the Senate and when their attention was called to the indisputable evidence in the case every one of them concluded that it was not consistent with his duty to do anything but oppose the nomination.

Then it has been stated that this is a matter of playing politics, and in an article appearing a few days ago in one of the journals supporting the nomination, in which some stinging remarks were directed at Members upon the other side of the aisle who are opposing the nomination, it was said, "Of course it is all right for the Democrats to oppose it. That is politics. That is politics"; the charge, of course, being that there is no foundation whatever to the opposition except a desire for some political or partisan advantage.

My esteemed friend the junior Senator from Massachusetts [Mr. GILLETT], whose career as a public officer has always evoked my approbation, advised the Senate that I had stated that I was not actuated in any way by partisan motives in the attitude I have taken with respect to the nomination. I am sure the RECORD will be searched in vain for any statement of that character emanating from me. The Senator from Massachusetts has been misled. I do not undertake to say that in the complex motives that may actuate me in my attitude with respect to this matter political considerations do not enter. All I desire to say in that connection is that I have discovered, particularly in these controversies, that if it is possible to give to a political opponent an unworthy motive for his conduct there is always some one ready to assign it.

I said I do not disclaim the idea that to some extent I am influenced in my conduct in relation to this matter by reason of my political affiliations. Why should not I be? On this floor some time ago I declared that it was the absolute duty of an opposition body to point out defects in policies advocated by the other side and to point out to the country weaknesses and improprieties in the conduct of any man nominated for public office upon the other side. I have a letter, received just this morning from an eminent lawyer of the city of Philadelphia, calling my attention to the fact that the country depends upon the opposition to show whatever defects there may be in nominations by a President for public office, because it is not to be expected that his own political friends will disclose those facts to the country. They come reluctantly to the task. I know perfectly well how difficult it is for Members upon the other side of the Chamber to oppose the pending nomination.

If the attitude of the President were followed, the power given to the Senate of the United States to confirm nominations made by him, and to advise and consent to them, would be utterly gone. It would become a mere formality if the President of the United States could send a nomination to the Senate, and, being rejected, could then give a recess appointment and continue that man in office; and yet not a word from Senators upon the other side of the aisle attached to the President of the United Staes in denunciation of what is apparently a violation at least of the perfect spirit of the Constitution.

I do not complain about it. I understand the difficulties of their position. But what I mean to say is that if there is politics upon this side of the Chamber in opposing the nomination let me undertake to say that there is politics on the other side in supporting the nomination. Who would undertake to say that Senators upon the other side of the aisle who are supporting the nomination are actuated by perfectly pure and upright motives without any tinge of partisanship whatever in their actions?

Mr. President, I have here a copy of the New York Herald-Tribune of a few days ago in which the Washington correspondent of that stalwart Republican newspaper states that there are probably not five Senators upon the Republican side of the Chamber who are really anxious to see Mr. Warren confirmed. Why are they there? Can anybody assert that political considerations are not to some extent active with them?

Mr. President, it will be recalled that when the distinguished Senator from Iowa [Mr. CUMMINS], the chairman of the Committee on the Judiciary, rose to state the case for Mr. Warren he told the Senate that the charge against Mr. Warren was that he had been attorney for a great corporation and for a trust. I took occasion then to correct the statement as being a statement of the attitude of those who were opposing the nomination of Mr. Warren and stated then upon the floor of the Senate that the testimony of Mr. Warren himself before two investigating committees disclosed not that he was simply acting as attorney but he was the alter ego of the offensive and oppressive Sugar Trust in endeavoring to fasten the monopoly represented by that organization upon the American people; that he was their representative and their organizer in the State of Michigan, not only gathering together the feeble companies of the State of Michigan, as has been represented, into the Michigan Sugar Co. but that he actively participated in the effort of Henry O. Havemeyer and the rest to gather in control the entire beet-sugar interests of the country.

The Senator from Iowa went on, and when he concluded I said to the Senate that I should proceed to read letters which would make it clear beyond the peradventure of a doubt that what I had stated was true, and that Mr. Warren was not representing them in the attitude of a counsel advising his client as to what the law was under certain circumstances, but that he was as guilty of the trust proceeding as Henry O.

Havemeyer himself. Yet after those letters had been produced and read in the Senate establishing that and more than that, establishing not only that he was engaged in organizing a combination in restraint of trade but that he was actually engaged in the fixation of price, in the division of territory, and other obnoxious monopolistic practices, the distinguished Senator from Pennsylvania [Mr. PEPPER] rose to his defense and got right back upon the ground stated by the Senator from Iowa [Mr. CUMMINS] in his opening argument that all he did was done in the capacity of counsel, which he proceeded to justify upon the ground that at that time a different view concerning the trust laws obtained before the country and by the bar, and not one word about the damning evidence that was introduced from the records of the Michigan Sugar Co., consisting of letters from and received by Mr. Warren.

Mr. PEPPER. Mr. President, will the Senator from Montana yield to me?

The VICE PRESIDENT. Does the Senator from Montana yield to the Senator from Pennsylvania?

Mr. WALSH. I yield to the Senator.

Mr. PEPPER. I think the statement which the Senator from Montana has just made must have been made either in ignorance or forgetfulness of the facts which the record will disclose.

Mr. WALSH. I read the speech of the Senator from Pennsylvania this morning in the RECORD.

Mr. PEPPER. Then, the Senator's statement is made in forgetfulness, not in ignorance of the facts, the circumstance being that I took the pains to quote the Senator——

Mr. WALSH. I can not permit the Senator to take my time.

Mr. PEPPER. Very well.

Mr. WALSH. I shall have to stand by the statement which I have made, and which I am perfectly willing to stand by.

Now, Mr. President, I wish to point out that there is just one way to reach this issue. It was raised squarely by the controversy and the colloquy between myself and the Senator from Iowa [Mr. CUMMINS]. The issue is, Did Mr. Warren act merely as an attorney at law, as a counselor advising his client as to the law, or did he act as the alter ego of the Sugar Trust itself and endeavor to gather up the sugar factories of the State of Michigan? There is only one way to answer that, and that is to take the letters, to analyze them, and to show that they are entirely consistent with the theory thus advanced by the defenders of Mr. Warren. Who has undertaken to do it? No one. Mr. Warren's defenders seem to desire to keep entirely clear of those letters, to forget all about them, like my distinguished friend and able lawyer the new Senator from the State of West Virginia [Mr. GOFF], who had not the hardihood to take up these letters and canvass them one by one and to explain the damning evidence contained in them.

I merely desire to refer to the argument made by my distinguished friend the new Senator from Connecticut [Mr. BINGHAM], of whom I have formed a very high opinion, that these are old affairs, that this is an old story. Just how old is it? In the year 1922 the consent decree was entered in the Sugar Trust case, when the court found and adjudged that the Michigan Sugar Co. and the American Sugar Refining Co. had entered into a conspiracy in restraint of trade in defiance of and in violation of the Sherman Antitrust Act. In the year 1922, only three years ago, that judgment was rendered.

It is said that Mr. Warren was dismissed as a defendant in that action. So he was, but the Michigan Sugar Co. was not. It was adjudged to be a violator of the law. Who and what is the Michigan Sugar Co.? The letters read in evidence here disclose that Charles Beecher Warren was the active agent, the representative of the American Sugar Refining Co., and the president of the Michigan Sugar Co., and the adjudication against the Michigan Sugar Co. is an adjudication, in morals, at least, against Charles Beecher Warren.

The Federal Trade Commission now comes forward and tells us that even at this very day the Michigan Sugar Co. is engaged in a conspiracy with various other companies to fix the price of beet pulp to the farmers of the United States to be purchased by them for the fattening of livestock. After an investigation, as stated by the Senator from Nebraska [Mr. NORRIS], they charge that that is the case. Now the answer comes in, but if the charge should be sustained by any evidence, it will become the duty of the Attorney General of the United States to prosecute the Michigan Sugar Co.; and yet Senators are seeking to invest Charles Beecher Warren with the duty. I can not believe that Senators of the United States will put themselves in that position before the country and before the world.

Mr. President, I now yield whatever time there is on our side to the Senator from Arkansas [Mr. ROBINSON].

Mr. ROBINSON rose.

The VICE PRESIDENT. The Chair understands the arrangement was that the speeches in the discussion of this matter were to alternate.

Mr. FESS. Mr. President——

The VICE PRESIDENT. The Senator from Ohio.

Mr. FESS. Mr. President, a parliamentary inquiry. What time is left for discussion on this side?

The VICE PRESIDENT. Five minutes.

Mr. FESS. Mr. President——

Mr. PEPPER. Mr. President, will the Senator from Ohio yield to me, in order that I may read into the RECORD a few words? It will take but a moment.

The VICE PRESIDENT. Does the Senator from Ohio yield to the Senator from Pennsylvania?

Mr. FESS. I yield, though I have only a short time.

Mr. PEPPER. I wish to read, beginning near the top of page 235 of the CONGRESSIONAL RECORD, a quotation from my remarks upon which the Senator from Montana [Mr. WALSH] has commented:

> It is said this man may be a lawyer of distinction; he may have the qualities of character and experience which fit him for this place; but some 20 years ago he was the attorney, the business adviser, and, it is even said, the business agent of the American Sugar Refining Co., or the Sugar Trust, in putting together some corporate structures which at that time were believed to be legal, and engaging in the process of fixing the price of sugar, the commodity in which the refining company was dealing.

I thank the Senator from Ohio.

Mr. FESS. Mr. President, it appears to me that the issue has been brought now to the single inquiry whether Mr. Warren, the man nominated for the office of Attorney General, is disqualified because of any defect of character as evidenced by what he did some years ago. That issue should be determined by testimony of competent witnesses. By that standard no doubt is left in my mind, and I feel convinced it would not influence adversely anyone free from partisan bias.

I regret more than I can express the issue involving the question of the constitutionality has been raised here and stoutly contended as to whether the President shall be permitted to make up his official family as he may see fit. With two notable exceptions, that practice has been followed uninterruptedly for over 130 years, and there is now no one on the floor who is willing to commend the attitude assumed or the action taken in those two exceptions. Few, if any, Senators would commend the conduct of this body in its conflict with Jackson in 1832, Tyler in 1843, or Johnson in 1867.

The first case was where President Jackson had dismissed William J. Duane from the office of Secretary of the Treasury because he would not remove the deposits of the Government to the several States. The Secretary contended he had no constitutional authority to remove the funds to 89 State banks. When he was dismissed on behalf of another more complacent there was raised the question whether the President had the right to remove him. President Jackson announced the appointment of Roger B. Taney, with orders to make the removal of the deposits. Issue was joined immediately, and the contest was led in this body by John C. Calhoun, aided by Henry Clay and Daniel Webster, raising the question whether or not that was a constitutional act. Those three famous men, known as the "great triumvirate" in the American Senate, joined against the President and refused to confirm the nomination of Mr. Taney, not so much because he was to be Secretary of the Treasury, but because of the fact that he was ordered to do what they claimed was an unconstitutional act. That is the Roger B. Taney precedent, and I am quite certain that Senators will appreciate its significance.

In the case of Caleb Cushing, those familiar with it will recall that Tyler was elected Vice President on the ticket with William Henry Harrison, but Harrison died one month after he was inaugurated and Tyler succeeded him in the office of President.

Tyler refused the dictation of Clay and Webster and fell into bad repute and ended his administration after constant resistance as an enemy of the party which elected him. It was this situation that led to the rejection of Cushing.

The same situation obtained with Johnson, who vetoed 21 bills of Congress, 17 of which were passed over his veto. His Cabinet appointments were questioned. These cases are quoted only to indicate the unwisdom of the policy.

In the selection of the Cabinet the one responsible party should be given full power to select, otherwise he can not be made responsible. This has been the custom from the days of Washington.

The VICE PRESIDENT. The time of the Senator from Ohio has expired.

Mr. ROBINSON. Mr. President, this controversy must not degenerate into an issue between the Executive and the Senate. No justification exists for the display of animosity or resentment, either by the President toward the Senate or by Senators toward the Executive, in connection with the question whether the Senate shall advise and consent to the nomination of Charles B. Warren as Attorney General.

The law of the land requires action by both. It is the plain intent of the Constitution that neither shall act with entire independence of the other. The President nominates public officers, but, except when the Congress so authorizes, his appointments can not become effective without the advice and consent of the Senate. Wise public policy requires that both the Executive and the Senate shall act temperately and dispassionately, and that each shall proceed with due regard and consideration for the prerogatives of the other.

The Senate should not arbitrarily refuse its advice and consent to a nomination for office made by the President, and the Executive is not justified in demanding the acceptance of a candidate found objectionable by the Senate. Since the action of two coordinate departments of the Government is required by the Constitution in filling Federal offices, the representative of neither should employ compulsion or intimidation with respect to the action of the other. The advantage of requiring a joint decision is lost if the function of one of the departments becomes merely perfunctory or acquiescent.

Some who admit the correctness of the general principle now asserted think that it should not be applied to those officers commonly known as members of the President's Cabinet. Undoubtedly deference for the President's convenience and wishes should prompt the Senate to accept the President's choice for Cabinet positions when serious questions of public policy or moral deficiency are not raised. It will hardly be suggested by any Senator that this body should under no conditions object to a nominee for the Cabinet. Such a contention has never been made, and might necessarily involve a plain violation of official duty—assuming that a President might be uninformed as to the moral or mental fitness of his choice.

The country, Mr. President, has had recent instances of Cabinet members whose personal character proved so objectionable from the standpoint of morality and fidelity that one would convict himself of insincerity and ignorance if he committed himself to such a doctrine.

The office of Attorney General was created and its powers are defined by statute. The Attorney General is an adviser of the President, but his more important and far-reaching duties have relation to every department and agent of the Government and to the public at large. He supervises in a sense the enforcement of Federal laws throughout the Nation. He selects the agents to investigate violations of law and recommends for appointment the judges who interpret the Constitution and statutes, as well as the marshals and other agents who investigate charges and who execute processes.

The views of an Attorney General are inseparable from the policies of the Department of Justice, and these policies, as everyone knows, sustain an intimate relationship to the effectiveness of every criminal and penal statute. The Senate has already once decided that the President's choice for Attorney General, by reason of his record in the organization and management of certain corporations adjudged by the courts to have proceeded oppressively and in disregard of the antitrust laws and by reason of his personal responsibility for the lawless acts of those corporations, may not wisely be intrusted with the great responsibilities attached to the office of Attorney General. This is, of course, embarrassing to Mr. Warren and his friends, and some degree of embarrassment may also result to the President by reason of the Senate's decision. But this decision is just as binding, if adhered to, as would have been the President's finding had be determined that Mr. Warren could not properly be nominated to the office of Attorney General.

The course pursued by Mr. Warren in connection with the affairs of the Michigan Sugar Co. is portrayed by his own testimony before committees of the Congress and in letters over his own signature. It is urged by the opposition to him that lack of fairness and sincerity and a readiness secretly to circumvent the antitrust laws are established. After a prolonged discussion the Senate failed by a tie vote to confirm the nomination of Mr. Warren.

This of itself should have been sufficient. Unless the Executive chooses to take the position that the Senate has no business to exercise its constitutional prerogative in connection with appointments to the Cabinet; unless the Executive desires to insist that the selection of an Attorney General is a matter of no concern to the Senate; unless the President takes the position that the Constitution, which requires the Senate to advise and consent, must be ignored and disregarded, the rejection of Mr. Warren should have prompted the selection by the Executive of another candidate. Inasmuch, however, as the vote was close and the Vice President absent, the President saw fit to return the nomination for further consideration. He has insisted that the Senate reverse its attitude. Many Senators would like to earn the good will of the President by yielding to his request.

Many on this side of the Chamber were slow to cast their votes in the negative. They desired, if justified in so doing, to abide by the President's selection. But when the record was presented to the Senate they were reluctantly convinced that the President's choice for Attorney General did not deserve that confidence and could not receive that support which the high character of the office and its relationship to the liberties and privileges of our citizens should command.

The issue before the Senate is of great public importance. It should be considered solely in its public aspect. Surely no Senator can find happiness in taking a course which is embarrassing to the President or to one whom he deems worthy of selection as Attorney General of the United States. But, after all, the main consideration is the public interest. The early future promises a decisive issue relative to the enforcement of laws against trusts and combinations. The faith of the people in their Government will not be diminished through the action of the Senate in declining to confirm the nomination of Mr. Warren when they study the record, even though the action of the Senate be misinterpreted and unfairly criticized by many newspapers whose managers permit them to publish one-sided or misleading information.

Senators at last serve not only as Members of a great lawmaking body but as ambassadors of the States to the Central Government. Their highest reward must be the consciousness of duty, however unpleasant, faithfully performed.

The VICE PRESIDENT. The time of the Senator from Arkansas has expired.

Mr. HARRISON, Mr. SWANSON, Mr. HEFLIN, and Mr. REED of Missouri called for the yeas and nays, and they were ordered.

The VICE PRESIDENT. The question is, Will the Senate advise and consent to the nomination of Charles Beecher Warren as Attorney General of the United States? On that question the yeas and nays have been ordered. The Secretary will call the roll.

The Chief Clerk proceeded to call the roll.

Mr. FERNALD (when his name was called). I have a general pair with the senior Senator from New Mexico [Mr. JONES]. I transfer that pair to the senior Senator from Vermont [Mr. GREENE], and will vote. I vote "yea."

Mr. GEORGE (when his name was called). I have a general pair with the senior Senator from Colorado [Mr. PHIPPS]. I transfer that pair to the senior Senator from Nevada [Mr. PITTMAN], who, if present, would vote as I shall vote. I vote "nay."

Mr. McMASTER (when his name was called). I desire to announce that I am paired with the junior Senator from Pennsylvania [Mr. REED]. If the junior Senator from Pennsylvania were present, he would vote "yea." If I were at liberty to vote, I should vote "nay."

Mr. OVERMAN (when his name was called). I have a general pair with the senior Senator from Wyoming [Mr. WARREN], who, I understand, is now upon the high seas. I have tried to get a transfer. I have been unable to do so. Therefore I can not vote. If I were at liberty to vote, I should vote "nay," and the Senator from Wyoming would vote "yea."

The roll call was concluded.

Mr. HARRISON. My colleague [Mr. STEPHENS] is necessarily absent. He has a pair on this question with the senior Senator from New Jersey [Mr. EDGE]. If my colleague were present, he would vote "nay," and the senior Senator from New Jersey, if present, would vote "yea."

Mr. BRATTON. The senior Senator from New Mexico [Mr. JONES] is necessarily absent, but is paired with the Senator from Vermont [Mr. GREENE]. If the senior Senator from New Mexico were present, he would vote "nay."

Mr. DALE. It has already been announced that my colleague [Mr. GREENE] is paired, but I am informed that if he were present he would vote "yea."

The result was announced—yeas 39, nays 46, as follows:

YEAS—39

Bingham	Fernald	McKinley	Schall
Butler	Fess	McLean	Shortridge
Cameron	Gillett	McNary	Smoot
Capper	Goff	Means	Spencer
Cummins	Gooding	Metcalf	Stanfield
Curtis	Hale	Moses	Wadsworth
Dale	Harreld	Oddie	Watson
Deneen	Jones, Wash.	Pepper	Weller
du Pont	Keyes	Pine	Willis
Ernst	Lenroot	Sackett	

NAYS—46

Ashurst	Edwards	Kendrick	Robinson
Bayard	Ferris	King	Sheppard
Blease	Fletcher	Ladd	Shipstead
Borah	Frazier	La Follette	Simmons
Bratton	George	McKellar	Smith
Brookhart	Gerry	Mayfield	Swanson
Broussard	Glass	Neely	Trammell
Bruce	Harris	Norbeck	Tyson
Caraway	Harrison	Norris	Walsh
Copeland	Heflin	Ralston	Wheeler
Couzens	Howell	Ransdell	
Dill	Johnson	Reed, Mo.	

NOT VOTING—11

Edge	McMaster	Pittman	Underwood
Greene	Overman	Reed, Pa.	Warren
Jones, N. Mex.	Phipps	Stephens	

So the Senate refused to advise and consent to the nomination.

NORTHERN PACIFIC LAND GRANTS

As in legislative session,

The PRESIDENT pro tempore announced the appointment of Mr. ASHURST as a member on the part of the Senate of the special committee authorized under Public Resolution 24, directing the Secretary of the Interior to withhold his approval of the adjustment of the Northern Pacific land grants, approved June 5, 1924, in place of Mr. CARAWAY, resigned.

HEARINGS BEFORE COMMITTEE ON REVISION OF THE LAWS

As in legislative session,

Mr. ERNST submitted the following resolution (S. Res. 39), which was referred to the Committee to Audit and Control the Contingent Expenses of the Senate:

Resolved, That the Committee on Revision of the Laws, or any subcommittee thereof, be, and hereby is, authorized during the Sixty-ninth Congress to send for persons, books, and papers, to administer oaths, and to employ a stenographer at a cost not exceeding 25 cents per hundred words to report such hearings as may be had in connection with any subject which may be before said committee, the expenses thereof to be paid out of the contingent fund of the Senate, and that the committee, or any subcommittee thereof, may sit during the sessions or recesses of the Senate.

JOHN A. ROBINSON—WITHDRAWAL OF PAPERS

As in legislative session,

On motion of Mr. MCKINLEY, it was

Ordered, That the papers filed with the bill (S. 2439) for the relief of John A. Robinson be withdrawn from the files of the Senate, no adverse report having been made thereon.

EXECUTIVE SESSION WITH CLOSED DOORS

Mr. CURTIS. I move that the Senate proceed to the consideration of executive business with closed doors.

The motion was agreed to, and the doors were closed. After 15 minutes spent in secret executive session the doors were reopened and (at 2 o'clock and 55 minutes p. m.) the Senate, as in legislative session, adjourned until to-morrow, Tuesday, March 17, 1925, at 12 o'clock meridian.

NOMINATION

Executive nomination received by the Senate March 16 (legislative day of March 10), 1925

ASSISTANT SECRETARY OF AGRICULTURE

Renick W. Dunlap, of Ohio, to be Assistant Secretary of Agriculture.

CONFIRMATION

Executive nomination confirmed by the Senate March 16 (legislative day of March 10), 1925

POSTMASTER

OHIO

Plummer D. Folk, Leipsic.

REJECTION

Executive nomination rejected by the Senate March 16 (legislative day of March 10), 1925

ATTORNEY GENERAL OF THE UNITED STATES

Charles Beecher Warren to be Attorney General.

SENATE

TUESDAY, *March 17, 1925*

The Chaplain, Rev. J. J. Muir, D. D., offered the following prayer:

Our Father and our God, always so gracious in Thy dealings with us and ever remembering our needs, we come this morning, while attempting to lisp Thy holy name in prayer, to realize again and again our dependence upon Thee. Teach us continually even by Thy providences how dependent we are, so that through the duties of this day and looking toward the morrow, when separation may be had, Thy guiding providence may be around each life. Keep, we beseech Thee, each from the ills and the dangers that may be threatening, and grant that in each respective home brightness and blessing may be vouchsafed. The Lord be with us constantly, helping and leading us in simple trust in Jesus our Savior. Amen.

The reading clerk proceeded to read the Journal of the proceedings of the legislative day of Tuesday, March 10, 1925, when, on request of Mr. CURTIS and by unanimous consent, the further reading was dispensed with and the Journal was approved.

NOTIFICATION TO THE PRESIDENT

Mr. CURTIS. Mr. President, I offer the resolution which I send to the desk and ask for its adoption.

The VICE PRESIDENT. The resolution will be read.

The resolution (S. Res. 40) was read, considered by unanimous consent, and agreed to, as follows:

Resolved, That a committee of two Senators be appointed by the Vice President to wait upon the President of the United States and inform him that the Senate has about completed the business of the present session and desires to know if the President has any further communications to make to it.

The VICE PRESIDENT appointed Mr. CURTIS and Mr. ROBINSON as the committee.

PETITIONS AND MEMORIALS

Mr. LADD presented the following joint resolution of the Legislative Assembly of the State of North Dakota, which was ordered to lie on the table:

Senate bill 196

(Introduced by Mr. O. H. Olson and Mr. Magnuson)

A joint resolution requesting Congress to enact suitable legislation to protect the farmers' market and reduce his marketing cost

Be it resolved by the Senate of the State of North Dakota (the House of Representatives concurring):

Whereas agriculture is entitled to equal protection with industry and labor, and the export surplus should not be allowed to fix the domestic price and nullify tariff provisions ostensibly enacted for the benefit of agriculture; and

Whereas it is essential to successful cooperation that the local and terminal marketing machinery be cooperatively owned and operated by the producers: Be it

Resolved by the Legislative Assembly of the State of North Dakota, That Congress be requested to enact suitable legislation for the immediate benefit of agriculture, providing a practical method of segregating and disposing of the surplus, in order that the American farmer may sell at an American price and share with industry and labor equal protection against foreign prices; be it further

Resolved, That Federal aid be directed to the acquisition and operation by cooperatives of the local and terminal facilities essential to cooperative marketing, and that the market places of the great staples be opened to all buyers and sellers without discrimination and subject only to legal restrictions; and be it further