

JULY 13, 1937

THE FEDERAL JUDICIARY

The SPEAKER: Under the previous order of the House, the gentleman from Texas [Mr. SUMNERS] is recognized for 1 hour.

Mr. SUMNERS of Texas: Mr. Speaker, I am going to try this afternoon to be useful to the public interest in a situation which we must all regard as very serious.

When we stop to take our soundings, when we look at the stars for our direction, when we read the signs of the times, no American citizen can fail to appreciate the gravity of our situation. It does not make any difference what your views may be about other matters, no intelligent American citizen can fail to appreciate the seriousness of the situation. When we look about us at the nations of the earth today, we know that free government, popular government on earth, relatively speaking, is disappearing. For anybody with our governmental traditions to face that situation and know that the very identical things which are afflicting the other nations of the earth are also afflicting this Nation, he must be serious.

We are assembled here this afternoon at a time which the historians of the future will record as the highest peak in many respects in human history within 500 years.

When we make an examination of the attitude which obtains among the persons who are operating the functioning machinery of this Government, I say, with all respect, we must recognize that much of the hope of the Nation rests in the House of Representatives—you, in this tragic hour of the world's existence.

We know that as a people, as a Nation, we are at the crossroads in America. Soon we must determine whether or not we are going to preserve Anglo-Saxon institutions in this country or join the other nations of the earth under a dictator. Do not let anybody fool himself about that. People do not have dictators merely because they choose to have dictators. They have dictators when their problems exceed the governmental capacity of their people. Now, write that down, please. No people clothed with the power of self-government ever came under the government of a dictator, except by conquest, unless they had lost the ability to provide in themselves an agency through which popular government could function.

The work of government has to be carried on. This is provided for in the economy of God Almighty. The fact that there shall be government is fixed in human necessity. The people of Germany lost the power to govern and Hitler came to govern when the people of Germany failed to provide in themselves an agency through which the Government of Germany could be carried on and meet its problems.

We think these things cannot come to us. We are deceived by a perfectly ridiculous egotism. Only the greatest people who ever trod this earth can save this country from a dictator. We confront a situation this hour, when I stand here and you sit there, that requires a united government, a united people. Is there anybody who has any sense who does not know that the problems of this hour challenge us to produce the most united people and the most capable people who ever assumed the responsibility of government on the face of this earth? Is there anybody at this hour who has any sense who does not know that?

We are dealing with some practical things today. Does anybody challenge that? What is happening to us? Are we in America on this day moving toward a greater solidarity of the people? Are we moving in America this day toward a greater solidarity in the Senate of the United States? Are we moving in America today toward a greater cooperation of effort between the President of the United States and the legislative branch of the Government? If not, in what direction, then, are we moving?

I am going to talk a little horse sense this afternoon, just plain, practical horse sense, to men and women who sit under the greatest challenge of responsibility, so far as I know, in human history since time began.

I am going to talk a little about the Supreme Court situation, and I shall try to do it in a very helpful way. I want to talk just as plainly this afternoon as I can, and, as God knows my heart, I want to do good for my country. I am for the President of the United States and I am for my country. I do not want to discuss the provisions of the pending bill. I want to direct your attention, however, to the havoc which that bill is now working in the solidarity of the Nation. That is what I am talking about, and with the hope though vain it may be that as officers and as a people we may calmly consider whether there still remains differences of sufficient substance to justify this concentration of public interest and effort upon that which up to this time has brought only confusion, discord, and hurt to that solidarity which it is essential for us to have in order to have the strength and unity of effort to make our people secure in these times of world-wide chaos.

That is all that I am talking about. I am asking the American Nation what ought to be done under the circumstances. A few years ago this administration came to responsibility. It came in in an hour of great responsibility and of public danger. One of the most fascinatingly interesting, psychologically, governmental phenomena to be observed among the people of the earth occurred. I was here during the Wilson administration, and I saw that thing happen then. Our people, Anglo-Saxon people, have the genius, fascinatingly interesting, the remarkable genius of sensing the existence of a condition which requires a quicker pick-up and stronger power than their institutions ordinarily afford. I saw it in the Wilson administration, when, instead of turning the Government over to a dictator, as other peoples do, the people gave temporary power to Mr. Wilson to do all that a dictator could do, and had the genius to retain the power, to control its exercise, if necessary, and the ability to recapture and distribute that power. I do not know whether Mr. Wilson misunderstood his commission, his trusteeship, or not; but when that interesting time came, when, under the influence of the same Anglo-Saxon governmental instinct, the time came when that governmental power should have been sent back into the Anglo-Saxon institutions, Mr. Wilson did not recognize it.

He was not well. I pray God that same thing may not happen this time. Mr. Speaker, when this administration came into power, that identical thing happened again. The people said stand by the President. I stood by the President, not always, but generally. I wanted always to stand with him. He

did a good job—a mighty good job, but let nobody misunderstand what it cost to do that job. I am not talking merely about these billions of dollars that were expended, but also about what it cost us in morale, what it cost us in self-reliance, what it cost us in independence from the individual up through the small community and the State. Thirty-six billion dollars is the Government's debt today—and \$2,000,000,000 more this year has been spent than we have taken in. Where is that moving us toward? It is moving us toward bankruptcy, of course. The President wants to turn about, he says, and I believe him. I want to help him. If I can help to prevent this House splitting wide open, if I can help to prevent cleavage between the President and this House, or substantial parts of it, at this time when he needs and the country needs just the reverse of what is in the Senate and what is threatened in the House, I will be helping the President and I will be helping my country, I believe, more than those who are advising him now, when there is not enough left in this controversy to justify the hurt which is being done by its continuance.

I honestly believe that with all the conviction which the best advised judgment I can command gives to me. That is the only reason I am speaking today. When these States and municipalities, when individuals, private citizens, and others are moving on the Federal Treasury, when there is no money in the Treasury, where is that leading us? It is moving us toward bankruptcy in money and in self-reliance and independence and in those virtues that make it possible for a people to preserve a system of self-government. [Applause.] I believe the President recognizes that fact. I believe he is getting ready, and the country is getting ready, and you are getting ready, to tackle this job. And it is not going to be an easy job either. There is going to be lots of trouble about it. I do not want in this House, if we can avoid it, what is happening in and to the other body.

I think usually we have to speak of the Senate as "the other body." That reminds me of a story I heard down home. There had been too many folks killed in a gambling house in my town, so they posted a rule that there could not be any personalities. In a poker game one fellow caught another on the other side of the table cheating. He drew back his chair, put his six-shooter on the table, and said: "I am not going to call no personalities, I am not talking about nobody, but if I catch that red-headed, one-eyed son-of-a-gun cheating again I am going to shoot tother eye out." [Laughter.]

I hope I am not, in telling that little story, being disrespectful of the Senate. I certainly do not intend to be. I am concerned for my friends over there. This is not a situation of their choosing. Since February 5 this controversy has worn and consumed their energy and self-restraint and poured out among them vials of bitterness which has gone deeply into their relationships. That is not good for them. It is not good for the country. For the sake of the membership of the House, for the sake of the country, I devoutly hope that experience and that hurt can be avoided by the consideration and sound judgment of those in responsibility.

I do not believe, as I size up the situation, as I consider our difficulties, with the friction developing worse and worse within our governmental organization, that we will be in shape to tackle our job. Is that sound? [Applause.] I mean just horse sense. I am talking about horse sense. I do not think with the friction that is developing we can do the job.

How important is it to do the job? It is as important as the hope of liberty in the world. We hold the key position in the world today for free government as against autocracy. I am not trying to make a speech. I am just talking to the brains of thinking men and women in this solemn hour today. The Committee on the Judiciary of the House has tried to keep this controversy out of the House, and 'I have no apology to make for it; and at the same time we have been doing something to meet the condition against which the other bill, it is claimed, is directed. I will discuss that directly. The Senate and the House are different. Over in the Senate they have just a little crowd relatively. They know each other pretty well; it is a sort of club. When one of them says something mean to another, and the other says, "You are another one", probably knowing each other so very well there is not much fussing about it, and they just say, "Come on, let us go to lunch." At least that has been true. It is not so true now. This controversy, I am afraid, is cutting deeply. But you bring that issue into this House, transplanting as you would in a measure the bitterness in the Senate, you would split this House from top to bottom and it would not heal soon.

Then I say to my distinguished friend for whom I have the deepest affection, the leader of the House, the gentleman from Texas [Mr. RAYBURN], and to say equally distinguished and beloved friend, the Speaker, who sits there, when that is done, do not try to tell me that this House will be in any shape to follow you in solidarity and unity of effort in doing its share of the job of saving this country. I may do a bad job in this effort, but I am trying to be helpful today to my leader, my Speaker, this House, my President, and my country

I am appealing to the thinking sense of grown men and women who have their heads on their own shoulders. What we need in America more than anything else is to put our feet on the ground [applause] and put our heads on our own shoulders. There used to be an expression down among our boys in Tennessee when a fellow was showing a disposition to get a little flighty in the head, "Keep your shirt on!" Then we need to sit down and give this thing a little thinking, and when we give it a little thinking, get a picture of the world amid see what is happening at the other end of the building and what is happening between those there and the President, see what would happen here. Look at the condition of this country and the job ahead of us, we then ask ourselves if it is good, old-fashioned horse sense from anybody's standpoint to split us from top to bottom when the Supreme Court is already definitely moving out of the field where governmental policy is fixed; and when already under the laws you passed this session a vacancy has resulted and it only awaits nomination by the President and confirmation by the Senate to fill that vacancy and to start the inflow of new blood into the Supreme Court. The work which we have got to do to make our Nation secure against the perils 'which are abroad in the world today only a united people have got a chance to do. Have we got any sense? I mean, have we got any real sense? This thing which is going on is just not sensible. It can be avoided.

I hope I am not being offensive to anybody. If under the zeal of trying to drive home this one point I should give offense, especially to those who have for weeks been under the strain of this controversy, I will be deeply sorry. There is no human being who can look at this situation, analyze the situation and the problems of this country and not know they are chal-

lenging us as a people to be the greatest generation of people that ever walked the earth. There is not anybody who can analyze this situation and not know that we have a situation that challenges us Representatives to be the most efficient, patriotic, level-headed men and women who ever sat in this Chamber. These are not ordinary times. The balance sheet is being struck, nations and civilizations are being brought to judgment. Those who will not be instructed by the experience of others are being sent to the school of their own experience and made to pay for their tuition.

I want to congratulate the House on its program with reference to this thing that is now tearing this country wide open today. You put through a program here at this session. You put through the same program here dealing with the Supreme Court that a good, level-headed doctor would put through when called in to treat a patient with a similar disorder. You put through the same program in this House that a good mechanic would put through.

If you went to him with the gas line of your car stopped up, if you took to him a car that was not getting the normal intake of new gas, he would not put some dynamite under the car and blow it up. No. He would open up that line and see if he could not get the engine working. He might do something later more radical if that did not work, but that is what he would do first. Then you would not hurt the ear as a vehicle needed for the service of your family.

Now, let us see about this Supreme Court thing. Let us just talk common sense about it now. This House appreciated the fact that there was not a normal intake of new blood in that Court. You made an examination, a sort of diagnosis. You located an obstruction which blocked up the intake. We found that in the act of 1919, which gave to all other Federal judges the right to retire instead of resign after 70 years of age with 10 years' service, and to take light work retaining their judicial status with this constitutional arrangement, we had denied these Supreme Court judges by specific designation that right to retire. We had given to every other Federal judge in this country the right to retire instead of resigning, except Supreme Court judges. What does that mean? We have to be fair about this. It means that we said to them, "Stay on the job right where you are. You cannot have any lighter work. If you leave that bench, you have to check out and cease to be a judge."

Public opinion had something to say about it, too. About that time Mr. Holmes, who was approaching his ninetieth year, was on the bench, and the papers were writing about the grand old man still on the job. Let us be fair about this. Everybody was going over to the Supreme Court to see the grand old man nearly 90 years old, who was still on the job earning his salary. That was not all. The Constitution provides that their salaries are for life; they have their job for life, subject to good behavior. We had passed a law in 1868 which provided that these judges, at the age and with the service I mentioned a while ago, could resign and we would give them their salary for life. With that law on the statute book, Mr. Holmes came off the bench and we cut his salary \$10,000 for believing in us. What did that mean to all the other men on the Supreme Bench? It meant that we had not only said to them in 1919, "We want you to stay on the bench", but in doing to Mr. Holmes what we did, we said to them, "If you fellows dare to get off the bench we may fine you the full amount of your salary, guaranteed by the Constitution only

if you stay on the bench." Is that not right? I mean that is the fact. The first invitation, the first intimation given to these Supreme Court Justices that it would be agreeable for them to retire as other judges had been privileged since 1919 was given by the act passed by this House at this session of the Congress.

That is not quite all. Your committee presented a bill at the last Congress proposing this privilege of retirement, which other judges had had since 1919, and with the question squarely and specifically presented to this part of the policy-fixing body of the Nation, you said "no" by defeating the bill. That bill was not handled right, but still there was the specific denial of the right to quit regular service on the bench as that right had been given to all other Federal judges.

We removed that obstruction and gave Nature a chance. We gave these judges the same right to retire previously given other judges. Was not that the thing to do? Is not that what a good doctor would have done under similar circumstances; what a good farmer would do? Practical people dealing with practical things—and government is practical—would first recognize that God Almighty is the mighty force in the universe and that the thing to do, at least in the first instance, is to take Him into partnership, work in obedience to His laws, and give Nature a chance first.

That is what we tried to do last session. I brought that bill over here, and it was just plain, downright dumbness on my part or we would have put it through. I will tell you a secret about it, and I am ashamed to admit it: I just naturally overestimated the intelligence of the House. [Laughter.] I

We did not handle it right, but this year we reintroduced it; we brought it over in the House. It was your bill; you passed it. You removed the obstruction insofar as you are concerned. The Senate passed it. The President signed it. And notwithstanding the difficulties that were brought about by the great disturbance, one of these judges quit the bench under the provisions of that law. The President can fill that vacancy when he chooses. This Justice was one who, as frequently as any other, perhaps, had decided against what is designated as New Deal legislation. That created a condition with regard to that Court which makes it possible to change the relationship as much as adding two new judges would. There was no controversy, no noise. Nothing was done that might imperil the confidence of the people in that Court as an institution. I want to tell you that it is a pretty ticklish job when you begin to hit over the head indiscriminately people who operate the functioning machinery of our system of government. Now, sometimes you have to do it, but it is a pretty ticklish job, it is a pretty dangerous job in times like these. The average man does not draw a distinction between that intangible thing that we love with the holy love called patriotism and the human beings who are operating its functioning machinery. When you destroy the confidence of the people in the persons who are operating that machine it is just one step beyond that until you have destroyed their confidence in their Government.

It was our duty to do something about the situation to make it easier for new blood to flow into that Court, a sort of surgical operation; but to be done with a surgical instrument, not a meat ax. I wish the President had given this bill which he endorsed a chance before that other proposition was turned loose. I cannot help, but believe he was imposed on by somebody who did not want results to come that route. If

I may say with apology and deep respect, I believe he is being imposed on now. I wish he would, if he can find the time, give this thing a thinking through. I want to be helpful to him. This is no pleasant job for me.

We gave Nature a chance and Nature started the inflow of new blood that had been artificially obstructed by acts of Congress. That is not all, this House of Representatives has exercised in a quiet, respectful way its pressure upon that Court to try to get it moving out of the field where governmental policy is fixed. Beginning with Marshall the Supreme Court has been moving further and a little further into the field where governmental policy is fixed. Your committee, without "hollering" its head off about it, has been trying to ease them out a bit. We did not agree with the decision of the Supreme Court in the Municipal Bankruptcy Act. We brought in here as your servants another bill recently through which we hope to present again that issue to the Supreme Court; in other words, we are asking for a rehearing before that Court on that issue.

We indicated to them without getting into the press and "hollering" our heads off that we did not believe that that decision ought to stand as the law of the land, that we want to present it again. I have heard it being said around here that one of the Justices of the Supreme Court who changed his attitude and sustained important legislation of this Congress—I have heard it talked around that he "is a turncoat." Now, do you think that sort of talk is going to help the House in trying to get this Court upon a rehearing to hold that the States can constitutionally do what we believe they can do? Did you ever hear of a lawyer, who, securing a rehearing in a case that had been decided against him and got a favorable decision on rehearing, running out of the courthouse pointing back to the judge who had decided with him, hollering "Turncoat! Turncoat! I presented my matter to you, you gave me a rehearing, and upon the rehearing you decided for me; there is something crooked about it"? I am talking practical sense only. This illustrates the strain, the danger of letting this thing go on. That is why I am making this talk today. We are in no frame of mind to do the public business. There is not enough left in this controversy to justify the hurt and the danger from what we are doing.

That is not all this House has done this session. The House agreed that the acts of Congress were being too easily set aside on constitutional grounds. What did the House do about it? I am proud of this House in this hour of—well, I cannot say it, I was just about to talk about [laughter]—in this hour of hysteria. Boys, I am proud of you, sitting here in the council of the Nation with your feet on the ground and your heads on your shoulders, doing your own thinking. Under God Almighty may we do our own thinking. I do not find anywhere else in this Government the stability that I find in the House of Representatives today. When you found that the courts were too easily setting aside acts of Congress, what did you do? You passed a bill giving the Government of the United States the right in private litigation when the question of constitutionality of an act of Congress arises, to send its chief law officer into the courts to defend the constitutionality of that act of Congress and to appeal directly to the Supreme Court from an adverse decision. You also passed a bill this session making it easier to get rid of crooked judges. These are three things that the House has done at this session to straighten out this situation.

I am not going to take very much more of your time. I want to ask the people of this Nation, I want to appeal to the responsible officers of the Nation, to consider what is

happening under your program in the House, and what is happening during the effort to put the other program through; and, too, if it would not be better under all the circumstances to cease attempting to press through what I believe is an unnecessary piece of legislation, considering what has already happened and what we may reasonably expect to happen when we stop shouting to each other, and things quiet down among a people who proceed with mutual respect toward each other. [Applause, the Members rising.]

Let us give a chance to the legislation which has passed this House to secure results. Two of these bills are yet to be acted on in the Senate. That is not an unreasonable request. It is not an unreasonable suggestion. This is not the last session of the Congress. If this were the last time when we can have a Congress, there might be some reason in the minds of some gentlemen for risking the solidarity of this Nation by continuing to try to put through this last bill now. This is a thing that people have very deep convictions about. It is not a matter of good people on one side and bad people on the other. This proposition in the minds of many honest, patriotic people reaches to the foundation of our governmental structure.

Even as the Court was constituted before the retirement referred to, it has upheld the program recently presented. Since those decisions one of the dissenting Justices has quit. This gives the opportunity to appoint somebody else. This would mean, unless they misjudge the man who is appointed, that reducing on one side and adding to the other, these decisions that were rendered by a vote of 5 to 4 in favor of the Government during the last term would have a vote of 6 to 3 in favor of the Government without any new bill or any more retirements. Other vacancies are inevitable soon, especially if we can get this agitation out of the way.

When you examine into the situation you will find that when we get this thing out of the way, as soon as we take the lash from above the heads of these judges over there, some more of them will retire. I mean that as a fact. Everybody knows it is a fact. What is the excuse, then, for this bill being pressed any further at this time? Can we pretend to be unmindful of the hurt? To—save my life I cannot figure it out. There may be some reason, but I cannot figure it out.

Mr. Speaker, I am going to yield to any Member who wants to ask me questions. May I say first, however, I have not tried to make a speech this afternoon; but if these advisers who are counseling the President to force that bill into this House under pressure which they may be able to command, when we are trying to preserve strength and unity required to do the Nation's work, if they force that bill into this House for the sake of saving their faces or their hides, they ought not to have hide enough left to be worth bothering about. [Applause.]

Mr. O'CONNOR of New York: Will the gentleman yield?

Mr. SUMNERS of Texas: I yield to the gentleman from New York.

Mr. O'CONNOR of New York: If the gentleman and his committee maintain the present position against the presen-

tation of this bill to the House, as I understand it, how could it possibly come to the House?

Mr. SUMNERS of Texas: Well, there is the Rules Committee. [Laughter and applause.]

Mr. O'CONNOR of New York: I am quite sure the gentleman has had no experience with the Rules Committee reporting a bill that has not been reported by a standing committee pursuant to a request for a rule made by the standing committee?

Mr. SUMNERS of Texas: In other words, there is no chance over there? [Laughter and applause.]

Mr. COLDEN: Will the gentleman yield?

Mr. SUMNERS of Texas: I yield to the gentleman from California.

Mr. COLDEN: Is not the chairman of the Judiciary Committee going a little far when he assumes to protect this House from a responsibility that it now faces, and one on which the people of this country expect an answer from the House as well as from the other body?

Mr. SUMNERS of Texas: Now, would the gentleman make that a little clearer?

Mr. COLDEN: I assume that the chairman is trying to protect this House from a responsibility that I think it should take. Why should it not take the responsibility?

Mr. SUMNERS of Texas: I have tried to state it as clearly as I can. I believe, first, that the program this House has already put through removes the excuse, if I may put it that way, of sending into the House now a bill which will do for the House what that bill is doing in the Senate. Do I make myself clear?

Mr. COLDEN: Yes. The gentleman is assuming that some of the judges will resign, but we have no assurances that they will.

Mr. SUMNERS of Texas: The gentleman has not any assurance, either, that this bill will pass over there after it has "busted" us open from top to bottom. [Applause.]

Mr. KELLER: Will the gentleman yield?

Mr. SUMNERS of Texas: I yield to the gentleman from Illinois.

Mr. KELLER: Does the chairman of the Committee on the Judiciary take the position that his committee has a right to deny the House the opportunity to vote on this subject?

Mr. SUMNERS of Texas: No; I do not think that, but I take the position that the Judiciary Committee of the House is an agent of the House, trusted with certain responsibilities, and at any time this House wants to assume the responsibility of taking the bill away from the committee, it has the privilege of doing so.

Mr. BOILEAU: Will the gentleman yield?

Mr. SUMNERS of Texas: I yield to the gentleman from Wisconsin.

Mr. BOILEAU: I take it that those of us who are desirous of having this matter brought before the House then should start filing a petition to discharge the committee?

Mr. SUMNERS of Texas: No. I think you ought to reconsider and decide the other way.

Mr. KELLER: But if we are unwilling to do that, what is our remedy?

Mr. SUMNERS of Texas: I would suggest the gentleman ask his own group. I want to make an apology. You know I get up here and folks kind of laugh at me and it makes a sort of fool of me. I do not want to pull off "smart-aleck" stuff; therefore, if I seem to be discourteous, I assure the Members I do not want to be.

Mr. COLDEN: The gentleman from Texas has the exceptional ability of being able to laugh the average Member off the floor.

Mr. SUMNERS of Texas: Yes; hut the gentleman is not an average Member. [Laughter and applause.]

Mr. HARLAN: Will the gentleman yield?

Mr. SUMNERS of Texas: I yield to the gentleman from Ohio.

Mr. HARLAN: If the gentleman is correctly reflecting the position of the Judiciary Committee, then it is incumbent upon those who are in favor of meeting the situation as it comes up to oppose any recess that may be suggested; so that we can file a petition to take this matter from the Judiciary Committee and have the necessary number of legislative days lapse. In other words, the bill was filed in the House on July 6. It will have to pend before the gentleman's committee 30 days. The resolution to take it from the Judiciary Committee will have to pend 7 days and it will take 3 or 4 days to get the necessary number of signatures to the petition.

Mr. SUMNERS of Texas: The gentleman cannot do it in that time. [Applause and laughter.]

Mr. HARLAN: I was submitting a question to the gentleman as a Congressman, not as a prophet. So that in order to have the necessary time elapse and the Congress adjourn within a reasonable time, and in order to have a vote, it will be necessary for us to stay here without any recess. That will be the effect, provided we want to get out of here before September; is that not so?

Mr. SUMNERS of Texas: I do not know. That is too much mathematics for me. [Laughter.]

What I really meant, although I probably did not state it very well, was that I was hoping the leaders in the House, the

leaders in the Senate, and the people who are advising the President would just sort of sit down and give this thing a "think" and figure out what had happened under the bill which you passed and what they might expect would probably happen if they sent this bill over here and what would probably happen if they continue this agitation. You know what has been happening in another Chamber. I do not want it to happen here. If I am not trying in that attitude to render a public service, a service to this House, to my country, and to my President, then I am mighty badly mistaken. In this time of year especially, when you get people rowing and rowing and rowing, they are not in any shape to do the serious business of the Government. Do you think people who are continually in this row, week in and week out, month in and month out, are in any shape at all to do the serious business of the Government? And what is it all about? What is left to justify it?

What I am trying to say is that the difference between the bill they have in the Senate and your legislative program does not justify the destruction of the solidarity of this House and the Senate and sending deep lines, possibly permanent lines, of cleavage between the legislative and the executive branches of the Government at a time when every consideration of the public interest calls for unity and that cooperative effort impossible in an atmosphere of discord.

Mr. KELLER: Mr. Speaker, will the gentleman yield?

Mr. SUMNERS of Texas: In just 1 minute.

Probably I have not been temperate in what I have said, but what I am hoping is that perhaps the people who are for the bill and the people who are against the bill, all of whom love this country and want to serve it, and appreciate the danger of this hour, can get around the table and say, "Now, look here, had we better not let this thing ride awhile, and let the boys sober down and come back here next session, since this is not the last session, and see what else is to be done?" That seems to be horse sense to me.

Mr. COLDEN: Mr. Speaker, will the gentleman yield?

Mr. SUMNERS of Texas: I yield to my good friend, and I surely will not do any "wisecracking."

Mr. COLDEN: I admit I am no equal of the gentleman from Texas in that respect.

Mr. SUMNERS of Texas: I will not do it.

Mr. COLDEN: May I ask the chairman of the Committee of the Judiciary if the gentleman is advocating a sit-down strike in Congress on this great issue?

Mr. SUMNERS of Texas: I say that this great issue is not the only issue in the country. I believe they would do pretty good to sit down on this issue and go to work on other issues which demand attention. [Applause.] In all respect to the gentleman, I say that I do not think this is the only question we have in this country. I know and you know it is splitting us wide open. No one can deny that. You know and I know that we need a united people, we need a people who are working with the President. We do not want any lines of

cleavage between the legislative branch of this Government and the President. You know from the votes we have been seeing here in the last 3 or 4 weeks this situation, this strife, is beginning to reflect itself in the general legislative reaction of this House, and it is a serious matter.

Mr. COLE of Maryland: Mr. Speaker, will the gentleman yield?

Mr. SUMNERS of Texas: Yes.

Mr. COLE of Maryland: In view of the questions previously asked the distinguished gentleman as to the time required for a discharge petition in order to bring this subject to the floor of the House, I would like to ask the gentleman this question:

It is my understanding the original Court proposal was introduced in the House by the gentleman from Texas [Mr. MAVERICK], and no one else, and with that bill now dead in the Senate and the substitute therefore being discussed at this time in the Senate, and the fact that that substitute is the subject of a new bill introduced by the gentleman from Kentucky [Mr. Vinson] about a week ago, would a petition seeking the discharge of that bill from the Judiciary Committee, over which the gentleman from Texas presides with such dignity, be in order under the rules of the House before the expiration of 30 days? I would like to know if this is correct, and further, if the substitute Court proposal in the Senate has been introduced by anyone in the House other than the gentleman from Kentucky.

Mr. SUMNERS of Texas: Not by any member of the committee.

Mr. COLE of Maryland: So there is nothing from the consideration of which the gentleman's committee may be discharged?

Mr. HARLAN: The Senate bill has been introduced in the House.

Mr. COLE of Maryland: I am talking about the substitute.

Mr. HARLAN: The Senate bill has been introduced. The gentleman from Kentucky introduced it.

Mr. SUMNERS of Texas: Yes; it has been introduced.

Mr. COLE of Maryland: I did not know that.

Mr. McFARLANE: Mr. Speaker, will the gentlemen yield?

Mr. SUMNERS of Texas: I yield.

Mr. McFARLANE: I would like to have the view of the chairman of the committee on whether or not he expects his committee to hold hearings on the substitute anytime before Labor Day, and if so, when? The original bill has been pending before the House since February 5, and the substitute bill has now been pending for some little time. About 5 months have elapsed. How much of a sit-down strike do we have to have in the House before we consider this proposed legislation?

Mr. SUMNERS of Texas: Does the gentleman mean before we report it out?

Mr. McFARLANE: Before the gentleman's committee will begin holding hearings on it, or do something about it besides just sit here and pass the buck to the Senate.

Mr. SUMNERS of Texas: The gentleman wants to know how much sit-down strike he can have?

Mr. McFARLANE: I would like to know what the committee is going to do about holding hearings on the bill and considering it?

Mr. SUMNERS of Texas: Well, Mac, you are not by yourself on that. [Laughter and applause.]

Mr. KENNEDY of New York: Mr. Speaker, will the gentleman yield?

Mr. SUMNERS of Texas: I yield.

Mr. KENNEDY of New York: Does the gentleman realize we have had a vacancy on the Supreme Court now for about a month or so, and that under usual circumstances the President makes the appointment and sends it to the Senate for confirmation, and usually considerable time is required to investigate the appointment, and so forth? Up to the present time, as the gentleman knows, the President has done nothing about filling this vacancy. Does not the gentleman think if the President would make an appointment the country would have an opportunity to decide what type of men the President intended to appoint to the Bench, which might help us to solve this problem?

Mr. SUMNERS of Texas: I would not like to discuss that question, as that matter fails entirely within the discretion of the President.

May I say that, although it may not be appreciated, I am doing my best to be helpful in this situation? I may be wrong about it, but I really do believe I am a better friend of the President of the United States in trying to get this thing straightened out and this obstruction removed. If I may speak of myself, I saw this situation coming at least 3 years ago. I knew the historical background of the separation of the Executive from the control of judicial determinations. I knew something would have to be done to start again a normal flow of new blood into the Supreme Court, which would save any criticism of the President of the United States on the score that he was trying to control the decisions of the Court. The whole program of the House has been in that direction. I will venture the assertion that, when this thing is over and the President of the United States takes account of what has happened, he will say that the House of Representatives and even the committee with I which I happen to be connected have been as good friends of his as the folks who gave him that other bill. I believe so. [Applause.]

Mr. SABATH: Mr. Speaker, will the gentleman yield?

Mr. SUMNERS of Texas: Yes.

Mr. SABATH: Knowing the gentleman as I do, I cannot

believe he desires to leave the impression that the country is in danger, or that he desires to alarm the Nation because of the debate which is taking place on the judiciary.

Mr. SUMNERS of Texas: Oh, no; not at all.

Mr. SABATH: The gentleman recalls, I am sure, the strife in the House and in the other body when we considered other important bills, such as the Federal Reserve bill. In those days, as the gentleman recalls, we heard a great many predictions on what would happen to the Nation if that legislation were enacted into law. Nothing happened and the country was benefited, and I believe what is transpiring over there now will not be detrimental to the Nation. These gentlemen will cool off and after they have given the matter due and careful consideration, I believe they will agree on a substitute and everything will be "hunky-dory", if I may use that term. [Applause.]

Mr. SUMNERS of Texas: I want to thank my distinguished friend from Illinois for that suggestion, because I certainly do not want to create the impression that this bill in itself would bring about any of the dire results referred to. The point I am trying to make, which I think is sound, although I may be wrong, is that this Nation confronts now as great problems as ever challenged any people on the face of the earth; and when there is friction between the Legislature and the President or a sharp cleavage in the House of Representatives and in the Senate, I do not believe we are in as good shape to do the job as where such a situation does not obtain. I cannot see how that can be wrong.

Mr. Speaker, I want to make this additional statement: I am inclined to think that while this agitation has cost us a lot, yet the sit-down strikes and the agitation with regard to the Supreme Court have done more to stir up the people and make them begin to think than all the other things combined in the country, and that is what we have needed; and what I am now trying to say is that after having got the benefit from this agitation, is it not about time that we get together? You go over there and look at those Senators on each side, one of them just as good kind of person as the other, one of them looks to me as if he has as much sense as the other one. The President wants to do what is right in this country, I am sure, and I am sure my friend Kent Keller wants to do what is right, and I am sure that I do. I am hoping that we will at least make the effort. I am doing my job. I felt like I ought to make these statements, and if it does not work, my conscience is clear. Nobody is responsible for results. He is only responsible for doing his best and following the best judgment that God Almighty gives him, and when he does that, his conscience ought to be clear.

Mr. COLDEN: Mr. Speaker, will the gentleman yield?

Mr. SUMNERS of Texas: I yield.

Mr. COLDEN: Aside from the question the gentleman is discussing, does not the gentleman believe it is advisable for his committee to report out a constitutional amendment that will clarify the interstate powers of Congress over industry and labor to settle this question for all time?

Mr. SUMNERS of Texas: It is awfully hard to settle any question for all time. If I thought we could do it, I would do it. I do not know sir. I am telling you candidly, I do not know.

Mr. COX and Mr. LAMNECK rose.

Mr. COX: The gentleman has been so temperate, so kind, and has reflected such wisdom and sympathy that I trust tomorrow morning he will be given a national audience by a friendly and kindly press. [Applause.]

Mr. SUMNERS of Texas: I hope if they do write anything about it they will not just take one side of what I am trying to say and use it against the Court bill, or print what may be construed the other way. What I have hoped to do is to put over the one thought which I believe with all the conviction I can have is important now, that the time has come in American confusion when sensible men who love their country ought to try to sit around a counsel table and do something about this thing that is dividing and incapacitating us to a degree, as I see it, out of all proportion to the importance of the thing which is being fought over these 5 months now passed and other months in prospect. [Applause.]

Mr. LAMNECK: Mr. Speaker, will the gentleman yield?

Mr. SUMNERS of Texas: Yes.

Mr. LAMNECK: I take it from the gentleman's statement that he is not of the opinion that any change in the Supreme Court is necessary to legislate for the general welfare of the country under the Constitution.

Mr. SUMNERS of Texas: I am afraid I did not quite catch that question.

Mr. LAMNECK: I take it for granted, after listening to the gentleman this afternoon, he does not think a change in the Supreme Court as now outlined in the bill in the other body is necessary to accomplish the necessary legislation that we should pass for the benefit of this country?

Mr. SUMNERS of Texas: The gentleman means increasing the Court?

Mr. LAMNECK: Yes.

Mr. SUMNERS of Texas: No; I do not believe it, and I will tell the gentleman about that. We had this question up in 1925 when a bill was formulated which decreased the obligatory jurisdiction of the Supreme Court.

The American Bar Association in 1922, on account of the congestion of the Court, had advocated its increase to 11. The Committee on the Judiciary then took that matter under determination. There was none of this present heat about it. It was just a question of what seemed to be the best thing to do. As far as we could figure it out, nine seemed to be about the number that would be required to give the necessary variety of all the things which make up a court with its jurisdiction, variety of thinking, variety of judgment, and variety of sections of the country, and so forth; that it would be just about as good as anything could be, but we did decide that

the obligatory jurisdiction of the Supreme Court should be reduced. We went that route instead of increasing the number of judges. It was our conclusion, as I recall it, that judges added above nine would probably slow up rather than speed up the work of the Court. I observe there has been some criticism of the Court because of the small percentage of applications for certiorari which had been allowed.

When you examine it you will find that reduction in obligatory jurisdiction and this small allowance is the greatest reformation that has been effected in the procedure of Supreme Court since the organization of the Government. Prior to that enactment, when this great volume of matter was going to the Court as a matter of right, the Court was so congested that it could not take care of the national questions that came up, and in addition to that we reached the conclusion—and there was none of this heat; it was deliberately done—that insofar as private litigation is concerned, when the individual has had his trial in the trial court and that case has been reviewed in the circuit court of appeals, that that ought to be the end of judicial processes and the victor should have the fruits of his judgment.

We found that the little man was being literally worn out by going to the circuit court of appeals and up to the Supreme Court and back again, that the man with the long purse had an unconscionable advantage over the ordinary individual. So we gave the Supreme Court the discretion to stop litigation as between private persons in which no public interest was involved in the circuit court of appeals. [Applause.]

Mr. KELLER: Mr. Speaker, will the gentleman yield?

Mr. SUMNERS of Texas: Yes.

Mr. KELLER: I am not able to understand where there could be a better council chamber around which to gather than this body here constitutes in itself, and for my part I should like very much to hear the arguments the Members of this House have to put forward for and against the measure now under discussion. There is no heat amongst myself and my friends.

Mr. SUMNERS of Texas: But it would get up.

The SPEAKER: The time of the gentleman from Texas has expired.

[Prolonged applause, the Members rising.]

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