nal contempt" or without defining or differentiating between "criminal contempt" and "civil contempt." proceeds to make the provisions of the first sentence inapplicable to those contempts "committed in the presence of the court or so near thereto as to interfere directly with the administration of justice" and likewise inapplicable to "misbehavior, misconduct, or disobedience of any officer of the court in respect to the writs, orders or process of the court." In other words this second sentence deals with certain "contempts" and with "misbehavior of any officers of the court" and excludes such "contempts" and "misbehavior of any officer of the court" from the provisions of the Civil Rights Act—H. R. 6127. In other words, the second sentence says that if any contempt is committed in the presence of the court, or so near thereto as to interfere directly with the administration of justice, it is not dealt with in the Civil Rights Act—H. R. 6127. Likewise excluded from coverage by the Civil Rights Act—H. R. 6127—would be "the misbehavior, misconduct, or disobedience of any officer of the court" in respect to any writ, order, or process of court issued presumably under authority of the Civil Rights Act—H. R. 6127.

The last sentence of the amendment—section 151—simply tries to restate the proposition now appearing in section 401 of title 18, United States Code, that a court of the United States has power to punish contempts of its authority. However in restating that posposition, this last sentence refers to "civil contempts," whereas section 401 refers to "contempt of its—the court's—authority." Thus we see the last sentence of the amendment, section 151, refers to "civil contempt," as distinguished from the first sentence, which deals with "criminal contempt."

Nowhere in the amendment is any definition given of either "criminal contempt" or "civil contempt"; nor has Congress ever attempted to draw any such distinction. The sole provision attempting to draw a distinction between criminal and civil contempt is contained in rule 42 (b) of the Federal Rules of Criminal Procedure in the requirement that the notice with respect to a criminal contempt shall describe it as such. The Advisory Committee on Rules, appointed by the United States Supreme Court pursuant to the act of June 29, 1940—Fifty-fourth United States Statutes at Large, page 686—to assist in the preparation of rules of pleading, in their notes indicate that the requirement of notice written into rule 42 (b) was "intended to obviate the frequent confusion between criminal and civil contempt proceedings" pursuant to the suggestion made in *McCann* v. *New York Stock Exchange* ((2d Cir., 1935) 80 F. 2d 211). See Civil and Criminal Contempt in the Federal Courts, report of Los Angeles Bar Association, 17 Federal Rules Decisions 167–182—1955. The Supreme Court itself has belabored the distinction between civil and criminal contempts. For the Court's distinction see *Bessette* v. *W. B. Conkey Co.* ((1904) 194 U. S. 324, 328).

A contempt statute certainly comes within the due process of law requirements of the Constitution. To substantiate this point, I refer again to Willoughby on the Constitution of the United States, page 1727, section 1141. In this section Willoughby points out that a contempt which is not committed in open court does require due process of law for the defendant. The United States Supreme Court, in an opinion by Chief Justice Taft, held on April 13, 1925, that all the guaranties of due process of law are available to a person charged with contempt. *Cooke* v. *United States* ((1925) 267 U. S. 517.) Thus it is quite clear that the amendment—section 151—as now drafted would subject a person to criminal prosecution for a statutory offense so indefinitely defined or described as not to enable him to determine whether or not he is committing that offense. *Connally* v. *General Construction Co.* ((1926) 269 U. S. 385); *International Harvester Co.* v. *Kentucky* ((1914) 234 U. S. 216); *Collins* v. *Kentucky* ((1914) 234 U. S. 634).

Second. This amendment is unconstitutional, in violation of the fifth amendment prohibiting double jeopardy.

That provision of the amendment which permits the accused to be tried a second time by a jury for the same offense following conviction in a summary proceeding violates the fifth amendment to the United States Constitution, which declares "nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb."

In ex parte Grossman the Supreme Court stated that contempt is an "offense" within the meaning of the pardoning power of the President granted in article II, section 2, clause 1 of the enumerated powers of the President. Clause 1 declares the President "shall have power to grant reprieves and pardons of offenses against the United States, except in cases of impeachment." Chief Justice Taft in *ex parte Grossman* ((1925) 267 U. S. 87, 107) quoting *Myers* v. *United States* ((1924) 264 U. S. 95, 104–105).

If contempt is an offense when it comes to the pardoning power of the President, it certainly is an offense under the fifth amendment. Thus reading the language of the amendment—section 151—in pari materia with the decisions in ex parte Grossman and Myers against United States, for the Congress to grant a second trial following conviction, with the same defendant, the same charges, and the same evidence, would place the defendant in double jeopardy.

The proposal—section 151—even if it were not in violation of the fifth amendment, would place Congress in the position of gambling with the rights of our citizens. Suppose a judge tries a man or woman and finds the person guilty. The press reports this fact to the public and such cases are bound to stir the public interest. The person so convicted is then tried again on the same evidence. Any jury is bound to be influenced.

In addition, what basis or standard of conduct is to be the determining factor as to whether the judge imposes the lesser fine or sentence and lets his verdict stand or imposes the greater fine or punishment and moves the case along to a jury trial. There would be no uniformity in the application of the proposed statute—section 151—and the entire procedure would be awkward, cumbersome, and impracticable.

(Although Mr. THURMOND had not concluded his speech at this point, but continued for some time, in view of the circumstances, the following matters, which were ordered to be printed at the end of his speech, are printed at this place in the RECORD:)

SENATOR FROM WISCONSIN

During the delivery of Mr. THURMOND's remarks,

Mr. JOHNSON of Texas. Mr. President, will the distinguished Senator from South Carolina yield to me, with the understanding——

Mr. THURMOND. I will yield for a question.

Mr. JOHNSON of Texas. Mr. President, I should like to ask the Senator if he would be agreeable to yielding to me for the purpose of making a brief announcement, with the understanding that the announcement appear at the conclusion of his remarks, with the further understanding that when he resumes after the interruption it will not be counted as a second speech, and with the further understanding that the Senator retain the floor.

Mr. THURMOND. If unanimous consent is obtained, and there is no objection on the part of the majority leader or minority leader, I will do so.

The PRESIDING OFFICER (Mr. JOHNSTON of South Carolina in the chair). Is there objection to the request of the Senator from Texas? The Chair hears none, and it is so ordered.

Mr. JOHNSON of Texas. Mr. President, I am pleased to announce that the Senator-elect, Mr. WILLIAM PROXMIRE, from the State of Wisconsin, who was on yesterday chosen by the citizens of Wisconsin in a landslide vote, is present, ready, and prepared to take the oath of office.

I should like to read at this time into the RECORD of the Senate a telegram sent at 12:52 today, as follows:

Hon. FELTON M. JOHNSTON,
Secretary of the United States Senate,
Capitol Building, Washington, D. C.:

On the basis of unofficial returns of the vote cast August 27, 1957, for the United States Senator Mr. WILLIAM PROXMIRE is the United States Senator-elect from Wisconsin for the residue of the unexpired term ending January 3, 1959. Official certificate of election will follow upon completion of official canvass of vote cast.

STEWART G. HONECK,
Attorney General,
WARREN R. SMITH,
State Treasurer,
Members of the Board of State Canvassers.

Mr. President, the United Press ticker, at 4:17 this afternoon, carried the following statement:

MADISON, WIS.—The State board of canvassers today agreed to certify WILLIAM PROXMIRE's senatorial victory and allow him to go to the Senate before the official canvass.

The board will certify PROXMIRE's election to the Senate clerk late today. He could take office Thursday.

Declaring a candidate elected before the official canvass is believed to be unprecedented in Wisconsin elections.

Gov. Vernon W. Thomson said, "We are not going to stand on technicalities. We want Wisconsin to have representation in the United States Senate as soon as possible."

The Senate clerk has informed the canvass board that PROXMIRE's rapid certification would be acceptable on the basis of his wide margin of victory in the unofficial election tallies.

I read from the records of the Senate in a case directly in point, wherein the late Senator Hoey presented the Senator-elect from North Carolina, his colleague, Mr. Willis Smith:

SENATOR-ELECT FROM NORTH CAROLINA

Mr. HOEY. Mr. President, I present herewith a letter from the executive secretary of the State board of elections of North Carolina, showing that Willis Smith received a majority of the votes cast for United States Senator for the unexpired term of the late Senator Broughton, ending January 2, 1955. The State board of elections does not meet until tomorrow, and the certificate of election has not been officially issued. There is no controversy, and the certificate will be issued tomorrow. I ask unanimous consent that I may be permitted to file the statement today and the official certification tomorrow, and that the Senator-elect, who is present, may be permitted to take the oath of office.

The VICE PRESIDENT. Is there objection to the unanimous-consent request of the senior Senator from North Carolina?

Mr. WHERRY. I have no objection.

Mr. LUCAS. I have no objection. (Extract from CONGRESSIONAL RECORD, volume 96, part 12, p. 15772.)

Mr. President, I ask unanimous consent to have printed in the RECORD at this point as a part of my remarks a memorandum prepared by the Parliamentarian of the Senate, entitled "Administration of oath to Senators-elect or designate prior to receipt of credentials by the Senate."

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

ADMINISTRATION OF OATH TO SENATORS-ELECT OR DESIGNATE PRIOR TO RECEIPT OF CREDENTIALS BY THE SENATE

There have been 10 instances since 1924 when Senators elected or appointed to fill vacancies in the Senate were sworn in, by unanimous consent, prior to the receipt by the Senate of duly issued certificates of election or appointment.

In each case there was transmitted to the Vice President or the Secretary of the Senate a telegram or letter from State officials having authority to issue such certificates that the Senator-elect named had received a majority of the votes cast, and that certificates of election or appointment were being transmitted by mail to the President or Secretary of the Senate.

The case most directly in line with the present Wisconsin situation seems to be that of Senator Willis Smith, who was elected Senator from North Carolina on November 7, 1950, to fill the vacancy in the term expiring January 3, 1955.

The Congress on September 23, 1950, adjourned until November 27, of that year. On the opening day of the adjourned session, namely, November 27, 1950, Mr. Hoey, of North Carolina, presented a letter from the executive secretary of the State Board of Elections of North Carolina showing that Mr. Smith had received a majority of the votes cast for Senator, but that the State board of elections would not meet until the next day and therefore the certificate of election had not been officially issued. He further stated there was no controversy about the matter.

By unanimous consent, the oath was then administered to Mr. Smith. See attached excerpt from the CONGRESSIONAL RECORD.

(NOTE.—Of the 10 Senators referred to, 5 were Republicans, and 5 were Democrats.)

Mr. JOHNSON of Texas. The memorandum reads, in part:

There have been 10 instances since 1924 when Senators elected or appointed to fill vacancies in the Senate were sworn in, by unanimous consent, prior to the receipt by the Senate of duly issued certificates of election or appointment.

As soon as I received this memorandum and the telegram from the Secretary, a copy of which was sent to Hon. RICHARD M. NIXON, President of the United States Senate, I conferred with my colleague, the distinguished minority leader [Mr. KNOWLAND] and asked him to give consideration to the possibility of swearing in the Senator-elect upon his arrival in Washington this evening. My colleague, the minority leader, in his usual courteous manner, agreed to consider the matter, and stated that he would review the precedents.

After reviewing them, he informed me that he thought it desirable that the Senate have on file a communication from the Governor of the State.

The statement made to the press by the Governor, which is in my possession, reads:

We are not going to stand on technicalities. We want Wisconsin to have representation in the United States Senate as soon as possible.

In view of that statement, I urged the minority leader to contact the Governor by telephone, which he was unable to do until about 6:30. I understand from the minority leader that he had a conversation with the Governor by telephone. The Governor was not in his office, but the Governor informed him that he would dispatch a telegram, as requested, and that the telegram would be available early tomorrow.

Therefore, I should like to announce that, although we had hoped, expected, and believed, in line with the precedents, that it would be possible to have the oath administered to our colleague this evening, in view of the fact that it was not convenient or possible for the Governor to send the telegram, and we have not received the telegram, it will not be possible to administer the oath this evening.

It is expected that, upon receipt of the telegram tomorrow morning, the proceedings of the Senate will be interrupted at that point. I should like to inform the press and the friends of the Senator-elect that, when we receive the telegram, we shall ask that the Senate proceed to administer the oath to the Senator-elect.

Mr. KNOWLAND. Mr. President, will the Senator yield to me under the same conditions under which he secured the floor from the distinguished Senator from South Carolina?

Mr. JOHNSON of Texas. I yield.

Mr. KNOWLAND. The distinguished majority leader has made a factual statement of the situation, in which I concur, with this additional observation.

Normally, the procedure in the Senate is for a Senator-elect or a Senator-designate to present himself to take the oath of office, at the same time presenting a certificate duly made out and attested. Normally, such certificate is signed by the governor and attested by the secretary of state. That is the procedure which I believe applies to 90 percent of the cases of Senators sworn in, or perhaps even a far larger percentage. That is the proper and orderly procedure as we normally know it.

It is true, as the majority leader has pointed out, that there have been exceptions to that general rule.

Mr. JOHNSON of Texas. If the Senator will permit an interruption, I should like to point out that there have been 10 such instances in recent years, in which, by consent of all Members of the Senate—and there is no dispute that consent is required—the oath of office was administered previous to the receipt of the certificate by the Senate. The only point I wish to make is that consent is not given.

Mr. KNOWLAND. That is correct; but I also wish the RECORD to be clear, because I think it is an important matter in this body, where precedents are important. So far as I know, with the exception of the single precedent of the North Carolina case, in which the late distinguished Senator Hoey presented his colleague-designate, Senator Willis Smith, the other cases generally followed this pattern: the certificate of election or appointment had been duly made by the governor in the home State, and had been attested to by the secretary of state, and was in the mail.

However, because of the delays in the mail and the passage of time, the governor or the secretary of state—and I have the precedents before me—had sent a telegram stating that the certificate was in order, that it was in the mail, on the way to the Senate, and that the governor or the secretary of state was notifying the Senate to that effect. Under those circumstances, the oath has been administered.

In the case in North Carolina, in which a particular precedent was set, the late Senator from North Carolina rose in the Senate. He had previously filed a certificate of some kind—I have not seen the exact document—in which it was stated that, on the very next day, the official canvassing board would complete the official canvass of the vote, and would mail the official certificate to the Senate. Because of the circumstances existing at that time it was felt highly desirable for the oath to be administered to the Senator-elect, Mr. Smith. There was no contest in that case, just as there is none in this case. In view of the fact that on the next day the official canvass would take place, the Senate accepted the telegram and the statement of the Senator from North Carolina.

This case is slightly different, inasmuch as, as I understand, the official canvass would normally not take place for perhaps a week or 10 days. I do not wish to state that as an absolute fact, but it is my understanding that it is not a case in which the canvassing board would make the official canvass tomorrow. Normally, it would not be made for a week or 10 days.

Under those circumstances, I thought the Senate, for its own protection, in addition to having the telegram from 2 of the 3 members of the canvassing board saying that, on the face of the unofficial returns, Mr. PROXMIRE had been elected—and I know of no one who disputes that fact—we should have a telegram from the Governor of the State.

The same procedure should apply whether the governor be a Republican or a Democrat. He is the highest responsible official in the State. We should have a communication from him stating to us that the canvassing board had furnished him the necessary information, and that as soon as the official canvass was completed, the necessary certificates would be forwarded to the Senate.

I felt that the distinguished Senator-elect from Wisconsin, Mr. PROXMIRE, would not in any way lose any of his rights. It is not as though we were about to adjourn sine die and that an inequity might be experienced by him because he had not taken his oath of office. I informed the distinguished majority leader that that was my feeling in the matter.

I had communicated with the Governor of Wisconsin. I was informed that he was not in Madison but was en route from Madison to Milwaukee. I did get in touch with him, but not until approximately 6 o'clock. As the Senator from Texas has said, the Governor told me that as soon as he returned to Madison—he would be in his office first thing in the morning—he would send a telegram to the Secretary of the Senate, Mr. Felton Johnston, to that general effect. Under all the circumstances, I thought the Senate would be better protected by having a telegram from the Governor, and I said that I would take that position whether the Senator-designate was a Republican or a Democrat.

Mr. JOHNSON of Texas. I am not criticizing the conduct of the minority leader. I should like to suggest only that if he talked to the Governor of Wisconsin at 6 o'clock and the Governor felt at 6 o'clock as he felt at 4 o'clock, that he wanted Wisconsin to have full representation in the United States Senate as soon as possible—and I assume that Western Union is still operating—that in 4½ hours a telegram could have been received from the Governor of Wisconsin. It is not a matter of great moment. We are prepared to wait for a telegram, and the Senator-elect is prepared to wait for it even though it is a little disappointing. The only announcement I would like to make is that when the Governor desires to send the telegram, and follow through on the announcement he made earlier in the day, the Senator-elect is ready and willing to take his oath of office.

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

Mr. JOHNSON of Texas. I yield.

Mr. KNOWLAND. I ask unanimous consent to have printed at this point in the RECORD the other cases which have been referred to heretofore, the predominant number of which are cases in which the certificate had been signed and attested to and were merely being delayed in being forwarded.

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

CREDENTIALS—INSTANCES OF OATH ADMINISTERED TO SENATORS PRIOR TO RECEIPT OF CREDENTIALS

RICE W. MEANS, OF COLORADO

On December 1, 1924, the President pro tempore (Albert B. Cummins, of Iowa) laid before the Senate a telegram from the State canvassing board of Denver, Colo., stating it had convened on that day and canvassed the votes cast at the general election held November 4 for United States Senator to fill the vacancy caused by the death of Senator Nicholson, and that a certificate of election had been issued to Rice W. Means, who received the highest number of votes for the office.

No objection was made to the administration of the oath to Mr. Means. (Senate Journal, 68th Cong., 2d sess., p. 4.)

BENNETT C. CLARK, OF MISSOURI

On February 3, 1933, the President pro tempore (George H. Moses, of New Hampshire) laid before the Senate a telegram from the Governor of Missouri, stating that on that day he had appointed Hon. Bennett C. Clark to fill the vacancy caused by the resignation of Hon. Harry B. Hawes, and that a certificate of appointment had been mailed to Mr. Clark.

Mr. Robinson, of Arkansas (the minority leader), said: "Mr. President, Mr. Clark is present and ready to take the oath of office. I ask unanimous consent that he be permitted to take the oath."

No objection was made, and Mr. Clark thereupon took the oath. (CONGRESSIONAL RECORD, vol. 76, pt. 3, p. 3237.)

CARL A. HATCH, OF NEW MEXICO

On January 3, 1935, the Vice President (John N. Garner, of Texas) laid before the Senate a telegram from the Governor of New Mexico, dated January 2, 1935, and attested by the secretary of state, as follows:

"The PRESIDENT OF THE SENATE OF THE UNITED STATES:

"This is to certify that on the 6th day of November 1934, Carl A. Hatch was duly chosen by the qualified electors of the State of New Mexico a Senator from said State to fill the vacancy in the term ending January 3, 1937, caused by the resignation of Sam G. Bratton.

"Done at the executive office this the 2d day of January 1935.

"Witness my hand and the great seal of the State of New Mexico.

"Certificate follows by airmail."

Mr. Hatch took the oath of office. (CONGRESSIONAL RECORD, vol. 79, pt. 1, p. 4.)

WARREN R. AUSTIN, OF VERMONT

On January 3, 1935, during the presentation of credentials of Senators elected on November 6, 1934, Mr. McNary, of Oregon, said:

"Mr. President, under the statute of the State of Vermont, the canvassing board cannot convene until the 9th of January, as authorized by the legislature. In lieu of the usual credentials, therefore, I offer a certificate of the Secretary of State and the Governor of the State of Vermont showing the election, precinct by precinct and poll by poll, of Warren R. Austin as Senator from the State of Vermont. When the certificate shall be issued and received, I will offer it for filing in the Senate."

Mr. Robinson, of Arkansas, the majority leader, said: "Mr. President, I understand there are a number of precedents for the request of the Senator from Oregon, and also that no question has arisen or has been suggested to the Senate as to the election of the Senator from Vermont. I therefore make no objection."

The oath was administered to Mr. Austin. (CONGRESSIONAL RECORD, vol. 79, pt. 1, p. 7.)

The formal certificate of election was received on January 15 (p. 432).

MON C. WALLGREN, OF WASHINGTON

On December 19, 1940, Mr. Barkley, of Kentucky, presented a telegram from Senator Lewis B. Schwellenbach, of Washington, dated December 16, 1940, stating that he was that day submitting his resignation as Senator to the Governor of Washington, effective at 12 o'clock noon on that day.

Mr. Barkley then presented a telegram from the Governor of Washington, dated December 18, 1940, stating that he had that day appointed Mon C. Wallgren to fill the unexpired term caused by Senator Schwellenbach's resignation, and that certificate of appointment was being sent that day by airmail.

Mr. Barkley asked unanimous consent that Mr. Wallgren be permitted to take the oath of office, and no objection was made. (Senate Journal, 76th Cong., 3d sess., p. 801.)

JAMES OLIVER EASTLAND, OF MISSISSIPPI

On June 30, 1941, Mr. Bilbo, of Mississippi, presented a telegram from the Governor of that State, dated June 30, 1941, addressed to the Secretary of the Senate, stating that he had that day commissioned JAMES OLIVER EASTLAND United States Senator to succeed the late Senator Pat Harrison, and that the commission had been sent by airmail to the President of the Senate.

Mr. Bilbo asked unanimous consent that Mr. EASTLAND be permitted to take the oath of office, and no objection was made. (CONGRESSIONAL RECORD, vol. 87, pt. 5, p. 5745.)

ARTHUR E. NELSON, OF MINNESOTA

On November 18, 1942, Mr. McNary, by unanimous consent, presented a telegram from the secretary of state of Minnesota, as follows:

ST. PAUL, MINN.,
November 18, 1942.

Colonel HALSEY,
Secretary of the Senate, Capitol,
Washington, D. C.:

Minnesota Canvassing Board yesterday declared Arthur E. Nelson duly elected United States Senator, short term, November 3 to January 3. Certificate to that effect special delivery airmail mailed yesterday.

MIKE HOLM,
Secretary of State.

The Vice President (Henry A. Wallace) said: "Is there objection to the Senator-elect from Minnesota taking the oath on the basis of the telegram just read?"

There was no objection, and the oath was administered to Mr. Nelson. (CONGRESSIONAL RECORD, vol. 88, pt. 7, p. 8923.)

ADMINISTRATION OF OATH TO SENATOR-ELECT WILLIS SMITH, OF NORTH CAROLINA, PRIOR TO RECEIPT OF CREDENTIALS

Hon. Willis Smith was elected at the general election on November 7, 1950, to fill out the unexpired term of Senator Broughton, deceased, expiring January 2, 1955. The canvassing board of the State, however, had not met when the Senate reconvened on November 27, but was to meet on the 28th. When the Senate opened, Senator Hoey, of North Carolina, made the following statement and request:

"Mr. President, I have presented to the Secretary of the Senate a certified statement with reference to the election of Willis Smith as United States Senator from North Carolina. The State board of elections does not meet until tomorrow, and the certificate of election has not been officially issued. There is no controversy, and the certificate will be issued tomorrow. I ask unanimous

consent that I may be permitted to file the statement today and the official certification tomorrow, and that the Senator-elect, who is present, may be permitted to take the oath of office."

Senator Wherry, of Nebraska, and Senator Lucas, of Illinois, having stated there was no objection on their part, the oath of office was administered to Mr. Smith by the Vice President. (CONGRESSIONAL RECORD, vol. 96, pt. 12, p. 15772.)

ADMINISTRATION OF OATH TO SENATOR-ELECT DWORSHAK, OF IDAHO, PRIOR TO RECEIPT OF CERTIFICATE OF ELECTION

On November 28, 1950, the following proceedings occurred with reference to the administration of the oath to Hon. HENRY DWORSHAK as Senator-elect from the State of Idaho for the unexpired term ending January 2, 1951:

"Mr. WHERRY. I ask the Senator [Mr. O'MAHONEY] to yield for a matter of personal privilege, that is, for the administration of the oath of office to Hon. HENRY C. DWORSHAK as a Senator from the State of Idaho. I have a telegram in my hand from the Governor of the State of Idaho certifying to his election. The telegram reads as follows:

"BOISE, IDAHO, *November 27, 1950.*

"Hon. LESLIE L. BIFFLE,

"Secretary, United States Senate:

"Idaho official canvass complete show HENRY C. DWORSHAK elected to United States Senate for unexpired term ending January 2, 1955. Certificate in mail.

"C. A. ROBINS,
"Governor, State of Idaho.

"While the official document has not yet been received, yet the Senate gave unanimous consent yesterday to the swearing in of Senator-elect Smith of North Carolina, under the same conditions and, if there is no objection, I should like very much to have the Senator from Idaho sworn in.

"The VICE PRESIDENT. Does the Senator from Wyoming yield for that purpose?

"Mr. O'MAHONEY. I yield.

"The VICE PRESIDENT. If the Senator-elect will come forward, the Chair will administer the oath of office to him.

"Mr. DWORSHAK, escorted by Mr. Wherry, advanced to the desk, and the oath prescribed by law was administered to him by the Vice President." (CONGRESSIONAL RECORD, vol. 96, pt. 12, p. 15919.)

ADMINISTRATION OF OATH PRIOR TO RECEIPT OF CREDENTIALS—RICHARD M. NIXON, OF CALIFORNIA

On December 4, 1950, Mr. KNOWLAND (California) presented a telegram from the Governor of California, stating that on December 1 he had appointed RICHARD M. NIXON a Senator to fill the vacancy created by the resignation of Mr. Downey on November 30, and that on that day he had mailed a certificate of appointment to Mr. NIXON at Washington. The certificate not having been received, on request of Mr. KNOWLAND, the oath was administered to Mr. NIXON by the Vice President (Mr. Barkley), no objection having been made. (CONGRESSIONAL RECORD, vol. 96, pt. 12, p. 16042.)

Mr. KNOWLAND. I quite agree that under the Constitution no State can be deprived of its representation in the Senate without its consent. I also know that the Senate should lean over backward at all times to be sure that each State has its full representation. If we were confronted with a situation in which a yea-and-nay vote was about to be had in the Senate on a vital question, we might have a different situation. I might say that such a situation would deserve different treatment. So far as I know, however, we are engaged in a prolonged discussion, which will last for several hours. Neither Wisconsin nor Mr. PROXMIRE will be deprived of any rights by Mr. PROXMIRE taking his oath of office tomorrow. I believe that the orderly procedures of the Senate and the precedents of the Senate will be better protected by having the highest official in the State, the chief executive of the State, send a telegram to the Secretary of the Senate attesting to the facts.

Mr. JOHNSON of Texas. I merely would add that the Governor of Wisconsin, who earlier in the day announced that he wanted Wisconsin to have the Senator sworn in as early as possible, has found it impossible to send a telegram to the Senate in 4½ hours. I only wish to make it clear to the friends of the Senator-elect and the press that when the Governor of Wisconsin decides to file a telegram with Western Union, we will make an attempt to have the Senator-elect sworn in. The Governor of Wisconsin made the announcement regarding the representation of Wisconsin in the Senate earlier in the day.

I have every reason to assume that he meant what he said. So far as I know, Western Union is still in business.

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

Mr. JOHNSON of Texas. In a moment I shall yield. It has been some 4½ hours since the Governor was contacted. The last time the press contacted the Governor, he said, "We want Wisconsin to have representation in the United States Senate as soon as possible."

I want the people of Wisconsin to know that it was possible for Wisconsin to have a second Senator in the Senate at about 9 o'clock, and that the only reason the oath was not administered to the second Senator was that the Governor had not sent a telegram and that the minority leader had requested that the telegram be in hand.

I cannot agree with the minority leader that we can forecast how many votes we will have tonight. He is a well-informed, as well as a well-advised man. He is also an even-tempered man. But even he was caught off base last night, as was I, by a motion, which was voted on at a late hour.

It may be that while we are waiting on a wire from Wisconsin a Senator will make a motion tonight, and it may be that Wisconsin would like to have its vote recorded. It will be unable to have its vote recorded, not because of the precedent in the Hoey case, but because we are not going to allow the oath to be administered to the Senator-elect until the Governor of the State, who wants full representation of the State in the Senate, sends a telegram. I assume the Governor of Wisconsin left the impression with the Senator from California that he wanted the Senator-elect to take the oath. Is that correct?

Mr. KNOWLAND. The Governor made it perfectly clear that he was going to send the telegram when he got back to his office in Madison in the morning. He asked the minority leader if that would be satisfactory to him, and the minority leader informed him that in his judgment it would be.

Mr. JOHNSON of Texas. It is satisfactory to the minority leader, and I am sure it is satisfactory to the Governor. I should like to point out that it is quite disappointing to a man who has received a vote of confidence from his people and who has come here, in the expectation the oath would be administered to him this evening. I am sorry it is necessary to have the swearing in go over until tomorrow, but apparently that is all that can be done. I hope that at the earliest time in the morning when Western Union opens for business, and when the Governor decides that he can confirm what he said to the press, a telegram may be forthcoming.

Mr. KNOWLAND. Mr. President, I am frankly surprised a little——

Mr. JOHNSON of Texas. I ask the Senator to wait a moment. The Senator from Tennessee [Mr. KEFAUVER] has been on his feet. I first yield to him.

Mr. KEFAUVER. I know that quite a number of people came from Wisconsin with the Senator-elect and that many of his friends are very eager to be here at the time the Senator-elect takes the oath. Does the minority leader have any indication when the Governor will send the telegram, or when the minority leader will recognize the fact that Mr. PROXMIRE has been elected in Wisconsin?

Mr. JOHNSON of Texas. I believe the minority leader recognizes that fact already. I believe the minority leader wants to be cooperative. I think it is the minority leader's expectation that the Senator-elect will be sworn in by noon tomorrow. That is in accordance with the conversation he had with me earlier. If that is not correct, I will be glad to have him correct it. I yield to the minority leader for that purpose.

Mr. KNOWLAND. I will say to the majority leader that we expect to have a telegram in the morning, and I see no reason why the oath could not be administered around noon tomorrow, or whenever the telegram is received.

If the Senator will extend the courtesy of yielding to me further, I should like to say that I am a little surprised at the Senator's statement. I do not believe any criticism is due the Governor of Wisconsin. I called him at 6 o'clock. I was not notified of this until about 4 o'clock this afternoon, or perhaps a little later, and I immediately tried to reach the Governor at Madison. He had left the capital for Milwaukee. I finally did reach him, and I explained the situation to him. I thought that under the procedures of the Senate and under the precedents I had read, the Senate of the United States, as an institution, was entitled to have from the highest executive officer of the State a telegram of the type I have described. I think that is good procedure.

Mr. JOHNSON of Texas. Mr. President——

Mr. KNOWLAND. The Senator had yielded to me.

Mr. JOHNSON of Texas. I had yielded to the Senator, but I should like to say at this point that I agree with the Senator that we are entitled to receive a telegram. I express the hope that the Governor will go ahead and dispatch it.

Mr. KNOWLAND. If the Governor of the State is now away from the capital, but if he is going to be in his office in

the morning, I do not believe it is either fair or equitable to criticize him. If any criticism is due in this regard, it is due to the minority leader. I suggested to the Governor that I thought it would be perfectly appropriate, when he returned to his office at Madison in the morning, for him to send the telegram at that time. The people of Wisconsin themselves delayed some 4 months in filling this vacancy. There is no undue delay in this regard. I think the procedure is in keeping with the precedents of the Senate, and I do not think it has warranted any criticism of the Governor of Wisconsin. If the Governor dispatches the telegram in the morning, as I expect he will do, I believe he will not be subject to any criticism in that regard. I think the Senate of the United States, in the swearing in of a new Member of this body, who will represent, in part, one of the 48 States in the Union, is entitled to more than a news ticker slip or more than a statement by two of the three members of an official board. We do not have the unanimous decision of the board, because I understand the secretary of state was not available when the other two members met and sent the telegram which has been referred to. Under the circumstances, I think we are entitled to receive from the chief executive of the sovereign State of Wisconsin a telegram such as the one I have indicated. I hope in the future this discussion will be helpful to the Senate, and I hope, whether the vacancy is a Republican or a Democratic vacancy, and whether the vacancy is in the North, South, East, or West, that the Senate will protect its own prerogatives and will at least have from the chief executive of the State an indication that is in keeping with the laws and the general customs of the State.

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

Mr. JOHNSON of Texas. Mr. President, I should like to reply to the Senator from California.

First of all, no one is criticizing the Governor. We are merely pointing out that at 6 o'clock the Governor, pursuant to a suggestion I made a little after 4 o'clock that the Senator-elect would like to take the oath this evening, was so notified, and at 11 o'clock the Senate has not received the telegram which had been requested. That is a matter completely within his jurisdiction. I do not criticize him.

I should like to point out that the Senator-elect was elected. The Senator elect is present and ready to take the oath. The Senator from California was notified to that effect, and a special request was made that he attempt to follow the last precedent we had, and permit the Senator-elect to take the oath. He said he wanted to talk to the Governor. He did talk to him at 6 o'clock. I do not know what transpired in that telephone conversation.

I make no criticism of the minority leader or the Governor. There are many people who wanted to know when the swearing-in ceremony was going to take place. I attempted to announce to the Senate that it could not take place tonight, for the reasons given. It may very well be that the Governor was in touch with the telephone company, but was unavailable to Western Union. It may be that in his good judgment he preferred the telegram to be sent tomorrow. I do not know and I do not particularly care. I merely want the RECORD to show that we made the request, that we followed the precedents of the Senate, that we asked the consideration of the minority leader and the Governor of the State, I do not ask that the Senator-elect be administered the oath until the Governor has been heard from; but I hope he will be heard from in the morning; and if he is, when he is, I shall ask that the oath be administered.

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

Mr. JOHNSON of Texas. I yield to the Senator from California.

Mr. KNOWLAND. I have tried to state the situation as clearly as I could. I have stated the reasons, which I believe to be sound. The fact of the matter is that in all the 10 precedents mentioned by the majority leader, in all of which the certificate had been signed by the Governor, had been attested to by the secretary of state, and was actually in the mail, on the way to Washington, and the Governor of the State or the secretary of state had sent a telegram—even under those conditions the only way a Senator-elect or a Senator-designate could take his oath of office would be by the unanimous consent of the 95 other Senators of this body.

I have tried to cooperate with the Senator from Texas and told him as minority leader I would do everything possible to facilitate the taking of the oath tomorrow by the Senator-elect from the State of Wisconsin.

Mr. JOHNSON of Texas. Does the Senator object to my announcing that fact?

Mr. KNOWLAND. No; I do not, but I believe the criticism of the Governor is unwarranted.

Mr. JOHNSON of Texas. I am not criticizing the Governor.

Mr. KNOWLAND. I leave that to the record. I believe the Senator has.

Mr. JOHNSON of Texas. The Senator can leave it to the record. The Governor said, "We want Wisconsin to have representation in the United States Senate as soon as possible." I submit the Senator-elect is in the Chamber, that the Governor was notified some 5 hours ago, that Western Union is still operating, and Wisconsin is still deprived of a vote in this body. Let the record speak for itself; and if there is a Senator here who can speak with cool authority when the roll is called, let him stand up.

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

Mr. JOHNSON of Texas. Yes, I yield to the Senator from Vermont.

Mr. AIKEN. I merely wanted to say there may be an explanation for this delay. I was Governor of a State for 4 years, and I do not believe that any governor would send a telegram of the type which is expected to be received from the Governor of Wisconsin until the telegram had been carefully gone over by the attorney general of the State, to make sure that the Governor had the right to send such a telegram and that it complied with the laws of the State. I think that is possibly the explanation.

Mr. JOHNSON of Texas. I am confident there are explanations. I simply want the country to be on notice that tomorrow, when the Governor of Wisconsin decides to send a telegram which says in effect what he said to the press early today, the oath will be administered. I also point out to my delightful friend from Vermont, since he is concerned with the Attorney General's opinion, that the Attorney General is one of the persons who signed the telegram attesting to the election of the Senator, and evidently he is a member of the State board of canvassers.

Mr. AIKEN. I do not know but that the Attorney General has already gone over a proposed telegram.

Mr. JOHNSON of Texas. He has. He has telegraphed the Vice President to that effect, and I hold in my hand a telegram from the State board of canvassers.

Mr. AIKEN. I would not expect a governor to send a telegram of that kind without having it scrutinized by the Attorney General, to make sure the governor had the right to send such a telegram, and that the wording was correct. I know as governor I would not do otherwise.

Mr. JOHNSON of Texas. I would not know what the Governor of Wisconsin would wish to require before he sent such a telegram. I did not have a conversation with him. I do know the Attorney General telegraphed. I do know that the Governor has stated publicly that he does not want to stand on technicalities. He wants Wisconsin to have full representation in the United States Senate as soon as possible; and I submit that if we follow the most recent precedent of the Senate in the Hoey case, the State of Wisconsin would now have full representation by two Senators. When the State has it I think will depend upon when the telegram arrives. The only purpose of the Senator from Texas was to make a simple announcement, in line with the Hoey precedent.

The Senator-elect is present, ready to take the oath; and except for the fact that the minority leader wanted a telegram from the Governor, and except for the fact that the Governor was away from his office, and except for the fact that he talked to him at 6 o'clock and he had not sent the telegram, the oath would have been administered by now. When that will come about, I do not know. I hope it will be at an early date.

I now yield to my friend from California.

Mr. KNOWLAND. Mr. President, at this point in the RECORD I ask unanimous consent that there be printed rule VI relative to the presentation of credentials, and the form of credentials which are expected of a Senator-elect or a Senator-designate of the United States.

Mr. JOHNSON of Texas. Mr. President, I have no objection to that. I do not wish to make the point that unanimous consent is required for the swearing in ceremony. We all know that it is. The point I want to make to my gracious friend from California is that unanimous consent has not been given.

The PRESIDING OFFICER. Is there objection?

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

RULE VI

PRESENTATION OF CREDENTIALS

1. The presentation of the credentials of Senators elect and other questions of privilege shall always be in order, except during the reading and correction of the Journal, while a question of order or a motion to adjourn is pending, or while the Senate is dividing; and all questions and motions arising or made upon the presentation of such credentials shall be proceeded with until disposed of.

2. The Secretary shall keep a record of the certificates of election of Senators by entering in a well-bound book kept for that purpose the date of the election, the name of the person elected and the vote given at the election, the date of the certificate, the name of the governor and the secretary of state signing and countersigning the same, and the State from which such Senator is elected.

On January 4, 1934, the Senate agreed to the following:

Resolved, That, in the opinion of the Senate, the following are convenient and sufficient forms of certificate of election of a Senator or the appointment of a Senator to be signed by the executive of any State in pursuance of the Constitution and the statutes of the United States:

"CERTIFICATE OF ELECTION

"To the PRESIDENT OF THE SENATE OF THE UNITED STATES:

"This is to certify that on the — day of ———, 19——, A ——— B ——— was duly chosen by the qualified electors of the State of ——— a Senator from said State to represent said State in the Senate of the United States for the term of 6 years, beginning on the 3d day of January, 19——.

"Witness: His excellency our governor ———, and our seal hereto affixed at ——— this — day of ——, in the year of our Lord 19——.

"By the governor:

"C——— D———,
"Governor.

"E——— F———,
"Secretary of State."

"CERTIFICATE OF APPOINTMENT

"To the PRESIDENT OF THE SENATE OF THE UNITED STATES:

"This is to certify that, pursuant to the power vested in me by the Constitution of the United States and the laws of the State of ———, I, A——— B———, the governor of said State, do hereby appoint C——— D——— a Senator from said State to represent said State in the Senate of the United States until the vacancy therein, caused by the ——— of E——— F———, is filled by election as provided by law.

"Witness: His excellency our governor ———, and our seal hereto affixed at ——— this ——— day of ———, in the year of our Lord 19——.

"By the governor:

"G——— H———,
"Governor.

"I——— J———,
"Secretary of State."

Resolved, That the Secretary of the Senate shall send copies of these suggested forms and these resolutions to the executive and secretary of each State wherein an election is about to take place or an appointment is to be made in season that they may use such forms if they see fit. (Senate Journal 17, 73–2, January 4, 1934.)

Mr. KEFAUVER. Mr. President, will the Senator from Texas yield to me?

The PRESIDING OFFICER. Does the Senator from Texas yield to the Senator from Tennessee?

Mr. JOHNSON of Texas. I yield.

Mr. KEFAUVER. Of course, it is customary for the senior Senator from the State in question to escort a Senator-elect to the desk, to take the oath of office.

When the Senator-elect arrived, I saw the senior Senator from Wisconsin [Mr. WILEY] ready to escort him to the desk. Is there any question in that connection?

Mr. JOHNSON of Texas. There is not the slightest question, so far as I know.

The only observation I should like to make is that many questions were raised about when the Senator-elect would be sworn in. I attempted to announce that the Senator-elect was present and was willing to be sworn in whenever unanimous consent could be obtained. The obtaining of unanimous consent was dependent upon the request made of the Governor at 6 p. m. We thought the telegram from him would be obtained immediately, because of the announcement the Governor had made at 4 o'clock. However, that telegram has not been forthcoming.

Therefore, I should like to have the Senate be on notice and the Senator-elect be on notice and his friends be on notice that when the telegram arrives, the Senate will proceed to have the oath of office administered, if unanimous consent is then given.

We realize that unanimous consent is required, and that any one Senator can then object.

Therefore, I am not now making a unanimous-consent request, because I have been informed by the minority leader that unless and until the Governor sends the telegram, unanimous consent will not be given. I have also been informed that the telegram will be here before noon, tomorrow.

The Senator-elect and his friends may be on notice that when the telegram arrives, we shall take judicial notice of it, and shall proceed to ask that the oath be administered.

Mr. President, I thank my friend, the Senator from South Carolina [Mr. THURMOND], for his courtesy. I trust that he appreciates the situation which prompted our unusual request of him.

Mr. THURMOND. Mr. President, I have been very glad to yield.

AUTHORIZATION FOR SUBCOMMITTEE ON DISARMAMENT TO SUBMIT A REPORT SUBSEQUENT TO SINE DIE ADJOURNMENT

Mr. HUMPHREY. Mr. President, I ask unanimous consent to submit a report of the Subcommittee on Disarmament following the adjournment of the Congress.

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

PERSONNEL POLICIES IN THE DEPARTMENT OF DEFENSE

During the delivery of Mr. THURMOND'S speech,

Mr. GOLDWATER. Mr. President, the most serious threat to the potential of the United States to defend itself through the strategy of retaliation, or even the strategy of long defense, is the constant drain on our trained manpower. I have discussed this problem with hundreds of enlisted men and officers during my annual tours of duty with the Air Force and during the many visits I make to posts in the course of a year. I find, almost universally, that men do not want to leave the service, but they are forced to do it for economic reasons. In my opinion, the Cordiner report is the solution to this problem, inasmuch as it is based upon the recognition of skill and ability, instead of longevity or rank. Incentive has been the driving force in the American economy. It should likewise be the driving force in the professional Army—in the Navy, Marines, and Air Force.

Hearings on S. 2014 have been started.

This urgent need to retain the right kind of personnel in our Armed Forces is the most pressing issue in the entire realm of national defense. The chiefs of the uniformed services and the Chairman of the Joint Chiefs of Staff, as well, have stated this to be true. They recognize the problem as the one most basic to providing in the most economical and sensible way the kind of efficient defense we must have. No other single problem reaches in magnitude the gravity of this problem of manning our Armed Forces with the caliber of leaders and technicians so necessary for the protection of our country.

These hearings and the testimony given in them will do more than anything has yet done to arouse the people to the want for new and realistic personnel policies within the Department of Defense. The people of this country must be given the means to understand the problems confronting a serviceman, to know those things which weigh against his decision to stay in the service. Once they know, they will rush to support measures aimed at alleviating the plight in which the serviceman now finds himself.

To adequate housing, limited fringe benefits, inequitable pay, and a general lack of professionalism and organizational esprit de corps are working against our service members. Improved housing, readjusted pay scales and the inauguration of remedial personnel policies will cause the esprit to rise and the high rate of personnel turnover to taper off. Not only will efficiency improve but many billions of dollars will be saved.

I am appalled at the recent statistics published on the resignations among the graduates of West Point and Annapolis. These are the men in whom we have invested large sums of money for training. Yet they are resigning—leaving the services in large numbers. Just recently the newspapers carried the story of West Point's class of 1954. Exactly 3 years after their graduation, and on the first instance of their becoming eligible, about 10 percent of the graduates of that class submitted their resignation. Undoubtedly, others of the class will follow. Why are they leaving the service, and why is the investment of more than $2 million spent in training these 48 young officers being lost? The answer is sim-