The legislative clerk called the roll, and the following Senators answered to their names:

[No. 12 Leg.]

Allen	Ervin	Nelson
Baker	Griffin	Pastore
Bentsen	Hathaway	Sparkman
Byrd, Robert C.	Helms	Symington
Cranston	Hruska	Talmadge
Domenici	Jackson	Tower
Eagleton	Mansfield	

The PRESIDING OFFICER. A quorum is not present.

Mr. MANSFIELD. Mr. President, I move that the Sergeant at Arms be directed to request the presence of absent Senators.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Montana.

The motion was agreed to.

The PRESIDING OFFICER. The Sergeant at Arms will execute the order of the Senate.

After some delay, the following Senators entered the Chamber and answered to their names:

Abourezk	Eastland	McIntyre
Aiken	Fannin	Metcalf
Bartlett	Fulbright	Moss
Beall	Gurney	Muskie
Bellmon	Hansen	Nunn
Bennett	Hart	Pell
Bible	Hartke	Percy
Biden	Haskell	Proxmire
Brock	Hatfield	Randolph
Buckley	Hollings	Roth
Burdick	Huddleston	Schweiker
Byrd, Harry F., Jr.	Hughes	Scott, Pa.
	Humphrey	Scott, Va.
Cannon	Inouye	Stevens
Case	Javits	Stevenson
Chiles	Kennedy	Taft
Clark	Long	Tunney
Cook	McClellan	Weicker
Cotton	McClure	Williams
Curtis	McGee	Young
Dole	McGovern	

Mr. ROBERT C. BYRD. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Idaho (Mr. CHURCH), the Senator from Washington (Mr. MAGNUSON), the Senator from Minnesota (Mr. MONDALE), the Senator from New Mexico (Mr. MONTOYA), the Senator from Connecticut (Mr. RIBICOFF), and the Senator from Alaska (Mr. GRAVEL) are necessarily absent.

I further announce that the Senator from Louisiana (Mr. JOHNSTON) is absent on official business.

I also announce that the Senator from Mississippi (Mr. STENNIS) is absent because of illness.

Mr. GRIFFIN. I announce that the Senator from Massachusetts (Mr. BROOKE), the Senator from Colorado (Mr. DOMINICK), the Senator from Hawaii (Mr. FONG), the Senator from Arizona (Mr. GOLDWATER), the Senator from Oregon (Mr. PACKWOOD), the Senator from Kansas (Mr. PEARSON), and the Senator from South Carolina (Mr. THURMOND) are necessarily absent.

The Senator from Maryland (Mr. MATHIAS), the Senator from Ohio (Mr. SAXBE), and the Senator from Vermont (Mr. STAFFORD) are absent on official business.

The PRESIDING OFFICER. A quorum is present.

ENROLLED JOINT RESOLUTION PRESENTED

The Secretary of the Senate reported that on today, February 7, 1973, he presented to the President of the United States the enrolled joint resolution (S.J. Res. 42) to extend the life of the Commission on Highway Beautification established under section 123 of the Federal-Aid Highway Act of 1970.

ESTABLISHMENT OF SELECT COMMITTEE TO INVESTIGATE AND STUDY CERTAIN ACTIVITIES IN THE PRESIDENTIAL ELECTION OF 1972

The Senate continued with the consideration of the resolution (S. Res. 60) to establish a select committee of the Senate to conduct an investigation and study of the extent, if any, to which illegal, improper, or unethical activities were engaged in by any persons, acting individually or in combination with others, in the Presidential election of 1972, or any campaign, canvass, or other activity related to it.

The PRESIDING OFFICER. The question is on the adoption of the resolution.

Mr. BAKER. Mr. President, I have an amendment at the desk, which I ask the clerk to report.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read the amendment, as follows:

On page 2, line 11, strike "five" and insert in lieu thereof "six".

On page 2, line 14, strike "two" and insert in lieu thereof "three".

Mr. BAKER. Mr. President, this amendment to the resolution now pending before the Senate simply provides that the select committee constituted by the resolution would consist equally of three Republicans and three Democrats.

On yesterday, in colloquy with the distinguished senior Senator from North Carolina, I indicated that I felt that a select committee was the preferable way to constitute a board of inquiry of the Senate; that I thought it was superior to one of the standing committees doing this inquiry. I thought it offered a greater opportunity to illuminate all the facts attendant on the circumstances of the recent Presidential campaign and other political activities.

I indicated, as well, that the precedent for having an equal division in select committees and special committees of the Senate in this respect was well established, and that I believed we would enhance and reinforce the position of absolute objectivity and freedom from personal consideration if we were to back that precedent in this instance.

I also indicated yesterday that I have no doubt whatever about the objective manner, the calm, cool, and judicial manner, in which the distinguished senior Senator from North Carolina will conduct this inquiry as chairman of the select committee if he is chosen as chairman of the select committee. This amendment in no way impugns his standing in that respect, nor does it suggest that I have any fear that the majority members of the committee, nor the staff, for that matter, will engage in a partisan witch hunt.

On the other hand, Mr. President, we must face the fact that, inevitably, this inquiry will be fraught with political implications. That has been the case previously on other occasions, and the Senate has dealt with it, I think, in a very commendable way.

Precedents that occur to me in that respect go back at least to 1954, when there was a select committee of the Senate to investigate the McCarthy allegations. A resolution was adopted by the Senate in 1954, constituting a committee, on the basis of equal distribution, of three Republicans and three Democrats.

More recently the Senate Standards and Conduct Committee, which, of course, is a committee of very high sensitivity, dealing with the conduct of the members of this body, was constituted on the basis of three Republicans and three Democrats.

In the other body, the House of Representatives, in their allocation of membership to the House Standards of Official Conduct Committee, has followed the same principle, when it allocated a membership on the basis of six members for each party.

In the Select Committee on Improper Activities in the labor-management field in 1957, the same formula was followed with an allocation on the basis of four members for each party.

More recently there was created a special Senate Committee on the Termination of the National Emergency. That Special Committee is made up of equal numbers of Republicans and Democrats, four of each party.

The special committee to study questions related to secret and confidential documents, which was created in S. Res. 13 in the 93d Congress, is made up of five Republicans and five Democrats.

I feel that as we launch into a broad, sweeping inquiry, far broader than any judicial inquiry can be, certainly more comprehensive and broader than any criminal inquiry can be, and as we go into legislative type hearings as distinguished from judicial hearings where we are encumbered with the Federal rules of civil procedure or the rules of criminal procedure, it is incumbent on us that we guard against any question on partisanship in the inquiry on which we are about to embark. It is for that reason that I offer this amendment to change the composition of the committee from three Democrats and two Republicans to three Democrats and three Republicans, with the avowed and expressed hope that if that happens, the distinguished senior Senator from North Carolina will be chosen and will agree to accept the assignment as chairman of the committee.

Mr. President, I am willing at this time to yield the floor.

Mr. ERVIN. Mr. President, I am strongly opposed to this amendment. Indeed, if this amendment were agreed to, it would mean that the resolution would carry within its provisions the seeds of its own incapacity to enable the performance of the functions which the resolution would assign. I will come back to that in a minute.

Mr. President, I ask for the yeas and nays on the amendment.

The yeas and nays were ordered.

Mr. ERVIN. Mr. President, I have studied the precedents, and virtually without exception every select committee

that has been established since 1947 has been divided between the majority party in the Senate at the time and the minority party in the Senate at the time so as to give the majority party a larger representation in numbers than that of the minority party. For example, in the second session of the 80th Congress, they established a special committee—which is a name they used to give to select committees—to investigate the national defense program.

The membership of that committee consisted of six Republicans and four Democrats.

The same session established a Special Committee To Study the Problems of American Small Business. The membership of that committee consisted of seven Republicans and five Democrats.

The same Senate established a Special Committee To Reconstruct the Senate Roof and Skylights and Remodel the Senate Chamber. The membership of that committee consisted of three Republicans and two Democrats.

If we are going to have a majority and a minority party on the Select Committee To Study the Reconstruction of the Senate Roof and Skylights and Remodel the Senate Chamber, where there are present no political overtones of any kind, we certainly should have a division which would enable the committee to be established by Senate Resolution 60 to function in the event of disagreement between the members of two different parties on the committee.

During the 81st Congress, they continued the Select Committee on Small Business with an assigned membership of eight Democrats and five Republicans.

In the 82d Congress, they retained the Special Committee on the Reconstruction of the Senate Roof and Skylights and Remodeling of the Senate Chamber with a membership of three Democrats and two Republicans.

They established in that session a Select Committee on Small Business, with a membership consisting of seven Democrats and six Republicans. They also established a Special Committeee To Investigate Organized Crime in Interstate Commerce, with a membership consisting of three Democrats and two Republicans.

During the 84th Congress, the Select Committee on Small Business was continued with a membership consisting of seven Democrats and six Republicans. They also established at that time a Special Committee on the Senate Reception Room which consisted of three Democrats and two Republicans. Why they should have any difference where there is no great likelihood of anything more important to discuss except how the reception room should be decorated or whose pictures should hang on the wall, I do not know. There is no room for disagreement. Well, some could disagree on that, I guess.

In the 85th Congress, they continued that Select Committee on Small Business with a membership of seven Democrats and six Republicans.

During the 86th Congress, the Senate continued the Select Committee on Small Business with a membership of 11 Democrats and six Republicans. They established a Select Committee on National Water Resources. Surely there is not much room for disagreement about water, unless we are going to have a little bourbon or Scotch to go with it. This committee consisted of 10 Democrats, with one other Democrat as an ex-officio member of the committee, and six Republicans.

The Senate established, in that same Congress, a Special Committee on Unemployment Problems. That committee consisted of six Democrats and three Republicans.

In the 87th Congress, the Select Committee on Small Business was continued with a membership of 11 Democrats and six Republicans constituting its membership.

During the same Congress, the Senate established a Special Committee on Aging which consisted of 14 Democrats and seven Republicans.

During the 88th Congress, the Senate continued the Select Committee on Small Business with 11 Democrats and six Republicans. It also continued the Special Committee on Aging with 14 Democrats and seven Republicans.

During the 89th Congress, the Senate continued the Select Committee on Small Business with 11 Democrats and six Republicans, and the Special Committee on Aging with 14 Democrats and seven Republicans.

Then, during the 90th Congress, the Senate continued the Select Committee on Small Business with 11 Democrats and six Republicans, and the Special Committee on Aging with 13 Democrats and seven Republicans.

During the 91st Congress, the Senate continued the Select Committee on Small Business with 10 Democrats and seven Republicans, established a Select Committee on Nutrition and Human Needs with eight Democrats and five Republicans, and continued the Special Committee on Aging with 11 Democrats and nine Republicans.

During the 92d Congress, the Senate established a Select Committee on Equal Educational Opportunity with a membership composed of nine Democrats and six Republicans. During the same Congress, the Senate continued the Select Committee on Nutrition and Human Needs with eight Democrats and six Republicans constituting its membership It also continued the Select Committee on Small Business with nine Democrats and eight Republicans, and the Special Committee on Aging with 11 Democrats and nine Republicans.

I think the records will show that the membership of these select committees was composed of Democrats and Republicans proportionate to the respective membership in the Senate of Members of the two parties. It is true that there have been, during recent years, some four committees where the membership was equally split. Three of those committees dealt with matters concerning the internal affairs of Congress and matters relating to the Senate itself.

In other words, we had the Select Committee on Standards and Conduct, the membership being equally divided between the two parties having representation in the Senate. There is in that committee virtually no room for tie votes or differences of opinion, because Members of the Senate of both parties certainly entertain virtually the same opinions in respect to what constitutes ethical conduct on the part of a Senator of the United States. So that is totally unlike the select committee which is proposed to be established by the pending resolution. The pending resolution proposes to authorize an investigation and study, not of anything relating to the Senate exclusively, but of matters relating to the Presidential election of 1972, a matter lying outside the scope of senatorial activities or senatorial conduct.

A second select committee of the four that I have discovered which had equal division in the party membership of their members was the Special Committee on the Reorganization of Congress. That had reference to the internal affairs of Congress and how they should be conducted, and there were no possible partisan implications in that committee. It had nothing to do with anything outside of the Congress itself.

The third select committee where the membership was equally divided was the Watkins Committee which was appointed to study the question of whether Senator Joseph McCarthy, of Wisconsin, should be censured for conduct unbecoming a Senator. Manifestly, that was a matter within the family of the Senate itself, and was dealt with by an equally divided select committee, as should have been done.

The other ilustration of a select committee, whose function did not relate to the internal affairs of the Senate or Congress as did the other three, was a Select Committee To Investigate Improper Activities in Labor-Management Relations. The membership of that committee was equally divided, but there were two reasons for that, both totally unlike the reason which prompts the introduction of this resolution.

The Subcommittee on Permanent Investigations of the Committee on Government Operations began an investigation of its own accord into certain activities of officers of the Teamsters Union on the West coast. The Committee on Labor and Public Welfare claimed that the permanent Subcommittee on Investigations was trespassing on its legislative domain, and a controversy arose in the Senate with respect to which of the two committees had jurisdiction of the investigation into alleged improper conduct in the labor and management field. So, to reconcile the conflicting claims of jurisdiction and to proceed with the investigation which circumstances indicated needed to be made, a compromise was agreed upon whereby they established a select committee composed of an equal number of Senators from the permanent Subcommittee on Investigations of the Committee on Government Operations and from the Committee on Labor and Public Welfare. That was the reason why there was an equal number of Senators from each committee.

There was another consideration:

Everyone recognized that labor had then, as it has now, a powerful political clout, and the membership of the two parties in the Senate was divided by only about one Senator. The Democratic Party had perhaps a majority of one Senator, and it was recognized that if there was any hope of securing the adoption of a resolution establishing a Select Committee To Investigate Improper Activities in the Labor and Management Field, there would have to be strong bipartisan support from both parties. So it was agreed that not only would they have an equal division of membership between the Subcommittee on Permanent Investigations and the Committee on Labor and Public Welfare, but in order to assure strong bipartisan support for the resolution establishing the select committee, the membership should be apportioned in equal numbers between the two political parties in the Senate. That is the explanation for that. That is the only select committee I can find, outside of the select committee dealing with internal affairs of the Senate and dealing with the internal affairs of Congress, that has been set up since about 1947. I have not had the opportunity to investigate the conditions before that.

This is, as the distinguished Senator from Tennessee has said, a case which might, unless the select committee acts circumspectly, have some political overtones. There has been only one other similar select committee set up during the life of this generation, so far as I can find, and that is what we have called, popularly, the Committee To Study the Controversy Between Senator McCarthy and the Army. That select committee was set up during the time when a majority of the Members of the Senate adhered to the Republican Party. That was a select committee which investigated charges which had considerable overtones, because of the charges which had been leveled against Secretary Stevens and the Department of the Army.

So when the Senate established the select committee to investigate those charges, it established a Special Committee on Investigations which had a membership composed of four Republicans, Karl Mundt, Everett Dirksen, Charles Potter, and Henry Dworshak; and three Democrats, JOHN L. MCCLELLAN, HENRY M. JACKSON, and STUART SYMINGTON.

The select committee was appointed to investigate an area more similar to the matter covered by this resolution than in any other area in the modern history of the Senate. The precedent set by the Republicans, then a majority, in that case, of establishing a select committee consisting of four Republicans and three Democrats is still the precedent we should follow in this case.

The reason I am opposed to this amendment is that I do not think the Senate should pass a resolution establishing a select committee which embodies in its provisions a provision which would possibly make it difficult, or even impossible, for the select committee to perform its functions. I would hope that any investigation which might be conducted by a select committee under this resolution would try to ignore political considerations.

I am certain that all the Members on both sides of the aisle share that desire. I pledge myself to do everything within my power to see that political overtones can be eliminated from any investigation and study under this resolution, to the maximum extent possible.

As I said yesterday, I take the business of judging my "fellow travelers to the tomb" very seriously, and I will do everything in my power, if I should be made chairman of this select committee, to see that the subcommittee judges those who may be charged with illegal, improper, or unethical conduct in respect of the elections, or any campaign, or canvass, with the cool neutrality of the impartial judge.

But I would dislike to be chairman of a committee which did not have the capacity within itself to make the decisions which it has to make to carry out the duties imposed on it. That would be precisely the effect this amendment would do. This amendment would provide a mechanism by which it is quite possible that the select committee could never reach a majority decision in respect to what investigations it should conduct or what subpenas should be issued, or what the committee staff should do.

I just think it would be the height of folly for the Senate to adopt a resolution establishing a select committee with provisions in the resolutions which could—I do not say they will—but they certainly create the possibility that the committee would be unable to reach any decision with respect to the matters necessary to enable it to perform the functions which the resolution would impose upon it.

For these reasons, I know that it is not the motive of my good friend from Tennessee to have a stalemate, or to have a committee which would be powerless to make a decision and, yet, that is the possibility created by this amendment.

I, therefore, appeal to the Senate that if it wants a select committee which would certainly have the power to function instead of being bogged down in indecision and chaos, to reject this amendment.

Mr. TOWER. Mr. President, it appears to me that the weight of the argument made by the distinguished Senator from North Carolina is to the effect that because this deals with a partisan matter on which there are likely to be partisan decisions, the absolute majority control of the committee should be in the hands of the majority party.

I think that this is the kind of situation where, because there are partisan considerations involved for the committee to act in what appears to be an objective way, the representation should be absolutely balanced.

What has been raised here is the fundamental question about what kind of precedent we may set.

Is the Senate going to function as a vehicle for the majority party in that body to launch investigations against actions allegedly committed by members of the minority party, with the pregnant possibility that some sort of political benefit will accrue to the majority party? I think that this is a unique kind of case, one in which we should pick our way very carefully because we may be setting precedents here.

At some point in time, conceivably, the Republicans could become the majority in this body. That is a day much to be wished for on the part of many of us, some 43 of us; but I will not comment on the prospects of that at the moment. But it is conceivable that the Republicans could use this precedent in an effort to mount some sort of investigation against alleged acts of members of the Democratic Party, in an effort to embarrass that party.

I do not suggest for 1 minute that this is the motive of my friend of North Carolina. I assign to him only the loftiest motives. I know that he has a judicial objectivity that compels him to want to get at the truth so that justice may be done. But what we must understand here is that we are setting a precedent; and in setting a precedent for Senate inquiry into political business—albeit, business that is of a shady character—we certainly should establish the principle of bipartisanship, so that we can be assured of some degree of objectivity.

There were alleged incidents in the 1954 and the 1968 campaigns, incidents of electronic surveillance, on the part of Democrats against Republicans. There was no public outcry because it was not generally known. What happened this time is that the miscreants got caught, and therefore the matter is one of public knowledge, and indeed should be public knowledge, and indeed those who perpetrated the alleged crime of electronic surveillance of the Democratic National Headquarters should be apprehended, should be tried, should be punished; and no one on this side of the aisle disagrees with that.

No one on this side of the aisle wants to mount any kind of dilatory activity to prevent the adoption of this resolution. We do not face such an investigation with any trepidation. Our hearts do not tremble at the thought of what might be revealed. Our hands and our consciences are clean. The matter is currently being pursued in litigation, and those responsible are being tried and are being punished.

If we want to convey to the people of the United States the idea that this is a bipartisan inquiry that ultimately might lead to legislation to prevent this kind of thing or better enforcement to prevent it, then it should be bipartisan and there should be no doubt, just as when the conduct of a Democratic Member of the Senate was called to question, it was conceived to be wise and just that an absolutely bipartisan committee look into the matter and make its recommendations to the Senate. There was no problem of tie votes in that committee; there was no problem of the committee being unable to do its business. It functioned; it made its report; the Senate acted on

that report; and a vast and overwhelming majority of the Senate agreed in part with that report, and I do not anticipate any such difficulty this time.

But whatever difficulties might result in a committee of even membership as to party affiliation does not begin, in my estimation, to rival the evil that would result from our setting a precedent here that a partisan majority of a select committee could in the future look into the activities of the minority party.

Mr. SCOTT of Pennsylvania. Mr. President, may I be recognized?

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SCOTT of Pennsylvania. Mr. President, the distinguished Senator from Texas has made a presentation with which I believe it would be very difficult to find fault.

The proposal of the minority here is that we are helpless in the hands of the majority unless we are treated with scrupulous fairness. In this matter the choice is simply one between the conduct of an inquiry by a majority under a resolution which is framed in the form of an indictment to which the minority is expected to respond, on the one hand—and an absolutely bipartisan, free-of-political-overtones investigation conducted by an equality of membership on both sides of the aisle, as we have done in the McClellan committee and in the Committee on Standards and Conduct, on the other, open, free, and entirely cooperative investigation would eliminate from the mind of any reasonable person any suspicion whatever of witchhunts or indictments or unwarranted pursuit of some who may prove to be innocent as well as some who may prove to be guilty.

This is not an appeal for stalemate, quite to the contrary. The minority are perfectly willing to agree that the majority shall have the power to break a tie in any one of several ways they wish, either by the chairman or by an ex-officio person, or in any way in which the majority may wish to be sure that it prevails, so long as we have an equal voice.

What does this resolution do? It is the broadest resolution ever introduced in the Senate, in my recollection. The chairman is empowered with greater authority and greater powers than we have ever given to any chairman. I must say that I cannot imagine a Senator better qualified or better equipped to wield these massive powers than the distinguished senior Senator from North Carolina, in whom we all have confidence, without question. But this resolution is limited to a single occurrence because the majority view here is that they do not wish to know of anything else. This is "See no evil, hear no evil, speak no evil, except the evil we demonstrate, which we will define carefully."

Moreover, in section 3, subsection (11) of this resolution are the widest possible powers to send a hoard of officials amongst the executive department—if I can paraphrase the Declaration of Independence a little—to send a group of staff members, because the committee would be too busy to do all this itself to look into all the raw files of the Government, to look into the FBI files, without waiting until they have been evaluated or determined as to any conclusions found, to look at every rumor made against any person, be he innocent or guilty. Such an investigation into the raw files will turn up various evidences, undoubtedly, of shortfalls in conduct on the part of many people—alleged shortfalls which may be entirely false. It will turn up every sort of material subject to use as blackmail if the particular person who uncovers it is unscrupulous in his person.

This is a power never before given to anyone in the history of our Constitution. It is a power which is more subject to abuse than any other power of which I can think. It is wild, it is unbelievable, that this power is written into this section.

Let us consider, by parallel, the Committee on the Judiciary. In that committee only the chairman sees the finished FBI files. Out of that file much important raw material has already been removed. He sees the person's interview and all the relevant information necessary to pass on the matter before the committee. He is not required to show it to any other member of the committee, although on proper reason shown, other Senators may see it. It is not available to staff members. It is closely guarded by the chairman.

The distinguished Senator from North Carolina and I both serve on the Committee on the Judiciary and we know that on this committee which drafts laws under which we live and abide we have been extraordinarily scrupulous, as, indeed, the Senator from Arkansas (Mr. McCLELLAN) has been in the conduct of his committee business. We do not permit the picking and prying into the filthy cesspools of rumor which lie at the bottom of many a file and which would be a happy hunting ground for the evilly disposed, for the rumor monger, for the person who wishes to leak it to his favorite source.

Skeletons would come tumbling out of the closet; skeletons devoid of fair play. In other words, bastard skeletons would come piling out of these closets, wreaking an immense amount of damage, and for what? Simply so the majority could investigate a single, shabby, discrediting incident which should be investigated. I said that from the beginning. I said that on June 20. There should be an investigation and we should ask the American Bar Association to head it.

My statement would fully include the thought of a senatorial or congressional investigation. Yet, let us get the facts out.

What I am proud of is that the minority leadership, as one voice, as far as I know, have indicated they do not oppose an investigation. The Senator from Texas has spoken, and I praise him for it; the Senator from New Hampshire (Mr. COTTON), and all members of the leadership have indicated they welcome an investigation. We ask only that it be fair and well and truly conducted and that it be to the point.

We also say, "Why not look into 1964?" The Senator from Arizona has frequently pointed out the misbehavior to which he was subjected from many points in 1964 when he was a candidate. Why not look into 1968? Only today a Senator on this side of the aisle said to some people—I had forgotten the incident—that in 1968 I called him; he and I were having a conversation about the elections which had just gone by. I remember the Senator telling his travel plans. I do not remember the intervention and the wording, but he does. That telephone was electronically bugged and somebody cut in and made certain remarks. I had forgotten it. It was after election, but it is an incident that happened in 1964, in November.

There were many other instances, and they could be adduced, but the majority does not want to know what the majority party or its friends or supporters did. "Perish forbid" is their slogan. Perish forbid if we should at any point imply there was at any point anything wrong with the majority party.

No, let us not look into Mr. Tuck and his practical jokes, picking and prying, of his issuance of false statements and the general rhetorical hee-hawing with regard to Mr. Tuck's boyish pranks, always at the expense of his party. Let us find out.

But let us equally find out whether or not virtue is the sole property of an individual, of a party, of a group. Let us find out who is guilty in this case. If we do not believe the courts can find out, let us find out who was innocent. Let us have the Senate make a judgment, if it can make an unbiased one, which, as this committee presently formed, it would have difficulty to find out. Let us try. We will cooperate even if we lose, even if we are drowned out, even if we are overridden, even if the majority exercises the full force of its power because it is afraid to let us go into the 1964 campaign and the 1968 campaign; and that is what is bugging them and not electronic surveillance. That is what is bugging them. That is why they say, "Let us confine this strictly to a careful examination of something where we know the only political benefit to be gained would be gained by us, and let us not put this in the technical 3-D dimension where we can see it against what has long been going on in this country," and that is a lot of undesirable, improper practices by supporters of both political parties, which has been going on for too long.

I yield to the Senator from Tennessee.

Mr. BAKER. Mr. President, I commend the distinguished minority leader for his appropriate remarks under these circumstances. I suppose that one of the bitter fruits we will reap from the appearance of the lack of impartiality is inevitable further conflict, conflict as to one's motives, conflict as to the scope of the inquiry, as to the narrowness of the inquiry, and other events that may or may not be disclosed in this investigation will inevitably be a part of these proceedings.

I speculate that if this resolution had called originally for an equal division of Republicans and Democrats, for we had ample precedent for doing so in other equally, sensitive matters, we would not have that attitude now growing up. I

think the minority leader has bespoken the attitude that will arise throughout the country. In the final analysis, it is not the Senate that will decide if this should be three and two, three and three, or four and four. We will make the technical determination and ultimately reach a decision. But the American people reach the final decision. I cannot believe for one moment that the American people believe American fair play says that a defendant under a resolution charge of indictment should be tried by a force consisting of three for conviction and two for acquittal. It has been my hope since this matter first arose that the Senate would comport itself in such a way that a situation such as that would not be created.

The American people look to this body to inquire into the full scope of the election process, unfettered by the judicial process, and they expect the Senate to fully inquire into whatever aspect of the matter should be presented to us so the chips can fall where they will.

Just as the senior Senator from North Carolina yesterday professed that his determination would be cold and judicially impartial, I profess to be absolutely neutral in this inquiry, not as a member of the select committee, but as a Member of the Senate. I profess to go into this matter as one Member of the Senate, determined to decide all facts and implications and all the activities, and to ascertain all the patterns of conduct to which Congress may wish to direct itself for remedial action. I profess to be just as diligent in my ambition to prosecute as to be impartial.

I do not suggest for a moment that I or any Republican Member of the Senate has a desire to serve as defense counsel for anyone. If we do not start on an absolutely impartial basis, if we do not start by signaling to the American people that the Senate is doing one of the things it does very well, and that is undertaking a comprehensive investigation of a sensitive matter, if we do not start on the right foot impartially, the American people are not going to judge us on the basis of the resolution, but, rather, on the basis of our motives in starting with this unequal distribution.

I shall not prolong this much longer except to say this: The distinguished senior Senator from North Carolina indicated he did not wish to preside over a committee that could not act because of a stalemate in case of a 3 to 3 division. To begin with, I doubt that that will happen, because I speculate the leadership will appoint people who are dedicated to the proposition that six men will act in concert and that they will be enjoined to act in concert in an impartial investigation of all the attendant circumstances. So I doubt very much that we are going to have a partisan stalemate, if the committee is evenly divided, and if we approach the matter with impartiality.

Next, I noticed yesterday that the senior Senator from North Carolina, I believe very correctly, amended his resolution to delete the legislative reporting requirement of the committee, with the suggestion that it be a fully effective and investigatory committee, and on a matter of this importance it ought not to report legislation to the Senate.

Where is the stalemate in that respect? On the matter of writing a report? Surely not, because it is inconceivable to me that there will be more than one report. There may be six views. There may be five and one views, or two and three, but surely no one will suggest that any member of the committee, no matter what ratio is, will be forbidden from expressing his opinion or his view. So there is no stalemate on reporting. Certainly there is no stalemate on stating views in the report which the resolution requires the select committee to submit to the Senate.

On the matter of issuance of subpenas, which is the next item that would occur to me where there is a potential for stalemate, to begin with, I doubt very much if any member of either party on the select committee would have any objection to any subpena that had the most remote connection or the most minor possibility of developing competent information. I doubt that would happen, but if it did, there are ways far better to approach it than to make the distribution on the committee 3 to 2 and raise the very ugly specter of a partisan inquiry, and one of those ways is to have the chairman, if the Senate so wishes, make the determination on the matter of subpena power.

I would be perfectly willing to say that if there was a stalemate on the matter of issuing a subpena, the chairman's point of view would prevail on the issuance of that subpena.

There may be other possibilities for stalemate, but if there are any, I am not sure I recognize them at this time; but I am sure, Mr. President, that we can find ways to avoid stalemates. There are many, many ways to contrive to avoid a stalemate that I can think of, and all of them are preferable to starting out with a stacked deck.

Bear in mind that the emotion of the debate today is as a mere inconsequence to the emotion of the debate that will rage not only in the committee, but in the Senate and in the country, if we do not conduct ourselves with such scrupulous impartiality, with such a total lack of partisanship, with such an absolute dedication to fairness, that we can face the country with our result as a unified Senate; and I believe we are going off on a very wrong foot if we do not embody that determination in an equal distribution on this committee.

I thank the Senator for yielding.

Mr. SCOTT of Pennsylvania. Mr. President, I will yield to myself for one observation. I do agree with the Senator from Tennessee. One thing we want to avoid in the public mind and in the mind of this body, and that is that we are being subjected to a packed jury. No one wants to do that.

I do commend those who report the news that they examined subsection 11 of section 3 as to the powers of examination to all agencies of Government and all documents, no matter how raw—and raw in every sense—they may be because they run counter to the right of privacy which has been so long advocated in the Senate and the press, and which run considerably counter to the rights of the people affected.

It may be that if this privacy is invaded and if it involves the seccadilloes of a politician, that may be a matter for entertainment, but there are not only politicians here. Let us suppose it involves the jingle-belling of a member of the press around the houses of joy. Then, I submit, there may be a great deal more amusement against the right of privacy.

Look to your rights and look to ours, so we may be justified in what we are saying, and not be portrayed as seeking to delay or prevent anything. We are for it. We are for expediting. We will very likely offer amendments to expedite it. We want it fair. We want it just. We do not want to violate any principle of American jurisprudence by allowing persons to poke into every cesspool that can be found in order to drag up filth on which no proof exists, and no one ought to be exposed to this kind of proceeding. I yield the floor.

Mr. WEICKER. Mr. President, I want to commend the Senator from Tennessee for putting his finger on the real issue of the debate before us, because the real issue is credibility—credibility insofar as the American people are concerned relative to any investigation that might be undertaken by this body.

They will be asking questions. Why is it important to have the amendment of the Senator from Tennessee providing that the committee be constituted on a 3-to-3 basis? Why is that important? I answer very simply this: So the result of the work product of that committee will be believed. That is why it is important.

At the time of the Watergate crisis, at the time of the ITT case, at the time of the charges and countercharges in the last campaign between the various candidates in the Democratic and Republican Parties, polls invariably would be taken as to whether this was an issue in the minds of the American people. You all know the results of those polls as well as I do. As a Republican, let me say I was aghast to learn that in fact these transgressions were not issue with the American people. Why were they no issue? Because, in the mind of the average citizen, they all do it. It is done all the time by both parties. A plague on both Houses.

That is why it ought to be 3–3, so the committee can do its work, and so when it comes forth with the result of its work, it will be believed. But to go into the aftermath with this partisan approach is no better than not to go ahead and investigate as far as the public is concerned.

I am getting a little tired of being at the bottom of the totem pole as far as public esteem is concerned. I think Members on the other side should feel the same way. Yet the way this committee is constituted, the way the whole affair is starting, the committee will do its work, and the result will be a partisan one. Last time it was the Republican Party; this time let it be the Democratic Party. What will result is not the democratic process. Ask the people, especially

the young people, if that is not so. It would be nice to have some work done that had credibility to it. A 3–2 committee renders the work product of that committee a partisan one. I attribute no motives to a 3–2 committee, but that is the way it is. It is partisan, and the work product is meaningless, and the members on that committee are involved in that partisanship on an individual basis.

There is not one of us who sits in this body who did not share, at the time of our youth, the dream of reaching this lofty position in government. At that time it was a young man's dream. Politicians, men in high public places were idols.

That is no longer the case. This system has been smeared and fudged around by everyone, by both parties, and by the press. I know the men and women I work with. They are men and women of honor. And their work product is good. Because there are Watergates and ITT's and whatever anyone wants to bring up does not in my mind change the gleam or shine of this Government. If there is any rot in it, it ought to be rooted out, and it ought to be rooted out by both major parties in equal measure.

This opportunity now confronts us. We have the opportunity now at hand, not to gain points one over the other, but to gain points for the American political system.

Mr. ERVIN. Mr. President, I will make one or two observations. If I had any feeling that three Democrats on this committee or the committee itself would seek to crucify people for political purposes, I would vote against the resolution entirely.

It is a custom in this country to solve most of the problems by majority rule. I ought to be opposed to majority rule because I have died from more lost causes than any other Member of the Senate. However, it is still the only way by which decisions can be made.

The minority has the opportunity to exercise wisdom and convince the majority of the rectitude of its cause. But the decision has to be made by the majority.

The Senator from Texas said that this would establish a precedent. Here is the precedent. Here is the whole committee report that shows the precedent. When the charges were made against Army Secretary Stevens of improper and biased conduct, the Senate—which was then controlled by a Republican majority—set up a select committee to investigate those charges which, like this case, to some extent had some political overtones. They set up a committee of four Republicans and three Democrats.

That is the only precedent we have that I know of concerning a select committee to investigate matters of this kind.

My friends say, of course, that if we set up a committee of three Democrats and two Republicans, some people will criticize it and say that the Democrats are trying to persecute the Republicans. This resolution gives them the right to investigate the truth or innocence of committing improper conduct. It does not charge anyone with improper conduct.

If we establish a mechanism of a committee, the members of which are three Senators who are Democrats and two Senators who are Republicans, some people who are suspicious of all human conduct can say that the Senate wanted to whitewash this whole thing and so they set up a committee under which the committee would be prevented from making any decision or taking any action.

I am opposed to the amendment. I do not say it will accomplish this purpose. However, it would create the possibility that the committee would suffer from paralysis. And I do not think the Senate ought to establish a committee where that possibility exists.

Mr. WEICKER. Mr. President, I would like to comment on a remark made by the distinguished Senator from North Carolina where he commented on his high esteem of the Democratic members of the committee to be appointed.

The point I am making is that it does not make any difference what we think of ourselves. It makes no difference to the American people what the Senator from North Carolina thinks of his colleagues or what the Senator from Connecticut thinks of his.

The fact is that we have an opportunity to restore the faith of the American people in this political process. And the way in which we are going to accomplish that in the most successful fashion is to put the matter in the hands of an equal number of the members of each party and not have the Democrats hitting the Republicans over the head or the Republicans hitting the Democrats over the head in a bipartisan fashion. We will gain absolutely nothing by doing it in that manner.

This partisanship quite frankly has become quite a serious national problem.

Mr. BAKER. Mr. President, I commend the Senator from Connecticut for a very succinct and, I think, very appropriate remark. It is not indeed the final judgment of the Senate, but rather the judgment of the people of the United States that should control as we debate this resolution. It is not too late to do this.

I proferred a suggestion a moment ago to the Senator from North Carolina, and I hoped it might eliminate some of his stated objections to an equal balance on the select committee. That suggestion was to provide that in the case of subpena power, if there was an equal division of votes, that the chairman's point of view would be the prevailing point of view. I did not detect a response from the Senator from North Carolina on that matter. I judge that means that it is not acceptable.

I wonder if the Senator from North Carolina could suggest any other alternative by which we could avoid the stalemate which he fears without creating a distorted effect.

Mr. ERVIN. I would say that the best way to make certain that there will be no stalemate is to have a committee which has a majority on one side or the other. The number on each side would not make any difference to the Senator from North Carolina, as far as that is concerned.

Mr. BAKER. I know it would not make any difference.

Mr. ERVIN. But the Senator from Florida yesterday asked me about the subpena power. And he seemed to be very pleased that the resolution does not give the chairman the power of issuing subpenas without the concurrence of the rest of the committee. As far as I am concerned, I would not want to issue subpenas without the concurrence of the committee.

Mr. BAKER. I would not want the Senator to do so either. However, if there were a committee composed of three members of each party, I would be very pleased for the chairman to have the determination. Would that make any difference to the Senator from North Carolina?

Mr. ERVIN. No. It is my belief that the chairman should be more or less of an instrument to carry out the will of the committee. I would not want to have that authority in the hands of a committee composed of three Democrats and three Republicans. If three Senators did not wish to have a subpena issued, I would not want to have two votes on the question.

Mr. BAKER. Would it not be that way as the Senator proposes the membership of the committee? If there were three Democrats and two Republicans, the Democrats would have three votes.

Mr. ERVIN. A member of the committee should not have two votes, one as a member of the committee and one as the chairman of the committee.

One of the great cases before the Supreme Court, Baker against Carr, came out of Tennessee. And I am in favor of one man, one vote.

Mr. BAKER. I am glad to know that, because I know of an occasion when the Senator from North Carolina and I had a very sharp debate on that matter.

Mr. ERVIN. Yes. However, the Senator has grown wiser since that occasion.

Mr. BAKER. I have never doubted his wisdom. I am happy to have his support now.

I wonder if it would serve any purpose and if we could find a way out of this, because I want to be fair, and I am willing, as far as I am concerned, to amend my amendment providing I can obtain unanimous consent, since the yeas and nays have been ordered, to provide that in the case of a stalemate on subpena power, the chairman's point of view would prevail. I wonder if there are any other things in the mind of the Senator from North Carolina that we could resolve and thus avoid a stalemate, if that is what we are concerned about. What else could we do to eliminate a stalemate?

Mr. ERVIN. I can say that the best thing to do is to follow the precedents established by the Republicans when the Republicans were in control of the committee. They then established a select committee like the one this resolution proposes to establish.

Mr. BAKER. And of course as to the precedent that we had in the McCarthy case of equal representation, and the precedent established in the termination of national emergency, which also has equal representation, and the precedent in the select committee relating to se-

cret and confidential documents, which also has equal representation, plus the Committee on Improper Activities in the Labor-Management Field, which was also of equal representation, as well as the Select Committee on Standards of Conduct, I wonder if it does not serve as a precedent to the Senator on important issues when there is an area of sensitivity, that we present ourselves to the country as an impartial tribunal.

I wonder, then, if we cannot meet this problem of a stalemate, if that is really the sticking point, if we cannot meet it with a subpena power solution, or if the Senator from North Carolina has other problems about which he is concerned.

Mr. ERVIN. Mr. President, the Senator from North Carolina does not want to be entitled to cast two votes. Every other Senate committee is established with a division of membership between the parties roughly comparable to their membership in the Senate, every one of them that is now in existence, except the Senate Ethics Committee.

Mr. TOWER. There are two others.

Mr. BAKER. And the other two I mentioned, National Emergency and Confidential Disclosure.

I wonder in that respect, speaking of appearance to the public, as to the country making a judgment on our fairness, what the situation would be if the Republicans were in the majority in the Senate today, and we insisted on three and two.

Mr. ERVIN. If the Senator will pardon me, that is exactly what they did when they were in the majority.

Mr. BAKER. I think the country would judge that we were trying to serve a political purpose if indeed we insisted on three and two. I think a committee dealing with a matter of this sensitivity ought to avoid the appearance of partisanship, and the only way to do it is by equal division. I think the Senator from North Carolina ought to try to find a way, and I am willing to ask for a quorum call, if he will help me to get past the stalemate.

Mr. ERVIN. I would say the only truly effective way that I know to avoid a stalemate is by the very method that this resolution sets forth.

Mr. BAKER. Does the Senator from North Carolina doubt for a moment that what I have suggested would avoid a stalemate?

Mr. ERVIN. Well, we would have the same situation as if the Senator from North Carolina were the only man on the committee, and he was to make the decisions. I do not want that power.

Mr. BAKER. Mr. President, I am perfectly willing to have the Senator from North Carolina have the tie-breaking vote. If I am willing to do that, I would hope the Senator from North Carolina would be willing to.

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

Mr. BAKER. I yield.

Mr. COTTON. The only reason that the Senator from New Hampshire asked the Senator from Tennessee to yield was that, without pride of authorship—because it did not go very far—it was the Senator from New Hampshire, in the consultation or conference that took place between the joint leadership of both parties, who suggested the expedient of having a 3-to-3 makeup of the committee, and that should there be a tie vote on any subject, the chairman should have the power to cast the deciding vote.

The one thing that I noted was that the attitude of everyone on the other side of the aisle engaged in that conference was completely adamant. The suggestion that an ex officio member could come in and break a tie, and the suggestion that the chairman would have the power to break a tie by having his vote prevail, met with a blank wall.

As far as I am concerned, I think the important thing is to get this committee created. And I want to note this: If we on this side of the aisle wanted to make political capital for ourselves, I think that a 3-to-2 committee would be far preferable to a 3-to-3 committee, because then if any Republican wants to gain political advantage he can cry that "It was a partisan investigation and was brought out for partisan purposes, and we did not have an equal voice," and try to pass that impression out to the country.

In fact, we would be even in a better situation if the Democratic side insisted on having all Democrats on the committee.

As far as the Senator from New Hampshire is concerned, there should be an investigation. I shall vote for this investigation. I would vote for the investigation if every Member on that investigatory committee was from the majority side, because there is one thing that must not be allowed to happen. There must not be any suspicion allowed to go out to the American people that there has been any kind of a whitewash or any kind of a cover-up, no matter who may be involved, where they are found, or how high they may be.

So, regardless of this vote and regardless of the vote on any other amendment, it should be perfectly clear, as far as I am concerned, that I am going to vote for the investigation, but it was, to me, very clear in our conference that the plan is fixed, that the majority are pledged to it, and that this matter of making speeches about these amendments is an exercise in futility.

I simply would say that if you want to continue partisanship on this vital issue, the best way to do it is to let the suspicion go out to the people that this is a weighted committee.

I have absolute confidence in the fairness and integrity of the distinguished Senator from North Carolina, and I doubt if there is a single Member of this body, on either side, who does not have absolute confidence in him. As far as I am concerned, I do not know of any three Senators on the other side, or any five Senators on the other side of the aisle, that I do not have complete confidence in. But the matter at stake is not in whom we have confidence. The matter at stake is public confidence.

I shall, of course, vote for the amendment of the Senator from Tennessee, but when I walked out of the room last night, after some 2½ hours of trying to avoid the necessity of even a debate on this matter, I was perfectly positive that the stage is set. By that I do not mean that the stage is set for an unfair investigation. It could not be so with a man like the Senator from North Carolina as chairman of the committee. But the stage is set for this kind of a set-up, and I find it difficult to understand why it is set. If I were sitting on the Democrat side instead of on the Republican side. I would want it a 3 to 3 committee, with provision to prevent a deadlock or a stalemate. So, as the Senator from Tennessee has so well said it is unfortunate if we start this off with even the faintest odor of politics or political partisanship. I shall vote for the investigation, however it may be planned. I shall vote for it because, in my opinion, if every member of the investigating committee were on the other side of the aisle and they were absolutely unlimited in their powers and free to go into any extraneous matter it would be far better for the American people that there be a complete revelation.

Mr. BAKER. Mr. President, I commend the Senator from New Hampshire for his usual eloquent remarks. I agree with the tenor of his remarks. It will be a great contribution to the perspective of this debate.

The distinguished Senator from North Carolina referred to the so-called McCarthy committee on the 4-to-3 basis. In my opening remarks, I referred to the censure of Senator McCarthy on the basis of 3 to 3—and the date was July 5, 1954, I believe.

It might serve the record to point out to my colleagues that there were two inquiries in the McCarthy case, one was 4 to 3 which, incidentally, was the Army-McCarthy investigation, and the other, as I understand it, was on the censure of Senator McCarthy which was equally divided, 3 to 3.

Mr. ERVIN. Mr. President, that is true. It was equally divided. It only involved the question of whether the Senator had been guilty of disorderly conduct within the meaning of the Constitution and it did not have any other matters to be investigated. The other McCarthy hearing was called the Army-McCarthy hearing where the committee was divided 4 to 3, with four Republicans and three Democrats. It involved political overtones because it involved charges made against that very fine gentleman and Republican, Secretary of the Army, Robert Stevens, and the Department of the Army.

Mr. BAKER. I thoroughly agree with the Senator that there were, in fact, two committees. Since the Senator from North Carolina and I have made statements which appear on their surface to be at variance, I want the record to be clear on that point. There were two committees, the one that voted censure, which was equally divided, and the other one that conducted the investigation into the Army-McCarthy hearing, which was not equally divided.

Mr. President, I have at the desk an amendment to my amendment. The yeas and nays have been ordered and, therefore, I would have to ask unanimous consent before I could modify that amendment, which I would propose to do.

I wonder whether, at this time, it would be in order for the clerk to report the proposed change before I ask unanimous consent.

The PRESIDING OFFICER (Mr. McCLURE). It would be in order, and the clerk will state the modification.

The legislative clerk read as follows:

On page 2, line 11, strike "five" and insert in lieu thereof: "six".

On page 2, line 14, strike "two" and insert in lieu thereof: "three".

On page 3, between lines 6 and 7 add a new subsection as follows:

"(d) In the event of a tie vote in the select committee as to whether a subpena should issue, the position taken by the chairman shall be the prevailing position."

On page 3, line 7, delete "(d)" and insert in lieu thereof: "(e)".

Mr. BAKER. Mr. President, this, as Senators can see, is the embodiment, by modification, of the suggestion I made in our previous colloquy.

I now ask unanimous consent that I may amend my amendment.

Mr. ERVIN. Mr. President, reluctantly, I must object to the request. I do not understand it exactly. I think, maybe, it will not be necessary, even if the amendment is either defeated or adopted.

The PRESIDING OFFICER. Does the Senator from North Carolina object?

Mr. ERVIN. Yes, Mr. President, and I dislike doing so.

THE PRESIDING OFFICER. Objection is heard. The modification is not agreed to.

Mr. BAKER. Mr. President, I have nothing further to say on this amendment. I am sorry that the proposed amendment to the amendment was objected to. The Senator from North Carolina, of course, is entirely within his rights to object. On that procedural point, I will offer this as a separate amendment if my amendment fails.

I yield the floor.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Tennessee.

On this question the yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Idaho (Mr. CHURCH), the Senator from Mississippi (Mr. EASTLAND), the Senator from Alaska (Mr. GRAVEL), the Senator from Washington (Mr. MAGNUSON), the Senator from Minnesota (Mr. MONDALE), the Senator from New Mexico (Mr. MONTOYA), the Senator from Connecticut (Mr. RIBICOFF) are necessarily absent.

I further announce that the Senator from Louisiana (Mr. JOHNSTON) is absent on official business.

I also announce that the Senator from Mississippi (Mr. STENNIS) is absent because of illness.

I further announce that, if present and voting, the Senator from Alaska (Mr. GRAVEL), the Senator from Connecticut (Mr. RIBICOFF), the Senator from Washington (Mr. MAGNUSON), and the Senator from Indiana (Mr. BAYH) would each vote "nay."

Mr. GRIFFIN. I announce that the Senator from Massachusetts (Mr. BROOKE), the Senator from Colorado (Mr. DOMINICK), the Senator from Hawaii (Mr. FONG), the Senator from Arizona (Mr. GOLDWATER), the Senator from Oregon (Mr. PACKWOOD), the Senator from Kansas (Mr. PEARSON), and the Senator from South Carolina (Mr. THURMOND) are necessarily absent.

The Senator from Maryland (Mr. MATHIAS), the Senator from Ohio (Mr. SAXBE), and the Senator from Vermont (Mr. STAFFORD) are absent on official business.

If present and voting, the Senator from Arizona (Mr. GOLDWATER) and the Senator from South Carolina (Mr. THURMOND) would each vote "yea."

The result was announced—yeas 35, nays 45, as follows:

[No. 13 Leg.]

YEAS—35

Aiken	Cook	Javits
Allen	Cotton	McClure
Baker	Curtis	Percy
Bartlett	Dole	Roth
Beall	Domenici	Schweiker
Bellmon	Fannin	Scott, Pa.
Bennett	Griffin	Scott, Va.
Brock	Gurney	Stevens
Buckley	Hansen	Taft
Byrd, Harry F., Jr.	Hatfield	Tower
Case	Helms	Weicker
	Hruska	Young

NAYS—45

Abourezk	Haskell	Metcalf
Bentsen	Hathaway	Moss
Bible	Hollings	Muskie
Biden	Huddleston	Nelson
Burdick	Hughes	Nunn
Byrd, Robert C.	Humphrey	Pastore
Cannon	Inouye	Pell
Chiles	Jackson	Proxmire
Clark	Kennedy	Randolph
Cranston	Long	Sparkman
Eagleton	Mansfield	Stevenson
Ervin	McClellan	Symington
Fulbright	McGee	Talmadge
Hart	McGovern	Tunney
Hartke	McIntyre	Williams

NOT VOTING—20

Bayh	Gravel	Pearson
Brooke	Johnston	Ribicoff
Church	Magnuson	Saxbe
Dominick	Mathias	Stafford
Eastland	Mondale	Stennis
Fong	Montoya	Thurmond
Goldwater	Packwood	

So Mr. BAKER's amendment was rejected.

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Berry, one of its reading clerks, informed the Senate that, pursuant to the provisions of section 1, Public Law 523, 78th Congress, the Speaker had appointed Mr. YATRON, Mr. BYRON, and Mr. MIZELL as members of the National Memorial Stadium Commission, on the part of the House.

The message also informed the Senate that, pursuant to the provisions of section 1, Public Law 86–420, the Speaker had appointed Mr. NIX, Chairman, Mr. WRIGHT, Mr. GONZALEZ, Mr. DE LA GARZA, Mr. KAZEN, Mr. UDALL, Mr. WALDIE, Mr. WIGGINS, Mr. LUJAN, Mr. STEIGER of Arizona, Mr. BROOMFIELD, and Mr. STEELE as members of the U.S. Delegation of the Mexico-United States Interparliamentary Group, on the part of the House.

The message further informed the Senate that, pursuant to the provisions of section 301, Public Law 89–81, the Speaker had appointed Mr. MAZZOLI, Mr. DULSKI, Mr. CONTE, and Mr. SYMMS as members of the Joint Commission on the Coinage, on the part of the House.

The message also informed the Senate that, pursuant to the provisions of section 601(a), Public Law 91–513, the Speaker had appointed Mr. ROGERS and Mr. CARTER as members of the Commission on Marihuana and Drug Abuse, on the part of the House.

The message further informed the Senate that, pursuant to the provisions of section 5, Public Law 420, 83d Congress, as amended, the Speaker had appointed Mr. CAREY of New York and Mr. QUIE as members of the Board of Directors of Gallaudet College, on the part of the House.

The message also informed the Senate that, pursuant to the provision of section 1, Public Law 86–417, the Speaker had appointed Mr. SLACK, Mr. BENNETT, Mr. WAMPLER, and Mr. ROBERT W. DANIEL, JR., as members of the James Madison Memorial Commission, on the part of the House.

The message further informed the Senate that, pursuant to the provisions of section 1, Public Law 86–42, the Speaker had appointed Mr. MORGAN, Chairman, Mr. JOHNSON of California, Mr. RANDALL, Mr. KYROS, Mr. STRATTON, Mr. MEEDS, Mr. CULVER, Mr. HARVEY, Mr. MCEWEN, Mr. HORTON, Mr. WINN, and Mr. DU PONT as members of the U.S. Delegation of the Canada-United States Interparliamentary Group, on the part of the House.

The message also informed the Senate that, pursuant to the provisions of section 2(a), Public Law 85–874, as amended, the Speaker had appointed Mr. THOMPSON of New Jersey, Mr. RONCALIO of Wyoming, and Mr. FRELINGHUYSEN as members ex officio of the Board of Trustees of the John F. Kennedy Center for the Performing Arts, on the part of the House.

The message further informed the Senate that, pursuant to the provisions of section 202(a), title 2, Public Law 90–264, the Speaker had appointed Mr. GRAY, Mr. BLATNIK, Mr. HOWARD, Mr. MCEWEN, Mr. ZION, and Mr. MIZELL as members of the National Visitor Facilities Advisory Commission, on the part of the House.

The message also informed the Senate that, pursuant to the provisions of section 601, title 6, Public Law 250, 77th Congress, the Speaker had appointed as members of the Committee To Investigate Nonessential Federal Expenditures the following members of the Committee on Ways and Means of the House: Mr. MILLS of Arkansas, Mr. ULLMAN, and Mr. COLLIER; and the following members of the Committee on Appropriations of the House: Mr. MAHON, Mr. WHITTEN, and Mr. CEDERBERG.

ESTABLISHMENT OF SELECT COMMITTEE TO INVESTIGATE AND STUDY CERTAIN ACTIVITIES IN THE PRESIDENTIAL ELECTION OF 1972

The Senate continued with the consideration of the resolution (S. Res. 60) to establish a select committee of the Senate to conduct an investigation and

study of the extent, if any, to which illegal, improper, or unethical activities were engaged in by any persons, acting individually or in combination with others, in the presidential election of 1972, or any campaign, canvass, or other activity related to it.

The PRESIDING OFFICER. The resolution is open to further amendment.

Mr. PASTORE. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order.

Mr. BAKER. Mr. President, while many of my colleagues are here, let me take this opportunity to say that I have at least one and possibly two further amendments. I do not expect they will take very long. I hope we can proceed to a rollcall vote on the next amendment in 10 or 15 minutes. I have an amendment at the desk which I ask the clerk to state.

The PRESIDING OFFICER. The amendment will be stated.

The amendment was read as follows:

On page 2, line 11, strike "five" and insert in lieu thereof: "six".

On page 2, line 14, strike "two" and insert in lieu thereof: "three".

On page 3, between lines 6 and 7 add a new subsection as follows:

"(d) In the event of a tie vote in the select committee as to whether a subpoena should issue, the position taken by the chairman shall be the prevailing position."

On page 3, line 7, delete "(d)" and insert in lieu thereof: "(e)".

Mr. ERVIN. Mr. President, I ask for the yeas and nays on the amendment.

The yeas and nays were ordered.

Mr. BAKER. Mr. President, this is the same amendment that I asked the clerk to report in the course of our previous debate as a proposed modification to my amendment, to which the Senator from North Carolina objected.

Mr. STEVENS. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order.

Mr. BAKER. Mr. President, if I may have the attention of my colleagues for just a few minutes, this will not take too long.

This is the same amendment which I attempted to offer as a modification to my previous amendment, which, in effect, simply specifies that in the case of a three and three division of this select committee, in the event of a tie on the matter of the issuance of the subpena, that the position of the chairman shall be the prevailing position. That is the only thing the amendment would do.

The amendment adds the language that, in effect, gives the chairman tie breaking authority in case of a tie in a three and three committee in issuing subpenas.

In previous colloquy I said, and I reiterate now, that if a stalemate really is the bone of contention, if the fear of stalemate is really and genuinely the matter that prevents the adoption of an equal division of this committee, then if there are other matters beside the issuance of subpenas I would be willing to try to work out something to avoid a stalemate. This amendment relates to the issuance of subpenas; if there are others, I hope they are suggested.

On the question of legislative authority of this select committee, it has none because of the amendment of the Senator from North Carolina yesterday. On the question of filing a report, there is no language on whether it should include majority and minority views. I assume the general precedent under legislative reorganization would prevail so that no one's rights would be cut off or added to.

Mr. President, I am honestly seeking a way to avoid the objection stated to an equal division of this select committee. I will not burden this colloquy much further about how the country is going to view this, but I do want to reiterate once more that if we wrap ourselves in the flag of righteousness and claim that we have investigated a matter of grave concern, beginning with a stacked deck, not only will we not have a definitive investigation of this matter but we have lessened the dignity and the effectiveness of the Senate as a body. I think the issue is that broad and that important to our future as an institution.

The Senate should investigate this matter. The Senate is the best prepared of all departments of Government to undertake it. It is far better prepared than the judiciary because we are not dealing with specific indictments against specific defendants; we are not cluttered by the criminal rules of procedure or the civil rules of procedure which prevail in the Federal courts.

We can sweep as far and wide as we wish to make sure that the searchlight of our scrutiny reaches every legitimate nook and cranny. We should get off on the right foot. This amendment provides for a six-man committee, equally Democrats and Republicans, and it provides that in any case where there might be a tie in the issuance of subpenas the chairman would have the right to break the tie.

Mr. ERVIN. Mr. President, despite the good motives of my friend, the Senator from Tennessee, I am compelled to oppose this amendment for the same reason heretofore stated.

This committee, with a three and three membership, would raise the possibility of a paralysis in the action of the committee. The mere fact that the chairman would be allowed to break a tie vote on whether a subpena should be issued would not take care of the issue. Probably other questions will come before the committee for determination: Selection of counsel, determination of members of the staff, what disbursements should be made on vouchers, which one of many areas authorized to be investigated shall be investigated. This would not cure 1 percent of the problems that would probably arise.

Therefore, I ask the Senate to vote no on this amendment.

Mr. BAKER. If there are 100 areas where we might have an impasse—I would hope we could have gotten by the major ones, but if we cannot—then there is one way to change that objection, and I understand it is the only objection of the Senator from North Carolina. The only objection he has made is that we might come to a deadlock, an impasse. I would suggest then that that could be resolved if we said, on all issues, whether subpena power or anything else, the distinguished chairman would cast the tie-breaking vote.

As far as I am concerned, I am willing to do that, if the Senator from North Carolina is willing to accept it on that basis.

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

Mr. BAKER. I yield.

Mr. STEVENS. I rarely participate in debate on the floor, but I would like to say to the Senator from Tennessee that I think he is absolutely correct. It appears to me that the resolution casts those who are in the minority in the Senate as being a portion of the defendants in the case, instead of being a portion of those who are dedicated to finding out what led to the Watergate incident, who was involved, and to turn over every stone it is possible to turn over to expose the total trail of this incident to the American public. I think it is entirely equivalent to the Ethics Committee. I congratulate the Senator from Tennessee in his dedication to try to make it start out as a nonpartisan effort.

I am almost afraid the total result of the debate and of the resolution itself is going to be that we are starting off with a concept that there would be a difference of opinion between Democrats and Republicans on this matter, and it is in fact casting us in a position where we will be portrayed as the attorneys for the defense, which I think is most unfortunate.

I wish there were some way in which we could work it out. I think the Senator from Tennessee has a very good suggestion, which is to give the distinguished chairman of the committee the power at any time to break the deadlock. That would seem to me to be sufficient. But the mere presence of an equal number of majority and minority members on the committee, it seems to me, would assure the public that this is a matter in which the Senate is united in setting forth before the American public the total information available about the Watergate incident.

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

Mr. BAKER. I yield.

Mr. CASE. I am glad to associate myself with the Senator from Tennessee. I hope it would still be possible to change the mind of the majority, and particularly the Senator from North Carolina. It will add so much to the dignity and to the conduct of this committee and to the authority which its findings will carry if they will accept the idea that it should be bipartisan. If they do not, I am terribly sorry, because it will turn into a situation, I am afraid, which, however hard Senators may try, will still have the context of a partisan operation. That is the last thing we want.

It is the last thing I would want if I were a member of the majority here. In a very real sense, from the standpoint of the majority itself, it would be well to have the Senator from Tennessee prevail on this amendment, with any further amendments that the Senator from North Carolina may feel necessary; but I would hope that, on this matter, an

equal division, equal authority, and equal membership on the committee would be accepted. I think it is a matter of very great importance to the Senate as a whole.

Mr. ERVIN. Mr. President, if I had time——

The PRESIDING OFFICER. The Senator from Tennessee still controls the time.

Mr. BAKER. Mr. President, we do not have any controlled time.

The PRESIDING OFFICER. The Senator is correct. The Senator from Tennessee had the floor.

Mr. BAKER. I thank the Chair very much.

I have at the desk now a proposed modification of my amendment, which will require unanimous consent since the yeas and nays have been ordered. Before I ask unanimous consent to modify the amendment, I would ask the clerk to report the proposed modification.

The PRESIDING OFFICER. The clerk will report the proposed modification.

The legislative clerk head as follows:

On page 2, line 11, strike "five" and insert in lieu thereof: "six".

On page 2, line 14, strike "two" and insert in lieu thereof: "three".

On page 3, between lines 6 and 7 add a new subsection as follows:

"(d) In the event of a tie vote in the select committee, the position taken by the chairman shall be the prevailing position."

On page 3, line 7, delete "(d)" and insert in lieu thereof: "(e)".

Mr. BAKER. Mr. President, the net effect of this proposed modification is simply that in all instances where there is any tie, to avoid any possibility of a stalemate in a committee made up of six members, equally divided, the chairman shall have the deciding vote. That is an extraordinary confidence in the chairman of the committee in such a sensitive matter, but I have that confidence. I am not trying to flatter the Senator from North Carolina. I am trying to meet the stated objection that he fears, that an equally divided committee may result in a stalemate. I think this amendment will avoid that.

Mr. President, I ask unanimous consent to modify my amendment in that respect.

Mr. ERVIN. Mr. President, I have no objection to the unanimous consent request, but I want to make a parliamentary inquiry. As I understand it, if the amendment is modified in the way suggested by the Senator from Tennessee, the order for the yeas and nays still stands.

The PRESIDING OFFICER. The Senator is correct.

Is there objection to the unanimous-consent request? The Chair hears none, and the amendment is so modified.

Mr. ERVIN. Mr. President, I am opposed to this amendment. There is some rumor abroad that I may be chairman of this select committee, and the effect of this amendment is to say that I shall control all the disagreements among the committee. It really would not change having one more of the majority party on the committee. It would simply say I constitute two members of the committee, and I do not want to have the power and responsibility, if I were selected to be chairman of the committee. I do not want to act in a dual role and have two votes in the committee in case of a tie. I do not want that power.

I hope the Senate will reject the amendment.

I appreciate the compliment the Senator from Tennessee pays me in proposing this amendment, but I am like Caesar—if I am chairman, I want to refuse the crown.

Mr. BAKER. Mr. President, I appreciate the analogy. If there is any Senator in this Chamber who deserves to be compared to Caesar, I suspect it would be the Senator from North Carolina. But let me hasten to say that he is declining to accept the responsibility he has already gained for himself. As I understand the Senator from North Carolina, he is reluctant to accept the grave responsibility of breaking a tie, but that is infinitely preferable to having a stacked committee of three to two to begin with.

Mr. CASE. Mr. President, if the Senator will yield, I think this is a way out of the dilemma. I understand the modesty of the Senator from North Carolina to judge himself incompetent to assume this great responsibility, but let him vote "No," let him abstain, let him, on the Democratic side, join all of us on the Republican side in doing its good job.

Mr. BAKER. I thoroughly applaud the suggestion. I think it is an eminently practical one.

Mr. ERVIN. I could not vote or abstain from voting on this proposal. I do not think, if I am to be chairman, or if anybody else is to be chairman, I or he ought to be permitted to break a tie vote which is cast by his own vote.

Mr. BAKER. Mr. President, my observation in that respect is that I am far more willing that the Senator from North Carolina have that power than I am for him to have a statutory majority of the jury. I have no fear in that respect. I think that the Senator from North Carolina will be impartial and judicial. But in any case, in his judicial career I very much doubt he would have permitted the impaneling of a jury where there was any taint or suspicion that any juror, let alone two-fifths of them, had already made up his mind—not that they had, but even a suspicion that they had would be enough to disqualify those jurors.

The Senator from North Carolina has indicated on any number of occasions in the last 2 days that he intends to approach this undertaking, if he is chairman, with the cold, calm deliberation that he believes the job requires.

I believe that to be the case. The first obligation of a trial judge, the first obligation of a jurist is to see that there is a fair and impartial jury of his peers and not two-fifths and three-fifths. Mr. President, I am willing for the Senator to have this power. I offer it to him in good faith and, I hope, in good grace. I have nothing further to say on this point.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Tennessee.

Mr. WEICKER. Mr. President, it is difficult to get away from raw partisanship. Given the Constitution, practice, tradition, or what have you, I have no question at all as to the exercise of power because the Democrats have the votes.

The only difficulty is that this is not a matter that belongs to the Democratic Party or the Republican Party. It belongs to the American people. I have difficulty with my own party with regard to what I think is impropriety, just as I do with the Democratic Party.

As has been pointed out so ably by the Senator from New Jersey what is important here is that the American people believe the work product of this committee.

There is a job to be done to once again bring honor to this body and to our profession. I cannot subscribe to any of the high attributes given to Members on the other side who are advocating this particular cause. In the past certainly they have brought dignity, honor, fairness, and bipartisanship to the issue. However, make no mistake about it, they are bringing to this particular issue just the issue of partisan politics, raw partisanship, and nothing more. They can quote all of the precedents in the Constitution that they care to. However, we detract from this body and from the eventual work product that will come forth from the committee's effort.

I will have an amendment after the amendment of the Senator from Tennessee is disposed of which will point out the weakness in the argument of the Senator from North Carolina. For the present all I would say is that I see no reason why the taxpayers' money should be used in this particular case since this is a bipartisan effort. Let the Democratic Caucus go ahead and appoint an ad hoc committee and let them do it and let the work product come from the Democratic Party.

On the other hand, if it is a resolution to achieve something for the American people and root out some of the cancer in the political system in both parties, the work should be done by both parties if it is to be believed.

PRIVILEGE OF THE FLOOR

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that Mr. James Flug, Mr. William Pursley, and Mr. Robert Smith have the privilege of the floor during rollcall votes on this resolution.

The PRESIDING OFFICER. Without objection, it is ordered.

The question is on agreeing to the amendment of the Senator from Tenessee. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Idaho (Mr. CHURCH), the Senator from Mississippi (Mr. EASTLAND), the Senator from Alaska (Mr. GRAVEL), the Senator from Washington (Mr. MAGNUSON), the Senator from Minnesota (Mr. MONDALE), the Senator from New Mexico (Mr. MONTOYA), and the Senator from Connecticut (Mr. RIBICOFF) are necessarily absent.

I further announce that the Senator from Louisiana (Mr. JOHNSTON) is absent on official business.

I also announce that the Senator from Mississippi (Mr. STENNIS) is absent because of illness.

I further announce that, if present and voting, the Senator from Washington (Mr. MAGNUSON), the Senator from Connecticut (Mr. RIBICOFF), and the Senator from Indiana (Mr. BAYH) would each vote "nay."

Mr. GRIFFIN. I announce that the Senator from Massachusetts (Mr. BROOKE), the Senator from Colorado (Mr. DOMINICK), the Senator from Hawaii (Mr. FONG), the Senator from Arizona (Mr. GOLDWATER), the Senator from Oregon (Mr. PACKWOOD), the Senator from Kansas (Mr. PEARSON), and the Senator from South Carolina (Mr. (THURMOND) are necessarily absent.

The Senator from Maryland (Mr. MATHIAS), the Senator from Ohio (Mr. SAXBE), and the Senator from Vermont (Mr. STAFFORD) are absent on official business.

If present and voting, the Senator from Arizona (Mr. GOLDWATER) and the Senator from South Carolina (Mr. THURMOND) would each vote "yea."

The result was announced—yeas 36, nays 44, as follows:

[No. 14 Leg.]

YEAS—36

Aiken	Cook	Javits
Allen	Cotton	McClure
Baker	Curtis	Percy
Bartlett	Dole	Roth
Beall	Domenici	Schweiker
Bellmon	Fannin	Scott, Pa.
Bennett	Griffin	Scott, Va.
Biden	Gurney	Stevens
Brock	Hansen	Taft
Buckley	Hatfield	Tower
Byrd, Harry F., Jr.	Helms	Weicker
Case	Hruska	Young

NAYS—44

Abourezk	Hathaway	Moss
Bentsen	Hollings	Muskie
Bible	Huddleston	Nelson
Burdick	Hughes	Nunn
Byrd, Robert C.	Humphrey	Pastore
Cannon	Inouye	Pell
Chiles	Jackson	Proxmire
Clark	Kennedy	Randolph
Cranston	Long	Sparkman
Eagleton	Mansfield	Stevenson
Ervin	McClellan	Symington
Fulbright	McGee	Talmadge
Hart	McGovern	Tunney
Hartke	McIntyre	Williams
Haskell	Metcalf	

NOT VOTING—20

Bayh	Gravel	Pearson
Brooke	Johnston	Ribicoff
Church	Magnuson	Saxbe
Dominick	Mathias	Stafford
Eastland	Mondale	Stennis
Fong	Montoya	Thurmond
Goldwater	Packwood	

So Mr. BAKER'S amendment was rejected.

The PRESIDING OFFICER. The resolution is open to further amendment.

Mr. ERVIN. Mr. President, it has been suggested to me by the distinguished minority leader that the resolution should be amended as follows:

On page 2, line 11, strike out the word "five" and insert in lieu thereof the word "seven";

On the same line of the same page, strike out the word "three" and substitute in lieu thereof the word "four";

On page 2, line 14, strike out the word "two" and insert in lieu thereof the word "three".

This would have the effect of increasing the membership of the committee from five to seven, and having four members from the majority and three members from the minority.

This, it seems to me, is a wise suggestion the distinguished minority leader has made to me, and so I will modify the resolution accordingly.

Mr. TOWER. Mr. President, will the Senator from North Carolina yield for a question?

Mr. ERVIN. I yield.

Mr. TOWER. The Senator from North Carolina is himself modifying his own resolution?

Mr. ERVIN. Yes.

Mr. TOWER. Have the yeas and nays yet been ordered?

Mr. ERVIN. No.

Mr. TOWER. I thank the distinguished Senator.

The PRESIDING OFFICER (Mr. MCCLURE). The resolution is so modified.

Mr. GURNEY. Mr. President, I have an amendment which I send to the desk and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

On page 2, line 1, insert the following: strike "Presidential election of 1972" and insert in lieu thereof "last three Presidential elections."

On page 2, lines 4 and 5, strike "election" and insert in lieu thereof "elections."

On page 5, line 24, strike "in 1972."

On page 7, lines 17 and 18, strike "the Presidential election of 1972," and insert in lieu thereof "any of the last three Presidential elections."

On page 7, line 19, strike "election" and insert in lieu thereof "elections."

On page 7, line 24 strike "in 1972."

On page 9, lines 2 and 3, strike "Presidential election of 1972" and insert in lieu thereof "last three Presidential elections."

Amend the title of the resolution by striking "in the Presidential election of 1972, or any campaign, canvass, or other activity related to it" and inserting in lieu thereof "in the last three Presidential elections, or any campaign, canvass, or other activity related thereto."

Mr. GURNEY. Mr. President, what this amendment would do would be to broaden the scope of the investigation. The resolution now, of course, has within its scope the presidential election of 1972. This amendment would increase the scope of the investigation to the past three presidential elections, which would include the one in 1968 and the one in 1964.

Before I go to the argument on the merits of the amendment, I should like to make a few general remarks about the whole business of Watergate. As I stated yesterday, and I think nearly all my colleagues on this side of the aisle agree, we are not unhappy about proceeding with this investigation. We would like to uncover as many facts as have not been uncovered and get to the bottom of what happened and who was involved.

But I think one observation should be made, and that is the Watergate affair was really never much of an affair in this last election. It did not figure in the election at all, really. I do not think it changed a handful of votes in any part of the country.

I can speak with some authority on that because one of my jobs since September 1972, following the Republican Convention in Miami, was to act as one of the surrogates for the President in the election and I campaigned in many States and spent much time in my own home State of Florida campaigning continually for a period of 3 months and then extensively for a period of 6 weeks prior to the election. I really never heard anyone say much about the Watergate affair. If it ever was raised, it was raised in this fashion, "Well, that is another one of those political wing-dings that happen every political year. We understand what is going on. People are playing politics and political games. Republicans are spying on Democrats."

I am sure that if the Republicans knew what was going on in the Democrat camp, the same thing would be happening over there.

I think another very interesting point in this whole Watergate affair is how certain of the news media tried to make a tremendous political issue out of it. I recall that CBS ran a continuous series night after night after night on the Watergate, trying to pump it up into something that might make the Democrat candidate something to hang on to, like a strap hanger—and certainly he needed it—no question about that. But in spite of all this drummed up interest in Watergate, of course it played no part in the election. People really did not think much about it at all.

One of the interesting things, of course, was what the pollsters had to say or found out about it.

The Harris poll ran a poll less than a month before election, during the height of the Watergate affair—it was about the middle of October—and I would like to refer to some of the results of that poll because I think they are interesting and show us that people really did not think much about it.

Seventy-six percent of the voters polled—and this was an in-depth questioning, taken nationwide in one of the larger polls on the whole election process of 1972—a little better than three-quarters of the voters, all those who were polled, agreed that they know about Watergate but were not following it closely. They were interested in it, but then, by a margin of 70 percent to 13 percent—of course, there were some that did not express an opinion on this—but the 70 percent of those polled said that the wiretapping of Democrat Headquarters was a case of political spying.

Moreover, a very large percentage of them dismissed it as being no encroachment on civil rights. Sixty-two to 26 percent of the voters polled said they were not worried about civil liberties. Fifty-seven to 25 percent said it was political spying, a common occurrence in politics especially around campaign time.

The same poll, on another matter, which I suppose is connected with Watergate, the campaign contribution aspect—there were many charges that the Republicans and the Committee to Re-

elect the President were receiving huge amounts of money from special interests and from business and were concealing the amounts, and that was going to make a great difference in the campaign—showed that only 18 percent of those polled gave any credence to that charge. They did not believe it, either.

So, Mr. President, I make these general remarks simply to point out two things: One, that the Watergate affair was really never that big as a political campaign issue. But the other point, so important, is that the voters all across the country thought this was a practice that both political parties indulged in during political campaigns, presidential campaigns, or other campaigns.

So that is why I think this amendment is in order. If we are going to give objectivity to this investigation and its final report, whatever we plan to do by way of recommending legislation, it seems to me it must be done with a bipartisan—I was going to say nonpartisan manner—I guess I should probably have used that expression—but at least a bipartisan tinge or aroma to this whole thing. I do not know that we can do that exactly, zeroing in purely on the Watergate, which is obviously oriented in one direction. That is one investigation of spying, and on the other we should seek to find out what happened in the other elections.

What are we trying to do here, anyway? We are trying to find out what happened in the Watergate affair, yes. That is the No. 1 objective of this. But not the chairman, not the author of this bill who, certainly, I hope, will be chairman of the committee when it is appointed. I feel very strongly that his object is broader than just the Watergate affair itself but to find out generally what happens in political spying, bugging, and surveillance, and all the rest of the shenanigans that are sort of some of the sideshows in our political campaigns. If we are going to make an honest contribution, to find out how we can improve political campaigns and certainly cut down on this aspect of it, then we should have the investigation as broad as we can make it.

There is no one in the Senate, all 100 Senators and, for that matter, all 435 Members of the House of Representatives, who would not say, if they were queried somewhere where they would not be quoted, that both political parties do that, Democrats as well as Republicans. We are all at fault to a certain extent. I have heard some observations made that we, Republicans, are not nearly so good at it, or else we would have more representation in the House and Senate. So the other side must be more effective than we are. But, be that as it may, whether one is better at spying than the other, I think it is a case where both political parties, candidates of both political parties or their followers—in more cases it is the followers than the candidates themselves—do do these things that most of us would prefer not to see done.

I would think the best way to find out all we can about this and get all the knowledge we can garner and learn all the tricks of the trade, would be to investigate not just one incident but more than one incident and make the investigation as broad as we can make it, which as I say, certainly should include the two prior political campaigns, the one in 1968 and the one in 1964. Incidentally, that certainly would be a very fair bipartisan approach, because the losing candidate in 1968 is a Democratic Member of this body and the losing candidate of 1964 is a Republican Member of this body. So I would think that would show the greatest sense of impartiality and objectivity, to get into those campaigns and find out what happened there, also.

The reason for offering the amendment—and I want to make this as clear as I can—is not to try in any way to make a donnybrook out of this matter or to try to make it a strictly "You did this" and "No, you did that" matter. That is not the point of it. The point is to broaden this whole business so that we can get some knowledge of what does happen in these campaigns and from there hopefully, come up with suggestions and legislation, and perhaps we may do away with some of our problems.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. TOWER. Mr. President, the Senator from Florida is to be commended for offering an eminently fair amendment.

I note that the function of this committee is to determine whether, in its judgment, certain occurrences which may be revealed by the investigation and study indicate the necessity or desirability of the enactment of new congressional legislation to safeguard the electoral process by which the President of the United States is chosen. Considering that, it seems to me entirely relevant to look into the campaigns of 1964 and 1968.

As a matter of fact, less is known about what happened during those campaigns than what happened during the 1972 campaign with respect to electronic surveillance. There have been strong indications and evidence and assertions by people in responsible places that there was, indeed, electronic eavesdropping in those two campaigns. It was never involved in any litigation; it was not publicly brought to light, except to the extent that it may have been written about by a reporter or two. I do not know. I do not recall seeing any press accounts of it.

It seems to me that we might even show some greater degree of interest in what might have happened in those campaigns which is not widely known and is a matter on which we have little knowledge than in a matter on which we have a great deal of knowledge, which has been and still is the subject of litigation, with the courts and the prosecutors still in business on the whole issue of the Watergate.

Of course, I hope that this committee will not engage in any kind of activity which might prejudice the rights of any people currently involved, defendants involved, in that matter, or people who might become involved in the future.

In any case, we do know more about what went on in the 1972 campaign, and we do not know what went on in 1964 and 1968—at least, not general knowledge.

I think that if the majority were to accept this amendment, it would tend to negate almost any claim of partisanship that could be made against the committee. It would be adequate evidence of impartiality and a genuine desire to get at the whole matter of electronic surveillance or other illegitimate acts that might in some adverse way affect the electoral processes in the selection of the President of the United States.

Mr. President, I ask for the yeas and nays on this amendment.

The yeas and nays were ordered.

Mr. TOWER. I think we would lay to rest many of the fears of partisan consideration if this very wise amendment by the distinguished Senator from Florida were adopted.

Mr. ERVIN. Mr. President, to accept this amendment would be about as foolish as the man who went bear hunting and stopped to chase rabbits.

The Senator from Texas has quite well said that there have been no charges of any improprieties in 1964 and 1968; but he says that we should take them into consideration so that we can discover if there is any basis for such charges.

On the contrary, the resolution undertakes to investigate matters that are fresh, and are connected with the presidential campaign of 1972. From the night of June 16, last year, when five men were caught redhanded in an act of burglary in Democratic National Headquarters, in the Watergate building in Washington, down to the present moment, the news media of all kinds have had articles dealing with charges and insinuations of one kind and another, of vast and illegal or improper or unethical conduct in connection with this one election.

I have never seen any charges made about the election of 1964 or the election of 1968. I think it would be a tragedy to try to dilute the efforts of the committee to be established by this resolution, if it is adopted, to investigate matters concerning which there is no concern or apprehension and about which no charges have been made.

So I trust that the Senate will reject this amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Florida. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk proceeded to call the roll, and Mr. ABOUREZK voted in the negative.

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

The PRESIDING OFFICER. The rollcall is in progress.

The assistant legislative clerk concluded the rollcall.

Mr. ROBERT C. BYRD. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Nevada (Mr. BIBLE), the Senator from Nevada (Mr. CANNON), the Senator from Idaho (Mr. CHURCH), the Senator from Mississippi

(Mr. EASTLAND), the Senator from Alaska (Mr. GRAVEL), the Senator from Michigan (Mr. HART), the Senator from Washington (Mr. MAGNUSON), the Senator from Minnesota (Mr. MONDALE), the Senator from New Mexico (Mr. MONTOYA), the Senator from Wisconsin (Mr. NELSON), and the Senator from Connecticut (Mr. RIBICOFF) are necessarily absent.

I further announce that the Senator from Louisiana (Mr. JOHNSTON) is absent on official business.

I also announce that the Senator from Mississippi (Mr. STENNIS) is absent because of illness.

I further announce that, if present and voting, the Senator from Connecticut (Mr. RIBICOFF), the Senator from Alaska (Mr. GRAVEL), the Senator from Washington (Mr. MAGNUSON), the Senator from Indiana (Mr. BAYH), and the Senator from Nevada (Mr. CANNON) would each vote "nay."

Mr. GRIFFIN. I announce that the Senator from Massachusetts (Mr. BROOKE), the Senator from Colorado (Mr. DOMINICK), the Senator from Hawaii (Mr. FONG), the Senator from Arizona (Mr. GOLDWATER), the Senator from Oregon (Mr. PACKWOOD), the Senator from Kansas (Mr. PEARSON), and the Senator from South Carolina (Mr. THURMOND) are necessarily absent.

The Senator from Maryland (Mr. MATHIAS), the Senator from Ohio (Mr. SAXBE), and the Senator from Vermont (Mr. STAFFORD) are absent on official business.

If present and voting, the Senator from Arizona (Mr. GOLDWATER) and the Senator from South Carolina (Mr. THURMOND) would each vote "yea."

The result was announced—yeas 32, nays 44, as follows:

[No. 15 Leg.]

YEAS—32

Aiken	Curtis	McClure
Baker	Dole	Percy
Bartlett	Domenici	Roth
Beall	Fannin	Scott, Pa.
Bellmon	Griffin	Scott, Va.
Bennett	Gurney	Stevens
Brock	Hansen	Taft
Buckley	Hatfield	Tower
Case	Helms	Weicker
Cook	Hruska	Young
Cotton	Javits	

NAYS—44

Abourezk	Haskell	Metcalf
Allen	Hathaway	Moss
Bentsen	Hollings	Muskie
Biden	Huddleston	Nunn
Burdick	Hughes	Pastore
Byrd, Harry F., Jr.	Humphrey	Pell
	Inouye	Proxmire
Byrd, Robert C.	Jackson	Randolph
Chiles	Kennedy	Schweiker
Clark	Long	Sparkman
Cranston	Mansfield	Stevenson
Eagleton	McClellan	Symington
Ervin	McGee	Talmadge
Fulbright	McGovern	Tunney
Hartke	McIntyre	Williams

NOT VOTING—24

Bayh	Goldwater	Nelson
Bible	Gravel	Packwood
Brooke	Hart	Pearson
Cannon	Johnston	Ribicoff
Church	Magnuson	Saxbe
Dominick	Mathias	Stafford
Eastland	Mondale	Stennis
Fong	Montoya	Thurmond

So Mr. GURNEY's amendment was rejected.

The PRESIDING OFFICER. The resolution is open to further amendment.

Mr. TOWER. Mr. President, I call up my amendment, and ask that it be read.

The PRESIDING OFFICER. The clerk will read the amendment.

The assistant legislative clerk read the amendment, as follows:

On page 13, line 23, insert at the end of section 6 the following "Not less than thirty-three and one third percent of the monies made available pursuant to this resolution for the purpose of retaining or employing personnel shall be made available to the minority members of the select committee".

Mr. TOWER. Mr. President, the purpose of this amendment is to simply assure the minority of something approaching adequate staffing. Actually, the minority will have more than one-third of the membership of the committee, and there would be a requirement that they have at least one-third of the moneys available for direct compensation for personnel on the committee.

I think it goes without saying that in a matter of this sort, certainly minority staffing is eminently desirable. I know there are many standing committees of the Senate that work on substantive matters that have staffs in which the majority, and minority staffs are not readily identifiable; they work for all. There are several committees like that. But if the argument of the Senator from North Carolina that the majority members be a majority on the committee is valid, then it is equally valid that there should be adequate staffing for the minority members of the committee.

The amendment I have offered is in the spirit of the Legislative Reorganization Act, which requires that two out of six of the professional personnel be members of the minority. This amendment would be in the spirit of the Legislative Reorganization Act.

It would be my hope that the distinguished Senator from North Carolina and his colleagues would accept the amendment.

Mr. ERVIN. Mr. President, this committee is supposed to investigate the same things. It is not supposed to have two separate investigations, one conducted by the four majority members and another by the three minority members. They are supposed to investigate exactly the same thing.

I see no reason to put in a resolution of this kind, something that has never been put in a resolution establishing a select committee in the history of the U.S. Senate, so far as I can ascertain.

If the minority members felt that they must act as sort of counsel for the defense for some of these parties, this proposal might be appropriate. I do not think that is their function. I think it is the function of the majority and minority members to investigate identically the same thing, to determine what the truth was with reference to these matters.

I oppose this amendment. I recognize that minority members of a committee should have some assistants to enable them to keep up with what the committee is doing, and I will assure the Senate that if this resolution is adopted and I should become chairman of the committee, I will do everything I can to see that the minority has equitable representation.

Mr. GRIFFIN. Mr. President, will the Senator yield to me?

Mr. ERVIN. I yield.

Mr. GRIFFIN. What does the Senator consider equitable, if provision for a third of the committee staff is not equitable?

Mr. ERVIN. I will say to the Senator that I do not know what it is until we get down to discussing the matter. I am not able to make that decision. I did not think I had to make it here today, because such a provision has never been put in any resolution establishing a select committee before in the history of the U.S. Senate. So I am not in a position to make that decision.

Mr. GRIFFIN. It is already in the law, in the Legislative Reorganization Act, as to all standing committees.

Mr. ERVIN. I disagree most emphatically with the distinguished Senator from Michigan.

All the Reorganization Act says is that standing committees of the Senate shall have six professional employees and that two of them shall be assigned to the minority. It does not say they will have one-third of all the remainder of the people who work for the committee.

Mr. GRIFFIN. That certainly establishes the spirit——

Mr. ERVIN. I cannot understand why the Senator from Michigan thinks it should have two separate investigatory staffs.

Mr. GRIFFIN. Well, if the Senator will permit me, earlier in his argument today he referred to a committee that was established when Republicans controlled the Senate—a committee which was chaired, as I understand it, by Senator McCarthy. I was not here at that time, but I seem to recall, that there was a minority counsel of the committee representing the Democrats; his name was Robert Kennedy.

Mr. ERVIN. I never made any reference to any committee chaired by Senator McCarthy.

Mr. GRIFFIN. I thought he did earlier today.

Mr. ERVIN. No, not today. I mentioned two so-called McCarthy investigations, one of them the Army-McCarthy hearing, which was investigated by a committee headed by Senator Karl Mundt, and the so-called censure committee, which was headed by Senator Watkins of Utah. This amendment says it would be divided down at least to 33 percent, even in cases of employees who are purely clerical, and there is nothing in the Reorganization Act to that effect. I can assure the Senator that I will give the minority adequate assistants.

Mr. GRIFFIN. But that would be something less than one-third, I take it?

Mr. ERVIN. I do not know what it would be. I did not think this point would ever be raised, because since the time George Washington took his oath of office as President of the United States in the first session of the first Congress of the United States assembled, such a proposal as this with reference to any select committee has never been made. I did not anitcipate it. Therefore, I did not study

in advance what would be equitable. But I assure the minority that I shall certainly see that they get an equitable, reasonable proportion of the staff. But I will not accept any kind of theory that we are going to have two investigations conducted by this committee, one on behalf of the minority members and one on behalf of the majority members. I think there should be one investigation for the entire committee.

I ask the Senate to defeat this amendment.

Mr. TOWER. Mr. President, certainly I am really amazed, because what we have asked for here is certainly not unreasonable. No one has envisioned in offering or speaking for or supporting this amendment two separate investigations—one conducted by the majority and one by the minority—any more than we offer separate legislation by the majority and minority or reports out of the committees. It does not happen.

What we are suggesting here is that the minority be adequately staffed. It has already been established that we are going into politically sensitive matters. We are establishing a precedent here of using the Senate of the United States as a vehicle for the investigation of alleged political unethical conduct of members of another party. No one can tell me that anyone who views this objectively is going to say that this thing is completely fair and impartial and objective, if we are not even going to establish the right of the minority party to have adequate staffing.

We have only asked for three, and that is indeed in the spirit of the Legislative Reorganization Act. I know it is not spelled out by the letter of the act, but it is certainly in the spirit of that act.

I say that the Senate would reflect great discredit on itself if this amendment were rejected. I think it is going to be far more difficult for the majority to make a case that this is a fair and impartial investigation if we are going to be denied adequate staff on the minority.

Mr. STEVENS. Mr. President, I again join with the Senator from Texas. I think the Senator from North Carolina should look to the past and should look to other times and the size of the committee staffs in the period he is talking about.

Since I have returned, I have heard a hue and cry for reform of the Congress. And if there is any one area where there is probably no question about the disparity in the ability of individual Members of the Senate to conduct their business, it is on the staffs of the committees. We ask for one-third of the staff support on a committee that will have, as outlined, two of the five members from the minority. That is too little. We should have 40 percent of the committee support. We should have the ability to know that the people who are working with the Republican members are working with them.

I fully believe in the concept of a professional staff. However, this is turning very much into a bipartisan concept that I personally abhor. I was prepared—and I told the minority leader that I was prepared—to serve on a committee that was balanced, three members to each side, in which the Senate was going to investigate this mess. However, if it is the Democratic Party that is going to investigate the mess, then I join the others in saying that the Democratic Party ought to investigate it.

I have an amendment that would delete the Republican membership on the committee and let the Democrats investigate it if they wish to do so. However, I thought that I was a Member of the U.S. Senate and that the Senate was obligated to investigate this.

It is highly improper in my opinion to turn it into such a partisan political maneuver. It seems to me that we are running the 1976 campaign in 1973. But if we are professional Members of this body, we ought to have a professional staff on an equal basis. And even with a proportionate distribution, the staff of the majority would have 60 percent of the staff. And I think that would be sufficient.

As we look around at some of the members of the professional staff and the full committee staffs, we can find instances where there are more than 100 staff members and we have a minority staff of six who serve the minority.

If anyone in the United States can expect us to do our share and carry our load under these circumstances, I do not see how it can be done.

I have called on some of my friends to turn to an organization such as Common Cause and call the attention of the American people to what is going on.

When I came to this town in 1950 as a young lawyer and watched the McCarthy committee, I abhorred some of the things that they did. However, I still noticed that there were minority staff members and what they did.

When I was a practicing lawyer, I know that there was a minority staff and they were fairly well balanced. However, in the last 5 or 6 years, it has gotten considerably out of balance. This is what is wrong with the U.S. Senate.

When people ask me what should be reformed, I tell them that we ought to give each Senator staff to perform the services that he has to perform.

We are equal in the Senate when it comes to voting, but not in the committee.

This committee will be nothing but a political witch hunting committee unless there are some changes. I say that advisedly, as one who has been in the middle of the road in this body. I have never seen anything that will turn this Senate around and split it as much as this committee will if it continues to be constituted as presently outlined.

Mr. COOK. Mr. President, I have been listening to the debate. What bothered me was the colloquy between the Senator from North Carolina and the Senator from Michigan, because the Senator from North Carolina said he would make the decision, he would see to it that there was equitable representation on the part of the minority, he would say what kind of representation they would have, and he would see to it that certain staff would be made available.

I must say that I have heard about the seniority system in the U.S. Senate. I lack a great deal of seniority. However, if there was ever an opportunity to prove that seniority is just about as right as it can be, this is the time. For one individual to say that he can determine how the $500,000 that will be appropriated is going to be handled from the beginning to the end would not do so. I can only plead pauperism and say that even the public defender has staff, as does the Commonwealth attorney.

Mr. President, let us proceed with at least some degree of legal logic. We do not have to play games with what has been done since the time of Washington. We may be able to play games with regard to the Constitution in this regard. And we might even do it in the case of the Constitution. However, I would hope that the Chief Justice of the United States would not say when he goes into that room, "Here is what we are going to do. And here is how we will do it." For him to say whether they are adequately staffed on the committee is rather shocking to me.

I will tell the U.S. Senate as a ranking member of the Committee on Rules and Administration what shape we are in on the Republican side. I hope that Common Cause will listen.

I say to the Senator from Alaska that we can look at the staff of the minority and we will find 16 percent of all of the staffs are on the minority side. Some committees are different. Some committees are even over and above the provision of section 202 of the Legislative Reorganization Act. And one of them is the Public Works Committee, chaired by the Honorable JENNINGS RANDOLPH of West Virginia. But on some committees there are 24 members of the staff and not one minority staff member. And that is not uncommon. So I can only say that when people listen to this debate and to who is prepared and who is not prepared, they will understand it. But that does not mean that the minority party ought to be prepared unless it does it on its own.

I can only say that if we find ourselves in a position where we are Members of the Senate and on a committee that is going to be established by this body and that this is the decision that I will make, then I will say to the Senate that it is seniority at its worst. And it ought to be looked into very seriously. It ought to be debated for a long, long time.

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

Mr. COOK. I yield.

Mr. ERVIN. Let me confess that the inexact language I used rightly subjects me to the verbal chastisement which the able and distinguished Senator from Kentucky has given.

What I meant to say and, as the Senator has pointed out, I probably failed to say, is that if I were a member of the committee I would do everything I could to persuade the committee to make a reasonable allotment of staff to the members of the minority, and that is what I intended to say; but perhaps I phrased

it somewhat inexactly, and, therefore, I accept in a contrite spirit the very eloquent chastisement which the Senator from Kentucky has given me.

Mr. COOK. I say to the Senator from North Carolina, and he knows this, that without any equivocation this Senator has all the respect in the world for him. I accept those words, and I am delighted that they are in the RECORD, because that means that there will be a decision.

Unfortunately, again I say to the Senator from Texas—and that is why his amendment is before this body now—that decision will be made by the majority. And even with all of the pleading of the Senator from North Carolina, if the other two members decide that the minority shall have nothing, then the minority shall have nothing.

Mr. ERVIN. Oh, if I vote with the minority on this point, they will have a majority on their side.

Mr. COOK. I must say to the Senator from North Carolina, the decision will not be made by the four, but it will be made by the three, and if the three decide or the four decide 3 to 1, then that will prevail. So I would not suggest that it will not be done as a body; it will be done by the four who constitute the majority, and I think even then, the Senator from North Carolina will agree that on any committee in the Senate of the United States, when it comes to organization and when it comes to what kind of staff will be made available, that decision is not made by the committee as a whole, but it is made by the majority side of the table; and the majority side of the table can vote with one vote in distinction between them, but they do not go join the other side to see that it is overcome, and I think the Senator from North Carolina will have to admit that.

Mr. President, I yield the floor.

Mr. COTTON. Mr. President, a great deal has been said in the Senate this afternoon about establishing precedents. I agree with the other Senators who have addressed themselves to this amendment. I think all of them on our side have expressed their confidence in the fairness of the Senator from North Carolina repeatedly. But I found myself a little shaken by the opposition to this particular amendment.

If I read this resolution correctly, as far as the resolution is concerned, the minority members of this select committee would not have even the right to a minority counsel to advise them; and I cannot conceive of the Senate now ceasing to be partisan. Frankly, I had not expected these other amendments to be adopted, but I cannot conceive of the Senate establishing that kind of a precedent.

I am confident that the Senator from North Carolina would give us a minority counsel; but it should not be given to us, it should be a matter of right. This is an extremely serious investigation, and it is essential that the people of this country be satisfied with it. For the first time, I think, since I have been in this body with the Senator from North Carolina, whose ability I respect so much and whose integrity I respect so much, he has made a statement I cannot even comprehend. That the mere fact that the minority members of a staff of a select committee that is dealing with something that you can talk all you want to and whitewash all you want to, is partisan, if the minority members have anything to say, it constitutes two separate investigations. If it were anyone other than a great constitutional lawyer, I would have to characterize that as nothing but nonsense.

I would take the Senator's word on this matter of toil, but it is not a matter of taking someone's word. It is not a matter of putting a crumb on the table. It is a matter of establishing a precedent and maintaining the precedents of the past that at least the minority members of such a committee are entitled to a minority counsel. They are also entitled to assistants in reasonable proportion to such assistance as they need to discharge their duties, and it should not be a matter of a gracious gift from anyone, it should be a matter of right and justice, written right into this resolution.

Mr. SCOTT of Pennsylvania. Mr. President, will the Senator yield at that point?

Mr. COTTON. I yield.

Mr. SCOTT of Pennsylvania. I think we can see now where we are at and where we are getting.

What we see is the power of the majority which, first of all, says that you cannot have equality in a Senate decision on a matter of ethical conduct and proper standards, and a majority which says that you must give them unheard of power beyond that ever granted to another committee; that you must allow them to go where they wish and look for whatever they want, and pursue any rumor or unsubstantiated allegation to the point where they would hope that the Muse would rest on the rumor rather than on substance; and now, a further blow to the equity of the situation, in their refusal even to admit that under the Reorganization Act, which we voted on and passed, there is contemplated an equitable division to the minority.

We are 43 percent of this body. In order for the majority to work its will, it insists in its division of professional staff, that the minority shall have 33⅓ percent, and not the 43 percent which our representation entitles us to and which the people of the United States voted, in their own exercise of their judgment, should constitute the Senate of the United States. We are to be denied the assurance that we will be provided for under the statutes of this land and under the equitable distribution intended to be assured by that act.

So now we are going through the processes of power personified, the process of overweening arrogance exceeded even to a point where they do not wish us to be adequately equipped to determine the truth or falsity of the allegations of witnesses.

That is going pretty far, and, Mr. President, it seems to me it is going entirely too far. Go ahead and work your will; tell the people of the United States that the minority has no rights; that your concern for minority rights does not extend to the Senate; that Senators have no minority rights; that we have no civil rights; that we have no rights except to abide by your procedure as you go ahead with your inquisition into rumor, into substance or lack of substance, and to follow wherever your whim listeth.

That seems to me to be not quite right, and I regret very much that we cannot even agree on this. I do not think the actual hiring of assistants is what is at issue here, because much of that could be worked out depending on the good will and what the British call the grace and favor of the chairman. What we are arguing about is a very important principle: Is the law going to be followed? Is the Reorganization Act, in word and in spirit, to be upheld? Are we going to be given any chance whatever to bring out what may be important information bearing on the whole political process of campaigns and elections?

Well, it seems, we are not. If we are not, perhaps we should leave the whole thing to the majority. Let them hold their proceedings. Let them be as "star chamber" as they wish to be about it. Let them make all the charges they want. Then let the United States see for itself that what is going on is not a bipartisan inquiry in support of legislation but a partisan political effort to extract the last bit of juice from an already considerably squeezed lemon—and lemon it is, and I make no defense for it—lemon it is. To extract the very last citric benefit from a situation which should be approached by this body in an even, equitable, judicious, and judicial examination of the truth. That is all we are asking for here.

It is obvious that in vote after vote, what we are getting is a determination to ride us down, to roll us over, to seek the maximum political benefit which can be obtained from a single incident, without the slightest scintilla of curiosity as to what may have happened at another time and another place in other elections.

If that is fair, Mr. President, then, indeed, this body has descended to a very, very unfortunate nadir.

I thank the Senator.

Mr. ERVIN. Mr. President, I wanted to offer an amendment to the Tower amendment——

Mr. BAKER. Let me make these remarks briefly first, then I will be most happy to yield the floor so that the Senator from North Carolina can do that.

Mr. President, in furtherance of the point developed by the distinguished minority leader, "Where are we at?" I recall yesterday he predicted that unless we came to terms with absolute objectivity, impartiality, and no partisan inquiry, the whole matter would evolve into a great shouting match, it would engage us in the fiercest sort of political strife, and create a great deal of confusion.

I have not stated that with the exact precision of the distinguished Republican leader but I believe that is the burden of his summary.

We are now at that place where, demonstrably, there is uncertainty in our minds about the fairness, the impartiality, the appropriateness of the inquiry into which we are about to launch.

I can conjure up an entirely different

scenario in my mind that might have taken place, beginning yesterday, had we not been met with the adamant refusal of the majority to yield on a single point.

I wish that we had been willing to follow the precedents—and there are ample precedents—for equal distribution and numerically equal representation on this select committee, but instead of that, in this debate, we have had a series of amendments in which a modicum of representation on an equal basis was rejected.

We would have had genuine agreement and generous statements on both sides of the aisle that we as Republicans and Democrats together, all as Members of the Senate, sharing the same oath of office in support of the same Constitution, would pledge ourselves, our time, and our energies to get to the bottom of this affair and to find out and learn what the facts are, to let the chips fall where they may, and to imply at least that the Republicans would be as hard, if not harder, on Republicans than any Democrats ever thought about being in this sort of inquiry.

I believe that is the scenario that would have taken place and that we would have had a marvelous situation in which to commence this inquiry.

Mr. STEVENS. Mr. President, will the Senator from Tennessee yield?

Mr. BAKER. I yield.

Mr. STEVENS. I am glad the Senator mentioned that because I think the majority party has entirely misread the attitude of Members of this body on this side of the aisle.

So far as I am concerned, I would serve on a 3–3 committee because, as a past U.S. attorney and prosecutor, I would like to assist in removing this blot on the Republican Party, with which I have been associated for so long.

But if I am going to be placed in a position where I would serve on a committee where I did not have assistants, where it started with a political bias already in, I do not think it would do any good at all, in order to try and correct this dastardly deed that took place.

I still do not know why they broke into the Republican headquarters—Democratic National Headquarters, by the way. [Laughter.] That would be the last place I would look for secrets. But as a practical matter, I would certainly like to find out what they were doing there and I would like to do it on the basis of political equality and on the basis of being a Member of the Senate, and not as a member of a committee where you have a stacked deck before you start.

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

Mr. BAKER. I yield.

Mr. AIKEN. I should like to clarify the situation to which the Senator from Alaska just referred. I also would like to know why they broke into the Democratic headquarters. I was reading in one of the local newspapers which finally listed six or eight cases where Republican offices had been broken into. They were all broken into by hoodlums in search of money.

Mr. BAKER. I thank the Senator from Vermont.

I hope that the Senator from Pennsylvania (Mr. SCOTT) will not feel offended and that the Republican leader will not mind if I recall a story that he stated in that respect. I believe that the rhetorical slip of the tongue by the Senator from Alaska (Mr. STEVENS) about breaking into Republican headquarters brings to mind the story that the Senator from Pennsylvania related, that he was once Republican National Chairman and that he could not recall ever having had anything that anyone would want to steal——

Mr. SCOTT of Pennsylvania. Still do not.

Mr. BAKER. And he still believes that story now.

I reiterate what the Senator from Alaska has so ably said, and which I honestly believe every member of the minority believes. Assurances will be given on this matter, if we proceed on the basis of a clear, fair, objective inquiry into what happened, because the Democratic Party may have something of a short-term gain politically by trying to embarrass Republican officials; but the Republican Party in the United States has a lot more to gain by expunging that spot from its reputation. And we will do that, but we will not do it at the sufferance of the majority who stack the committee, who deprive us of staff potentiality, and who create the initial impression that it is something other than an objective inquiry.

I think that this scenario I have tried to describe would have occurred. I hope it can still occur, but the chances are slim of any wholesome cooperation into this inquiry, and we will be, I fear, greatly weakened and dis-served from what we have seen in the past day and a half.

"Where we are at" is the question, as the minority leader has pointed out. Where we started out was with 2–3. We tried to go to 3–3. We tried to give a tie-breaking vote to the chairman—to give a tie-breaking vote to the chairman in case of any tie vote. Then we went to 3–4. We could not agree on how we would handle the date and the scope of the inquiry, whether 1972 or any other time.

Now we have the question of staff.

We hear a lot of talk about the President's being in the "splendor of the isolation of the White House" and a "captive of his staff," or the bureaucracy being an autonomous agency of Government that is responsible to no one.

The Senate is frequently a captive of its staff. I doubt there is a man in this Chamber that will deny that the staff has extraordinary power in the course of our deliberations and the staff's efforts to help us in the discharge of our duties simply because we have such a diverse role to play and so many things to accommodate that the staff must be called upon to act, in many cases, almost independently. So it seems to me that if we are ever to protect against that in sensitive matters we have to have a clear delineation of staff responsibility.

Mr. President, I said that I thought the chances of having an accommodation had been dashed. I do not think they have been destroyed. I think we can still do that. It will take some doing, but we can.

But this staff business I believe to be as important, if not more important, than any other item we have been talking about, including the 2–3 distribution, or the 4–3 distribution. I believe that we have got to find a way out of this dilemma.

I recall that in the McCarthy hearings, which have been referred to, an independent counsel was hired, a distinguished trial lawyer from my home city in my State, Ray Jenkins, who represented the committee. I recall that there was private counsel for the parties who were involved. But I cannot even conceive of that undertaking having been done by a majority staff, even though the staff at that time would have been a Republican staff; and I cannot conceive of this being done that way.

The gentle remonstration of the Senator from North Carolina that he will do the right thing when it comes to staff reminds me of some of the sharp traders in Tennessee and Kentucky and other States who aways put you on notice that your pocketbook is about to be lifted, when they say, "Don't worry about that. We'll do the right thing."

This is far too important a matter to depend on somebody's assurance that they are going to do the right thing. I have expressed confidence in the good will of the Senator from North Carolina, but this is too important a matter to leave this loose end untied.

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

Mr. BAKER. I yield.

Mr. COOK. In my part of the country, we say, "That dog won't hunt"; and I think the Senator from West Virginia understands that phrase.

Mr. BAKER. I am not going to offer an amendment at this time, but I would like to know the reaction of the distinguished Senator from North Carolina about a proposal that the staffing be done on an independent basis, that outside counsel be employed, and that we do it on a basis not similar to that which we do with standing and select and special committees.

Mr. ERVIN. If the Senator will yield, that is the reason why I said sometime ago that I propose an amendment to the Tower amendment.

I say to the Senator from Tennessee that there was some outside counsel in the McCarthy hearings, but every one of them, I think, was a Republican. I know Mr. Jenkins was. That is beside the point.

I would like to offer an amendment to the Tower amendment, as follows:

Strike out everything between the words "not less" and "select committee," and insert in lieu thereof, "The minority members of the select committee shall have representation on the staff of the select committee equal at least to one-third thereof."

I agree with the Senator from New Hampshire that they are certainly entitled to minority counsel.

Mr. COTTON. I thank the Senator.

Mr. TOWER. My amendment provides that 33⅓ percent of the moneys available

for direct compensation to personnel be allotted to the minority, and the Senator is suggesting one-third of the personnel. In other words, the Senator wants to pay the Democrats more than the Republicans.

Mr. ERVIN. Not necessarily. I just do not want to divide the money. I think we could very well agree on the staff. I do not know whether the Senator wants a lot of doorkeepers and messengers and things like that.

Mr. TOWER. No. We envision professional personnel, because this is an investigative procedure and requires people of considerable skill and experience; and that is what we envision as staff members.

Mr. ERVIN. Yes. I think that one-third——

Mr. TOWER. One thing that worries me about that—would the Senator read that again, please?

Mr. ERVIN. It reads:

The minority members of the select committee shall have representation on the staff of the select committee equal at least to one-third thereof.

Mr. TOWER. That worries me a little, because that means that the majority might have all the professional staff and the minority might get all the secretaries. Under certain circumstances, that might be desirable. [Laughter.]

But in this particular instance, I think that what we are concerned about is that we want to be assured of approximately one-third of the professional staff, and I think that is fully within the spirit of the Legislative Reorganization Act. I concede that there is no legal requirement to that effect, but I see no reason why we cannot operate within the spirit of that act, which was considered to be pretty good at the time we passed it.

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

Mr. ERVIN. I yield.

Mr. PASTORE. I think that at this point we are indulging in semantics and going from the sublime to the ridiculous.

The argument made by the Senator from North Carolina is that if the money is split, it might create the impression that there is a double investigation, and he is trying to avoid that. The minority denies that that is the purpose.

This modified amendment would accomplish exactly what the Senator from Texas wants to do, and that is that he is entitled to one-third of the staff, without mentioning the matter of the money. Naturally, if we are going to give the minority the janitors and we are going to take the lawyers, that would be a disgrace and a scandal for the Senate. No one intends to do that, and there must be reliance on the integrity of a man like SAM ERVIN.

If the Senator wants to write the word "professional" in there, I think that is agreeable and should be acceptable. The fact remains that we should not become ridiculous.

Mr. TOWER. I do not think anybody has impugned the honesty or good intentions of the Senator from North Carolina. Nobody on this side has done that.

I want to make sure we get one-third of the professional staff. I am not interested in sheer numbers of people. I am interested in the percentage of the professionalism on the staff.

In the Banking, Housing and Urban Affairs Committee we Republicans have almost one-third of the compensation. We have only 26 percent of the staff.

Mr. PASTORE. But does not the word "adequate" take care of that—adequate staff equal to one third? Adequate staff achieves equality.

Mr. TOWER. I believe the Legislative Reorganization Act uses the word "professional," and I am willing to accept that.

Mr. ERVIN. I would suggest, in deference to the statement of the Senator from Texas, that the minority members of the select committee shall have one-third of the professional staff of the select committee.

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

Mr. SCOTT of Pennsylvania. Professional and clerical.

Mr. ERVIN. I would not want to divide the clerical. I do not think we ought to decide right here. I would add to this, "one-third of the professional staff of the select committee and such proportion of the clerical staff as may be adequate."

Mr. TOWER. That is good. We will take that.

Mr. STEVENS. The total staff.

Mr. ERVIN. The staff is a totality.

Mr. TOWER. Will the Senator read that as it has been further amended?

Mr. ERVIN. In other words, this is really in the nature of a substitute to the Senator's amendment. I would strike out everything in the Senator's amendment and substitute in lieu thereof the following:

The minority members of the select committee shall have one-third of the professional staff of the select committee and such part of the clerical staff as may be adequate.

Mr. TOWER. Let us make a little legislative history at this point.

In the opinion of the Senator from North Carolina, does this reserve the right of the minority to a minority counsel?

Mr. ERVIN. Oh, yes.

Mr. COTTON. After the words "professional staff," before speaking of clerical, why not say "including a minority counsel"?

Mr. ERVIN. That is all right.

I have now rewritten this, at the suggestion of the distinguished Senator from New Hampshire, so as to read:

The minority members of the select committee shall have one-third of the professional staff of the select committee (including a minority counsel) and such part of the clerical staff as may be adequate.

Mr. TOWER. Let me ask the Senator from North Carolina a question about consultants. For the purposes of this amendment, should consultants be considered professional staff?

Mr. ERVIN. I think they should. I have no objection.

Mr. SCOTT of Pennsylvania. I do not see any reason why not.

Mr. TOWER. With that understanding, we are prepared to accept——

Mr. ERVIN. If anybody should hold that it is not sufficient to cover them, I would try to get the committee to apportion consultants all on the same basis.

Mr. TOWER. I thank the Senator from North Carolina. Having made that legislative history I am prepared to accept the amendment of the Senator from North Carolina to the amendment.

The PRESIDING OFFICER. The Senator's amendment will be so modified.

Mr. ERVIN. I will read this again.

Mr. TOWER. Let us make sure we get it right.

Mr. ERVIN. Strike out everything between the words "not less" and the words "select committee" and insert in lieu thereof the words:

The minority members of the Select Committee shall have one third of the professional staff of the Select Committee (including a minority counsel) and such part of the clerical staff as may be adequate.

The PRESIDING OFFICER. The Chair wishes to ask the Senator from North Carolina if this is in lieu of the language proposed by the Senator from Texas, in toto.

Mr. ERVIN. Yes. It is really a substitute. No, not quite. He states in his amendment:

Page 13, line 23, insert.

I would keep that part of the language of the amendment.

The PRESIDING OFFICER. The Senator from Texas has a right to accept the modification.

Mr. TOWER. I accept the modification.

The PRESIDING OFFICER. The question is on the amendment as modified. [Putting the question.] The amendment was agreed to.

Mr. TOWER. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. PASTORE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. GRIFFIN. Mr. President, I send an amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The amendment was read as follows:

On page 11, line 19, after the word "committee", strike all through the word "member" on line 21 and insert in lieu thereof: "or the majority or minority counsel, when authorized by the chairman or ranking minority member,".

Mr. GRIFFIN. Mr. President, I ask that the amendment be read again for the benefit of the Senator from North Carolina.

The PRESIDING OFFICER. The amendment will be read.

The amendment was read as follows:

On page 11, line 19, after the word "committee", strike all through the word "member" on line 21 and insert in lieu thereof: "or the majority or minority counsel, when authorized by the chairman or ranking minority member,".

Mr. ERVIN. Mr. President, I do not object to a modification, but it seems to me you should be able to send somebody besides the general counsel.

Mr. GRIFFIN. Would the Senator allow me to have a few minutes to state the case for this amendment. I believe it is

a very important amendment, and I commend the distinguished Senator from North Carolina for making some modification himself in the language of the resolution as originally introduced. He did tighten it up himself somewhat with respect to the number of people who will have access to the raw FBI files containing all kinds of hearsay comments and unverified, unevaluated statements.

The experience of other investigatory committees of the Senate, including the Committee on the Judiciary has demonstrated the importance of being very careful in this area for the protection of innocent people. If a lot of staff members are going to have access to raw files of this kind, there will be a great risk of infringing on the right of privacy of individuals who have no real connection with the subject of the investigation. As Senators must realize, such files contain many ridiculous, unverified statements, and unless there is judicious use of such matter, innocent people can easily suffer irreparable damage.

I notice the presence of the Senator from Arkansas (Mr. McCLELLAN) in the Chamber. I know that he, as a veteran investigator, realizes the importance of the point I am making. As I understand the practice of the Committee on the Judiciary, only the chairman and the ranking member ordinarily look at material in an FBI file. It is seldom that other Senators who are members of the committee look at such material, and committee staff people are precluded altogether.

This amendment would recognize a right on the part of members of the committee to have access to such files. But it would specify precisely which staff members would have such access—and limiting it to the majority counsel and the minority counsel when authorized by the chairman or ranking minority member. In that way, we would pin down the responsibility and we would know exactly who would have access to such files.

It could be very unfortunate and might result in a great deal of needless damage to the reputations of innocent people if a great many staff people were to be allowed to rummage through such files.

The FBI, as we know, takes statements from anyone who will make a statement. FBI files should be reviewed only by those who will exercise a high degree of responsibility.

I wonder if the Senator from North Carolina would accept the amendment.

Mr. ERVIN. I would suggest a change in it. Under the Senator's amendment, and I think I had it pretty tight before——

Mr. GRIFFIN. Yes, the Senator improved it.

Mr. ERVIN. But I think I unimproved it because first it was more restrictive. But we need not argue about that.

I think it is a mistake to say the only people who can see this are members of the committee, or the majority counsel and minority counsel.

Mr. GRIFFIN. When authorized by the chairman or the ranking member.

Mr. ERVIN. We would have investigatory people who might have served in the FBI who should be able to see the matters mentioned in this section. I would think it would be better to say this: Strike what the Senator proposes to strike and say: "or the chief majority counsel or minority counsel, and such of its investigatory assistants as may be designated jointly by the chairman and the ranking minority member."

That would fix the chairman and the ranking minority member, instead of having the counsel of both groups. They could agree on some investigator and have the assurance of protection, and require both the chairman and the ranking minority member to make the joint selection.

Mr. TOWER. I think that is an improvement.

Mr. ERVIN. If the Senator will agree to that I will modify the amendment and so provide.

Mr. GRIFFIN. Unless I hear some objection from this side of the aisle, I am inclined to accept that modification. I would admonish the chairman of the committee to be and whoever is appointed to be the ranking minority member to exercise this responsibility with great care. I would hope that the number of people who would have such access will be small and judiciously limited.

Mr. ERVIN. I agree with the Senator on that.

Mr. President, I modify the amendment by striking out everything after the word "committee" on line 19, page 11, through the word "member" on line 21, page 11, and insert in lieu thereof the following: ", chief majority counsel, minority counsel, or any of its investigatory assistants designated jointly by the chairman and the ranking minority member."

That makes it the chief counsel and the minority counsel member. It has to be a joint agreement.

The PRESIDING OFFICER. Would the Senator send that language to the desk, please?

Does the Senator from Michigan accept the modification?

Mr. GRIFFIN. I accept the modification.

The PRESIDING OFFICER. The amendment is so modified. As soon as the Senator sends it to the desk, it will be modified.

The amendment, as modified, is as follows:

On page 11, line 19, after the word "committee", strike all through the word "member" on line 21 and insert in lieu thereof: "chief majority counsel, minority counsel, or any of its investigatory assistants jointly designated by the Chairman and the ranking minority member".

The PRESIDING OFFICER. The question now is on agreeing to the amendment, as modified. [Putting the question.]

The amendment, as modified, was agreed to.

Mr. HELMS. Mr. President, the distinguished senior Senator from North Carolina (Mr. ERVIN) has presented a proposal which, in other times and other places, might be discussed with more objectivity and greater purpose than at present. He has presented his analysis with a great deal of force and supported his arguments with his accustomed vigor. However, I regret that he has rejected, one after another, suggestions made to improve upon his original proposal and to perfect its mechanism.

If the investigation which the Senator desires does not have the utmost appearance of impartiality and objectivity, then it will not gain the trust of the American people. It goes without saying that partisanship is at the very heart of the original problem. One of our major political parties stands accused of interfering with the privacy of our other major political party. Seven minor figures have been indicted and found guilty by our courts; two are seeking to appeal. The end of the case is not yet in sight. It is not surprising that feelings are running high.

It is all the more important, therefore, that the investigation be conducted in an atmosphere that inspires confidence and betrays no suspicion that less than the truth, and the whole truth, has been found. I am disappointed that my colleague has rejected the suggestion that both major political parties be equally represented in this investigation. Such a rejection will only fuel the fires of those who are charging that this investigation is only a year-long fishing expedition, designed to be as far-ranging as possible, gathering everything and everybody in the net. My distinguished colleague—and he knows of my great personal admiration and respect for him—has often been on the floor of the Senate defending the civil rights of persons whose rightful privacy has been intruded upon. I know that he will be among the first to come to the floor if such a sweeping investigation as this, cruelly brought the names of the innocent in association with the names of the guilty.

I am further dismayed that the cost of this investigation, under these circumstances, will be $500,000. If the subject were one which were cloaked with mystery, if new evidence tended to indicate that much more would be unearthed, if there were any hope at all that a definitive resolution would be achieved, then a half million dollars might be a price worth paying. Yet there is no evidence worth considering.

The Watergate situation has received the closest and most penetrating scrutiny of any story in modern journalism.

A grand jury has made a thorough investigation and returned indictments.

A trial was held in the U.S. district court in which five defendants pleaded guilty and two others were convicted after an extensive trial. The trial judge himself went beyond the bounds of an adversary proceeding and interrogated the defendants himself before he satisfied himself that there were no others involved in the crimes.

The FBI and the Justice Department made a thorough investigation of their own.

Our distinguished colleague from the House of Representatives, the Honorable WRIGHT PATMAN, made a staff investigation through his House Banking and Currency Committee.

The distinguished senior Senator from Massachusetts had the staff of his Judiciary Subcommittee make on-the-spot investigations in this matter, and has apparently not pursued it further.

The junior Senator from North Carolina therefore finds it difficult to justify spending $500,000 on yet another investigation with broad powers given to a select committee to rehash old charges for another year.

If there are matters that need to be pursued further, then they ought to be looked into by the full Judiciary Committee. I know that the Judiciary Committee has a full calendar of proposals; but if there are overwhelming problems yet to be resolved in the Watergate affair, then I know that the public would have far more confidence in a normal standing committee balanced by the regular political process.

Moreover, this body has also established a Permanent Investigating Subcommittee of the Government Operations Committee which could perhaps easily handle many of these matters. Encouragement could also be given to the Judiciary Committee's Administrative Practice and Procedure Subcommittee to look further into those matters in its jurisdiction.

Mr. President, I dislike seeing a half-million dollars of the taxpayers' money spent on another investigating mechanism, adding to the Senate's own bureaucracy, when the job could, in my judgment, be done by existing personnel and facilities already available to this body.

The PRESIDING OFFICER. The resolution is open to further amendment.

If there be no further amendment to be proposed, the question is on agreeing to the resolution, as amended.

Mr. ERVIN. Mr. President, I ask for the yeas and nays on final passage.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Indiana (Mr. BAYH), the Senators from Nevada (Mr. BIBLE and Mr. CANNON), the Senator from Idaho (Mr. CHURCH), the Senator from Mississippi (Mr. EASTLAND), the Senator from Washington (Mr. MAGNUSON), the Senator from Minnesota (Mr. MONDALE), the Senator from New Mexico (Mr. MONTOYA), the Senator from Connecticut (Mr. RIBICOFF), the Senator from Alabama (Mr. SPARKMAN) are necessarily absent.

I further announce that the Senator from Louisiana (Mr. JOHNSTON) is absent on official business.

I also announce that the Senator from Mississippi (Mr. STENNIS) is absent because of illness.

I further announce that, if present and voting, the Senator from Indiana (Mr. BAYH), the Senator from Nevada (Mr. CANNON), the Senator from Washington (Mr. MAGNUSON), the Senator from Alabama (Mr. SPARKMAN), and the Senator from Connecticut (Mr. RIBICOFF), would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Massachusetts (Mr. BROOKE), the Senator from Colorado (Mr. DOMINICK), the Senator from Hawaii (Mr. FONG), the Senator from Arizona (Mr. GOLDWATER), the Senator from Oregon (Mr. PACKWOOD), the Senator from Kansas (Mr. PEARSON), and the Senator from South Carolina (Mr. THURMOND) are necessarily absent.

The Senator from Maryland (Mr. MATHIAS), the Senator from Ohio (Mr. SAXBE), and the Senator from Vermont (Mr. STAFFORD) are absent on official business.

The Senator from Alaska (Mr. STEVENS) is detained on official business.

If present and voting, the Senator from Massachusetts (Mr. BROOKE), the Senator from Arizona (Mr. GOLDWATER), the Senator from Alaska (Mr. STEVENS) and the Senator from South Carolina (Mr. THURMOND) would each vote "yea."

The result was announced—yeas 77, nays 0, as follows:

[No. 16 Leg.]

YEAS—77

Abourezk	Ervin	McGee
Aiken	Fannin	McGovern
Allen	Fulbright	McIntyre
Baker	Gravel	Metcalf
Bartlett	Griffin	Moss
Beall	Gurney	Muskie
Bellmon	Hansen	Nelson
Bennett	Hart	Nunn
Bentsen	Hartke	Pastore
Biden	Haskell	Pell
Brock	Hatfield	Percy
Buckley	Hathaway	Proxmire
Burdick	Helms	Randolph
Byrd, Harry F., Jr.	Hollings	Roth
Byrd, Robert C.	Hruska	Schweiker
Case	Huddleston	Scott, Pa.
Chiles	Hughes	Scott, Va.
Clark	Humphrey	Stevenson
Cook	Inouye	Symington
Cotton	Jackson	Taft
Cranston	Javits	Talmadge
Curtis	Kennedy	Tower
Dole	Long	Tunney
Domenici	Mansfield	Weicker
Eagleton	McClellan	Williams
	McClure	Young

NAYS—0

NOT VOTING—23

Bayh	Goldwater	Ribicoff
Bible	Johnston	Saxbe
Brooke	Magnuson	Sparkman
Cannon	Mathias	Stafford
Church	Mondale	Stennis
Dominick	Montoya	Stevens
Eastland	Packwood	Thurmond
Fong	Pearson	

So the resolution (S. Res. 60), as amended, was agreed to, as follows:

S. RES. 60

Resolved,

SECTION 1. (a) That there is hereby established a select committee of the Senate, which may be called, for convenience of expression, the Select Committee on Presidential Campaign Activities, to conduct an investigation and study of the extent, if any, to which illegal, improper, or unethical activities were engaged in by any persons, acting either individually or in combination with others, in the presidential election of 1972, or in any related campaign or canvass conducted by or in behalf of any person seeking nomination or election as the candidate of any political party for the office of President of the United States in such election, and to determine whether in its judgment any occurrences which may be revealed by the investigation and study indicate the necessity or desirability of the enactment of new congressional legislation to safeguard the electoral process by which the President of the United States is chosen.

(b) The select committee created by this resolution shall consist of seven Members of the Senate, four of whom shall be appointed by the President of the Senate from the majority Members of the Senate upon the recommendation of the majority leader of the Senate, and three of whom shall be appointed by the President of the Senate from the minority Members of the Senate upon the recommendation of the minority leader of the Senate. For the purposes of paragraph 6 of rule XXV of the Standing Rules of the Senate, service of a Senator as a member, chairman, or vice chairman of the select committee shall not be taken into account.

(c) The select committee shall select a chairman and vice chairman from among its members, and adopt rules of procedure to govern its proceedings. The vice chairman shall preside over meetings of the select committee during the absence of the chairman, and discharge such other responsibilities as may be assigned to him by the select committee or the chairman. Vacancies in the membership of the select committee shall not affect the authority of the remaining members to execute the functions of the select committee and shall be filled in the same manner as original appointments to it are made.

(d) A majority of the members of the select committee shall constitute a quorum for the transaction of business, but the select committee may fix a lesser number as a quorum for the purpose of taking testimony or depositions.

SEC. 2. That the select committee is authorized and directed to do everything necessary or appropriate to make the investigation and study specified in section 1(a). Without abridging or limiting in any way the authority conferred upon the select committee by the preceding sentence, the Senate further expressly authorizes and directs the select committee to make a complete investigation and study of the activities of any and all persons or groups of persons or organizations of any kind which have any tendency to reveal the full facts in respect to the following matters or questions:

(1) The breaking, entering, and bugging of the headquarters or offices of the Democratic National Committee in the Watergate Building in Washington, District of Columbia;

(2) The monitoring by bugging, eavesdropping, wiretapping, or other surreptitious means of conversations or communications occurring in whole or in part in the headquarters or offices of the Democratic National Committee in the Watergate Building in Washington, District of Columbia;

(3) Whether or not any printed or typed or written document or paper or other material was surreptitiously removed from the headquarters or offices of the Democratic National Committee in the Watergate Building in Washington, District of Columbia, and thereafter copied or reproduced by photography or any other means for the information of any person or political committee or organization;

(4) The preparing, transmitting, or receiving by any person for himself or any political committee or any organization of any report or information concerning the activities mentioned in subdivision (1), (2), or (3) of this section, and the information contained in any such report;

(5) Whether any persons, acting individually or in combination with others, planned the activities mentioned in subdivision (1), (2), (3), or (4) of this section, or employed any of the participants in such activities to participate in them, or made any payments or promises of payments of money or other things of value to the participants in such activities or their families for their activities, or for concealing the truth in respect to them or any of the persons having any connection with them or their activities, and, if so, the source of the moneys used in such

payments, and the identities and motives of the persons planning such activities or employing the participants in them;

(6) Whether any persons participating in any of the activities mentioned in subdivision (1), (2), (3), (4), or (5) of this section have been induced by bribery, coercion, threats, or any other means whatsoever to plead guilty to the charges preferred against them in the District Court of the District of Columbia or to conceal or fail to reveal any knowledge of any of the activities mentioned in subdivision (1), (2), (3), (4), or (5) of this section, and, if so, the identities of the persons inducing them to do such things, and the identities of any other persons or any committees or organizations for whom they acted;

(7) Any efforts to disrupt, hinder, impede, or sabotage in any way any campaign, canvass or activity conducted by or in behalf of any person seeking nomination or elections as the candidate of any political party for the office of President of the United States in 1972 by infiltrating any political committee or organization or headquarters or offices or home or whereabouts of the person seeking such nomination or election or of any person aiding him in so doing, or by bugging or eavesdropping or wiretapping the conversations, communications, plans, headquarters, offices, home, or whereabouts of the person seeking such nomination or election or of any other persons assisting him in so doing, or by exercising surveillance over the person seeking such nomination or election or of any person assisting him in so doing, or by reporting to any other person or to any political committee or organization any information obtained by such infiltration, eavesdropping, bugging, wiretapping, or surveillance;

(8) Whether any person, acting individually or in combination with others, or political committee or organization induced any of the activities mentioned in subdivision (7) of this section or paid any of the participants in any such activities for their services, and, if so, the identities of such persons, or committee, or organization, and the source of the funds used by them to procure or finance such activities;

(9) Any fabrication, dissemination, or publication of any false charges or other false information having the purpose of discrediting any person seeking nomination or election as the candidate of any political party to the office of President of the United States in 1972;

(10) The planning of any of the activities mentioned in subdivision (7), (8), or (9) of this section, the employing of the participants in such activities, and the source of any moneys or things of value which may have been given or promised to the participants in such activities for their services, and the identities of any persons or committees or organizations which may have been involved in any way in the planning procuring, and financing of such activities.

(11) Any transactions or circumstances relating to the source, the control, the transmission, the transfer, the deposit, the storage, the concealment, the expenditure, or use in the United States or in any other country, of any moneys or other things of value collected or received for actual or pretended use in the presidential election of 1972 or in any related campaign or canvass or activities preceding or accompanying such election by any person, group of persons, committee, or organization of any kind acting or professing to act in behalf of any national political party or in support of or in opposition to any person seeking nomination or election to the office of President of the United States in 1972;

(12) Compliance or noncompliance with any Act of Congress requiring the reporting of the receipt or disbursement or use of any moneys or other things of value mentioned in subdivision (11) of this section;

(13) Whether any of the moneys or things of value mentioned in subdivision (11) of this section were placed in any secret fund or place of storage for use in financing any activity which was sought to be concealed from the public, and, if so, what disbursement or expenditure was made of such secret fund, and the identities of any person or group of persons or committee or organization having any control over such secret fund or the disbursement or expenditure of the same;

(14) Whether any books, checks, canceled checks, communications, correspondence, documents, papers, physical evidence, records, recordings, tapes, or materials relating to any of the matters or questions the select committee is authorized and directed to investigate and study have been concealed, suppressed, or destroyed by any persons acting individually or in combination with others, and, if so, the identities and motives of any such persons or groups of persons;

(15) Any other activities, circumstances, materials, or transactions having a tendency to prove or disprove that persons acting either individually or in combination with others, engaged in any illegal, improper, or unethical activities in connection with the presidential election of 1972 or any campaign, canvass, or activity related to such election;

(16) Whether any of the existing laws of the United States are inadequate, either in their provisions or manner of enforcement to safeguard the integrity or parity of the process by which Presidents are chosen.

SEC. 3. (a) To enable theselect committee to make the investigation and study authorized and directed by this resolution, the Senate hereby empowers the select committee as an agency of the Senate (1) to employ and fix the compensation of such clerical, investigatory, legal, technical, and other assistants as it deems necessary or appropriate; (2) to sit and act at any time or place during sessions, recesses, and adjournment periods of the Senate; (3) to hold hearings for taking testimony on oath or to receive documentary or physical evidence relating to the matters and questions it is authorized to investigate or study; (4) to require by subpena or otherwise the attendance as witnesses of any persons who the select committee believes have knowledge or information concerning any of the matters or questions it is authorized to investigate and study; (5) to require by subpena or order any department, agency, officer, or employee of the executive branch of the United States Government, or any private person, firm, or corporation, or any officer or former officer or employee of any political committee or organization to produce for its consideration or for use as evidence in its investigation and study any books, checks, canceled checks, correspondence, communications, document, papers, physical evidence, records, recordings, tapes, or materials relating to any of the matters or questions it is authorized to investigate and study which they or any of them may have in their custody or under their control; (6) to make to the Senate any recommendations it deems appropriate in respect to the willful failure or refusal of any person to appear before it in obedience to a subpena or order, or in respect to the willful failure or refusal of any person to answer questions or give testimony in his character as a witness during his appearance before it, or in respect to the willful failure or refusal of any officer or employee of the executive branch of the United States Government or any person, firm, or corporation, or any officer or former officer or employee of any political committee or organization, to produce before the committee any books, checks, canceled checks, correspondence, communications, documents, financial records, papers, physical evidence, records, recordings, tapes, or materials in obedience to any subpena or order; (7) to take depositions and other testimony on oath anywhere within the United States or in any other country; (8) to procure the temporary or intermittent services of individual consultants, or organizations thereof, in the same manner and under the same conditions as a standing committee of the Senate may procure such services under section 202(i) of the Legislative Reorganization Act of 1946; (9) to use on a reimbursable basis, with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, the services of personnel of any such department or agency; (10) to use on a reimbursable basis or otherwise with the prior consent of the chairman of any other of the Senate committees or the chairman of any subcommittee of any committee of the Senate the facilities or services of any members of the staffs of such other Senate committees or any subcommittees of such other Senate committees whenever the select committee or its chairman deems that such action is necessary or appropriate to enable the select committee to make the investigation and study authorized and directed by this resolution; (11) to have access through the agency of any members of the select committee, chief majority counsel, minority counsel, or any of its investigatory assistants jointly designated by the chairman and the ranking minority member to any data, evidence, information, report, analysis, or document or papers relating to any of the matters or questions which it is authorized and directed to investigate and study in the custody or under the control of any department, agency, officer, or employee of the executive branch of the United States Government having the power under the laws of the United States to investigate any alleged criminal activities or to prosecute persons charged with crimes against the United States which will aid the select committee to prepare for or conduct the investigation and study authorized and directed by this resolution; and (12) to expend to the extent it determines necessary or appropriate any moneys made available to it by the Senate to perform the duties and exercises the powers conferred upon it by this resolution and to make the investigation and study it is authorized by this resolution to make.

(b) Subpenas may be issued by the select committee acting through the chairman or any other member designated by him, and may be served by any person designated by such chairman or other member anywhere within the borders of the United States. The chairman of the select committee, or any other member thereof, is hereby authorized to administer oaths to any witnesses appearing before the committee.

(c) In preparing for or conducting the investigation and study authorized and directed by this resolution, the select committee shall be empowered to exercise the powers conferred upon committees of the Senate by section 6002 of title 18 of the United States Code or any other Act of Congress regulating the granting of immunity to witnesses.

SEC. 4. The select committee shall have authority to recommend the enactment of any new congressional legislation which its investigation considers it is necessary or desirable to safeguard the electoral process by which the President of the United States is chosen.

SEC. 5. The select committee shall make a final report of the results of the investigation and study conducted by it pursuant to this resolution, together with its findings and its recommendations as to new congressional legislation it deems necessary or desirable, to the Senate at the earliest practicable date, but no later than February 28, 1974. The select committee may also submit to the Senate such interim reports as it considers appropriate. After submission of its final report, the select committee shall have three calendar months to close its

affairs, and on the expiration of such three calendar months shall cease to exist.

SEC. 6. The expenses of the select committee through February 28, 1974, under this resolution shall not exceed $500,000, of which amount not to exceed $25,000 shall be available for the procurement of the services of individual consultants or organizations thereof. Such expenses shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the select committee. The minority members of the select committee shall have one-third of the professional staff of the select committee (including a minority counsel) and such part of the clerical staff as may be adequate.

Mr. ERVIN. Mr. President, I move that the vote by which the resolution was agreed to be reconsidered.

Mr. ROBERT C. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Hackney, one of its reading clerks, informed the Senate that, pursuant to the provisions of section 1202, title 12, Public Law 91-452, the Speaker had appointed Mr. KASTENMEIER, Mr. EDWARDS of California, Mr. HUTCHINSON, and Mr. SANDMAN as members of the National Commission on Individual Rights, on the part of the House.

The message also informed the Senate that, pursuant to the provisions of section 123(a), Public Law 91-605, the Speaker had appointed Mr. WRIGHT, Mr. GRAY, Mr. DON H. CLAUSEN, and Mr. SNYDER as members of the Commission on Highway Beautification, on the part of the House.

The message announced that the House had passed, without amendment, the joint resolution (S.J. Res. 37) to designate the Manned Spacecraft Center in Houston, Tex., as the "Lyndon B. Johnson Space Center" in honor of the late President.

QUORUM CALL

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

SKYJACKING

Mr. HARTKE. Mr. President, it is my plan to bring to the attention of this body a series of issues concerning the operation of the Federal Aviation Administration.

I have made a statement for the CONGRESSIONAL RECORD, listing some 27 charges organized under seven categories. These run through the whole gamut of FAA operations and policies.

At this time I ask unanimous consent that an article appearing in the Washington Star of February 4, be printed in the RECORD following my remarks.

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

(See exhibit 1.)

Mr. HARTKE. Mr. President, now, we are to consider the FAA antihijacking regulations, and I say they constitute: a serious invasion of civil rights, and an unconstitutional encroachment of the Executive upon the legislative functions of Government; and I believe evidence will show that the FAA regulations do not, cannot, and will not work.

Further, it can be shown that there are other remedies to skyjacking that stand a better chance of stopping this serious crime without violating the rights and interests of American citizens and their Constitution.

Even assuming there were no other remedy whatsoever, and there is, I maintain that the burden of proof to show violation for these questionable FAA procedures must rest upon the FAA and upon anyone who defends them, not upon those who oppose them. I repeat, that even if there were no other remedies than those of the FAA, they are still improper and the burden of proving their constitutionality and legality rests on those who affirm them so heatedly, not upon anyone who resists them.

The majority of these have not even been tested at law.

Mr. President, if I could prove that the FAA regulations cannot, do not, and will not work, I would mollify some of my critics, win some friends, but lose the main question.

And, Mr. President, if I could prove, here or in court, that I have been separately and singly harassed at airports, that other Senators, Congressmen, their staff members, members of the President's Cabinet, their staffs and families, have done exactly as I have done without harassment—if I could prove all that, Mr. President—I would have mollified some critics, won some friends, and lost the main question.

And, Mr. President, if I prove too quickly here that devices other than mass airport search, seizure, and arrest—for arrest is exactly what we are dealing with here, then I shall have mollified some critics, won some friends, but will have lost the main question.

Finally, Mr. President, even if I prove that the FAA has not attempted to establish any legal validity at all for those regulations—at least one airline is beginning to have some doubts—and if I establish that the FAA acted in an irresponsible and haphazard fashion, I will have mollified some critics, won some friends but will have lost the main question.

The important question in this issue is not harassment of me personally, not better alternative devices, not the ineffectuality of the FAA methods. The important question in this issue—in my judgment, perhaps the most important issue over the next two decades—is one not only at the very heart of my dispute with the FAA; it lies at the core-center of the newsman's immunity issue; and it is even before this Chamber in the impoundment issue.

The evidence seems clear, Mr. President, that the FAA has quite literally endangered the lives of all American air travelers. And it is my opinion that evidence will show that persons in the highest places of the FAA bare a direct responsibility, literally, in the deaths of some victims of air tragedies. This is a serious charge. The evidence on this must come out, and I shall see that it does—and I think there lies much of the source of my harassment at airports.

But even this, Mr. President, this terrible documentary of tragedy in the air, is not the heart of this issue.

The capriciousness, impracticability, the irresponsibility of the FAA policies and operations are the sort of things that can be remedied, at least so that they will not cause further havoc.

But the main question before us will have gone underground once again. We will have remedied the irresponsibility of the moment and allowed what is most dangerous to escape our focus of concern. That is what, God willing, I intend to stop. That is what I intend to keep in focus, if I have to bring the issue to the forefront here and at every airport in the country, until the American people understand the issue and rise up to fight with me for it.

My easiest course, Mr. President, is to do as some people have attempted to do, say "I have nothing to hide, I will be an example to you of the way I can go ahead and cower down when confronted with this type of regulation," to secure the sympathy of the American people simply by fighting for the necessary changes in the FAA rules, show a better way to stop skyjacking, and prove that the FAA has been remiss in serving the people. That can and will be done.

But with the American people satisfied on that, we will be in great danger, I believe. We will have lost the main question. It shrouds the corners of congressional fund impoundment; it stalks the corridors of the CIA and the FBI; it makes Watergate, a resolution in respect to which the Senate has just passed, look like a Sunday school picnic.

It walks the street of every ghetto. It lurks behind every late night knock in poor sections of every city. It rose like a babe in the west coast Japanese concentration camps; and has matured like a bully to stop "long hairs" on turnpikes; it lurks behind the move to have cartoonists and psychiatrists tell us what skyjackers are supposed to look and act like.

The main question in this issue of mass airport arrest, is one of constitutional law, Mr. President. That is the question at issue here. Perhaps the most important question of constitutional law ever raised in this Nation—at least as important as that raised a century ago as to whether this Union can be dissolved at the will of one or some of its States.

Now, if I say that airport arrest is a great constitutional question, who will listen? Many of my friends tell me my public relations image on this issue is bad. Just name, they say, other Senators who use constitutional immunity at airports. I understand that both the FAA and some lawmakers are getting a little uneasy about doing what they had been doing before.

But I intend to forego the public rela-