STATEMENT BY SENATOR STROM THURMOND (D-SC) IN THE SENATE ON THE RIGHT OF TRIAL BY JURY, MARCH 27, 1957.

MR. PRESIDENT:

One of the great American heritages is the right of trial by jury.

Up until the time the Constitution of the United States was formulated and adopted, the right of a person to a trial by jury had never before been so clearly stated in the basic law of any country. In Article III, Section 2, the Constitution guarantees that:

"The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed;..."

In the Fifth Amendment to the Constitution the guarantee to a trial by jury is supplemented by the further guarantee that:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, ...

The Sixth Amendment spells out the meaning of trial by jury in the following guarantee:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

I regret to say, Mr. President, that I do not believe the spirit of this constitutional guarantee has always been applied in the past. But no violation of the spirit of this constitutional guarantee, which has occurred in the past, compares with the apparent determination of some people in the present to circumvent the
the guarantee of the right of trial by jury.

The dangers inherent in empowering a judge to impose sentences on persons not tried by a jury were made clear in some of the cases arising out of labor disputes in the early thirties.

As a result of occurrences which took place during that period of labor unrest, a law was enacted specifically for the protection of persons involved in labor management disputes. That law (Title 18, Section 3692) provides that:

"In all cases of contempt arising under the laws of the United States governing the issuance of injunctions or restraining orders in any case involving or growing out of a labor dispute, the accused shall enjoy the right of a speedy and public trial by an impartial jury of the State and district wherein the contempt shall have been committed."

The same protection extended to persons in labor disputes does not apply in other type cases. The law clearly states (Title 18, Section 401) that:

"A court of the United States shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none other, as --

(1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;

(2) Misbehavior of any of its officers in their official transactions;

(3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command."

In Title 18, Section 3691, there is another provision which constitutes a denial of the right of trial by jury. This section provides, in addition to the three conditions in Section 402, that the right to trial by jury shall not apply in criminal contempts when the action is "brought or prosecuted in the name of, or on behalf of, the United States."
This is a most important provision when in certain instances the court has requested the United States to prosecute a case or when the Justice Department has voluntarily entered the case and substituted the United States for the real party in interest.

In effect, this provision makes it possible to deny the right of trial by jury in all contempt cases.

The entry of the United States into a case negates protection of the right of trial by jury which Americans almost unanimously consider a fundamental right. I doubt that many citizens realize they have been denied the right of trial by jury in any situation.

If a person charged with a heinous crime is entitled, as he is under the Constitution, to the right of trial by jury, surely there is not a member of the Senate who would deny the same right to a citizen charged with violating an injunction. The validity of injunctions are subject to dispute. Therefore, I can visualize no reasonable basis on which anyone could claim that justice would be best served by denial of jury trial. The time has not come in this country when the end justifies the means in courts of justice. I do not believe such a time will ever come in the United States. The people of this country believe in constitutional government. I believe they want it strengthened, not weakened.

Mr. President, the bill which I am co-sponsoring with Senator Eastland would strengthen the constitutional guarantee of the right of trial by jury.

Courts would still have the power to punish contempts committed in the presence of the court or so near by as to interfere with justice, or in the event of contempt of an officer of the court.
What this bill would do would be simply to provide every citizen with the protection now given persons in labor disputes. It would also prevent entry of the United States into cases from denying the accused trial by jury.

There has been much talk of strengthening civil rights. This bill provides a way to strengthen the right of trial by jury for every citizen of the United States. It is non-partisan and non-discriminatory. I hope the Committee and the Senate will act expeditiously on this bill so as to protect this vital right more adequately.

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