OFFICE OF THE ATTORNEY GENERAL

Washington, D.C.

August 9, 1957

Honorable Joseph W. Martin, Jr.
U. S. House of Representatives
Washington, D. C.

Dear Congressman Martin:

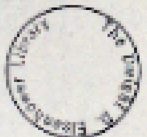
This is in response to your letter of August 8, 1957.

The Senate modified and passed the Civil Rights Bill (H.R. 6127) which, as amended, would require jury trials upon demand in all criminal contempt actions in all courts of the United States, including the Courts of Appeals and Supreme Court, except in respect to contempts committed in the presence of the court and by court officers. In addition, the Senate amendment would limit punishment of "natural" persons for wilful contempts to fines not exceeding $1,000 and to imprisonment not exceeding 6 months.

You inquire in your letter as to the effect of this amendment. The practical effect, if adopted, will be to hamper not only the enforcement of the Civil Rights Bill itself, but also to make it much more difficult to enforce federal law and policy in other vital areas involving the public interest.

As you know, in criminal contempt cases there is no constitutional right to a trial by jury. In fact the Senate amendment contemplates a procedure which is contrary to traditional federal and most state procedures for vindicating the authority of a court resulting from a wilful disregard of its order.

The Supreme Court said in a unanimous decision in the Debs case (158 U.S. 564, 595):



> "To submit the question of disobedience to another tribunal, be it a jury or another court, would operate to deprive the proceeding of half its efficiency."

In the later case of Gompers v. Buck Stove and Range Co., 221 U.S. 418, the Supreme Court in a unanimous decision by Mr. Justice Lamar said (p. 450):

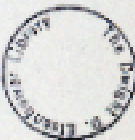
> "There has been general recognition of the fact that the courts are clothed with this power and must be authorized to exercise it without

> referring the issues of fact or law to another tribunal or to a jury in the same tribunal. For if there was no such authority in the first instance there would be no power to enforce its orders if they were disregarded in such independent investigation. Without authority to act promptly and independently the courts could not administer public justice or enforce the rights of private litigants. Bessette v. Conkey, 194 U.S. 337."

These two cases state the general rule on the subject.

The federal judges who hear and decide these cases are not foreign to the people of their soil and the areas in which they sit. They are generally natives of their communities. Their roots are there. They know the people, their customs, their prejudices, their capacity for human betterment. These judges, in turn, are held in high esteem because of their position, their legal background and learning, and their standing as citizens in the community. Such judges may be expected, as experience has shown, to be utterly fearless in their duty, to apply the law without favor, and to uphold it with utmost integrity. And should there be any error in the application of the law or abuse of authority, the court's decree in these contempt proceedings is subject to review on appeal in the Courts of Appeal and the Supreme Court. The long record which these Courts have demonstrated in protecting the rights of defendants in contempt proceedings is persuasive that all of the protection which the law affords will continue to be extended to all.

The argument has been made that criminal contempts in the past have been relatively few in number, and therefore no great apprehension need be exercised about the impact of the amendment. This argument misses the point. It is the very threat of an existing criminal contempt procedure that is both speedy and effective which helps to bring about fuller compliance with law today. This has made unnecessary resort to as many criminal contempt proceedings as would otherwise have been required. But once permit this remedy to be weakened by withdrawing the means by which legal orders and decrees may be promptly enforced, and the resulting disrespect for the law will be harmful.



In most state courts also, the view has long prevailed that proceedings for criminal contempt of court are not subject to the right of trial by jury. A few cases should suffice to illustrate the general rule.

In the landmark Carter's Case, 96 Vir. 791, 816, the Supreme Court of Virginia said:

> "It was suggested in argument that to maintain the position that to entrust juries with the power to punish for contempts would impair the efficiency and dignity of courts, disclosed a want of confidence in that time-honored institution. May it not be said in reply that to take from courts a jurisdiction

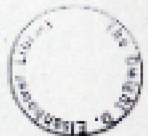
which they have possessed from their foundation betrays a want of confidence in them wholly unwarranted by experience? The history of this court, and indeed of all the courts of this Commonwealth, shows the zealous care with which they have ever defended and maintained the just authority and respect due to juries as an agency in the administration of justice, but our duty, as we conceive it, requires us not to be less firm in vindicating the rightful authority and power of the courts."

In Demetree v. State, 89 So. 2d 498 (Fla.), the Court said:

"The power to punish for violation of a valid subsisting order of a court of competent jurisdiction necessarily inheres in our judicial system. This is so for the simple reason that without the power our judicial system would become a mere mockery for a party to a cause could make of himself a judge of the validity of orders which had been issued and by his own acts of disobedience set them aside, thereby ultimately producing the complete impotency of the judicial process. There can therefore be no doubt that the courts are clothed with power to punish contempt for violation of their orders and they have this authority without the necessity of referring the issues to another tribunal or to a jury in the same tribunal."

In Ex Parte Evett, 264 Ala. 675, 89 So. 2d 100, the Alabama Supreme Court said:

"It would be anomalous indeed to hold that a criminal contempt committed against either of those courts should be tried under the criminal code; and even so, to hold that the accused was entitled to a trial by jury. And it would be equally anomalous to hold that the law gives an alleged contemnor of the Circuit Court a right of trial by jury and at the same time, deny it to alleged contemnors of the Appellate or Probate Courts. Clearly, contempt proceedings are not criminal cases within the meaning of the Constitution or statutes of Alabama."



The Department has received from General Counsels of certain regulatory agencies and from some Divisions of the Department of Justice comments on the effect this amendment would have on their activites if enacted into law. For your convenience portions of their views are set forth below.

A. National Labor Relations Board

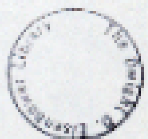
"The enactment of the Senate amendment, providing for jury trials and limiting fines and terms of imprisonment, would tend to encourage

more widespread and flagrant disobedience of court orders in the regulatory field. Agencies will be reluctant to become involved in lengthy and costly jury litigation. With the threat of criminal contempt minimized, a respondent plainly will be more likely to engage in tactics which are aimed at evading the court's order."

B. Department of Labor

"A requirement of a jury trial in contempt actions could seriously hamper and delay enforcement of the injunction decree in what is an ordinary business and labor standards situation requiring uniform national compliance. It would place the contempt of court action on the same footing as an original criminal action, with all the delays that can be involved. It is not as though there had not already been a trial of the matter on the merits.

"In addition, the new proposed procedures would increase the expense and burden of contempt proceedings in the many situations that could not have been looked into thoroughly in connection with the passage of this amendment. Instead of the relatively small expenditure of time and money required for a hearing by courts already versed in this technical statute dealing with labor standards and also familiar with the background of the case, the matter would be referred for the first time to a group both unfamiliar with the Act's terms and its concepts of coverage and exemptions and without knowledge of the law suit which led the court to issue the injunction in the first place. The substitution of a jury for the judge in such proceedings, granting all the desirable elements of a jury trial, would not serve the interests of a fair trial but could seriously impede the proceedings so that in practical effect it would foreclose resort to criminal contempt in those situations where it has always been considered an appropriate and necessary protection of the court's processes."



C. Securities and Exchange Commission

"In the Commission's opinion, a requirement for a jury trial would unduly encumber the effectiveness of its enforcement program.

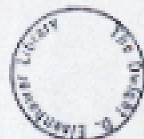
"In the experience of the Commission it is not believed that the absence of a jury trial has visited either injustice or hardship on persons charged with and convicted of criminal contempt. Under existing procedures the judge who considered the misconduct which led to the injunction initially, and who was responsible for the decree itself, is the arbiter of questions as to the scope of the injunction and whether the decree has been disobeyed. Under the proposed amendment the judge would be replaced by the jury which would assume the function of construing the judge's decree. The reassignment of this function would, in the Commission's opinion, be warranted only on the basis of a demonstrated need therefor and the existence of abuse by the judiciary in this respect."

D. Atomic Energy Commission

"The possibility of invoking either or both of the foregoing sections of the Atomic Energy Act [injunction and subpena power] in connection with

the various programs of the Atomic Energy Commission, including licensing of private persons and facilities and safeguarding of restricted information, is likely to develop as greater public participation in the Commission programs takes place. The desirability of maintaining adequate remedies and sanctions, should such sections be invoked, is obvious. In those cases where the decrees of the courts have been formulated following consideration of fairly complex factual issues, the inclusion thereafter of a jury to determine whether a decree has been violated would perhaps require reintroduction of major portions of the evidence in the original proceedings and careful instruction of the jury respecting the intent of the decree. This would not appear to enhance the efficiency of the criminal contempt remedy.

"In addition to the two sections under the Atomic Energy Act which look toward court orders in enforcement proceedings and vindication by criminal contempt when necessary, the Atomic Energy Commission has had occasion to invoke, through the Attorney General, the provisions of the Labor Management Relations Act, 1947, which allow injunctions against threatened or actual strikes imperiling the national health or safety. 29 U.S.C. 176-180. While these injunctions have not been violated, we would be concerned if limitations were laid upon the court in dealing promptly and efficaciously with any violations which might arise. In this connection the $1,000 limitation on a fine imposed upon an individual might have very little deterrent effect. * * *"



E. Federal Trade Commission

"Orders to cease and desist issued under the Clayton Act are often of necessity in the language of the statute itself and any determination of violation requires the application of laws of considerable complexity to equally complicated facts. Reference is made to the conflicting concepts of 'injury to competition,' to the concept of 'proportionately equal terms,' and to the provisions of the brokerage clause in Section (2) of the Clayton Act.

"Before a jury of laymen, who ordinarily would have little or no understanding of the intent and meaning of such laws, could return an appropriate verdict on a charge of violation, it would be necessary for the court to sufficiently educate them on the intent and meaning of such laws by way of a charge. It is submitted that this is probably impractical in view of the fact that antitrust lawyers of long experience and great ability as well as courts do in many respects often differ in respect of their interpretation of the intent and meaning of such laws.

"For these considerations and from the standpoint of more efficiently dealing in future violations by the same offenders, it is submitted that trial by jury for criminal contempt in such cases would in all probability be less effective and less practicable than by the court as has been heretofore the custom in United States Courts of Appeal."

F. Antitrust Division

"The jury trial requirement for criminal contempt will also harm effective enforcement of the antitrust laws as administered by the

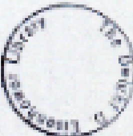
Department of Justice.

"Such requirement would, in practical effect, often force the Government to prove anew the very antitrust violation the court's decree sought to remedy.

"Contempt, it seems clear, may largely turn on the intent and meaning of that judgment which the court, along with the parties, fashioned. From this it follows that decision on the contempt question may require intimate knowledge of the very facts and issues involved in the original antitrust action. Certainly the judge who, along with the parties, went through a trial and formulated the decree, is better able to decide such questions than a jury.

"Indeed, were a jury to decide criminal contempt issues, major portions of the evidence in any original antitrust litigation might well have to be introduced for a second time. * * *"

"Finally, even if the Government waded through a criminal contempt jury trial, and the jury found defendants guilty, the pending jury trial amendment would curb those fines which a court could impose on guilty individuals. Thus the Senate-accepted provision specified that in case the accused is a natural person, the fine to be paid shall not exceed the sum of $1,000 * * * in the <u>Schine</u> case, for example, one individual was fined $25,000, and all <u>other</u> individuals fined $5,000 apiece. Beyond that, this $1,000 limit hardly seems consistent with Congress' recent action in upping Sherman Act maximum fines to $50,000. It is illogical to permit a court to fine an individual up to $50,000 for a Sherman Act violation and then limit to $1,000 that fine which a court could impose for transgressing a civil decree which could grow out of the very same violation."


The Dwight D. Eisenhower Library

G. <u>Office of Legal Counsel</u>

The Office of Legal Counsel of the Department indicated that the Amendment would also have a harmful effect on contempt proceedings in the Supreme Court and Courts of Appeals. It concluded:

"Since the 'jury-trial amendment' to the Civil Rights Bill applies to all criminal contempt proceedings for violation of orders of 'any court of the United States or any court of the District of Columbia', the amendment plainly covers the Supreme Court of the United States and the eleven federal Courts of Appeals. In all criminal contempt proceedings in those courts for violation of their own orders--except where the contempt was committed in or near the presence of the court, or by a court officer--a jury trial would be required by the bill as it now stands.

"1. The Supreme Court customarily issues, each year, various kinds of stay or injunctive orders, for the purpose of preserving its jurisdiction pending a decision in a case. If those orders are violated, criminal contempt proceedings can be instituted by the Court to punish the violator. Up to now, it has not been necessary to provide a jury trial. Under the Bill, a jury trial will be mandatory.* * *

"2. The same observations can, of course, be made with respect to the eleven Courts of Appeals which likewise issue stay, injunctive, and bail orders. An example of a contempt proceeding in a Court of Appeals is the well-known case of Sawyer v. Dollar, 190 F.2d 623 (C.A.D.C.), involving the disputed stock in the American President Lines, Ltd. Under the present bill, the criminal aspects of that complicated contempt proceeding would have had to be tried by a jury.

"This is a particularly serious matter for the Courts of Appeals which have constantly to issue decrees enforcing the orders of such agencies as the Federal Trade Commission, the National Labor Relations Board, and the Civil Aeronautics Board. * * *"

The Federal Courts have played a vital role in the progress and success of our nation. I am sure that the Congress will want to consider carefully whether it is wise to weaken the traditional authority of those courts by approving such a sweeping amendment.

Sincerely,

/s/ William P. Rogers

Acting Attorney General