





THE SPEAKING OF SENATOR JOHN WORTH KERN

By

Joseph C. Rhea

ABSTRACT OF THESIS

Submitted to the College of Communication Arts  
Michigan State University of Agriculture and  
Applied Science in partial fulfillment of  
the requirements for the degree of

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Approved by

Joseph C. Rhea

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The purpose of this study is to examine the speaking of John Worth Kern, with emphasis given to his speaking while a United States Senator from Indiana. The writer attempted to discover the contributions made by Kern and his speaking to the United States Senate under the first administration of President Woodrow Wilson.

Several occasions of informal speaking (that which took place in caucuses, conferences, and individual meetings), as reported in historical collections, biographical and political works, newspapers and magazines, and other secondary sources, are examined. Occasions of formal speaking (that which took place before assembled audiences), as reported in the Congressional Record and the previously mentioned sources, are examined and two speeches given before the senate are selected for detailed examination and analysis.

The thesis includes an introduction, a biographical chapter, a chapter on informal and formal speaking, two chapters (each dealing with a single speech) of detailed rhetorical analysis, and a conclusions chapter.

Chapter I introduces the thesis by presenting the purpose of the thesis, essential definitions, major limitations and obstacles, the significance of the thesis, and by indicating major materials and the general organization of the study.

In Chapter II, the life of Kern from childhood to his election to the senate is discussed for the purpose of attempting to discover his development as a speaker. Kern's schooling, his

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development as a state politician, and his ascension to national prominence in public life are discussed in some detail. Kern began his career as a country lawyer, was elected Indiana's Reporter to the Supreme Court, was elected to the state legislature in Indiana, and became the Democratic minority leader in the state senate, ran for Governor of Indiana twice, ran for Vice-President with Bryan in 1908, and was elected to the United States Senate in 1910.

The informal speaking of Senator Kern is given considerable attention in Chapter III, as well as the issues which gave rise to both the formal and informal speaking. The formal speaking occasions are discussed in general, and essential biographical information on the six years of Kern's public service as a senator is also related. Special emphasis is given to examining Kern's leadership while Democratic majority leader of the senate during the first Wilson administration.

Chapters IV and V deal respectively with a rhetorical analysis of Kern's speech in favor of the Sherwood pension bill for Civil War veterans, and a rhetorical analysis of his speech in refutation of the plea of *res adjudicata* (prior adjudication). The latter speech was given as the first speech in a series of three in favor of disqualifying the election of Senator William Lorimer of Illinois. Each of these two chapters considers the history of the issue, preparation, textual authenticity, immediate setting and occasion, arrangement, invention (logical, ethical and psychological appeals), style, delivery, and response. ?

The principle conclusions derived in Chapter VI include the recognition of Kern's character and personality, leadership qualities, political experience, and previous experience and training in public speaking as significant sources of his formal and informal speaking in the senate. His informal speaking appears to have had greater significance in the senate than his formal speaking. Still, when the occasion arose which Kern felt called for formal speaking on the floor of the senate, Kern presented his case forcefully and well.

As a figure in national life, Kern seems to have selected for himself the role of the quiet leader who keeps behind the scenes as much as possible. His principal medium of expression was informal public speaking in conferences, caucuses, and individual meetings with government leaders.

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## CHAPTER I

### INTRODUCTION

#### Purpose

The purpose of this study is to examine and criticize the political speaking of John Worth Kern. While much consideration is given to the role played by Kern's informal speaking in his leadership in the United States Senate, formal rhetorical criticism is reserved for his formal speaking on major issues before that body. The ultimate goal is to obtain some understanding of the formal and informal speaking of this former senator from Indiana who occupied a significant legislative position in an important legislative period of the United States Senate.

#### Definitions

Two terms used in the above statement of purpose deserve further explanation. Within the confines of this study the term "formal speaking" refers to speaking for the record from the floor of the senate. "Informal speaking" refers to speaking off the floor of the senate in individual face-to-face meetings, generally for the purpose of securing support for measures sponsored or supported by the Democrats.

#### Limitations

While this study could have concentrated on any of several periods of Kern's speaking in his legal and political career before

he was elected to the senate, it attempts to examine extensively only his speaking while a member of that body. The length of his political career dictates the selection of only a part of Kern's speaking, and the period in the senate was selected because it is felt that this is the speaking with the most lasting significance.

No attempt will be made to present a detailed analysis of short comments by Senator Kern. Rhetorical criticism is confined to senate addresses which are not dependent upon a preceding speech for the adequate presentation of a central idea, and which are prompted by an issue of some importance.

#### Obstacles

Two chief obstacles are encountered in this study. The lack of primary source materials is a definite obstacle to accuracy in examining Kern's formal and informal speaking, an obstacle which is only partially overcome by the use of secondary sources. The accidental destruction of most of Kern's private papers in 1951 is of major importance in this respect. Only a few fragments of his papers remain, many as a part of other historical collections.

The lack of enough authorities who are able to recall information of value to the study is another obstacle encountered. Those who can recall some information find their memories dimmed by the passage of a half a century since the events took place.

#### Significance

The significance of a study of Senator John Worth Kern is indicated by these words of Thomas R. Marshall, Vice-President of the United States during the period of 1913-1921:

It is a measure of a little man to be cocksure, to be eternally and everlastingly right, to be quite certain that Jehovah gave into his hands all knowledge, all goodness and all power. It is the measure of a really great man to walk with certainty and yet walk humbly in his public life, granting to other men the right to think, to speak, to act freely.

. . . . .  
This was the grade of man John Worth Kern was. He showed it in his brilliant services at the bar, in his forceful presentation of his party's principles on the stump and in that kindly, loveable leadership which, when he left the Senate of the United States, made it the supreme desire of political friend and foe alike to do something for him as the shadow of night began to gather around his head. To my mind he was one of Indiana's great and illustrious citizens whose life, when read by the schoolboy of today will help to sweeten, glorify and adorn the public service of tomorrow.<sup>1</sup>

Previous to his election to the senate Kern had twice been the unsuccessful Democratic candidate for governor in Indiana, and in 1908 the unsuccessful candidate for Vice-President. During the organization of the senate in 1910, his first Congress, Kern was selected as the leader of a group of progressive Democrats who nearly succeeded in wrenching control of the senate Democratic caucus from the conservatives. With the reorganization of the senate in 1913, Kern became majority leader, was reelected to the position in 1915, and served in this important position until 1917. During this time the senate was in session longer than had been the case since the Jefferson administration. The same period saw one of the largest volumes of progressive legislation approved in the history of the country, much of it during the first two years when Kern faced the double burden of a heavy legislative calendar and a narrow Democratic majority.

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<sup>1</sup>Thomas R. Marshall Collection, Indiana State Historical Library, Indianapolis, Indiana.

Despite the problems, only one administrative measure failed to pass the senate. William G. McAdoo, then Secretary of the Treasury, reported that "John W. Kern served as Democratic leader of the Senate during a period when some of the most important legislation in the history of the country was enacted into law."<sup>2</sup> Senator Willard Saulsbury of Delaware, president pro tempore of the senate stated:

"In his position as Democratic leader and chairman of the caucus he displayed great ability and tact in handling a majority of senators composed of men whose opinions in some cases differed widely. Every one respected him and many of us loved him. We felt when he left the senate that the party to which he belonged and the country had met with an irreparable loss."<sup>3</sup>

Thus, Kern occupied a significant position in the history of that period; his speaking formed a major part of his work; and, therefore, he is worthy of study in order to discover the contribution which his speaking made.

Kern has not been the subject of a previous thesis in the field of speech. Only slight mention of his role is made in works in the field of history, and he has received only brief notice in political science works. Even in his own time, he received little national attention while in the United States Senate. Aside from the limited publication of a biography and a small number of articles, little has been written on Kern. The intrinsic merit of the man and his career combine with the lack of previous writings to make this study a worthwhile task.

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<sup>2</sup>Claude G. Bowers, The Life of John Worth Kern (Indianapolis: The Hollenbeck Press, 1918), p. 369.

<sup>3</sup>Ibid., p. 375.



### Materials

Two sources are of primary importance in this study. The biography by Claude G. Bowers, The Life of John Worth Kern, is the only major work which deals with Kern's role in the senate. Thus, heavy reliance is placed upon it. At the time that the book was completed the author had been in Indiana politics for a quarter of a century. He was personal secretary to Senator Kern during his term in the senate, and was sympathetic to Kern's views. His background was that of a newspaper editor and reporter. Commenting on the book, a reviewer wrote:

While the whole volume is thus sympathetic there is no offensive partiality, no long arguments so often indulged in by apologists to prove his hero always in the right. The reviewer, as has been intimated, was not a follower of Senator Kern but he has not found a single expression in the volume at which offense could be taken. Mr. Bowers is a graceful writer, his style is clear and simple. The volume should rank with Mr. Foulke's Life of Morton as one of the two best contributions to Indiana biographical and political literature.<sup>4</sup>

Since no manuscripts of Kern's speeches are available and his speeches were not reprinted in the newspapers, the Congressional Record was adopted as the best secondary source. Whenever possible, the accuracy of the texts is verified by comparison with the excerpts from newspaper accounts.

Aside from these two principle sources, others deserve brief mention. The Woodrow Wilson Collection in the United States Library of Congress provides significant information on Kern's relationship with President Wilson. A private collection of the undestroyed portion of Kern's papers, held by John Worth Kern II, are valuable in

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<sup>4</sup>"Reviews and Notes," Indiana Magazine of History, XV (March, 1919), p. 78.

many respects; and several collections of the papers of Indiana political leaders in the Indiana State Historical Library also are of some significance.

Many other materials and sources have been utilized in this study, and these are indicated in the footnotes throughout the thesis and in the bibliography.

### Organization

The study is divided into six chapters, including this introductory first chapter. Chapter two traces the sources of Kern's speaking ability and furnishes essential biographical material which covers the period of his life up to his entrance into the senate. Chapter three discusses the nature of Kern's leadership and the role of his informal speaking. It also deals with certain biographical material concerned with the six years of Kern's senate career.

Chapters four and five contain rhetorical criticism of two speeches made by Kern from the floor of the senate. Chapter six seeks to summarize and offer some conclusions about Kern's speaking which are based on the preceding chapters.

## CHAPTER II

### THE MAKING OF THE MAN

#### The Early Years

Early days. John Worth Kern was born on December 20, 1849, in Alto, Indiana, a small community in Howard County.<sup>1</sup> His father, Dr. Jacob W. Kern, and his mother, Nancy (Liggett) Kern, had moved into this sparsely settled, heavily timbered region from Shelby County, Indiana in 1846. The generous and sympathetic physician and his wife had become leaders in the swampy region,<sup>2</sup> and in June of 1849 the doctor had risen in politics to the presidency of the Howard County Democratic Convention.<sup>3</sup>

In 1854 the Kern family, including an older sister, moved to Warren County, Iowa and settled near Indianola among other settlers from Indiana in a place called "Hoosier Row" because of its numerous Howard County people.<sup>4</sup> In this locale young Kern's political beliefs in the Democracy (Democratic Party) were solidified. During the campaign of 1860 he would often make a trip to Indianola

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<sup>1</sup>Charles Blanchard (ed.), Counties of Howard and Tipton, Indiana: Historical and Biographical (Chicago: F. A. Battey and Company, 1883), p. 340.

<sup>2</sup>George S. Cottman (ed.), Indiana Scrapbook Collection: Biography (Article from Indianapolis News, August 3, 1904), IV, pp. 58-59.

<sup>3</sup>Jackson Morrow, History of Howard County, Indiana (2 vols.; Indianapolis: B. F. Bowen and Company, 1910), I, p. 354.

<sup>4</sup>Cottman, loc. cit.

with a load of wood, and attend the political rallies. His yelling and cheering for Douglas attracted a great deal of attention to the eleven-year-old Democrat. Shortly after Douglas lost the election, he met a friend of his father who asked him how he felt about the election.

"Like Lazarus."

"Why, how is that?"

"Like I'd been licked by the dogs," was the reply.<sup>5</sup> Here in Iowa young Kern received his early schooling. His father was both a farmer and doctor in the community, and John spent the greater part of the year working on the farm. In the winter he attended one of the common schools of Iowa, which were considered good by the standards of the far west.<sup>6</sup> He received additional help in his studies from his father, an excellent scholar, who graduated in medicine in Virginia in 1840.<sup>7</sup>

The death of Mrs. Kern and the lack of good educational facilities beyond the common schools prompted Doctor Kern to return to Alto, Indiana in 1864.<sup>8</sup> John enrolled in the Indiana Normal School of Kokomo where he received advanced schooling during

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<sup>5</sup>Claude G. Bowers, The Life of John Worth Kern (Indianapolis: The Hollenbeck Press, 1918), p. 5.

<sup>6</sup>Cottman, loc. cit.; Will Cumback and J. B. Maynard (eds.), Men of Progress: Indiana (Indianapolis: The Indianapolis Sentinel Company, 1899), p. 185.

<sup>7</sup>Ibid.

<sup>8</sup>Bowers' biography of Kern states that they returned in 1865 (see Bowers, op. cit., p. 5). However, two other references (see Blanchard, op. cit., p. 341 and Cottman, loc. cit.) clearly indicate the date as 1864.

the winters of 1865-1866 and 1866-1867. Under the direction of Professor E. N. Fay and a staff of competent teachers, this private institution was considered superior to most Indiana schools of the period. Kern rode back and forth to school on horseback each day, and, to economize with money, he carried his lunch. To help pass the time on the nine-mile daily winter rides, he would often recite his lessons aloud, engage in a little practice oratory,<sup>9</sup> and study the great speeches.<sup>10</sup>

Kern was industrious about his education, and was considered a leader among the other boys and girls. Jackson Morrow, a life-time friend, described him as "a brilliant student but not a plodder."<sup>11</sup> He absorbed the textbook materials easily. Nor was he concerned with dull formulas in his study of English, but merely with the principles that dealt with the clear and forcible expression of thoughts.<sup>12</sup> J. Oscar Henderson, a school companion of Kern's at Normal, stated that:

He was a sweet, precocious, gentle boy, ambitious to the last degree and always hopeful and sure of himself. Intellectually he ripened and expanded far beyond his years. As a boy he excelled all his fellows in oratory and loved forensic contests. From his boyhood his dreams was to become a lawyer of renown. . . . He was an intense Democrat, . . .<sup>13</sup>

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<sup>9</sup>Bowers, op. cit., p. 7; Cottman, loc. cit.; and Blanchard, loc. cit.

<sup>10</sup>Letter from late Hon. Claude G. Bowers, U. S. Ambassador (retired), historian, and close friend of John W. Kern, to writer, August 15, 1957.

<sup>11</sup>Bowers, loc. cit.

<sup>12</sup>Ibid., pp. 7-8, and Cottman, loc. cit.

<sup>13</sup>Kokomo Dispatch, August 21, 1917, p. 1, col. 3.

His religious education played an important part in his development. He attended Sunday school in the Alto Methodist log church, and at the Cobb church located a mile outside of Alto, and during a one-day Sunday school celebration in the summer of 1865, Kern represented the Alto Sunday School in a contest between Sunday schools, by delivering a paper on temperance. His clear, incisive and earnest manner captured the large audience in his attack on the saloon and drunkenness,<sup>14</sup> and the paper was selected for publication in the county paper.<sup>15</sup>

Teaching days. While young Kern held to high ideals, his industriousness also developed in him a sense of practicality and self-sufficiency. This is best indicated by his decision in late 1865 to pursue a legal career.<sup>16</sup> His most immediate need was that of money to attend law school. Although his father's practice was adequate enough to provide the extra money needed, John preferred to provide the funds himself. To do this, he took the examination before the county examiner, Rawson Vaile, for a teacher's license. On the basis of the high score made by Kern, he was granted a twenty-four months' license--the longest term granted by a county examiner.<sup>17</sup>

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<sup>14</sup>Bowers, op. cit., pp. 5-6.

<sup>15</sup>Ibid.

<sup>16</sup>This decision was reached, in part, because of Kern's love for books which tended to lead him to reject his father's desire that he remain in the old homestead and go into the medical profession. Charles W. Taylor, Biographical Sketches and Review of the Bench and Bar of Indiana (Indianapolis: Bench and Bar Publishing Company, 1895), p. 338.

<sup>17</sup>Bowers, op. cit., p. 8.

His first term of teaching was conducted before he was sixteen at the common school in Alto, probably in the winter of 1865-1866. His last term of teaching was conducted at the Dyar Schoolhouse, a district school located in the Albright settlement three and a half miles east of Alto.<sup>18</sup> The record of his experiences at the Dyar Schoolhouse provides an example of some of the leadership qualities that were developing in him. The district school was large for the times, consisting of about sixty boys and girls, many of them older and larger than the young schoolmaster. On the playground he would join in the games as an equal, but in the classroom he was a strong disciplinarian. In one instance, the refusal of a rebel to stand brought on a severe whipping after school in the presence of two other boys as witnesses. In another instance, Kern presided as judge over a dispute in ownership of a pet rabbit. The boy in possession of the rabbit was found not to be the rightful owner, was forced to give up the rabbit, and became the recipient of several lashes from the schoolmaster.<sup>19</sup> His advice in the last week of November, 1867 to Jackson Morrow, a friend and district school teacher, was well in keeping with these two examples.

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<sup>18</sup>On this point the biographers are contradictory. The question could well be asked, "How could he both attend school and teach at the same time [winter of 1865-1866]?" The answer might well lie in the fact that Kokomo Normal was primarily a school for the training of teachers, and therefore might arrange its term to accommodate the vocational commitments of their young teachers. However, the answer must remain one of speculation. The records of Kokomo Normal were destroyed in a fire, according to an interview with C. V. Haworth of Kokomo, August 26, 1957; Cottman, loc. cit.; Blanchard, loc. cit.; Bowers, op. cit., p. 9; and Kokomo Dispatch, August 19, 1917, p. 1, col. 4.

<sup>19</sup>Cottman, loc. cit.; Bowers, op. cit., pp. 9-10; and Kokomo Dispatch, August 19, 1917, p. 1, col. 4.



He told him "not to spare the rod, but crack the whip under their bellies whenever they deserve it." He softened this statement, however, by saying that the students were "generally well disposed," and "not naturally vicious. . . . I sympathize deeply with every school teacher, knowing as I do the responsibility resting upon them."<sup>20</sup>

His sense of responsibility in teaching is indicated more clearly in descriptions on his teaching methods. They are described by Albert B. Kirkpatrick and township school officials as being those of an original thinker, one not addicted to ironclad sophistic rules of instruction. He created an interest in learning among the students that resulted in rapid student progress. He particularly enjoyed reading from Patrick Henry and other orators in McGuffey's Sixth Reader. The township school officials were disappointed when he gave up teaching to pursue his legal education, because they felt he had the true instinct of a great teacher.<sup>21</sup>

In addition to the speaking experience gained by teaching, the schoolhouse debates of the period afforded an excellent opportunity for developing Kern as a young speaker. These debates were presented by the Dyar school literary and debating society organized by Kern. The topics usually were taken from the problems of reconstruction. Kern took a regular part in the debates, and his usual chief competitor was Jesse Yager, a leader in the community and an able speaker. Although Kern consistently stood against current community beliefs by favoring a liberal reconstruction policy

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<sup>20</sup>Bowers, op. cit., p. 16.

<sup>21</sup>Cottman, loc. cit.; and Bowers, op. cit., pp. 9-10.

for southern white people, the earnestness and vigorousness of his presentations won at least the respect and admiration of his Republican audience, if not their beliefs. He appeared to be a little extreme in his speaking, gesturing wildly, speaking at the top of his voice, and utilizing half of the schoolhouse as his platform.<sup>22</sup>

Kern's first and only venture as an actor on a stage occurred in the summer of 1866 as a member of the Alto Dramatic Society. The play was a typical temperance drama of the period, "The Demons of the Glass," and Kern's realism and earnestness as the father and husband who became a drunkard made him the star of the evening.<sup>23</sup> He was a strong advocate of the temperance movement.

Before the end of his second term of teaching, Kern became a deeply religious, active member of the Methodist church as a result of a revival meeting at Albright's chapel.

During these teaching days, when the young pedagogue was preaching temperance, damning the radicalism of the Thad Stevens, protesting against carpetbag government in the southern states, practicing his embryo eloquence upon debating societies in the woods, and experiencing a spiritual awakening, he was attracting attention throughout the community and county as a youth of precocious ability and rare gifts. This did not affect his natural modesty or his relations with young people of his own age. . . . Writing of his boyish characteristics, Mr. Morrow says: "His friendship was steady and faithful. I never knew him to cut a friend as the mood or occasion might suggest. He appeared to always meet his friend with a smile and a friendly handclasp that impressed one as real, and he manifested his interest in helpful ways. He had been trained to know the value of a dollar, taught that it represented real value and should not be squandered, but if he met a friend in need and he had a dollar in his

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<sup>22</sup>Ibid., pp. 10-11.

<sup>23</sup>Ibid., pp. 11-12.

pocket that dollar was his friend's at once. He had large sympathies and in a sense he was his brother's keeper. His general character never changed."<sup>24</sup>

As the end of the second term drew near, he turned his attention to the selection of a law school to enter. Because of its reputation as the great school of the West, but primarily because the living expenses at the school stayed within his modest means, Kern chose the University of Michigan. He entered there in the spring of 1867, taking a special course of study under the Literary Department. In the fall of 1867 he entered the law department of the same school as a junior, and was graduated in March of 1869.<sup>25</sup>

#### College Years

Legal training. While no record of the special course of study Kern took under the Literary Department can be found, one might assume that it was a preparatory course designed to fill in the "gaps" in his educational experience at Kokomo Normal. Realizing that the Literary Department curriculum stressed the classics at this time, we might reasonably speculate that the course of study concentrated on classical literature. The study of an English rhetoric was possibly a part of that course.<sup>26</sup>

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<sup>24</sup>Ibid., pp. 12-13.

<sup>25</sup>Blanchard, loc. cit.; Bowers, op. cit., pp. 13-14; Bottoman, loc. cit.; and Cumback and Haynard, op. cit., p. 106. Here again, there is disagreement as to the length of time and the exact time of the experience. It appears that the time span makes the above the only reasonable distribution of the total time involved.

<sup>26</sup>Newman's Rhetoric was a part of the required curriculum for Sophomores in 1844 and Whately's Rhetoric was a part of the required curriculum for Juniors in 1845 to 1846. The University of Michigan: An Encyclopedic Survey (Ann Arbor: University of Michigan Press, 1943), Part III, pp. 558-559.

Kern entered law school in October of 1867. The sole entrance requirement, that "the candidate shall be 18 years of age, and be furnished with certificates giving satisfactory evidence of good moral character,"<sup>27</sup> meant that the law school became a haven for the lazy student.<sup>28</sup> To balance this group of poor students, the faculty could look for inspiration to a group of students with considerable ability. Many of this group were already practicing attorneys, men who had studied law in the offices of practicing lawyers. Others of this group were nearing the end of their studies with lawyers who were about to recommend them to the bar. This group, taking advantage of the lectures by the faculty before entering into practice on a permanent basis, was a stimulant for the serious-minded students, such as Kern.<sup>29</sup>

The course of study, not at all like the training of today, was laid out over a two-term period. Each term lasted only six months, from the first of October until the last Wednesday in March of the following Spring,<sup>30</sup> and the student could begin his studies with either term. The method of instruction was not that of creative thinking. The professors lectured, and the students listened. Juniors, who were not quizzed or examined on their studies, came to the lectures and listened, and then returned to their studies if

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<sup>27</sup>Ibid., Part IV, p. 1019.

<sup>28</sup>The Michigan Book (Ann Arbor: Inland Press, 1898), p. 35.

<sup>29</sup>Wilfred Shaw, The University of Michigan (New York: Harcourt, Brace and Howe, 1920), p. 133.

<sup>30</sup>Wilfred B. Shaw, The University of Michigan: An Encyclopedic Survey, (4 vols.; Ann Arbor: University of Michigan Press, 1951), II, p. 1023.

they were ambitious. Seniors were subject to quizzes which could be expected occasionally during the last part of the term, although they normally did not have very much effect on the outcome of graduation. The same was true of the final oral examination given each senior student. It consisted of only a few questions, and no one was ever failed at this point.<sup>31</sup>

Graduation requirements were minimal. Attendance at the lectures and moot courts was expected, and students completed the formal oral examination and a written dissertation. The dissertation was to consist of "not less than forty folios," but it was not considered very important. Grading and examinations were apparently a matter of "going through the motions."<sup>32</sup>

But perhaps stressing the difference in legal education of that day and the present is a little harsh. On the other side of the picture, the lectures were certainly given by quite capable men. Most of them were either practicing attorneys or members of the Bench, in addition to being proficient as instructors in the law. During those two years, Kern fell under the influence of this law faculty, including James Valentine Campbell, Marshall Professor of Law; Charles Irish Walker, Kent Professor of Law; Thomas McIntyre Cooley, Jay Professor of Law; Ashley Pond, a practicing lawyer from Detroit; and Charles Artemas Kent.<sup>33</sup>

In addition to the ten lectures given each week, the students were required to attend a moot court that was held at least once

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<sup>31</sup>Ibid., p. 1026.

<sup>32</sup>Ibid.

<sup>33</sup>Ibid., p. 1018 and 1026.

each week and presided over by the lecturer of the day. These moot courts were held for the purpose of promoting the practical knowledge and application of the principles taught in the lectures.<sup>34</sup>

The opportunity was there for the ambitious students to learn.

"The men sat at the feet of great lawyers, learned men, and could learn as much or little as they might elect."<sup>35</sup>

The coin shows still brighter when we consider the general state of legal education at this time. Other law schools usually required no more, and there were some who had even easier requirements. And, if this legal education was an easy way to become a lawyer, studying for the bar in an attorney's office was usually easier.<sup>36</sup>

Public speaking training. In addition to the moot courts, other activities were of benefit in the development of Kern's speaking ability. In the latter part of November, Kern wrote a letter to his friend, Jackson Morrow, in which he remarked that he had been receiving a great deal of practical knowledge of law through club courts. These club courts were organized by the students who desired to gain additional practice in the application of legal principles learned in the lectures. As a member of the Indiana Club he had already been an attorney in four mock cases, and was to appear again "next Saturday."<sup>37</sup>

The literary, or debating, societies connected with the law school offered another extra-curricular source of oratorical devel-

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<sup>34</sup>Ibid., p. 1023.

<sup>35</sup>Ibid., p. 1026.

<sup>36</sup>Ibid.

<sup>37</sup>Ibid., p. 1024; and Bowers, op. cit., pp. 16-17.

opment for Kern. The Webster Society, officially in existence from October 21, 1859, was the first society, followed shortly by the Jeffersonian Literary Society. Kern belonged to the Douglas Literary Society, a small group averaging thirty members each term from 1865 to 1870.<sup>38</sup> In a letter on February 12, 1868, he told Morrow that on the previous Saturday night they had discussed the question, "'Resolved that the reconstruction policy of congress is unwise and inexpedient,'" and he had led the debate in opposition to the policy.<sup>39</sup>

Kern had the opportunity to hear contemporary speakers in lectures sponsored by the Students' Lecture Association. This association brought to Ann Arbor such men as Ralph Waldo Emerson, Bayard Taylor, Theodore Parker, Henry Ward Beecher, Horace Mann, and Henry M. Stanley, and stimulated interest in platform speaking among the students.<sup>40</sup> Kern commented on a lecture given by John B. Gough on "Eloquence and Oratory," stating that Gough was a "splendid lecturer and his lecture" was generally a success.<sup>41</sup>

Kern's most concentrated preparation in oratory may have occurred as a result of lectures on elocution that were given twice each week to the law students by Professor Moses Coit Tyler.<sup>42</sup> The lectures, according to Kern, were of "great advantage."<sup>43</sup>

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<sup>38</sup>The Michigan Book, pp. 96 and 98.

<sup>39</sup>Bowers, op. cit., p. 22.

<sup>40</sup>Shaw, University of Michigan, p. 220.

<sup>41</sup>Bowers, op. cit., pp. 21-22.

<sup>42</sup>There is no record of how many weeks these lectures were held.

<sup>43</sup>Bowers, op. cit., p. 17.



Prior to coming to the University of Michigan in the Fall of 1867, Tyler had acquired a considerable reputation as a speaker and journalist. His work at the University in English language and literature, and the science and art of elocution brought warm commendations from many sources.<sup>44</sup>

Much of Tyler's resource materials for his lectures came from the classics. While Kern was at the University, Tyler had made careful notations on his readings from Quintilian's Institutes of Oratory, Forsyth's Life of Cicero, Cicero's Oratory and Orator's, Mills' Dissertations and Discussions, and the works of Aristotle and Tacitus.<sup>45</sup>

The influence of this reading of the classics on Tyler's conception of modern oratory is indicated, in part, by the following:

Sep. 15, 1869

It strikes me that a captivating and helpful book on modern aspects of oratory, with contrasts to the ancient, might be written in the form of a conversation between celebrated American characters; say Charles Sumner, Greeley, [sic.] and Lincoln, with presence of two or three young men. Lay the scene at the Soldiers' Home, near Washington, on Saturday night during the war. Lincoln glad to relieve his mind by contemplations of philosophy and ----- and by ----- Sumner represents the learned advocate of classical eloquence; Lincoln, the exemplar of unpolished American eloquence; Greeley the shrewd philosophical opponent of all oratory as such. Sumner quotes learnedly all about the literature of ancient and modern times; Lincoln praises Clay, Colonel Baker and tell good stories, quotes Shakespeare and gives ingenious augural comments, besides quoting the Bible and tracing the thread of oratory there. Greeley's attitude is that of futility. Of course the model will be Cicero's "Brutus" and "DeOratore."

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<sup>44</sup>Howard Mumford Jones, The Life of Moses Coit Tyler (Ann Arbor: University of Michigan Press, 1933), pp. 119 and 125; and Shaw, University of Michigan: Encyclopedic Survey, p. 548.

<sup>45</sup>Cornell University Library, Moses Coit Tyler MSS Collection, Commonplace Book V, pp. 129, 56-66, 68-75, 184-186, and Book VI, Parts 1 and 2.

It might be better to publish this after Sumner and Greeley are dead -- unless they persist in living too long -- nor until -- it is written.

Also: studies for it might be made by getting material for University lectures on "Oratory, Ancient and Modern."<sup>46</sup>

An evaluation of Tyler's ability on the platform was found in an unidentified newspaper clipping, dated 1869:

It would be difficult to give an idea of the brilliancy, humor, and beauty of this lecture, its varied information and the indescribable charm of manner, the felicitous rendering of words, that stamp his meaning vividly upon the mind; suffice it to say that no lecture of the course has given so universal satisfaction and delight as this from Prof. Tyler, who in private life is as genial, brilliant, and delightful as he is in public --- happy the student to whom he daily lectures, for not many colleges have a popular Professor.

The Detroit Free Press of March 6, 1871 spoke of Tyler's brilliant flashes of humor, eloquent and graphic description, rapier thrusts of satire, and careful analyses of the speaking of great political men. The Detroit Post of the same date also called attention to these analyses.<sup>47</sup>

Thus, Kern not only had the benefit of an extremely capable rhetoric and elocution teacher, but also the benefit of one who was thoroughly familiar with all the canons of rhetoric. We cannot assume that Kern's professor of elocution remained untouched by the Sophistic flavor of the lyceum movement and concentration on elocution. On the basis of the evidence, we can assume that Tyler offered his students much more than just the proper gesture strokes and mimicked registrations of emotion; even more than just proper voice inflection and platform decorum. Tyler's teachings were

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<sup>46</sup>Ibid., Part 2.

<sup>47</sup>Ibid., Personal Record Book, 1853-1875.

quite properly grounded in a classical understanding of rhetoric, including Cicero and Quintilian.

The senior law student. January 1, 1869 found Kern hard at work on his thesis, "The Dissolution of Agency," and studying for his examinations.<sup>48</sup>

"We senior law students don't have quite so fine a time as we did last winter. Then all we had to do was to sit and listen to lectures, but now we are quizzed each morning on the lectures of the preceding day, and after holidays we will be examined every afternoon on last winter's lectures, to wind up with an examination of five days at the close of the term. Rather a gloomy prospect, isn't it?

"I have no particular fears but that I shall get through all right and come out a veritable LL.B."<sup>49</sup>

On March 20, 1869, Professor Charles Walker was asked by Kern and other members of the senior class to prepare his last lecture to them "with a view to publication" in mind.<sup>50</sup> Walker consented, and on March twenty-fifth he addressed the Senior Class of 1869 on the subject of "Practical Suggestions." In the lecture he cautioned the seniors that in their new profession they should run an orderly office, devote much time to careful study, and prepare cases for trial carefully. He pleaded for them to perform their full duty to society, and make themselves felt as a power for good in the community and to others.<sup>51</sup>

Final examinations took place on March twenty-sixth and twenty seventh. And on March thirty-first Kern was graduated into the

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<sup>48</sup>Bowers, op. cit., p. 23.

<sup>49</sup>Ibid., p. 24.

<sup>50</sup>Henry Wade Rogers (ed.), Law School Pamphlets, Michigan Historical Collections, University of Michigan, Ann Arbor.

<sup>51</sup>Ibid.

profession of law.<sup>52</sup>

#### Growth of the State Politician

Country lawyer. Kern, after a short period of a few weeks of local traveling, returned home. His neighbors, anxious to hear the new lawyer, soon had a speaking engagement arranged for him in the neighborhood. Kern carefully prepared the speech, and then went into the woods behind the house to practice it. A neighborhood girl passed by in time to see a "crazy man" waving his hands wildly and shouting to the trees. The Kern household reassured the girl that the noises and gestures were only John practicing his speech.<sup>53</sup>

The day of admission to the bar and to law practice occurred for the twenty-year-old lawyer in May of 1869. He set up his practice in Kokomo, Indiana, and confidence in his new abilities was strengthened considerably within the next two months by participation in several cases. His office became the gathering place for the younger men of the town. In the evenings and on Sunday afternoons the group would gather to discuss the problems of society and local gossip. Kern seemed to enjoy these meetings, but sometimes became disturbed if one of the "loafers" would hang around during his working hours. The gregariousness of Kern seemed to be already firmly established.<sup>54</sup>

The description of Kern as a "genius" became quite prominent

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<sup>52</sup>Record of the Department of Law in the University of Michigan, I, p. 409.

<sup>53</sup>Bowers, op. cit., p. 26.

<sup>54</sup>Ibid., pp. 29-30, and Taylor, op. cit., p. 338.

during this period. It will be remembered that as a boy Kern was thought to have unusual mental abilities. Several characteristics of Kern during this period are apparently responsible for this label of high praise. The biographer describes his genius in terms of his eloquence before a jury, which surpassed the older members of the bar. He also points to the winsome geniality of Kern's personality that brought him friends and popularity in ever-increasing quantity. His performance before the local justice of the peace courts, the only local forums of the period, made him a virtual hero in the county.<sup>55</sup> One of his admirers was C. C. Shirley, later a prominent Indiana lawyer. He described him as "one who had been touched with the fires of genius."<sup>56</sup>

"I know the impression he made on me was that his client was always right and much wronged by the highly reprehensible persons on the other side. . . . I learned that his wonderful skill in marshalling the facts and circumstances, added to his real genius for pathos, ridicule and invective, when these weapons could be used to advantage, were often quite as much to be feared as the merits of his case. He knew when to employ these weapons and never made the mistake so frequently observed of resorting to either unless there was something in the case which made it certain he would 'get away with it.' He avoided the obvious resort to such expedients--indeed he never seemed to employ them at all. This is what made him so effective when he did use them."<sup>57</sup>

In another instance C. C. Shirley said of Kern:

"I first knew of him in the justice of the peace courts of Honey Creek township. As often as he was attorney in a case I was present at the trial. I was charmed with his eloquence and drew my early inspirations from him at the bar. There are no courts which represent the human passions, humor and pathos more potently and effectually than

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<sup>55</sup>Bowers, op. cit., pp. 30-31.

<sup>56</sup>Ibid., p. 31.

<sup>57</sup>Ibid., pp. 32-33.

the justice of peace courts. In them John W. Kern was perfectly at home. He ran the gamut of human emotions and sympathies. He had a big heart himself and understood human nature perfectly, and consequently was a perfect master of the human heart and played upon the heart strings at will."<sup>58</sup>

Thus, Shirley thought Kern's brilliance was in his oratory. And Bowers described Kern, the Kokomo lawyer, as a "brilliant criminal lawyer in those days, powerful with juries," and "very eloquent." Later on "he lost some of the 'purple patches'" of oratory that marked the early period of his legal career.

He had the qualities of the orator--a capacity for deep feeling on convictions deeply felt. He knew men and how to reach their minds and hearts. This was the reason he was a great criminal or trial lawyer in his early days.<sup>59</sup>

His practice in Howard County also required the power of analysis to discover human weaknesses and expose conspiracies. Through the exposing of falseness and concealment Kern presented a case before both the court and jury on its own merits. He became famous for this analytical practice, and was soon engaged on one side or the other of every important case tried in the county.<sup>60</sup>

One reason for the success of Kern in the practice of law may lie in his choice of law partners. Among these were J. F. Elliott, later judge of the Circuit Court of Howard County and one of the brightest legal minds in the county; L. J. Hackney, later a judge on the Supreme Court of Indiana; N. R. Lindsay; and Col. N. P.

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<sup>58</sup>Morrow, op. cit., p. 404.

<sup>59</sup>Letter from Bowers to writer, August 15, 1957.

<sup>60</sup>Cumback and Maynard, op. cit., p. 186; and Kokomo Dispatch, August 19, 1917, p. 1, col. 4.

Richmond.<sup>61</sup>

Perhaps the most notable characteristic of Kern's early legal career is the depth and rapidity of his perception. One example of this occurred in a case where he was positive that the prosecuting witness was lying. Lacking evidence to substantiate his belief, Kern decided to rely on a bluff. Dramatically, he opened the drawer of the desk in front of him and held up a blank sheet of paper. Looking directly at the witness he demanded fiercely, "Did you not on a certain occasion testify so and so in this matter?" The witness, certain that he had been caught in his lie wilted and confessed that he had testified differently on a previous occasion.<sup>62</sup>

An outgrowth of his skill in perception was his reliance on the expedient. Kern was not the kind to drag out a court case. He preferred the fastest course of action that would lead to the desired results. While Kern was still very new in the practice of law he represented the plaintiff in a suit on a promissory note. He had not expected the defendant to make an appearance in Tipton where the case was to be tried, and had not prepared for a trial. However, the defendant was represented by one of the region's outstanding judges. When Kern realized he was going to be facing a contest with such a worthy opponent as Judge Green he was completely at a loss and greatly embarrassed at his lack of preparation. However, Judge Garver was on the bench and, being sympathetic toward the new lawyer's position, asked Kern what he intended to do and if he would "take a rule." Kern did not know that to "take a rule"

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<sup>61</sup>Cottman, loc. cit.

<sup>62</sup>Bowers, op. cit., pp. 38-39.

meant that the defendant was required to answer the plaintiff's complaint, or that the plaintiff was required to reply to the defendant's answer, but he did know the judge would not mislead him. So with an air of complete competence he remarked, "Yes, your honor, yes, I believe I will take a rule."<sup>63</sup>

A later example of the use of the expedient occurred after Kern had gained considerable experience in the practice of criminal law. In this case his client had been accused of stealing a pocketbook. Kern secured a pocketbook similar to the one which had been stolen. He presented it to the prosecuting witness and pressed him for a positive identification. The witness fell for the trap and identified the pocketbook as his, whereupon Kern placed the real one in question before the court. The case for the prosecution was lost.<sup>64</sup>

Kern displayed his youthfulness by never allowing an opportunity to get a laugh from his courtroom audience slip through his grasp. One of his most celebrated practical jokes was played upon J. Fred Vaile, father of the man who gave him the gruelling examination for his teacher's certificate. Vaile was an immaculate dresser and prided himself on his silk hat. Kern was making an argument before the court, and, pretending to be wrapped in the emotion of his argument, he brought his law books crashing down on Vaile's plug hat. The audience roared its approval as Vaile grew livid with rage. Only Kern's acting ability in apologizing profusely to Vaile,

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<sup>63</sup>Morrow, op. cit., p. 403; and Kokomo Dispatch, August 19, 1917, p. 1, col. 4.

<sup>64</sup>Bowers, op. cit., p. 38.





and in pleading his distraction during the heat of an argument to the court saved him from a fine for contempt.<sup>65</sup>

Kern was reluctant to charge proper fees. A classic example of this occurred when Kern was a partner to Judge B. F. Harness. Their client was a woman, unable to talk, for whom they had saved forty acres of land in a civil suit. When her little boy asked about the fee, the lawyers talked it over and Kern meekly suggested seventy-five dollars. The woman extracted the amount from a roll in her stocking containing six-hundred and thirty-five dollars. Through her son, she told them she had brought along this amount as an anticipated partial payment, expecting to pay the rest after her corn crop had been harvested and sold.<sup>66</sup>

Kern made his reputation as a lawyer chiefly through his oratorical skill and ability in criminal cases. Some of his greatest speeches were made on the side of the prosecution.<sup>67</sup> This may seem unusual when we consider the character of Kern as being sympathetic to human nature.<sup>68</sup> Perhaps his role as a prosecutor will become clearer when we later consider Kern's early political career.

One of the outstanding criminal cases in which Kern represented the prosecution was the murder case of the State of Indiana vs. Hawkins. The case was tried at Kokomo with Kern as special prosecutor in 1885. Kern had been hired by the father of the murdered boy. Senator Donald Vorhees was employed by the local law

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<sup>65</sup>Ibid., pp. 33-34, and Morrow, op. cit., p. 406.

<sup>66</sup>Ibid., p. 407.

<sup>67</sup>Bowers, op. cit., p. 40.

<sup>68</sup>See p. 23-24.



firms of Cooper and Harness and O'Brien and Shirley to defend Hawkins. The case grew out of a shooting prompted by Hawkins' desire to defend the honor of a woman friend against a man who was one of Hawkins' friends. Voorhees had been especially successful on the defense in cases which involved wrongs committed against women. The case attracted state-wide attention.

Kern's closing argument was made at night before a great crowd which over-flowed into the hallway and corridors of the courthouse. Realizing that one of his chief objects of attack had to be the prestige of the Voorhees name, he spent a considerable amount of time in ridicule of the efforts of the defense. The ridicule became so intense that Voorhees left the courtroom where he remained until the end of the speech.<sup>69</sup>

"Mr. Kern," writes A. B. Kirkpatrick, then prosecuting attorney, "was at his best and held the jury and audience spellbound as he swept everything before him by his irresistible logic and eloquence. At its conclusion, Senator Voorhees said with a qualifying adjective that it was a shame to have a man like John Kern make the closing speech in such a case. Kern easily won the laurels over the senator."

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"As a criminal lawyer," writes A. B. Kirkpatrick, "Kern in his prime was perhaps not excelled in Indiana. I have seen Senator Voorhees, Major Gordon, John S. Duncan, Henry N. Spaan and Major Blackburn in the trial of criminal cases and in my opinion none of them excelled Kern."<sup>70</sup>

Kern secured a conviction, and Hawkins received a seven year prison sentence.<sup>71</sup>

His popularity and prominence as a criminal lawyer, his percep-

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<sup>69</sup>Bowers, op. cit., pp. 40-41.

<sup>70</sup>Ibid., pp. 40-42; and Kokomo Dispatch, August 19, 1917, p. 1, col. 4.

<sup>71</sup>Morrow, op. cit., I, p. 354.

tion of human nature, his kindly nature and understanding manner were perhaps the key ingredients that fostered the birth of Kern, the political orator, from the development of Kern, the forensic orator. Kern, the political orator, will be the concern of the remaining portion of this chapter.

Howard County politician. Kern's long association with and adherence to the principles of Indiana Democracy began with the influence of his father. Doctor Jacob H. Kern was an ardent Democrat, and although he did not rise to the political heights that were to be the destiny of his son he was for many years the most prominent Democrat in Howard County. As early as 1849 he served his party as President of the Howard County Democratic Convention.<sup>72</sup>

Not that this was such an impressive honor, for Doctor Kern and his son had chosen to settle in a county which recorded Republican majorities ranging upward from a minimum of around 1,200 votes as regularly as clockwork. Consequently, running for public office as a Democrat meant that it was strictly a labor of love for the party with little hope for political success. The lack of potentially successful Democratic candidates is best indicated by how quickly John Kern was called upon to make a futile race.<sup>73</sup>

In March of 1870 the Democratic County Central Committee met for the purposes of organizing for the coming Fall elections, and to consider whether or not the running of a straight Democratic ticket was worth the effort. Kern's efforts in favor of a full ticket won him his first official recognition by the party, the

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<sup>72</sup>Kokomo Dispatch, August 19, 1917, p. 1, col. 4.

<sup>73</sup>Cottman, loc. cit.

Secretaryship of the County Central Committee. The August convention accorded Kern an unusual position in the determination of the platform, Chairman of the Committee on Resolutions, and when the nominating proceedings had ended, Kern had been nominated by a vote of 39 to 8 as the Democratic candidate for the county's seat in the State Legislature. He was not yet twenty-one years of age.<sup>74</sup>

The Convention of 1,000 Democrats had not acted rashly. Kern had already gained the reputation of a political orator of considerable skill, and through the early summer his speeches had made a considerable impression on the community. The Kokomo Democrat reported on one of his speeches on August third:

"Considering the intense heat of the evening and the great disadvantage under which he spoke it was an eloquent and able effort and so regarded. The court house was crowded and the audience went away entertaining as high an opinion of the Kokomo boy as ever."<sup>75</sup>

His writings, also, came before the eye of the public, with his political comments published in The Kokomo Democrat which he served as an assistant editor.<sup>76</sup> During the summer of 1870 he contributed many articles "calculated to fire the Democratic heart."<sup>77</sup>

Kern's campaign speeches during the late summer and early fall put political fear in the hearts of the Republicans. Although Kern was opposed by a popular Civil War local hero, his fight was

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<sup>74</sup>Ibid., and Bowers, op. cit., pp. 48-51.

<sup>75</sup>Ibid., pp. 50-51.

<sup>76</sup>Logan Esarey, History of Indiana: From Its Exploration to 1922, Kate Milner Rabb and William Herschell, "An Account of Indianapolis and Marion County." (4 vols.; Indianapolis: B. F. Bowen and Company, 1922), IV, pp. 545-546.

<sup>77</sup>Bowers, op. cit., p. 51.

so sincere and earnest that the Republicans found it necessary to exert their political organization and Party press organ, the Kokomo Tribune, to their full capacities to counteract the energetic campaigning of Kern.<sup>78</sup>

One of Kern's first moves in the campaign was to challenge his opponent, Captain Kirkpatrick, to a series of joint debates, but the invitation was declined. His oratory had its effect on the voters during the election, and Kern carried Kokomo and the rest of Center Township, normally Republican by 400 votes. He was beaten by less than 250 votes, while in other offices at stake the county went Republican by 1,000 votes.<sup>79</sup> Although Kern lost the election the Republicans were never again sure of their supremacy as long as Kern was on the Democratic ticket.<sup>80</sup>

Kern's popularity both as a political partisan and as a lawyer grew with such rapidity that in the spring elections of 1871 he was elected by the Kokomo City Council, consisting of five Republicans and three Democrats, to fill the office of City Attorney. He was reelected to the position twice, serving until 1875 when he declined to fill the office for another two-year term, but did return to the office in 1876 for one year. In May of 1883 he was again elected to the office for a two-year term, but apparently did not complete it. Each time a Republican dominated Council elected

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<sup>78</sup>Ibid.

<sup>79</sup>Blanchard, op. cit., p. 342; Cottman, loc. cit.; and Kokomo Dispatch, August 18, 1917.

<sup>80</sup>Bowers, op. cit., p. 53; Cottman, loc. cit.; and Blanchard, op. cit., p. 342.

him.<sup>81</sup>

Kern was an ardent supporter of the reform elements within the Democratic Party. This did not make him very popular with the conservative elements among Howard County Democrats, but he did not subdue his enthusiasm in 1871 for Horace Greeley, Democratic candidate for President, and for Hendricks, the Democratic candidate for Governor of Indiana, both advocates of reform. In the Democratic County Convention of 1874 Kern was still advocating reform. The editor of the Republican Kokomo Tribune commented on his speech, "If he had lived in the days of the Reformation he would have been the head and front of that movement. As a reformer Kern is a success."<sup>82</sup>

Kern's leadership of the Democratic Party in Howard County was evident by this time. In addition to the major address on reform made in the convention, he also made twenty-one of the thirty-two motions placed before the delegates. He was attending the caucuses of the State Democratic Committee in Indianapolis as the sole representative of the County. From that year until 1884 he was the principal Secretary of the State Democratic Conventions.<sup>83</sup>

The convention selected Kern to run for the county office of Prosecuting Attorney that year. During the campaign an excellent example of Kern's power of ridicule developed. He persevered in

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<sup>81</sup>Blanchard, loc. cit.; Bowers, op. cit., pp. 56-57; and Kokomo Dispatch, August 18, 1917, p. 1, col. 7.

<sup>82</sup>Bowers, op. cit., pp. 57-58.

<sup>83</sup>Ibid., p. 58; and Biographical Sketches of Members of the Indiana State Government; State and Judicial Officials, and Members of the Fifty-fourth Legislative Assembly, 1885 (Indianapolis: The Indianapolis Sentinel Company, 1885), p. 25.



his advocacy of reform during the campaign, levelling his oratorical attack at local county officials. It appears he had a working knowledge of the principle of explaining the abstract by drawing upon pertinent concrete examples. Kern brought home to his audience the abstract concept of reform by relating to their personal experience and knowledge.

The Republican county officials had adorned their offices with items that Howard County farmers would deem "frills" and "extravagant misuse of public funds." Included in this list were such items as paper weights, arm rests, dusters, and fancy stationery, all of which became the objects of Kern's political ridicule. Chief among the items of ridicule, however, was an invention by a man named McGill which clamped papers together. Kern would go to such lengths in his descriptive ridicule of the "McGill machine" that his audience would build a picture in their minds of a monstrosity not unlike a threshing machine. At the proper time, Kern would then show them the tiny real device and name the high price paid by the officials for it. Kern succeeded in making the "McGill machine" an issue in the campaign to the extent that in the election, while he was defeated by 234 votes, the Republican fortress received another good shaking. In 1880 he was again defeated for the office by 505 votes, while the Republican candidate for President, Garfield, carried the County by 1,200 votes.<sup>84</sup>

The State Democratic Convention of 1876 was a sharp lesson in Kern's exuberance for reform. He engaged in an attack upon one of the leading and most honestly forthright lawyers on the Indiana Supreme Court bench. The attack was prompted by "unessential purchases of stationery and other conveniences for their offices by

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<sup>84</sup>Bowers, op. cit., pp. 58-59; and Blanchard, loc. cit.

the members of the court. Kern lost his fight against the judge and later came to realize the enormity of his mistake.<sup>85</sup> The purchase of some stationery does not mean there has been a misuse of public funds.

Although his inexperience might have occasionally handicapped him, as in his mistaken reform exuberance against the judge, Kern was always a loyal member of his party. His popularity in Howard County caused many Republican leaders in the county to lay political fortunes at his feet if he would only be converted and join the ranks of the Grand Old Party.<sup>86</sup> Kern declined. He was also immune to his own personal desires in matters where party loyalty was most concerned. In his exuberance prior to the National Democratic Convention in St. Louis, 1876, for Governor Hendricks of Indiana, he stated that he would not vote for Tilden if he received the nomination for President. Party loyalty led him to vote for Tilden in the face of heavy criticism from The Kokomo Tribune.<sup>87</sup>

In the county convention of 1882, Kern's speech on reform (a regular part of the agenda by now) concentrated heavily on attacking politicians who buy their nomination and election. He predicted that the time would come when such politicians would be repudiated by the people. Kern was later to be an important factor in that repudiation.<sup>88</sup>

State politician. From 1876 to 1884 Kern was gaining state-

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<sup>85</sup>Bowers, op. cit., pp. 61-62.

<sup>86</sup>Cottman, loc. cit.

<sup>87</sup>Bowers, op. cit., pp. 63-64.

<sup>88</sup>Ibid., p. 65.

wide prominence as a political stump speaker. More and more the party was calling on his services away from Howard County as well as in his own locale. With his increased recognition and his desire for a little financial reward for his efforts, Kern decided to run for the state office of Reporter of the Supreme Court in the campaign of 1884.<sup>89</sup>

The Democratic Party ran one of its strongest tickets of the 19th Century in Indiana that year. Isaac P. Grey, Captain W. R. Myers, John J. Cooper, and James H. Rice were the candidates for the chief state offices. They included a shrewd politician, a great stump orator, a business man of high character in the business world, a well-respected lawyer, and a popular personality. They were backed up by a strong group of young party workers including John E. Lamb, Benjamin F. Shively, and a party manager in Marion County who was shortly to be a very important influence in Kern's political fortunes, Thomas Taggart. Former United States Senator Joseph E. McDonald, Senator Daniel W. Voorhees, and Thomas A. Hendricks, the Vice-Presidential running mate of Grover Cleveland during the election, brought their national prestige on the state campaign.<sup>90</sup> Certainly, Kern had plenty of help for the first time in his political experience.

Of course Kern was making his own mark during the campaign. According to Bowers, his consultation of the files of The Indianapolis Sentinel indicated that Kern concentrated on the tariff question in the campaign, speaking usually for two hours each time. His speaking won the now not unusual praise for being eloquent, log-

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<sup>89</sup> Ibid., pp. 68 and 84; and Cottman, loc. cit.

<sup>90</sup> Bowers, op. cit., pp. 70-73.



ical, convincing, highly persuasive in matters of pathos, and cognizant of matters of ethos.<sup>91</sup> Perhaps Doctor E. E. Quivey of Fort Wayne recorded the most vivid picture of Kern in this period.

"He was very slender and in the long frock coat of the period seemed much taller than when I saw him years afterward. He had an abundance of hair which was almost black and which he wore rather long, but always neatly trimmed about the edges. His face was rather pale and already lines were graven on his forehead and about the eyes, which, together with heavy eyebrows, gave an expression of austerity which wholly belied his nature. Although an indefatigable worker he was not a rugged man, and was therefore very careful of his physical welfare, using every precaution to forestall some seemingly ever-impending illness. While I am sure that he had many hours of physical discomfort, he never even intimated that he was not in the best of health.

"Wherever he appeared he made a profound impression by his fluent speech and the compelling force of his logic. He seldom embellished his thoughts with figurative language, and his speeches were entirely devoid of verbosity; his power seemed to lie in the earnest, lucid simplicity of his appeal. He never sought to please the fancy of his auditors by lofty flights of oratory, nor did he indulge in any tricks that crafty orators employ for applause. Indeed applause seemed more disconcerting than pleasing to him. . . . .  
Under no consideration would he deliberately offer offense to any one, and he was inclined to let personal incivilities go unrebuked and apparently unnoticed. Yet when goaded to retaliation he was equal to any emergency."<sup>92</sup>

The above description lacks any mention of the "purple patches" of oratory that marked Kern in his early years before the bar. In fact, Doctor Quivey specifically mentions that the Kern of this period was not given to such lofty oratorical practices. In light of the above description, it appears that the change in Kern's style of speaking occurred sometime before 1884.<sup>93</sup> Kern won his first important election that fall and a four-year term of service

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<sup>91</sup>Ibid., pp. 72-77.

<sup>92</sup>Ibid., pp. 76-79.

<sup>93</sup>See p. 24.

with the United States Supreme Court as Reporter for the State of Indiana. In 1884, a good year for Democrats in Indiana, Kern ran 1,500 votes ahead of the Democratic ticket, chiefly due to his popularity in Howard County.<sup>94</sup>

From a country lawyer to Reporter of the Supreme Court is at least a modest measure of success in the political world. But Kern was also meeting with a measure of success in his personal life. Thus, a review of Kern's personal life in this period is essential to obtain an adequate picture of his development.

Private and social life. After Kern had been graduated from the University of Michigan and was just settled in his Kokomo office on Mulberry Street,<sup>95</sup> he lost little time in entering the social whirl of the town. In addition to the young men of the town who sought his favor, Kern found that a promising young lawyer was also a favorite among the young women of the town. Specifically mentioned shortly after his arrival were Misses Whenett and Hazzard with whom he had renewed old acquaintances. They had called on him at the office, and he in turn was intending to call on both of them at their invitation.<sup>96</sup> Whether or not he completed both calls, on November 10, 1870, Kern married Julia Ann Hazzard, daughter of a prominent Kokomo business man. Kern's chief critic, The Kokomo Tribune, announced the marriage in this way:

"Notwithstanding the ultra Democracy of John, there is a whole-souled manner, a generous style and an earnestness

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<sup>94</sup>Biographical Sketches of Indiana State Government, p. 25.

<sup>95</sup>Historical Atlas of Howard County, Indiana (Chicago: Kingman Brothers, 1876), p. 94.

<sup>96</sup>Bowers, op. cit., pp. 28-29.

about him that has compelled admiration. We have never heard a single person speak of the bride except in the highest terms of praise. She is intelligent, domestic in her habits and preferences and very good."<sup>97</sup>

By this time Kern's father had returned to his home state of Virginia taking young Kern's sister with him. John visited them frequently, but his father remained there, a recluse, the rest of his life.<sup>98</sup>

As time passed, Kern's multitude of friends grew to enormous proportions. His witticisms and practical jokes were laughed over and passed on to others. His quick temper was still very much a part of him, and he was quick to rise to a challenge during these early years in Howard County. His popularity and oratorical powers combined to prompt demands for his services as a speaker on many occasions outside of the courtroom and off the political stump. Old-settlers' meetings and Sunday school picnics are examples of these occasions.<sup>99</sup> It was said of him in the 1884 campaign that "his social manner won for him a host of friends irrespective of party."<sup>100</sup> Doctor Quivey termed him "by far the most approachable public man we had encountered. The distant, awe-inspiring characteristics of some of the other speakers were wholly foreign to his nature."<sup>101</sup>

In those early years, a son and a daughter were born into the Kern household, Fred R. and Julia A. Kern was actively engaged socially as a member of the Methodist Church, a Freemason, and an

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<sup>97</sup>Ibid., pp. 35-36.

<sup>98</sup>Ibid., p. 45.

<sup>99</sup>Ibid., p. 46.

<sup>100</sup>Ibid., pp. 74-75.

<sup>101</sup>Ibid., p. 78.

Odd Fellow. But his personal life was to know great sadness also, for on September 1, 1884, his wife, Julia Ann, died. With the passage of time Kern's sorrow lightened, and on December 23, 1885, he married Araminta A. Cooper, daughter of Doctor William Cooper of Kokomo. Two sons, John Worth Kern II and William Cooper Kern, were born to this union.<sup>102</sup>

Kern lost the race for reelection as Supreme Court Reporter in the campaign of 1888 by the margin of 2,500 votes. His fond dreams of accumulating a little extra cash during his term of office did not materialize. His gregariousness proved to be the downfall of those dreams. This was an age of "socializing" on the Washington scene, and Kern's affability and ready wit made him a choice favorite for the never-ending stream of Indiana politicians that flowed into the capitol. The result was that he spent his money as rapidly as he made it. He authored seventeen volumes of Indiana Reports on the United States Supreme Court (Volumes 100 to 116) during his term of office, and, after finishing out the term, was forced to sell the copyright on them for a very small sum in order to help alleviate his poor financial condition.<sup>103</sup>

Return to law practice. Kern returned to private practice, but now made his home in Indianapolis. There he entered into a partnership with Leo O. Bailey. Kern and his partner concentrated largely on the more lucrative civil practice in law, rather than Kern's former specialty of criminal practice. Kern later left the

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<sup>102</sup>Esarey, From Its Exploration to 1922, p. 548; and Blanchard, loc. cit.

<sup>103</sup>Bowers, op. cit., pp. 84-85; Cottman, loc. cit.; and Cumback and Maynard, loc. cit.



partnership for civil practice on his own.<sup>104</sup>

There were two prominent reasons for Kern's abandonment of criminal practice. He felt that the law cases in criminal practice involved immoral and irreligious acts that were repugnant to his own set of values. His financial condition also warranted the change to a more lucrative type of practice. His depth of perception of human nature, his sense of justice and mercy, and his analytical mind gave impetus to his rise as a civil lawyer. With the aid of his able partner, the firm of Kern and Bailey was soon among the leading law firms in Indianapolis.<sup>105</sup>

Few of the cases attracted any notable attention, primarily because civil law was the less spectacular of the three phases of law in this period. Curiously, the two cases worthy of note in this last period of Kern's legal career did attract considerable attention. One was a prominent civil case and the other an important criminal prosecution. The civil case was a contest between the State of Indiana and the railroad corporations. Kern served as a special counsel for the state in what turned out to be a series of cases arising out of Indiana taxes on railroads. In the criminal case he served as a special assistant to the United States Government in a case arising out of an indictment of the alleged wreckers of the Indianapolis National Bank. This indictment resulted in a

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<sup>104</sup>Bowers, op. cit., p. 86; John B. Stoll, History of the Indiana Democracy, 1916 (Indianapolis: Indiana Democratic Publishing Company, 1917), p. 935; Encyclopedia of Biography of Indiana, George Irving Reed (2 vols.; Chicago: The Century Publishing and Engraving Company, 1899), p. 86; and Cumback and Maynard, loc. cit.

<sup>105</sup>Encyclopedia of Biography, p. 86; and Cumback and Maynard, op. cit., p. 187.



series of cases called the "Swamp Land cases." The effect of both the civil and criminal actions was to raise Kern to a position among the leaders of his profession in the state of Indiana.<sup>106</sup>

Return to state politics. Kern did not wait long before he again entered political service in his state. In 1892, without any urging or prompting on his own part, the Marion County Democratic Convention nominated him for election to the state senate. Again, political fortune smiled on Kern and he was elected along with a Democratic majority in both houses of the state legislature, a Democratic governor, and a full slate of electors for Grover Cleveland's second presidential term of office.<sup>107</sup>

Because of his ability and popularity, he was placed among the leaders in the state senate. His prominence is reflected in his committee assignments which included rules, finance, roads, public buildings, the city of Indianapolis, and the chairmanship of the Insurance Committee. The only slight of Kern was committed by Mortimer Nye, the lieutenant governor, when he failed to place Kern on the Judiciary Committee. Nye was criticized by the state Democrats for this snub.<sup>108</sup>

It was in labor legislation that Kern made his strongest impression in the state senate. During the session of 1893 Kern led the fight for the passage of two important labor bills. The first was the Deery bill that legalized labor unions, and the second, the Hench bill, established the first employers' liability law to be en-

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<sup>106</sup>Taylor, op. cit., p. 340; and Bowers, op. cit., p. 87.

<sup>107</sup>Bowers, op. cit., p. 88; Stoll, loc. cit.; and Cottman, loc. cit.

<sup>108</sup>Bowers, op. cit., p. 89.

acted in Indiana. Indiana was the fourth state in the nation to adopt this kind of legislation. The courage of Kern in his convictions is shown in the debate for the passage of the Deery bill. Kern made a major address in behalf of the bill just a year after the outbreak of a serious transportation strike in Indianapolis which lasted several weeks. Bitter feelings over the inconvenience and police measures employed during the strike were still fresh, and business interests were violently opposed to the bill. In the consideration of the Hensch bill Kern was pitched against the railroad lobby and an unfriendly judiciary committee. After overcoming their objections and gaining senate approval, he had to hand-carry the bill as amended through House approval and to the Governor's office for signature. A third piece of legislation was also enacted into law during that session, partly through the efforts of Kern. In many respects it was a quarter of a century preview of a "first" in national legislation in which Kern was to be a leading advocate, a child labor law.<sup>109</sup>

In the session of 1895 Kern became the minority party leader with the Republicans once again in the majority. His chief role was that of defensive criticism. For example, in an election bill Kern fought unsuccessfully against a Republican measure to redraw election district boundaries.<sup>110</sup>

The Kern of this period was "among the best-dressed men in the senate."<sup>111</sup> On the streets he wore a Prince Albert coat and a

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<sup>109</sup>Ibid., pp. 93-100; and Stoll, loc. cit.

<sup>110</sup>Bowers, op. cit., pp. 101-111.

<sup>111</sup>Ibid., p. 89.

black silk hat. He usually could be seen smoking a cigar. His manner was cordial and inspired confidence in his ability and sincerity. He was polite to Republicans and Democrats alike and was impartially admired and respected by both sides of the senate. His speeches contained more and better support, greater variety, and more originality than those of the majority of Indiana legislators. His excellent sense of humor and ability in ridicule were greatly appreciated in the usually dull sessions. Although he was an unswerving partisan, his speeches were free of bitterness and bigotry toward his Republican opponents.<sup>112</sup>

Private and social life. Socially, he was now a member of the Knights of Pythias, the Order of Elks, and a thirty-second degree Mason. One of the most significant positions of recognition came to him in 1898 when he was named Charter Dean of the Indianapolis College of Law. He held this position until 1905. In his religious belief Kern was still quite orthodox although not now a member of any church. He was a total abstainer, but firmly believed that temperance was a question that each man had to settle for himself.<sup>113</sup>

His second wife was of great help to him. Immediately after their marriage she undertook quite capably the task of raising Julia, his infant daughter by his first marriage. Their home was at 1836 North Pennsylvania Street in Indianapolis. By 1899 Julia was in her early adolescence and Fred was a grown man. Fred had

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<sup>112</sup>Ibid., pp. 89 and 101; Taylor, loc. cit.

<sup>113</sup>Cumback and Maynard, loc. cit.; and Proceedings of the Twenty-sixth Annual Meetings of the Indiana State Bar Association (Indianapolis: Indiana State Bar Association, 19220, p. 71.

served as a volunteer soldier under General William R. Shafter at Santiago, and now lived in Washington, D. C. in retirement because of ill health. Araminta, while watching over the trials and tribulations of her adolescent step-daughter, also found time to counsel her husband wisely in his political career. Her assistance to him passed well beyond the normal duties of a housewife.<sup>114</sup>

Kern was also a social success at parties and other friendly gatherings. He was quite familiar with the social graces, and his polite and kindly manner made him a good listener, the key to success in many social situations. His vivid imagination and quick wit, coupled with his large supply of adaptable anecdotes, also contributed to his success in Hoosier social life.<sup>115</sup>

Relationship of Kern and Taggart. Sometime during the 1890's Kern became associated with a man who more than any other was responsible for his late but meteoric rise to national fame, Thomas Taggart.

Tom Taggart was a young politician who was enjoying a different kind of political fame. Like Kern, he was a political "prodigy." Through his faithful party service, Taggart was made chairman of the Seventh district congressional committee in 1890, serving in that capacity for ten years. With the office went membership on the State Central Committee, and in 1892 he was chosen as State Democratic Chairman.

Taggart's fame lay in his ability to organize effectively

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<sup>114</sup>Ibid.; Bowers, op. cit., pp. 85-86; and Cottman, loc. cit.

<sup>115</sup>Encyclopedia of Biography, p. 86; and Taylor, loc. cit.



party activity. It was his organization plans in the campaign of 1892 that delivered Indiana's electoral votes to Cleveland, gave Indiana a completely Democratic state government, and put Kern in the Indiana Senate. These plans were a source of wonder to National Committeemen and they requested copies for implementation in their own states. The result was national prominence for Taggart.<sup>116</sup>

He was elected Mayor of Indianapolis for three successive terms in 1895, 1897, and 1899. Taggart first employed the services of Kern while he was Mayor, appointing him corporation counsel in 1895. In 1897 he appointed Kern City Attorney for Indianapolis, and to the same office in 1899. The position paid four thousand dollars a year and gave Kern an opportunity to acquire some private law cases.<sup>117</sup> His close association with Kern led Taggart to reserve bigger and better plans for him.<sup>118</sup> In 1900 and 1904 Taggart was the national committeeman for Indiana, and in 1904 he was elected Democratic National Chairman.<sup>119</sup>

There can be little doubt that Taggart was a political "boss," although he was certainly not the kind of party boss that Boss Tweed in New York City represented. Taggart did not buy and coerce his way to fame. Instead he won his position through his organizational ability. He was not a self-made boss, but was rather a boss by the choice of the Democratic Party. The fact still remains that by 1900

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<sup>116</sup>Alva Charles Sallee, "Taggart Collection," State Historical Library of Indiana, Indianapolis, pp. 25-28.

<sup>117</sup>Ibid., p. 163.

<sup>118</sup>Ibid., pp. 25-28; Stoll, loc. cit.; and Cumback and Maynard, loc. cit.

<sup>119</sup>Sallee, op. cit., pp. 37, 42, and 68.



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the State Democratic organization was under the direct manipulation of Taggart, however temporary that manipulation was to be.<sup>120</sup>

The campaign of 1896 was a great turning point in the political life of Kern, and a great testing of his loyalty to the Democratic Party. The schism caused by the issue of the free coinage of silver was no more apparent than in the State of Indiana. On May twenty-eighth of that year the conservative, or pro-gold, elements of the party held a mass meeting to counteract the effect of a free coinage conference which had been held a few days before. Kern was one of the speakers at that meeting who spoke out against the free and unlimited coinage of silver. The free silver men countered with another rally which featured as one of the main speakers former Congressman Benjamin F. Shively, the chief advocate in Indiana for silver.

The State Democratic Convention was in political revolt that year. The Marion County gold delegation was not seated by the credentials committee despite the written protest of Kern who was the only anti-silver member of the committee. The State Convention ended in a victory for the free silver men with Shively bearing the silver Democratic standard as candidate for Governor.

The sharp division between the monied and the laboring classes, which the later nomination of Bryan in Chicago evidenced, soon overshadowed the free coinage question with other questions involving political corruption through coercion and bribery. In addition to the moral question of the fight, Kern found other sources of ra-

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<sup>120</sup>*Ibid.*, p. 96; and Edna Miller, "The Editorial Opinion of John B. Stoll" (unpublished Master's thesis, Department of History and Political Science, Butler University, 1946), p. 67.

tionale for his continued loyalty, if any other than his faith in the Democracy were needed. Many parts of the Democratic platform Kern found to be highly favorable to his own standard of reform. Among these were the income tax, popular election of senators, employee protection against the coercion of the employer in his exercise of the franchise, and the correction of evils in the use of the court injunction. Kern could fight for these issues with his usual zeal. Early in the campaign he met William Jennings Bryan. He told him that prior to the convention he had fought against silver, and his frankness won him the confidence and respect of Bryan. From that time forward Kern was to become known as Bryan's lieutenant in Indiana.<sup>121</sup>

As has been stated, the Indiana Democracy by 1900 was Taggart Democracy, so it is not surprising that the Taggart lieutenants favored him for the nomination for Governor. However, Taggart insisted that he did not want to make the race, and, with Taggart's urging, they turned to Kern. Many personal friends had also been urging Kern to become a candidate, but he was determined to remain out of the race. However, Frank Burke, a man who was not very popular with the organization forces, announced his candidacy, and in order to insure supremacy of the machine forces and to please Taggart, Kern accepted the call. His selection as nominee by the State Democratic Convention was easily managed, and Kern conducted an energetic fight for the election. But the Grand Old Party was election king that year, although Kern ran well ahead of the national Democratic ticket.

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<sup>121</sup>Bowers, op. cit., pp. 118-125; and Stoll, loc. cit.

In the 1904 campaign Kern was again disinclined to run for Governor, but the personal plea of the Democratic presidential candidate, Alton B. Parker, on the grounds that no one else could add so much strength to the Democratic vote in Indiana swayed Kern from his determination and he again consented. His consent caused Taggart some trouble since he had made a personal promise to Frank Burke to leave him a clear field in gaining the convention nomination. Taggart again engineered the nomination for Kern, and in so doing nearly lost Burke's support. Kern lost his second attempt to gain the gubernatorial seat to Republican J. Frank Hanly by over eighty-four thousand votes. The Republican landslide was repeated on the national scene.<sup>122</sup>

Kern's prominence in the Democratic Party of Indiana was now heightened not only by his popularity among party members but also because he was now a politician who enjoyed the backing of the Taggart machine. Both Kern and Taggart believed in the principle that "to the victors belong the spoils." Yet, Kern's motives and integrity in relation to his involvement with the machine were not questioned. Kern's frankness and sincerity overshadowed any connotations that might have been attached to the bossism of Taggart.<sup>123</sup> Kern's political popularity is further indicated by his election as the first President of the Indiana Democratic Club.<sup>124</sup> By 1905 his popularity and record of service had won him the complimentary vote

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<sup>122</sup>Logan Esarey, A History of Indiana: From 1850 to the Present (2 vols.; Indianapolis: B. F. Bowen and Company, 1918), I, p. 1056; Bowers, op. cit., pp. 128-143; and Stoll, loc. cit.

<sup>123</sup>Esarey, From Its Exploration to 1922, IV, pp. 547-548.

<sup>124</sup>Commemorative Biographical Record of Prominent and Representative Men of Indianapolis and Vicinity (Chicago: J. H. Beers and Company, 1908), p. 23.

of his party for United States Senator, an honorary gesture in the light of a Republican legislature, but one which was to have real meaning in another five years.<sup>125</sup> Before this time, however, Kern was destined to gain even greater recognition in the Democratic Party.

#### National Prominence

Beginning of national prestige. Kern was not unknown on the national level by this time. The plea for his gubernatorial candidacy in 1904 by Parker is a clear indication of his increasing popularity and prestige among the national Democratic leaders. Kern first met Parker and many other prominent Democrats on his first trip to Europe in the summer of 1895.<sup>126</sup>

Political conditions in 1904 made it desirable to have Indiana strongly represented in the national leadership during the coming campaign. One reason for this was the nearly absolute control of the Taggart forces over the State organization under Taggart's organizational ability. One such award of representation could have been the vice-presidential nomination, and at the St. Louis Convention Kern was receiving some attention for this position. However, Taggart was interested in the chairmanship of the National Committee and the Indiana delegation was pledged to his support. On the other hand, Democratic leaders from the Eastern States were quite willing to see the Vice-Presidential nominee come from Indiana. It was a question of either one but not both, and in the end the Indiana del-

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<sup>125</sup>Ibid.

<sup>126</sup>Bowers, op. cit., pp. 114-118.

egation voted, with Kern's consent, not to present his name in nomination. Kern would have liked the nomination, but he was not willing to stand in the way of Taggart's candidacy for Democratic Chairman of the National Committee.<sup>127</sup>

Personal interlude. Kern made a trip to Great Britain in the summer of 1906. Returning to the United States he plunged into the 1906 campaign in Indiana with his usual vigor. But Kern's health was not good. In fact, his two trips overseas had been prompted by the hope that they would improve his health. They had only a momentary recuperative effect, however, and Kern soon contracted a cold which, in his weakened physical condition, he was unable to throw off.

An examination by his doctor revealed that Kern was a victim of incipient tuberculosis. Kern entered Doctor Von Ruck's sanatorium at Asheville, North Carolina three weeks before Christmas. In those days the word "tuberculosis" was practically synonymous with death. Gone were all of his dreams of political fame. His one desire was to live as long as possible in order to be of further service to his family as a father and a husband.<sup>128</sup>

Kern had always been deeply in love with his family. John Worth Kern II, his second son, was born in 1899, and in 1900 William Cooper Kern was born. The year 1900 was also the year of Doctor Jacob Kern's death. Although saddened by his father's death, Kern found great consolation in his own family. He was a very proud father, and deeply regretted the time that he was forced to spend

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<sup>127</sup>Cottman, loc. cit.

<sup>128</sup>Bowers, op. cit., pp. 144-150.

away from his boys and wife.

The forced separation from his family while in the sanitorium finally proved to be too much for him, and in March of 1907 he left there for a visit to his home. Although he had not been dismissed from the sanitorium, he did not return there until ten years later. He was not to return alive from that second trip to Asheville.<sup>129</sup>

National campaign of 1908. On May 13, 1907, Kern wrote a letter to his cousin, Howard L. Kern, which serves as a preview of the next event in Kern's political career. His cousin had written him asking how he should stand on political issues of the day. Kern first analyzed two of the present political leaders.

I was glad you had the opportunity to meet Mr. Bryan for he is one of the best men America has yet produced. He has grown and gained constantly since 1896, and occupies a higher position in the esteem of the people than ever before, and all this, not alone because he is able, but because he is entirely sincere, and a thoroughly good man.

Mr. Roosevelt is a very popular man, but his popularity grows out of the fact that he has torn away from the teachings of Mark Hanna and the other republican leaders, and espoused the principles for which Bryan stood in 1896, and for which he was then so roundly denounced.

. . . . .  
I expected to live to see Bryan and the democratic party entirely vindicated in its position taken in 1896, but I did not anticipate that within ten years a republican president would be even more radical than Bryan.<sup>130</sup>

He had not been home from the sanitorium a year when speculation over his possible selection as the running-mate of William Jennings Bryan in the 1908 Presidential election became wide-

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<sup>129</sup>Ibid., pp. 150-155; and Logan, From its Exploration to 1922, p. 548.

<sup>130</sup>Kern MSS, Private Collection, "Kern to Howard Kern," May 13, 1907.

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spread.<sup>131</sup> Both Bryan and Kern unintentionally encouraged this speculation. In December of 1900 Kern had set the preliminary stage for this speculation by openly announcing his admiration for and belief in Bryan and the principles he held. With this speech before the Jefferson Club of Lincoln, Nebraska, in the presence of Bryan, Kern had established himself as a radical among Indiana Democrats. He had certainly strengthened his position as Bryan's lieutenant.<sup>132</sup>

But the incident that brought the speculation sharply into focus occurred at a dinner meeting of the Indiana Democratic Club sometime before the Democratic National Convention of 1908. John E. Hollet, Kern's successor to the Presidency of the Club, expressed the hope that Kern would be the running-mate of Bryan. Kern, conscious of the drain on his finances by his illness, jokingly remarked that if he were nominated and elected he would be forced to take up residence in Washington in a one room apartment, Bryan carried through on the joke by saying that "if John is elected he will not have to live in one room, for I will give him part of the White House." It was not long before this complimentary good-natured banter had been exaggerated beyond all reasonable proportions. Kern found himself being looked upon as the favored choice of Bryan for the Vice-Presidential nomination, something that neither he nor Bryan had intended.<sup>133</sup>

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<sup>131</sup>Kern had been previously considered for the Vice-Presidential nomination in 1904. Kokomo Dispatch, August 18, 1917, p. 1, col. 7.

<sup>132</sup>Bowers, op. cit., pp. 131-136.

<sup>133</sup>Ibid., pp. 157-158.

Kern went to the Convention in Denver determined to discourage any move by delegates to place his name before the Convention. His chief reason for this stemmed from his recent illness. Although he had made a remarkable recovery, his friends and family were deeply concerned about the effect that the campaign would have on his precarious health. His wife, whose political counsel Kern valued highly, also warned him of the possible consequences should he desire to enter the race. Kern, himself, was changed by his illness. It had revealed how important his family was to him. He came back from the sanatorium determined to abandon his political career and concentrate on being with his family as much as possible. Bryan, understanding Kern's feelings, did nothing to encourage the nomination of Kern.<sup>134</sup>

However, it did not take the Indiana delegation long to realize that the spirit of Denver was such that it made the nomination of Kern a practical probability. Kern's name was one of a half dozen which were being featured as the leading Vice-Presidential choices. Kern and Bryan had made no secret of their admiration and respect for each other, so the majority of delegates knew that Kern would be acceptable to Bryan.<sup>135</sup> Indiana was also a good political choice for the home of the Vice-Presidential nominee in order to carry out the theme of progressiveness in the party platform.<sup>136</sup>

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<sup>134</sup>Ibid., pp. 158-160; and Logan, From its Exploration to 1922, pp. 546 and 548.

<sup>135</sup>Bryan had asked Kern to stop at his home on the way to the Convention to discuss some proposals for the platform. Kern MSS, Private Collection, "Bryan to Kern," June 26, 1908.

<sup>136</sup>The progressive movement was strongly identified with the midwest and western plains.

But Kern gave every sign to the Indiana delegation that he was not a candidate. He never mentioned the subject, but instead concentrated on fighting for a party platform that would be completely agreeable with Bryan's ideals and program. But the Indiana delegation was not to be denied. With the convention in a quandry as to who should receive the Vice-Presidential nomination, the Hoosier delegates could sense that victory was within their reach.

On the day before the nominations, July ninth, Kern finally consented to the wishes of the delegation at least to canvass the delegations on their opinions of the possible reaction to his candidacy for the nomination. But to his wife that day Kern wrote:

I could get this nomination with little effort. It has been very flattering of course to have offers of support from the great men of the party--Governors, Senators and Congressmen, but I can't lose sight of the fact that my first duties are to my loved ones at home. And I can't see how I can take the nomination without ruining my business, and going deeper into debt, besides taking on an awful responsibility, and a great physical risk.

So I have concluded that I will discourage it, and urge the nomination of some one else.<sup>137</sup>

Many of the Hoosier delegates could not content themselves with this, and quite openly engaged in a campaign for support during the canvass. Their reports confirmed the acceptability of Kern as Bryan's running-mate, and on the morning of the nominations, the Indiana delegates gathered to hear Kern make his personal position clear.

"In the first place I want to thank you all for your good wishes and your efforts in my behalf. But my position and yours is the same that it has ever been since we came to Denver. I am not, and have not been a candidate for the vice-presidential nomination, and if there is to be any contest,

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<sup>137</sup>Kern MSS, Private Collection, "Kern to Mrs.", July 9, 1908.

any balloting at all, my name will not be presented. That is what I wish the position of the Indiana delegation to be, and if you agree with me that is what it will be. Let us forget about it and go home and carry Indiana. God bless you all."<sup>138</sup>

At the same time that Kern was denying his candidacy, John E. Lamb and Thomas Taggart were representing Indiana in a conference of party leaders who were canvassing the availability of suggested Vice-Presidential possibilities. The result of the conference was agreement that the best interests of the party would be served only by the nomination of Kern.

The nominations began at noon on July tenth with Alabama yielding her position on the roll call to Indiana. Thomas Riley Marshall, then nominee for Governor of Indiana, placed Kern's name in nomination. State after state rose to second the nomination of Kern. Charles A. Towne, whose name also had been placed in nomination, took the lead for others and withdrew his name for the purpose of obtaining an acclamation nomination for Kern. A motion for nomination of Kern by acclamation soon followed. Kern was nominated in perfect accord with his statement of clarification to the Indiana delegation. There had been no balloting and no contest for the nomination, and Kern still emerged as the nominee even though the convention action was against his intentions.

Kern received a telegram from Bryan on the same day. It read:

Accept my warmest congratulations. Your nomination gratifies me very much. We have a splendid platform and I am glad to have a running mate in such complete harmony with the plat-

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<sup>138</sup>Bowers, op. cit., pp. 160-164.

form. Stop off and see us on your way east.<sup>139</sup>

The Bryan and Kern campaign began with a precedent-breaking announcement. The candidates decided to pledge the Democratic Party to the publicizing of campaign contributions before the election, and to limit the amount that could be contributed by an individual party. All contributions between one hundred dollars and ten thousand were to be publicly announced, and no contribution of over ten thousand dollars was to be accepted from a single subscriber. This formula later was written into law.<sup>140</sup>

Kern embarked on his campaign itinerary in the middle of September. It carried him into Kentucky, Illinois, Maryland, Alabama, Georgia, North and South Carolina, West Virginia, New Jersey, New York, Connecticut, Ohio, and back to Indiana. At the height of his campaign he was summoned home to his son's bedside. John Kern II had been stricken with polio. The night of the election was a night of sorrow and anxiety at 1836 North Pennsylvania Street--not because of the returns, but because the second John Kern was not expected to live through that night. When he was told that his father had lost the election, young John exclaimed, "What fools the people of the United States are to turn down such a man as father." Two years later the Republican Vice-President Sherman called at the Kern home. He was told the story in front of John Kern II. He placed his hand tenderly on the crippled boy's head and said, "My boy, the more I have seen of your father and the better I know him the more inclined I am to think you were right."<sup>141</sup>

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<sup>139</sup>Kern MSS, Private Collection, "Bryan to Kern," July 10, 1908.

<sup>140</sup>Bowers, op. cit., pp. 169-170.

<sup>141</sup>Ibid., pp. 178-186.

Despite the fact that this was the third major political defeat for Kern, he was not abandoned either politically or socially. The uneven contest was an accepted thing in Indiana with the Democrats always cast in the role of the underdog. Thus, Kern's defeat was not a personal one. His role was considered to be one of personal sacrifice in three of the "normal" election years. Yet, 1908 was not a completely normal one since the Democrats did quite well in Indiana. Marshall was elected Governor and the Democrats enjoyed a majority in the State House of Representatives.<sup>142</sup>

Socially, Kern still enjoyed great success in both fraternal and community affairs. One of the community services that he enjoyed most of all during those early years of the twentieth century was his position as the President of the Commercial Club of Indianapolis. There were no party lines drawn in this club. It was a predominantly Republican membership who elected Kern to its highest office. Kern enjoyed this position because he enjoyed the activities and areas of concern in the Club. It was dedicated to the best interests of the community in which Kern lived--interests stretching from social to financial to sanitary considerations.<sup>143</sup>

United States Senate campaigns of 1909 and 1910. Perhaps it was the picture of the sacrifices of 1900, 1904, and 1908 that prompted Kern's friends and associates to believe that Kern would finally receive his reward. With a majority by a margin of twenty in the Indiana House and only a minority by four in the Indiana

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<sup>142</sup>Charles M. Thomas, Thomas Riley Marshall: Hoosier Statesman (Oxford, Ohio: The Mississippi Valley Press, 1939), p. 60.

<sup>143</sup>Cottman, loc. cit.

Senate, the Democrats were certain of electing a United States Senator in 1909 on the combined vote of the Legislature. But other considerations and factors intervened to thwart the supporters of Kern.<sup>144</sup>

One of the most important factors which had not been considered was the victory in the State Democratic Convention of 1908 by anti-Taggart forces. In fact, during the Convention Taggart arose during a dramatic moment of the Convention proceedings and stated that the Taggart machine had been sent to the "scrap pile." Taggart's candidate for Governor, Samuel M. Ralston, had been defeated for nomination while the cheers of the anti-Taggart hundreds defied Taggart from the floor. There could be no doubt by the end of the day that the Taggart machine was completely disassembled. But as Taggart's lieutenant, A. C. Sallee, put it, "When the righteous win a political victory they go home and take chloroform, while their adversaries, after every drubbing, put a double shift on the job."<sup>145</sup> It is extremely doubtful that if Taggart had really believed his organization was now mere scrap he would have said so. Instead he went about the task of quietly rebuilding his organization while adopting a policy of watchful waiting. However, Kern as a Taggart man probably was not looked upon with great favor by the new anti-Taggart leaders.<sup>146</sup>

A second and closely related factor in the uncertainty of Kern's political future stems from the political conditions which led to the 1908 Democratic victory in the state. Liquor legisla-

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<sup>144</sup>Bowers, op. cit., p. 188; and Thomas, loc. cit.

<sup>145</sup>Sallee, loc. cit.

<sup>146</sup>Ibid.

tion and the temperance movement were the underlying causes of the political conditions. The Democrats favored a ward and township option law, while Governor Hanly had compelled the Republican convention to declare the party in favor of county option. But Hanly was not content to let the voters decide the issue. Early in the fall he called a special session of the State Legislature and placed the county option law upon the statutes before the voters could register their decision on the issue. The end result of this action was that the anti-prohibition elements in Indiana lined up with the Democrats, and these elements did not favor the machine-tactics of Taggart or Kern's radical stand with the Bryan ideals.<sup>147</sup>

There was a negative factor involved also. Taggart would like to have had the nomination for himself, and permitted the mentioning of his name during the early discussions concerning possible candidates. But it soon became apparent that the weakened condition of his influence might only mean another defeat, so patient Taggart withdrew from the race completely to wait for better days. In withdrawing, he elected to run a neutral course and not lend his support to any of the other candidates.

Governor Marshall could have wielded considerable influence over the name of the Democratic choice. Personally, he favored Kern, but the support of those who had aided him in his candidacy for Governor was given to Edward G. Hoffman, a comparatively unknown man in party inner circles. Because of the circumstances of his newly-won position and his sponsors' support of Hoffman, Marshall also elected to remain neutral in the race.<sup>148</sup>

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<sup>147</sup>Bowers, op. cit., p. 189; and Miller, op. cit., p. 72.

<sup>148</sup>Thomas, op. cit., pp. 60-62.



Then, of course, there were other candidates. Perhaps Benjamin F. Shively was the most prominent. He had served in the United States House of Representatives, and had conducted a hard fought campaign for Governor in 1896. He measured up well against the standards set by former Democratic Senators, such as Voorhees, McDonald and Turpie. In addition, he was the favorite of the liberal elements who were in no small measure responsible for the Democratic victory.

John E. Lamb was another possible choice. He was a prominent party worker who, at Bryan's request, had been in charge of the Western Headquarters during the campaign of 1908. Behind these two leading contenders were Major G. V. Menzies, another Party worker; L. Ert Slack, the favorite of temperance forces; and Edward G. Hoffman, backed by the prestige of the organization which had nominated Marshall. Therefore, Kern did have considerable competition for the election.<sup>149</sup>

Even Kern was a factor in his own defeat. Evidently overcome by the assurances and confidence of his own supporters, he did not open up his own headquarters in the Denison Hotel at Indianapolis until long after the other candidates had established their meeting rooms. The other candidates worked at perfecting efficient and effective organizations designed to manipulate the county delegations, while Kern decided to rely on popular opinion to present him with the nomination. The result was that the rest of the candidates, with the exception of Lamb, combined their efforts early to defeat Kern. Lamb tried to warn Kern of the dangerous conditions

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<sup>149</sup>Bowers, op. cit., pp. 189-190.

early, and urged him to take a concentrated stand for an open ballot. But the day following the warning only carried a report by the newspapers that Kern was said to favor an open vote. No statement had been made by Kern, and when the press carried a report on the following day that Kern could be assured of thirty-five votes on the first ballot, Kern went back to sleep. It was not until two days before the caucus, a week after Lamb's warning, that Kern finally realized the danger. His statement in favor of the open ballot came too late.<sup>150</sup>

One of the most active opponents of Kern was John B. Stoll, Editor of the South Bend Daily Times. Stoll admired Kern, but apparently no actual friendship existed between them. Stoll did not like Taggart, and Kern was a Taggart man. Consequently, Stoll usually felt quite cool to Kern at anytime he was a candidate for office. Stoll went to the caucus as head of a St. Joseph County delegation, seeking to block the Kern movement, while working diligently to secure the election of Benjamin F. Shively, Kern's foremost opponent.<sup>151</sup>

The caucus was conducted under the most stringent rules of secrecy. Many of the caucus members stated quite openly that they had no intention of revealing to anyone how they voted. To enforce the rules of secrecy, every time a caucus member left the room he would be followed by another to make sure he talked to no one. In one instance a "shadow" narrowly escaped a beating with a cane when he infuriated Lamb by poking his head over the shoulder of Lamb in

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<sup>150</sup>Ibid., pp. 191-193.

<sup>151</sup>Miller, op. cit., pp. 75 and 78.

an effort to hear what he was saying to a state senator from his own county.<sup>152</sup>

The first ballot indicated Kern would probably lose. He had planned on over thirty votes on the first ballot. Instead, twenty-five votes were cast for him. On the second ballot Kern received twenty-three votes. All twenty-five votes had been pledged to Kern, but two had deserted their pledged positions.

Lamb and Kern had arrived at an agreement before the balloting began which was destined to be an unfortunate arrangement for Kern and his supporters. They had agreed that if no candidate had received a majority on the second ballot, Lamb would swing all of his support to Kern, with the exception of one vote, on the third and fourth ballots. Then if Kern still had not won by the end of the fourth ballot, all of Kern's votes would in turn go to Lamb on the fifth ballot.

True to his word, Lamb shifted his votes behind Kern on the third ballot with the result that Kern received thirty-four votes. But the stampede which the Kern forces had expected did not materialize, and on the fourth vote Kern slipped to twenty-eight votes. At this point Kern's part of the bargain should have gone into action. For the fifth and sixth ballots Lamb was to have enjoyed Kern's support. If the effort failed, then Lamb was to swing his support back to Kern for the seventh and eighth ballots, and then repeat the cycle for the remaining ballots.

But Kern's delegates, with the exception of a very few, did not shift their allegiance. Lamb was bitterly disappointed with

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<sup>152</sup>Bowers, op. cit., pp. 193-194.

Kern. Just as Kern had felt the hand of treachery, Lamb now believed he was experiencing it. After the convention Kern told the Lamb forces that he had simply forgotten to inform his supporters of the agreement. The excuse is so weak that it may well be the real truth. Kern was a very inefficient political organizer. He relied heavily on Taggart for such things, and Taggart was neutral in this race.<sup>153</sup>

By the fifth ballot Kern felt he had lost. As the ballots continued and the contest narrowed to Kern and Shively efforts were made to secure the support of the losing candidates for Kern. It was clear that Kern was the one man that every candidate, with the exception of Lamb, was determined to beat. On the sixth ballot Lamb supporters joined the ranks of the "beat Kern" movement. On the nineteenth ballot four votes remained stubbornly for Lamb's hopeless candidacy. If they had gone to Kern, the twentieth ballot would probably have spelled victory for Kern. The vote on the nineteenth ballot, with these four votes, could have been Kern 40 to Shively's 38 votes. Instead, the 30 votes for Shively on the nineteenth ballot to Kern's 36 votes developed into 42 votes for Shively on the twentieth ballot and the Senatorship. At two o'clock in the morning of January 14th Kern was left with his thirty-six votes, and a costly political mistake.<sup>154</sup>

Kern went home a bitterly disappointed man. His years of sacrifice seemingly meant nothing to his party. His years of labor

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<sup>153</sup>Bowers, op. cit., pp. 191-192.

<sup>154</sup>Thomas, op. cit., pp. 60 and 63; and Bowers, op. cit., pp. 193-195.

had been to no avail, and memories of past words of praise from party friends were apparently meaningless. Forty-four members of the caucus had promised their support to the Kern candidacy after the contest had narrowed. The promise had been made prior to the balloting. When the roll was called during the week following the caucus, forty-four men claimed they had voted for Kern. Eight were obviously guilty of violating their pledge.

Rumors were widely circulated before the caucus that several votes had been purchased. Kern told a journalist that the eight men had been tempted away from him by the brewery interests in Indiana. On the other hand, the brewers openly acknowledged that they were fighting against Kern, not for Shively. Probably the votes were bought for minor candidates who were soon eliminated.<sup>155</sup> Shively was not to be condemned for what had happened. Kern later retracted his accusation against the brewery interests, and cemented cordial relations with Shively.

Although the caucus was over, the storm of public opinion was just beginning. The Indianapolis News summed up the general opinion in this way, "We think that Mr. Kern suffered from the secret ballot, for this deprived him of the weight of the popular endorsement which was clearly his, and which would have full play had there been an open ballot." The caucus attracted attention outside the borders of Indiana, and its notoriety was later used as one of the arguments in favor of the Seventeenth Amendment to the Constitution of the United States.<sup>156</sup>

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<sup>155</sup>Thomas, op. cit., p. 64.

<sup>156</sup>Bowers, op. cit., pp. 195-196; Thomas, op. cit., pp. 60 and 64; and Cottman, loc. cit.

Governor Marshall realized that the political future of the Democratic Party in Indiana for several elections to come was now at stake. The second senatorial seat was to be selected by the next session of the state legislature, and it was necessary to lay plans early if a repetition of the caucus scandal of 1909 was to be avoided. Marshall, several weeks in advance of the State Democratic Convention of April, 1910, announced the "Governor's Plan" for selection of the Democratic nominee for Senator. Essentially, the plan consisted of the selection of a Democratic choice for United States Senator prior to the campaign and election of the state legislature which would elect the senator to Washington. This selection would take place in the State Convention by the nomination procedure and delegation vote. The plan would have the advantages of not only eliminating the notorious caucus from the selection, but would also give the people of Indiana a clear picture of whom they would be voting for as United States Senator when they voted for their legislators.<sup>157</sup>

The Governor's plan met considerable opposition among the conservative, professional elements of the party. Senator Shively was firmly against it. Taggart attempted to get Marshall to withdraw his proposal, because it would hurt his chances as a candidate. In fact, he would be eliminated by the same rank and file which defeated his forces in the 1908 State Convention. Marshall was firm in his stand, however, and many other prominent Democrats rushed to his support. The deciding factor may have been Senator Albert J. Beveridge's strong appeal to the independent vote in his speech be-

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<sup>157</sup>Thomas, op. cit., pp. 64-65; Bowers, op. cit., pp. 198-199; and Sallee, op. cit., p. 163.

fore the Republican State Convention early in April. It was quite obvious that Beveridge was to be the Republican choice. Therefore, it was essential that the Democrats select the best candidate possible and make their selection known to the people. Marshall stood firm on his proposal that the plan be submitted to the Convention for their consideration.<sup>158</sup>

On April twenty-seventh the tactical maneuvering in the pre-convention meetings revealed the Taggart forces in control of seven districts which were against the Governor's proposal. The forces that favored the proposal could muster only six districts. Taggart now saw a way in which to dispose of the plan, secure his election, and still not antagonize the Governor and his supporters. Exercising his control over the rules committee, he recommended that the Convention as a whole vote on the Governor's plan with the realization that he now controlled a majority of districts on this issue.

The Convention was called to order on the twenty-eighth, and after the usual preliminaries proceeded to vote on the Governor's plan. Taggart lost his gamble by an error and the Governor's plan carried by a vote of 888½ to 858½.

Now the Convention proceeded with the business of electing their choice for United States Senator. The leading candidates were Lamb, Taggart, and Kern. Lamb wanted the nomination. He was violently opposed to Taggart and still disappointed with Kern as a result of the 1909 caucus. Taggart wanted the nomination but knew that he was not especially popular with the rank and file delegates. Kern had gone home from the 1909 caucus firmly resolved, in his dis-

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<sup>158</sup>Thomas, op. cit., pp. 65-66.

appointment, that his decision to leave politics had been the correct course for him to follow. He came to the Convention as a regular delegate from Marion County determined to block any movement that would possibly place him in another political contest as a candidate. He wanted nothing more than to serve his party in a limited local manner, and to concentrate on his private law practice and especially on his family life.<sup>159</sup> It is possible that a personally embarrassing situation also prompted Kern to remain insistent that he was not a candidate. Lamb had urged Kern to present his name before the Convention, but Kern felt his situation would not permit him to cement his relations with Lamb in this manner. But it is not likely that Kern was largely influenced by this situation.<sup>160</sup>

At this point in the proceedings the nominations were made. During the Convention Lamb had committed a tactical error on the floor of the Convention by attacking Taggart viciously in a candidacy speech. He was hissed down, but Taggart was furious. Taggart had an agreement with the Marion County delegation that he would cast their votes for the senatorial candidate of his choice. He was determined that if nothing else he would not give his support to Lamb.<sup>161</sup>

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<sup>159</sup>Sallee, loc. cit.; Thomas, op. cit., p. 66; and Bowers, op. cit., pp. 199-201.

<sup>160</sup>Sallee insists that Kern wanted the nomination but could not actively seek the nomination because of the situation with Lamb. However, it should be kept in mind that Sallee was an apologist for Taggart. Kern's frame of mind and general personality traits indicate that the other two reasons for his reluctance were the overwhelming considerations involved. Sallee, loc. cit.

<sup>161</sup>Again, Sallee indicates that Taggart was not a serious candidate and fully meant to support Kern. This does not seem likely. Ibid.



Kern had left the Convention floor after the victory of the Governor's Plan. He knew that there had been movements afoot to present his name to the Convention. But he was quite confident that these movements had been successfully halted by expressing his desires to Howard and Clinton Counties.<sup>162</sup>

At this point we can merely speculate as to what actually was the reason behind the presentation of Kern's name to the Convention. The delegates responsible were a few farmers in the Marion County delegation. Now if we are to believe that Taggart was in control of the Marion County delegation then it seems reasonable that Taggart was merely taking out "insurance" in case he could not secure the election. Because of his own lack of popularity and the current eruption in his relations with Lamb this would seem quite reasonable. On the other hand, if there was any candidate who could take the nomination from him it was certainly Kern. Still, if Kern was really serious about not being a candidate, then it was not likely that the Convention could draft a candidate who refused to be drafted. A third possibility is that Kern did want the election as Sallee contends. It would seem that the most logical explanation is that Taggart, recognizing the improbability of his own election, decided to lay the groundwork for a possible draft by permitting some members of the delegation to place Kern's name before the Convention.

Kern's nomination had a stimulating effect on the mood of the Convention. There was a tremendous ovation and cries of "Kern!" "Kern!" drowning out the other noise in Tomlinson Hall. Mrs. Kern

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<sup>162</sup>Bowers, op. cit., p. 199.

was sitting in a box in the balcony with Mrs. Thomas Marshall and the novelist, Meredith Nicholson. She was obviously pleased with the honor being shown her husband but quite confident that he would not accept. Kern returned to the Convention floor during the first ballot to discover that his name was before the Convention. After it was all over he described it this way:

"When I entered the hall," he said afterward, "several men yelled 'Stand pat, John,' and I didn't know what to do for an instant. I thought, however, that the manly thing to do was to make a statement to the convention and I stood on a chair and told them that my name had been presented without my knowledge or consent, and that no man had any right or authority to present my name and that I was not in any sense a candidate."<sup>163</sup>

After he had finished, the roll call continued with Wabash County who proceeded to cast 15 of its 16 votes for John W. Kern. The end of the first ballot gave Kern 303 votes. Only six of these were from Marion County, while the other 177 votes in the county had been cast for Thomas Taggart.

On the second ballot Taggart launched a stampede to Kern by withdrawing his name and casting his entire delegation vote for Kern. The second ballot was completed with 647 votes being cast for Kern. Kern strode to the platform with the nomination almost in his grasp. But again he protested vigorously against the right of the delegates to force upon him this nomination. Cries of "No, No" and "Sit down, you can't refuse" were heard. At the conclusion of this address to the Convention Kern left the hall confident that he had finally convinced them that he would not accept the draft movement.

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<sup>163</sup>Ibid., pp. 199-200.

Lamb withdrew after he left, and Kern was made the unanimous choice of the Convention. Kern heard of the Convention's action in his law office where he had returned to work on a case. At first, he was inclined to refuse the draft. The honest and enthusiastic action of the Convention delegates in the face of his personal reluctance was certainly a strong persuasive factor. Finally, it was this honor together with the insistence of party leaders that persuaded Kern to consent to the draft. His plans for a quiet peaceful life and a profitable law practice were completely shattered, but it was to be replaced by his greatest political achievements.<sup>164</sup>

The convention seemed to have been full of irony. Kern, who had desired the nomination a year ago, did everything possible to keep the nomination away from him. Yet, he was the party choice. Taggart fought for the nomination, but in the end yielded to one of his political products to avoid endangering the party's chances of winning in the fall. In opposing the Governor's plan Taggart had been fighting for his own election. Yet, once the vote was in he had accepted defeat gracefully. It was later discovered that Taggart had actually won, but Taggart knew it was too late. A clerk discovered a mistake in the official tabulation of the vote on the Governor's plan while the second ballot was going on. In the vote of one county the official had recorded incorrectly. Instead of favoring the proposal most of the county delegates had actually voted against the plan. The mistake cost Taggart his victory and a

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<sup>164</sup>Ibid., p. 201; and Thomas, loc. cit. Sallee maintains, of course, that Kern knew Taggart's plans in advance. Sallee, loc. cit.

senate seat.<sup>165</sup>

Kern's opponent in the senatorial campaign of 1910 was the incumbent Senator Albert J. Beveridge. His eloquence was a potent weapon which Kern had to consider. Beveridge had begun his Senate career as a strong and consistent champion of Big Business. He defended the trusts and advocated the protective tariff. The senate at this time was under the direction of what was known in Democratic circles as the Aldrich senatorial machine.<sup>166</sup> Beveridge was an ardent supporter of this machine until the debate on the Payne-Aldrich tariff bill. The Aldrich machine was determined to force the harsh restrictive tariff on the western states. Beveridge could not honestly support the measure so he left the Aldrich camp and fought with Dolliver, Cummins, Bristow, Clapp and Lafollette against the bill. His action cost him the support of a large number within his party. Under the circumstances his only hope seemed to be to rally enough support among the progressive elements of the Democratic party to counteract the loss of support from his own party.

With this in mind, Beveridge made his speech before the Republican State Convention in early April, appealing to the progressive independent vote. His supporters were busy mapping the strategy of the campaign which would place the Democrats in the role of supporters of the Payne-Aldrich tariff bill and other reactionary measures. This was to be accomplished by holding up before the

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<sup>165</sup>Thomas, op. cit., p. 67.

<sup>166</sup>Kenneth W. Hechler, Insurgency: Personalities and Politics of the Taft Era (Studies in History, Economics, and Public Law, No. 470; New York: Columbia University Press, 1940), p. 194.

people two or three likely selections for United States Senator should the legislature remain a Democratic body.

Marshall's plan and the selection of Kern as the Democratic choice for senator completely upset this strategy. Kern was the state's most widely known progressive. Beveridge wrote Marshall after the Convention stating, "You have broken my heart."<sup>167</sup> Beveridge faced the obstacles and prepared thoroughly for the battle to come in the fall.<sup>168</sup>

Kern was busy with the task of cementing relations with the Democratic party. Most important in this respect was to placate the feelings of Shively supporters which had been ruffled by Kern's accusation a year before that the brewery interests were responsible for his defeat. Although he had not intended to imply anything in his remarks, the newspapers and many of Shively's supporters felt that Kern was accusing Shively of being the emissary of brewery interests. Kern sought to undo this impression in a speech before the Democratic editors at French Lick, Indiana on June 24, 1910.

"One of the crowning features of the victory of 1908 was election of a legislature, Democratic on joint ballot, which made possible the election of a Democratic United States senator.

There have been, and there were, before the Democratic caucus older soldiers than Benjamin W. Shively, but there were none better. His election to the senate by the Democratic members of the legislature without a single dissenting vote secured to the people for six years the service of a man ripe in scholarship, rich in experience and eloquent and convincing in expression--a man of unquestioned integrity and commanding ability.

And I stop here to say that, from the honor of his election to the present time, I have never failed whenever opportunity offered, to express my appreciation of the char-

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<sup>167</sup>Bowers, op. cit., p. 203.

<sup>168</sup>Ibid., pp. 202-203.

acter of the man, and since he entered the senate my approval of the splendid record made by him in the exalted position to which he was called.

I shall not speak of my present candidacy for the senatorship, which came about by the unanimous demand of my party in the state convention assembled, further than to say that it is my ambition to serve the people of my native state in that great legislative forum by seconding the efforts of Benjamin F. Shively."<sup>169</sup>

On October first Kern opened his campaign with a strong speech in Evansville, Indiana. In it he outlined the issues of the campaign. He carefully pointed out that Beveridge's voting record was full of inconsistencies. Beveridge's action in voting for the Ship Subsidy bill and against the income tax was pointed to as examples of inconsistencies with telling effect. These examples made Beveridge's plea that he had become a progressive look quite weak in comparison to the desires of the people and the record of Kern's progressivism. Kern carefully pointed out the closeness of Beveridge's alliance with the current Republican policies. Beveridge's appeal to the progressive vote appears to have been compromised. In the latter half of his speech Kern concentrated on a denunciation of the extravagant expenditures and the misuse of taxing power by the Republicans.<sup>170</sup>

The reaction to Kern's speech was one of commendation from both sides of the political fence. The Republican paper, The Indianapolis News, called the speech "a straightforward and manly presentation of the Democratic Case."<sup>171</sup> William Jennings Bryan tele-

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<sup>169</sup>Cottman, loc. cit.

<sup>170</sup>Kern MSS, Private Collection. "Campaign Speech of 1910."

<sup>171</sup>Bowers, op. cit., p. 205.

graphed Kern, "Your speech was a powerful statement and much stronger both in substance and manner to that of your opponent."<sup>172</sup>

Kern was constantly on the stump during the next month. He won friends among the newspaper correspondents from Indianapolis who followed him from one place to another, with the result that his speeches were given the widest possible publicity. He continued to hammer away at the inconsistencies in Beveridge's stand as a progressive. He concentrated so heavily on Beveridge's position on the Ship Subsidy bill that Beveridge was forced to admit that if a similar situation were to arise he would be against such a measure.<sup>173</sup>

Beveridge was never more eloquent than in the campaign of 1910. He played the role of a crusader determined to smite down the reactionaries of the "dastardly" Payne-Aldrich tariff. Fred Landis, an Indiana orator known for his wit, said that Beveridge was standing for "Mary of the vine-clad cottage" holding the plutocrats at bay.<sup>174</sup> Beveridge enjoyed the analogy and adopted it into his campaign. But he had forgotten that Kern was a master of ridicule, and in a speech at Decatur, Indiana, Kern brought his weapons of satire and ridicule to bear on "Mary." When he was through the entire country was laughing at Beveridge's Mary.<sup>175</sup>

Both candidates had outside help. Theodore Roosevelt descended on Indiana on behalf of Beveridge. He had been well coached

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<sup>172</sup>Ibid., pp. 203-205.

<sup>173</sup>Ibid., p. 205.

<sup>174</sup>Ibid., p. 206.

<sup>175</sup>Ibid., pp. 205-206.

on the political situation in Indiana by W. D. Foulke, a prominent Indiana Republican.<sup>176</sup> But the otherwise good effect of Roosevelt's support was partially negated by rumors of bad feelings between Beveridge and Roosevelt. The basis for these rumors was the cancellation of Roosevelt's speech in Richmond, Indiana. Actually, the train was running late, forcing cancellation in order that Roosevelt could keep a more important engagement in Columbus, Ohio.<sup>177</sup>

Kern was aided strongly by his close friends, Alton B. Parker and William Jennings Bryan. In the middle of October Parker told an Indianapolis audience that in the Senate "we shall need the common sense, the sturdy honesty and eloquence of John W. Kern."<sup>178</sup> Bryan, at the same time, was sweeping through the countryside with a barrage of oratory, speaking to a dozen audiences each day in behalf of Kern.<sup>179</sup>

Kern, Bryan and Parker had devastated Beveridge's appeal to the independent and progressive voters. Roosevelt's action at Richmond had further hurt his cause. Another chief deterrent to Beveridge's election was the non-support of the elements of his own party who favored the Aldrich machine from which he had rebelled. In fact, many of these men were actively working for his defeat.

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<sup>176</sup>Indiana State Historical Library, W. D. Foulke MSS Collection, Foulke to Roosevelt, September 13, 1910, Indianapolis.

<sup>177</sup>Oscar King Davis, Released for Publication: Some Inside Political History of Theodore Roosevelt and His Times, 1898-1918 (Boston: Houghton Mifflin Company, 1925), pp. 232-233.

<sup>178</sup>Bowers, op. cit., p. 207.

<sup>179</sup>Ibid., pp. 206-207.



In addition, the Republican outcast, former Governor J. Frank Hanly, was in the throes of zealous temperance. He was busy collecting affidavits to prove Beveridge drank too much. His plan was to preserve these affidavits until the state legislature met, and then stampede the legislators with the affidavits to elect a moderate candidate on the temperance issue. While the effect of this sabotage was minor it did serve to divert some attention from Beveridge to the total abstainer, Kern. Perhaps Foulke summarized the hope of the Beveridge supporters best in a letter to Roosevelt when he said, "Many Republicans will knife Beveridge but he, like you, will get a large accession of Democratic votes."<sup>180</sup> But the hope turned out to be only a dream and the Democrats carried the legislature.

However, many of the legislators elected were supporters of the more conservative party leaders who did not like Kern's radical policies. Despite their pledge at the Party's Convention it was suggested by several of them that they might not be bound by the action of the State Convention. This may have been an attempt by Taggart supporters to regain the ground they lost as a result of the mis-tabulated vote on the Governor's plan. At any rate, the mere suggestion brought on a storm of protest. Governor Marshall made it clear that he would not sign the commission of any man other than the choice of the State Convention, Kern, who had been the choice of the people in the election. Consequently, Kern was promptly elected when the state legislature met, and was sent on

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<sup>180</sup> Foulke Collection, loc. cit.

his way to the Senate of the United States.<sup>181</sup>

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<sup>181</sup>Bowers, op. cit., pp. 207-208. It should be remembered that 1910 was a bad year for the Republicans all over the country. In fact, Beveridge considered his defeat a moral victory and was not in the least downcast by the results. The Republicans had done better in Indiana than in most of the states that year. While the Democrats had carried the state legislature by a substantial majority of seats, it had been by narrow margins of the popular vote. In fact, the Republicans had succeeded in reducing the popular vote given to Marshall two years before. Indiana State Historical Library, Beveridge MSS Collection, Beveridge to Secretary of the Treasury MacVeagh, November 18, 1910, Indianapolis.

## CHAPTER THREE

### THE SENATOR FROM INDIANA

#### Political Developments

Introduction. In the previous chapter the personal and political development of Kern was traced. Some attention was given to indicating the sources of his attitudes and ideas in his early education, religious training, personality traits, later education, law practice, and political experiences. The period of time represented in the chapter is sixty-two years, while this chapter covers only six years.

The purposes of this chapter are to trace the sources of Kern's ideas while a member of the United States Senate, in light of the previous chapter, and to indicate the leadership of Kern in the informal and formal speaking situations that surround the work of the senate. The sources of his ideas are developed through a summary examination of the issues of concern to Kern, while his leadership is indicated by examples, testimony, and discussion of interpersonal relations.

The first two years in the Senate. The Democratic party was very successful in the elections of 1910. The Democratic victory had been prompted not only by the Payne-Aldrich Tariff, which had antagonized the mid-western and western plains states, but also by the alienation of the Republican insurgents from the Republican regulars. With the added strength of the progressive elements across

the country, a formerly weak Democratic party suddenly became for the first time since 1892 the Congressional leader, even though that leadership lacked unity. The House of Representatives now held 227 Democrats, 162 Republicans, and one Socialist. The senate was composed of 49 Republicans and 42 Democrats.<sup>1</sup> Republicans like Senator Robert LaFollette, however, sometimes sided with the Democrats in the upper house giving the Democrats a working majority by their insurgency.<sup>2</sup>

Champ Clark of Missouri was elected Democratic Speaker in the House of Representatives. The Republican majority in the senate were in reality two parties, the insurgents (progressives) and the regulars. Ten of the Democratic senators were new members, each of them progressive and determined to fight for an aggressive party policy. Among these new men were Senators James A. Reed of Missouri, Atlee Pomerene of Ohio, Gilbert Hitchcock of Nebraska, and James A. O'Gorman of New York. These new men were joined by experienced solons such as Senator Stone of Missouri and Senator Shively of Indiana.<sup>3</sup>

The enthusiasm of these new senators and their senior allies was prompted by the dissatisfaction of the people with the Democratic

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<sup>1</sup>The distribution of the senate seats between the two parties changed several times due to late elections by state legislatures.

<sup>2</sup>Arthur S. Link, Woodrow Wilson and the Progressive Era, 1910-1917 (The New American Nation Series; New York: Harper and Brothers, 1954), p. 7; and Mark Sullivan, Our Times: The United States, 1900-1925 (6 vols.; New York: Charles Scribner's Sons, 1932-1935), IV, pp. 362-372.

<sup>3</sup>Link, The Progressive Era, pp. 4-8; and Claude G. Bowers, The Life of John Worth Kern (Indianapolis: The Hollenbeck Press, 1918), pp. 204-211.

regulars. Many of these regulars, who came from relatively secure Democratic states, had become soft in their opposition to the Taft administration and the Republican majority in the past Congress because of social and patronage favors given them during the earlier Republican years. This softness had manifested itself during the Payne-Aldrich Tariff fight when Democratic opposition was secondary to that of the Republican insurgents. Many of these new senators were pledged to the restoration of an uncompromising party policy that would eliminate this kind of lethargy.<sup>4</sup>

The problem of how these new "should-be-seen-and-not-heard" senators were to impress their views on the majority of senior Democratic senators remained. They were not new men to politics, and they were determined to ignore tradition in a fight for representation on the most prominent committees. The leader of this fight was Senator Kern. He was the logical choice both from the standpoint of political experience in the progressive ideals of the new senators, and national recognition as a Democratic party leader. He did not seek the position, but the progressive groups congregated by choice in his office to map their strategy.<sup>5</sup>

The main battle took place in the Democratic caucus called for the purpose of electing a caucus leader. An assumption of the regulars was that the former leader, Senator Martin of Virginia,

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<sup>4</sup>Ibid., p. 212; Link, The Progressive Era, pp. 3-7, and 36-42; Oscar King Davis, Released for Publication: Some Inside Political History of Theodore Roosevelt and His Times, 1898-1918 (Boston: Houghton Mifflin Company, 1925), pp. 167-172; and Kenneth W. Hechler, Insurgency: Personalities and Politics of the Taft Era (Studies in History, Economics and Public Law, No. 470; New York: Columbia University Press, 1940), p. 105.

<sup>5</sup>Bowers, op. cit., pp. 212-213.

would be reelected to his position without opposition. Martin was not disliked by any of the new senators, but he symbolized the old regular regime which the new men were bent on destroying.

Therefore, Kern, leading the new senators, presented Senator Shively's name in nomination. The new men were fighting tremendous forces. The force of senatorial courtesy demanded deference to the elders in the senate, and the pleas that Martin's defeat would be used against him unfairly in the primaries within his own state was a strong point. Although the regulars obtained Martin's election, the desertions to the new forces were so numerous that the caucus election left an indelible impression upon the political plans of the regulars.<sup>6</sup>

The pressure on the conservatives, as applied by the progressives, was to be maintained. For one, Bryan promised Kern that he was going to keep after Martin. "It may help him to keep good on votes--it may also help us among those who voted for him. You and I have their constituents after them."<sup>7</sup>

The old regime quickly recognized the need for liberal concessions to this aggressive new force. In selecting the Committee on Committees, Kern's name was included in the membership. While on this committee Kern faced what was perhaps his most embarrassing political situation. Shively had made a lifetime study of fiscal legislation, and Kern was determined to support him for membership

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<sup>6</sup>Ibid., pp. 213-214; John B. Stoll, History of the Indiana Democracy, 1916 (Indianapolis: Indiana Democratic Publishing Company, 1917), p. 936; and New York Times, April 6, 1911, p. 1; April 7, 1911, p. 1; and April 8, 1911, p. 1.

<sup>7</sup>Kern MSS, Private Collection, "Bryan to Kern," April 29, 1913.

on the important Finance Committee. When he got to the committee meeting, however, and announced his support of Shively, the committee members told him that they had already determined in his absence that he should be a member of that committee. Kern vehemently declined, stating that Shively was by far the more qualified man. The committee members informed him that Shively was completely unacceptable, and if he did not accept the position, Indiana would not be represented on the Finance Committee at all. Faced with the knowledge of the alternative, and aware of the honor that the committee was bestowing upon him, Kern reluctantly accepted. Two years later, Kern was able to make up the slighting of Shively by voluntarily retiring from the Finance Committee in favor of Shively, while retaining him as a ranking member of the Committee on Foreign Relations.<sup>8</sup>

One of the other committees on which Kern served was the Committee on Privileges and Elections. He had just begun his work in the senate when it ordered a second investigation into charges of corruption in the election of Senator Lorimer of Illinois. As a member of the Committee on Privileges and Elections, Kern was soon completely involved in the endless months of hearings on the important case.<sup>9</sup> As a result, he was seldom with the Finance Committee in its consideration of the Canadian Reciprocity bill. When circumstances permitted, however, Kern would attend the committee

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<sup>8</sup>Bowers, op. cit., pp. 214-216; Kern MSS Collection, "Kern to wife," April 14, 1911; and New York Times, April 12, 1911, p. 2; and April 28, 1911, p. 8.

<sup>9</sup>Bowers, op. cit., p. 217; and New York Times, April 7, 1911, p. 7.

hearings on the bill. He was in favor of the bill's principle and purpose, even though it was advocated by the administration.<sup>10</sup> Kern also served on the Immigration, and Pacific Islands and Puerto Rico committees during this Congress.<sup>11</sup>

One of Kern's campaign promises in 1910 had been to fight against waste in government expenditures.<sup>12</sup> In his first speech before the senate on July 28, 1911, he received his first opportunity to oppose a measure that he deemed a waste of tax dollars. Fifteen senate committees were to be given the services of an additional messenger for each committee, to be paid for out of the senate's contingent fund. Kern opposed the measure on the basis that these committees had finished their work and the messengers would not be needed with the session drawing to a close. Apparently, Kern was opposed to waste within the spoils system, but believed in the system itself.<sup>13</sup>

Kern's first role in the senate as a chief advocate occurred during the consideration of pension legislation for Civil War veterans. Kern led the fight for the Sherwood Dollar-a-Day Pension bill in opposition to a substitute measure. Kern had observed the hardships of the Civil War veterans in their day-to-day living, and had promised Indiana voters in the campaign of 1910 to fight for dollar-a-day pension benefits.<sup>14</sup> On March 16, 1912, Kern made the opening

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<sup>10</sup>Bowers, op. cit., p. 217; Hechler, op. cit., pp. 185-186; and George Coleman Osborn, John Sharp Williams: Planter-Statesman of the Deep South (Baton Rouge: Louisiana State University Press, 1943), p. 180.

<sup>11</sup>New York Times, April 28, 1911, p. 8.

<sup>12</sup>Kern MSS Collection, "Campaign Speech of 1910."

<sup>13</sup>U.S., Congressional Record, 62d Cong., 1st. Sess., 1911, XLVII, Part 4, 3290-3297. cf. chap. ii, p. 32.

<sup>14</sup>Kern MSS Collection, "Campaign Speech of 1910."



address in favor of the Sherwood bill. While his speech made him many friends in the Grand Army of the Republic, the Sherwood bill did not pass. A compromise measure, the McCumber-Sherwood bill, was approved, providing more liberal benefits than in the past.<sup>15</sup>

Kern was keenly interested in labor issues. His position on these issues was first indicated in the senate in the debate on a resolution concerning a strike of textile mill workers in Lawrence, Massachusetts.<sup>16</sup> The strike took place during the winter of 1911-1912. It was the subject of a large volume of "reform" articles in newspapers and magazines. The resolution specifically directed the Commissioner of Labor to furnish full information to the senate concerning the conditions of the textile workers in Lawrence. Considerable opposition developed to the resolution on the grounds that this constituted federal interference in purely local affairs. In effect, the resolution was asking for a complete federal investigation. Kern actively engaged in the debate in favor of the resolution. After some amendments, the resolution was adopted, but by this time a House investigation of Lawrence mill conditions had exposed the putrefaction to the entire country.<sup>17</sup>

At the same time that the Lorimer investigations were in the Privileges and Elections Committee, Kern was presented with a "trial run" of his beliefs concerning corruption in elections. The committee reported that their investigations had revealed that Senator

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<sup>15</sup>Bowers, op. cit., pp. 217-221; and U.S., Congressional Record, 2d Sess., 1912, XLVIII, Part 4, 3465-3470.

<sup>16</sup>cf. chap. ii, pp. 41-42.

<sup>17</sup>Bowers, op. cit., pp. 221-222; and New York Times, March 1, 1912, p. 3; and March 2, 1912, p. 8.

Stephenson of Wisconsin had secured his seat by blanket corruption of the Wisconsin electorate in a primary. Little question of his guilt existed, but Senator Stephenson was a sick man. The frail, failing figure evoked a great deal of sympathy from senators who were accustomed to seeing corruption in their profession. The argument was made that the senate should not disgrace this man on the brink of his grave. Another argument was that the money had been used to pay men to "work" for the election of Senator Stephenson, and therefore was simply an error in judgment if an error at all.

Kern was sympathetic toward the figure of the man, Stephenson, but he strongly believed that elements in the case made it even more corrupt than the Lorimer case. In the debate on the committee's findings Kern argued for Stephenson's ouster on two points. He stated that the "work for pay" in the election was wholesale bribery, and then proceeded to show that payment to a newspaper editor for favorable editorial comment on a candidate constituted a breach of public trust. He then attacked the suggestion that emotional feelings should be permitted to interfere with the senate's execution of its public trust, for Kern hated the use of money to control elections. But on the Stephenson issue his views were among the minority, and Stephenson remained in the senate.<sup>18</sup>

The Lorimer case was to have a different ending. The Privileges and Elections Committee, after listening to and reviewing volumes of testimony, filed two reports. The majority found Lorimer not guilty of corrupt practices, but Kern joined with the minority

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<sup>18</sup>Bowers, op. cit., pp. 222-224; and New York Times, March 27, 1912, p. 9. cf. chap. ii, p. 56.



in a report asking for Lorimer's removal from office. During the debate that ensued, Kern was the chief advocate for the minority report on the floor of the senate. It was his second and longest major speaking effort, covering portions of the legislative periods on June fourth, fifth, seventh and eighth of 1912.

Kern had been the leading exponent in favor of Lorimer's expulsion during the committee hearings. The reform newspapers had been very active, and public pressure against Lorimer was beginning to bear heavily upon his defenders. Kern's speech, the persistency of the minority, public pressure, and the conscience of some of the senators resulted in the minority report being adopted, 55 to 28. Lorimer left the senate.<sup>19</sup>

Kern and the Democratic Convention of 1912. Kern's victory over Lorimer carried with it the admiration and respect of the Democratic party as it assembled in Baltimore for the opening of the national convention on June 25, 1912. As early as April in 1911 it became apparent that Kern was a possible "dark horse" choice for the Presidential nomination. Kern was an active supporter of Governor Marshall of Indiana. The rumors disturbed him, and he wrote a letter to Marshall stating clearly that he intended to remain a firm supporter of Marshall's candidacy. Marshall replied that the expression of loyalty, while appreciated, was unnecessary. He tended to blame Taggart for the rumors, knowing Kern was not the kind of man who could engage in this kind of political intrigue.<sup>20</sup>

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<sup>19</sup>Bowers, op. cit., pp. 226-251; Stoll, loc. cit.; and U.S., Congressional Record, Part 8, 7594-7597, 7700-7706, 7775-7787, and 7845-7848.

<sup>20</sup>Thomas, op. cit., pp. 120-121; and Kern MSS Collection, "Kern to Mrs.," April 14, 1911.



On July 16, 1911, Kern gave out an interview in Washington in which he analyzed the Presidential possibilities. He attempted to remove his name from the field by stating that Governor Marshall's chances were infinitely better than those of anyone else, but in spite of this "Kern for President" buttons made their appearance in Michigan in December of 1911. Marshall, learning of these buttons through a Michigan supporter, told him he was confident that Kern had no knowledge of these buttons, and that he was certain Kern would repudiate them if he was informed of their existence. By January of 1912 the newspapers were engaging in wide-scale speculation, and Kern's name was being prominently mentioned as a "dark horse" compromise choice for the Democratic nomination, in anticipation of a long ballot fight. Kern again wrote Marshall disclaiming any responsibility for these speculations, and Marshall remained confident of Kern's support.<sup>21</sup>

Despite the combined efforts of Kern and Marshall, the "Kern for President" movement continued to flourish.<sup>22</sup> At the Convention Kern was selected as Chairman of the Committee on Resolutions, and had been Bryan's candidate for Temporary Chairman. In one of the most dramatic speeches of the convention Kern withdrew his own name from the race and asked Alton B. Parker to do the same in the name of party unity. Failing in this, Kern asked Tammany Boss Murphy to appeal to Parker to withdraw in favor of a compromise candidate;

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<sup>21</sup>Thomas, op. cit., p. 121.

<sup>22</sup>An undated letter (February 3, ----), probably 1912, from Bryan to Kern asks if Marshall would withdraw in Kern's favor if it became impossible to secure the nomination for him. Kern MSS Collection.

and, failing here, he placed Bryan's name in nomination. The conservative elements of the party were attempting to keep the progressive leaders out of the limelight and away from the nomination. Kern's purpose in the speech was to arouse the delegates and the party ranks at home to the intentions of the conservative elements. The efforts of Bryan and Kern in this respect were quite effective. While Bryan lost in his bid for the temporary chairmanship, Ollie James (a progressive) was made permanent chairman.<sup>23</sup>

Kern had withdrawn his name not only in an effort to expose the efforts of the conservatives, but also to discourage the ever-present dark horse rumors. Delegates and prominent politicians in several states were interested in contributing to the Kern movement. Despite Kern's efforts, offers of support continued to come in from the West Coast and from Indiana, Ohio, Illinois, and Michigan. Kern discouraged all of them, relenting after several ballots only to the point of stating that he would not consider his own candidacy until it was quite apparent that Marshall, Clark, Harmon, or Wilson could not obtain the nomination. He remained loyal to Marshall

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<sup>23</sup>Stoll, loc. cit.; Bowers, op. cit., pp. 253-270; Link, The Progressive Era, pp. 11-13; Davis, op. cit., pp. 316-318; Alexander L. George and Juliette L. George, Woodrow Wilson and Colonel House: A Personality Study (New York: The John Day Company, 1956), pp. 104-105; and Ray Stannard Baker, Woodrow Wilson: Life and Letters, Vol. III, Governor, 1910-1913 (Garden City, New York: Doubleday, Doran and Company, 1927-1939), pp. 339-340. Bryan's role in relation to that of Kern's is detailed in: William Jennings Bryan and Mary Baird Bryan, The Memoirs of William Jennings Bryan (Chicago: The John C. Winston Company, 1925), pp. 167-168, and 171; Faxon Hibben, The Peerless Leader: William Jennings Bryan (New York: Farrar and Rinehart, 1929), pp. 308-309; J. C. Long, Bryan: The Great Commoner (New York: D. Appleton and Company, 1928), pp. 251-253, and 255; and M. R. Werner, Bryan (New York: Harcourt, Brace and Company, 1929), pp. 181-184.

through Marshall's support of Wilson, and later in Marshall's successful bid for the Vice-Presidential nomination.<sup>24</sup>

The successful Democratic campaign and the national elections followed, and after the Christmas holidays Congress again convened. During the short "lame duck" session of the Sixty-second Congress, the senate took under consideration a measure designed to increase the cost and facilities of certain government buildings. Kern was against the measure because it was a bill that could be considered by the new Sixty-third Congress, a Congress more in keeping with the wishes of the people as expressed in the fall elections. He took the position that the bill was a "pork barrel" measure and should be defeated.<sup>25</sup>

The election of 1912, because of Roosevelt's Bull Moose party, resulted in the Democrats winning by a minority of the popular vote while the Republican and Bull Moose parties split the majority vote. Eleven new Democratic senators gave the Democrats a narrow majority in the senate (51 Democrats, 44 Republicans, 1 Progressive), while the House Democratic majority was greatly increased. The eleven new senators were strong supporters of Wilson's reform programs and the Party Platform of 1912. Together with Senators Kern, O'Gorman, Lea, Williams, Ashurst, Pomerene, Reed, Myers and Johnson, the new Democratic senators embarked on their senatorial careers by assisting in the organization of a progressively minded Demo-

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<sup>24</sup>Bowers, op. cit., pp. 274-281.

<sup>25</sup>U.S., Congressional Record, 3d Sess., 1913, XLIX, Part 5, 4696-4697. Kern MSS Collection, "Campaign Speech of 1910." cf. chap. ii, p. 33.



cratic senate.<sup>26</sup>

Taggart and Kern. The election also had its effect on the Indiana Taggart machine. Across the rest of the country the political machines were meeting disaster. Boss Murphy in New York was meeting defiance, while the President-elect had broken the New Jersey Smith machine in 1910. But in Indiana, Taggart now reigned supreme. With his support, Marshall had become the successful Vice-Presidential candidate of the Democratic party, and the state legislature was under his domination. Taggart men filled offices in many cities, and county court houses also held allegiance to the Taggart banner. In Washington, both Shively and Kern were considered Taggart men, while in the House all of the thirteen Indiana seats were filled by Taggart followers. Taggart's position was to remain relatively secure until the 1916 elections.<sup>27</sup>

Of course, such a large extension of power was bound to suffer from the strain and stress of divergent opinions among individual leaders. Certainly Kern, Shively and Marshall could not be expected to agree with Taggart on every issue, and furthermore, Marshall was normally associated with anti-Taggart forces. In the first six months of 1913 the Indiana press was filled with rumors of a Kern-Taggart split. Probably, some disagreement existed. The result, however, was general agreement that Kern and Marshall were

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<sup>26</sup> Bowers, op. cit., pp. 282-285; and Link, The Progressive Era, pp. 21-24. The President openly sought and encouraged this progressive theme in the leadership of the Government. Arthur S. Link, Wilson: The New Freedom (Princeton: Princeton University Press, 1956), pp. 67-70, and 147-157.

<sup>27</sup> Alva Charles Sallee, "Taggart Collection," Indianapolis: State Historical Library of Indiana, pp. 96 and 110.

not the kind of men who would forget the efforts of Taggart in their behalf.<sup>28</sup>

Reorganization of the senate. The Sixty-third Congress had been in session just two days when the Democratic progressive elements determined to depose Senator Martin as the Democratic leader and substitute a more progressive leader. Kern had taken a law case over the holidays which had lasted longer than he had anticipated. Consequently, he was not a party to the maneuvers of the progressive element.

Kern was informed by telegram of the movement for Democratic caucus reorganization and asked for assurance of his cooperation. He was also asked to indicate his willingness to accept the Chairmanship of the Committee on Committees. Kern wired his assurance of cooperation in the maneuver, but gave no encouragement to the proffered caucus leadership.

On a Sunday evening in late February of 1913, thirty of the fifty-one Democratic members met at the home of Senator Luke Lea on Massachusetts Avenue. Their purpose was to select their progressive candidate for majority leader. The qualifications of several men were considered, and the possible candidates gradually eliminated by the conferees. They finally selected Senator Kern as the best candidate. Kern was not present at the conference and had made no effort to secure support for the position.

Several good reasons existed for the selection of Senator

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<sup>28</sup>There is no evidence that Taggart felt any breach in his relations with Kern. Sallee, op. cit., p. 163; The Fort Wayne News, April 28, 1913, "Editorial;" and Fort Wayne Journal-Gazette, June 16, 1913, p. 1, col. 1.



Kern, despite the fact he had been in the senate for only two years. First, the candidate had to be a nationally known progressive who was in complete harmony with the Democratic platform. Kern had been a Vice-Presidential candidate in 1908 and had served as Chairman of the Committee on Resolutions, the committee responsible for writing the platform. Certainly, he measured up to this criterion. But so did a few other party leaders.

A second requirement arose out of the nature of the Democratic majority in the senate. With so small a majority, it was necessary that the candidate for the leadership have an unlimited reservoir of tact to preserve unified Democratic support of party measures. Not only would tact be necessary, but infinite patience with individuals as well. Kern had made his reputation in the party as one of the most patient and tactful leaders. The same could not be said for some of the other possible choices.

Other desirable criteria also fitted Kern, and through them the choice was made. Kern was recognized as a man of skill in situations where conciliation was needed, and personal popularity in the senate was a factor in his favor. His application of the tests of common sense and practicality to ideas and ideals sharpened the focus of attention upon him. And finally, his forty years of party service assured the leaders that opposition to party measures would not develop because of a lack of devotion to duty if Kern was elected.<sup>29</sup>

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<sup>29</sup>Bower, op. cit., pp. 287-289.

With the decision of the leaders already made, the caucus election of Kern on March fifth was merely a formality. His first act as majority leader was the appointment of the Steering Committee. The membership selected was safely progressive, but reflected a conciliatory tone by including Senators Martin and Clark to represent the conservative elements of the party. One revolutionary aspect of the selection occurred in the fact that five of the nine members had been in the senate two years or less.

As the process of the selection of committees continued it was quite clear that this revolutionary aspect was to be the theme in the senate. The golden god of seniority had been swept from its pedestal. Senior senators found themselves forced into choosing between honored assignments rather than accepting both. Kern's patience and tact were put to the test several times during this successful revolt. Senator Simonds, ranking member of the Finance Committee and a high tariff man, was made Chairman of the Finance Committee, but the committee membership consisted of progressive low tariff senators. Senator Bacon wanted both the Chairmanship of the Foreign Relations Committee and the office of President Pro Tem; but he reluctantly consented in the decision when he became only the committee chairman. Senator Clark, an ultra-conservative, was awarded the position of President Pro Tem. The new Banking and Currency Committee was composed of progressive currency men to insure the success of Wilson's campaign promise for currency reform.<sup>30</sup>

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<sup>30</sup>Ibid., pp. 289-292; and Frederick Austin Ogg, National Progress, 1900-1917 (The American Nation: A History, Vol. 27; New York: Harper and Brothers, 1918), pp. 213-214.

The changes were not made without some protest. Kern told his wife:

I have been under a terrible strain all this week--working with my Committee on Committees, arranging the membership of 73 committees, and selecting chairmen of all committees. Every Democratic Senator wanted to get on the best committees and secure for himself a first class Chairmanship. Tillman was storming around like a madman because he was to be removed from the chairmanship of the big Appropriations Committee. Our Committee divided nearly equally on the question of throwing Senators Johnston and Bankhead of Alabama out of their Chairmanships. It looked for a time as if my administration was going to break up and be a failure. I got the President's aid, and everybody else that I could, and we finally reported our Committees to the Caucus this morning expecting much dissatisfaction and a big row with Tillman and others. But to my surprise, the row did not occur, and everybody seemed delighted with what he got. When we brought the names of our Committees into the Senate for approval this afternoon, old Tillman asked to be allowed to move that the Senate approve our action.<sup>31</sup>

With his senate administration secure, Kern turned to other tasks before joining his family in Virginia. The first of these tasks was housekeeping. He needed to get settled in his new offices in the Senate Building, and his second task was that of calling on various government departments to secure positions for Indiana Democrats. During the next week, he would be concentrating on securing his portion of the senate patronage. Reward for party and personal loyalty was well in keeping with Kern's belief in the spoils system.<sup>32</sup>

The revolt spread its influence over the new senate rules. Chairmen lost their power of arbitrary control over legislation in a series of far-reaching changes. Now a majority of the committee

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<sup>31</sup>Kern MSS Collection, "Kern to Mrs.," March --, 1913.

<sup>32</sup>Ibid. cf. p. 83, n. 13.

might call for committee consideration of pending legislation, and a preponderance of the majority members in a committee could name sub-committees to consider pending legislation and report back to the full committee. They could also name members to confer with House conferees when disagreements on legislation between the two bodies occurred. These changes in the rules kept the progressives in firm control of the Democratic majority, thereby keeping the odds in favor of the success of the Wilson program. The effect of the changes in the rules was to deprive the committee chairmen of their authoritarian positions and reduce them considerably to the status of coequals with their committee memberships. Through all of this party unit was preserved.<sup>33</sup>

The significance of these changes did not go entirely unnoticed by the nation's press. Comments ranged from that of The Literary Digest, "the reorganization of the senate has been accomplished in a way paralleling the overturn of Cannonism in the house by the practical abolition of the seniority rule in making up committees," to that of The Springfield Republican which commended the "throwing off of the customary control of a perpetual succession based on seniority of service." Senator Kern commented to the press that it was the intention of the Steering Committee to make the senate "Democratic not only in name but in practical results." The radical changes in the senate rules attracted less attention, but The Review of Reviews stated that "even more significant than the personal changes which bring a new set of men into control of a body so recently managed by the extreme conservatives of both parties are the

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<sup>33</sup>Bowers, op. cit., pp. 293-295.

changes in the rules."<sup>34</sup>

The role of Araminta Kern. While Kern had assumed the reins of the senate majority, his wife stood patiently by in their home, Kerncliff, in Hollins near Roanoke, Virginia. Her political judgment continued to be of great help to her husband. Kern tended always to expect the best in people. He was highly idealistic in his dealings with them, honest and open-handed in every way. His love for people told him to expect the same kind of associations from others. Mrs. Kern, however, was far less optimistic. She had learned to become an ardent Democrat through the maturation process of watching her husband's progress and disappointments from the time he became Reporter to the Supreme Court to his victory as a United States Senator. From the position of a biased observer she knew that there had been several "supporters" in time of victory who had been missing from the ranks in time of doubt and defeat. She knew that these opportunists were not to be trusted. In effect, she became a check on the reins of her husband's trust in people and their support of the progressive program. She served as a sounding board for his troubles, a counselor for his political problems.<sup>35</sup>

Mrs. Kern also had a political career of her own. While in Virginia she maintained an interest in child welfare work in Indiana, and her chief office was that of a member of the Board of Trustees in charge of the Indiana Girls' School, a correctional institution. Her political activity and character are indicated in

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<sup>34</sup>Ibid., pp. 292-294.

<sup>35</sup>Interviews with John W. Kern, II, October, 1957 through January, 1958.



a letter to Governor Samuel Ralston concerning an issue arising out of a proposal for a new cottage at the school.

Can you give me any reason why we should not build a cottage that would add to the comfort of our Supt. providing we took care of the number of girls necessary. Is there any reason for Amos Butler interfering to the extent he forced our board to give Miss Dye another chance--the memory of which makes my very blood boil-- . . . I only want fair play and I insist that we should be allowed to plan a cottage that suits our ideas--not beyond the appropriation . . . Why should we build just above a septic tank when we can place the cottage in a more healthful place. Mr. Kern sees this as I do and thinks "Amos" is going too far--tho of course he insisted that I say nothing--but I am not built this way. I want justice. I believe you will find that this board is most careful and are anxious to please you and do our part toward making your administration a success. Of course my faith in you is so strong that I believe the people would have faith in you--even if every board you have should "go wrong."<sup>36</sup>

Just as valuable as her political advice was her aid to her husband in meeting the endless social obligations that were so much a part of the political activity of this period. One of her most formidable tasks occurred when she found it necessary to ask President Wilson to leave a party. The episode occurred at a dinner party at Bryan's home in Washington. Kern had to leave on a late evening train for Indianapolis in order to make a speech there the next day. They had expected the party to break up in plenty of time, but the President became so intrigued by the performance of the singer brought in for the occasion that he kept calling for encores. Time was getting so short that Mrs. Kern finally slipped into a chair next to the President and said to him, "Mr. President, we probably will be court-martialed, but we are going to have to leave before you do," and then explained her husband's predicament. The Presi-

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<sup>36</sup>Indiana State Historical Library, Governor Samuel M. Ralston Collection, Letter from Mrs. Kern to Gov. Ralston, September 19, 1913.

dent agreed to assist them, and said his farewells to the people present in as few minutes as possible. They humorously recalled the incident several times on later occasions.<sup>37</sup>

She maintained occasional correspondence with President Wilson for the purposes of expressing normal social greetings, and attending to social relations that fell under her obligations as a hostess in party circles. Expressions of sympathy, Christmas wishes, friendly and informal remarks about her children (Wilson was especially fond of the two boys, John, II and William), invitations to visit them, congratulations, and summations of "grass roots" political expressions that her husband had observed while speaking outside of Washington served to assist her husband in maintaining good relations with the President.<sup>38</sup> The President faithfully responded to this correspondence, and even he seemed to be aware of her political acuity. In response to Mrs. Kern's expression of concern that the pressures of those favoring war with Germany might push the nation into the world conflict, the President assured her on January 24, 1916, that there need be no fear "that the jingoes will force or even hurry me into anything."<sup>39</sup> It is quite evident that Mrs. Kern was in every respect a partner to her husband in his political success.

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<sup>37</sup>Indiana State Historical Library, "They Achieve" Scrapbook Collection, Lotys Benning Stewart, "They Achieve Series, No. 69, The Indianapolis Star, July 5, 1942.

<sup>38</sup>United States Library of Congress, Woodrow Wilson Collection, Series II, Letters between Mrs. Kern and Woodrow Wilson, August 22 and December 23, 1914; and January 4, January 21, and October 16, 1915.

<sup>39</sup>Baker, op. cit., Vol. VI, Facing War, 1915-1917, p. 26.

Kern and the issues of the first Wilson Administration.

While Mrs. Kern was busy carrying out her duties as a political helpmate and mother, her husband was carrying out his task of "mothering" the senate. Those four years, from April 7, 1913 through March 4, 1917, were to be the longest and hardest four years of work that the United States Senate had experienced since the Jefferson administration. The Congress was not in session only eleven months out of those four years, including short holiday breaks. The solons were in session 1,022 days out of 1,427. During those first years Kern was faced with the double burden of extra sessions and a very narrow Democratic majority.<sup>40</sup>

Although the problems were interrelated, perhaps the one which caused the most concern was the narrow majority. Keeping Democratic members "on the party reservation" on individual party issues was an especially difficult task. While the senate leadership and the administration were progressive, there were still many conservatives among the senate membership that had to be dealt with on these issues. The program was uncompromisingly progressive, and the conservatives had to be kept in line.

The energy and enthusiasm of President Wilson for his own program were certainly factors in inspiring party unity. But Wilson's enthusiasm for his program did not carry through to his personal relations with the politicians in the House and senate to the same degree. Many distrusted the "political novice" who had been catapulted from a position as a college president to President of the United States in a little over two years. In the same manner,

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<sup>40</sup>Bowers, op. cit., p. 349.

Wilson did not trust the politicians completely. His experience in breaking the New Jersey machine had taught him that there was much in the politician that did not merit his trust.<sup>43</sup>

Thus, it would appear that the picture of cooperation by Arthur S. Link was somewhat less rosy than painted.

To begin with, because of the Republican rupture, the Democrats had a majority of seventy-three in the House during the critical first two years of the administration. Moreover, many of the Democratic members were new and inexperienced--114 of the 290 had been elected for the first time in 1912--and Wilson easily dominated them. In addition, the old-line Democratic leaders like Oscar W. Underwood, William C. Adamson, or Henry D. Clayton realized that the fate of their party depended upon their performance, and they willingly cooperated with the President to prove that they were not, as Republicans often charged, "the organized incapacity of the country." Finally, most of the Democrats in the Senate were able, responsible, and progressive, as eager as Wilson himself to give the administration success. . . . Even the older, more conservative leaders in the Senate, like Furnifold M. Simmons of North Carolina, Thomas S. Martin of Virginia, John H. Bankhead of Alabama, or William J. Stone of Missouri, signified their readiness to follow the President.<sup>44</sup>

Certainly, many of these political developments contributed to the end result of a progressive four years of considerable legislation. Nevertheless, while many of these Congressmen were rela-

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<sup>43</sup>Instances of this atmosphere are numerous. Wilson's reliance on Col. House is an indication of Wilson's distrust. The Democratic revolt on the Ship Purchase bill is an indication of senatorial distrust. Ralph McGill, "The President," in Em Bowles Alsop (ed.), The Greatness of Woodrow Wilson (New York: Rinehart and Company, 1956), pp. 82-83 and 85-86; Link, The Progressive Era, pp. 9-10, 25-26, and 31-35; Bowers, op. cit., pp. 349-350, 353-358, and 361-362; Bowers, Letter to author; Interviews with John Kern, II; and Link, The New Freedom, pp. 67-70 and 147-157. Link is somewhat inconsistent since he characterizes Wilson's leadership in Congress as omnipotent, and in the same work cites examples and characteristics of weakness in his leadership.

<sup>44</sup>Link, The Progressive Era, p. 35. See n. 43.

tively new and inexperienced, they had been products of local political experience covering several years. They were politicians, while Wilson was the amateur.<sup>45</sup> Also, the conservatives had just been defeated in the organization of the senate majority by the progressives, the supporters of Wilson. Although they realized that they would need to lend general support to the administration, they could not be depended upon for the kind of support necessary to push through every measure on the strength of the Democratic vote alone.

Evidence of the majority problems in the senate occurs not only in consideration of differences of viewpoint,<sup>46</sup> but in human weaknesses as well. Congress was called into extraordinary session to consider tariff revision just one month after Wilson assumed office. From April 7, 1913 until October 24, 1914, the longest congressional session in the nation's history, Congressmen were at the task of considering legislation. That is, many of them were. Washington is not a vacation wonderland during the late spring and summer. Heat and humidity combine to make it one giant steam bath. Across the line, the racing season was in full swing in Maryland. The cool breezes in the Blue Ridge Mountains beckoned the solons as they sat in senate chamber. With no ventilation, the giant fans only pushed the hot, damp air around the chamber. As the tariff

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<sup>45</sup>The word "amateur" is used in a relative sense to denote a degree of inexperience in the practice of politics. Wilson served his political apprenticeship as Governor of New Jersey and President of Princeton University from 1902 to 1913.

<sup>46</sup>Baker, op. cit., Vol. V, Neutrality, 1914-1915, p. 134; and Alfred Lief, Democracy's Norris: The Biography of a Lonely Crusade (New York: Stackpole Sons, 1939), pp. 144-146 and 148-149.

fight in 1913 wore on into the months of June and July, the day-dreams became more often truant realities. Senator Walter Johnson was pitching for the Washington Senators at the ball park, and could be found only at the morning roll calls. The "party whip" sent out a letter pleading for regular attendance, and then immediately disappeared for a few days. When he returned, Kern told him he was glad he had recovered from his illness. "But Senator," was the reply, "I have not been ill." Kern told him that he had not seen him for several days and had assumed he was sick. The secretary of another senator sought to explain his absence by telling Kern he could not get a seat on a returning train. Kern got him back by showing the secretary a number of newspaper clippings that listed the Senator's "vacation" activities.

Examples of this kind of truancy occurred all the time. In part, it can be forgiven. After all, the senate was not accustomed to meeting through the Washington summer, and the fact that they consented to remain in session is all to their credit. But someone had to remain in Washington, and someone had to keep track of the wanderers and attempt to bring them back when they were needed. The narrowness of the majority made a Republican "surprise party" on pending legislation entirely possible, and the responsibility rested on Kern's shoulders. The fact that there were no "surprises" by the Republicans is ample testimony both to Kern's ability in his watchdog role, and to the Republican desire to wander as well.<sup>47</sup> On November 27, 1913, the New York Times saluted the Democratic record of

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<sup>47</sup>Bowers, op. cit., pp. 349-353.

attendance.

So far, however, the Democrats have shown their ability to maintain a quorum without Republican assistance. Almost the full Democratic strength is in Washington and while that is only a little more than a majority, they are usually to be found for roll calls. The Republicans undoubtedly will insist upon the maintenance of a quorum and it is likely that debates will be seriously hindered by the repeated calling of the roll.<sup>48</sup>

Misinterpreted humor prompted Kern to address the senate on August 9, 1913. Senator Jacob H. Gallinger of New Hampshire had attempted to interject a little humor into the senate business two days before by exaggerating an alleged order by Secretary of the Navy, Josephus Daniels. Unfortunately, newspaper reporters and some senators took him seriously. Kern's speech was in defense of the Secretary of the Navy and in advocacy of greater promotional opportunities for enlisted men in the Navy.<sup>49</sup>

Never during those first two years of the Wilson administration was the senate all "sweetness and light." During that first summer there were many disagreements and heated discussions about the Underwood tariff bill that were ironed out under Kern's leadership in majority caucuses.<sup>50</sup> On one occasion, a Democratic senator bolted the caucus and accused the leadership from the senate floor of running the Democratic caucuses like a political machine. After

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<sup>48</sup>The debate in question was on the Federal Reserve bill. New York Times, November 27, 1913, p. 12.

<sup>49</sup>Congressional Record, 63d Cong., 1st Sess., 1913, L, Part 4, 3215-3216.

<sup>50</sup>The majority caucus was an instrument of leadership which had long been neglected by the Democrats. On June 20, 1913, the first caucus of Democratic senators "that anyone" could remember was held. From that time forward, the senate majority caucus was a potent weapon in lining up support behind the administration's measures. Wilfred E. Binkley, President and Congress (New York: Alfred A. Knopf, 1947), pp. 211-212.

four months of patient, tactful work, Kern saw the results of his efforts in the passing of the Underwood tariff law. Typically, Wilson received the credit.<sup>51</sup>

With the tariff law enacted, Congress was eager to adjourn, but Wilson insisted that they take up the Federal Reserve bill before adjournment.<sup>52</sup> Democratic senators grumbled, while prolonged hearings were demanded by the angry minority on both sides of the chamber who looked with disfavor on currency reform. A caucus was held by the Democrats on November 26, 1913, to break the deadlock in the Banking and Currency Committee, and it was agreed that there would be no Christmas recess unless the currency bill received senate approval by December twenty-fourth. Kern addressed the senate on December seventeenth, asking for an unanimous consent agreement on a date which the vote on the bill would be taken.<sup>53</sup> The motion failed, but the leadership again proved effective and the bill was signed into law by the President on December twenty-third. Again,

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<sup>51</sup>Link and McGill both adopt the view that Wilson's personal leadership was responsible for the victory over would-be destroyers of tariff reform in the senate. But the leadership of senate progressives in the caucuses which applied Party pressure more directly to the recalcitrants was logically more effective. Kern was a strong supporter of tariff reform. Link, The Progressive Era, pp. 35-43; McGill, op. cit., pp. 87-88; Bowers, op. cit., pp. 349-351; Link, The New Freedom, pp. 177-197; and George and George, op. cit., pp. 134-137.

<sup>52</sup>It was a characteristic of Wilson during these four years that he demanded immediate action on his proposed legislation, never satisfied with success on any single measure. Ibid., pp. 117-120, and 137-142.

<sup>53</sup>Congressional Record, 2d Sess., LI, Part 2, 1033-1034.



the administration received the credit.<sup>54</sup>

The next session got underway in January of 1914. Administrative measures designed as anti-trust legislation further shortened already short tempers. The conservative Democrats felt that things had already gone too far with the currency reform. Now Wilson sought to tamper with the hallowed ground of big business enterprises. Several opponents of the intended anti-trust legislation sought to defeat the legislation by interpreting the proposals to apply equally to labor unions. Kern felt strongly that the arbitrary price-fixing and monopoly consumer oppression by big business was in a far different class from the organization of laborers and farmers for the purpose of improving living wages and living conditions.<sup>55</sup>

Kern's interest in the laboring men first became nationally prominent in his Paint Creek resolution, which he introduced in the senate on April 12, 1913. Briefly, the resolution provided for an investigation by a sub-committee of the senate Committee on Education and Labor into the laboring conditions of miners in the coal fields of West Virginia. The sub-committee was also to determine if agreements and combinations contrary to law were in existence. At the time of its introduction Kern did not realize the attention that this resolution was to receive. Resolutions on this subject

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<sup>54</sup>bill. Above comments (n. 51) also apply to the Federal Reserve  
89-92; Link, The Progressive Era, pp. 43-53; McGill, op. cit., pp.  
George Bowers, op. cit., p. 353; Kern MSS Collection, "Kern to Mrs.,"  
(Probably December), 1914; Link, The New Freedom, pp. 199-240; and  
and George, op. cit., pp. 137-142.

<sup>55</sup>Bowers, op. cit., pp. 328, and 353-354.



had been introduced before, but had never received satisfactory attention. Conditions in these mining fields were in such a state that mine owners had hired men who had killed not only the miners, but the wives and children of miners in camps suspected of union activities. Some union leaders were being shot, while others were held as prisoners by the owners.

The subject was not a popular one with the senate. Many of the solons steered clear of the subject because they feared being identified by their constituents as favoring this fiery young labor movement that was attacking the free enterprise system. A few owed allegiance to management circles who wanted the union movement stopped on whatever front, no matter how justified the cause that precipitated the movement.

Kern found some friends in the senate on this issue, but the fight was an up-hill struggle against one of the most effectively organized economic forces in the country. The opposition possessed a thoroughly effective press that ground out the benefits of paternalism to the public. Kern gave a major address in support of the resolution on May 9, 1913.

The resolution was finally approved by the senate, and the investigation which followed completely substantiated the case of the miners against the owners. The opposition press was forced to retire from its prediction of downfall for Kern's leadership as a result of the investigation. Kern's stand had been vindicated.<sup>56</sup>

Kern played a significant role in other battles for social justice. One of these occurred during senate consideration of the

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<sup>56</sup>Bowers, op. cit., pp. 296-327.

Sundry Civil appropriation bill of 1914. One of the commissions covered by this appropriation bill was the Industrial Relations Commission, and, under the leadership of Frank P. Walsh, a lawyer from Kansas City, this commission had been doing a thoroughly effective job of probing into the social and industrial problems of the country. Many times the efforts of the commission resulted in exposing management malpractices that hurt the case of management in its fight against the rising tide of unionism. The propaganda mill of business began to grind out their version of the commission's work. Walsh was pictured as a socialistic visionary who was only causing bad blood to flow between employers and employees. The work of the commission was pictured as a dangerous waste of the taxpayers' money, and the result was that the Appropriations Committee cut the appropriation from \$200,000 to \$20,000. The move was designed to strangle the commission's work through a lack of funds.

Kern sympathized with the efforts of the commission, and was determined to see the commission continue its tasks. Senator Borah took the lead in defending the commission, and Kern followed with a strong commendation and defense of its purposes and work. The debate on the issue took up most of the day on July 7, 1914, but when the vote was finally taken the Industrial Relations Commission was given the necessary funds by a vote of 46 to 18.<sup>57</sup>

Wilson again moved in opposition to the progressives in his party in the consideration of the Seamen's bill. He had been in favor of the bill from the beginning, but discovered that the bill would have the effect of abrogating the contractual obligations of

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<sup>57</sup> Ibid., pp. 329-332. cf. chap. ii, pp. 41-42.



alien seamen on foreign ships while they were in American ports. This, in turn, brought the United States into a position of conflict with certain maritime treaties, to which she was a signatory member. It was further pointed out to Wilson that such action might have an undesirable effect upon the convention on safety at sea, which was to be held in November, 1913. While it was too late to stop action in the senate on the bill, Wilson was able to halt passage in the House.

The bill's chief lobbyist was the organizer, advocate, and leader of the seamen's union, Andrew Furseth. He was one of the delegates to the London Convention which might have resulted in a convention agreement that would have made the Seamen's bill unnecessary. When the Convention failed to meet the standards set by the Seamen's bill, Furseth resigned his position as delegate and returned to the United States to continue his fight on behalf of the bill.

The Convention continued, and ratified an agreement that called for fairly rigid safety measures on all maritime shipping carried on by the signatory states. The question before the administration now became one of pressing for unconditional ratification, or of provisional ratification which would leave room for the Seamen's legislation. The decision was made to press for unconditional ratification. But the Congressional progressives won the victory.

On August 27, 1914, the House passed a modified version of the Seamen's bill, and in December the senate ratified the Convention with a broad reservation. Three months later, both houses ratified the conference report on the Seamen's bill. Bryan, in a

rare moment of progressive disagreement, urged Wilson to give the bill a pocket veto, and it appeared that this would be its fate even after a letter of appeal from Furseth reached Wilson.

There were many powerful influences, other than diplomatic, which were against the bill. Delegations appeared at the White House to protest the measure, and the National Chamber of Commerce came out against the bill. On the other hand, the progressives in both parties generally favored the measure. Bryan opposed it only on diplomatic grounds.

Then two events occurred which changed Wilson's position. Kern led seven or eight senators to the White House, and urged the signing of the bill. On March second Senators La Follette and Owen accompanied Furseth in a call on Bryan. As a result of Furseth's persuasive appeal and La Follette's personal promise that Congress would give its earnest support to the State Department in the abrogation of old treaties and negotiation of new ones to eliminate conflict with the Seamen's bill, Bryan gave his support to the legislation. Wilson, after a considerable amount of deliberation, finally signed the bill on March 4, 1915.<sup>58</sup>

Kern's role in the passage of the bill is best told by Furseth, its chief advocate.

"Shortly after the senator came to the senate I went to him and asked his permission to tell him about the seamen. He had not time then, but told me to come to his hotel. Upon my arrival at the appointed time I told him it would take

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<sup>58</sup> Link, The Progressive Era, pp. 61-63; Bowers, op. cit., pp. 332-340; Link, The New Freedom, pp. 269-274; and Elmo Paul Hohman, "Maritime Labour in the United States: I, The Seamen's Act and its Historical Background," International Labour Review, XXXVIII (August, 1938), pp. 200-211.

me at least twenty minutes to give him some idea of what I had to say. He told me to go ahead. I did and I was with him for about an hour and a half. In a quiet easy way he encouraged me to talk, and I told him about the seaman's daily life on the vessel, but more so on the shore. At sea, the terrible quarters, the ceaseless toil, the poor food, the general treatment and the longing to get away from the life which was degraded by involuntary servitude and a feeling of helplessness. On shore, the power of the Crimp to dictate our wages and take away what we were to earn in the form of advance or 'allotment to the original creditor,' as the thing was called; the power to compel us to go to sea in any vessel and with any kind of men--destitute poor devils who set our wages when we were hired and whose work we had to do at sea because they could not. With it all a feeling that we were forgotten by God and held in bitter contempt by men on shore. When I stopped he would ask a question and set me going again, and then he said--'I shall see whether we can not help you.'

"And he certainly did. I tried not to go to him too often; but it was often and he was always kind and encouraging. I always left him with more hope in my heart, and sometimes I needed it sorely. If God ever placed upon the shoulders of men a part of the burdens of others the senator was surely one of those men. My burden was always lighter and my heart more free when I left him.

"There never was anything that he could personally do to help getting the Seaman's bill through that he did not do. He helped to get the bill considered. He helped to get it passed. He saved it when the London Convention and the treaty adopted there was about to strangle it for good. If that treaty had been adopted the Seamen's bill could never have been passed. That treaty was designed to keep the Americans from the sea, and if the United States now has the men needed or is able to get them, not only the seamen, but this nation owes the thanks therefor to Senator Kern."<sup>59</sup>

Furseth again expressed his appreciation, this time personally to Kern in a letter of holiday greetings, written on December 31, 1916.

"My Dear Senator--The seamen have lived through one year in freedom, in hope, and in gratitude to you. On their behalf and for myself I wish you a blessed New Year and all the happiness that can come to those who feel the pain of others. May God in his mercy to us and to all who toil preserve you in health and strength to fight on for man's freedom."<sup>60</sup>

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<sup>59</sup>Bowers, op. cit., pp. 337-339.

<sup>60</sup>Ibid., p. 340.



Two other measures deserve brief mention at this point. The first of these was a model workmen's compensation bill that had been drafted by the American Association for Labor Legislation. The bill was sponsored by Senator Kern and Representative McGillicudy of Maine, and received full administration support. In the senate the bill met with a number of well-intentioned amendments but, nevertheless, amendments which if approved would have resulted in the destruction of the bill's effectiveness. Kern and his supporters successfully fought down the amendments, and the senate gave its approval to the bill in August of 1916. When the Kern-McGillicudy Workmen's Compensation bill became law, 400,000 civil service employees were enrolled under its benefits.<sup>61</sup>

The second measure was the Keating-Owen child labor bill. In 1914 Wilson had opposed a similar bill on the grounds that it was unconstitutional. But in the summer of 1916 he took strong administrative action to secure the passage of the Keating-Owen bill. Congress was in the mood to adjourn, because of the fast-approaching November election. The pressure of two heavy sessions of legislation had left many political fences in a critical state of disrepair. But Wilson and Kern felt that the legislation was essential if the midwest was to remain in the Democratic ranks. Kern and Senator Stone, after Wilson's personal intervention within the walls of the Capitol had failed to bring some recalcitrants in line, brought considerable pressure to bear upon the rebels both within

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<sup>61</sup>Kern first became an advocate for this kind of legislation while a member of the Indiana Senate, twenty-five years before this time. Ibid., pp. 340-342; and Link, The Progressive Era, p. 226.

and outside the caucus meetings.

Kern's role in the bill's consideration is best explained by one of the Democratic opponents to the measure, Senator Vardaman.

"I remember distinctly that the senior senator from Indiana stated to the caucus that a failure to pass the child labor bill would militate very much against the Democratic party in Indiana and would probably defeat him for re-election. But the caucus adjourned with a program agreed upon which left out the consideration at this session of the child labor and immigration bills. The next morning I heard that the distinguished senator from Indiana--the Democratic leader, mind you--was very much dissatisfied with the caucus action and was busily engaging himself trying to create sentiment in favor of rescinding the action of the caucus of the evening before. It was also whispered that the president would be invited to take a hand in order to save the senator from Indiana from the evil effects of non-action upon the child labor bill. The correctness of these rumors was soon verified. In due time the president of the United States appeared at the capitol and called certain senators into consultation. But as to what he said--or ordered--I am not at liberty to speak, since I was not one of the senators consulted.<sup>62</sup>

Kern had always been a strong advocate of permitting the protests and petitions of groups against proposed legislation to be printed in the Congressional Record. But on this issue, he felt so strongly the injustice of the protests that he refused to permit any of them, except one, to be printed. The exception was a letter from a minister in the South who protested on the grounds that child servitude was making it possible for many families to continue to live by permitting the children to work.

Through both administrative and senate leadership pressure, the action of the caucus was reversed. Kern continued to press home the idea to recalcitrant senators that child labor legislation could

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<sup>62</sup>Bowers, op. cit., pp. 345-346. Wilson was spurred to action by a deteriorating political picture in the face of the coming Presidential election. George and George, op. cit., p. 143.

benefit the party's chances at the polls in November. When the bill was finally taken up in the senate it passed with very little opposition. While Kern's work had again been quite effective, he received little credit for the bill's passage. The efforts of leadership in solon conversations and caucuses seldom come before the eyes of the public.<sup>63</sup>

Kern's participation in issues surrounding foreign relations during the period from 1913 to 1917 can only be indicated. While his beliefs led him to oppose any action that did not support America's neutrality, he generally supported administrative measures and led the majority in the fight for their adoption against the Republican efforts.

Kern's one failure to hold the majority in line occurred in March, 1915 with the defeat of the President's Ship Purchase bill. In 1913 the Ship Registry bill was introduced in Congress. With opposition developing to the measure, the President cancelled his usual cabinet meeting on July 31, 1913, and called the Congressional leaders, Senators Kern and Clarke and Representatives Underwood and Adamson, to the White House for a conference. He described to them the disastrous possibilities of the nation's exports rotting in warehouses because of a lack of merchant shipping from the belligerent nations. He then urged the Ship Registry bill as the means to provide the merchant marine necessary to meet that emergency. The bill, making possible the transfer of ships of foreign registry to American registry, passed the senate on August seventeenth and

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<sup>63</sup> Bowers, *op. cit.*, pp. 346-348; and Kern MSS Collection, "Kern to Mrs.," July --, 1916, August 6, 1916, and August --, 1916.



was signed by the President on August eighteenth.

But private enterprise shipping did not respond to the availability of transfer from foreign registry with the necessary amount of capital investment to purchase a large number of foreign vessels. There were still not enough American merchant shipping available. Thus, he urged the outright purchase of foreign shipping by the government through the instrument of the Ship Purchase bill.

Many arguments were urged against the measure. Most of them centered around the government purchase instead of private enterprise, and the implications of the purchase on the foreign policy of neutrality. The House caucus voted to support the measure, and passed the bill on February 16, 1915. The caucus action in the senate was also in support of the bill, but the Republicans were unified in their opposition. At a critical point in the deliberations seven Democrats (Senators Bankhead of Alabama, Vardaman of Mississippi, Hardwick of Georgia, Clarke of Arkansas, Hitchcock of Nebraska, Camden of Kentucky, and O'Gorman of New York) bolted the caucus decision and sided with the Republicans. On March 4, 1915, the senate adjourned without the bill achieving passage.<sup>64</sup>

On March 3, 1916, Kern delivered his fourth major address. He had long been opposed to American citizens risking the uneasy peace of our country by travelling on ships belonging to belligerents. But through the personal explanation of the President on reasons for his opposition to the Gore resolution, a measure designed to lead to the denial of passports to American citizens

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<sup>64</sup>Bowers, op. cit., pp. 366-368; and Baker, op. cit., V, pp. 109-134.



travelling on belligerent ships, Kern spoke in opposition to the resolution.<sup>65</sup>

As threatening as the war clouds were, the darkest clouds on Capitol Hill in late August and early September of 1916 were those which threatened a general railroad strike across the country. Conferences and Presidential appeals yielded no results. President Wilson's plan of settlement calling for an eight-hour day, increased freight rates and a permanent arbitration commission was completely unacceptable to the railroad presidents.<sup>66</sup> President Wilson's comment to the railroad presidents, as he left the final conference with them was, "I pray God to forgive you, I never can."<sup>67</sup> Kern wrote to Mrs. Kern his feelings on the subject.

"The railroad situation is alarming. The railroad presidents who are here seem to be determined not to yield to the president's requests, and if they persist it means the greatest strike in the history of the country--one that will tie up every railroad and stop every train in the country. The president came to the capitol to-day and called Senator Newlands, chairman of the Railroad committee, and myself into his room to talk over a proposition to amend some of our arbitration laws and the Interstate Commerce law, so as to make further negotiations possible. . . . It is difficult to-night to foretell just what the outcome will be. The men who own the roads seem to care nothing for the public interests, and if disaster comes it will largely be their fault. I am calling the Steering committee together to-morrow and the president will probably come down to confer with a number of senators and congressmen Monday morning."<sup>68</sup>

Wilson met twice with the senators in Kern's private room, 249 in

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<sup>65</sup> Bowers, op. cit., pp. 366-368; and George and George, op. cit., pp. 153-154.

<sup>66</sup> Bowers, op. cit., pp. 363-365; and Link, The Progressive Era, pp. 235-236.

<sup>67</sup> Link, The Progressive Era, p. 236.

<sup>68</sup> Ibid., pp. 235-236; and Bowers, op. cit., pp. 363-365.

the Senate Building, during which time the President's proposals were discussed and adopted for senate action. Wilson's proposals included the enforcement of an eight-hour day on the railroads, and compulsory suspension of railroad strikes until a federal commission had investigated the cause for strike action. The legislation, known as the Adamson Act, was enacted on September second.

While Kern's leadership among the senators was as valuable in this issue as in others, Kern was especially valuable as the recipient of information on the negotiations in progress. Because of his popularity with organized labor, and his stand on this issue, he was kept in touch with the progress of the conferences by reports from the labor participants in the conferences.

The railroad presidents were not eager to accept the Adamson Act. From January to March of 1917 they fought the legislation, but with the impending war and a personal appeal from the President, they consented to the inevitable. The nation's largest transportation industry became the trail blazer in the eight-hour day.<sup>69</sup>

Kern also spoke on other occasions, but these occasions were of a minor character. A summary of these minor addresses would reveal the following list.

1. February 15, 1913      Memorial address on Vice-President James S. Sherman
2. February 22, 1913      Memorial address on William W. Wedemeyer, Representative
3. June 24, 1916          Memorial address on Senator William O. Bradley

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<sup>69</sup> Ibid., pp. 365-366; Link, The Progressive Era, pp. 236-237; and Kern MSS Collection, "Kern to Mrs.," September 3, 1916. cf. chap. ii, pp. 41-42.



4. August 22, 1916 Speech of apology to the senate and Senator Hardwick of Georgia for an error in senatorial courtesy
5. February 18, 1917 Memorial address on Senator Benjamin F. Shively
6. February 25, 1917 Memorial address on William G. Brown, Representative
7. March 3, 1917 Speech announcing his departure from the senate<sup>70</sup>

Of course, other issues during this first Wilson administration concerned Kern, and many of these were issues of some importance. Certainly, the beginning of the income tax was one of these. The purpose here has been merely to indicate some of the issues which seem to have been of most active concern to Kern. Many other senators during this period were capable of leadership, and Kern was not the kind to keep leadership from others.

The nature of Kern's leadership. It is perhaps prudent to inquire into the nature of Kern's leadership in the senate. Certainly the exposition of the preceding issues indicates to some degree the nature of the leadership, but a more detailed investigation seems to be of value.

Just as Kern's qualifications for majority leader brought him the position, these same qualifications were to maintain his position of leadership during some of the most trying years of legislative labor ever faced by the senate. The extraordinary session of 1913 flowed without a break into the regular session and into the next session. When Congress finally adjourned in 1914 it had been in

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<sup>70</sup>Congressional Record, 62d Cong., 3d Sess., 1913, XLIX, Part 4, 3208-3209; 3676; 64th Cong., 1st Sess., 1916, Part 10, 9923-9924; 12929, and 12945-12946; 2d Sess., 1917, LIV, Part 4, 3551-3552; Part 5, 4251; and 2913-4914.

session 567 days, leaving in its wake the greatest amount of progressive legislation ever enacted in so short a time to that date.<sup>71</sup>

Bowers best describes Kern's leadership of this period.

Throughout this period Kern had played a vitally important part, but not a spectacular one. When the senate was not in session he was busily engaged with the Steering committee in efforts to reconcile differences, to conciliate the disgruntled, and owing to the meager majority always in danger of being overthrown, frequent caucuses were called at night, and, when time was pressing, on Sunday mornings. His work was not the sort that strikes the imagination, but it was the kind that counts, and with a less astute, patient, conciliatory and watchful leader the story of the achievements of the Wilson administration during the first two years might never have been written as it was. So completely did he dedicate his time and energy to his work that weeks went by when he never entered his offices in Senate building, and senatorial duties more important than those of routine were performed by his assistants.<sup>72</sup>

An outstanding example of Kern's devotion to his job occurred during the day and night deliberations on the Ship Purchase bill. Kern knew the dangers of a minor Democratic bolt from the caucus determinations. Therefore, during this period he had comforts brought on the gallery floor in order to get a little sleep between points of crisis.<sup>73</sup>

As desertions and threats of desertions began to occur the situation became increasingly difficult. On February twelfth, Kern told his wife that they were now relying on La Follette, Norris and Kenyon to make the vote a tie. Democrats were losing sight of their promise to uphold the President in passing the bill. On February

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<sup>71</sup>Bowers, op. cit., p. 355; and George and George, op. cit., pp. 133-134.

<sup>72</sup>Bowers, loc. cit.; and Bowers, Letter to author.

<sup>73</sup>Bowers, op. cit., p. 357, and Kern MSS Collection, "Kern to Mrs. . .," February 12, 1915 and February 15, 1915.

fifteenth, Kern told his wife:

Some of the Democratic insurgents are pretty tired of their bargain and would like to get back if they could let go. No, I am not blamed for the loss of the seven Democratic votes. Everybody (the President better than anybody) **[knows]** that it was no fault of mine and couldn't have been avoided. Hitchcock hates Bryan, O'Gorman hates McAdoo and the President. Hence they oppose everything the administration wants. Camden and Bankhead are controlled by the big interests--Vardaman is a crank who only wants notoriety while Clarke of Ark. is a rule or ruin reactionary. Speaking of myself Hoke Smith said yesterday, "You have the affection of everybody on our side as no one else could have."<sup>74</sup>

Despite the efforts of Kern and the President, the bill failed.

Not until August 18, 1916, was it possible to bring enough pressure to bear in the caucus to push through a new Shipping bill.<sup>75</sup>

While the President kept up the deluge of administrative measures during the years of 1915 to 1917, Kern was reelected majority leader and faced the task of gaining senate acceptance on the legislative schedule which was already loaded beyond its normal capacity. Even Democratic senators who possessed a high degree of loyalty to their party, and especially to its platform, became discouraged<sup>76</sup> when they saw the products of sweltering summer labor fall under criticism by an unappreciative press and public.

Thus, it was necessary for Kern to engage regularly in analyzing the sentiments of his colleagues. The narrow majority and the discouragements made it necessary to consult constantly with other Congressional leaders, and the changing sentiments required him to remain in frequent reportive contact with the administration.<sup>77</sup>

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<sup>74</sup>Kern MSS Collection, "Kern to Mrs.," February 15, 1915.

<sup>75</sup>George and George, op. cit., pp. 152-153.

<sup>76</sup>Kern MSS Collection, "Kern to Mrs.," February 12, 1915.

<sup>77</sup>Bowers, op. cit., pp. 358-360.

Several times Kern would report that the prevailing opinion of the majority was in favor of adjournment for a much deserved rest. Wilson would tactfully insist upon the importance of the measures before the senate, and Kern would return with new inspiration to keep the senate in session. Conferences in the Steering Committee would lead to party caucuses and the eventual decision to support the President's wishes to continue in session.

Taunts from the press and the opposition that the senate had relinquished its legislative leadership to the administration had some effect, however. With the conservative dissatisfaction already evident, minor desertions occurring, and absenteeism compounding the problems of a narrow majority, taunts did little for the morale of the Democratic members. A never-ending task of conciliation faced Kern, not only on issues but on ruffled feelings as well.<sup>78</sup>

Furthermore, Kern had not wanted the task of the leadership for another two years. He had told his wife in either late February or early March:

I will probably be offered the leadership again and will decline it. I could not stand the strain for another two years. I must be in a situation where I can get away for a week or a month if I feel like it. I would not repeat my experiences of the past month for any money--the strain is too great, and I feel that I would break down completely and this I cannot afford. . . . The strain and worry are not compensated for in any way. . . . I am in reality a prisoner here as long as this leadership continues and I am determined to end it. . . .<sup>79</sup>

But events dictated the necessity for Kern to run for reelection to the leadership.

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<sup>78</sup>Bowers, op. cit., pp. 358-360.

<sup>79</sup>Kern MSS Collection, "Kern to Mrs.," (Possibly February), 1915.

Most of the Democratic leaders are here and the sole topic of conversation is the organization of the Senate. While most of them seem to be in favor of my reelection as leader, there are a few who are trying to work up a scheme to make me President pro-tem of the Senate, and elect some one else as leader.

In view of the war on me that has been commenced by the Indianapolis Star, and I understand it will be kept up, it is important to me that I be reelected to the position I already hold. . . . Swanson, Overman and Fletcher are the only ones that I know of who are active in trying to get up the movement to make me President Protem, but there may be others in it. Fletcher and Overman both want my place, and Swanson is working in Martin's interest.<sup>80</sup>

As it turned out when the caucus met to elect the majority leader, Kern's opponents had received so little encouragement in their proposal that they were among the leading spokesmen asking for Kern's reelection by a rising vote. Thus, Kern became the majority leader for another two years.<sup>81</sup>

Kern's personality, party prestige, and ethical character appeared to be his chief assets in persuading senators to overlook their personal considerations in favor of the higher purposes of loyalty to their party leader and the party platform. His popularity with the Democratic senators, his sincerity, and the soundness of his political judgment were rarely questioned. His appeal for unity of effort on the basis of the party's reputation as a constructive force nearly always met with success.<sup>82</sup>

Some of the Democratic senators were inclined to accuse him of weakness when he failed to denounce the Democratic senators who had deserted the ranks to assist the Republicans in defeating the President's Ship Purchase bill. But Kern's leadership was not based

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<sup>80</sup> Ibid., March, 1915.

<sup>81</sup> Ibid., Letter two days later.

<sup>82</sup> Bowers, op. cit., pp. 361-362.



upon harsh discipline measures. While he looked upon the desertion with distaste, he was not the kind of leader who would resort to hasty words of denunciation when his leadership had been frustrated on a single issue. He knew that temporary disagreements on single issues exist only on those single issues. Criticism or denunciation of those single issues would result only in the loss of the confidence and friendship of the recalcitrant on future issues where his aid could well mean the deciding vote. To criticize the recalcitrants would mean that Kern would lose votes for future administration measures.<sup>83</sup>

Others felt that Kern was not a true leader because he did not lead the majority in making speeches in behalf of the administrative measures. There were many prominent senators, and more insignificant ones, who made more speeches than he did. Kern seldom spoke during those four years. The more essential work in the conferences, caucuses, Steering Committee, and direction from the floor occupied a great deal of Kern's time that otherwise might have been put to use defending the measures that he supported.

Another factor which figured prominently in Kern's decision not to feature himself in the oral advocacy of administrative measures from the senate floor was his strategy in dealing with the Republican opposition. His strategy was to keep the Democrats from responding to the Republican arguments, let the Republicans talk themselves out as soon as possible, and thereby force an early vote.

This strategy meant that the burden for favorable vote ac-

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<sup>83</sup> Ibid., p. 362.





tion rested entirely on the shoulders of Kern and other senate Democratic leaders. Kern and men like Senator Stone spent weeks in advance of a particular vote lining up the Democrats behind the measure. When all the disagreements had been conciliated and victory assured, then the measure was allowed to come to the floor for the final debate and vote. Therefore, the Republicans in opposition generally had little effect on the outcome of legislation.

Kern recognized one weakness in this strategy other than planned desertion from the conference and caucus decisions. On the day of the final debate when the galleries were packed with constituents, he lived in fear that some Democratic senator bent on thrilling the galleries with his eloquence would upset his carefully lined up victory. For this reason, Kern did not himself engage in this senseless kind of speaking, and did his best to discourage others. He was not concerned with obtaining the credit for the victory. He was satisfied with the realization of that victory.<sup>84</sup>

Dictatorship could never have been substituted for the type of leadership undertaken by Kern. The individualism and talent of the Democratic senators would never have worked "in harness" under a dictator. Kern, realizing this, never sought to unify the majority by making demands upon them. When, in the case of the child labor bill, he came dangerously close to this attitude with the comment that failure to act would result in his defeat, the majority responded by leaving the bill out of the caucus determination of future legislative action. The bill was saved only through the personal intervention of the President, thereby neutralizing Kern's

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<sup>84</sup>Ibid., pp. 358-362.

role as an advocate for action on the bill.<sup>85</sup>

Kern carried most of his points in conferences and caucuses by his insistent persuasiveness. Opponents found it was much easier to follow his logical and emotional appeals than to offer objections and follow a different course.<sup>86</sup> This is perhaps best exemplified by Bowers.

More than any other man he was responsible for getting the Wilson measures through, but because his work was done behind closed doors with the men of the party in opposition he had never had the credit he more than any other man deserved. I remember when Senator Reed of Missouri, a powerful man and not a great partisan of Woodrow Wilson was fighting a Wilson bill I was present at Kern's attempt to line Reed up when the conference closed with Reed saying: "Well, Uncle John, if you feel so strongly about it I will vote for your damn bill." That sort of thing happened regularly during those hectic four years of the first Wilson administration.<sup>87</sup>

Many other public servants had opportunities to observe Kern's leadership. Among them, Secretary of the Treasury William G. McAdoo who said:

"John W. Kern served as Democratic leader of the senate during a period when some of the most important legislation in the history of the country was enacted into law. With the people's interest ever uppermost in his mind, he marshalled the forces of his party with infinite patience and tact, and always with self-effacement. He was loved and respected by his colleagues, regardless of party, and always possessed the confidence of the public and the administration."<sup>88</sup>

Senator Charles S. Thomas analyzed Kern as a leader in this way:

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<sup>85</sup> Ibid., p. 371.

<sup>86</sup> Ibid.

<sup>87</sup> Bowers, Letter to author.

<sup>88</sup> Bowers, op. cit., p. 369.

"Senator Kern was the most kindly, efficient and practical of men, and an ideal leader for a majority just coming into control of a great body like the senate, after an exile of twenty years. No other member of the majority could, in my judgment, have done the work so well and so satisfactorily as Senator Kern; . . .

". . . The senator's judgment of men, his methods of appeal and his wonderful tact in dealing with his associates enabled him in the course of ten or fifteen days to report a plan of organization [the reorganization of the Senate after the 1912 election] absolutely satisfactory to all of his associates with a solitary exception. Even that exception finally gave way to Senator Kern's resourceful, courteous and generous methods of treatment. I think it can be said with perfect truth that the enactment of the great program of reform legislation by the sixty-third congress was due as much to Senator Kern's splendid leadership as to any other single influence."<sup>89</sup>

Senator James A. O'Gorman emphasized other qualities of Kern's leadership ability.

"His upright character, his recognized ability and his attractive personality had already prior to his selection as Senate majority leader given him a strong hold upon their [his colleagues] esteem. At our conferences after he became Senate majority leader, which were frequent, he was wise and resourceful in suggestion. On these occasions he invited the freest discussion of legislative plans and policies, and was always candid, sympathetic, conciliatory and helpful.

"He had a clear and strong mind, a sound judgment, an unbending integrity, a comprehensive knowledge of our constitution and laws, and a power of laborious application that enabled him to render valuable and efficient public service. Patriotism, humor and loyalty to his friends were his eminent characteristics. He was a strong partisan, but there was a kindness about him that turned aside all feelings of ill will or animosity."<sup>90</sup>

This last statement would seem to imply that Kern won a number of personal friends on the Republican side of the aisle, and that these friendships remained largely undisturbed during the polarity of partisanship on the senate floor. The President Pro Tempore of the

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<sup>89</sup> Ibid., pp. 371-373.

<sup>90</sup> Ibid., pp. 373-374.

senate, Senator Willard Saulsbury, stated that:

"In his position as Democratic leader and chairman of the caucus he displayed great ability and tact in handling a majority of senators composed of men whose opinions in some cases differed widely. Every one respected him and many of us loved him. We felt when he left the senate that the party to which he belonged and the country had met with an irreparable loss, . . . Dignified, upright, able, I doubt if any one ever impressed himself upon his colleagues more favorably than he. . . . The kindly, sweet and generous character influenced us all in our personal relations with each other, and when, as he occasionally did, he took a high, strong stand in favor of a given course, he carried us irresistably to the conclusion desired."<sup>91</sup>

From these quotations it can be seen that Kern's qualities of leadership represent our modern conception of the group leader. Leadership "requires an understanding of people, ability to handle people, a high sense of social responsibility, considerable skill in analysis and synthesis, competence in give-and-take conversation, and personal qualities which inspire confidence and respect."<sup>92</sup> To this list we can add Kern's ability as an advocate when the need arose for advocacy to support his beliefs.

One defect in his leadership was also one of his strong attributes that accounted for his social and personal popularity. A skilled conversationalist, Kern had a deserving reputation as a humorist. He had a weakness for telling anecdotes, and told them in a way that made them very real and personal. His gentleness in human relations and his fondness for the telling of anecdotes combined to cause Vice-President Marshall to comment, "If instead of smiling he had frowned, he might have gone much further, but it will

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<sup>91</sup>Ibid., pp. 375-376.

<sup>92</sup>James H. McBurney and Kenneth G. Hance, Discussion in Human Affairs (Revised edition; New York: Harper and Brothers, 1950), p. 231.

be a long, long time before the Senate finds a more popular, a more useful, and an abler representative.<sup>93</sup> It would seem that the defect was not a serious one.

Wilson and Kern. We have noted previously that Kern had a great deal to do with the success of Wilson's first administration. It is perhaps important, then, that we obtain some impression of Kern's relations with President Wilson. In order to construct this impression it will be necessary to examine several things; the record of Kern's official visits to the President, reporting of Kern's unofficial visits with the President, and correspondence between President Wilson and Kern.

The distinguishing feature between the official visits and unofficial visits is a rather arbitrary one. The official visits are defined as those listed in the Executive Diaries, the official appointment books of the President (kept by the Head Doorman) for the years 1913 to 1916. These visits always consisted of Kern calling on Wilson during the President's regular visiting hours. All other visits between Wilson and Kern are arbitrarily defined as unofficial. The term is applied without regard to significance of those "unofficial" visits.

It will be noticed from the following listing of the official visits that Kern was a frequent official visitor. The significance of any of these visits cannot be determined from the listing alone. Indeed, the majority of these appointments contain no refer-

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<sup>93</sup> Thomas R. Marshall, Recollections of Thomas R. Marshall; A Hoosier Salad (Indianapolis: The Bobbs-Merrill Company, 1925), pp. 292-293; and Indiana State Bar Proceedings, 1918, p. 208.

ence to their purpose. It may be assumed that one or two constituted excursions for "visiting firemen" to meet the President.

One specifically dealt with a pardon case in which the power of the President to issue pardons might come into play. Two were for the purposes of extending invitations to the President. Most of the other visits appear to be concerned with matters of legislation.

The listing is in summarized form.

#### 1913 Volume

page 195	Monday	July 14	Kern and Borah	
			(re Kittenback and Keste pardon case)	30 minutes
233	Thursday	August 21	Kern and Shively	10:30-11:00
274	Wednesday	October 1	Ashurst and Kern	10:55-11:00

#### 1914 Volume

page 50	Thursday	February 19	Kern	9:45-10:30
89	Monday	March 30	Kern	11:45-12:00
134	Thursday	May 14	Lieb and Kern	
			(to extend invitations)	10:50-10:55
152	Monday	June 1	Kern and Shively	10:30-10:35
189	Wednesday	July 8	Kern	11:30-12:00
340	Monday	December 14	Kern, Shively and Rep. Rauch	11:15-11:30

#### 1915 Volume

page 6	Wednesday	January 6	Kern	10:30-10:45
8	Monday	January 8	Kern and others	2:30-3:30
61	Tuesday	March 2	Kern	
			[Probably Seamen's bill]	10:30-11:00
152	Tuesday	June 1	Kern	
			(the White House)	3:00
243	Tuesday	August 31	Kern	12:00

#### 1916 Volume

page 24	Monday	January 24	Kern and Dr. McKelway	11:00-11:15
54	Wednesday	February 23	Kern, Ransdell and others	11:00-11:30
59	Monday	February 28	Kern and Rep. Dixon	11:30
81	Tuesday	March 21	Kern and others	10:00-11:00
			(re. Water Power Bill)	
131	Wednesday	May 10	Kern	11:00-11:10

Page 187	Wednesday	July 5	Kern and Taggart	10:45-11:00
342	Thursday	December 7	Kern	3:30
356	Thursday	December 21	Kern and others	2:30-3:30

In terms of length of time involved in a single visit, the appointments range from one hour to five minutes in length. Kern's official visits are among the largest number received by the President from one individual during that first administration. Few Senators (Stone being the most notable exception) called on the President as often as Kern.<sup>94</sup>

But official visits, as herein defined, are not a very adequate measure of Kern's relations with Wilson. Many unofficial visits are vastly more important than these official ones. It would be best to consider some of these in passing.

During the summer of 1916 Wilson again showed his ability at breaking with tradition, and at the same time indicated his relations with Kern. Without any warning he came to the Capitol on one afternoon and immediately went to the Marble Room, the usual scene of Wilson's precedent-breaking conferences with solons on important legislation. Wilson dispatched a page to find Senator Kern and bring him there, and a brief conference followed Kern's arrival. Other senators were then called in, and the news was released that Wilson was insisting on passage of the Child Labor bill before Congress adjourned. This was the bill on which Kern pinned many of his hopes for reelection. Wilson had learned of the caucus action in refusing to consider the bill before adjournment, and was prompted to apply this extra pressure to the senate by calling on Kern and

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<sup>94</sup>U.S. Library of Congress, Wilson Papers, Series I.

in turn applying pressure to other Democratic leaders in the senate.<sup>95</sup>

During the railroad crisis of late August and early September, 1917 the President again called at the Capitol. There, in conference with Kern and Senator Newland, he discussed possible legislation that would make it possible for negotiations to continue. The next night was dark and stormy, and Kern was in a meeting of the Finance Committee in the basement of the Capitol. Capitol police had left their posts at the entrances of the building and gone to their room down in the basement to get away from the torrential rains. The precedent-breaking President, who had come out in his car in search of Kern, suddenly walked into their room, and requested that they find Senator Kern. Kern answered the summons, and he and the President immediately began a conference in the basement corridors. They continued it upstairs in the Marble Room, as soon as they could find a janitor to open the door, and at its conclusion, Wilson announced he would hold Congress in session until the needed railroad legislation was enacted. Shortly after this, two additional conferences were held between the President and senate leaders in Kern's private room in the Senate Building.<sup>96</sup>

Foreign affairs prompted still another meeting. On February 21, 1916, Senators Kern and Stone and Representative Flood attended a White House briefing on relations with Germany. Stone was Chairman of the Senate Committee on Foreign Relations and Flood was Chair-

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<sup>95</sup>Bowers, op. cit., pp. 343-348.

<sup>96</sup>Ibid., pp. 364-366.



man of the House committee. It is reported that Wilson told them that the United States would "prolong negotiations with Germany no longer if the coming communication from Berlin fails to meet the views of the United States."<sup>97</sup>

There are other evidences of the working relationship between Wilson and Kern in these unofficial visits. The appeals made by Wilson to Kern to add additional legislation to the always overworked calendar, and Kern's response to these pleas, are tributes to Wilson's reliance on Kern and Kern's loyalty to the President.<sup>98</sup>

The correspondence between Kern and Wilson that has been recovered is fragmentary in nature. Much of it does not deal with major issues, but some idea of Kern's relations with Wilson can also be obtained from an examination of it.

It is evident, from the correspondence, that Wilson turned to Kern on several occasions when there was a chance of strong opposition to administration supported legislation or appointments.

On June 4, 1913, Wilson wrote Kern requesting that he and other Democratic leaders line up support to assure that his nomination for Judge of the Juvenile Court be confirmed. Wilson told Kern that the choice had been especially difficult to make, and had been made only after a great deal of deliberation. The outcome of Wilson's request for support is not known.<sup>99</sup>

In matters of legislation not already mentioned, Wilson held a strong interest in the Rucker Corrupt Practices Act, regarding

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<sup>97</sup> Ibid., p. 367.

<sup>98</sup> Ibid., pp. 358-359.

<sup>99</sup> U.S. Library of Congress, Wilson Papers, Series VI, 112.



campaign contributions. Kern undoubtedly was also in favor of the bill, but there was a great deal of opposition to the bill and many modifications had been suggested. Thus, the bill was being kept in committee when it was needed in the coming elections of 1914. Senator Owen was urging Wilson's support of the bill, and Wilson, in turn, sought Kern's aid. "At present," Wilson said on June 23, 1914, "it is possible for our opponents to spend any amount of money they choose to spend against us, and there is no legal check upon anybody." He then asked Kern if it would be possible to place the bill on the calendar for the session in progress.

Wilson again wrote Kern about getting the bill on the calendar on August 20, 1914, but it was not until 1916 that the bill was finally approved by the Privileges and Elections Committee. On August 19, 1916, Senator Robert Owen sent a letter to the President requesting him to send a letter of congratulations to Kern on the report of the bill (Kern was to report the bill that afternoon), and to express his interest in the measure. Wilson carried out the request.<sup>100</sup>

The Alaska Coal Leasing Bill was one of several natural resources measures in which the President was interested. On October 8, 1914, he wrote Kern to urge senate support of the measure.<sup>101</sup> The Water Power and the General Leasing Bill prompted a letter to Kern on December 10, 1914. Senator Walsh had called the Secretary of the Interior, on an earlier occasion, expressing the fear that these bills would not come out to the floor of the senate during

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<sup>100</sup> Ibid., 1529.

<sup>101</sup> Ibid., 94.

that session unless they were started early. The Secretary of the Interior wrote the President, and the President, in turn, wrote Kern. "I fear," Wilson said, "with regard to all the bills in which I am interested that delays in beginning their consideration might be fatal to their passage."<sup>102</sup>

By April 12, 1916, the General Development bill had been reported out of the Public Lands Committee of the senate. Wilson wrote Kern urging that it be placed on the calendar for the session in progress. Wilson described the need this way:

The shortage of gasoline has made the development of the oil resources very important; the potash is very much needed because of our dependence hitherto upon Germany for that product; and the phosphates are required as fertilizers for our western lands. The release of these resources would seem a necessary part of preparedness and I sincerely hope that it will be possible for this bill to be given a chance to pass at this session.<sup>103</sup>

Sometime before April 21, 1916, Senator Walsh wrote to the Secretary of Interior, Franklin K. Lane, in regard to the Myers Water Power and Ferris Leasing bills. Lane wrote the President about Walsh's letter, and Wilson wrote Kern on April 21, 1916 requesting that the bills be taken up during the current session. (The two bills are assumed to be the same bills previously referred to as the Water Power bill and the General Development bill.) Wilson also remarked, "I understand that the present plan is to take up the Rural Credits Bill immediately. Would you be kind enough to let me know what the Steering Committee have in mind after that?"<sup>104</sup> On April

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<sup>102</sup> Ibid., p. 1888.

<sup>103</sup> Ibid., p. 23.

<sup>104</sup> Ibid.; and Link, The New Freedom, p. 131.



thirtieth Kern replied that there was still "a lack of interest" in the Water Power and Leasing bills, and Western senators were unfortunately "divided in sentiment." A water power bill was not passed by Congress until June of 1920.<sup>105</sup>

Just as Wilson sought Kern's support of favored legislation, Kern sought Wilson's cooperation in administration actions. In response to a letter from Kern on April 7, 1915, Wilson made official note with the Executive Clerk to issue an Executive Order granting old soldiers of the Civil War, who were in government service, a leave of absence with pay from September 26 to October 3 to attend the Grand Army of the Republic Encampment. The leave would also include as many days as would be necessary for travel.<sup>106</sup>

On May 30, 1915, Kern wrote Wilson recommending Judge E. Downey to fill a vacancy on the United States Court of Claims, Wilson approved the selection on August 2, 1915 after a careful investigation.<sup>107</sup> But Kern's interest in potential and actual government employees was not confined to placing them in government jobs. (It will be remembered that Kern was a believer in the spoils system.) He also was interested in maintaining faithful party workers in office, and in government service.

In 1914 Kern wrote Wilson that some question had been raised about the President's support of Senator Shively, Kern's friend and senior colleague from Indiana, for reelection. On September 31, 1914, Wilson wrote Kern, "I am genuinely surprised that any question should

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<sup>105</sup> Baker, op. cit., VI, p. 103.

<sup>106</sup> Wilson Papers, Series VI, 344.

<sup>107</sup> Ibid., 132 L.



have arisen as to whether I want Senator Shively returned. I do most decidedly wish it." Wilson added:

May I not add a word of cordial appreciation of the whole Indiana delegation in Congress? The members of the House have stood by the administration with unfailing generosity and spirit and have made me feel a very deep interest in the political fortunes of every one of them.

I need not tell you, my dear Senator, what my sentiments are towards yourself.<sup>108</sup>

In 1915, a George W. Hall was dismissed by the Civil Service for inefficiency. Hall appealed to several people, including Kern, that an injustice had been done. He claimed that the type of work he had been doing required the correction of hundreds of examination papers, and could not be done at the rate the Service had defined as the normal work load. Kern appealed to the President, and Wilson wrote him in reply on March 9, 1915, stating that he was "convinced by the evidence" that an injustice had not been done. He told Kern that the Civil Service Commission had informed him that Hall was not required to read examination papers at all, but merely letters of application which he could handle at the rate required. Kern replied:

But my dear Mr. President, did you send for Mr. Hall and hear any evidence that he might have to submit? Do you think it quite fair to dispose of any case upon evidence offered by one of the parties to the controversy, denying a hearing to the other side? Mr. Hall is a man of fine intelligence and high character so thoroughly competent in every way that Senators Johnson, Gorman, Pomerene and myself did not hesitate to endorse him for a place on the Civil Service Commission believing him to be superior in everyway to Mr. McIlheny and every other member of the Board as then constituted. Of course, the fact that he is a sturdy Progressive Maine Democrat also weighs with us somewhat. I sincerely hope that you may see your way clear to send for Mr. Hall

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<sup>108</sup> Ibid., Series VII, LB 17A, pp. 87-88; and Link, The New Freedom, p. 467, n. 80.



and hear his side. Such a man--such a splendid Democrat-- is entitled to be heard.

I have not changed my opinion of this Civil Service Board since I talked to you months ago. Indeed I hear complaints of their partiality and inefficiency and unfairness on every hand. I am strongly of the opinion that they have deceived you in this case.

After receiving the letter Wilson again wrote Kern on March fifteenth stating, "I am always distressed when I find your judgment and mine at all at variance." Wilson told him that he felt he could not see Hall personally since it might serve as a precedent for every dismissed Civil Service employee to come running to him. He promised to make additional inquiries of another sort, and closed by saying that on the basis of evidence furnished to him by the Chairman of the Civil Service Commission "it did not seem . . . I could question but one is never certain that he is right." Hall was later vindicated of the particular charge, but was never officially exonerated. The Civil Service Commissioners even admitted that their evidence had been incorrect, but never publicly.<sup>109</sup>

As senate majority leader, Kern was often asked by Wilson to determine the attitude of senate Democrats toward certain subjects. In either late August or early September Wilson asked Kern to determine how the senate would feel about returning early for a special session. It will be remembered that only a short time before this the senate had completed the marathon of 567 days of sitting in decision on the President's "urgent" legislation. After polling by letter many of the senate Democratic leaders, Kern wrote the President on September twenty-second. He briefly summarized the views

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<sup>109</sup> Ibid., VI, 1929.

of seven senators on the subject, the majority of whom were against the calling of a special session, and then stated his own position: "If the war situation is such, in your judgment, that an extra Session of the Senate for Executive business could be safely called, it ought to be called--otherwise not." Wilson replied, "I think your own judgment is the sum of the whole matter. . . . I am sincerely obliged to you for the care you have taken to canvass the opinion of members of the Senate, and your letter is of great assistance to me."<sup>110</sup>

Kern held a vital interest in foreign affairs, as did most solons during this period of international tensions and war. On two occasions he furnished some information to Wilson on international relations. The first occasion was prompted by Kern receiving a letter from Addison C. Harris, a friend and former U. S. Ambassador to Austria. Harris told Kern of his relations with Baron Makino, Minister for Foreign Affairs of Japan at the time of Harris's writing (January 22, 1914). Harris evaluated Makino as a temperamental man of great ability, and ambitious to enlarge the boundaries of the Japanese Empire to the point of employing force if given the opportunity. Kern wrote a covering letter to the President, and forwarded the letter. Wilson replied that he had read the letter with a great deal of interest.<sup>111</sup>

In late December or early January of 1915, Kern received two letters from German-Americans protesting the sale of arms and ammunition to Great Britain, and forwarded them to President Wilson.

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<sup>110</sup>Ibid., II.

<sup>111</sup>Ibid., VI, 272.

Wilson replied that he had read them with a great deal of interest and concern, and hoped that a method of publicity he had worked out with Senator Stone would meet at least part of the situation.<sup>112</sup>

Kern's personal relations with Wilson are difficult to describe beyond this point. Kern's natural liking of most men he met was most certainly true in the case of Wilson. He admired President Wilson for his ability and knowledge. His strong devotion to party duty made him just as dutiful to the leader of his party. Kern may have become disappointed with Wilson, at times, because of Wilson's lack of belief in some of the more radical reforms advocated by the progressive Democrats. But Kern was not the kind of man who let even major political grievances upset his personal relations with a friend.<sup>113</sup>

If there was any strain between the two, it was probably felt on the part of Wilson. Wilson's weakness, his distrust of the professional politicians, probably operated in the case of Kern as well.<sup>114</sup> Kern was a product of the Taggart machine in Indiana; and while Taggart enjoyed good relations with Wilson, Wilson's distrust of politicians may have extended to both Kern and Taggart.

Conclusion. The passage of time and the lack of primary source materials in sufficient quantities makes positive identifica-

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<sup>112</sup> ibid., 1745, Neutrality file.

<sup>113</sup> Bowers, op. cit., pp. 362-363.

<sup>114</sup> Interviews with John Kern, II; and James Kerney, The Political Education of Woodrow Wilson (New York: The Century Company, 1926), pp. 342-343. The exception to this distrust was Colonel Edward M. House who enjoyed Wilson's complete confidence. Wilson told House, "You are the only person in the world with whom I can discuss everything." Link, The New Freedom, pp. 93-94.

tion of the sources of Kern's ideas difficult. The discussion of the issues and the occasions for Kern's speeches to the senate indicate, in the light of this chapter and the previous chapter, the major channels in which his attitudes and ideas were developed.

By the same token, the discussion of Kern's leadership indicates one of the vehicles through which his ideas were expressed. The informal speaking which Kern did in conferences and with individuals, and in view of his legislative strategy, probably contributed more to the final outcome of the legislation passed under Wilson's first administration than most of the speeches on the floor of the senate. At the same time, Kern was not opposed to speaking from the floor of the senate when the occasion made this necessary. On four occasions involving major issues Kern stepped out of his informal speaking role as majority leader, and into the role of the floor advocate.

## CHAPTER IV

### A RHETORICAL ANALYSIS OF THE SPEECH IN FAVOR OF THE SHERWOOD PENSION BILL

#### Selection of the Speeches

In chapter three it was determined that Kern rarely addressed the senate from the floor, and an examination reveals that his formal speaking falls into essentially three categories. The first category may be described as responsive debate. This category consists of answers and challenges by Kern which occur during the course of debates on various issues, and generally lack one or more of the essential elements of a speech (introduction, body, conclusion). They are characteristically short, ranging from one sentence to two paragraphs.

A second category consists of memorial addresses, declamations, and speeches connected with the operation of the senate. These addresses contain all of the essential elements of a speech, but are only remotely, if at all, connected with issues surrounding legislation before the senate.

The third category consists of issue-connected speeches on legislation pending before the senate, and this category was selected for rhetorical analysis.

The first category of speaking was eliminated on the basis that all of the factors of rhetorical analysis could not be considered since one or more of the essential elements of a speech were

missing from the speaking instances within this category. The second category was dismissed from consideration because the speeches were not concerned with important issues surrounding legislation, and because the effect of the speeches was not significant in relation to the primary, legislative function of the senate. The third category was selected because it is concerned with the important issues surrounding legislation before the senate.

Kern made five speeches in this category, and two of these have been selected for analysis in this and the next chapter. Kern's first speech before the senate will not be subjected to rhetorical criticism because it was concerned with a relatively minor issue surrounding a Public Building bill. Since the speech on the Sherwood bill, a more important issue, covers many of the same arguments that Kern originally raised in his first speech, the decision was made to exclude the speech on the Public Buildings bill.<sup>1</sup> Two other speeches were eliminated in order to achieve a satisfactory compromise between an analysis which is representative of Kern's speaking, and an analysis which is detailed without becoming cumbersome in length. The first of the speeches to be analyzed stemmed from the major issue of pension legislation for Civil War and the War with Mexico veterans.

#### Criteria for Criticism

While there are many acceptable methods of developing the analysis and criticism of a speech, the following method is used for the sake of consistency in each of the two speeches analyzed. The

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<sup>1</sup>U.S., Congressional Record, 62d Cong., 1st Sess., 1911, XLVII, Part 4, 3290-3297. (Hereinafter referred to as Record.)

issue is first reviewed before the speech itself is considered. Kern's preparation of the speech, authenticity of the text which is used, and the immediate setting and occasion for the speech are considered in the sections following examination of the issue. The logical and psychological arrangement of the speech is then explored with some attention given to the organization of main points and sub-points, and the use and placement of transitions.

Invention is considered under the three main divisions of logical appeals, ethical appeals, and psychological appeals. The kinds of argument and types of support are examined under logical appeals, while the division of ethical appeals examines the speaker's level of sincerity, his attitudes, and appropriate characteristics of the speaker that contribute to ethical appeals. Psychological appeals that are considered include those of a general nature, those characterized by suggestion, and specific appeals made to primary and secondary motives.

A discussion of style follows invention. It is considered under the characteristics of force, accuracy, directness, unobtrusiveness, clearness, and variety. Kinds and examples of stylistic devices and devices of direct discourse are also cited. Delivery is then considered on a general basis without specific reference to the speech under examination.

Response to the speech is examined under the three categories of response during the speech, response immediately after the speech, and later response. The salient features of the analysis and criticism are then discussed in the order of method just discussed.

## The Issue

Chronological history of the pension issue. Pension legislation had long been a source of discussion in the United States, as is indicated by the following chronological table.

1. Prior to June 27, 1890, all pension legislation for veterans of the Civil War recognized only specific disabilities incurred in the line of duty.
2. The act of June 27, 1890 abandoned the requirement of service originated disability and substituted requirement of incapacity to perform manual labor, regardless of the origination of the incapacity. The disability pension provided ranged from six to twelve dollars per month, and required Civil War service of at least ninety days. A pension of eight dollars per month was provided for all widows of the Civil War veterans who had been married prior to June 27, 1890.
3. In March of 1904, by Executive Order No. 78, age became the standard by which disability was determined.
4. On May 9, 1900 the Pension act was amended to provide pensions to widows only if their net income was not above \$250 per annum.
5. The act of February 6, 1907, was solely an age pension, granting pensions to all who had served 90 days during the Civil War, as follows: 62 years, \$12 per month; 70 years, \$15 per month; and 75 years, \$20 per month.
6. The act of April 19, 1908, abolished the income provision, and the pension of the widow was increased to \$12 per month. Under this act and the acts of February 6, 1907, the services of the physical and financial examiner were discontinued.<sup>2</sup>
7. March 4, 1911, the Sulloway Dollar-a-Day Pension bill died in committee with the end of the 61st Congress.<sup>3</sup>

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<sup>2</sup>U.S., Congress, Senate, Committee on Pensions, Service Pension: Report of the Committee on Pensions Together With the Views of a Minority on H.R. 1, Report No. 355, Part 1, 62d Cong., 2d Sess., 1912, pp. 2-3.

<sup>3</sup>Charles Francis Adams, "Pensions--Worse and More of Them," World's Work, XXIII (December, 1911), p. 190.



Lobbying and legislative action on the Sherwood bill.

To the Grand Army of the Republic and other supporters of more liberal pension benefits for Civil War veterans, the failure of the Sulloway bill in the Sixty-first Congress in 1911 seemed to spell doom to their efforts.<sup>4</sup> But at the opening of the Special Session of the Sixty-second Congress General Isaac R. Sherwood, Representative of the Ninth Congressional District of Ohio, introduced the Sherwood Dollar-a-day Pension bill in the House of Representatives. Sherwood was chairman of the Pension committee in the House, and a pioneering advocate of the principle that pension legislation should be based on age.<sup>5</sup>

The Grand Army of the Republic held two objections to the Sherwood bill. They claimed, first of all, that the bill was unscientific since the pensions would be based on service periods of three, six, nine and twelve months, and no provision was made for pensioners whose service was measured in terms of years. Their second objection stemmed from a clause which denied admission to national homes for disabled soldiers, to all pensioners who were in receipt of twenty-five dollars or more each month. The clause further provided exemption from benefits of the proposed legislation to all veterans whose net income per annum was a thousand dollars

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<sup>4</sup>Journal of the Forty-sixth National Encampment of the Grand Army of the Republic at Los Angeles, California, September 12-13, 1912, p. 196. (In later references, G.A.R. Journal).

<sup>5</sup>Ibid.,; Adams, loc. cit., p. 191; Claude G. Bowers, The Life of John Worth Kern (Indianapolis: The Hollenbeck Press, 1918), p. 218; and U.S. Congress. House, Committee on Invalid Pensions, Service Pensions for Certain Defined Soldiers of the Civil War, Report No. 160, 62d Cong., 1st Sess., 1911, p. 1.

or more, exclusive of their pension income.<sup>6</sup>

While there were these objections to the Sherwood bill, the Grand Army of the Republic was sufficiently encouraged by the national picture to take steps in support of the bill's basic principles. In early December of 1911, the G.A.R. pension committee met with their Commander-in-Chief. They agreed that the Sherwood service principle was good, but wanted the bill to approximate more closely the provisions of the defeated Sulloway bill. Therefore, they decided to ask Sherwood to amend his bill by eliminating its objectionable features, such as the income clause and the restrictions on admission to soldiers' homes, and add provisions to the bill that would make it more "scientific" in its service period provisions. Due consideration would be shown to those of short service and advanced age, as well as those suffering from service disabilities. This agreement led to the committee's adoption of the double standard, a pension which would be based upon age and service combined.<sup>7</sup>

The Sherwood bill passed in the House of Representatives on December 12, 1911 with its objectionable features eliminated, but without provisions recognizing advanced age.<sup>8</sup> On the following day the G.A.R. Pension Committee met with Senator McCumber, Chairman of the Senate Committee on Pensions, and advised him of their resolution in favor of the double standard. To justify McCumber's fram-

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<sup>6</sup>Ibid., pp. 2-6; and G.A.R. Journal, pp. 197-198.

<sup>7</sup>Ibid., p. 198.

<sup>8</sup>"Survey of the World: The Pension Bill," The Independent, LXXI (December 21, 1911), pp. 1353-1354.

ing of another pension bill based on the double standard, the committee passed the following resolution in his presence:

Resolved, That it is the sense of this committee that the age and service standards should be combined in any pension measure enacted by the present Congress, to the end that justice and equity be done to all classes of our Comrades.

The G.A.R. Pension Committee believed that neither a strictly service or a strictly age pension bill could become law.<sup>9</sup>

In January of 1912, at the request of Senator McCumber, the G.A.R. Pension Committee appeared before the Senate Committee on Pensions, which the G.A.R. reported as being "a most helpful and successful hearing." McCumber then introduced a substitute motion which was designed to change the Sherwood pension bill from a dollar-a-day service pension to a pension of less size which was based on both service and advanced age. Kern spoke in favor of the original bill and against the substitute motion on March 16, 1912. But the substitute motion was adopted, and on March 29, 1912, the Sherwood-McCumber pension bill passed the senate by a 51 to 16 vote.<sup>10</sup>

On April fourth the two bills were sent to conference where agreement was not reached until May second. At first, Sherwood was inclined not to give up any of the ground he had won from the House of Representatives, but after an income clause had been eliminated from the senate bill and \$1,685,000 had been added to its cost, he and Representative John A.M. Adair concurred in the revised senate

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<sup>9</sup>G.A.R. Journal, p. 198.

<sup>10</sup>Ibid., pp. 199-200.

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version.

The result of the passage of this compromise bill was that every pensioner had his pension increased. The annual increased value of the national pension roll was \$25,797,702, and the average annual increase to each pensioner was \$61.28.<sup>12</sup>

#### Preparation

Unfortunately, the accidental destruction of Kern's private papers in 1951 left few traces of his methods in preparing a speech. Some inferences might be obtained from the discussion of his previous speaking experiences.<sup>13</sup> But the greatest reliance must be placed upon the recollections and writings of Claude G. Bowers, Kern's personal secretary while in the senate, and on the recollection of Henry Fountain Ashurst, former Senator from Arizona. This section is concerned with comments on the general methods of Kern's preparations for a speech, and the specific preparation which Kern made for the speech under examination.

An important part of Kern's preparation for a speech was the thought process which took place prior to the arrangement of the ideas. Kern would concentrate on a problem with such force that he would exclude all outside diversions. If he felt that he might be

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<sup>11</sup>U. S. Senate, Service Pensions Report, pp. 4 and 6; G.A.R. Journal, p. 200; and U.S., Congress, House, Committee of Conference, Service Pension to Certain Defined Veterans of the Civil War and War with Mexico, Report No. 647, 62d Cong., 2d Sess., 1912, pp. 1-5.

<sup>12</sup>U.S., Congress, Senate, Committee on Pensions, Remarks of Porter J. McCumber, Document No. 645, 62d Cong., 2d Sess., 1912, p. 1; and G.A.R. Journal, p. 200.

<sup>13</sup>cf. chap. ii, pp. 35-36, and chap. iii, pp. 124-126.

interrupted, then he would make himself inaccessible by locking himself in a private room in the Senate Building which could not be entered from his public offices. Even telephone communication was limited to a select few who were given the unlisted number.<sup>14</sup>

He seemed to dread sitting down to the task of preparing a speech. Possibly, he was mentally engaged in the process of selecting and discarding ideas before beginning the actual arrangement of the ideas in formal preparation but, if so, he never outwardly exhibited the process.<sup>15</sup> This possibility is borne out by his scrutiny of political problems. Kern was not given to jumping to conclusions on the basis of his emotions. Through engaging in objective analysis, he would view each political problem from every angle he could bring to mind before reaching a decision. After reaching the decision, he would hold it in abeyance while he carefully reviewed the arguments on the problem again and again. Only after several reconsiderations would he act on the basis of his decision.<sup>16</sup> Applying this mental trait to the preparation of his speeches, it would seem that preliminary thought on the selection and rejection of ideas was an important part of Kern's preparation.

Kern did not write out his political speeches unless an especially important occasion prompted this kind of attention. His legal training and erudition served him so adequately as sources

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<sup>14</sup>Bowers, op. cit., p. 404.

<sup>15</sup>Claude G. Bowers, "John Worth Kern: An Appreciation," The Fort Wayne Journal-Gazette, August 27, 1917, p. 4 (Hereinafter referred to as Bowers' article in The Fort Wayne Journal Gazette).

<sup>16</sup>Bowers, loc. cit.

that he did not need to depend upon a manuscript. Normally, he would simply arrange the main ideas in his head after going through the mental process of problem analysis.<sup>17</sup>

But when the occasion called for formal preparation of a written manuscript, and if he resigned himself to the task, Kern would gather his materials and begin. His preparation materials consisted of a rough scratch pad, several sharpened pencils, and a plentiful supply of cigars. He would then slowly, carefully, and patiently write out the speech in longhand.

While writing, he would shut himself away from other people and outside influences. He might begin the writing in his room at the Capitol, another section would be completed in his private room in the Senate Office Building, and the final section of the speech might be completed at his hotel in the evening. Whenever and wherever Kern prepared his manuscript, it was always a slow, painstaking task.

If the copy was slow in coming, it certainly reflected Kern's mental process of selecting and rejecting ideas in advance of setting them down on paper. Even in the longest and most important of his prepared manuscripts there were only a few eliminations and additions to the draft. The finished writing gave the appearance (from its lack of erasures and deletions) of a copied manuscript rather

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<sup>17</sup>Ibid., p. 407; and Letter from Henry Fountain Ashurst to writer, July 11, 1958.

than a creative one.<sup>18</sup>

As a result of his reluctance to begin formal preparation and the slow evolvment of the completed manuscript, Kern often found himself writing on the speech right up to the moment it was to be given. Newspaper men were always asking for advance copies or extracts of these speeches, but Kern was irritated by such requests and refused to fill them. In many cases it would have been impossible to fill the requests since little formal preparation was involved. When the speeches were formally prepared, they were usually so tardy in their completion that advance copies still would have been impossible to furnish. On at least one occasion, when pressured by his staff for a manuscript of a speech, he became irritated and sarcastically remarked, "If, after forty years, I need any advertising in Indiana I'd better quit." Consequently, his speeches before the senate received little publicity.<sup>19</sup>

During his entire six years in the senate, Kern prepared only two speeches by writing complete manuscripts. The first of these was the speech under present consideration on the Sherwood bill, and the second was his memorial tribute to Vice-President James Sherman. Kern took more pride and exercised more care in the preparation of the Sherman memorial address than with any of his other

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<sup>18</sup>Bowers, loc. cit.; and Bowers' article in The Fort Wayne Journal-Gazette, pp. 4-5. An undated manuscript in longhand bears out this observation. The speech, on the character of George Washington, contained only 30 word changes, 5 deletions, and 2 additions in the two thousand word manuscript. Kern MSS Collection.

<sup>19</sup>Bowers' article in The Fort Wayne Journal-Gazette, p. 5.

senate speeches.<sup>20</sup>

Kern prepared the pension speech with considerable care, writing out a complete manuscript with a pencil on a pad.<sup>21</sup> Because of the lack of a preserved manuscript, other matters of preparation for this speech must be inferred from the general remarks above.

#### Textual Authenticity

Since the manuscript of the speech on the Sherwood bill was not preserved, the text contained in the Congressional Record was adopted as the best secondary source. The accuracy of this text was checked against limited quotations from the delivery of the speech which appeared in various newspapers. While the text covers nearly four and one-half pages in the Congressional Record, the excerpts from the speech are taken from only five paragraphs on one page and one paragraph from another page. But, on the basis of these excerpts, Kern made only minor word deviations from the prepared manuscript during the delivery of the speech. The newspapers accounts were from the Associated Press wires, generally, but at least one independent report is represented, providing a third source for comparison and substantial agreement.<sup>22</sup>

#### Immediate Setting and Occasion

Kern lived in the same hotel as Sherwood, the Congress Hall

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<sup>20</sup>Ibid.

<sup>21</sup>Bowers, op. cit., p. 219.

<sup>22</sup>Indianapolis News, March 16, 1912, p. 13; South Bend Tribune, March 16, 1912, p. 1; Fort Wayne Journal-Gazette, March 17, 1912, p. 1; Indianapolis Star, March 17, 1912, p. 2; and Record, 2d Sess., 1912, XLVIII, Part 4, 3466 and 3469.



Hotel, and the two men had become close friends. Sherwood, a Democrat, was a member of the House majority, while Kern was in the Democratic minority of the senate. McCumber, a Republican, enjoyed the support of the majority party as well as of the G.A.R. organization. From the beginning of the debate, the Sherwood bill was fighting a losing battle in the senate,<sup>23</sup> but Kern sought to defend the measure in his first "set" (completely prepared manuscript) speech before the senate.<sup>24</sup>

On Saturday, March 16, 1912, the senate met at twelve noon. Following the usual preliminaries of communications, petitions and memorials, unanimous consent (private) measures, and other quickly disposed of items of business, Senator McCumber addressed the chair:

I move that the Senate proceed to the consideration of House bill No. 1. I observe that the Senator from Indiana [Mr. Kern] is now present, and he gave notice that he would desire to speak on the bill immediately after the close of the morning business.<sup>25</sup>

His motion was interrupted momentarily for the consideration of a resolution requesting information on the possible reorganization of the Harvester Trust, and was then approved.

Since a roll call was not ordered during the entire legislative day, it is impossible to determine the exact number of senators present. However, it was an unusually heavy legislative day of third readings, and at least a quorum of the senate was probably present.<sup>26</sup> Attendance at roll calls on the three previous legislative days had

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<sup>23</sup>Bowers, op. cit., pp. 218-219.

<sup>24</sup>Ibid., p. 213.

<sup>25</sup>Ibid., 3465.

<sup>26</sup>Ibid., 3464-3490.

ranged from 52 to 59 senators.<sup>27</sup>

The three major viewpoints were all represented on the floor that day. (The Senate had been considering the Sherwood bill on the floor since early in March.) Senator Kern was representing the advocates of the Sherwood bill, a general pension measured based on service. Senator McCumber represented his substitute motion, a substitute enacting clause to the Sherwood bill which was based on both age and service. And Senator Claude A. Swanson of Virginia took up the cause of a small minority who sought the defeat of both measures on the principle of economy in the government.<sup>28</sup>

The size of the gallery audience is not reported in the sources explored, but since this was a Saturday session with a great deal of activity taking place in both houses it seems reasonable to assume that it was near capacity. There was at least one special guest in the chamber, General Sherwood, who sat with his hearing trumpet to his ear a few seats distant from Kern as he spoke on the bill.<sup>29</sup>

#### Arrangement<sup>30</sup>

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<sup>27</sup>Ibid., 3136, 3180, and 3371.

<sup>28</sup>Ibid., 3465-3478.

<sup>29</sup>Bowers, op. cit., p. 219.

<sup>30</sup>While the analysis and criticism of arrangement follow classical tradition, the terminology and interpretation stem from the following modern works: Glen E. Mills, Composing the Speech (New York: Prentice-Hall, 1952), pp. 217-266; Henry Lee Ewbank and J. Jeffery Auer, Discussion and Debate: Tools of a Democracy (2d ed.; New York: Appleton-Century-Crofts, 1951), pp. 137-162; Winston Lamont Brembeck and William Smiley Howell, Persuasion: A Means of Social Control (New York: Prentice-Hall, 1952), pp. 194-240 and 340-360; and Alan H. Monroe, Principles and Types of Speech (4th ed.; Chicago: Scott, Foresman and Company, 1955), pp. 307-331.

Introduction. Kern opened his remarks with a statement of his thesis.

Mr. President, I rise to speak in favor of a pension bill that will settle the pension question for all time to come; that will forever put an end to special legislation; that will, when once put into operation, enable the Government to dispense with the services of thousands of examiners and special agents, spies and detectives--a measure which has the support of the great majority of the soldiers of the Nation who served in the ranks of the Union Army as privates during the Civil War and who by the thousand are registering their protest against the McCumber or Smoot substitute now under consideration.<sup>31</sup>

The first point in the introduction announces Kern's stand on the issue and seeks the attention of his audience. The second point establishes reasons for his stand.

The only transition from the first point to the second is the salutation, "Mr. President," and the transition from the second to the third point is accomplished by the words "and yet." The third point, itself, is primarily the major transition from the introduction to the body of the speech. It carries the rationale of Kern's stand on the issue to the introduction of three of his main arguments.

Thus, the introduction accomplishes three functions corresponding to its three points: it announces Kern's stand on the issue, it establishes the rationale for that stand, and it introduces his main arguments. The major transition from the introduction to the body of the speech is adequate, but the transitions within the introduction are somewhat abrupt.<sup>32</sup>

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<sup>31</sup>Record, 3465-3466.

<sup>32</sup>Ibid.

Body. Kern analyzes the problem in terms of three expressed needs: the government has failed to carry out the provisions of its contract with the soldiers of the Civil War, the government can no longer practice discrimination among the veterans of the Civil War, and the proposed substitute would not meet the just demands of the veterans.

The criteria for the solution to the problem are expressed in the development of the needs. They are: a pension which restores the value of the pension to the level of the one granted in 1890, a pension which treats all veterans equally and grades them on length of service only, a pension which eliminates the costly machinery of the Pension Bureau, and a pension which meets a basic living standard of a dollar a day.

The central idea of the speech is not concisely expressed by Kern, but the speech incorporates the theme that the Sherwood bill, if passed, will fulfill the obligation of the government, honorably, and will humanely settle the pension question without inequality and discrimination.

Five main points are made in the body of the speech: (1) the Sherwood bill is an obligation of honor, (2) it is too late for discrimination, (3) the substitute bill does not meet the demands of the Union soldiers, (4) denial of the Sherwood pension is misplaced economy, and (5) an appeal to southern Senators is made asking them to share this burden as the burdens have been shared by the North and the South equally in the past. Major supports, or sub-points, for each main point range from three to five in number.

The logical development of the speech is largely inductive,

moving within each main point from specifics to the general. Argument is used to develop the first and second main points, the third and fourth by refutation, and the fifth main point by exposition and argument. The following excerpts from the substance outline will illustrate the kind and means of logical development.

- II. It is too late for discrimination
  - A. Webster did not practice discrimination when addressing the Revolutionary War veterans
  - B. There were many kinds of soldiers who took part in the Civil War victory 27 years ago
  - C. After 47 years, it is also too late to practice discrimination in pension legislation
  - . . . . .
- IV. Denial of the Sherwood pension is misplaced economy
  - A. The bill would not cost as much as it is alleged
  - B. This is an honest debt
  - C. The cry of economy has a new and strange sound
  - D. Old soldiers must pay for everything on too small pensions, while Congressmen get many things free and have large salaries
  - E. Our pension list ought to be the largest in the world
- V. This is an appeal for justice to southern senators
  - A. Your interests are the same as ours
  - B. Our burdens are equally shared
  - C. We have fought together
  - D. We ask you to share this additional burden with us

The transition between the first and the second main points consisted of a summary appeal to the argument contained in the first point.

Mr. President, I now call upon all those men who were so solicitous for the national honor in 1896, and whose consciences were so quickened at the mere prophecy of 50-cent dollars, to rally to the support of the Sherwood pension bill to the end that the old soldiers of the Union who made hundred-cent dollars, or dollars of any kind, possible in this country, and who were paid for their gallant services in 40-cent dollars, may have before they die some measure of justice at the hands of a Government penitent for its one act of debt repudiation.<sup>33</sup>

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<sup>33</sup>Ibid., 3467.

A **similar** transition was used between the second and third main points, and between the third and fourth points. The transition between the fourth and fifth main points both summarized the argument and introduced the next point.

Surely these patriotic gentlemen who are clamoring for palatial residences for our ministers and ambassadors abroad, that they maintain our national dignity and prestige, would not advocate a policy respecting the soldiers of the Republic which would place them upon a par with the half-fed and poorly clad of the world's poorest nations.

Mr. President, I hope I may be permitted to address some words to my brethren of the South, who represent their several States in this body with such distinguished ability.<sup>34</sup>

In each of the first three transitions between main points, the transition served to summarize the argument in the preceding point, but did not introduce the next point. Thus, the transition was still somewhat abrupt, as can be illustrated by returning to the first example.

. . . a Government penitent for its one act of debt repudiation.

It was in June, 1825--mark the date, for it is important--that the cornerstone of the Bunker Hill Monument was laid.<sup>35</sup>

Even in the case of the transition between the fourth and fifth main points, the change is almost as abrupt.

Transitions between the sub-points within the first two main points are largely summary appeals to the sub-points made within the development. The arguments are so condensed in the latter three main points that the sub-points under each are summaries of supporting arguments. Thus, the transitions consist largely of short connecting words and phrases. The same kind of transitions are used

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<sup>34</sup>Ibid., 3469.

<sup>35</sup>Ibid., 3467.

to connect the supports under the sub-points in the first two main points. Examples of such transitions are: "Mr. President," "as a rule," "yet," "the first class," "while the second class," "a little later," "and," "but," "under," "or," "with great labor," and "if."

Internal and external summaries are well represented in the discussion of the transitions, but these summaries are generally concerned with a single argument (the point presently under discussion) and summaries containing more than one argument are not made.

While the summary transitions tend to divide the speech into segments, two other factors are operating to give the speech unity. The single word and short phrase transitions cement some of the otherwise disjointed phrases together, and the major summary appeals at the close of the introduction and in the conclusion tie the body of the speech to the introduction and conclusion. The second factor operating for structural wholeness is the psychological development of the speech. The arrangement closely follows Monroe's pattern of the motivated sequence,<sup>36</sup> as can be illustrated by the following extraction from the substance outline.

Attention:

Introduction

- I. The pension bill that will settle the pension question forever
- II. I am representing the entire state of Indiana in advocating the Sherwood bill
- III. This bill is not extravagance

Need:

Body

- I. This is an obligation of honor (the government has failed to carry out the provisions of its contract with the soldiers of the Civil War)

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<sup>36</sup>Monroe, op. cit., p. 310.

II. It is too late for discrimination

Need-Satisfaction:

III. The substitute bill does not meet the just demands of the old soldiers

Satisfaction:

IV. Denial of the Sherwood pension is misplaced economy

V. Appeal for justice--made to southern Senators

Visualization:

Conclusion

I. The old soldier in the mid-west (anecdote)

Action:

II. Alternative is the Sherwood bill

But despite the factors working for unity, the lack of transitions which introduce the next point or argument and the lack of those which relate one or more arguments to another combine to give the speech a somewhat segmented composition.

Therefore, in examining the body of the speech, Kern analyzes the pension problem in terms of three needs, while developing the criteria for the solution to the problem within those needs. The central idea of the speech is not concisely expressed by Kern, but seems to dwell in the thesis that the passage of the Sherwood bill will fulfill the government's obligation on the issue and settle the pension question without inequality and discrimination. The logical development of the speech is largely inductive, moving through five main points from specifics to the general. Argument, refutation, and exposition are the chief means of logical development. Internal and external summaries also serve as transitions, but, with the general



lack of transitions which introduce succeeding points (the major transition at the end of the introduction is the only important exception) and which relate one or more points to another, the structural wholeness of the speech is not complete. This segmentation is partially offset by the psychological arrangement of the speech which follows the pattern of the motivated sequence.

Conclusion. For the conclusion of the speech Kern chose the combination of an illustration and visualization of the future. The final appeals to sympathy and relief from anxiety are implied rather than direct, as witnessed by the following extraction.

I have in mind the case of an old white-haired veteran, who served his country faithfully and well, and who, with his old wife, the sweetheart of war times, is waiting for the summons of the Master. . . . They can no longer work, but are trying to live on a pension of \$16 per month. . . . The cost of living is such that, of course, they can no longer live on that amount. And the alternative--there are only two places open to them--the soldiers' home for the old soldier and the poor-house for the sweet-faced old wife, for she is not allowed to accompany him to the home. God forbid that in a rich Nation like this such a tragedy should be possible in the life of any of its defenders.

But there is another alternative, and that is the passage of the Sherwood bill, that will dry the tears in thousands of eyes, bring hope and joy and happiness into scores of thousands of humble homes, and cheer the hearts and quicken the steps of the hundreds of thousands of old soldiers, who during their few remaining years will be living monuments to the generosity of a grateful country, which in the days of its greatest wealth and power did not forget the men whose valor made glorious so many pages of its history.<sup>37</sup>

Comments on the final appeals contained in the conclusion will be made in considering the psychological appeals in the speech. While the "illustration" and "visualization" point up the Sherwood bill's possible accomplishments as a result of passage, they do not

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<sup>37</sup>Record, 3470.

satisfactorily summarize the arguments which were advanced for the bill's passage. Thus, the conclusion is not as strong as some of the conclusions on major points.

Summary on arrangement. The introduction of the speech accomplishes three functions which correspond to its three points: it announces Kern's stand on the issue, it establishes the rationale for that stand, and it introduces his main arguments. The transition from the introduction to the body is somewhat abrupt, but adequate.

The inductive logical development of the body of the speech is contained in five main points. Each main point is supported by sub-points which range from three to five in number. The means of logical development in the first two main points is by argument, the next two by refutation, and the final main point by a combination of exposition and argument. Transitions between sub-points and between main points are generally of the summary type, which do not serve to introduce the next point or to relate one or more points with a succeeding point. Transitions between support elements and smaller units of thought are generally of the connective type, consisting of single words or short phrases. Internal and external summaries are equivalent to the transitions between sub-points and between main points.

The psychological arrangement of the speech, following closely the motivated sequence pattern, the conclusion, and the transition at the close of the introduction are main contributors to the structural wholeness of the speech. But the lack of introductory transitions and summaries which relate one or more points to a pre-

ceding or succeeding point partially offset this structural unity, and tend to segment the main points in the body of the speech.

A combination of illustration and visualization of the future are the main components of the conclusion. The final appeals to sympathy and relief from anxiety are implied rather than direct. The conclusion does not seem as strong as some of the conclusions drawn in the body of the speech.

### Invention<sup>38</sup>

Logical appeals. As has been previously stated, the logical development of the speech is largely inductive, moving within the main points from the specific to the general. The kinds of argument employed follow a division of effort pattern. In the introduction, where Kern is concerned with announcing his stand on the issue and establishing the rationale for that stand, he employs unsupported assertions, causal argument, and argument from analogy.

Specifically, in the first point of the introduction Kern attempts to point out by unsupported assertions that the Sherwood bill will put an end to the pension question forever by eliminating the need for special pension legislation dispensing with the services of examiners, and by its receiving the support of the veterans.

The second point in the introduction is developed by causal argument. Kern attempts to establish an effect to effect relationship between the alleged effect of unanimity of public opinion in Indiana in favor of the Sherwood bill, and the signs of that unanimity in the favorable declarations of the state Republican and Demo-

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<sup>38</sup> Analysis and criticism are based upon the same references and Pages as in the case of arrangement. See no. 30, p. 153.

cratic platforms. The two signs are considered effects since the state Democratic action is developed by effect to cause reasoning. The advocacy of the state Republican platform for the Sherwood-type pension is assumed to be an observable fact, while the concluding sub-point of the unanimity of Indiana public opinion may be classed as a hasty generalization.

It will be remembered that the third point in the introduction is the major transition from the introduction to the body of the speech. Thus, it is not too surprising that Kern utilizes argument from analogy to relate the public opinion in Indiana to the pension question on the national scene. The drawing of conclusions unsupported by the evidence characterizes all three of the sub-points-- (A) an appropriation necessary to maintain the honor of the state is considered extravagant, (B) taxes levied for the purpose of providing for the unfortunate are paid cheerfully, and (C) whether an obligation of honor or a matter of common humanity, the providing for Civil War veterans is not extravagance. The assumption of the analogy is that opinion in Indiana is analogous to national opinion on the pension question.

The precedent for the kinds of argument employed in the body of the speech was established in the transitional point in the introduction. The first main point utilizes argument from comparison, while argument from analogy is employed in the second. The third, fourth, and fifth main points are developed by argument from comparison.

Specifically, the first point compares the government's effusive concern over the honorable treatment of its obligation to

Civil War bondholders and businessmen to the (alleged) dishonorable treatment of its pensioned veterans, and argues from this comparison for justice in this obligation of honor through support of the Sherwood pension bill.

The four sub-points in support of the comparison employ argument from comparison and observable fact. The first sub-point contrasts the poor men who fought in the Civil War to the business men who made fortunes from government contracts. The second sub-point observes that the value of the dollar has fallen below fifty cents. The third and fourth sub-points also argue from comparison of other features in the government treatment of bondholders and veterans.

Argument from analogy is used in developing the second main point. Here, Kern draws an historical analogy between the characteristics of the Revolutionary War veterans present when Daniel Webster dedicated the Bunker Hill memorial and Webster's indiscriminate address to them, and the characteristics of the Civil War veterans. He argues from this analogy that the government should be indiscriminate in the Civil War pension legislation because it is too late for discrimination. Historical narrative and observable fact are the chief supporting elements to the analogy. Argument from comparison is used in the second and third sub-points.

The third main point returns to argument from comparison. Kern contrasts the weaknesses of the McCumber substitute with the Sherwood bill's ability to eliminate those weaknesses. The function of this main point is refutation of the substitute motion, which is handled by contending that the substitute does not meet the needs and retains evils present in the status quo. Assertions are used to ex-

press directly Kern's stand against the substitute motion and for the Sherwood motion, while a quotation and paraphrased comments attributed to General Sherwood, an expert but prejudiced authority, are used as chief supports in pointing out the weaknesses and evils of the McCumber substitute.

The chief argument raised against the Sherwood bill is that it violates the pledge made by both major parties of economy in the administration of the government. Kern refutes this contention in the fourth main point by appealing to a higher ideal in American government than that of economy, specifically, to the ideal of maintaining national dignity and prestige. Argument from comparison is again employed, through which Kern contrasts previous government expenditures and present government salaries with the proposed Sherwood pension. Kern offers documented statistical evidence in support of his contention that the opposition has committed the fallacy of faulty statistics, and draws the conclusion that the Sherwood bill would not cost as much as the opposition contends. The remaining subpoints follow a chain of reasoning which leads to argument by reductio ad absurdum. The reasoning is supported by a repetitive pattern of observable facts and unsupported assertions of which the following is an example:

But, sir, this cry of economy in governmental expenditures has a new and strange sound. It has been seldom heard during the past 12 years, [unsupported assertion] while the expenses of government have nearly doubled and climbed up to the enormous figure of a thousand million dollars a year [observable fact].

It was not heard in connection with [unsupported assertion] the appropriation of hundreds of millions of dollars for the Panama Canal [observable fact], nor has it been insisted upon during the time [unsupported assertion] that the taxpayers have been contributing a half billion dollars or more

[observable fact] in carrying out the work of subjugating the Philippine Islands and benevolently assimilating the Filipino people [unsupported assertion].<sup>39</sup>

In the concluding sub-point Kern points out the opposition's fallacy of faulty synthesis in comparing European pensions to those of the American veterans without taking into consideration the American standard of living.

The final main point is also argued from comparison. Kern appeals to the senators from the southern states to join in the support of the Sherwood pension, supporting it as a burden to be carried mutually by both the North and South as the burdens and interests have been shared by the sections since the Civil War. The first sub-point is chiefly established by unsupported assertion, but the second stands on the firmer ground of refutation by adoption of the argument of the southern opposition's complaint that they have already shouldered their burdens arising out of the Civil War, and then by the statement that the North has also shouldered their share of those burdens. The third sub-point reasons from southern participation in the Spanish-American War united with northern participation (cause) to the assertion that this participation resulted in the dispelling of doubts concerning southern loyalty to the Union (effect). The fourth sub-point draws the concluding appeal by inference from the comparisons made in the previous three sub-points. Exposition of the common interests and burdens shared by the North and South sets the stage for the refutation by adoption of the opposition's argument.

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<sup>39</sup>Ibid., 3469.

The conclusion of the speech contains only two elements of support: one is an illustration from personal experience or knowledge and the other is an argument from alternatives set up by the illustration.

In summary, Kern employs inductive reasoning in the development of logical appeals. It is characteristically imperfect induction because it does not take into consideration all possible instances or contingencies. The introduction of the speech employs unsupported assertions and causal argument from effect to effect to establish Kern's stand on the issue and the rationale for that stand. The major transition from the introduction to the body of the speech employs argument from analogy. The body utilizes argument from analogy and from comparison in introducing and establishing three needs, and in refuting three arguments by the opposition. Argument from alternatives set up by an illustration is utilized in the conclusion.

Kern places heavy reliance on his own personal experiences, opinions, and judgments to support the structure of his arguments. The third main point is an exception in that Kern emphasizes the authoritative, but biased, testimony of General Sherwood. The first sub-point under the fourth main point also utilizes the testimony of Sherwood, but its effectiveness is over-shadowed by Kern's reliance on personal conclusions through the next three sub-points in support of the argument.

Ethical appeals. Perhaps the chief factor in Kern's use of ethical appeals is his primary sincerity (an unreserved belief in the persuasive proposition)<sup>40</sup> on the issue. He manifests this in

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<sup>40</sup>Brembeck and Howell, op. cit., pp. 254-257.





the speech chiefly by the directness of his attack. Kern maintains this atmosphere throughout the speech, and the following examples can serve only as indications of some of the means employed to create and maintain it.

Mr. President, I rise to speak in favor of a pension bill that will settle the pension question for all time to come;<sup>41</sup>

.....

Mr. President, that convention also, by a unanimous vote, nominated me as the party's candidate for the position I now hold. I accepted that nomination, fully advised as to the declaration of principles theretofore made by the convention, and, without hesitation or mental reservation agreed that, if elected, I would honestly and faithfully do what I could to carry out my party promises.

.....

The platform declaration for a dollar-a-day pension was not made as a mere empty promise to catch votes--

.....

Measured by its dealings with other creditors, this Government has utterly failed to carry out the plain provisions of its contract with the soldiers of the Civil War.<sup>42</sup>

.....

Who will grudge these old veterans a dollar a day?

.....

Mr. President, I grant freely that there was a time when discrimination would have been proper.

But after the lapse of a half century it is too late . . .<sup>43</sup>

Mr. President, let there be no more delay in caring for those who bore the battle, their widows and orphans. If we have not the desire as patriots to do so, let us as a Christian people have compassion upon them, because they need the Nation's comforting aid.

Sir, I am opposed to the pending bill, . . . because it does not meet the just demands of the Union soldiers.<sup>44</sup>

.....

I have not been greatly interested in the discussion as to what this or that bill will cost. It is a reflection upon the integrity, the honor, and the financial ability of this Nation to consider a question of that kind in that light.

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<sup>41</sup>Record, 3465.

<sup>42</sup>Ibid., 3466.

<sup>43</sup>Ibid., 3467.

<sup>44</sup>Ibid., 3468.

It is said that our pension list is larger than that of any nation in the world. I have not examined the statistics, but I hope it is. It ought to be.<sup>45</sup>

. . . . .  
If I could carry you with me into some of the homes of the Central West where these old soldiers abide, I am sure your hearts would be so touched that you would agree to the liberal provisions of the Sherwood bill. I have in mind the case of an old white-haired veteran, . . .<sup>46</sup>

Kern's primary sincerity in dealing with the issue also yields the "by-product" atmosphere of straightforwardness and honesty on the issue.

Three attitudes are of primary importance in the building of the ethical appeals, the speaker's attitudes toward himself, his subject, and his audience. The second paragraph of the examples immediately above together with this, the paragraph which follows it in the speech, constitute a clear statement of Kern's attitude toward himself in relation to the issue. In developing this second main point Kern again uses his own attitude as an ethical appeal through implied analogy.

Sir, in the county in which I was born and reared there was a solitary grave near the roadside, said to have been that of a soldier of the Revolution who had died in the early pioneer days of that county. I remember the veneration in which that grave was held by me and my youthful associates. The question as to whether he had served months or years, whether he had been the best soldier or the worst, never entered our minds. We only remembered that he had worn the uniform of the Continental Army and had contributed to the cause of American liberty.<sup>47</sup>

Just as his attitude toward himself contributed to the ethical appeals, so did his attitude toward the subject. The examples of

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<sup>45</sup>Ibid., 3469.

<sup>46</sup>Ibid., 3470.

<sup>47</sup>Ibid., 3467.

Kern's primary sincerity are excellent illustrations of subject attitude, but the best illustration is found in the transition from the introduction to the body of the speech.<sup>48</sup> However, Kern's attitude toward his audience probably detracted from, rather than contributed to the ethical appeals. It does not seem reasonable to suppose that the best way to build one's own prestige and character in the eyes of others is to attack their own interests.

And the men in or out of Congress who go about with microscope peering into the individual records of the few, to discover a defect here and there--the men on the hunt for excuses to justify them in refusing justice to the great mass, will not command more attention than would a man at Bunker Hill who tried to break the force of a great oration by reading records showing that a few of the old Revolutionary soldiers before him were unworthy of the tribute which Webster had paid to all.<sup>49</sup>

. . . . .  
Distinguished Senators here have, with great labor, added up all the miserable pittance received by each of these old veterans during the past 47 years, and with a horror-stricken air hold up before us the enormous total of nearly \$4,000,000,000. When the proposition was made to double the salary of the President of the United States and then add \$25,000 per annum for travelling expenses, did anyone take the time to give to the public the total sum of all the moneys paid to all the Presidents since the formation of the Government?

Or when the proposition was made a few years ago to increase the salaries of the Senators and Congressmen, was any computation exhibited of the total amount paid to the Members of the two Houses during the century and a quarter of our national life?

. . . . .  
When pork-barrel appropriations are asked and made for costly public buildings at crossroads and county seats, . . . no Senator has ever thought of . . . calculating the enormous amount of public money that has been thus wasted during the last half century.

These mathematical prodigies of the Senate never let loose their restrained energies except when the heroes of Gettysburg and Antietam, Chancellorsville and Lookout call the attention of the Government to its broken pledges and its inexcusable ingratitude to the men who saved its life.

. . . . .  
This old soldier, who must pay house rent, pay exorbitant prices for everything he eats and wears, and pay all out of a pension of \$15 or \$20, . . . must sympathize deeply with his

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<sup>48</sup>Ibid., 3466.

<sup>49</sup>Record, 3467.

unfortunate representatives in Washington, who are compelled to eke out a miserable existence on \$625 per month, with all the little accessories furnished by an unsympathetic Government. The distinguished Senator from Ohio impressed us all on yesterday with his fervid declaration that he would be rejoiced to support a measure giving the old soldier a dollar a day if the poor Government could only afford it. How natural it will be for him as a patriotic American to cover back into the Treasury a part of his next month's salary to aid an improverished Nation in its struggle with adversity.<sup>50</sup>

Just how much effect this criticism had on his audience is impossible to determine. Certainly, as a leading member of the minority party Kern would be expected to level some criticism at the majority while supporting a Democratic measure that had little chance of passage. But, the implications of the remarks apply both to Republicans and Democrats alike, and, therefore, appear to go beyond expectations. It is also true that Kern's long experience and prominence in politics would give him the right to criticize the political actions of his colleagues to some extent, despite his junior status. Thus, the question of to what extent this criticism was a poor attitude for Kern to take toward his audience must remain unresolved.

However, in Kern's appeal to the southern senators it would seem that his attitude toward his audience did add to his ethical worth. His reference to them as "my brethren of the south" introduced his theme of sectional unity that prevailed throughout the appeal. His deference to them in their objections after meeting the question of economy with scorn indicates at least a measure of sympathy for the proffered objections, and his remarks are at least flattering to southern pride.

I know how you venerate the memories of the great leaders of the Confederacy, who with the great leaders of the Army of

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<sup>50</sup>Ibid., 3469.

the Union have crossed the great river and are fraternizing on the father shore. . . .

Your interests are the same as the interests of those of us born under northern skies, and I would subject you to no penalties or burdens which I would not willingly share. My ancestors, even to the first American generation, were born in old Virginia. . . .

I state this only to show that in my advocacy of this measure I am prompted by no sectional prejudice nor actuated by any spirit of antagonism.<sup>51</sup>

Therefore, it appears that Kern's attitudes toward himself and toward his subject made material contributions as ethical appeals. However, Kern's attitude toward his audience probably made little constructive contribution.

Kern also utilizes personal identification as an ethical appeal. His opening statement in the introduction and the other examples of his direct stand in favor of the Sherwood pension contain elements of a personal identification with the issue. Examples of implied identification with ideals are found in large quantities throughout the speech, and the analogy using Webster's memorial address implies identification with historical precedent and the ideals of a national hero. Personal identifications with the "public" (or people) and with the audience are used to a lesser extent. An example of each type of personal identification follows.

Mr. President, I favor House bill No. 1--the Sherwood bill--because it is the nearest approach to a dollar-a-day pension that is attainable and because it settles once and for all this much-mooted pension question.<sup>52</sup> [Identification with the issue]

There is no nation in the world so rich as this, nor has any nation so patriotic a people, nor a people so ready and willing to rally to their country's standard in time of danger, or to make sacrifices, if need be, to contribute of their substance for the care and support of its defenders when by reason of service or age they need such care and support.<sup>53</sup>

[Identification with ideals]

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<sup>51</sup>Ibid.

<sup>52</sup>Ibid., 3468.

<sup>53</sup>Ibid., 3469.

And then we recall the promises that were made in the hour of national stress and storm to induce them to leave their homes and peril their lives and sacrifice health to the end that the Nation might not perish from the earth, not forgetting the pledge of the Nation made by the immortal Lincoln in his second inaugural address, delivered a month before the fall of Richmond and five weeks before his tragic death, that we would "bind up the Nation's wounds and care for him who shall have borne the battle and for his widow and orphan."<sup>54</sup> [Identification with historical precedent and with the ideals of a national hero]

Our people can never be brought to the belief that there can be extravagance in any appropriation of public moneys for the purpose of providing for the necessities of the old men whose services in that great War between the States made disunion impossible and the Union perpetual, . . .<sup>55</sup> [Identification with the "public"]

Sir, we heard much in a recent campaign . . . . .<sup>56</sup> . . . . .  
We now can only deal with this rapidly disappearing army as a mass. We can only remember. . . . We only see. . . And then we recall . . . that we would. . .<sup>57</sup> If we have not the desire as patriots to do so, let us as a Christian people have compassion upon them, because they need the Nation's comforting aid.<sup>58</sup> [Identification with the audience]

Another appeal is introduced in the second point of the introduction, seeming objectivity. In the introduction it is manifested by Kern's implication that he is advocating a bipartisan cause.

It will be seen that in the great central State of Indiana, . . . there is absolute unanimity of sentiment on the question, . . . so that in advocating the Sherwood pension bill here I am representing no party nor faction of a party. . . .<sup>59</sup>

His recognition of an argument by the opposition continues this theme

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<sup>54</sup>Ibid., 3468.

<sup>55</sup>Ibid., 3466.

<sup>56</sup>Ibid.

<sup>57</sup>Ibid., 3467-3468.

<sup>58</sup>Ibid., 3468.

<sup>59</sup>Ibid., 3466.

in the second main point of the speech,

Mr. President, I grant freely that there was a time when discrimination would have been proper.<sup>60</sup>

and his appeal to the southern senators also carries it in his recognition of their complaints and problems. However, the total effect of the frequent generalizations, and his frank opposition to the substitute motion, tend to cancel out the few appeals to seeming objectivity.

The number of characteristics of the speaker that are reflected in the speech constitutes an indefinite sum, dependent both on the definition and delimitation of the characteristics, and the speaker, audience, and occasion. Thus, the following characteristics which are exemplified are not exhaustive of the possibilities, but are rather indicative of the major characteristics noted according to one definition and delimitation.<sup>61</sup>

I am representing no party nor faction of a party . . .<sup>62</sup>  
[character]

. . . . .  
And yet, sir, the Government was so jealous of its honor that in March, 1869, by the famous coin act, all such bonds were made payable in coin, thereby giving to the bondholders a clear profit of more than \$678,000,000--. . .<sup>63</sup> [fund of knowledge]

Mr. President, that convention also, by a unanimous vote, nominated me as the party's candidate for the position I now hold.<sup>64</sup> [past success]

Yet to-day these same financiers, with the same earnestness and zeal with which they shouted for national honor in 1896, are denouncing as a raid on the Treasury a proposition to pay to old soldiers who saved their country for them the pittance of a dollar a day, that they may have food and shelter in their

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<sup>60</sup>Ibid., 3467.

<sup>61</sup>Brembeck and Howell, op. cit., p. 248. <sup>62</sup>Record, 3466.

<sup>63</sup>Ibid., 3466-3467.

<sup>64</sup>Ibid., 3466.



old age, and that some measure of justice be done them because in those dreadful days of civil war they were paid dollars worth less than 50 cents for their heroic work.<sup>65</sup> [enthusiasm]

I have not been greatly interested in the discussion of what this or that bill will cost.<sup>66</sup> [self-confidence]

Mr. President, these venerable soldiers of the Union to whom we owe so much of our greatness and prosperity make no unreasonable demands, for they only demand that the plighted faith of the Nation be kept and that they have just treatment.<sup>67</sup> [opinion]

I remember the veneration in which that grave was held by me and my youthful associates.<sup>68</sup> [experience]

I know how you venerate the memories of the great leaders of the Confederacy, . . .<sup>69</sup> [tact]

And so, among the characteristics of the speaker expressed in the speech are character, fund of knowledge, past success, enthusiasm, self-confidence, opinion, experience, and tact.

In addition to the above expressed characteristics, there are also certain unexpressed characteristics which are observable simply by looking at the speaker. Among these unexpressed ethical appeals is his popularity in the senate.<sup>70</sup> His age, sixty-two, certainly places him in the customarily "respected" age group, but, in a body characterized by men above fifty years of age, it is doubtful that age was an important factor. However, Kern's intelligence was a source of great respect among his colleagues,<sup>71</sup> and his political experience, stretching over the span of forty-two years,

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<sup>65</sup>Ibid.

<sup>66</sup>Ibid., 3469.

<sup>67</sup>Ibid., 3467.

<sup>68</sup>Ibid.

<sup>69</sup>Ibid., 3469.

<sup>70</sup>See Chap. iii, pp. 124-126.

<sup>71</sup>See Chap. iii, pp. 124-126.

was certainly a strong factor.<sup>72</sup>

Kern's appearance and bearing are also important characteristics in the building of ethical appeals. Of course, it cannot be determined exactly what Kern wore or how he looked while addressing the senate on the Sherwood pension bill, but certain general remarks on his appearance and bearing are probably appropriate.

Kern had considerably changed his manner of dress within a period of a few years prior to his election to the senate. The familiar Prince Albert coat, which many of the senators still wore, had now been exchanged for a business man's sack suit, and the silk hat was now worn only on state occasions. The coat of his suit was a long-tailed cutaway, and a bow tie was fastened at the square-tipped collar of the white shirt. The characteristic, long beard had now turned to grey and was kept trimmed close to his chin. His unusual and attractive dark eyes were shadowed by gold-rimmed spectacles.<sup>73</sup>

Thus, Kern was not the well-dressed man of the earlier years. His manner of dress was still formal, but had lost the attractiveness that marked the earlier years. His posture was still upright and correct when speaking, but his general appearance was "dolorous," and together with "his whiskers and his gold-rimmed spectacles" contributed "to a saturnine make-up."<sup>74</sup> While his appearance was not particularly attractive, his many enviable personal

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<sup>72</sup>See chaps. ii and iii.

<sup>73</sup>Bowers, op. cit., pp. 412-413; and Fountain's letter to writer, July 11, 1958.

<sup>74</sup>Ibid.; and Bowers, loc. cit.

qualities<sup>75</sup> apparently combined to mellow the unattractive appearance into what World's Work described as the appearance of a "good old honest farmer."<sup>76</sup>

In summary, Kern's primary sincerity, sincerity based upon personal conviction, is one of the chief contributors to the ethical appeals found in the Sherwood pension speech, and yields a secondary atmosphere of straightforwardness and honesty. His attitudes toward himself and toward his subject contribute substantially, but his attitude toward his audience is not very constructive.

During the course of the speech Kern identifies himself with the issue, ideals, historical precedent, ideals of a national hero, the "public," and the audience. Seeming objectivity is introduced by the implication that he is advocating a bipartisan cause, and is utilized in many places through the speech.

Among the expressed characteristics contributing as ethical appeals, Kern employs character, fund of knowledge, reference to past success, enthusiasm, self-confidence, personal opinion, personal experience, and tact. The unexpressed characteristics of popularity, age, intelligence, political experience, and appearance and bearing; each make some contribution to a greater or lesser degree.

Psychological appeals. In the first point of the introduction Kern meets the tone of the occasion by making a direct stand in favor of the bill. The attention step is also introduced by the attention factors of startling statement and an appeal to the selfish interests of the senators.

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<sup>75</sup>See chap. ii, pp. 124-126.

<sup>76</sup>William Bayard Hale, "Friends and Fellow Citizens," The World's Work, XXIII (April, 1912), p. 681.

Kern establishes the rationale for his stand on the Sherwood bill in the second point. He rationalizes bipartisanship in his advocacy by taking known Indiana attitudes toward the subject, and making the adaptation to the Republican majority in his audience by stressing the bipartisanship of his subject in Indiana.

Psychological appeals in the third point of the introduction include an appeal to the known attitude of placing the honor of the nation above the cost of a particular appropriation. There is also an idealistic appeal to social consciousness which reflects the tone of the occasion.

The need step in the motivated sequence begins with the first main point in the body of the speech. In support of the need, Kern employs the appeal to fund of knowledge in making economic assertions about the conditions of the two classes under comparison. This is especially true in the second and third sub-points. In the fourth sub-point he anticipates the reluctance of Republicans to support the Sherwood pension by urging it as a matter of simple justice. This same appeal also presents a preview of the contention contained in the satisfaction step, and may be given the additional classification of an appeal to social consciousness.

In the second main point, when Kern moves from the historical narrative to the drawing of the analogy, he begins to move from the needs and toward the step of satisfaction. The exact point of transition is difficult to determine, but seems to fall within the following excerpt:

A few years more and the grandest army the world ever saw will have disappeared, and the men who, at Gettysburg, and Antietam, and Chancellorsvill, and Lookout won imperishable

glory for themselves and their country will live only in the memories of the younger generations, who will in the years to come enjoy the blessings of a free Government which these old men periled life to maintain.<sup>77</sup>

(The above paragraph is still a part of the need step.)

Mr. President, these venerable soldiers of the Union to whom we owe so much of our greatness and prosperity make no unreasonable demands, for they only demand that the plighted faith of the Nation be kept and that they have just treatment.

In this age of luxury they demand no luxuries, nor do they ask to be indulged in any extravagant tastes. They only ask that out of our abundance they be allowed a sum which will provide humble homes, beds on which to rest and to die, raiment that will protect their aged bodies from the cold, and food sufficient to sustain them in their declining years.<sup>78</sup>

(The preceding two paragraphs introduce the satisfaction step, while the following paragraph makes the appeal to the step of satisfaction.)

Who will grudge these old veterans a dollar a day? Their days for earning money are past. The road to the grave is a short one.<sup>79</sup>

Prior to the beginning of the satisfaction step, Kern's use of historical narrative reflects his fund of knowledge by focusing on the historical precedent. The rhetorical questions in the conclusion of the first sub-point reflect Kern's awareness of senators among the opposition who would discriminate among the veterans of the Civil War. The quoted paragraph immediately above also reflects this awareness, and makes a corresponding idealistic appeal to social consciousness.

Kern again recognizes the predisposition of some of the senators toward the McCumber substitute by utilizing direct attack of

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<sup>77</sup>Ibid., 3467.

<sup>78</sup>Ibid.

<sup>79</sup>Ibid.

the substitute as a psychological appeal in the third main point. His substantiation of General Sherwood as an authority and his use of the quoted material reflect his fund of knowledge, while the contention that the Sherwood bill will settle the pension question forever may be classed as an appeal to the selfish interests of the senate in eliminating a large source of private bills.

In pointing out the fallacy of faulty statistics in the first sub-point of the fourth main point Kern increases the prestige of his fund of knowledge, and then proceeds with his direct attack by stating the opposition's main argument against the Sherwood pension. He offers additional psychological appeals in his refutation of the argument by exposing the selfish economic motives and interests of government officials. He concludes the main point with an idealistic appeal to social consciousness, supporting it by comparison with the known attitude of some senators in favor of luxurious residences for American ambassadors.

In the final main point Kern first utilizes a psychological appeal to the sectional status of southern senators by claiming he understands their veneration of Confederate heroes. He defers to their political consciousness by directing his remarks to them instead of to the President of the senate. He anticipates their opposition to the general pensioning of Union veterans by asserting from the comparisons that this is just an additional burden to be shared by the two sections of the country.

The conclusion of the speech contains the visualization and action steps of the motivated sequence. Psychological appeals to sympathy and relief from anxiety are implied, but the strongest ap-

peal is made to social consciousness.

Much of Kern's speech is also characterized by suggestion. Figurative language, examples of which are cited under stylistic devices, is used extensively. Kern's level of language usage suggests that the speaker is an intelligent person, but one whose emotions have been aroused by sincere convictions. "Loaded" words and striking statements indirectly, but effectively, call to mind ideas which are intended but not specifically stated. Examples of both "loaded" words, which have been underlined, and striking statements are contained in the following:

And the men in or out of Congress who go about with microscope peering into the individual records of the few, to discover a defect here and there--the men on the hunt for excuses to justify them in refusing justice to the great mass, will not command more attention than would a man at Bunker Hill who had tried to break the force of the great oration by reading records showing that a few of the old Revolutionary soldiers before him were unworthy of the tribute which Webster had paid all.<sup>80</sup>

The rhythm of Kern's style in the development of the fourth main point, especially in the argument by reductio ad absurdum, suggests Kern's rising emotions in ridiculing the argument of denying the Sherwood bill on the basis of economy in government.

It was not heard. . . , nor has it been insisted upon . . .  
It was not urged . . .  
It is a cry that is only heard . . .  
When the proposition was made, . . . did anyone take the time . . .  
Or when the proposition was made, . . . was any computation exhibited . . .  
The salaries of the postmaster . . . are increased steadily, . . . yet we have heard from no source . . .  
When pork-barrel appropriations are asked and made, . . . no Senator has ever thought of undertaking . . .  
These mathematical prodigies . . . never let loose . . . except when . . .<sup>81</sup>

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<sup>80</sup>Ibid., 3467.

<sup>81</sup>Ibid., 3469.

Thus, it can be seen that Kern's use of psychological appeals in the speech is extensive. Direct references to basic drives of his audience are found in several places. In the introduction he refers to the veterans as being "so old and infirm as to be unable to win bread by their labor and anxious and distressed because of their inability to provide for their necessities."<sup>82</sup> Here, the basic appeal to food is expressed, while shelter, clothing, and security are easily implied from the term "necessities."

Again, in the first point of the body of the speech Kern attacks the financiers who oppose paying the "pittance of a dollar a day" to veterans "that they may have food and shelter in their old age."<sup>83</sup> But perhaps the best example of Kern's appealing to these basic drives is found in the development of the second main point.

They only ask that out of our abundance they be allowed a sum which will provide humble homes, beds on which to rest and to die, raiment that will protect their aged bodies from the cold, and food sufficient to sustain them in their declining years.<sup>84</sup>

To food, shelter, clothing and security, Kern has added the basic drive of sleep or rest.

These psychological appeals to the basic drives start only as vague references and gradually become more vivid in their description. This trend continues in the fourth main point. "This old soldier, who must pay house rent, pay exorbitant prices for everything he eats and wears, . . . with fond remembrance of the beefsteak now only a memory," sympathizes with the Congressman who

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<sup>82</sup>Ibid., 3466.

<sup>83</sup>Ibid.

<sup>84</sup>Ibid., 3467.



makes only \$625 per month.<sup>85</sup>

Finally, in the concluding illustration Kern calls on the basic drives to plead the case of the old soldier who "has earned his bread with his hands" and out of his small pension pays half for "the rent of an humble cottage," while the other half must pay for "food, fuel, clothing, medicines, and medical treatment."<sup>86</sup>

But direct references to basic drives are only a small part of the psychological appeals offered by Kern. Secondary motives of shame, sympathy, loyalty and pride receive major attention. Kern evokes shame chiefly in the reductio ad absurdum of the fourth main point.<sup>87</sup> Another example of this motive occurred early in the speech at the close of the first main point.

When, a little later, a measure was offered in Congress to protect the national honor by paying to the soldiers the difference between the amounts which the Government agreed to pay them and the amounts actually received by them from the Government, it failed of a respectful hearing, its author being denounced as a demagogue for bringing a proposition so preposterous into the halls of national legislation.<sup>88</sup>

Kern appeals to the sympathy of the senators for the Union veterans in almost every argument advanced. The three following examples from the introduction, body, and conclusion are only representative of the many times this motive appeal is employed.

Every delegate in that Indiana State convention at the time he cast his vote for that platform declaration had in mind scores of his neighbors who had served their country in the hour of its distress now grown so old and infirm as to be unable to win bread by their labor and anxious and distressed because of their inability to provide for their necessities.<sup>89</sup>

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<sup>85</sup>Ibid., 3469.

<sup>86</sup>Ibid., 3470.

<sup>87</sup>Ibid., 3469.

<sup>88</sup>Ibid., 3467.

<sup>89</sup>Ibid., 3466.

Who will grudge these old veterans a dollar a day? Their days for earning money are past. The road to the grave is a short one.<sup>90</sup>

And the alternative--there are only two places open to them--the soldiers' home for the old soldier and the poorhouse for the sweet-faced old wife, for she is not allowed to accompany him to the home. God forbid that in a rich Nation like this such a tragedy should be possible in the life of any of its defenders.<sup>91</sup>

The motive appeal to loyalty finds its chief use in the appeal for the support of southern senators.

For many years after the Civil War there was widespread distrust of your loyalty in the North--a feeling which, with all my ability, I combated since my boyhood, for I knew you and believed in you and trusted you. But that distrust has been dispelled forever.

The war has been ended so long ago that there are only eight men in this body who participated in the conflict--four who fought with the Confederacy and an equal number beneath the Stars and Stripes--all now engaged in generous rivalry as to who shall render the best service for the country they all love alike.

You have borne your burdens with such cheerfulness and acquiesced in the results of the war so generously and loyally that when we ask you to share with us an additional burden, . . . we can not but hope that your generous hearts will respond to our appeal.<sup>92</sup>

Loyalty is also evoked by the example of the veterans who "made disunion impossible and the Union perpetual,"<sup>93</sup> and by Kern's call upon the Senators "solicitous for the national honor, . . . to rally to the support of the Sherwood pension bill to the end that the . . . [veterans] may have before they die some measure of justice at the hands of a Government penitent for its one act of debt repudiation."<sup>94</sup>

Pride, one of the strongest of secondary motive appeals, is

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<sup>90</sup>Ibid., 3467.

<sup>91</sup>Ibid., 3470.

<sup>92</sup>Ibid., 3469-3470.

<sup>93</sup>Ibid., 3466.

<sup>94</sup>Ibid., 3467.

used by Kern chiefly in contrast to shame. An example of this usage of the pride motive appeal appears shortly before the example of motive appeal to shame which was cited above from the body of the speech.

On that proud day of review, in May, 1865, the men of that army were in the vigor of young manhood, full of joy that their efforts for the Union had been crowned with success--full of hope for the future of the Republic for which they had sacrificed so much. Laying aside arms and uniform they returned to the peaceful walks of life and took upon themselves the duties of citizenship.<sup>95</sup>

The entire second main point is full of these contrasts between pride and shame, giving the effect of a continuous psychological appeal.

Many other secondary appeals are present in the speech. Some are closely related to those which have already been mentioned, while others are utilized only once or twice. The following examples cite these appeals in a summary fashion.

Mr. President, I rise to speak in favor of a pension bill that will settle the pension question for all time to come; that will forever put an end to special pension legislation; that will, when once put into operation, enable the Government to dispense with the services of thousands of examiners and special agents, spies and detectives--a measure which has the support of the great majority of the soldiers of the Nation who served in the ranks of the Union Army as privates during the Civil War and who by the thousand are registering their protest against the McCumber or Smoot substitute now under consideration.<sup>96</sup> [solution to audience problem; economy of effort, time, and money; and potential approval by others]

That convention was not made up of mere politicians, but was composed for the most part of earnest, serious-minded men from every walk of life, who for the time had left the plow, the anvil, the shop, the office, and the store and assembled to declare their political faith, to express themselves upon public questions, and as patriotic citizens organize their party for the contest for better government and more equal

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<sup>95</sup>Ibid.

<sup>96</sup>Ibid., 3465-3466.

and beneficial laws.<sup>97</sup> [ideal democratic operation in representative government]

It was in line with the promise of "generous pensions" made in the last Democratic national platform . . . and with the promises made in the platforms of all political parties since the commencement of the Civil War.<sup>98</sup> [respect for political promises]

Then, again, the taxes levied for the purpose of providing for the care and education of our unfortunate people--the blind, the deaf and dumb, the soldiers' orphans, and others of that class--that their lives might be brightened a little, seemed heavy and burdensome, but they were paid cheerfully, because the common instincts of humanity required it.<sup>99</sup> [charity]

Daniel Webster was the orator of the day. The day, the place, the occasion, the audience, the surrounding! What inspiration for the greatest of all American orators! And Webster rose grandly to the occasion and delivered an oration that will live as long as men and women who love liberty read our language. Who has read his words addressed directly to the venerable men of the revolution, recounting their sacrifices in the cause of liberty, and expressing the everlasting gratitude of the beneficiaries of their valorous deeds, without such emotions as bring the tears unbidden to the eyes?<sup>100</sup> [honor, patriotism, devotion to others]

The blessings which under the providence of God will be enjoyed by the countless generations which follow them.<sup>101</sup> [respect for Deity]

I remember the veneration in which that grave was held by me and my youthful associates.<sup>102</sup> [worshipful respect]

And then we recall the promises that were made in the hour of national stress and storm to induce them to leave their homes and peril their lives and sacrifice health. . . .<sup>103</sup> [danger, health]

Under its provisions but a few thousand of the surviving veterans could ever receive a dollar a day, and it is so full of inequalities and unjust discrimination that it has received unstinted condemnation at the hands of the soldiers of the country.<sup>104</sup> [fairness]

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<sup>97</sup>Ibid., 3466.

<sup>98</sup>Ibid.

<sup>99</sup>Ibid.

<sup>100</sup>Ibid., 3467.

<sup>101</sup>Ibid.

<sup>102</sup>Ibid.

<sup>103</sup>Ibid., 3468.

<sup>104</sup>Ibid.

The Sherwood bill, . . . will, . . . be a distinct and positive proof of the gratitude of the Nation to its defenders.<sup>105</sup>  
[gratitude]

When pork-barrel appropriations are . . . made, . . . no Senator has ever thought of . . . calculating the . . . money . . . thus wasted during the last half century.<sup>106</sup> [honesty through its antithesis]

Your interests are the same as the interests of those of us born under northern skies, and I would subject you to no penalties or burdens which I would not willingly share. My ancestors, even to the first American generation, were born in old Virginia. My father having removed to the North long before the Civil War, was a Douglas Democrat and for the Union, and yet, after the war was over, he so longed for the mountains and valleys of his native State that he returned there, and after a citizenship of 30 years, died at a ripe old age and peacefully sleeps in the bosom of the dear old State that he loved so well.<sup>107</sup> [parental affection, common ties]

In summary, Kern employs psychological appeals in references to the tone of the occasion, known audience attitudes, and in idealistic appeals to social consciousness in the introduction of the speech. The attention step is also included, introduced by the attention factors of startling statement and an appeal to selfish interests.

The body of the speech utilizes the broad psychological appeals of fund of knowledge, appeal to social consciousness, known attitude, selfish interests, sectional status, and political consciousness. The need step in the motivated sequence is introduced in the first point of the body, and the satisfaction step begins where Kern moves from the historical narrative to the drawing of the analogy.

The conclusion of the speech contains psychological appeals to sympathy and relief from anxiety, which are implied, but the strong-

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<sup>105</sup>Ibid.

<sup>106</sup>Ibid., 3469.

<sup>107</sup>Ibid.

est appeal is made to social consciousness. The visualization step is represented chiefly by the illustration in the conclusion, while the action step is expressed in the final appeal.

Suggestion is achieved in the speech through the extensive use of figurative language, and level of language usage. "Loaded" words and striking statements, and the rhythm of the style also contribute to suggestiveness.

Specific psychological appeals to the basic drives for food, shelter, clothing, and security are made, and almost of equal importance are the secondary appeals to shame, sympathy, loyalty and pride. Of lesser importance are the specific psychological appeals to solution of audience problem, economy of effort, economy of time, economy of money, potential approval by others, ideal democratic operation in representative government, respect for political promises, charity, honor, patriotism, devotion to others, respect for Deity, worshipful respect, danger, health, fairness, gratitude, honesty, parental affection, and common ties.

### Style<sup>108</sup>

Force. Kern's style is characterized by force achieved through the choice of words. He uses short and specific words, the active voice, and emotional language. He does not practice the principle of brevity in the number of words used to express an idea,

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<sup>108</sup>While following the classical tradition, modern terminology in the analysis and criticism of style is based upon Mills, op. cit., pp. 267-310; Harry R. Warfel, Ernst G. Mathews and John C. Bushman, American College English: A Handbook of Usage and Composition (New York: American Book Company, 1949); and John M. Kierzek, The MacMillan Handbook of English (3d ed.; New York: The MacMillan Company, 1954).

but instead he is copiously diffuse. However, the selection of the words within the sentences achieves the forceful expression of ideas despite the handicap of lack of brevity.

Short and specific words are not always used, but usually appear in points of emphasis and major illustrations. The following examples illustrate the use of short and specific words, first in a major illustration and then in a point of emphasis.

They can no longer work, but are trying to live on a pension of \$16 per month. Half of that sum goes for the rent of an humble cottage; out of the other \$8 per month must come food, fuel, clothing, medicines, and medical treatment. The cost of living is such that, of course, they can no longer live on that amount.<sup>109</sup>

They only ask that out of our abundance they be allowed a sum which will provide humble homes, beds on which to rest and to die, raiment that will protect their aged bodies from the cold, and food sufficient to sustain them in their declining years.

Who will grudge these old veterans a dollar a day? Their days for earning money are past. The road to the grave is a short one.<sup>110</sup>

The division between the active and passive voices in reference to past events is about equal in the introduction and the first two main points of the speech, although the last three main points and the conclusion of the speech generally utilize the active voice. A major exception occurs in the fourth main point where the active voice is used in contrast to the passive voice during the argument by reductio ad absurdum. Even in this instance, the active voice is dominant. The example is taken from the fifth main point.

If you say that you have patiently and uncomplainingly borne the burdens entailed by the war for nearly half a cen-

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<sup>109</sup> Record, 3470.

<sup>110</sup> Ibid., 3467.





tury, I agree with you, but remind you that we have carried our full share of the same burden and at the same time have contributed something to the development of the new South, in every way so marvelous a transformation of a Nation laid waste by war into a rich, prosperous land that blossoms as the rose.<sup>111</sup>

Emotional language is utilized throughout the speech, but rises in frequency during the many summary appeals that are made at the conclusion of sub-points and main points. The following example is given without reference to the emotional devices employed since the stylistic devices will be dealt with a little later, and the psychological appeals have already received consideration.

Who was there on that historic occasion to sound a note of discord by protesting against the tribute of the great orator because it was paid to all of the survivors? Who, on that great occasion, had it in his heart to say, "No, Webster, you are mistaken. In the rapidly thinning ranks of these old grey-haired soldiers there are men who faltered in the hour of danger--men who served only months instead of years--men who do not deserve to be honored by this people." There was no such thought in any mind, and the harmony of the occasion was not marred by such utterance, and no old soldier who heard that great oration returned to his home that day heavy of heart because of any intimation that he was less deserving than his comrades who had served longer or even better.<sup>112</sup>

In his selection of supporting details Kern achieves force by using figures of speech, recalling vivid experiences, developing striking illustrations, making allusions and direct references to history, making allusions to the Bible and to tradition, using vivid description, pointing up a dramatic struggle, and by a copious use of hyperbole.

Figures of speech will be exemplified under the later discussion of stylistic devices.<sup>113</sup> Examples of the narration of vivid

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<sup>111</sup>Ibid., 3469.

<sup>112</sup>Ibid., 3467.

<sup>113</sup>See pp. 193-202.

experiences have been previously cited; specifically, the experience of the visits to the grave of the Revolutionary War veteran,<sup>114</sup> and the experience of the state Democratic convention.<sup>115</sup> Striking illustrations are exemplified by the quoted materials from General Sherwood in the third main point, and by the several illustrations developed in the argument by reductio ad absurdum contained in the fourth main point.<sup>116</sup> Direct references and allusions to history are seen in the second and third points of the introduction<sup>117</sup> and in the contrast between Webster's oration and the treatment of Civil War veterans made in the second main point.<sup>118</sup>

Allusions to the Bible are minor, but contribute to the emotional justification of the arguments advanced, as seen in these examples:

Did Webster on that historic day in that hallowed place stop to draw a line of distinction between the old grey-haired veterans?<sup>119</sup>

Within that time hundreds of thousands of those brave men have answered their last roll call and have been called to their reward.<sup>120</sup>

If we have not the desire as patriots to do so, let us as a Christian people have compassion upon them.<sup>121</sup>

I know how you venerate the memories of the great leaders of the Confederacy, who with the great leaders of the Army of the Union have crossed the great river and are fraternizing on the farther shore.<sup>122</sup>

God forbid that in a rich Nation like this such a tragedy should be possible in the life of any of its defenders.<sup>123</sup>

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<sup>114</sup>Record, 3467.

<sup>115</sup>Ibid., 3466.

<sup>116</sup>Ibid., 3469.

<sup>117</sup>Ibid., 3466.

<sup>118</sup>Ibid., 3467-3468.

<sup>119</sup>Ibid., 3467.

<sup>120</sup>Ibid.

<sup>121</sup>Ibid., 3468.

<sup>122</sup>Ibid., 3469.

<sup>123</sup>Ibid., 3470.

The major allusions to tradition are contained in Kern's appeal to the historical precedent of Webster's oration,<sup>124</sup> and the appeal for southern senators to share mutually with the North the additional burden of the Sherwood pension (allusion to the southern tradition of generosity).<sup>125</sup> The use of vivid description is best exemplified by Kern's description of the setting and occasion for Webster's oration,<sup>126</sup> and also contains an excellent example of dramatic struggle.<sup>127</sup>

Examples of hyperbole are found in abundance. In fact, Kern is guilty of intemperance in its use, which weakens its effectiveness in contributing to psychological appeals. For example, the exaggerations contained in the argument by reductio ad absurdum over-emphasize the bad government expenditures of the past, and cloud the real point that denial of the Sherwood bill is misplaced economy.<sup>128</sup>

Sentence arrangement helps to achieve the forceful style despite Kern's weakness for run-on sentences. It helps, first of all, because Kern arranges his sentences in an order of an ascending pattern from suspense to climax, with each pattern covering the development of a key idea. The introduction is a good example. It begins with a point of climax on "a pension bill that will settle the pension question for all time to come," descends to the suspense of seeming digression in the exposition of Indiana's state Democratic convention action, rises on the statement of sentiment unanimity in Indiana for the Sherwood pension to the point of climax on Kern's

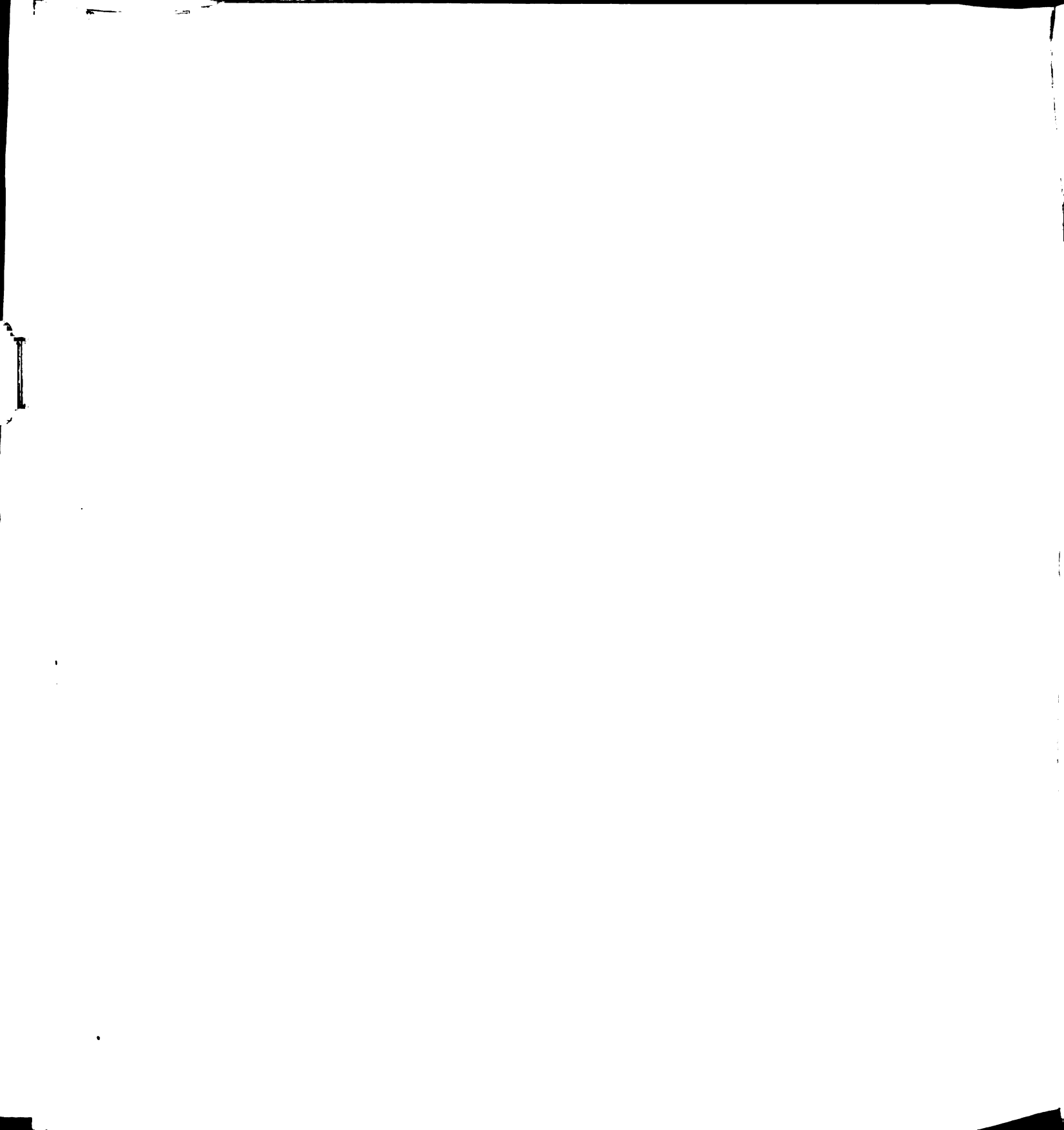
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<sup>124</sup>Ibid., 3467. See p. 190.      <sup>125</sup>Ibid., 3469-3470. See p. 184.

<sup>126</sup>Ibid., 3467. See pp. 186.

<sup>127</sup>Ibid.

<sup>128</sup>Ibid., 3469.



declaration of bipartisan representation in his stand on the issue, and then repeats the pattern to the next point of climax in Kern's statement that the Sherwood pension is not extravagance when the claim is made on the basis of government obligation or on grounds of common humanity.<sup>129</sup>

The antithetical arrangement of the sentences in the argument by reductio ad absurdum in the fourth main point is a good example of force achieved by antithesis. Supporting and transitional statements within the antithetical arrangement are also good examples of the contrasting balance that contributes to the force of the style.<sup>130</sup>

Kern employs compound-complex sentences almost to the exclusion of other kinds, and therefore, the lack of variety does not contribute to a forceful style. But the placing of key ideas in sentences apart from support materials is a distinct contribution. The following is an example:

Measured by its dealings with other creditors, this Government has utterly failed to carry out the plain provisions of its contract with the soldiers of the Civil War.<sup>131</sup>

Emphasis is also given by Kern's practice of packing the less important supports and ideas into long paragraphs and sentences, and utilizing shorter paragraphs and sentences for the more important supports and ideas.

Restatement and repetition of sentences are also used, but with moderation. Two examples are cited as an indication of this

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<sup>129</sup>Ibid., 3465-3466.

<sup>130</sup>Ibid., 3469.

<sup>131</sup>Ibid., 3466.

moderation.

No, no; the war had ended 42 years before. It was too late for discrimination then. The time had long gone by for nice discriminations.

.....  
Mr. President, the great war for the preservation of the Union ended 47 years ago.

.....  
Forty-seven years have rolled by.

.....  
Mr. President, I grant freely that there was a time when discrimination would have been proper.

But after the lapse of a half century it is too late.<sup>132</sup>

Business men, as a rule, remained at home and made money while clerks and employees went to war.

.....  
The first class had remained at home engaged in the pleasant pursuit of money making, while the second class had endured during all those long years all the privations incident to the greatest war of modern times.<sup>133</sup>

The moderate use of restatement and repetition for emphasis is indicated by the fact that the first example immediately above covers a span of fifteen paragraphs, while the second example spans five paragraphs.

In summary, Kern's style is characterized by force through the use of effective word choice (short and specific words, the active voice, emotional language), proper selection of supporting details (figures of speech, vivid experiences, allusions and direct references to history, allusions to the Bible, vivid description, dramatic struggle, and hyperbole), and effective sentence arrangement (suspense and climax, antithesis and balance, separate sentences for key ideas, contrast in paragraph proportion, restatement, and repetition).

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<sup>132</sup>Ibid., 3467.

<sup>133</sup>Ibid., 3466.

Accuracy. Generally, Kern's style may also be characterized by accuracy. While the length of the run-on sentences makes it difficult to follow grammatical forms, it appears that Kern uses correct grammar within the limitation of common usage of the period.

The denotation and connotation of words are usually precise, because the words used are familiar to the audience and are placed in familiar contexts. An excellent example of precision is found in the introduction of the speech. Words employed chiefly for their connotative meaning have been underlined.

That convention was not made up of mere politicians, but was composed for the most part of earnest, serious-minded men from every walk of life, who for the time had left the plow, the anvil, the shop, the office, and the store and assembled to declare their political faith, to express themselves on public questions, and as patriotic citizens organize their party for the contest for better government and more equal and beneficial laws.<sup>134</sup>

The above example also illustrates Kern's ability to express shades of meaning, but, as can also be seen, he is not always careful to select specific and concrete words. This is not a distinct defect in the style since style is aimed generally at creating a total effect, and the lack of specificity and concreteness usually occurs where the idea is less important than the emotional response that its expression evokes.

Directness. Since Kern is a popular member of the body which composes his audience, and is thoroughly familiar with the accustomed language of the group, the problem of achieving directness in style is made easier. The audience is accustomed to Kern's usual style of speaking, and thus, little or no adaptation in style is necessary

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<sup>134</sup>Ibid., 3466.

with this audience. An exception occurs when Kern makes some special adjustment in language in his appeal to southern senators. The adjustment consists largely of including in his development words and phrases which suit the listening vocabularies and attitudes of the southern senators, and are peculiarly familiar in their connotations to "southern gentlemen." Examples of these words and phrases include: "my brethren of the South," "common," "common brotherhood," "common interests," "old Virginia," "sleeps in the bosom," "that blossoms as the rose," "the gallant young son of North Carolina," and "the sons of Indiana and Georgia."

The language in general is well-suited to the occasion and Kern's personality, as well as to the purpose and the type of the speech. The use of personal pronouns adds to the directness, and occasional questions and appropriate illustrations also contribute. The chief deterrent to accuracy of style is Kern's fondness for elaborate statements.

Unobtrusiveness. Kern's weakness for the run-on statements and exaggeration makes a bad beginning for a style free of factors which call attention to it. But Kern's personality, the occasion, and the audience tend to modify the effect of his stylistic weakness. Euphony is spoiled frequently by Kern's wordiness which interrupts the easy pronouncing order of the words that would exist if the sentences were shorn of the unessential words. Fifty words were eliminated from one of the run-on sentences to yield the following example. Within its context, no information was left out or the meaning altered.

This old soldier, . . . must sympathize deeply with his



unfortunate representatives in Washington, who are compelled to eke out a miserable existence on \$625 per month.<sup>135</sup>

As can be seen from the example, brevity is not one of Kern's attributes.

In general, Kern's style does call attention to itself. Its only saving features are that euphony is not always spoiled, and the rhythmical movement, as found in the fourth main point, does contribute to some ease. However, even here, exaggeration draws attention away from the euphony and rhythm.

Clearness. Kern's identity as a member of the body that is also the audience establishes a community of reference between the speaker and the audience. There is no evidence in the speech that indicates Kern departs from the accustomed language usages which he holds in common with his audience.

Word choice generally follows the accepted principles of selecting concrete and specific words to express specific ideas, while reserving to general and abstract ideas the general and abstract expressions. But unnecessary amplification and simplification and reinforcement of ideas defeat brevity and seriously detract from the clarity of the style.

Variety. As can be seen by the examples cited previously in the consideration of style, Kern displays considerable variety in word choice, ordering of phrases and sentences, and the use of vivid and figurative language.

Variety in sentence structure, however, is practically nonexistent. Simple sentences are very rare with compound sentences

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<sup>135</sup>Ibid., 3469.

only a little less so. Complex sentences are fairly frequent, but compound-complex sentences are in the overwhelming majority. With the exception of complex sentences, the following example is fairly representative of the distribution in types of sentence structure.

The armies of the Union were made up almost entirely of poor men. [simple sentence] Business men, as a rule, remained at home and made money while clerks and employees went to war. [compound-complex sentence] Men who owned farms, especially those who owned large farms, operated them with great profit throughout the struggle, while the tenants and farm hands were urged to volunteer. [compound-complex sentence] Great fortunes were made by many of those who took no part in the conflict for the necessities of the Government were great and the opportunities for making money unparalleled. [compound-complex sentence] Contractors for supplies of every kind waxed fat, and the manufacturers who were subject to war taxes were given special tariff legislation, enacted for the avowed purpose of offsetting the amounts paid by them for the support of the Government, but for the real purpose of enriching them at the expense of the people. [compound-complex sentence]

The Government promised to pay the soldiers \$13 per month which was afterwards increased to \$16. [complex sentence] <sup>136</sup>

Stylistic devices--figures of comparison and contrast. The following extractions are examples of stylistic devices that Kern employs during the speech. Analogy and antithesis and contrast are devices which are the most important in the use of figurative language.

And yet, sir, the Government was so jealous of its honor that in March, 1869, by the famous coin act, all such bonds were made payable in coin, thereby giving to the bondholders a clear profit of more than \$678,000,000--a naked speculation--something for nothing.

When, a little later, a measure was offered in Congress to protect the national honor by paying to the soldiers the differences between the amounts actually received by them from the Government, it failed of a respectful hearing, its author being denounced as a demagogue for bringing a proposition so preposterous into the halls of national legislation.

Mr. President, I now call upon all those men who were so solicitous for the national honor in 1896, and whose consciences were so quickened at the mere prophecy of 50-cent dollars, to rally to the support of the Sherwood pension bill to the end that the old soldiers of the Union who made hundred-cent dollars, or dollars of any kind, possible in this country, and who were paid for their gallant services in 40-cent dollars, may have before they die some measure of justice on the hands of a Government penitent for its one act of debt repudiation.<sup>137</sup> [analogy]

If you say that you have patiently and uncomplainingly borne the burdens entailed by the war for nearly half a century, I agree with you, but remind you that we have carried our full share of the same burden and at the same time have contributed something to the development of the new South, in every way so marvelous a transformation of a Nation laid waste by war into a rich, prosperous land that blossoms as the rose.<sup>138</sup> [simile]

And the men in or out of Congress who go about with microscopes peering into the individual records of the few, to discover a defect here and there--the men on the hunt for excuses to justify them in refusing justice to the great mass, will not command more attention than would a man at Bunker Hill who had tried to break the force of the great oration by reading records showing that a few of the old Revolutionary soldiers before him were unworthy of the tribute which Webster paid to all.<sup>139</sup> [metaphor]

It was not urged while 200,000 new offices were being created or while the salaries of all the principal office-holders in the United States were being largely increased because of the high cost of living.

It is a cry that is only heard when the proposition is made to care for the soldiers of the Nation, and is only heard then because they have grown too old to hold official station and because it is thought that on account of old age and decrepitude they can no longer exert great influence in the political affairs of the country.<sup>140</sup> [antithesis and contrast]

A common hope, a common destiny, and a common country, with a single flag, bind us in the ties of a common brotherhood.<sup>141</sup> [anaphora]

Some had served from Bull Run to Appomattox and others whose service was shorter and of less value, but beneath every blue

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<sup>137</sup>Ibid., 3466-3467.

<sup>138</sup>Ibid., 3469.

<sup>139</sup>Ibid., 3467.

<sup>140</sup>Ibid., 3469.

<sup>141</sup>Ibid.

uniform there beat a patriotic heart.<sup>142</sup> [onomatopoeia]

And the men in and out of Congress who go about with microscope peering into the individual records of the few.<sup>143</sup>  
[oxymoron]

A common hope, a common destiny, and a common country, with a single flag, bind us in the ties of a common brotherhood.<sup>144</sup>  
[progression and particularization]

Stylistic devices of direct discourse. The devices of direct discourse, exemplified below, are employed by Kern during the speech. Personal pronouns and acclamation are prominent devices.

We now can only deal . . . as a mass. We can only remember that they . . . all did something. . . . We only see the bent and tottering forms. . . . And then we recall the promises that were made, . . . that we would. If we have not the desire as patriots to do so, let us as a Christian people have compassion upon them. because they need the Nation's comforting aid.<sup>145</sup> [pronouns in first and second person]

He says:

First, let me call your attention to the fact that no soldier . . . will . . . get . . . the maximum pension.<sup>146</sup>  
[quotation]

Who, on that great occasion, had it in his heart to say, "No, Webster, you are mistaken. In the rapidly thinning ranks . . . are men who faltered."<sup>147</sup> [dialogue]

Who will grudge these old veterans a dollar a day?<sup>148</sup>  
[rhetorical question]

Was reference made to that? No, No; the war had ended 42 years before.<sup>149</sup> [question and answer]

My father, . . . returned there, and after a citizenship of 30 years, died at a ripe old age and peacefully sleeps in the bosom of the dear old State that he loved so well.<sup>150</sup>  
[personification]

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<sup>142</sup>Ibid., 3467.

<sup>143</sup>Ibid.

<sup>144</sup>Ibid., 3469.

<sup>145</sup>Ibid., 3467-3468.

<sup>146</sup>Ibid., 3468.

<sup>147</sup>Ibid., 3467.

<sup>148</sup>Ibid.

<sup>149</sup>Ibid.

<sup>150</sup>Ibid., 3469.

The day, the place, the occasion, the audience, the surroundings! What inspiration for the greatest of all American orators! And Webster rose grandly to the occasion and delivered an oration that will live as long as men and women who love liberty read our language.<sup>151</sup> [acclamation]

Webster only saw--the people only recognized this body of survivors in the mass-rapidly diminishing, year by year as death called, and, before it might be too late, all sought to do honor to all lest discrimination might work injustice to some.<sup>152</sup> [deliberation]

Other stylistic devices. In addition to the two general categories of stylistic devices, Kern employed certain others. Examples of these follow.

The distinguished Senator from Ohio impressed us all on yesterday with his fervid declaration that he would be rejoiced to support a measure giving the old soldier a dollar a day if the poor Government could only afford it. How natural it will be for him as a patriotic American to cover back into the Treasury a part of his next month's salary to aid an impoverished Nation in its struggle with adversity.<sup>153</sup> [humor through ridicule]

This old soldier, . . . must sympathize deeply with his unfortunate representatives in Washington, who are compelled to eke out a miserable existence of \$625 per month, with all the little accessories furnished by an unsympathetic Government.<sup>154</sup> [understatement, satire through irony]

But the seats of honor were occupied by the old survivors of the revolution, the men who had followed Washington and his generals in that war for independence, and some of whom had witnessed with swelling hearts the surrender of Cornwallis.<sup>155</sup> [metonymy]

The American soldier, . . . still deserves to live.<sup>156</sup> [synecdoche]

. . . and saw the sons of South Carolina . . .<sup>157</sup> [alliteration]

. . . to the end that the Nation might not perish from the

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<sup>151</sup> Ibid., 3467.

<sup>152</sup> Ibid.

<sup>153</sup> Ibid., 3469.

<sup>154</sup> Ibid.

<sup>155</sup> Ibid., 3467.

<sup>156</sup> Ibid., 3469.

<sup>157</sup> Ibid., 3470.

earth, . . .<sup>158</sup> [allusion]

The road to the grave is a short one.<sup>159</sup> [proverb]

Summary of stylistic devices. During the speech Kern employs many stylistic devices. Analogy and antithesis and contrast are prominent among the figures of comparison and contrast which are used, while personal pronouns and acclamation are major devices of direct discourse. The following table summarizes the other devices employed.

figures of comparison and contrast	devices of direct discourse
simile	pronouns in the
metaphor	first and
anaphora	second
onomatopoeia	person
oxymoron	quotation
progression	dialogue
particularization	rhetorical question
	question and answer
other devices	personification
	acclamation
humor through ridicule	deliberation
understatement	
satire through irony	other devices
metonymy	
synecdoche	alliteration
allusion	proverb

Summary of style. Kern's style is characterized first of all by force. It is achieved through the use of effective word choice in selecting short and specific words, employing the active voice, and utilizing emotional language. Figures of speech, vivid experiences and description, references to history, allusions to history and to the Bible, dramatic struggle, and hyperbole, used in the speech, are examples of Kern's ability in selecting the proper sup-

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<sup>158</sup> Ibid., 3463.

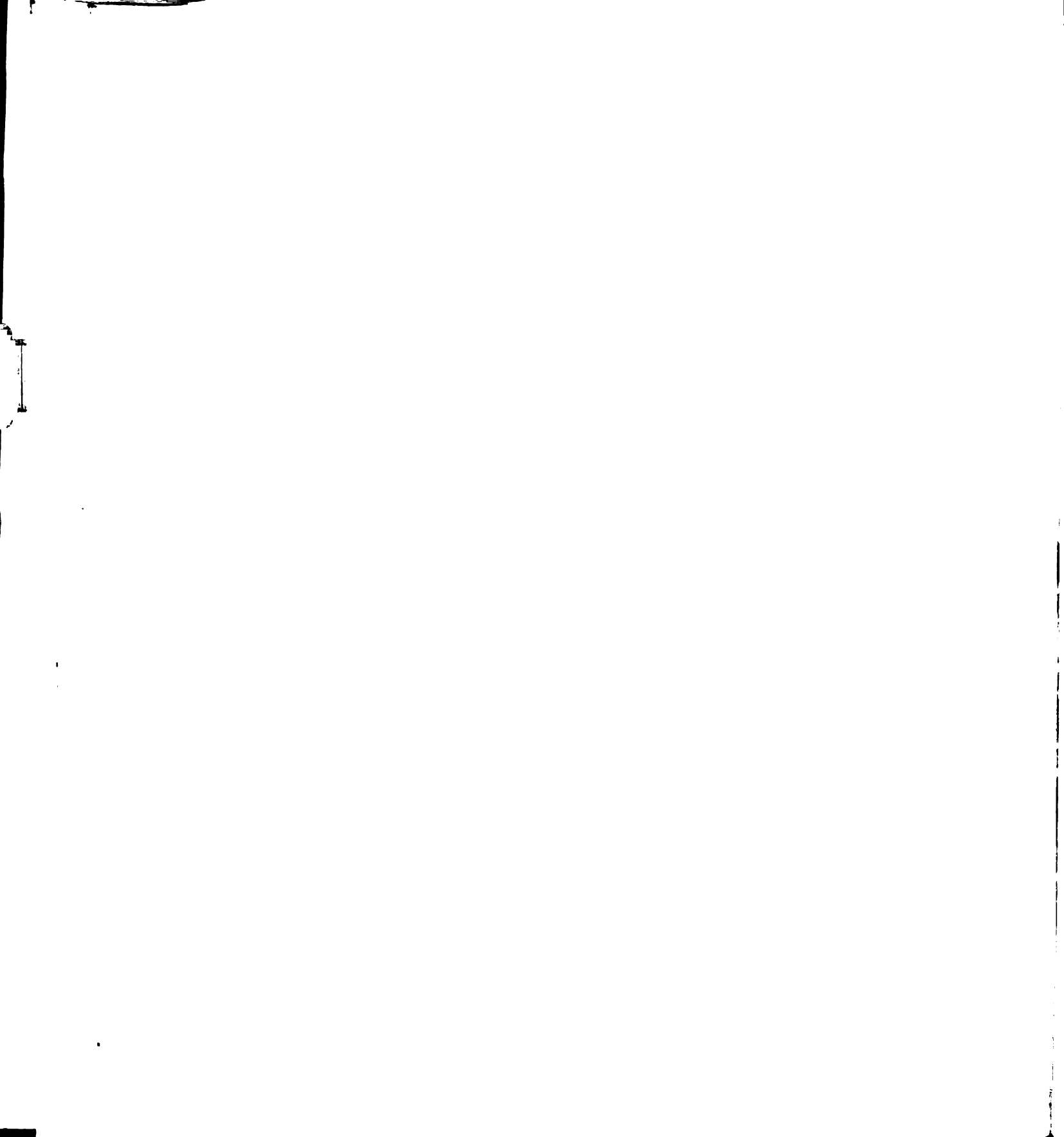
<sup>159</sup> Ibid., 3467.

porting details which contribute to the forceful style. Another contribution is made by effective sentence arrangement. Sentence orders of suspense and climax, and antithesis and balance give variety to the sentences which cannot be found in the type of sentences employed. The placing of key ideas in separate sentences, contrast in paragraph proportion, restatement, and repetition provides additional emphasis.

Accuracy in Kern's style is achieved largely through precision in the denotative and connotative meanings of the words used in the speech. Specificity and concreteness are not always maintained in the selection of words, but the weaknesses in these characteristics usually occur where the ideas expressed are less important than the emotional responses evoked by their expression.

Since Kern is a member of the body comprising the audience, and is familiar with its accustomed language usage, little adjustment in his own usage is necessary. The particular occasion causes Kern to make sectional adjustments in his language usage during his appeal to southern senators. In general, the language is well-suited to the occasion, the speaker's personality, and the purpose and type of the speech. Personal pronouns, occasional questions, and appropriate illustrations finish out the attributes that contribute to a directness of Kern's style. The chief deterrent to that directness is Kern's fondness for elaborate statements.

The style, far from being unobtrusive, calls attention to itself through run-on statements, exaggeration, and poor euphony. But rhythmical movement and the fact that euphony is not always spoiled slightly modify the obtrusiveness. Clarity of style also





is seriously hampered by this unnecessary amplification and reinforcement of ideas.

Variety in the style is indicated in word choice, ordering of phrases and sentences and the use of vivid and figurative language. However, variety in sentence structure is at a minimum, with compound-complex sentences in the over-whelming majority.

General remarks on style. The above criticism of the style of the speech was based upon accepted definitions of the attributes of good speaking style. These remarks which follow are based upon the biographer's criticism of Kern's speaking style. The purpose in the exposition of these remarks is to provide a basis of comparison of the style in this specific speech with what Bowers considered to be Kern's general practice in the style of his oratory.

Kern's style of oratory was natural almost to the point of being colloquial. He was not concerned with the coining of epigrams or other gems of oratory. He used the best English, but only within the boundaries of his conversational style. He did not use invective. For this, he occasionally substituted sarcasm or ridicule through humor. He excelled in these devices but, because of the earnestness of his speaking in the senate and his position of leadership, he seldom used them on the floor of the senate. Kern was also skilled in the use of puns. His humor was not the kind that engaged in character destruction; only in good-natured foolery. But even this humor was not often present in Kern's oratory while in the senate.<sup>160</sup>

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<sup>160</sup> Bowers article in Fort Wayne Journal-Gazette, August 27, 1917, p. 4.

Comparison on style. Under comparison, the conclusions drawn from the analysis of the style of this speech and the general comments by Bowers both intersect and diverge. Generally, in this speech Kern is little interested in coining gems of oratory. A single proverb is the only noted exception. He uses the best English, within the boundaries of his conversational style, and does not use invective. Sarcasm and ridicule through humor are noted in the fourth main point, but puns are not noted. Certainly, Kern's style could not be considered natural almost to the point of being colloquial in this speech. While it is not on the extreme side of the classical grand style, it is certainly well past the middle style in language usage. Thus, these deviations from the general remarks by Bowers, of sarcasm and ridicule from the floor of the senate and natural style, are noted in this speech.

#### Delivery

The sources examined do not reveal specific information on the delivery of the speech on the Sherwood pension. However, an examination of comments on Kern's delivery in the past,<sup>161</sup> and a consideration of some general remarks on Kern's delivery of speeches during the period he was in the senate, should indicate certain practices which were probably true of the delivery of this speech.

Generally, Kern's physical bearing during the delivery of a speech was relaxed but in good taste. His posture was correct, with upright stance and hands hanging loosely at his sides when not employing bodily action. Occasionally, with moderation, he would dev-

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<sup>161</sup>See chap. ii, pp. 35-36.

iate from this position for purposes of an occasional gesture. Kern was also known to use two other stances in delivery. These stances were basically the same except that the shoulders were drawn back a little more due to his hands being folded and placed behind him, or, as in the second stance, due to one hand and fore arm being placed behind his back parallel to the floor with the thumb of the other hand hooked in the belt loop of his trousers, elbow pointed away and to the rear, at his side.<sup>162</sup>

Kern's delivery was normally simple, direct, and conversational. "Without special graces, he has learned the art of direct and forceful speech."<sup>163</sup> He spoke directly to his audience, and with great fluency and sincerity. He was not robust or flamboyant in his oratory, and only occasionally rose to emotional heights when carried away by the strength of his convictions. He rarely, if ever, displayed anger in his speaking.<sup>164</sup> He was "an energetic and convincing speaker."<sup>165</sup>

Kern did not speak in the Hoosier regional accent because his father was a Virginian, and because he had spent his early boyhood years in Iowa.<sup>166</sup> His articulation and pronunciation of words

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<sup>162</sup>Interviews with C. V. Haworth, Kokomo historian, August, 1957; Letter from Ashurst to writer, July 11, 1958; Bowers, op. cit., portrait adjoining p. 128; and Hale, op. cit., portrait on p. 679.

<sup>163</sup>Ibid., p. 681.

<sup>164</sup>Ibid.; Bowers article in Fort Wayne Journal-Gazette, August 27, 1917, p. 5; and The Fort Wayne Journal-Gazette, November 1, 1910, p. 1.

<sup>165</sup>Hale, loc. cit.

<sup>166</sup>Bowers, op. cit., p. 167.



in delivering a speech were considered good.<sup>167</sup>

### Response

The response to the speech may be divided into three categories; the response during the speech, the response immediately after the speech, and later response. Each of these types of response will be considered in turn.

Response during the speech. Kern's speech was given close attention by his colleagues.<sup>168</sup> Following shortly after Kern's quotation from General Sherwood, Kern was interrupted by Senator Reed Smoot of Utah, the author of the substitute motion. The immediate cause for the interruption seemed to be the challenge to the substitute motion offered by the quotation and Kern's succeeding statement that the Sherwood bill was "the nearest approach to a dollar-a-day pension that is attainable." Smoot pointed out that under the Sherwood bill a soldier with less than six months service would get only fifteen dollars per month without an increase regardless of how long he lived, while under the substitute motion he would get an increase until, if he lived to be seventy-five years of age, he would receive thirty dollars per month. Kern responded by pointing out that he would receive it only if he had served three years. Smoot then pointed out that a veteran who had served ninety-days would receive under the substitute twenty-one dollars at age seventy-five. The exchange then moved to the argument of special pension bills with Smoot contending that there would always be a need for such bills,

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<sup>167</sup> Ashurst letter to writer, July 11, 1958.

<sup>168</sup> Bowers, op. cit., p. 219.

and Kern pointing out that the Sherwood bill was designed to eliminate that need. McCumber joined in the debate with this exchange prior to Kern's continuing on to his next point:

Mr. KERN. Under the Sherwood bill, as I understand it, the total disability of a soldier gives him \$30 a month, if he served six months.

Mr. SMOOT. Or if wounded in battle.

Mr. KERN. If wounded in battle or if he served more than six months.

Mr. McCUMBER. The Senator is wrong there. Or unless the disability is of service origin.

Mr. KERN. I have not time to stop and discuss the bill. Senators can read the bill. It speaks for itself.

Mr. SMOOT. I will not further take the time of the Senator from Indiana. As he says, the bill speaks for itself.<sup>169</sup>

Kern seems to have come off second best in this exchange, largely due to his own impatience with the interruption.

Senator Jacob H. Gallinger of New Hampshire interrupted Kern at the close of the fourth main point to add that while it was true that the pension appropriation of the United States was larger than that of all the other nations in the world combined, it was better for the money to be going for that purpose than to support a large standing army like those present in European countries. Kern then continued by elaborating on this point in the conclusion of his fourth main point.<sup>170</sup>

The only other recorded responses which took place during the course of the speech were those of General Sherwood, nodding vigorously in assent to the points which Kern was making,<sup>171</sup> and of Senator Atlee Pomerene of Ohio who was reported to have been angered by

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<sup>169</sup>Record, 3468.

<sup>170</sup>Ibid., 3469.

<sup>171</sup>Bowers, op. cit., p. 219.



Kern's ridicule of his plea for economy which had been made the day before. "Pomerene got red in the face and did not enjoy the joke a bit."<sup>172</sup>

Response immediately following the speech. At the close of the speech, McCumber arose and addressed the senate in rebuttal to Kern's arguments. He stated that Kern's eulogizing of the Union veterans had met with a hearty response by the senators on both sides of the chamber, but in belittling the efforts of the government in the soldiers' behalf he did an injustice to the Congress and the American people, and to historical facts.

McCumber based his challenge on the contention that there was no valid comparison between Webster's oration to the Revolutionary War veterans and the question under consideration. He contrasted the present day resolutions of gratitude received from the pensioners with the line of discrimination drawn in Webster's day which prevented a soldier who had served less than nine months from receiving a pension, and then pointed out that since 1890 the Civil War soldier needed only a service of ninety days.

He then pointed out that the pension received in Webster's day was not the economic equivalent of today's pension, and, furthermore, the Revolutionary War pension would not have been received at all unless the veteran was in indigenous circumstances.

McCumber challenged the idealism of the claim that the Sherwood bill would eliminate special pension legislation by describing a condition in which the money provided by the Sherwood pension would

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<sup>172</sup>Indianapolis Star, March 17, 1912, p. 2.





not be enough to meet a specific need. He then pointed out that Kern had also left Senator Smoot's challenge on the lack of a provision for pension increases under the Sherwood bill unanswered.<sup>173</sup>

Later response. The speech and its occasion were given little attention by the newspapers, even in Indiana. Somewhat of an exception was the Indianapolis Star which termed the speech "about the liveliest utterance that has been heard in the Senate for several years, dealing with men and measures in a refreshingly candid way."<sup>174</sup>

However, the Associated Press carried excerpts from three or four paragraphs in the speech and some short paraphrased comments. From this small coverage Bowers reports:

The day following its delivery hundreds of letters expressive of gratitude poured in upon the senator from Pennsylvania, New York, Maryland and West Virginia; the next day brought hundreds from Ohio, Indiana, Illinois, Kentucky; and so on until the sixth day, when they arrived as numerous from Oregon and California. Resolutions from hundreds of Grand Army posts soon followed; and then, with the publication, and distribution by request of the speech, letters from scores of posts telling of meetings devoted to the reading of the speech for the benefit of those too old to read.<sup>175</sup>

Kern, himself, told the senate on March 29, 1912:

Since I addressed the Senate a week ago I have received many hundreds of letters from old soldiers all over the country, from New York and Pennsylvania, Nebraska and Kansas, California and Oregon.

. . . . .  
All of these letters indicate that the soldiers, the men who are interested in this legislation, are almost to a man opposed to the McCumber or Smoot substitute, and are in favor of a measure that will give them the relief they need and

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<sup>173</sup>Record, 3470-3471.

<sup>174</sup>Indianapolis Star, March 17, 1912, p. 2.

<sup>175</sup>Bowers, op. cit., p. 220.

will make their pathway down to the grave a little more pleasant.<sup>176</sup>

Thus, the total response that is reported, combined with the fact that the senate adopted the substitute motion, indicates that Kern's speech met with little success before his immediate audience in the senate, but received a favorable response from the more remote audience of Civil War veterans.

#### Summary

Preparation. Since Kern's private papers were accidentally destroyed, little specific information on Kern's methods of preparation is known. The only specific information on the preparation of this speech is that it was prepared with considerable care and was written out completely. Taking into consideration general statements about Kern's preparation, it would seem probable that the manuscript was written only after considerable thought had been given to the mental selection and rejection of ideas for the speech. Kern's manuscripts were usually quite free of erasures or additions.

Immediate setting and occasion. Kern began speaking at the close of the senate's regular business. His audience was largely hostile with the two major dissenting viewpoints well represented. The size of the gallery audience listening to Kern's first "set" speech is not reported, but the busy legislative activity on this, a Saturday afternoon, makes it probable that the audience was near capacity.

Arrangement. The introduction of the speech accomplishes

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<sup>176</sup>Record, 3994-3995. Extracts from some of those letters are found on the pages cited and also on 4008-4009.

three functions corresponding to its three points; it announces Kern's stand on the issue, it establishes the rationale for that stand, and it introduces his main arguments.

Five main points, each supported by three to five sub-points, are developed by inductive logic. Argument, refutation, and exposition and argument are the means of development. Internal and external summaries are the chief means of transition from one main point to another, and between sub-points within a main point. As transitions, they are somewhat inadequate since they do not successfully introduce the next point. The structural wholeness of the speech, which is developed chiefly by the motivated sequence pattern of arrangement, is therefore impaired by the lack of introductory transitions. However, the conclusion and the transition from the introduction to the body of the speech tend to draw it together. Illustration and visualization of the future are the main components of the conclusion.

Invention. Imperfect inductive reasoning is used in the development of logical appeals which concentrate on three needs and the refutation of three arguments put forth by the opposition. Argument from comparison and from analogy support the needs and refutation, while causal argument is used in the introduction and argument from alternatives in the conclusion. Authoritative (but prejudiced) testimony, some historical narrative, and personal experiences, opinions, and judgments are used to support the structure of his arguments. Personal experiences, opinions, and judgments receive major emphasis.

Psychological appeals considerably strengthen the logical

structure with the five steps of the motivated sequence readily discernable. The kinds of psychological appeals employed include appeals to the tone of the occasion, selfish interests, known attitudes, social consciousness, anticipated attitudes, informational status, sectional status, and political consciousness.

Also included are appeals to the basic drives of food, clothing, shelter and security. The secondary motive appeals to shame, sympathy, loyalty and pride receive major attention, while less attention is devoted to the appeals of solution to audience problem, economy of effort, economy of time, economy of money, potential approval by others, ideal democratic operation in representative government, and others. Suggestion through figurative language, loaded words, level of language usage, and rhythm also contributes.

Kern's attitude toward himself and toward his subject contribute to ethical appeals, but his attitude toward his audience is of little help. Personal identification with the issue, with ideals, with historical precedent, with the public, and with the audience also aid in some instances, as well as seeming objectivity. While characteristics of the speaker are inexhaustive of definition, the characteristics of character, fund of knowledge, past success, enthusiasm, self-confidence, opinion, experience, and tact are expressed. The unexpressed characteristics of age, intelligence, political experience, and appearance and bearing also contribute to ethical appeals. But the chief factor is Kern's primary sincerity in the speech, which is based upon personal conviction on the issue.

Style. Kern's style is characterized by force achieved through the use of effective word choice, proper selection of sup-

porting details, and effective sentence arrangement. Accuracy is achieved largely through precision in the denotative and connotative meanings of words used in the speech. Directness of the style is aided by Kern's adjustment in language to the southern senators, language suitability to the occasion, language suitability to Kern's personality, language suitability to the purpose and type of speech, personal pronouns, occasional questions, and appropriate illustrations. But the style calls attention to itself through the use of run-on sentences, exaggeration and poor euphony. Clarity of style is hampered by unnecessary amplification and reenforcement of ideas, and variety in sentence structure is minimized by the fondness for compound-complex sentences. However, some variety is obtained by effective word choice, effective ordering of sentences and phrases, and the use of vivid and figurative language. Stylistic devices have been previously summarized, and another listing would accomplish little. Those which are prominently featured include analogy, antithesis and contrast, personal pronouns, and acclamation. Using the classical definitions of levels of style, Kern exemplifies the grand style of the period in this particular speech.

Delivery. While nothing specific is known about Kern's delivery of the pension speech, certain general remarks may have been true of this speech. His physical bearing was relaxed but in good taste. His delivery was characterized as being simple, direct, and conversational. While he was fluent and sincere, he was not robust or flamboyant. He did not speak in the Hoosier regional accent, and his articulation and pronunciation were considered good.

Response. The response to the speech may be characterized as

unfavorable in the case of his immediate audience but favorable in the case of the reported reactions from his remote audience.

CHAPTER V

A RHETORICAL ANALYSIS OF THE SPEECH IN FAVOR OF THE  
MINORITY RESOLUTION ON SENATOR LORIMER OF ILLINOIS

The Issue

Chronological history of the Lorimer issue. William Lorimer was elected to the United States Senate by the Illinois state legislature on May 26, 1909, and within a year his right to that elective office was being challenged by charges of corruption in his election by the legislature. The following chronological table briefly summarizes the events of this issue as it passed through its early development in Illinois through its conclusion following two investigations by the senate.

May 26, 1909 -- Lorimer elected by Republican and Democratic votes to the United States Senate

April 30, 1910 -- Rep. C. A. White confessed he received \$1,000 from Lee O'Neill Browne for voting for Lorimer and \$900 from Rep. R. E. Wilson as his share of general corruption fund

May 5, 1910 -- Rep. H. J. Beckmeyer confessed to receiving \$1,000 for his vote

May 6, 1910 -- Cook county grand jury indicted Browne for bribery, and Wilson and Rep. L. B. Link for perjury

May 7, 1910 -- Link confessed receiving \$1,000 for his vote

May 28, 1910 -- Lorimer made speech in senate denying bribery and charging "conspiracy." State Sen. Holstlaw confessed he received \$2,500 for voting for Lorimer

June 29, 1910 -- Browne jury in Chicago disagreed

September 9, 1910 -- Second Browne jury acquitted defendant



- September 20, 1910 -- Investigation committee of the U.S. Senate began work in Chicago
- October 29, 1910 -- Attorney Erbstein indicted on charge of bribing Juror Grant McCutcheon
- December 12, 1910 -- U.S. Senate subcommittee exonerated Lorimer reporting charge not substantiated
- December 17, 1910 -- Erbstein jury disagreed
- January 9, 1911 -- Minority of the U.S. Senate committee, led by Sen. Beveridge, reported to senate its conclusion that Lorimer was not legally elected
- January 22 to February 28, 1911 -- Lorimer case debated in U.S. Senate
- March 1, 1911 -- U.S. Senate by a vote of 40-40 permitted Lorimer to retain his seat
- April 6, 1911 -- Sen. LaFollette introduced resolution to re-open Lorimer case in senate
- May 18, 1911 -- Illinois state senate by vote of 39-10 declared its belief that Lorimer was elected by bribery and corruption
- June 7, 1911 -- Senate ordered Lorimer investigation by special committee
- January 8, 1912 -- Testimony by Lorimer and Detective Burns began before special committee in Washington
- February 9, 1912 -- Testimony by Lorimer and Burns ends
- March 28, 1912 -- Special senate committee voted 5-3 in exoneration of Lorimer and Edward Hines
- April 6, 1912 -- Hines, as witness before senate committee, denied Funk's testimony and afterward sued Funk for \$100,000 damages
- May 20, 1912 -- Senate received majority report signed by Senators Dillingham, Jones, Fletcher, Johnston, and Gamble exonerating Lorimer, and minority report signed by Senators Kern, Kenyon, and Lea recommending his seat be declared vacant<sup>1</sup>

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<sup>1</sup>Fort Wayne Journal-Gazette, July 14, 1912, p. 1.



Senate action in the second investigation. On April 6, 1911, Senator Robert LaFollette of Wisconsin introduced a resolution into the senate calling for the reopening and reinvestigation of the election of Senator William Lorimer. The resolution was subsequently approved, and a committee appointed to conduct the investigation.<sup>2</sup>

For 102 days the committee listened to a parade of witnesses that included all types of men, from leaders of government to bartenders. However, shortly after the hearings began it became apparent that there was a sharp division of opinion among the committee members. Kern and Senators William S. Kenyon of Iowa and Luke Lea of Tennessee were firmly convinced of Lorimer's guilt, while Senators William P. Dillingham of Vermont, Wesley L. Jones of Washington, Duncan U. Fletcher of Florida, Joseph F. Johnston of Alabama, and Robert J. Gamble of South Dakota subscribed to Lorimer's innocence.<sup>3</sup>

During the committee hearings, the examination of witnesses called by the committee and the cross-examination of witnesses brought before the committee by Lorimer were conducted largely by Kern, Kenyon and Lea with Kern the most active.<sup>4</sup> After the hearings closed, the three senators found that the inactivity of their committee colleagues during the hearings was also to apply to the filing of a report. The hearings closed on February 9, 1912, and it was not until May twentieth

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<sup>2</sup>Ibid.; and Claude G. Bowers, The Life of John North Kern (Indianapolis: The Hollenbeck Press, 1918), p. 228.

<sup>3</sup>Fort Wayne Journal-Gazette, July 14, 1912, p. 1; and Bowers, op. cit., pp. 229 and 232.

<sup>4</sup>Ibid., p. 235; U.S., Congress, Senate, Committee to Investigate the Election of William Lorimer, Election of William Lorimer: Hearings Pursuant to S.R. 60, senate doc. 484, 62d Cong., 2d Sess., vols 16-24, 1912.

that the insistence of the minority was able to force the filing of a report.<sup>5</sup>

When the committee had met to draw up the report on March twenty-seventh, all of the resolutions offered by the minority met with failure by the predetermined vote of five to three. There was nothing left for the minority to do, but to file a minority report.<sup>6</sup>

The majority report was a lengthy, argumentative document which made two main points. First, the majority felt that the senate in this action constituted a judicial body bound by judicial precedents, and, therefore, was without power to recall this case before the senate because it had already received prior adjudication (res adjudicata) before the senate in the previous investigation. Second, they argued that beyond this no new evidence of any significance had been uncovered by this second investigation.<sup>7</sup>

The minority report, on the other hand, was a comparatively briefer document of twenty-two pages. It vigorously expressed its dissent from the majority by briefly reviewing the evidence placed before the committee, and then by stating:

"Believing that the confession of the members of the legislature, strengthened by corroborating circumstances and by other evidence relating to the members of the legislature who did not confess, establish conclusively not only that at least ten members were purchased for the purpose of electing William Lorimer to the senate, but that the record reeks and

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<sup>5</sup>Bowers, op. cit., pp. 238-239.

<sup>6</sup>Ibid., pp. 239-241.

<sup>7</sup>Ibid., p. 243; U.S., Congress, Senate, Committee to Investigate the Election of William Lorimer, Election of William Lorimer: Report, Senate Report 769, Part 1, 62d Cong., 2d Sess., vol. C., pp. 1-92, May 20, 1912. (Hereinafter referred to as Lorimer Report.)

teems with evidence of a general scheme of corruption, we have no hesitancy in stating that the investigation establishes beyond contradiction that the election of William Lorimer was obtained by corrupt means and was therefore invalid, and we submit the following resolution:

"Resolved, That corrupt methods and practices were employed in the election of William Lorimer to the senate of the United States from the state of Illinois, and that his election was therefore invalid."<sup>8</sup>

Kern's role in the issue to this point is indicated by Senator Lea of the minority in the committee, and by John Callan O'Laughlin who was the Washington correspondent for the Chicago Daily Tribune. Lea believed that:

"Senator Kern was a dominating force in that part of the Lorimer committee that resulted in the full investigation of the case. The committee was intended by some to be a white wash and it was Kern's determination to prevent that. His insight into human nature and knowledge of men enabled us to extricate from unwilling witnesses incidents in Illinois politics which gave color and meaning to much testimony that would otherwise have been barren of significance. Again Senator Kern's tact prevented much friction in the committee that might have resulted in outbursts that would have diverted attention from the main issue -- the guilt or innocence of Lorimer. Again Kern's droll and ridiculing sense of humor so discomfited many of the witnesses that they could not adhere to their prepared testimony."<sup>9</sup>

O'Laughlin, whose paper held a vital interest in the successful prosecution of Lorimer, commented:

"His conduct in connection with the Lorimer case in itself justifies the country in holding up his memory to remind future generations of what they owe him.

"Mr. Kern, when he began his duty as a member of the Lorimer investigating committee -- it was a distasteful duty -- realized as did we all that the country stood at the parting of the ways. Whether corruption was to continue in connection with the election of United States senators or whether the people were to be given an opportunity to have their own representatives in the upper house was the question

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<sup>8</sup>Bowers, op. cit., p. 242; and Lorimer Report, Part 2, pp. 113-114.

<sup>9</sup>Bowers, op. cit., p. 244.

he was called upon to investigate and determine. I know the pressure that was brought to bear upon him directly, indirectly, openly and insiduously, and I know that he stood up against it with that wholehearted courage which he manifested in other matters he faced.

"As a member of the investigating committee it was Mr. Kern's cross-examination which frequently brought out points that even members of the committee were endeavoring to cover up. If he had not been on the committee, I hesitate to say what the result might have been."<sup>10</sup>

The stage was now set for the second senate debate on the Lorimer election. Senator Beveridge of Indiana had been the major speaker for the minority in the previous debate, and Kern was chosen to carry the prosecution banner in this second debate. The debate opened on June fourth with Kern beginning his remarks. He spoke again on June fifth, and again on June seventh and eighth.

On June eighth the senate agreed by unanimous consent to vote on the Lorimer question on July sixth. The agreement was made after a full meeting of the investigating committee had taken place. Senator Lea requested the delay in the voting because it was necessary for him to be absent from the senate during the immediate future due to the serious illness of his father. The supporters of Lorimer were quick to agree to the request since the time interval involved would ease the public pressure in favor of Lorimer's expulsion.<sup>11</sup>

On July sixth the debate was resumed with Senator Dillingham speaking for over three hours in support of Lorimer. He did not complete his remarks before relinquishing the floor to Senator Porter McCumber of North Dakota who also spoke in favor of Lorimer. Senator

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<sup>10</sup>Ibid., pp. 244-245.

<sup>11</sup>New York Times, July 9, 1912, p. 11.

Henry L. Myers of Montana then spoke for the remainder of the afternoon in refutation of the remarks of Dillingham and McCumber, and in support of the minority resolution asking for Lorimer's expulsion.<sup>12</sup>

On July eighth Senator Dillingham continued his remarks in support of Lorimer. He spoke four hours without concluding, and then turned the floor over to Senator Duncan U. Fletcher of Florida who spoke for two hours and fifteen minutes in support of Lorimer without concluding either.<sup>13</sup>

Senator Fletcher concluded his remarks on July ninth, followed by Senator Dillingham who also concluded before the end of the session. Since Senator Lorimer was not prepared to offer the concluding argument at that time, the senate recessed until the next day.<sup>14</sup>

Senator Joseph F. Johnston of Alabama spoke with few interruptions in support of Lorimer on July tenth, and was followed by Senator Wesley L. Jones of Washington who was frequently interrupted. At a number of points in the speech these interruptions took on the proportions of extensive general debate involving several senators. The senate recessed after approximately seven hours devoted to these two speeches and the accompanying debate.<sup>15</sup>

Senator John R. Thornton of Louisiana continued the debate on

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<sup>12</sup>U.S., Congressional Record, 62d Cong., 2d Sess., 1912, XLVIII, Part 9, 8671-8682. (Hereinafter referred to as Record.)

<sup>13</sup>Ibid., 8685-8696.

<sup>14</sup>Ibid., 8723-8774.

<sup>15</sup>Ibid., 8812-8849.

July eleventh as the final supporting speaker for Lorimer. Senator Lea, followed by Senator James A. Reed of Missouri, then spoke in favor of the minority resolution. It is significant to note that six major addresses were made in support of Lorimer, while only three relatively short speeches were made in further support of Kern's speech on the position of the minority. Lorimer now took the floor in his own defense, but did not conclude before the senate adjourned for the day.<sup>16</sup>

Lorimer spoke for five hours on July twelfth without concluding his defense. His only interruptions were two occasions of support by Senator Jones and Senator Dillingham, and for a mid-afternoon recess proposed by Senator Smoot.<sup>17</sup>

On July thirteenth Lorimer concluded his remarks. Two short explanations of votes followed, and then the senate proceeded to vote on the minority resolution. It was adopted, and Senator Lorimer's election to the senate was invalidated by a vote of fifty-five to twenty-eight.<sup>18</sup>

#### Preparation<sup>19</sup>

Knowledge of Kern's specific preparation for this speech is not as limited as in the case of his other senate addresses. Kern

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<sup>16</sup>Ibid., 8882-8901.

<sup>17</sup>Ibid., 8936-8949.

<sup>18</sup>Ibid., 8968-8987.

<sup>19</sup>The method of rhetorical criticism is identical to that outlined in chapter four. See chap. iv, pp. 141-142.



approached the task of preparation with a basic thesis well in mind. It closely follows his original theory which he adhered to during the investigation:

Edward Hines, interested in the lumber schedule of the Payne-Aldrich bill and lobbying in Washington, was urged by Aldrich and Penrose to help hurry a new Republican vote into the senate from Illinois to help out in the tariff fight. After conferences it was agreed that Lorimer should be the choice, and Hines undertook to put the agreement into effect. He financed the fight for Lorimer. The money was used through the management of Lee O'Neill Browne, the clever leader of the majority wing of the Democrats in the lower house of the legislature, and with the knowledge of Lorimer. He [Kern] was absolutely positive that the wholesale defection of the Democrats to Lorimer could only have been the result of corrupt influence because the election of a reactionary Republican senator might, in view of the conditions surrounding the tariff fight in the senate, determine a national policy to which Democrats were elementally opposed and upon which they had made their campaign one year before. Had these Democrats gone to a Republican who would vote with Dolliver and Beveridge he might not have been so sure. Going to Lorimer, he was predisposed to the belief that money had been used.<sup>20</sup>

The months of testimony and inquiry only served to strengthen that predisposition and add what Kern believed to be indisputable new evidence of Lorimer's guilt.<sup>21</sup>

Thus, Kern came to his task of preparation firmly convinced of Lorimer's guilt. His task was largely the role of chief prosecutor, while the senate sat as jury and judge in proceedings which were somewhat analogous to an impeachment. As a prosecutor before a high court, it was his task to open the debate on the committee reports and review the evidence upon which the minority based their conclusion of Lorimer's guilt.

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<sup>20</sup>Bowers, op. cit., pp. 235-236.

<sup>21</sup>Ibid., pp. 239-243.

Reviewing the testimony would not be an easy task. One hundred eighty witnesses had appeared in 102 days and had filled 8,588 pages with testimony. This was Kern's first task in preparation. His training and skill as a lawyer helped him to get immediately to the essentials, but it was still necessary for him to review the greater part of the testimony in order to obtain necessary facts and proper authority. Several days were spent in this task of going through the testimony and jotting down notes on scrap paper.

Kern wrote out the major part of his speech in his room at Congress Hall during the week preceding its delivery. It was at this point that this speech takes on some unusual aspects. The "speech" was delivered before the senate in four "parts" on four separate days. He prepared each day's presentation separately, and no succeeding part was prepared before the delivery of the prepared part. In fact, he was working on each part right up to the time for its delivery, and almost none of the manuscript was typewritten.<sup>22</sup>

The separate preparations and separate deliveries of four parts over four days would indicate that there are actually four speeches dealing with segments of a general subject. Yet, Kern consistently refers to his remarks as a continuous address, implying a single speech. However, an examination of the text reveals that the remarks on three of the four days bear no relationship to each other, other than that each is concerned with the same general subject. This is most clearly illustrated by the fact that Kern is chiefly concerned on the first day with refuting an argument raised by Lorimer supporters,

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<sup>22</sup>Ibid., p. 246.

while on the second day he proceeds to develop the background for his entire "speech." Thus, it seems quite clear that the "parts" of the "speech" are actually at least three separate, but related, speeches. The speech delivered on the first day was selected for detailed analysis as being representative of Kern's speaking on the issue since the length of his total effort on the issue defies adequate examination except as the subject of an entire study.

### Textual Authenticity

The text of the four speeches, including the one to be examined in detail, was taken from the Congressional Record since the original manuscript was not preserved. Its accuracy was checked against the quotations from the delivery of the speech which appeared in various newspapers. The primary check was made against the stenographic report of all four speeches which was carried by the Chicago Daily Tribune. The report contained almost all of the remarks made by Kern during the four days, and the check revealed only minor word deviations from the text found in the Congressional Record.<sup>23</sup>

### Immediate Setting and Occasion

Kern, of course, had become the spokesman for the minority on the basis of his leadership in the investigating committee. His chief opponents in the debate which was forthcoming would be Dillingham,

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<sup>23</sup>Chicago Daily Tribune, June 5, 1912, p. 1, June 6, 1912, p. 1, June 8, 1912, p. 4, and June 9, 1912, p. 4; Kokomo Dispatch, June 5, 1912, p. 1; Indianapolis News, June 4, 1912, p. 1, June 5, 1912, p. 1; Indianapolis Sun, June 4, 1912, p. 11, and Indianapolis Star, June 5, 1912, p. 2, June 6, 1912, p. 2, June 7, 1912, p. 4, and June 8, 1912, p. 3.

Jones and Lorimer. Their defense of Lorimer would be based first of all on the plea of res adjudicata (the case had received prior adjudication).

However, senate opinion was in Kern's favor. In a poll released by Vice-President James Sherman on June second, senate opinion was divided 55 to 38 in favor of ousting Lorimer.<sup>24</sup> Lorimer's supporters, realizing that they were already fighting a losing battle, attempted to get Lorimer to resign, but he would not resign in disgrace.<sup>25</sup>

Kern's first speech was given on June fourth. Lorimer manifested his attitude against resigning by introducing several resolutions and bills during the morning hour of the session. After the usual morning business, the minority resolution of the Lorimer investigation committee was called up, and Kern rose to speak. Lorimer sat a few feet away from Kern in the seat usually occupied by Senator Moses E. Clapp of Minnesota. Behind Lorimer was Jones, and Dillingham was seated a few chairs from him. Nearly every Democratic senator was present to hear Kern and observe how he would act in his first full-scale senate debate as a major participant.<sup>26</sup> There was also a large gallery audience.<sup>27</sup>

Kern made his second speech on June fifth. It seems likely that there were fewer senators present in the chamber. Lorimer sat across the aisle from Kern, and Senator George E. Chamberlain of

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<sup>24</sup>Chicago Daily Tribune, June 3, 1912, p. 1.

<sup>25</sup>Ibid., June 5, 1912, p. 1.

<sup>26</sup>Ibid.

<sup>27</sup>Indianapolis News, June 4, 1912, p. 1.



Oregon sat near Kern. Prior to Kern's speech Lorimer attracted attention by crossing the aisle and shaking hands with Kern. Chamberlain rose and said to Lorimer, "I suppose that you must think each of us who is going to vote against you is a devil or a fellow." "Not at all," replied Lorimer. "I don't think so at all." The three men talked with each other in a friendly fashion for about five minutes before Lorimer returned to his seat.<sup>28</sup> The size of the gallery audience is not known.

The third speech was made on June seventh and eighth. The Chicago Daily Tribune reported that "the senators evidently have made up their minds and the speeches are not expected to change any votes." The case had become one "of going through the appropriate motions and of waiting for the end." The Tribune regarded it as "doubtful that Lorimer will have the vote of 15 of the 95 senators if the question should ever go to a roll call."<sup>29</sup> Kern's audience consisted mainly of senators who had taken office since the conclusion of the first investigation and who had not heard the case discussed. The other senators remained within calling distance in the cloak rooms, in case the absence of a quorum should be suggested. Lorimer remained in the chamber in a seat on the center aisle.<sup>30</sup>

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<sup>28</sup>Chicago Daily Tribune, June 6, 1912, p. 1; Indianapolis News, June 6, 1912, p. 1; and Indianapolis Star, June 6, 1912, p. 2.

<sup>29</sup>Chicago Daily Tribune, June 8, 1912, p. 4.

<sup>30</sup>Ibid.



Arrangement<sup>31</sup>

Introduction. Kern begins his address by stating his purpose:

I shall content myself by giving to the Senate as briefly and concisely as I can my views on the single question of law presented in the case, and as plainly and as briefly as I can I shall present to the Senate the salient points in this vast volume of testimony, as I conceive them to be salient points, with the sole view of informing Senators respecting the evidence adduced at the hearings.<sup>32</sup>

In the second point of the introduction he expresses his own feelings of unpleasantness for the task that faced him in the speech. However, he justifies his acceptance of the task in the third point on the basis of the momentous questions involved in the case. The fourth point of the introduction serves as the major transition between the introduction and body by introducing his specific subject. Aside from this wholly adequate major transition, the transitions between the points of the introduction are largely accomplished by the salutation "Mr. President," and the transitional words "but," "now," and "before."

Therefore, the introduction accomplishes three functions within its four points; it announces and limits Kern's purpose in addressing the senate, it establishes the rationale for his speech, and it introduces his specific subject.

Body. Kern analyzes the problem posed by the plea of res adjudicata by examining the events leading up to and surrounding that

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<sup>31</sup>The method and sources used for the analysis and criticism of arrangement are the same as those used in chap. iv. See chap. iv, p. 153, no. 30. Excerpts from the speech, utilized as examples, are sometimes repeated in different parts of this section and other sections of the chapter to illustrate different factors of rhetorical analysis.

<sup>32</sup>Record, Part 8, 7594.



plea. In analyzing the problem he cites the appropriate legal bases and precedents.

The criteria for solution to the problem are expressed within the analysis. They include (1) if the senate has the power under the Constitution to reinvestigate a case, then the plea of res adjudicata must fail. (2) If the previous investigation was incomplete, then the case ought to be reopened. (3) If the case was reopened, then the plea itself is res adjudicata. (4) If there is new evidence, then the case ought to be reopened. (5) If the honor and integrity of the senate is threatened, then the case ought to be reopened. (6) If the result of permitting the plea will be confusion and bewilderment by inaction, and derision by the people, then the plea should not be permitted.

The central idea of the speech is not concisely expressed by Kern, but the speech incorporates the theme that the plea of res adjudicata should not be permitted because it comes too late, and because the senate possesses sufficient reason and authority above and beyond the plea to reopen the Lorimer case.

Three main points are made in the body of the speech: (1) the senate has the power under the Constitution to reopen the case, (2) the case ought to be reopened because there is new evidence in the case, and (3) the case ought to be reopened regardless of the plea of res adjudicata. Major supports, or sub-points, for each main point range from three to four in number.

The logical development of the speech is largely inductive, moving within each main point from the specific to the general. Refutation supported by argument is used in the development of each main

point. The following excerpt from the substance outline indicates the kind and means of logical development.

- I. The senate has the power under the Constitution to reopen the case
  - A. The senate acted under this authority in the case of Lorimer
  - B. The Constitution gave the senate this power so it would be unfettered by judicial decisions or precedents
  - C. The plea of res adjudicata not heard until hearings had ended
  - D. If the power of the senate under the Constitution to reinvestigate a case for any reason is conceded, then the plea of res adjudicata must fail
- II. The case ought to be reopened because there is new evidence in the case
  - A. The former investigation was incomplete
  - B. The majority contended that new evidence would have justified reconsideration of the case
  - C. If there is new evidence, then the case ought to be reopened
- III. The case ought to be reopened regardless of the plea of res adjudicata
  - A. The principle of res adjudicata is the same now as it was when the senate voted to reopen the investigation
  - B. If the plea of res adjudicata applies, why were the majority report participants ready to volunteer for a useless task
  - C. If the plea is permitted, the decision will meet with derision of the senate from the people of the country

The transition between the first and second main points consists of a summary of some of the arguments contained in the first point.

The time for a plea of former adjudication was when the Senate was considering the question as to whether the case should be reinvestigated. After acquiescing in that action --aye, taking part in that action--and, without objection or protest, taking part in the proceedings before the committee, using the process of the Government in procuring the attendance of his witnesses before the committee at public expense, it is now too late for Senator LORIMER to be permitted to urge this remarkable defense.<sup>33</sup>

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<sup>33</sup>ibid., 7595.

The only introductory transition to the second point is furnished by the salutation, "Mr. President." No transition is used to bridge the gap between the second and third main point. Thus, the transition between the first two main points of the speech is abrupt, as can be illustrated by the following:

...it is now too late...to urge this remarkable defense.

Mr. President, I do not know what prompted other Senators to vote for a reinvestigation of this case.<sup>34</sup>

The following excerpt illustrates the lack of transition between the second and third main points:

These things which I have just enumerated I propose in a subsequent part of this address to show. [End of second main point.] [Beginning of third main point.] Every member of the majority of this committee is a lawyer of experience and ability.<sup>35</sup>

With the exception of a summary appeal similar to that previously cited, the transitions between sub-points and supports consist largely of short connecting words and phrases. Examples of such transitions are: "Mr. President," "and also," "but," "if," "then," "and here," "and yet," "although," and "yet."

Internal and external summaries appear to be entirely adequate when the length of the speech is considered. An example of each follows:

Whatever the causes that existed for ordering the reinvestigation, it was ordered; that order was acted on; the new investigation has been made, Senator Lorimer freely and without protest participating in it; and the report of the committee is here for final disposition. It will be quite apparent to lawyers that this plea comes too late, if it

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<sup>34</sup>Ibid.

<sup>35</sup>Ibid., 7596.

ever could have been made. The plea itself is res adjudicata.<sup>36</sup> [external summary]

The confessions of Beckmeyer and Holstlaw and Link were repudiated by the Senate, in speeches made on the floor of this body, for the sole reason that they had been coerced into making them by methods intolerable in a civilized country. And yet, sir, the prosecuting officers charged with the employment of these methods were not asked a single word on the subject as to whether or not the charges were well grounded.<sup>37</sup> [internal summary]

The structural wholeness of the speech is maintained largely by the fact the speech is concerned with the refutation of a single argument advanced by the opposition. Within that framework, there is little danger of that unity being weakened. Certainly, the lack of a transition between the second and third main points tends to disrupt the easy flow of ideas, but the singleness of purpose prevents this from becoming a major point of concern.

The psychological arrangement of the speech also works for unity within the speech, but cannot be identified as an example of the motivated sequence. In this speech Kern employs repetition of a constant theme as a psychological means of achieving unity. The following excerpts from the speech illustrate the development of that theme:

I do not propose to discuss this question at length, because a majority of the Members of this body are lawyers by profession and those who are not are men of affairs, not likely to be misled by this eleventh-hour technical defense.<sup>38</sup>

The time for a plea of formal adjudication was when the Senate was considering the question as to whether the case should be reinvestigated. After acquiescing in that action

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<sup>36</sup>Ibid.

<sup>37</sup>Ibid.

<sup>38</sup>Ibid., '7594.

--aye, taking part in that action--and, without objection or protest, taking part in the proceedings before the committee, using the process of Government in procuring the attendance of his witnesses before the committee at public expense, it is now too late for Senator LORIMER to be permitted to urge this remarkable defense.<sup>39</sup>

Whatever the causes that existed for ordering the reinvestigation, it was ordered; that order was acted on; the new investigation has been made, Senator LORIMER freely and without protest participating in it; and the report of the committee is here for final disposition. It will be quite apparent to lawyers that this plea comes too late, if it ever could have been made. The plea is res adjudicata.<sup>40</sup>

If it is the law now that the Senate was without power to reopen and cause the reinvestigation of the case, it was without power on the 7th of June, 1911, and it must have been known to every lawyer in this body, including the members of the investigating committee.<sup>41</sup>

Gentlemen, this charge is too serious and this evidence too strong for the course of justice to be thwarted by this miserable technical defense which was born out of the travail of the closing scenes of the committee's hearings.<sup>42</sup>

Thus, in examining the body of the speech, Kern analyzes the problem posed by the plea of res adjudicata by examining the events leading up to and surrounding the plea, and six criteria for solution to the problem are expressed within the analysis. The central idea of the speech is that the plea of res adjudicata should not be permitted because it comes too late, and because the senate possesses sufficient reason and authority above and beyond the plea to reopen the case. Each of the three main points are supported by three or four sub-points, and their logical development is largely inductive. Refutation supported by argument is the means of development in each case. Transitions between main points are inadequate, but the transitions between

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<sup>39</sup>Ibid., 7595.

<sup>40</sup>Ibid., 7596.

<sup>41</sup>Ibid.

<sup>42</sup>Ibid., 7597.

sub-points and supports (consisting largely of connecting words and phrases) help maintain the easy flow of ideas. The chief contributions to structural wholeness, however, are made by internal and external summaries, the singleness of Kern's purpose, and the repetitive theme in the psychological arrangement of the speech.

Conclusion. The conclusion of the speech contains two elements; an abbreviated summary appeal, and a word of explanation.

Gentlemen, this charge is too serious and this evidence too strong for the course of justice to be thwarted by this miserable technical derense which was born out of the travail of the closing scenes of the committee's hearings.

Mr. President, having concluded this part of my speech, as I have been indisposed all the forenoon, I should like to continue my remarks tomorrow.<sup>43</sup>

The conclusion is not a strong one, nor is it necessary for it to be strong in this case. Kern had just completed prior to the summary an extensive ridicule of the defense of res adjudicata, and anything that would follow this ridicule would of necessity be either anti-climax or an incongruity. The presence of the summary as the last point in the psychological arrangement of the speech also makes anything stronger seem unnecessary.

Summary of arrangement. The introduction of the speech accomplishes three functions within its four points; it announces and limits Kern's purpose in addressing the senate, it establishes the rationale for his speech, and it introduces his specific subject. The body of the speech is concerned with the inductive development of the central idea, that the plea of res adjudicata should not be permitted, in three main points through refutation supported by argument. The

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<sup>43</sup>Ibid.



conclusion of the speech consists of an abbreviated summary appeal and a word of explanation. Structural unity is maintained in the speech chiefly through internal and external summaries, the singleness of Kern's purpose, and the repetitive theme in the psychological arrangement.

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Logical appeals. As has been previously stated, the logical development of the speech is largely inductive, moving within the main points from the specific to the general. Causal argument and argument from sign constitute the chief means of logical development.

Specifically, in the first point of the introduction Kern is simply stating his purpose, and argument is not involved. His second point is developed by exposition of his personal feelings toward his task. However, his third point is developed by sign reasoning. Kern discovers signs of the gravity of the case and the momentous questions involved in the preconceived opinions of the committee, the thoroughness of the investigation, and the present diversity of opinion arising out of the investigation. In the fourth point of the introduction Kern states his specific subject and intent as a means of introducing the body of the speech.

The first main point of the speech utilizes causal argument in establishing a relation between the power of the senate under the

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<sup>44</sup>The method and sources used for the analysis and criticism of invention are the same as those used in chap. iii, p. 162, no. 38.



Constitution to judge the qualifications, returns and elections of its members (cause), and four effects of that power in the case of Lorimer. The four effects constitute all but one of the sub-points of the first main point. The first effect, that the senate acted under this authority, is an observable fact.

The second point alleges a cause for the Constitution's granting this power to the senate (to keep the senate free from judicial precedents and decisions so that each case could be decided on its own merits), turning the main point momentarily into an effect.

However, the third sub-point returns the main point back into its role as a cause by establishing the effect that the plea of res adjudicata was not heard until after the investigation was completed. Thus, Kern implies that the plea was not made prior to this because the Lorimer supporters were aware that the senate did have power to reinvestigate the case. Sign reasoning is employed within the supports of the sub-point to indicate Lorimer's assent to the investigation. Some of the signs given by Kern are that Lorimer appeared in person and by counsel before the committee, that he cross-examined witnesses, and that he called witnesses in his own defense without mentioning the plea of res adjudicata. Sign reasoning is also employed in the second support of the sub-point where Kern cites the committee's expenditure of \$50,000 on the investigation as a sign of their disbelief in the plea of res adjudicata.

The fourth sub-point, or effect, states that if the power of the senate to reinvestigate a case is conceded (cause), then the plea of res adjudicata must fail (effect). Kern utilizes argument from

comparison in its development. He compares the cause-effect relationship between the granting of a new trial in a civil action and the subsequent reopening of the case for a complete investigation, with the senate action in the Lorimer case of reopening it to a complete investigation.

The fifth sub-point utilizes causal argument in summarily indicating the causes for the effect (that it is too late for Lorimer to be permitted this defense). Among the causes indicated are that the plea should have been made at the time the senate was considering reinvestigating the case, that Lorimer participated in the investigation, and that he utilized committee powers and funds to summon witnesses in his own behalf.

The second main point uses causal argument to establish a relationship between the effect that the case was reopened, and its causes as expressed by the sub-points. The first cause is that the former investigation had been incomplete. Sign reasoning is employed to indicate that the failure of the previous committee to question the accused county prosecutor is a sign of the incompleteness of the investigation. Causal argument is employed in the second support to tie the argument contained in this first sub-point of the second main point to the summary argument contained in the fifth sub-point of the first main point which is reiterated in this second support.

The second sub-point is simply evidence of fact quoted by Kern to indicate that the majority report consents to the fact that new evidence would be justification for reopening the Lorimer case in spite of the plea of res adjudicata. Kern's interpolation within the

quotation is classed as ridicule or inconsistency in the stand of the majority on the plea of res adjudicata, while admitting in the same breath their willingness to ignore the plea of res adjudicata if significant new evidence had been found in the case.

The second cause, that there is new evidence in the case, is then expressed in the third sub-point. Argument by condition, the only instance of deductive argument, is used in building the contention of the existence of new evidence on the assumptions of the audience that certain elements of the investigation contain new evidence. Kern utilizes a "scatter-gun" approach in reaching these assumptions on the part of the audience. A running analysis of this argument follows.

If there has been new evidence which intended to impeach the title of the sitting Member, I assume they [the majority of the committee] would agree that the case ought to be reopened and that the Senate ought to act upon the report. [Granted on the basis of the evidence cited in the second sub-point.] I assume that if the new evidence discovered fortified or confirmed the evidence already introduced the same rule would obtain. [Granted on the basis of the acceptance of the first condition.] [The following are dependent upon the assumptions made by the audience in the case.] If, then, it be shown in this evidence new and old, that four malefactors have confessed participation in the corruption charged; if it be shown that these men were corrupted by Lee O'Neill Browne and his accredited agent, Robert E. Wilson; if it be shown that Lee O'Neill Browne was the active and duly accredited agent of Senator LORIMER; if by the new evidence or by the new and old the relationship between White and Browne and LORIMER has been traced and shown to have continued until very nearly the time of the exposure, and if it be further shown that Browne and LORIMER attempted to quiet White by providing him, a Democrat, with an appointment in a Republican county office in Chicago; if it be shown that Senator LORIMER'S interest in Browne continued to be such that he paid \$10,000 out of his own funds to aid in his defense in a case where his guilt was unmistakable; if it be shown that about the time of the payment of the corruption money to White, Beckemeyer, Link, and Holstlaw, a number of other Democratic members who had betrayed their people in the

matter, were exhibiting almost simultaneously in various parts of the State \$100 bills which they had in their possession and for which they were unable to account; in circumstances have multiplied since the former hearing dispelling all doubt as to the bribery of Holstlaw and the other confessing malefactors, [The acceptance of the following, the argument, is dependent upon the acceptance of one or more of the conditions set forth in the preceding part of the sentence.] then, according to the report of the majority, the honor and integrity of the Senate would demand affirmative action regardless of the defense of res adjudicata. These things which I have just enumerated I propose in a subsequent part of this address to show.<sup>45</sup>

Causal argument is utilized in the third main point to establish a relationship between the effect that the case was reopened regardless of the plea of res adjudicata, and three causes that correspond to the three sub-points. The first sub-point, that the plea of res adjudicata is the same now as it was when the senate reopened the case, is established by causal argument. An example of the use of the enthymeme, the only one noted, is found in the first support.

Every member of the majority of this committee is a lawyer of experience and ability. So every such member, in common with every lawyer in the country, is entirely familiar with the law of res adjudicata.<sup>46</sup>

Sign reasoning is employed in the last support to indicate that the vote of the Senator from Vermont (probably Senator Dillingham) for the reinvestigation is a sign of a prior conviction that the law of res adjudicata did not apply in cases of this kind. Kern also poses a dilemma for Dillingham in any future explanation he may have about how it is possible for him to support the plea of res adjudicata when he

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<sup>45</sup>Ibid., 729b.

<sup>46</sup>ibid.

voted for the reopening of the case fully aware of the existence of such a plea.

The second and third sub-points are established from argument by reductio ad absurdum. The causes (or sub-points) contributing to the effect, that the case ought to be reopened regardless of the plea of res adjudicata, are; why were senators ready to take on a useless task if they believed in the plea of res adjudicata, and if the plea of res adjudicata is permitted it will meet with the derision of the people. Senators supporting the plea of res adjudicata are again placed in the dilemma of explaining why they were willing to enter into the investigation if they really believed in the plea of res adjudicata. Kern supports his argument in the third sub-point by taking circumstances of the evidence in the case and imagining their confusing effect on the people of the country if the plea of res adjudicata is permitted to prevail. He then builds on this argument by reductio ad absurdum to establish the contention that the effect of admitting the plea of res adjudicata in the face of the evidence would be to bring the derision of the people down on the senators.

The brief conclusion then closes the speech with a summary argument and a word of explanation.

In summary, Kern employs inductive reasoning in the development of logical appeals. It is characteristically imperfect induction because it does not take into consideration all possible instances or contingencies. The introduction employs statement of purpose, exposition, sign reasoning, and statement of specific subject. The three



main points utilize causal argument in establishing their contentions. Sign reasoning, causal argument, evidence of fact, argument by condition, enthymene, and argument by reductio ad absurdum are used in the sub-points within the main points.

Ethical appeals. One of the major factors in Kern's use of ethical appeals is his primary sincerity (an unreserved belief in the persuasive proposition)<sup>47</sup> on the issue. Kern illustrates this in the speech in his rationale for addressing the senate, and in the vigor of his attack on the defense of *res adjudicata*. He maintains this atmosphere throughout the speech, and the following examples can only illustrate some of the means employed to create it.

Mr. President, in addressing the Senate in support of the resolution declaring vacant the seat of one of its Members because of corrupt methods and practices employed in his election, I am performing one of the most unpleasant duties ever devolving upon me in the course of my life. It has never given me pleasure, sir, to inflict pain upon my fellow men, nor by word or act to do them injury.<sup>48</sup>

But, sir, from the moment I accepted the responsibilities attaching to a membership on this committee of investigation I have been deeply impressed with the gravity of the case, the momentous questions involved--questions momentous alike to the Senator whose right to a seat here is involved and to nearly an hundred million people interested vitally in the perpetuity of their Government and the stability of its institutions.<sup>49</sup>

The time for a plea of former adjudication was when the Senate was considering the question as to whether the case should be reinvestigated....it is now too late for Senator LORIMER to be permitted to urge this remarkable defense.<sup>50</sup>

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<sup>47</sup> See chap. iv, p. 167, no. 40.

<sup>48</sup> Ibid., 7594.

<sup>49</sup> Ibid.

<sup>50</sup> Ibid., 7595.

It was not solely on account of the newly discovered evidence that I voted for this second investigation. I was very largely influenced to that action by the firm belief that the first investigation had been utterly incomplete and had failed to develop facts which must have been accessible.<sup>51</sup>

If, then, it be shown in this evidence new and old, that four malefactors have confessed participation in the corruption charged;....then, according to the report of the majority, the honor and integrity of the Senate would demand affirmative action regardless of the defense of res adjudicata.<sup>52</sup>

Gentlemen, this charge is too serious and this evidence too strong for the course of justice to be thwarted by this miserable technical defense which was born out of the travail of the closing scenes of the committee's hearings.<sup>53</sup>

Kern's primary sincerity also contains a "by-product" atmosphere of fairmindedness which makes a strong contribution to the ethical appeals.

The three main attitudes which are important in the building of ethical appeals (the speaker's attitude toward himself, his subject, and his audience) make strong contributions. Kern's attitude toward himself is best indicated in the introduction of the speech.

It has never given me pleasure, sir, to inflict pain upon my fellow men, nor by word or act to do them injury.

In the practice of my profession, which covered a period of 40 years, my voice was raised many times in defense of men charged with wrongdoing, seldom in a demand for their condemnation, and in the few cases of that kind in which I succeeded in the conviction of men charged with crime, the pride of professional victory vanished as I witnessed the downfall of the men against whom my efforts had been directed, and the lamentations of the mothers, wives, and children of such men were so distressing that, except in cases of exceptional public importance, I abandoned that field of practice altogether.<sup>54</sup>

His attitude toward his subject is indicated in two ways; his personal

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<sup>51</sup>Ibid.

<sup>52</sup>Ibid., 759b.

<sup>53</sup>Ibid., 7597.

<sup>54</sup>Ibid., 7594.



attitude toward Lorimer, and his attitude toward the case.

My duty here is particularly painful, because the man against whose right to a seat here is in question is a fellow Senator, representing a State adjacent to my own, a man of pleasing personality, whose private life, as I understand, has been pure and whose home life is ideal. My personal relations with him during my short stay here have been exceedingly pleasant, and I can but regard him as a genial and kindly man.

The fact that he is a Republican while in every nerve and fiber I am a Democrat does not mitigate the unpleasantness of my work, because throughout my life my dearest and most valued personal friends have been Republicans.

But, sir, from the moment I accepted the responsibilities attaching to a membership on this committee of investigation I have been deeply impressed with the gravity of the case, the momentous questions involved--questions momentous alike to the Senator whose right to a seat here is involved and to nearly an hundred million people interested vitally in the perpetuity of their Government and the stability of its institutions.<sup>55</sup>

His attitude toward his audience also makes a significant contribution to ethical appeals, largely through complimentary references to their intelligence.

I believe, sir, that every member of that committee realized from the beginning that he was handicapped by these opinions already formed, but that all were determined that there should be a full and complete investigation--a thorough exploration of every known place where facts might possibly exist which would, in any degree illuminate the questions to be investigated.<sup>56</sup>

So that, while in the remarks I shall make I may with earnestness and zeal endeavor to enforce my views on this case upon the Senate, I trust that no part of this address may be construed as an attempt to belittle or stigmatize the members of the committee who do not agree with me, for they are gentlemen for whom I entertain the kindest feeling when I commenced service with them, and the long months of constant association have resulted rather in strengthening than

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<sup>55</sup>Ibid.

<sup>56</sup>Ibid.

diminishing that feeling of personal regard.<sup>57</sup>

I do not propose to discuss this question at length, because a majority of the members of this body are lawyers by profession and those who are not are men of affairs, not likely to be misled by this eleventh-hour technical defense.<sup>58</sup>

The reductio ad absurdum argument in the third main point probably does little harm to Kern's ethical appeals for two reasons. First, the argument levels ridicule only at the reasoning of the committee and not against the senators as a body, and secondly, the majority of the audience were already in agreement with Kern's point of view. Consequently, the reductio ad absurdum argument does not spoil the favorable attitude which Kern has carefully built.

Personal identification is utilized extensively by Kern as an ethical appeal. In the example given above of his attitude toward himself, he identifies himself with ideals in humane feelings. In the third paragraph of the example of Kern's attitude toward his subject, he identifies himself with the issue, and with the people of the country. The following is an example of Kern identifying himself with the audience.

If we are sitting as a judicial body, bound by judicial precedents--if, as a court, we are bound by the law--what warrant is there for the suggestion here that the Senate ought not under any circumstances to apply those judicial authorities and precedents?<sup>59</sup>

Kern's explanation of his personal feelings toward Lorimer adds the ethical appeal to seeming objectivity in his decision arising out

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<sup>57</sup>Ibid.

<sup>58</sup>Ibid.

<sup>59</sup>Ibid., 7596.

of the investigation. This same appeal is reiterated in his admission of holding preconceived opinions on case.

The following examples reveal certain characteristics of the speaker which constitute ethical appeals that are utilized in the speech.

It has never given me pleasure, sir, to inflict pain upon my fellow men, nor by word or act to do them injury.<sup>60</sup> [Character]

I shall only remind the Senate that under the Constitution it is the judge of the elections, returns, and qualifications of its own members; that acting under this authority on the 7th of June, 1911, it passed the resolution naming this committee and specifically authorizing and directing it to investigate whether corrupt methods and practices were employed in the election of WILLIAM LORIMER as a Senator of the United States from the State of Illinois, and also to inquire fully into and report upon the relation to and effect, if any, upon the election of WILLIAM LORIMER to the Senate.<sup>61</sup> [Fund of knowledge]

So that, while in the remarks I shall make I may with earnestness and zeal endeavor to enforce my views of this case upon the Senate, I trust that no part of this address may be construed as an attempt to belittle or stigmatize the members of the committee who do not agree with me, for they are gentlemen for whom I entertained the kindest feeling when I commenced service with them, and the long months of constant association have resulted rather in strengthening than diminishing that feeling of personal regard.<sup>62</sup> [tact]

I was very largely influenced to that action by the firm belief that the first investigation had been utterly incomplete and had failed to develop facts which must have been accessible.<sup>63</sup> [opinion]

In the practice of my profession, which covered a period of 40 years, my voice was raised many times in defense of men charged with wrongdoing, seldom in a demand for their condemnation, and in the few cases of that kind in which I

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<sup>60</sup>Ibid., 7594.

<sup>61</sup>Ibid., 7595.

<sup>62</sup>Ibid.

<sup>63</sup>Ibid.

succeeded in the conviction of men charged with crime, the pride or professional victory vanished as I witnessed the downfall of the men against whom my efforts had been directed, and the lamentations of the mothers, wives, and children of such men were so distressing that, except in cases of exceptional public importance, I abandoned that field of practice altogether.<sup>64</sup> [past success, and experience]

Thus, among the characteristics of the speaker expressed in the speech are character, fund of knowledge, tact, opinion, past success, and experience.

In addition to the above expressed characteristics, there are also certain unexpressed characteristics which are observable simply by looking at the speaker. Among these unexpressed ethical appeals is his popularity in the senate.<sup>65</sup> His age, sixty-two, certainly places him in the customarily "respected" age group, but, in a body characterized by men above fifty years of age, it is doubtful that age is an important factor. However, Kern's intelligence, especially in his knowledge of Constitutional law, was a source of great respect among his colleagues;<sup>66</sup> and his political experience, stretching over the span of forty-two years, was certainly a strong factor.<sup>67</sup> Finally, Kern's appearance and bearing, as discussed in chapter four, also made its contribution to the ethical appeals.<sup>68</sup>

In summary, Kern's primary sincerity is one of the chief contributors to the ethical appeals found in the speech on the plea of *res adjudicata*, and also yields an important secondary atmosphere of

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<sup>64</sup>Ibid., 7594.

<sup>65</sup>See chap. iii, pp. 124-126.

<sup>66</sup>See chap. iii, pp. 124-126.

<sup>67</sup>See chap. ii and iii.

<sup>68</sup>See chap. iv, pp. 176-177.

fairmindedness. His attitudes toward himself, his subject, and his audience also contribute substantially to his ethical appeals.

During the course of the speech Kern identifies himself with the issue, ideals, the people of the country ("public"), and the audience. Seeming objectivity is introduced by Kern's explanation of his personal feelings of friendliness toward Lorimer, and reiterated by his admission to preconceived opinions on the subject.

The expressed characteristics contributing as ethical appeals include character, fund of knowledge, tact, opinion, past success, and experience. Unexpressed characteristics are popularity, age, intelligence, political experience, and appearance and bearing. All of these characteristics make some contribution to ethical appeals, some more so than others.

Psychological appeals. In the first point of the introduction Kern employs an appeal to the selfish interests of the senators as an attention factor. In a question which the senate is well aware will take up considerable time at best, they would certainly be interested in being spared the unessentials and rhetorical flourishes.

In the second point Kern establishes the rationale for his stand on the Lorimer question by first stating "reasons" why he might support Lorimer. He also meets the tone of the occasion in describing his task as an unpleasant one. An appeal to friendship above the strife of politics is also made.

The third point of the introduction concludes the rationale for Kern's stand by indicating that the gravity of the case and the momentous questions involved are a call of a higher priority than

which can be accorded to personal feelings. References to known audience attitudes and to the ideals of intensity and thoroughness of work are also made. Praise is also used in an appeal of good will directed toward the majority of the investigating committee.

The fourth point of the introduction contains largely an appeal to the tone of the occasion, but reference is also made to the occupational status of the senators. The first point in the psychological pattern of reiteration is also made in this point.

In support of the first main point of the speech, Kern employs an appeal to the fund of knowledge of the senators in passing lightly over the action and the basis for it in the Lorimer case. The occupational status of the senators is reflected in Kern's allusion to their freedom under the Constitution from the power of judicial decisions and precedents when they are dealing with the case of one of their own members. He also appeals to the senators' sense of self intelligence, indirectly, to indicate that the actions of Senator Lorimer and the majority committee members suggest that their adoption of the plea of res adjudicata came only after all other possibilities of acquittal had been exhausted. This latter appeal also contains the second point in the psychological pattern of reiteration.

Kern uses a psychological appeal to a known attitude toward the subject in the second main point when he refers to the incompleteness of the first investigation. This is followed by the third point in the psychological pattern of reiteration, which also serves as a psychological bond between the first and second main points. Again, the appeal is made to the audience's predisposition against the

majority report, and the plea of res adjudicata. Kern closes the second main point with an appeal to the senators' ability to reason through the "mounting" evidence of Lorimer's guilt, and to reason to the conclusion that the evidence is substantial enough even in light of the majority report to warrant the reopening of the case.

Occupational status is the first psychological appeal made by Kern in the third main point. He then points out the conflict between the actions of the majority of the investigating committee and the plea of res adjudicata. An idealistic appeal to the social consciousness of the committee majority to induce them to release themselves from the conflict is implied. Kern follows this with a direct appeal to the selfish interests of the senators by dramatizing the reaction of the people if the plea of res adjudicata is permitted.

He closes the speech by making an idealistic appeal to social consciousness, and an appeal to the intelligence or "reason" of the senators by pointing up the strength of the evidence and the weakness of the plea of res adjudicata. The predisposition of the audience against the defense is also inferred, and the closing point in the psychological pattern of reiteration is made.

The reiteration acts as a bond between the beginning and conclusion in the refutation of the plea of res adjudicata.

Suggestion also characterizes Kern's speech, and makes a strong contribution to psychological appeals. Figurative language, examples of which are cited under stylistic devices, is used extensively. Kern's level of language usage suggests that the speaker is a reasonable, intelligent person who is going methodically about the task of

destroying an obviously weak argument. "Loaded" words and striking statements indirectly, but effectively, call to mind ideas which are intended but not specifically stated. Examples of both "loaded" words, which have been underlined, and striking statements are contained in the following:

If, then, it be shown in this evidence new and old, that four malefactors have confessed participation in the corruption charged; if it be shown that these men were corrupted by Lee O'Neill Browne and his accredited agent, Robert E. Wilson; if it be shown that Lee O'Neill Browne was the active and duly accredited agent of Senator LORIMER; if by the new evidence or by the new and old the relationship between White and Browne and LORIMER has been traced and shown to have continued until very nearly the time of the exposure, and if it be further shown that Browne and LORIMER attempted to quiet White by providing him, a Democrat, with an appointment in a Republican county office in Chicago;....if it be shown that a number of other Democratic members who had betrayed their people in the matter, were exhibiting almost simultaneously in various parts of the State \$100 bills....<sup>69</sup>

The rhythm of Kern's style in the above example, and as the conditional argument continues, suggests Kern's rising emotions in ridiculing the committee majority's ignoring of the evidence before them.

However, Kern makes only slight use of appeals to the basic drives of his audience. These appeals are made to the basic drive of security, specifically to security of position. The appeal is present throughout the reductio ad absurdum argument contained in the third main point. Kern implies in the dramatization and the succeeding argument that the application of common sense, should the plea of *res adjudicata* be permitted, would result in placing those senators supporting the plea in a precarious position with their constituents.

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<sup>69</sup>Record, 7296.



The use of secondary motives is more pronounced. Psychological appeals to the secondary motives include one which is given frequent use and is difficult to identify. In many respects, it appears to be a not too distant relative of our modern day concept of "guilt by association." Milder in form, it has been labeled in this study "implication by action." Essentially, this is the psychological appeal which is made when Kern refers to the fact that Lorimer and the majority members of the committee voluntarily participated in and approved of the actions taken in the committee's investigation, and that only after the investigation was completed was the plea of res adjudicata made. The psychological appeal simply states that since Lorimer and the committee majority participated voluntarily in an action, with the principle of res adjudicata known to them prior to action which they now allege is in conflict with that principle, they do not "really" believe that the plea of res adjudicata applies in this action. Otherwise, they would not have participated in the action.

This appeal appears to have its basis in the secondary motive of honesty of conviction. The secondary motive is given further expression in the third main point of the speech, where Kern calls up another secondary motive as well in the argument by reductio ad absurdum. The other motive, honor, also finds extensive expression throughout the second and third main points of the speech, largely through its antithesis, shame.

Another important feature of Kern's use of secondary motives is the hierarchy that he establishes in the case of three such motives.

Friendship is placed above political strife, and duty is placed above friendship as can be seen in the following example:

My personal relations with him during my short stay have been exceedingly pleasant, and I can but regard him as a genial and kindly man.

The fact that he is a Republican while in every nerve and fiber I am a Democrat does not mitigate the unpleasantness of my work, because throughout my life some of my dearest and most valued personal friends have been Republicans.

But, sir, from the moment I accepted the responsibilities attaching to a membership on this committee of investigation I have been deeply impressed with the gravity of the case.<sup>70</sup>

Other secondary appeals are present in the speech. Most of them are utilized only once or twice, and one or two are closely related to those which have already been mentioned. The following examples indicate these appeals in summary fashion.

Mr. President, in speaking to the Senate on this question I have no purpose to indulge in rhetorical flourishes; I shall employ no words of mere ornamentation; but I shall content myself by giving to the Senate as briefly and concisely as I can my views on the single question of law represented in the case.<sup>71</sup> [economy of time]

The pride of professional victory vanished as I witnessed the downfall of the men against whom my efforts had been directed, and the lamentations of the mothers, wives and children of such men were so distressing that, except in cases of exceptional public importance, I abandoned that field of practice altogether.<sup>72</sup> [sympathy for others]

I believe that every member of this investigating committee entered upon the discharge of his duties fully alive to the importance of the case and highly resolved to render fair, impartial, and patriotic service to the country.<sup>73</sup> [praise]

I shall only remind the Senate that under the Constitution it is the judge of the elections, returns and qualifications of its own members; that acting under this authority,

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<sup>70</sup>Ibid., 7594.

<sup>71</sup>Ibid.

<sup>72</sup>Ibid.

<sup>73</sup>Ibid.

....it passed the resolution naming this committee and specifically authorizing and directing it to investigate, ....the election of WILLIAM LORIMER to the Senate.<sup>74</sup>  
[power]

And yet, sir, the prosecuting officers charged with the employment of these methods were not asked a word on the subject as to whether or not the charges were well grounded.<sup>75</sup>  
[justice]

I might cite numerous other instances of the failure of that committee to investigate important questions which of necessity pressed upon them, but the one instance named is fairly illustrative.<sup>76</sup> [instances not named]

Such a decision would be received with derision in every part of the country by the men and women who believe in fair and open administration of justice and whose common sense tells them that the interposition of such a defense is for the purpose of thwarting justice rather than promoting it.<sup>77</sup>  
[common sense, and approval by others]

Several attention factors are utilized by Kern throughout the speech. His use of specific details in outlining the actions of Lorimer and the committee majority draws attention to the implication that they do not really believe that the plea of res adjudicata applies. His direct reference to Senators Dillingham and Lorimer, who were present in the audience, attracts the audience to the points being made about them. Kern's reference to the audience's common background as lawyers or men of affairs functions as an attention factor in that it serves as a common frame of reference for the audience from which they can follow Kern's refutation. He employs vitality as an attention factor in the introduction when he stresses the gravity of the Lorimer case. Humor through ridicule is utilized in the reductio ad

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<sup>74</sup>Ibid., 7595.

<sup>75</sup>Ibid., 7596.

<sup>76</sup>Ibid.

<sup>77</sup>Ibid., 7597.

absurdum argument of the third main point. However, the chief sustaining factor of attention employed by Kern is the factor of conflict. It is employed in the first main point in stressing the inconsistency of Lorimer's and the committee majority's actions with the plea of res adjudicata. It is employed in the second main point to stress the inconsistency of the majority report with the importance of the evidence discovered. And it returns in the third main point to stress again the inconsistency between the actions of Lorimer and his supporters and the plea of res adjudicata. It also stresses in this last main point the conflict between "public" opinion and the admission of the plea of res adjudicata.

In summary, Kern employs psychological appeals to selfish interests, tone of the occasion, known audience attitudes, praise, and occupational status in the introduction. The first point in the psychological pattern of reiteration is also made.

The body of the speech utilizes psychological appeals to fund of knowledge, occupational status, self intelligence, known audience attitudes, "reason," conflict, selfish interests, and idealistic appeals to social consciousness. The second point in the psychological pattern of reiteration is made in the closing sub-point of the first main point, while the third point in the psychological pattern is given in the second main point and forms a psychological bond between the arguments contained in the two main points.

The conclusion of the speech makes psychological appeals to social consciousness, "reason," and known audience attitudes. The final point in the psychological pattern of reiteration is made in the

summary appeal, tying the conclusion to the beginning of the refutation.

Suggestion in the speech is achieved through the extensive use of figurative language, and the level of language usage. "Loaded" words and striking statements, and the rhythm of the style also contribute to suggestion.

Specific psychological appeals to the basic drives are not abundant. Those found are made only to the basic drive of security. Of greater importance is Kern's use of psychological appeals to secondary motives. Appeals are made to "implication by action" and its related secondary motive of honesty or conviction. Appeals to honor are usually made through its antithesis, shame. Kern also utilizes a hierarchy of psychological appeals in which he places friendship above political strife, and duty above friendship. Other secondary appeals present in the speech include appeals to economy of time, sympathy for others, praise, power, justice, instances not named, common sense, and approval by others.

Several attention factors are utilized by Kern throughout the speech, and chief among these is the sustaining attention factor of conflict. Other factors employed include the use of specific details, direct references to audience members, common ground, and vitality.

### style<sup>78</sup>

**Force.** The style of the speech is characterized by force

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<sup>78</sup>The method and sources used for the analysis and criticism of style are the same as those used in chap. iv, p. 128, no. 128.

achieved in several ways. In his choice of words, Kern generally utilizes those which are short and specific. The active voice and emotional language are also employed. He does not practice the principle of brevity in the number of words used to express an idea, but instead tends to be copiously diffuse. Yet, the selection and placement of key words within the sentences achieves the forceful expression of ideas despite the handicap of lack of brevity.

While shortness and specificity in wording are not always characteristics in the style of the speech, it is certainly generally true, especially when considered within the confines of the senate which is known for expressions of ambiguity and multiple syllabification. It is especially present in points of emphasis and major illustrations. The following examples illustrate the use of short and specific words, first in a major illustration and then in a point of emphasis.

When your committee met he appeared in person and by counsel, and was present throughout the months of investigation cross-examining all witnesses called by the committee and examining scores of witnesses in his own behalf on every possible phase of the case, not only as to matters not called to the attention of the former committee, but bearing upon all questions investigated by that committee, and it was not until the hearings had ended that intimation was given that the power of the Senate to order, or that of the committee to make a full investigation of the questions submitted, was to be questioned.<sup>79</sup>

But you must be aware of the impression that would be made upon the public mind by a decision that this hair-splitting defense of res adjudicata is a sufficient answer to these serious charges. Such a decision would be received with derision in every part of the country by the men and women who believe in fair and open administration of justice and

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<sup>79</sup>Record, 7595.



whose common sense tells them that the interposition of such a defense is for the purpose of thwarting justice rather than promoting it.<sup>80</sup>

The active voice dominates throughout the speech. However, the passive voice is utilized by Kern in referring to past events where he is emphasizing directly or by implication the receiver of the action. Examples of the dominance of the active voice, and Kern's usage of the passive voice follow.

Conceding for the moment that this proceeding is analogous to a civil action at law, the granting of a new trial, even on the sole ground of newly discovered evidence, opens up the case for a full and complete reinvestigation. And here the Senate, without reciting the reasons why, reopened the case and directed the committee to investigate the question not as to the truth of the alleged newly discovered evidence, to investigate not the question as to whether there was newly discovered evidence of such weight and character as to justify action, but to investigate the question as to whether corrupt methods or practices had been employed in Senator LORIMER'S election; not to examine new evidence which might be adduced, but to hunt out, hear, and report all evidence bearing upon the subject to be investigated.<sup>81</sup> [Underlining indicates the use of the passive voice.]

Emotional language is employed frequently by Kern, but is especially important in the third main point. The following example of its usage is given without reference to the emotional devices employed since stylistic devices will be dealt with a little later, and the psychological appeals have already received consideration.

One Senator here, a member of the committee, has declared in an address to the Senate that he was so intent upon his duties as a member of this committee that he did not permit himself to read newspaper accounts of the investigation during the seven or eight months that it dragged along. His life during that period must have been a dreary waste. Why did he subject himself to such cruel privation if, as a lawyer, he knew that the committee was powerless to condemn and the Senate power-

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<sup>80</sup> Ibid., 756-757.

<sup>81</sup> Ibid., 7595.



less to act except in violation of law and precedents?<sup>82</sup>

In his selection of supporting details Kern achieves force by using figures of speech, recalling a vivid experience, developing striking illustrations, making allusions and direct references to legal precedent, making allusions to tradition, using vivid description, pointing up a dramatic struggle, utilizing factual data, and employing sparing use of hyperbole. The development of striking illustrations and the pointing up of a dramatic struggle are perhaps the most prominent factors of force in supporting details. Figures of speech will be exemplified under the later discussion of stylistic devices, but examples of the other types of supporting detail follow:

In the practice of my profession,....I witnessed the downfall of the men against whom my efforts had been directed, and the lamentations of the mothers, wives, and children of such men were so distressing that, except in cases of exceptional public importance, I abandoned that field of practice altogether.<sup>83</sup> [vivid experience]

The confessions of Beckemeyer and Holstlaw and Link were repudiated by the Senate, in speeches made on the floor of this body, for the sole reason that they had been coerced into making them by methods intolerable in a civilized country. And yet, sir, the prosecuting officers charged with the employment of these methods were not asked a word on the subject as to whether or not the charges were well grounded.<sup>84</sup> [striking illustration]

I shall only remind the Senate that under the Constitution it is the judge of the election, returns, and qualifications of its own Members.<sup>85</sup> [direct reference to legal precedent]

The time for a plea of former adjudication was when the

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<sup>82</sup>Ibid., 7596.

<sup>83</sup>Ibid., 7594.

<sup>84</sup>Ibid., 7596.

<sup>85</sup>Ibid., 7595.

Senate was considering the question as to whether the case should be reinvestigated.<sup>86</sup> [allusion to legal precedent]

The fact that he is a Republican while in every nerve and fiber I am a Democrat does not mitigate the unpleasantness of my work,...and while I come from a State noted for the fierceness of its political conflicts I am proud to say that in that Commonwealth the people are big enough and broad enough to yield to others the same liberty of thought they claim for themselves, and when the conflicts have ended and the smoke of battle blown away they recognize in each other the same good neighbors and friends that they were before they were summoned into action.<sup>87</sup> [allusion to tradition, and vivid description]

I could not fail to observe that the confessions of Link, Beckemeyer, and Holstlaw had been discredited by that committee because of the claim that they had been coerced into making them by barbarous methods alleged to have been employed by the prosecuting officers of Cook and Sangamon Counties, and yet these prosecuting officers were not permitted to come before the committee and refute these charges, as they have done in this investigation.<sup>88</sup> [pointing up a dramatic struggle]

That this investigation has been complete, and of an entirely different character from that of the Burrows committee, is attested by the fact that whereas the testimony taken by that committee is contained in a single volume of 748 pages, the testimony adduced before this committee fills 8 volumes, and covers 8,587 pages.<sup>89</sup> [citing factual data]

His life during that period must have been a dreary waste. Why did he subject himself to such cruel privation if, as a lawyer, he knew that the committee was powerless to act except in violation of law and precedents?<sup>90</sup> [hyperbole]

Sentence arrangement helps to achieve the forceful style despite Kern's weakness for run-on sentences. Kern arranges his sentences in an ascending order from suspense to climax, with each pattern of ascension covering a significant idea. A good example of this ordering

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<sup>86</sup>Ibid.

<sup>87</sup>Ibid., 7594.

<sup>88</sup>Ibid., 7595.

<sup>89</sup>Ibid., 7594.

<sup>90</sup>Ibid., 7596.

of sentences occurs in the first main point where Kern first reviews the action of the senate in the case, follows this by citing Lorimer's and the committee majority's actions during the investigation, then draws a comparison between the retrial of a civil action and the re-investigation of the Lorimer case, and concludes that it is now too late for the plea of res adjudicata to be made.

Antithetical arrangement of sentences also contributes to the forcefulness of the style. In the introduction Kern first states what he is not going to do before stating what he will do. He first states reasons for feeling inclined toward Lorimer before indicating why he is speaking against him. In the first main point of the speech Kern first states that Lorimer did not suggest during the committee hearings that the case was res adjudicata before he tells what Lorimer did. Other examples of this antithetical arrangement could be cited but these are sufficient to indicate the emphasis given to the ideas.

The kinds of sentences employed are largely compound-complex, and do not contribute to a forceful style. However, the short, compact clauses present in the expression of the key ideas clarify the complexity of the sentence when given oral expression. Consequently, these clauses make a distinct contribution to forcefulness of style. The following example illustrates the use of these short, compact phrases.

Whatever the causes that existed for ordering the reinvestigation, it was ordered; that order was acted on; the new investigation has been made, Senator LORDIMER freely and without protest participating in it; and the report of the committee is here for final disposition. It will be quite apparent to lawyers that this plea comes too late, if it

ever could have been made. The plea itself is res adjudicata.<sup>91</sup>

Restatement and repetition of sentences are used by Kern, with moderation, for emphasis. Most prominent in restatement and repetition is the theme that it is too late for this plea of res adjudicata, as can be seen in this example.

I do not propose to discuss this question at length, because...the Members...are,...not likely to be misled by this eleventh-hour technical defense.<sup>92</sup>

It was not until the hearings had ended that intimation was given that the power of the Senate to order, or that of the committee to make a full investigation of the questions submitted, was to be questioned.<sup>93</sup>

It is now too late for Senator LORIMER to be permitted to urge this remarkable defense.<sup>94</sup>

It will be quite apparent to lawyers that this plea comes too late, if it ever could have been made. The plea itself is res adjudicata.<sup>95</sup>

The interposition of such a defense is for the purpose of thwarting justice rather than promoting it.

Gentlemen, this charge is too serious and this evidence too strong for the course of justice to be thwarted by this miserable technical defense which was born out of the travail of the closing scenes of the committee's hearings.<sup>96</sup>

In summary, Kern's style is characterized by force through the use of effective word choice (short and specific words, the active voice, emotional language), proper selection of supporting details (figures of speech, recalling a vivid experience, striking illustrations, allusions and direct references to legal precedent, allusions

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<sup>91</sup>Ibid.

<sup>92</sup>Ibid., 7594.

<sup>93</sup>Ibid., 7595.

<sup>94</sup>Ibid.

<sup>95</sup>Ibid.

<sup>96</sup>Ibid., 7597.

to tradition, vivid description, pointing up a dramatic struggle, factual data, and hyperbole), and effective sentence arrangement (suspense and climax, antithesis, compact clauses, restatement, and repetition). The overwhelming use of compound-complex sentences does not contribute to the force of the style.

Accuracy. While the length of run-on sentences makes it difficult to follow grammatical forms, it appears that Kern uses correct grammar within the limitations of common usage of the period.

The words are selected carefully for proper denotative and connotative meanings when considered within their context and within the limits of the vocabulary of the audience. An example of this precision is found in the third main point of the speech. Words employed chiefly for their connotative meaning have been underlined.

But you must be aware of the impression that would be made upon the public mind by a decision that this hair-splitting defense of *res adjudicata* is a sufficient answer to these serious charges. Such a decision would be received with derision in every part of the country by the men and women who believe in fair and open administration of justice and whose common sense tells them that the interposition of such a defense is for the purpose of thwarting justice rather than promoting it.<sup>97</sup>

The above example also illustrates Kern's ability to express shades of meaning, but, as can also be seen, he is not always careful to select specific and concrete words. This is not a distinct defect in the style since style is aimed generally at creating a total effect. The lack of specificity usually occurs where the idea is less important than the psychological response that its expression evokes.

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<sup>97</sup>Ibid., 7596-7597.

Directness. Since Kern is a popular member of the body which composes his audience, the audience is thoroughly accustomed to hearing him speak, and he is accustomed to the language of the group. Thus, little adaptation in language to the audience is necessary. However, Kern makes some adaptation to the subject, his purpose, and the occasion. While this adaptation is difficult to describe, it seems to lie in the fact that Kern's language is the language of a lawyer speaking generally in non-technical terms on a point involving a legal argument. The composition is that of a prosecutor who is engaged in the task of summarizing his case before a jury that consists largely of lawyers. He is in this speech refuting a legal argument advanced by the defense, and he realizes that while the lawyers will understand his refutation in technical terminology, the other "jury" members will not. Thus, his composition is organized along the lines of legal argument, but the terminology is that which is understood by the entire body.

The language is well-suited to the occasion and to Kern's personality, as well as to the purpose and the type of speech. The use of personal pronouns adds to the directness, and occasional questions and appropriate illustrations also contribute. The chief deterrent to directness in Kern's style is his fondness for elaborate statements.

Unobtrusiveness. Kern's weakness for run-on sentences tends to call attention to the style of the speech. However, the frequency of short, compact phrases and the use of devices of direct discourse (exemplified later) override the tendency in the oral expression of the ideas. Basically, the style is conversational in nature when

placed within the confines of the audience and the occasion. It is as conversational as the formality of the occasion and Kern's ethical appeal of primary sincerity will permit. Euphony is present in the word order, which generally flows smoothly in oral expression, and in the use of words which are relatively easy to pronounce. Therefore, Kern's style may be characterized as being unobtrusive.

Clearness. Kern's identity as a member of the body that is also the audience establishes a frame of reference between the speaker and the audience, and there is evidence to indicate that Kern remains within the boundaries of accustomed language usages which he holds in common with his audience.

Word choices generally follow the accepted principles of selecting concrete and specific words to express specific ideas, and general and abstract expressions for general and abstract ideas. Amplification and the reenforcement of ideas defeats brevity to some extent, but this does not seriously detract from the clarity of the style.

Variety. As can be seen in the examples cited in previous and succeeding sections of this chapter, Kern displays considerable variety in word choice, ordering of phrases and sentences, and the use of vivid and figurative language.

Variety in sentence structure, however, is practically nonexistent. Simple sentences are very rare with compound sentences and complex sentences only a little less so. Compound-complex sentences are in the overwhelming majority.

Stylistic devices--figures of comparison and contrast. The following excerpts are examples of stylistic devices that Kern employs during the speech. Antithesis and contrast and anaphora are two of the more important devices in Kern's use of figurative language. Underlining is used in the examples to indicate the major parts of each device.

Conceding for the moment that this proceeding is analogous to a civil action at law, the granting of a new trial, even on the sole ground of newly discovered evidence, opens up the case for a full and complete reinvestigation. And here the Senate, without reciting the reasons why, reopened the case and directed the committee...<sup>98</sup> [analogy]

And while I come from a State noted for the fierceness of its political conflicts I am proud to say that in that Commonwealth the people are big enough and broad enough to yield to others the same liberty of thought they claim for themselves, and when the conflicts have ended and the smoke of battle blown away they recognize in each other the same good neighbors and friends that they were before they were summoned into action.<sup>99</sup> [metaphor]

...to investigate not the question....but to investigate the question...<sup>100</sup> [antithesis and contrast]

If, then, it be shown;...if it be shown;...if it be shown;...<sup>101</sup> [anaphora]

If the Senate was without power to act, and the committee, its creature, was under the law to be sent forth to combat imaginary windmills...<sup>102</sup> [oxymoron]

So every such member, in common with every lawyer in the country, is entirely familiar with the law of res adjudicata. The law of res adjudicata...<sup>103</sup> [anadiplosis]

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<sup>98</sup>Ibid., 7595.

<sup>99</sup>Ibid., 7594.

<sup>100</sup>Ibid., 7595.

<sup>101</sup>Ibid., 7596.

<sup>102</sup>Ibid.

<sup>103</sup>Ibid.



If, then, it be shown;...if it be shown;...if it be shown;  
if by the new evidence,...and if it be further shown;...if  
it be shown;...if it be shown,...then, according to the  
majority report,...<sup>104</sup> [progression]

I could not fail to observe that the confessions of Link,  
Beckemeyer, and Holstlaw...<sup>105</sup> [particularization]

After acquiescing in that action--aye, taking part in that  
action--and, without objection or protest,...<sup>106</sup> [inter-  
jection]

Stylistic devices of direct discourse. The devices of direct  
discourse, exemplified below, are employed by Kern during the speech.  
Personal pronouns and acclamation are prominent devices.

Mr. President, in speaking to the Senate on this question  
I have no purpose to indulge in rhetorical flourishes; I shall  
...but I shall...as I can my,...as I conceive,...because I  
know...<sup>107</sup> [pronouns in the first person]

Again, from page 41:  
Under all the authorities...<sup>108</sup> [quotation]

If this defense prevails, the plain people of the coun-  
try,...will ask: "Is it true that four men confessed to  
taking bribes, two of whom connected the bribe with the  
election of the Senator?" and the answer must be, "Yes, it  
is true, but it was res adjudicata."<sup>109</sup> [dialogue, and  
question and answer]

Gentlemen, this charge is too serious and this evidence  
too strong for the course of justice to be thwarted by this  
miserable technical defense which was born out of the travail  
of the closing scenes of the committee's hearings.<sup>110</sup> [per-  
sonification]

Whatever the causes that existed for ordering the rein-  
vestigation, it was ordered; that order was acted on; the new  
investigation has been made.<sup>111</sup> [acclamation]

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<sup>104</sup>Ibid.

<sup>105</sup>Ibid., 7595.

<sup>106</sup>Ibid.

<sup>107</sup>Ibid., 7594.

<sup>108</sup>Ibid., 7596.

<sup>109</sup>Ibid.

<sup>110</sup>Ibid., 7597.

<sup>111</sup>Ibid., 7596.

If these gentlemen believed then as they believe and declare now, why did they not decline this useless and fruitless task? If the Senate was...<sup>112</sup> [rhetorical question, and deliberation]

Other stylistic devices. In addition to the two general categories of stylistic devices, Kern employs certain others. Examples of these follow.

His life during that period must have been a dreary waste. Why did he subject himself to such cruel privation if, as a lawyer, he knew that the committee was powerless to condemn and the Senate powerless to act except in violation of law and precedents?<sup>113</sup> [humor through ridicule and satire]

If the Senate was without power to act, and the committee, its creature, was under the law to be sent forth to combat imaginary windmills and be compelled to report after seven long, weary months of effort, that its work according to law and precedent was a joke,...<sup>114</sup> [sarcasm]

I know that a very large majority of the Members of this body have not had time to wade through the thousands of pages of testimony offered in the case.<sup>115</sup> [metonymy]

The innocent voter will puzzle his brain as to how there could be escape in such a case.<sup>116</sup> [synecdoche]

....and the committee, its creature, was under the law to be sent forth to combat imaginary windmills...<sup>117</sup> [literary allusion]

The plea itself is res adjudicata.<sup>118</sup> [paradox]

Summary of stylistic devices. During the speech Kern employs many stylistic devices. Anaphora and antithesis and contrast are prominent among the figures of comparison and contrast, while Kern's use of personal pronouns and acclamation are major devices of direct discourse. The following table summarizes the other devices employed.

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<sup>112</sup>Ibid.

<sup>113</sup>Ibid.

<sup>114</sup>Ibid.

<sup>115</sup>Ibid., 7594.

<sup>116</sup>Ibid., 7596.

<sup>117</sup>Ibid.

<sup>118</sup>Ibid.

figures of comparison and contrast	devices of direct discourse
analogy	quotation
metaphor	dialogue
oxymoron	question and answer
anadiplosis	personification
progression	rhetorical question
particularization	deliberation
	interjection

other devices

humor through ridicule	synecdoche
satire	literary allusion
sarcasm	paradox
metonymy	

Summary of style. Kern's style is characterized first of all by force. It is achieved through the use of effective word choice in selecting short and specific words, employing the active voice, and utilizing emotional language. Figures of speech, a vivid experience, striking illustrations, allusions and references to legal precedent, allusions to traditions, dramatic struggle, factual data, and the sparing use of hyperbole are examples of the proper selection of supporting details in contributing to a forceful style. Another contribution is made by effective sentence arrangement. Sentence orders which include suspense and climax, antithesis, compact phrasing, re-statement, and repetition provide additional emphasis.

Accuracy in Kern's style is achieved through the use of correct grammatical forms and precision in the denotative and connotative meanings of the words used in the speech. Specificity and concreteness are not always maintained in the selection of words, but the lack of these characteristics usually occurs where the ideas expressed are not as important as the emotional responses evoked by their expression.

Since Kern is a member of the body comprising the audience,

and is familiar with its accustomed language usage, little adjustment in language usage is necessary. However, Kern does make some adjustment which is in keeping with his role as a prosecutor, and in keeping with his subject, purpose, and occasion. Essentially, that adjustment consists of the ordering of sentences and phrases along the lines of legal argument, while keeping the terminology employed non-technical and free from legal jargon. In general, the language is well-suited to the occasion, the speaker's personality, and the purpose and type of the speech.

While Kern's weakness for run-on sentences tends to call attention to the style of the speech, the frequent use of compact phrasing and devices of direct discourse override this tendency and preserve the unobtrusiveness of the style. The style is as conversational as the formality of the occasion and the primary sincerity of the speaker will permit, and euphony is generally present in the smooth-flowing oral expression of the word order.

The clarity of the style is evident in the word choice and in the selection of language usage which remain within the boundaries of common understanding between Kern and his audience. Amplification and the reenforcement of ideas defeat brevity to some extent, but in this speech do not seriously detract from the clarity of the style.

Variety in the style is indicated in Kern's choice of words, ordering of phrases and sentences, and the use of vivid and figurative language. However, the overwhelming use of compound-complex sentences provides little variety in sentence structure.

Comparison on style. In comparing the analysis of the style



of this speech with the general comments made by Bowers<sup>119</sup> on Kern's style, certain deviations are noted. Sarcasm, ridicule and satire in humor are utilized extensively by Kern in the development of the third main point, although not even a single instance of the use of puns was discovered. Kern's style could not be considered natural almost to the point of being colloquial in this speech. Taking into account the nature of Kern's audience and the times, the speech, according to the classical divisions of style, is considered an example of the middle style. Aside from these deviations, the analysis of the style in this speech is in agreement with the general remarks on style made by Bowers.

#### Delivery

While consideration of delivery is of necessity largely limited to the general remarks found in chapter four,<sup>120</sup> a few specific remarks on the delivery of the speech in refutation of the plea of res adjudicata, and the two succeeding speeches on the Lorimer question, can be made. One of the major factors influencing the delivery of these speeches is the fact that Kern was in a weakened physical condition all during their preparation and delivery. "He was physically almost exhausted when he began and almost ill before he concluded."<sup>121</sup> In the speech in refutation of the plea of res adjudicata, Kern indicated his condition at the close of his speech. "Mr. President, having

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<sup>119</sup>See chap. iv, p. 204.

<sup>120</sup>See chap. iv, pp. 205-207.

<sup>121</sup>Bowers, op. cit., p. 247.

concluded this part of my speech, as I have been indisposed all the forenoon, I should like to continue my remarks tomorrow."<sup>122</sup> The Chicago Daily Tribune reported, "Mr. Kern was not in condition to speak more than an hour, and will resume his address tomorrow."<sup>123</sup>

On June fifth Kern spoke for a little under two hours without apparent discomfort,<sup>124</sup> but his three-hour address<sup>125</sup> on June seventh exhausted him.

Mr. WILLIAMS (at 3 o'clock and 30 minutes p.m.). Evidently the Senator from Indiana is very much fatigued. He has not been well. I request that he be permitted to resume his speech tomorrow. He informs me that he can finish in about half an hour.

Mr. KERN. It will take me a very short time to conclude. I expected to finish this evening, but I have been indisposed for some days, and I find the effort this afternoon has exhausted me.<sup>126</sup>

An examination of the length of the text delivered by Kern on June eighth indicates that it took him a little over an hour to complete his speech.<sup>127</sup>

#### Response

The response to the speech is divided into three categories: the response during the speech, the immediate response following the

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<sup>122</sup>Record, 7597.

<sup>123</sup>Chicago Daily Tribune, June 5, 1912, p. 1

<sup>124</sup>Record, 7706.

<sup>125</sup>Indianapolis Star, June 8, 1912, p. 3.

<sup>126</sup>Ibid., 7786-7787.

<sup>127</sup>By comparing the length of the text of the speech given on June fourth which was an hour in delivery, with the text of the speech on June eighth, the length of time expended in the delivery on June eighth was determined. See no. 123.

speech, and the remote response (response which begins with the continuation of senate debate on the question one month after Kern's speech). Each of these types of response will be considered in turn.

Response during the speech. On June fourth Kern was interrupted only twice during the speech by challenge. Senator Weldon B. Heyburn of Idaho interrupted Kern shortly after Kern had stated that the senate had the power under the Constitution to reopen the Lorimer case. Heyburn offered the counter-argument that it was his understanding that only the senate concurrently elected with the case in question could reopen the case. Kern met this challenge by replying that the senate was a continuing body, and that if every member here should die the senate would continue to exist.<sup>128</sup> Dillingham interrupted Kern following the statement that the committee majority had voted for the reopening of the case to clarify his reasons for voting for the reopening. Dillingham stated that his vote was given on the basis that the allegation of new evidence in the case ought to be investigated, and if there was no new evidence then the plea of res adjudicata ought to apply. The interruption gave Kern the opportunity to lead Dillingham to admit that he did not object to the reopening of the case on any grounds.<sup>129</sup>

On June fifth, Kern was interrupted at several points in the speech. Several of these interruptions were of a minor nature, but one of significance occurred when Kern was discussing the existence of corruption funds for the Illinois state legislature which had been the

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<sup>128</sup>Ibid., 7595.

<sup>129</sup>Ibid.



practice in that state for several years. Dillingham challenged Kern to show a single witness who testified of his own knowledge to the existence of such a fund. Kern started to answer him, but Dillingham evidently realized the embarrassing position which this challenge put him in (the existence of such funds had been common knowledge for some time), and stated that he believed in the existence of such funds but that none of the witnesses had personal knowledge of their existence. This only placed Dillingham in a more awkward position, because the majority report had only mentioned that there was no first-hand knowledge of the existence of the corruption funds, and had neglected to state that the opinion of the majority was that these funds did exist. Whether or not the omission from the majority report was intentional, Kern made the most of the verbal admission of Dillingham, pointing out that the conclusions of the majority should have stated their belief as to the existence of a corruption fund.<sup>130</sup> The only other interruption of some significance was that by Lorimer in which he made clear his personal feelings toward Governor Deneen of Illinois.<sup>131</sup>

On the seventh of June Kern's recital of the salient points in the testimony met with no significant challenges by Lorimer and his supporters. He was interrupted only four times in three hours for questions and points of clarification of a minor nature.<sup>132</sup> Kern was not interrupted at all on the eighth of June.<sup>133</sup>

Immediate response following the speech. The reported response

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<sup>130</sup>Ibid., 7702-7703.

<sup>131</sup>Ibid., 7704.

<sup>132</sup>Ibid., 7775-7787.

<sup>133</sup>Ibid., 7845-7848.



to Kern's speech in refutation of the plea of res adjudicata (June fourth) was generally favorable. The Chicago Daily Tribune reported that it was the universal opinion of the Democratic side of the senate that Kern "conducted himself like a veteran" during the debate.<sup>134</sup> Prior to Kern's address the next day, Lorimer, an intent listener of the day before,<sup>135</sup> made a gesture of good will by crossing the aisle and talking with Kern in a friendly fashion.<sup>136</sup>

In response to Kern's speech on June fifth the Indianapolis News stated in an editorial favoring Kern's arguments and stand in the case, "The clear and studied speech made on the Lorimer case by Senator Kern should influence the senate in its action on the Illinois corruption investigation."<sup>137</sup> During the speech the Chicago Daily Tribune reported that Lorimer's "face was flushed, his manner more irritable than heretofore."<sup>138</sup>

The address by Kern to the senate on June seventh was followed on June eighth by the Chicago Daily Tribune's reference to the three days of speaking by Kern as "a masterly legal analysis of the plot to 'put Lorimer over' and of the subsequent efforts of the guilty ones to cover up their crimes."<sup>139</sup> The Tribune continued by noting that

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<sup>134</sup>Chicago Daily Tribune, June 5, 1912, p. 1.

<sup>135</sup>Ibid.

<sup>136</sup>Indianapolis News, June 5, 1912, p. 1.

<sup>137</sup>Ibid., June 6, 1912, p. 6.

<sup>138</sup>Chicago Daily Tribune, June 6, 1912, p. 1.

<sup>139</sup>Ibid., June 8, 1912, p. 4.

the defenders of Lorimer were becoming scarcer each day, and that it was doubtful that Lorimer would receive fifteen votes if a roll call vote was held.<sup>140</sup>

No response was reported in the newspapers for Kern's closing remarks on June eighth. However, Bowers reports that "the consensus of opinion among the lawyers of the senate was ...that it was a powerful, unanswerable, logical and eloquent arraignment of the accused senator,...and while other senators spoke with comparative brevity in favor of the minority report, the ground had been so exhaustively and conclusively covered by Kern that these confined themselves to one or two features of the case."<sup>141</sup>

Remote response. The supporters of Lorimer were not given an opportunity to reply to Kern's speech until July sixth. Senator McCumber was one of the first supporters of Lorimer to take advantage of that opportunity on the sixth. McCumber attacked directly Kern's speeches in refutation. He affirmed his belief in the application of the plea of res adjudicata on the grounds that the country and a majority of the senators were so influenced by their beliefs that they were incapable of deciding the case on its own merits. He denied that the new evidence was of sufficient character and strength to justify a new trial, but offered no evidence to substantiate his claim until the discussion of his next main point. Then, he contended that even if some corruption existed, the evidence did not implicate enough members

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<sup>140</sup>Ibid.

<sup>141</sup>Bowers, op. cit., p. 247.

of the Illinois state legislature to make a difference in the outcome of the election. He spent the remainder of the speech offering evidence from the testimony which was designed to discredit the chief witnesses of the minority, whose testimony Kern had reviewed in the last two days of his speech.<sup>142</sup>

Senator Myers followed McCumber, and bolstered Kern's argument against the plea of res adjudicata by citing legal precedents for Kern's stand and by substantiating the existence of new evidence in the case.<sup>143</sup>

On July eighth Senator Fletcher began his speech in support of Lorimer by returning to the question of the strength of the evidence. He first established the basis for reopening the investigation as being the question of new evidence in the case. He then proceeded carefully to review the testimony given before the committee in an attempt to discredit the evidence of testimony given by Kern in his speeches.<sup>144</sup>

On July ninth Fletcher concluded his remarks by further contending that the evidence offered by the minority was not only unreliable, but was insufficient to warrant trying Lorimer again.<sup>145</sup> The major speaker in support of Lorimer, Senator Dillingham, also concluded his remarks on that day. He had been speaking each day since July sixth. Dillingham first traced the origins of Lorimer's candidacy for

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<sup>142</sup>Record, Part 9, 8672-8677.

<sup>143</sup>Ibid., 8677-8682.

<sup>144</sup>Ibid., 8686-8696.

<sup>145</sup>Ibid., 8723-8726.

the United States Senate, then proceeded to give his views on the election of Lorimer, and followed that by a discussion of the evidence offered by the minority in Kern's speech in an effort to discredit that testimony. Following this, Dillingham discussed his interpretation of the move to unseat Lorimer, charging that forces were at work who wanted Lorimer's ouster for selfish reasons. He then moved on to a discussion of the confessions of the four Illinois state legislators in an attempt to discredit them. In his conclusion, Dillingham argued that the new evidence had proven conclusively that Lorimer's election was a result of natural political conditions in Illinois, and that the pressure of public opinion for Lorimer's ouster should not be permitted to prevail upon the senators in the face of the evidence of his innocence.<sup>146</sup>

Following a short speech by Senator Johnston in support of Lorimer and the plea of res adjudicata, general debate on the question of sufficient new evidence in the case prevailed for better than an hour with Senator Jones the chief speaker. At several points the position of the committee majority was certainly a losing one on this question, as can be indicated by the following exchange between Jones and Kern:

Mr. KERN. Does the Senator from Washington agree,...  
that Lee O'Neill Browne distributed some kind of fund...to  
...members of the legislature in June?

Mr. JONES. Oh, yes; I will agree to that.

.....  
Mr. KERN. Very well. Then, is it not true that that  
evidence of the distribution of money by Lee O'Neill Browne  
in June and Robert E. Wilson in July and the payment by  
Broderick of money to Holstlaw is entirely new evidence  
that was not conceded at all by the friends of Senator

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<sup>146</sup>Ibid., 8726-8774.

LORIMER in the previous investigation?

Mr. JONES. Certainly not. That evidence was all brought out in the other investigation and was all considered by the Senate.

Mr. KERN. But did not the friends of Senator LORIMER here in the former investigation utterly discredit that testimony as to the distribution of money by Lee O'Neill Browne and Robert E. Wilson?

Mr. JONES. I am not here to say what the friends of Senator LORIMER did. I do not know just what relevancy the Senate attaches to that matter at this point.<sup>147</sup>

Kern continued to debate with Jones his views on the case with as much success,<sup>148</sup> and the general impression received from an examination of these exchanges is that Senator Jones did Lorimer little good. The entire position of the committee majority was placed in a very bad light. Following the debate, Jones continued his remarks with only occasional interruptions. He devoted his time in attempts to discredit the testimony offered in evidence by Kern, and support the majority's plea of res adjudicata.<sup>149</sup>

Senator Borah then spoke in opposition to the plea of res adjudicata, and in support of Kern's viewpoint that the plea was not applicable and had come too late in the case even for consideration. Senator Jones regained the floor during the ensuing debate to challenge Kern's argument that the people would meet the decision of the senate to admit the plea of res adjudicata with derision. He stated that the people were interested in the case, but were interested in seeing it decided justly and fairly. "The people expect us to do our duty regardless of public clamor and prejudice."<sup>150</sup>

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<sup>147</sup>Ibid., 8818-8819.

<sup>148</sup>Ibid., 8819-8821.

<sup>149</sup>Ibid., 8821-8842.

<sup>150</sup>Ibid., 8847.

On July eleventh Senator Thornton made a short speech in support of Lorimer which did not bear significantly on the case as presented by Kern. Senator Lea followed Thornton, and spoke in support of Kern's refutation of the plea of res adjudicata, and then in support of the evidence offered by the minority.<sup>151</sup>

Senator Lorimer followed Lea in his own defense. Near the beginning of his remarks Lorimer attacked Kern's ridicule of the defense of res adjudicata:

This is no joke. It is a solemn, serious matter, and if the Senate shall adopt the recommendation submitted with the views of the minority of the committee;...it will be a declaration that the Senate of the United States has decided to follow the red flag and that it has adopted the doctrine of anarchy, the recall of judicial decisions.

The Senator from Indiana argues that the doctrine of res adjudicata is a technical defense which does not apply in this case, and that the people would not understand it... The rule of...former adjudication...is understood by the most humble citizen of this country as a guaranty to him against repeated assaults upon his liberty, his property or his rights.<sup>152</sup>

Lorimer then went on to offer evidence to support his contention that the move to unseat him had been organized by special interest forces.

Lorimer continued his remarks on July twelfth, and it became increasingly clear that he was not feeling very friendly towards Kern:

Probably the Senator from Indiana has the idea that all public men devote their time to pulling down people and things and that none of them devote their time to building up. For 17 years I have devoted my time to the deep waterway project.<sup>153</sup>

In every contrast, as can be seen from the examples cited, it becomes

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<sup>151</sup>Ibid., 8882-8892.

<sup>152</sup>Ibid., 8892.

<sup>153</sup>Ibid., 8942.



increasingly clear that Lorimer was attempting to create for himself the role of a misunderstood martyr. Lorimer next shifted to an attack of the language used by Kern in the report of the minority, claiming that it was full of "vile insinuations."

Here is another statement--and oh, Senators, this is a vile insinuation, because it involves a man who is in no way connected with the case:

. . . . .  
Listen to this language--  
. . . . .  
"Some one else"--mind that--"some one else"--  
. . . . .  
Why was not the governor's name used. The expression  
"somebody else" was more suspicious.<sup>154</sup>

Lorimer then attacked Kern's speech of June fifth. He accused Kern of "setting the stage" by deliberate exaggeration of Illinois political conditions in order to protect Senator Lea, a member of the minority, from criticism resulting from the fact that he was also elected by a coalition of Democrats and Republicans by the Tennessee state legislature.

That is all there is to it--the setting of the stage--to cover up the LEA Republican votes, to cover up the Tennessee bipartisan combination, to make Senators forget it.

What are the facts in this case? Almost every Democrat that voted for LORIMER was LORIMER'S warm, close, personal friend. Almost every Republican that voted for Senator LEA was delivered to him by the leaders of the Republican organization of that State and did not vote for him for reasons of personal friendship, as was the case in my election. That is the record in the case. It can be the only purpose of putting the case in that way.<sup>155</sup>

On June seventh Kern had told in his speech how a young man by the name of McCann had been given a position in a county clerk's office in Cook County for corroborating the testimony of one of the men

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<sup>154</sup>Ibid., 8942.

<sup>155</sup>Ibid., 8943.

involved in the corruption. Kern stated that this treatment indicated a pattern of providing for those who were witnesses for Lorimer. Lorimer called it:

The most vile insinuation that has been made:

. . . . .  
Mr. President, if the above statement means anything in connection with this case, it means that I have been suborning perjury. If that is the intent of the Senator from Indiana, I desire to characterize this statement in the only manner in which it can properly be characterized--a deliberately false statement. Suborning perjury is the insinuation; LORIMER the guilty man.<sup>156</sup>

From this point the attack on Kern became quite vicious and defamatory to Kern's character. Among several paragraphs of scathing digression into personalities, the following stands out:

Because he [Kern] made that charge against his colleague [Shively], it makes no impression on me. I never knew a character of his sort who was a good loser; and seldom are they willing to attribute the success of their opponents to anything but unfair dealing. Until it is proven, I will never believe, after reading the views of the minority that he signed, and the statements that he made in his speech on this case, that there is a word of truth in it....And as he sat there before me with assumed self-righteousness and an expression of "more holy than thou" on his countenance, then was I reminded of the Pharisee in the parable, with his hands reaching to the high heaven in prayer:

God, I thank Thee that I am not as other men are,...even as this publican.<sup>157</sup>

Lorimer continued his remarks by giving his analysis of the testimony, with a few references to Kern in the same uncomplimentary vein which has been previously observed.<sup>158</sup>

Lorimer concluded his remarks on July thirteenth in a statement which was saturated with psychological appeals. Only minor

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<sup>156</sup>Ibid.

<sup>157</sup>Ibid., 8945.

<sup>158</sup>Ibid., 8945-8949.

references were made to Kern during these concluding appeals.<sup>159</sup> Following Lorimer's remarks and two short explanations by senators of their votes, the vote was taken and Lorimer was ousted by a vote of 55 to 28 with 11 senators not voting because of absence.<sup>160</sup>

In connection with the attack by Lorimer on Kern, Bowers stated:

It is not surprising in view of the important part he played in the development of the case against Lorimer and Lorimerism that the anonymous attacks that had been made upon him should find open expression on the floor of the senate. The attack came in the course of Lorimer's speech in his own defense.<sup>161</sup>

Bowers continued to describe the nature of Lorimer's speech.

It was a masterly appeal to the emotions from a consummate criminal lawyer conscious of a desperate cause and bent on diverting the jury from the irresistible facts to the non-essentials. The manner of the delivery would have rejoiced the heart of a Belasco. It was dramatic, intensely so. No one listening to Lorimer as he spoke that day to a packed gallery and with the floor of the senate thronged with attaches and members of the house would have been surprised had he been told that the speaker was one of the greatest jury orators in the country. It was in the course of this speech that Lorimer entered upon a bitter attack upon Kern which indicated unmistakably the object of his special animus.<sup>162</sup>

The New York Times described the effect of that attack on the senate.

Mr. Lorimer's attack upon Senator Kern seemed to daze the Senate. Mr. Kern was out of the chamber at the time. But Mr. Kern came in later and much surprise was then felt that he made no attempt to defend the statements he had made and which Mr. Lorimer denounced as "lies."<sup>163</sup>

Bowers relates the reasons for Kern's absence from the chamber, and

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<sup>159</sup>Ibid., 8968-8986.

<sup>160</sup>Ibid., 8986-8987.

<sup>161</sup>Bowers, op. cit., p. 248.

<sup>162</sup>Ibid.

<sup>163</sup>New York Times, July 13, 1912, p. 1.



the reasons why Kern did not reply to Lorimer. When the attack began, one of Kern's friends sent word to him, and Kern started for the capitol. Kern had been ill for a month and unable to attend the senate sessions. He had been lying down in his room at the Senate Office Building when word reached him. He was met in the subway by some of his supporters and told of the nature of the attack. During the ensuing conference it was decided that unless the attack became too venomous, Kern would ignore it. It was felt that a personal exchange between Kern and Lorimer would only divert attention from the real issue and possibly delay the vote on the issue. Kern proceeded to the chamber following the conference, found a chair within a few feet of Lorimer, turned it so as to sit facing the speaker, and remained in that attentive position until Lorimer finished.<sup>164</sup> After the speech was over and the New York Times correspondent asked Kern to comment on it, Kern stated, "I will have no colloquy with Senator Lorimer. He is in his death agonies."<sup>165</sup>

Kern's comment appears to be a fairly accurate description. The New York Times correspondent described the scene the next day as Lorimer concluded his speech as an intensely emotional one. The galleries were packed, and the women among them were sobbing as Lorimer's eloquence drew to a close. But his eloquence in those two final hours changed no votes, and Lorimer was disqualified from the seat that he had held for three years.<sup>166</sup>

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<sup>164</sup>Bowers, op. cit., p. 249.

<sup>165</sup>New York Times, July 13, 1912, p. 1.

<sup>166</sup>Ibid., July 14, 1912, p. 1.

Thus, it appears that the passage of a month since Kern's delivery of his major addresses had done nothing to harm his cause. The 55 votes against Lorimer, indicated in Sherman's poll prior to the debate, remained firmly against him. It is a tribute to the strength of Kern's speeches on the question that despite the fact that his opposition had a full month in which to prepare an answer, it was not possible for them to present a convincing indictment against the minority's case.

But perhaps a better indication of the importance of and response to Kern's address is given by the Chicago Daily Tribune correspondent, John O'Laughlin, after the interval of several years from the time of the event:

His arguments, or rather his presentation of facts, were absolutely convincing, but more than this, the fact that he had come to the conclusion that Lorimer's seat had been purchased unquestionably influenced senators who recognized his integrity and the reliability of his judgment.<sup>167</sup>

From O'Laughlin's comments it becomes apparent why Lorimer's personal attack against Kern won him no converts, and why Kern and his supporters felt that it was unnecessary to reply to him.

Summary on response. The immediate response to Kern's speech may be generally classed as favorable. Even the members who supported Lorimer found little to challenge during the delivery of the speech. The remote response, as measured by the speeches given on the subject one month later, reveal that Lorimer's supporters were more adept at meeting Kern's prosecution than Lorimer himself. Even they, however, failed to substantiate their arguments satisfactorily to the senate

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<sup>167</sup>Bowers, op. cit., p. 244.

and the interested public. Lorimer resorted to an attack on Kern's character, rather than confining himself to Kern's arguments and the evidence. He tended to dwell on minor points and irrelevant issues with the result that his final appeal was lost on the senators and impressed only the galleries. Lorimer's response to Kern's speeches and the minority report is probably one of the most dramatic and emotionally-charged scenes ever experienced by the senate.

Thus, the total response to Kern's speeches on the Lorimer question is favorable from three standpoints. First, Kern's speaking was considered by his immediate and remote audiences as a carefully constructed legal argument and an adequate presentation of the views of the committee minority. Second, the speeches by Kern were inadequately challenged by Lorimer's supporters, thereby indicating the strength of Kern's arguments. Finally, the fact that the number of votes against Lorimer, indicated in the pre-debate polls, was the exact number of votes against him on the final votes indicates that Kern's speeches did not result in a loss of support for the minority resolution.<sup>168</sup>

#### Summary

Preparation. A primary source for Kern's preparation was his original theory on the Lorimer case which had been substantiated during the investigation. Firmly convinced of Lorimer's guilt, Kern began his

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<sup>168</sup>At the close of the first investigation opinion in the senate had been quite evenly divided with those in favor of Lorimer's ouster believed to have a slight majority. However, after Lorimer's speech, the final vote was registered in favor of Lorimer and his defense. Bowers, op. cit., pp. 226-229.

preparation by reviewing and taking notes on the 8,588 pages of testimony that had been collected by the committee. He had his purpose and his role of prosecutor firmly in mind as he went about his preparation. Each day's address was prepared separately, and no part of one day's address was prepared before the address preceeding it had been given. He was so rushed by the preparation that he was usually working on the day's speech right up to the time for its delivery. The separate preparations and separate deliveries, when considered in light of the context of the four days of remarks, clearly indicate the remarks are not one continuous speech, but in reality are three distinct speeches.

Immediate setting and occasion. Kern was the spokesman for the minority of the investigating committee, and he approached his task with the knowledge that senate majority opinion was in his favor. The speech under examination was given on June fourth with the Democratic side of the senate present in force to observe Kern's conduct in the debate. His audience during the remaining days was generally confined to new senators who had entered the senate since the close of the first investigation, while the other senators retired to their cloakrooms. Lorimer and his chief supporters were usually present.

Arrangement. The introduction accomplishes three functions within its four points; it announces and limits Kern's purpose, it establishes the rationale for his speech, and it introduces his specific subject. Three main points, each with three or four sub-points as support, are inductively developed through refutation supported by argument. The conclusion of the speech consists of an abbreviated summary and a word of explanation. The structural unity of the speech



is maintained through internal and external summaries, singleness of Kern's purpose, and the repetitive theme in the psychological arrangement.

Invention. Imperfect inductive reasoning is used in the development of logical appeals that concentrate on refutation of a single argument through three main points. The introduction employs exposition and sign reasoning as the chief logical appeals, while the three main points of the body are developed by causal argument. Sign reasoning, causal argument, evidence of fact, argument by condition, enthymeme, and argument by reductio ad absurdum are used in the sub-points within the main points.

Primary sincerity is one of the chief contributors to the ethical appeals found in the speech, and is accompanied by a secondary atmosphere of fairmindedness. His attitudes toward himself, his subject, and his audience also make substantial contributions. Personal identification with ideals, the "public," and the audience offer ethical appeals, as does Kern's seeming objectivity on the subject. Expressed characteristics of the speaker include character, fund of knowledge, tact, opinion, past success, and experience. Unexpressed characteristics include popularity, age, intelligence, political experience, and appearance and bearing.

Psychological appeals also make their contribution. The kinds employed include appeals to selfish interests, tone of the occasion, known audience attitudes, praise, occupational status, self-intelligence, "reason," conflict, and social consciousness. The psychological arrangement of the speech is based upon a pattern of reiteration

of a summary appeal. Suggestion in the speech is achieved through extensive use of figurative language, the level of language usage, "loaded" words, striking statements, and the rhythm of the style. Specific psychological appeals, few in number, are made only to the basic drive of security. Major secondary motive appeals include "implication by action," honesty, honor through shame, friendship above political strife, and duty above friendship. Other secondary motive appeals include appeals to economy of time, sympathy for others, praise, power, justice, instances not named, common sense, and approval by others. Attention factors employed include conflict, specific details, direct references to audience members, common ground, and vitality.

Style. Kern's style is characterized by force achieved through the use of effective word choice, proper selection of supporting details, and effective sentence arrangement. Accuracy is achieved through the use of correct grammatical forms and precision in the denotative and connotative meanings of the words used in the speech. Directness of the style is aided by Kern's adjustment in language, and the language suitability to the occasion, Kern's personality, and the purpose and type of the speech. Clarity of the style is preserved through the conversational tone of the speech and the presence of euphony, despite Kern's weakness for run-on sentences. Variety is indicated in Kern's choice of words, the ordering of phrases and sentences, and the use of vivid and figurative language. Stylistic devices are numerous. Using the classical definitions of levels of style, Kern's speech in refutation of the plea of *res adjudicata* exemplifies the middle style.

Delivery. The general remarks in chapter four on delivery apply in this instance.<sup>169</sup> In addition, Kern was hampered in the delivery of the speeches by his weakened physical condition. On June fourth he spoke for an hour, June fifth for a little under two hours, June seventh for three hours, and June eighth for a little over an hour.

Response. The response to the speech may be characterized as favorable before his immediate and remote audience of the senate and before the remote audience of the interested public. Unfavorable response was registered only in the case of Lorimer and his supporters.

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<sup>169</sup>See chap. iv, pp. 205-207.



## CHAPTER VI

### SUMMARY AND CONCLUSIONS

#### Development of Kern

Essentially three features in the life of John Worth Kern prior to his senate career are of significance in examining his senate speaking: his character and personality development, his political development, and his speaking.

Character and personality development. Kern's early years were spent in the pioneer regions of Howard County, Indiana and Warren County, Iowa. His parents, while not wealthy, were able to provide more of the comforts of living for their family than was true of the general population. Kern's early formal education took place in a school in Iowa, while his advanced teacher training was received at Indiana Normal School of Kokomo when he was only fifteen years old. He was characterized as being financially economical, industrious toward his education, ambitious, gentle in disposition, and religiously inclined.

Determined to become a lawyer, Kern taught school for two terms from late 1865 to early 1867 in order to finance his legal education. A sense of discipline, responsibility, and deep religious conviction were revealed in this period as additional traits of Kern's personality and character. His method of teaching also reveals that Kern was inclined to be creative and original in his thinking.

After attending the University of Michigan law school, Kern opened his private practice in law in Kokomo, Indiana in

May of 1869. Other traits of his personality and character now became apparent as he entered young adulthood. His social gregariousness, high degree of intelligence, popularity, understanding of human nature and emotions, capacity for deep feelings on firm convictions, analytical mind, depth and rapidity of perception, sense of humor, and loyalty to his beliefs manifested themselves as the young lawyer progressed in his private practice.

Kern achieved state-wide prominence as a lawyer shortly after entering into a partnership with Leo O. Bailey. His customary dress in 1895 was considered to be in excellent taste, with his Prince Albert coat and black silk hat. His manner was cordial and inspired confidence in his ability and sincerity. His social affiliations included membership in the Knights of Pythias and the Order of Elks, and he had advanced in the Masonic order to the thirty-second degree. Although still orthodox in his religious beliefs, he was not now a member of any church. The other traits of his personality and character were still very much in evidence and contributed to his social success at parties and friendly gatherings in Indianapolis.

Kern's physical health had never been excellent, and the strain of public life weakened him further until in 1906 he contracted tuberculosis and spent three months in recuperation at a sanatorium, leaving before the recovery period was completed. His illness served to deepen his devotion to his family and his home life, but his sense of devotion to principles was strong enough to keep him from dropping out of public life.

The development of Kern's character and personality



resulted in an enviable personal popularity which served as a strong foundation for a career in public life. But more important, perhaps, Kern's character and personality contained qualities that provided a sound basis for the position of leadership that he held during his public career. These qualities also served as personal reservoirs from which he could draw decisions when they had to be made and causes that could be advocated with an intenseness of sincerity and purpose.

Political Development. Kern's political development was nurtured by his father's example. Dr. Jacob W. Kern had risen in politics by 1849 to the presidency of the Howard County Democratic Convention. Kern, himself, became an intensely loyal Democrat at an early age, and manifested his convictions in the campaign of 1860 by his yelling and cheering for Douglas on trips to Indianola, Iowa.

His early legal practice made him a potential candidate for public office, but his chances of success were slim in a county which consistently piled up impressive 1,200 vote majorities or more for Republican candidates. His devotion to the party of his choice, however, led him to accept his party's call regardless of the hopelessness of his task. In 1870 he ran for the state legislature and was beaten by less than 200 votes. By 1874, his leadership in the Democratic party had advanced him to the office of principal Secretary of the State Democratic Conventions, a position which he held until 1884, and to the position of Howard County representative to the State Democratic Committee.





In 1874 and 1880 Kern ran for the office of Prosecuting Attorney for Howard County, each time exceeding his party in the number of votes cast for his election and losing to his Republican opponent by only a few hundred votes. He was known within the county and state Democratic circles as a strong advocate for reform. His loyalty to the Democratic party was so intense that by 1876 even personal convictions could not stand in the way of his support of Democratic candidates, but he was against the use of money to purchase support in elections and predicted the downfall of this practice before the court of public opinion in the near future.

By 1884 he had become known across the state as a political figure, and he decided to run in the fall elections for the state office of Reporter to the Supreme Court. Kern won election to the office and ran 1500 votes ahead of the Democratic ticket in an unusual year when Democrats were very successful in the state. He lost the fight for reelection to the office in 1888 but had gained considerable experience and valuable political friends while in office. The election of 1892 placed him in the state legislature as senator from Marion County, where he became known chiefly as a friend of organized labor. By 1895 he had advanced within the state senate to the position of minority leader for the Democrats, his chief role being that of critic of the Republican majority.

During the 1890's Kern became associated with Thomas Taggart who was later to become the Democratic state political boss. As mayor of Indianapolis, Taggart named Kern corporation

counsel in 1895, and City Attorney in 1897 and 1899. This led to Kern's nomination in 1900 by the Taggart-dominated state convention as Democratic candidate for Governor. While running well ahead of the national Democratic ticket in Indiana, Kern was defeated in the election. He was persuaded to run again in 1904 for Governor by the Democratic presidential nominee, Alton B. Parker, and lost in a landslide Republican victory. While a Republican-dominated legislature assured a Republican United States Senator, Kern received the complimentary vote of his party for the office in 1905.

Kern now enjoyed considerable national Democratic prestige, and had many friends among national Democratic leaders. This popularity, together with his friendship with Bryan and his identification with Bryan's political principles, won him the Vice-Presidential nomination in the National Democratic Convention of 1908, despite his personal reluctance to accept it. Although it was his third major political defeat, Kern remained a strong Democratic contender for public office since Republican domination was the rule during this period on both the national and many state levels.

The Democrats, however, dominated the Indiana state legislature after the election of 1908, and Kern was considered a popular choice for United States Senator. Three major factors (the defeat of Taggart forces in the State Democratic Convention by anti-machine forces, lack of support from Governor Marshall and Taggart, and Kern's self-confidence) combined with other lesser factors to defeat Kern's candidacy and elect Benjamin F.

Shively. Popular reaction and the "freak" adoption of Governor Marshall's plan to commit the Democratic party in advance of the election to a particular candidate for United States Senator, combined to bring about suitable conditions for the nomination and election of Kern to the United States Senate in 1910.

Kern was already known as a champion of the political principles of Bryan and the principles of reform, as well as having the reputation of being a friend to labor. In the campaign of 1910, Kern placed himself firmly in favor of the specific measures of government subsidization of merchant shipping and the national income tax. He condemned extravagance in government expenditures and the Payne-Aldrich Tariff and advocated a dollar-a-day pension for Civil War veterans.

Thus, Kern brought with him into the United States Senate a considerable store of political experience covering a period of forty-two years. He also came to the senate with considerable national prestige and popularity among members of his profession, and he possessed a considerable reputation as a successful political leader in Democratic circles. Riding the crest of a national reform movement, his role as Bryan's lieutenant also advanced his stature among the Democratic senators. His experience with the political issues of the day well qualified him for a position of leadership in the national legislature.

Experience and training in public speaking. Kern's experience in and study of public speaking began at about the time he entered the Indiana Normal School of Kokomo. He studied the great speakers as a boy and practiced oratory on the rides to and

from school. As a student, he excelled in oratory and forensic contests and was known to have a clear, incisive and earnest manner in his delivery.

His teaching experience contributed to his growing reputation as a young orator, not only in the classroom, but also in the Dyar school literary and debating society which Kern organized.

Kern's public speaking training and practice continued during his attendance at the University of Michigan. Club courts, moot courts, and the Douglas Literary Society offered opportunities for a great deal of public speaking practice, while attendance at student-sponsored lectures provided modern contemporary examples of public speaking. Kern's formal training in public speaking, however, was obtained largely from lectures in elocution given twice each week to the law students by Professor Moses Coit Tyler, an instructor with a deep understanding of the classical concepts of rhetoric.

As a country lawyer, Kern began to build his reputation as an orator chiefly by his practice before the justice of the peace courts. His oratory was characterized by the display of great skill in the marshalling of facts and circumstances, and in the use of pathos, ridicule and invective. He was highly persuasive, skilled in reaching the minds and hearts of his audiences. His oratorical skill and ability were of significance in the success of his early criminal law practice.

His political oratory also won a favorable response, first in Howard County and later on the state and national scenes. Beginning in 1874, Kern gave the major address on reform at each

Howard County Democratic Convention for a number of years. Many of his early campaign speeches also centered on this general theme, with special emphasis given to economy in government expenditures. Kern's use of ridicule in pointing out extravagant expenditures of the Republican office-holders was especially effective in the development of this theme.

In the campaign of 1884 he concentrated his oratorical efforts on the tariff question, usually speaking for two hours each time. His speaking was characterized as being eloquent, logical, convincing, highly persuasive in matters of pathos, and cognizant of matters of ethos. He was principally known as a highly logical speaker in contrast to his highly emotional speaking of ten years previous. He had now achieved a state-wide reputation as a skilled political stump orator. While a member of the state senate in the late 1890's Kern's speaking attracted attention for containing more evidence for better support, greater variety, and more originality than was true of the speeches of most Indiana legislators. His sense of humor and ability in ridicule remained as strong features of his oratory.

The campaigns of 1900, 1904, and 1908 made substantial contributions to his oratorical experience and broadened his reputation to include the national scene. His speaking in the campaign for the United States Senate in 1910 was highly logical, dealing with the issues in a frank and straightforward manner, but satire and ridicule were major weapons in his successful campaign against the veteran Republican orator, Albert J. Beveridge.

In summary Kern's speaking was the product of a man whose character, personality and political experience had brought to the fore leadership qualities that abundantly suited him to his new career as a United States Senator. His speaking, while highly logical, could still play on human emotions and made extensive use of the weapons of ridicule and satire in humor. His political experience included a store of encounters as an advocate of reform, and he was entering the senate at the advent of an era of reform. Behind both his speaking ability and his political experience was the firm foundation of an idealistically oriented and highly affable character and personality.

Kern's Informal Speaking  
in the United States Senate

Influence of his leadership. Perhaps the chief sources of Kern's success in informal speaking situations while a senator were his political experience, his persuasive ability, and his leadership qualities. During the first two years that he was in the senate his informal speaking was felt in a number of ways. His leadership of the Democratic progressive senators resulted in political concessions from the Democratic conservative senators that gave voice to the ideas of the progressives on important committees and placed Kern in a recognized position of leadership. During the investigation of the election of William Lorimer to the senate Kern's leadership played a major role in the successful outcome of the investigation, despite the pro-Lorimer report of the committee's majority. In other issues his voice was raised

during the debates both on the floor and in committees, and, while his efforts were not always successful, his influence was felt. His insistent refusal to become a "dark horse" candidate for the Democratic Presidential nomination in 1912 was of some significance in the eventual nomination of Woodrow Wilson for President and Thomas Marshall for Vice-President.

But the real significance of Kern's informal speaking was not felt until the formation of the Sixty-third Congress. During this Congress and the one which followed, Kern served as majority leader in the senate. Kern possessed some characteristics which made his selection a reasonable one despite his lack of seniority. He was a nationally known progressive, possessed the tact necessary to deal with a small majority, and exhibited a conciliatory and kindly manner based on years of political experience. Immediately following his selection, the long-standing principles of seniority in committee selection and in the senate rules were destroyed, and under Kern's direction the committees were formed without dissatisfaction being expressed on the senate floor.

Kern's leadership was quickly put to the test during the Special Session of the Sixty-third Congress in the summer of 1913. He faced the constant task of maintaining the Democratic majority on Capitol Hill during the hot Washington summer, and by personal and party pressure (by speaking personally to the senators and through the instrument of the Democratic senate caucus) successfully accomplished that task. There were always some who were dissatisfied, and on one occasion a Democratic senator bolted



the caucus decision on a measure and accused Kern's leadership of machine tactics. Under Kern's leadership, however, the instrument of the majority caucus became a potent weapon in the success of Wilson's first administration. Under its shadow the senate accomplished a downward revision of the tariff and passed the Federal Reserve Act, two of Wilson's major campaign promises, before adjournment on December 23, 1913. The weapon of the caucus and Kern's leadership continued to be successful during the next session in 1914. In March of 1915, Kern's control over the caucus failed, and seven Democrats joined with the Republicans to defeat the administration sponsored Ship Purchase bill. Again, in 1916 Kern's leadership of the caucus came near to failure when the caucus decided not to pass the Child Labor bill prior to adjournment, but, through the personal intervention of the President and Kern's renewed persuasive efforts, the caucus action was reversed and the bill passed.

Influence in conferences. In addition to his leadership in the caucus, Kern's informal speaking was felt in other avenues. In his relations with the President there often were occasions for conferences and meetings which utilized this means of communication. While no causal relationship can be drawn, favorable legislative action usually followed these conferences between Kern (and sometimes other Congressional leaders) and the President, and a list of these measures include the Child Labor bill, the defeat of the Gore resolution, the Adamson Act, the Underwood tariff bill, and the Federal Reserve Act. Conferences between Kern and individual senators of both parties also played a

significant role in obtaining support for these and other measures. His insistent persuasiveness in these individual meetings made it much easier for the other senators to follow his reasoning and his opinions on the measure than to oppose him.

Influence of personal relations. Kern's personal relations with the members of the administration and with other senators also played a major role in the success of his informal speaking. President Wilson placed considerable reliance upon him and his judgment, although he may have felt some distrust of Kern because of his status as a professional politician. Secretary of the Treasury William G. McAdoo, Secretary of the Navy Josephus Daniels, and Secretary of State William Jennings Bryan were among his close friends, and he was admired and respected by many of the administration who were not as close to him. While not universally liked in the senate, several senators claimed that he was universally admired and respected by his colleagues in the senate on both sides of the aisle. Among the adjectives used to describe him are responsible, patient, tactful, loved, respected, kindly, efficient, practical, ideal leader, resourceful, courteous, generous, unbending integrity, candid, sympathetic, conciliatory, wise, helpful, patriotic, honorable, loyal, dignified, able, and upright.

These attributes, which were applied to Kern during and at the close of his term in the senate, are indications of the strength of his character and personality, and suggest some of the reasons for the success of his leadership and informal speaking in the senate. Probably Kern's informal speaking in

conferences, caucuses, and individual meetings represents his most important contribution to the senate as a speaker.

### Kern's Formal Speaking in the Senate

Introduction. Kern's formal speaking falls essentially into the three categories of responsive debate, non-issue connected speeches, and issue connected speeches. The first two categories were eliminated from detailed consideration because of their relatively slight importance, and two speeches were selected from the third category for detailed rhetorical analysis. The other speeches in this third category centered in Kern's desire for improved laboring conditions (the speeches on the Paint Creek Resolution), his reforming desire to eliminate waste in government expenditures (the speech on the Public Buildings bill of 1912), and his personal loyalty to his party and the President (the speech against the Gore resolution of 1916). The first speech selected for analysis (the speech on the Sherwood bill) fulfilled Kern's campaign promise to support dollar-a-day pension legislation if he was elected to the senate, and the second speech (the speech in refutation of the plea of res adjudicata in the election case of Senator William Lorimer) reflected Kern's desire to eliminate corruption in elections.

Comparison of the two speeches examined. In comparing these two speeches certain similarities and dissimilarities are noted. Both speeches follow an imperfect inductive pattern of arrangement, make extensive use of ethical appeals, utilize ridicule and satire in humor, employ argument by reductio ad

absurdum in building the major climax, and contain the weakness in style of a preponderent usage of run-on sentences. Force, accuracy, directness, clearness, and variety characterize the style of both speeches.

The speeches are dissimilar in purpose in that the speech on the Sherwood bill relies heavily on psychological appeals to advocate a measure which was based upon the ideals of humane and charitable treatment for the veterans who were no longer able to care for themselves. On the other hand, the speech on the plea of res adjudicata was designed to refute a legal plea by making a logically constructed attack on the legal basis for that plea. Thus, heavy reliance was placed on the logical appeals with psychological appeals still receiving some emphasis.

Dissimilarity in purpose also led to dissimilarity in the kinds of logical appeals employed. In the speech on the Sherwood bill, argument from comparison and contrast is utilized while support elements include a great many unsupported assertions. However, the speech on the plea of res adjudicata utilizes largely causal argument with more substantial support elements including further causal argument and sign reasoning.

In matters of style, the speech on the plea of res adjudicata possesses greater clarity, more variety, and is more direct. The speech on the Sherwood bill, however, is characterized by a greater forcefulness of style. Figurative language plays a more prominent role in the speech on the Sherwood bill.

Essentially, the preparation and delivery of both speeches are the same. Kern prepared each speech by writing out in

long-hand a manuscript which was probably largely free from deletions and additions. It is probable that a great deal of mental selection and rejection of ideas occurred before Kern placed anything down in writing. It does appear that he made more detailed preparation for his speech on the plea of res adjudicata than on the speech in favor of the Sherwood bill, since a great deal more information was involved in the Lorimer question. Positive conclusions on Kern's preparation are thwarted by the lack of authoritative information and the absence of original manuscripts of the speeches.

Specific information on the delivery of these two speeches in the senate is lacking, but certain general remarks about his delivery may have applied in these instances. Generally, Kern's delivery in the senate was conversational in tone without embellishments. He spoke directly to his audience with fluency and sincerity and only occasionally raised his voice in an emotional response to the strength of his convictions. His articulation and pronunciation were considered good, and he did not speak in the Hoosier regional dialect. His physical bearing was relaxed and in good taste.

Response to the two speeches was largely favorable, but, in the case of the speech on the Sherwood bill, the response of his immediate audience of the senate was largely unfavorable to the central idea of the speech. The response of the remote audience of Civil War veterans to this speech was quite favorable with hundreds of letters received by Kern indicating this. Both

the immediate and remote audiences responded favorably to the speech in refutation of the plea of res adjudicata. The favorable response in the case of the Sherwood bill speech was largely indicated in the letters expressing agreement with Kern's viewpoints on the bill, while the response to the other speech contained a considerable amount of praise directed at the speech itself. It was considered a highly logical, very persuasive, and completely adequate presentation of the case against retaining William Lorimer in the senate.

#### Summary

Kern's formal and informal speaking in the Senate of the United States was, of course, a direct result of the issues that confronted the senate, but he can be termed a good speaker not only because of the issues upon which he spoke, but because of his personality and character, his public speaking experience, his political experience, and his leadership ability, all of which were acquired as a result of his long experience in public life. His informal speaking appears to us today to be of greater significance than his formal speaking, but when the need arose for Kern to address the senate from the floor on an issue of concern to him, he presented his case forcefully and well.

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