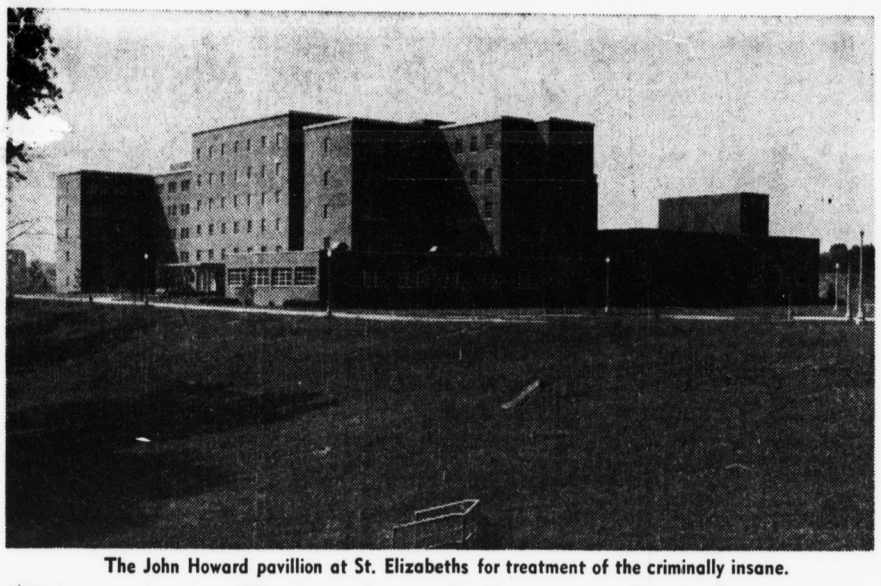


The John Howard pavillion at St. Elizabeths for treatment of the criminally insane.

District Criminal Insanity Law: The Issue Before Supreme Court

By MIRIAM OTTENBERG
Star Staff Writer

The tortuous trail of the District's criminal insanity decisions has finallly led to the Supreme Court.

For more than seven years, the high court left undisturbed both the Durham rule broadening the criminal insanity defense and the law compelling hospital commitment for those acquitted via the Durham rule.

Ironically, although most of the controversy has swirled around the Durham rule, it's the commitment law that comes under attack in forthcoming arguments before the Supreme Court.

The Durham decision of 1954 provided that an accused cannot be held criminally responsible for his act if it was the product of a mental disease or defect.

The law, passed 14 months later, provided that an accused found not guilty by reason of insanity had to go to a mental hospital and stay there until the hospital superintendent certified that he had recovered his sanity and would no longer be a danger to himself and others. Under the 1955 law, the recommended release had to be approved by the court.

283 Sent to Hospital

From the passage of the law to June 30 of last year, 283 persons had been acquitted on insanity grounds and sent to the hospital. In the same period, 92 were released either conditionally or unconditionally.

In the beginning, complaints about the law were heard only sporadically because the time in hospital was usually much less than the time the accused would have had to spend in jail, had he not been acquitted on insanity grounds. For instance, Mrs. Katharine A. Haynes, who killed her husband's mistress, was released from St. Elizabeths Hospital 43 days after she was found not guilty on grounds of insanity. She was the first committed under the then new law.

Meanwhile, the Court of Appeals was busy interpreting, explaining, expanding and defending the Durham rule. A complicating factor was added in 1957 when St. Elizabeths decided that a "sociopathic personality" was a mental disorder. Thus, those previously classed as sane but antisocial were brought under the mental disease classification of the Durham rule.

More Acquittals Result

This seemed to open the door wider to acquittals via the insanity route and the parade of "sociopathic personalities" grew. There was rebellion within the Court of Appeals itself, pointed comments that no other court was following the Durham rule and abortive efforts on Capitol Hill to replace the Durham rule with legislation.

Progressively, however, insanity acquittals began to look less attractive to the accused. District Court judges, supported by the Court of Appeals, were increasingly disinclined to make a revolving door of St. Elizabeths.

The very defendant who was acquitted as a "sociopathic personality," John D. Leach, was involved in a landmark appellate decision on the question of getting released from the hospital after his acquittal. In a unanimous opinion, the court of appeals made a distinction between being sane and being safe.

"The phrase 'establishing his eligibility for release,' as applied to the special class of which Leach is a member," wrote Judge George T. Washington, "means something different from having one or more psychiatrists say simply that the individual is 'sane.' There must be freedom from such abnormal mental condition as would make the individual dangerous to himself or the community in the reasonably foreseeable future."

Court Declines Review

The Supreme Court refused to review the ruling in the Leach case in 1959, thereby declining a bid to look at the law which it has now agreed to examine.

After the Leach case, the Court of Appeals took on a series of cases challenging the commitment law as a growing number of the acquitted on insanity grounds realized it was easier to get into St. Elizabeths than to get out. Where the hospital superintendent refused to certify them for release, they were free to seek release via habeas corpus proceedings. That's where most of the tests came.

The Court of Appeals standard emerging from these tests provides that the one seeking release must show that he has recovered his sanity and that the recovery has reached the point where he has no abnormal mental condition which in the reasonably foreseeable future would endanger him or the public if he were released.

In the same series of decisions, the Court of Appeals gave its answers to two of the questions now raised in the Supreme Court. In one case, the appellate court ruled that even a proclivity for writing bad checks was enough to make a man dangerous.

Constitutional Rights

In another case, the appellate court rejected the contention—advanced by the American Civil Liberties Union—that automatic commitment to a mental hospital after acquittal on grounds of insanity violates Constitutional rights.

The case now before the Supreme Court involves a bad check writer and again the American Civil Liberties Union, this time as "friend of the court," is claiming that the mandatory commitment law is unconstitutional.

The man in the case is Frederick C. Lynch, 42-year-old former Air Force lieutenant colonel who got into trouble for writing bad checks. On the day he pleaded not guilty in November, 1959, he was sent to District General Hospital for a mental examination.

A month later, the hospital reported that he was mentally incompetent to stand trial but on December 28, 1959, the hospital said he had shown some improvement and now appeared able to understand the charges against him. At the same time, however, the hospital reported that Lynch was suffering from a manic depressive psychosis at the time of the crime and that "such an illness would particularly affect his judgment in regard to financial matters, so that the crime charged would be a product of this mental disease."

The report thus spelled out the insanity defense under the Durham rule, but when Lynch came to trial his court-appointed counsel chose not to use this defense. Instead, he advised his client to plead guilty. Chief Judge John Lewis Smith, jr., of Municipal Court refused to accept the guilty plea. After trying the case, he found Lynch not guilty by reason of insanity and ordered him committed to St. Elizabeths.

Habeas Corpus Proceeding

After six months in the hospital, Lynch filed a habeas corpus petition attacking the legality of his confinement on the grounds that Municipal Court's refusal to allow him to plead guilty deprived him of his liberty without due process of law, that an "impossible burden" had been placed on him to rebut the psychiatric testimony, that his commitment violated the safeguards of the civil commitment law and that the 1955 mandatory commitment law was unconstitutional.

The District Court judge granted the habeas corpus petition, not on constitutional grounds, but on his belief that Municipal Court did not have jurisdiction to commit Lynch to the hospital.

The Court of Appeals disagreed. In a 6-3 decision, the appellate court ruled that Judge Smith's action was not only "far from an abuse of discretion but also it would seem affirmatively to have been the best possible decision, if not the only just one."

While the appeal was pending, Lynch was given a conditional release from the hospital, but he was ordered back to the hospital in April, 1961, after the court was told that Lynch created a disturbance in a Connecticut avenue restaurant by holding a mirror in front of the faces of women diners and making disparaging remarks about their looks. The court was also advised that in a two-week period, Lynch had written 32 bad checks.

Shortly after Lynch was returned to the hospital, his attorneys petitioned the Supreme Court to review his case and the American Civil Liberties Union came in as "friend of the court."

Decisions Are Attacked

The contentions of Lynch and the American Civil Liberties Union in effect attack all the later decisions of the Court of Appeals dealing with commitment to the hospital and release from it. They contend that only the defendant can raise the insanity issue, not the judge or presecutor; that those accused of nonviolent crimes like check-writing should not be covered by the mandatory commitment law and that those found not guilty by reason of insanity should be given a pre-commitment hearing to determine their present mental condition.

The Government disagrees on all these arguments, citing Court of Appeals decisions and the intent of Congress to strike a balance between the rights of the individual and the rights of society. In its brief, the Government points out that in more than 80 opinions since the Durham case, the court here has developed a body of law to achieve that balance.

The Government brief makes a distinction between civil commitments and those under the criminal insanity law. The need for prompt confinement pending observation of the patient's mental condition the Government argues, is far more compelling in a case where the individual has committed anti-social acts and may very well continue to do so unless treated.

Contending that a pre-commitment hearing after a verdict of acquittal on insanity grounds is not required on Constitutional grounds, the Government brief points out since 1800, judges have been ordering those acquitted on grounds of insanity to be held in custody as dangerous. Implicit in the determination of not guilty by reason of insanity, the Government argues, is the finding that the defendant actually committed the acts with which he was charged.

Expert Testimony

To underline the difference between the mental patient who goes through civil procedure and the one who goes through criminal courts to St. Elizabeths, the Government cites one of the many experts who testified in Congress for the mandatory commitment law.

"A man who is in a hospital because he has committed a crime for which he has been exculpated," said Dr. Manfred S. Guttmacher, one of the Nation's leading authorities on criminal insanity, "is a different individual from the individual who has been sent there as a mental case."

That's one of the major points the Government will argue when the Supreme Court hears the case later this month.

PORTRAIT OF MR. VINSON

Senior Member of the House

By CECIL HOLLAND
Star Staff Writer

When Congress reconvenes on Wednesday Representative Carl Vinson, Democrat of Georgia, will take his seat in the House as the ranking member.

Now in his 48th consecutive year in the House, the 78-year-old chairman of the Armed Services Committee became the oldest member in point of service on the death of Speaker Rayburn.

He is senior by more than eight years to his three nearest competitors — Chairman Cannon of the Appropriations Committee, Chairman Celler of the Judiciary Committee and Representative Taber of New York, ranking Republican on the Appropriations Committee.

Mr. Vinson, who has been dealing with the country's defense matters since 1917 when he became a member of the House Naval Affairs Committee, has served under eight Presidents.

At intervals in his long career in the House Mr. Vinson talked at times of retiring but he never got around to it. When Congressional pay was raised in 1955 from $15,000 to $22,500, Mr. Vinson drily remarked: "Well, if they are going to pay that kind of money in Congress, I think I'll make a career of it."

One More Term . . .

Mr. Vinson has different ideas now. "I'm going to ask my constituents," he said recently, "to send me back for one more term at least, so I can round out 50 consecutive years in Congress."

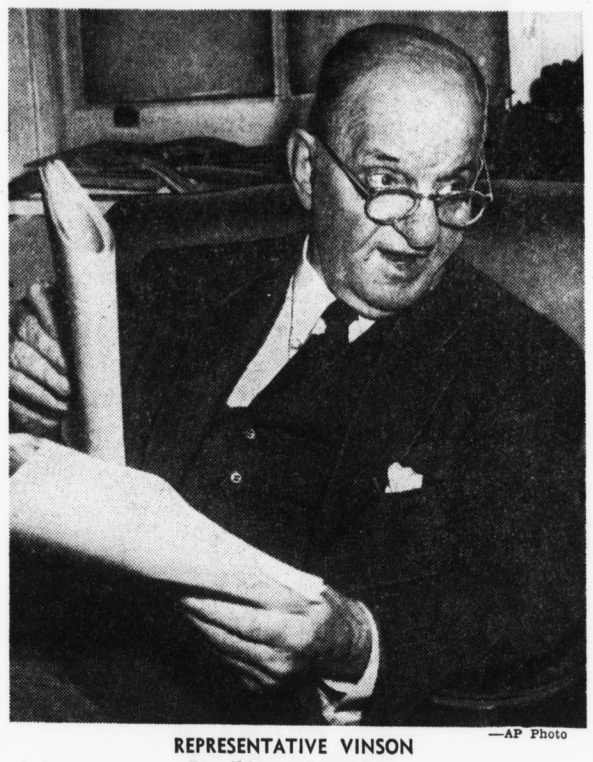
If that comes to pass, (and few things seem more certain than his re-election) Mr. Vinson will have set a record unmatched in American history. Senator Hayden, Democrat of Arizona, already has reached the half-century mark of Congressional service but it has been split between the House and Senate.

Being the House's senior member will mean little if any change in Mr. Vinson's well-ordered ways. Shortly before Christmas he returned, as customary, from his 600-acre Georgia farm to get ready for the second session. "We have a great deal to do," said Mr. Vinson. "So I came back to get things moving."

Appearing in the best of health, Mr. Vinson scheduled a series of hearings, including the readiness of the Nation's reserve forces, to start right after Congress convenes.

No. 1 Authority

In his long service Mr. Vinson has been happy to remain in the place he has carved out for himself as probably the country's foremost authority on defense matters. He has always refused to consider moving into high office in the executive branch. "I've always been more interested in my work here," he said reflectively.



—AP Photo

REPRESENTATIVE VINSON
Few things get past him

Once his friends began booming him for Secretary of the Navy. "I've got all I can say grace over right here," said Mr. Vinson. Another time he was suggested for Secretary of Defense. "Shucks," said Mr. Vinson jocularly, "I'd rather run the Pentagon from up here."

But any joking aside, the veteran lawmaker, who prefers to make the laws and see that policies are carried out, comes perhaps as near as any man, including Secretaries of Defense, in making some sense out of the vast and sprawling defense establishment. While he has fought for defense funds, first for the Navy and later for all the services, Mr. Vinson remains unimpressed with military "brass."

With top officials, military or civilian, he can be casual. "Now admiral," he once told a witness, "no hemming and hawing. Let's get to the bottom of this."

Mr. Vinson, who had never seen a battleship before he came to Congress from his landlocked middle Georgia district, likes to run a taut committee, as the Navy does its ships. Rambling witnesses tax his patience; he has been known to bring their remarks to a close with a pound of his gavel.

Once Senator Engle, Democrat of California, was a witness before his committee. The preceding witness, said Mr. Engle in opening his remarks, stated the case so well that he felt he could add nothing to it. "Thank you, Mr. Engle," Mr. Vinson snapped.

On With the Business

From time to time some members of the 36-man Armed Services Committee have challenged the benign autocrat who sits at the head of the table. Mr. Vinson listens, smiles, and after a time says: "All right, now let's get on with the business." At one time a colleague demanded the enunciation of a foreign policy to guide the Nation once and for all. "The only way to handle this foreign policy," Mr. Vinson retorted, "is from Saturday night to Saturday night."

The man who was once described as the "long, loud and lonely" advocate of a big Navy was born near Milledgeville, Ga., November 18, 1883. He received a law degree from Mercer University in Macon in 1904 and began practice in Milledgeville. He served as county sclicitor, in the Georgia House of Representative and as county judge.

He was in the midst of his term as judge when the congressional seat in his district became vacant in 1914. Mr. Vinson won it and has been in Congress ever since. He became chairman of the Naval Affairs Committee in 1932 and the Armed Services Committee after the congressional reorganization following World War II.

Shortly after he became head of Naval Affairs Mr. Vinson presented a $616 million Navy bill calling for a 10-year replacement and rebuilding program. In that and succeeding years he led the fight for a strong Navy which was able to rebound from the Pearl Harbor disaster to become a vital factor in winning World War II.

The Committee Merger

In the merger of the military and naval affairs committee into Armed Service, the long-time Navy champion faced no problem. "Now," he said, "I'm interested in all the services."

He has proved this in many ways. In 1949 he introduced and pushed through legislation calling for a 70-group Air Force. Last year he proposed additional steps to strengthen the country's air arm.

For all his prestige, Mr. Vinson has been one of the most retiring members of Congress, as far as the public is concerned. His wife, long an invalid, died in 1950. While she was ill, he refused all social engagements to remain at home with her. After her death he saw no reason to change his ways.

He still lives at 9 Primrose street, Chevy Chase, Md. A man of simple tastes, Mr. Vinson likes to do his own marketing at times. It is not unusual to see him in a market near Chevy Chase Circle.

When Congress adjourns, Mr. Vinson heads home in Georgia while many of his colleagues travel to far places in the world. He has never been to Europe but hopes to go some time. "I'm not much on traveling," Mr. Vinson explains. "I send my committee out and I require them to submit written reports. We find them very helpful."

If things run true to form, Mr. Vinson will have no trouble in setting a record of 50 years in the House. Only about once in a decade has he had opposition in his 16-county district in central Georgia and in his last two campaigns he carried every county in the district.

The reason is not hard to find. When he recently returned to Washington he was asked if he had a pleasant visit home. "I always enjoy seeing my constituents," Mr. Vinson replied.

Executions of Juveniles Allowed in 16 States

By BERNARD GAVZA
Associated Press Staff Writer

In Georgia's Reidsville prison, a 15-year-old Negro boy, Preston Cobb, jr., is whiling away days that can't be long enough for him. He is under sentence of death for killing a 70-year-old white farmer.

There have been protests and appeals from all over the world, moving the case from the obscurity of a rural county in Georgia to the spotlighted arena of public controversy.

The issue is not over the boy's guilt. It is over his age, and the State's legal capacity to execute a child.

Criticism has focused on laws and legal rulings which permitted the State to try Cobb as an adult. At the center of the issue, there is this question:

At what point is a youngster too young to be executed?

In Georgia, by law, the death penalty can be given to a child as young as 10.

But Georgia is not alone in this category.

An Associated Press survey of legal possibilities in criminal proceedings involving children shows:

In 16 States it is legally possible to execute children as young as 7.

In 3 States, death could be given children of 8.

In 3, including Georgia, youngsters of 10.

In the remaining 19 States having the death penalty, the minimum age ranges from 12 to 18.

All 50 States possess the power and authority to try children as adults—and give them the same punishment as adults—in cases of capital crimes.

In substance, this is the situation in the United States today:

Despite the protection given children through the juvenile court systems—in which they cannot be tried as criminals — all States can prosecute and punish children as though they are adults.

The trial of children in adult criminal courts is not the scheme of vengeful prosecutors but ideally and theoretically another way to give the child the greater protection of Constitutional rights.

The irony is that this legal machinery to protect children can cut both ways.

'Justice for the Child'

The machinery is not rusty by any means. Sometimes it delivers death; most times prison sentences that in some cases amount to living death.

At least 70 teen-agers have been executed in the last half century.

The youngest was a Negro boy of 14, George Stinney, jr., who was electrocuted for murder June 16, 1944, in South Carolina. Few females of any age have been put to death, but one was a Negro girl of 17. Virginia Christian was executed for murder in Virginia's electric chair August 16, 1912.

The capacity to inflict death upon youngsters drew sharp condemnation at a recent University of Chicago conference on "Justice for the Child." More than 70 of the Nation's leading juvenile court jurists, attorneys, probation officers, educators, welfare and social workers at a seminar expressed outrage "that any State retains and uses the power to execute a minor. Justice for the child means exactly that, and there can be no justice in executing a child, any child, anywhere," they said.

—AP Photo

PRESTON COBB, Jr.
Center of controversy

The juvenile court is not a court in the usual sense. Basically, it is a place where a hearing is conducted to decide what action can be taken in a case involving a juvenile.

The court's fundamental aim was stated in the laws by which Illinois created the first juvenile court in the Nation in 1899. It is "that the care, custody and discipline of a child (found to be delinquent, dependent or neglected) shall approximate as nearly as may be that which should be given by its parents."

"The truly significant innovation of the Illinois act was that children charged with law violations were not to be treated as criminals but were to be accorded the same individualized assistance as dependent and neglected children," says Judge Orm Ketcham of the D. C. Juvenile Court.

It marked an important departure from previous English and American chancery proceedings which had provided protection only to those children whose distress was the result of the actions of their parents rather than the result of their own delinquent acts."

There is no uniformity to the age limits which would bring a person under jurisdiction of the juvenile court, or bar him.

New York's children's court is limited to those 15 and younger, while in California and Nevada jurisdiction technically extends to those 20 and younger. In States such as Alaska, Florida, Georgia, Illinois, Kentucky, Maine, Texas and Massachusetts, jurisdiction covers those 16 and under, and in Alabama, Arizona, Hawaii, Idaho, Maryland, Virginia, Minnesota, New Hampshire and New Jersey, 17 and under.

Definition of 'Child'

These ages are keyed to varying definitions of "child" and "juvenile" and "minor." The broad standard came from common law.

Under the common law yardstick, children of 7 were deemed absolutely innocent—that is, lacking the mental competence required for criminal liability.

Children between 7 and 14 were presumed to lack such capacity. But this could be overcome by showing that the child was sufficiently intelligent to understand what he had done. At 14, a child was presumed to have adult intelligence and stand liable for his actions.

The common law groupings, which largely set age standards for criminal capacity, do not coincide with statutes setting juvenile court jurisdictions. The result is that while a State may consider a 15-year-old as a child, it may at the same time be able to hold a 10-year-old responsible for certain crimes.

Because of the difference in laws and their interpretation there is a hodge-podge of legal possibilities that apparently contradict each State's laws concerning juvenile court jurisdiction.

In New York, a 15-year-old charged with a serious crime can be transferred to jurisdiction of the criminal court.

Georgia's juvenile court jurisdiction applies to all those 16 and under regardless of the offene, but the State Supreme Court has ruled that in capital cases the jurisdiction belongs to the Superior Court. This permitted the trial of Preston Cobb, jr., and could determine what course will be taken in two other murders, one committed by a 16-year-old Negro boy and the other by a 15-year-old white boy. Sparked by the Cobb case, there's a growing movement in Georgia to raise the age limit of persons liable to capital punishment to 18. Gov. Ernest Vandiver—who has no clemency powers—has expressed belief the State Pardon and Parole Board would commute Cobb's death sentence if such a law is enacted.

Why the U. N. Must Ask a Big Bond Issue

By WILLIAM R. FRYE
Contributing Writer

UNITED NATIONS, N. Y.—The United Nations' $200 million bond issue is likely to precipitate something approaching a world-wide "great debate" on the U. N.—its authority, its functions, and its financing.

Each parliament which is invited to subscribe to the issue will logically ask its foreign office:

- What is the U. N. going to do with a kitty this size?
- Why does an organization supposedly financed by dues have to borrow money to pay its bills?
- If some members are in arrears on their dues, why should the rest step in and take up the slack?
- Is it in our national interest to help keep the U. N. afloat?

The lines for this debate are likely to be drawn in much the same way in Washington, Ottawa, Tokyo and New Delhi.

Already President Kennedy's announcement that he will request authorization to buy $100 million of the bonds has set the stage for a major row in Washington.

Those who want the U. N. to have "teeth" and who have confidence that that power would be exercised constructively, are likely to support the bond purchase.

Those who fear the policies of the U. N. majority, and doubt its discretion, are likely to oppose giving the majority so much financial elbow room.

Financing for Forces

The $200 million would be, in effect, a peace-and-security fund. It would be used to keep financially solvent the U. N.'s forces in the Congo and the Mideast. It could also be used to finance a new force if the need arose.

No one likes the idea of borrowing money for this purpose; a world peace organization obviously should not have to float a loan in order to meet its obligations. The best that is said for the loan is that it is the lesser of two evils.

The alternative would be to let the Soviet Union and certain other countries kill U. N. peacekeeping operations—now, and for the indefinite future—simply by withholding the money to pay for them.

Nations Causing Deficit

The bond issue, however, has this great disadvantage: it represents double taxation against the civic-minded members of the U. N.

These members not only will be obliged to pay their own contribution to the Congo and UNEF, but also will have to chip in to help pay off the loan.

And the loan, of course, will be used — in part, at least — to make up the deficit caused by Russian, French, Belgian, South African, Chinese, and other arrears. That deficit already amounts to more than $100 million.

There was plenty of grumbling about this in the debate which preceded approval of the loan. No one likes to be taxed because others have welshed on their debts.

But no one came up with a better plan.

And there is a bright side to the grumbling. Every country which has to dig into its treasury to help amortize the loan will have a motive of self-interest to demand that Russia and other welshing countries pay up.

If properly handled, this indignation could snowball into a major "pay-up" campaign. Perhaps no amount of political pressure could force the Kremlin to pay its dues; but then again, perhaps it could.

The longer the Kremlin held out, the madder the U. N. majority would be likely to get. At the very least, this would be a propaganda advantage for the West.

On Removing Voting Rights

An aroused U. N. majority would have available, any time it chose to use it, the weapon of removing Russia's voting rights in the General Assembly.

First steps were taken last month to lay the foundation for such a move. The Assembly asked the World Court whether Congo and UNEF dues constituted a legal obligation on all U. N. members under the provision of the Charter which removes voting rights from countries two years in arrears.

There is little doubt the court will answer "yes." With this legal basis for action, and with direct financial self-interest as a motive, a considerable number of U. N. countries probably could be persuaded to stand up to the Kremlin and shake the collection basket under its nose.

There is another circumstance, too, which encourages hope of such a stand. Several non-Communist countries which are most in arrears are among the most unpopular members of the U. N. South Africa and Belgium are two. Nationalist China, which after Russia is the biggest debtor (Russia owes $42 million; China $14 million) is unpopular with a sizable faction of the Assembly.

Thus many Afro-Asian countries which might be inclined to go easy on Russia, if she were the only target, would be eager to put the bite on these others. The reason they have not done so before is that many of them are themselves in arrears. No fewer than 82 of the 104 member states owe the U. N. money.