Thaddeus Hyatt in Washington Jail

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ON MARCH 12, 1860, by order of the United States senate, Thaddeus Hyatt of New York and Kansas was imprisoned in the common jail of the District of Columbia. He had declined to testify before an investigating committee of the senate, basing his refusal on the belief that the senate had no power, in a legislative inquiry, to compel either the presence or the testimony of witnesses. He contended also that in such a legislative investigation it had no right to punish a contumacious witness, with the result that he went to jail charged with contempt.

Thaddeus Hyatt was one of those minor makers of history, well known and of considerable importance in their own time, who have faded into obscurity with the passing of years. A prosperous New York manufacturer, the inventor of the translucent paving glass which is still in common use, an enthusiast in aerial navigation experiments, a structural engineer who made significant contributions to the use of reinforced concrete in building, he was also an author, philanthropist and advocate of worthy causes. In 1856-1857 he had served as chairman of the National Kansas Committee which was organized to send food, clothing and supplies to the drought-ridden settlers of Kansas territory. He had been one of the founders of the town of Hyatt in Anderson county, and a vigorous supporter of the Free-State party in the territory. It was through this phase of his activities that he became acquainted with John Brown, the nation's most militant Abolitionist, and he had more than once supplied money for the work of freeing slaves.

Following the fiasco at Harper's Ferry in 1859, when Brown was captured by United States marines under Col. Robert E. Lee and subsequently hanged for treason, the senate began an investigation. On the first day of the session, December 5, 1859, before even it had notified the house of representatives that it was ready to proceed to business, it received a motion by James M. Mason of Virginia which was formally read by the clerk:

Resolved, That a committee be appointed to inquire into the facts attending the late invasion and seizure of the armory and arsenal of the United States at Harper's Ferry, in Virginia, by a band of armed men, and report whether the same was attended by armed resistance to the authorities and public force of the United States, and by the murder of any of the citizens of

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Virginia, or of any troops sent there to protect the public property; whether such invasion and seizure was made under color of any organization intended to subvert the government of any of the States of the Union; what was the character and extent of such organization; and whether any citizens of the United States, not present, were implicated therein, or necessary thereto, by contributions of money, arms, munitions, or otherwise; what was the character and extent of the military equipment in the hands, or under the control, of said armed band, and where and how and when the same was obtained and transported to the place so invaded. And that said committee report whether any and what legislation may, in their opinion, be necessary, on the part of the United States, for the future preservation of the peace of the country, or for the safety of the public property; and that said committee have power to send for persons and papers.\(^1\)

This resolution was adopted by a vote of 55 to 0 on December 14, and next day a select committee of five members was appointed, composed of Mason as chairman, Jefferson Davis of Mississippi, Graham N. Fitch of Indiana, Jacob Collamer of Vermont, and James R. Doolittle of Wisconsin.\(^2\) The three first named were Democrats, the two latter were Republicans.

Because Thaddeus Hyatt was known to be an active Antislavery man as well as a supporter of Brown, and because it was reported that his name appeared on more than one paper in Brown's famous carpet-bag, he was among those summoned by the committee to appear and give testimony. His first decision was to coöperate; then he changed his mind and said he would appear but would not testify.\(^3\) When he finally arrived in Washington on February 1, 1860, he was so ill that he was confined to his room. Two weeks later, on February 14, he was asked to meet with the committee on February 17, but he requested an extension of time and was given three days more. This grace, however, was not enough for him. On February 20, instead of presenting himself, he wrote to Mason that despite his "very respectful, urgent and reasonable request for delay" the committee had seen fit to make a "peremptory demand" for his appearance. He declared that he was in Washington as a courtesy to the committee, that if he appeared and testified it would be on the same voluntary basis, and that his position was in no sense founded on any legal necessity. He might, he said, decide to testify under protest, without protest, or he might refuse to testify at all. In any case the decision would take a little time, and he asked for ten days more to think it over. Mason's reply, forthcom-

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2. Idem., pp. 152, 162.
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ing immediately, was that if Hyatt did not appear as ordered, on that very day, he would ask for process to compel him.4

Here the issue was joined. A battle over a question of constitutional interpretation was begun, with Hyatt contending ferociously that the senate had no power to compel either persons or papers in a purely legislative inquisition, and Mason insisting with equal vigor that it did. In addition to this point there was the further question of whether the senate had power to punish a witness who defied it. Hyatt wrote on February 21 that he would test the whole procedure in a state court, and on the same day the senate, at the request of the committee, ordered his arrest. From Boston, where he had gone to consult counsel, he informed Senator Mason on February 24 that any process could be served on him through his attorney, S. E. Sewall, at No. 46 Washington street. To both Mason and D. R. McNair, the sergeant-at-arms of the senate, he said that he would return to Washington on March 7 to await the senate’s course.5 These gentlemen, however, were unimpressed by Hyatt’s courteous individualism, for Theodore Hyatt, his brother, wrote from New York on March 5 that “Thaddeus left here last night with McNair . . . for Washington. . . .”6

On March 6 he was brought to the bar of the senate in the custody of McNair and supported on the arm of his old friend W. F. M. Arny, another figure well known in Kansas history who had appeared before the committee on January 16. Senator Mason offered a resolution, adopted by a vote of 49 to 6, that two questions be put to Hyatt: first, what was his excuse for failing to appear before the committee in accordance with the summons served on him on January 24, and second, was he now ready to appear and testify. Hyatt’s answers, in writing and under oath, were to be handed in by two o’clock, March 9.7 The voluminous manuscript with which he appeared on that day, prepared in large part by his attorneys, John A. Andrew and S. E. Sewall, was read by the clerk, Hyatt himself being too weak to undertake the task. There were several interruptions for debate and finally the hearing was continued. On March 12 Mason offered a resolution that Hyatt’s answer gave no sufficient excuse and moved that he be committed to the common jail of the District of Columbia. Then ensued a long

4. Ibid., February 2, 7, 22, 1860.
5. Ibid., February 28, 1860.
debate on whether the senate had such power, which eventually was brought to an end by an affirmative vote of 44 to 10. 8

Hyatt remained in jail until June 15, more than three months. He himself never made an objection, nor any attempt to free himself, 9 and he refused his consent to proposals for attempting to secure his release by means of habeas corpus proceedings. Instead he prepared himself for a lengthy stay. He converted his cell into a comfortable apartment, elaborately furnished and decorated, screening off a part for his bed chamber. He mailed "at home" cards to friends and politicians in Washington, and even had a supply of blank checks printed with his new address, Washington Jail, spread across the top in large type. The entertainment of visitors occupied much of his time, and it is said that his visitors' book soon began to read like a roster of the North's political and social elite. Between callers he busied himself with various humanitarian endeavors, including the arrangement of meetings at Cooper Institute, New York, in the interest of freedom, and he wrote occasional letters to newspapers. One of his more important projects, it is said, was the drawing up of a legal case against holding slaves in jail in the District of Columbia. He had unearthed the old colonial laws of Delaware and Maryland which prohibited the holding of Christians in jail. Since the laws had never been removed from the statute books, and the slaves of his day were Christians, the conclusion of his syllogism is obvious. Even lawyers of the caliber of Montgomery Blair, the postmaster general, who had served as counsel for Dred Scott in 1857, were reported to believe that the colonial law was still effective in the District. Such an issue, Hyatt thought, though clearly farfetched, could at least be made the basis for a vigorous agitation. 10

If Hyatt was busy and content where he was, those interested in his well-being were anxious to have him freed. His health was poor


9. At least one abortive effort was made in the senate to secure his release. On May 28, Sen. James Dixon of Connecticut offered a resolution that he be removed from the jail and allowed to go about freely within the limits of the city of Washington, but no action was taken on the motion.—Congressional Globe, Pt. 3, p. 2188. There were several public expressions of sympathy during his term in jail: On May 11 a meeting was held at Cooper Institute, New York, at which the speakers were S. E. Sewall, Wendell Phillips, and the Rev. Dr. George B. Cheever. On May 29 Dr. Cheever spoke on the subject of Hyatt's imprisonment at his Church of the Puritans in New York. —New York Daily Tribune, May 12 and 10, 1860.

10. These statements are found in an interview with Hyatt by Richard J. Hinton, a newspaperman whose lapes from fact are frequent, which was printed in the New York World probably in 1866 ("Hinton Scrapbook," v. II, p. 13, 14, Kansas State Historical Society Library). A sketch of Hyatt's jail "lodgings" is included. One of his "Washington Jail" checks is in the Society's MSS. vault. The New York Daily Tribune of April 4, 1860, prints a copy of a draft received for payment at a New York bank which illustrates Hyatt's "Abolitionism" methods: "Washington Jail, March 20, 1860, The Broadway Bank, at the City of New York, pay to Patrick Henry King, esq., jailer, or order, $45, being amount of jail fees to discharge Lloyd Chambers, a colored man, incarcerated for six months, on suspicion of his not owning himself. (Signed) Thaddeus Hyatt."
and they feared the confinement would do him serious harm. During the first weeks of his imprisonment, before it was realized that he would rebuff all attempts to secure his release, Theodore was constantly writing in such vein as this: "... When will you sue out the writ of habeas-corpus & when will the case be heard & decided. Write me all the particulars for I want you to get out of that 'dog-hole' soon as possible. ..." 11 In a letter to a friend he reported: "... My good brother still remains in Washington Jail and appears to enjoy his condition exceedingly. In his last letter to me he says 'I am much stronger & feel better every way. I think if I can only manage to retain my situation & not get turned out, that I shall get well.' I take it if the Senate knew of his happiness they would expel him very soon." 12 On May 20 he wrote to Thaddeus: "... I am very glad to hear you are so comfortable, but how your staying in that dog-hole 'is the best service you can render the unthinking world' I confess is utterly beyond my limited comprehension. ..." 13

Theodore believed that Thaddeus should take legal steps to determine his position. He wrote:

... In an elective government like ours for any person to attempt to annul, repeal, or abrogate an oppressive law by resisting its operation seems to me as unwise and unreflecting as it would be to throw yourself before the "Car of Juggernaut" to arrest its onward progress. I submit the proper course is to enlighten the public mind and agitate the subject until some action is taken that will modify or repeal the obnoxious statute, and to do this a man out of prison will be much more effective than one in prison. ...

Thaddeus, he continued, should take his case to the supreme court and should abide by whatever decision might be handed down. 14

In a letter to Arny on March 21 he elaborated this view:

... That misguided brother [of mine] ... ought to get out a writ of "Habeas Corpus" immediately while "Judge McLean" 15 is on the bench and have the whole question decided by the Supreme Court. If the decision sustains the Senate then testify under protest and come home & attend to his business matters instead of pursuing a "Quixotic" combat for the imaginary welfare of the dear public who don't care a pin whether he dies in the prison or gutter— he is but performing the part of the "Bull on the Railroad." ... I much fear my good brother has an exaggerated conception of the importance of his position in this matter and am well satisfied his contem-

13. Theodore to Thaddeus Hyatt.—Ibid.
15. John McLean, associate justice of the United States supreme court, acquired a reputation as a friend of the Abolitionists because of his opinion in the Dred Scott case—one of the rare instances in which he dissented from the majority—that slavery was contrary to right and was sustained only by local law.
plated appeal to the public will attract very little attention as they think he stands upon mere etiquette or formality, and this being so how can the masses become interested in the case when real & actual suffering and outrage find it so difficult to arouse the people to action in its behalf.

No! no! my poor brother should come down from his cloudy, dreamy political world of Ideality, to the hard matter-of-fact selfish world of reality, abandon his self-immolation as altogether unnecessary, uncalled for and productive of no good to [the] world generally or himself individually. . . .

Writing again to Arny two days later he reiterated his opinion that everything was to be gained and nothing lost by a habeas corpus proceeding carried before the supreme court.

. . . I cannot imagine why Thaddeus should object to this measure for if unsuccessful, his present position surely will not be damaged, but if per-chance he should prove successful, then indeed he will have conquered the “Senate” and achieved a signal triumph for the public, because he will have the Law on his side as well as Justice.

On this question I think he might obtain an impartial decision from the “Court” for the reason that there is no party or political phase to the case as is evident from the fact of Thaddeus being imprisoned by the votes of both friends & foes, Republicans & Democrats, and even if the “Court” should not discharge him I think they would be divided in their opinion & this (small as it may be) would be of some advantage as shewing the question a debatable one. . . .

“. . . [I] am sorry,” he added, “to find his ‘palace’ is infested with vermin, but suppose they (the vermin) conceive their rights to the hospitalities of the Government are equal to those of Mr. Hyatt. . . .”

Thaddeus was a never-ending source of trouble to his brother, chiefly because of his inaptitude in business matters. He seemed unable to regulate his expenditures according to his income, his taxes were frequently delinquent, and he was known to promise loans or gifts of money which he did not have. Much of the burden of managing his financial affairs fell to Theodore, and it was no easy task even to keep Thaddeus solvent. For example, he had made promises, said Theodore in September, that would obligate him to pay out something like $11,000 during the next two or three months, which would amount to more than twice his income for the same period.

. . . The fact is, . . . unless my poor demented, insane brother changes his course and husbands his resources Heaven itself cannot save him from destruction, for while he is wasting thousands of dollars on the infernal John Brown, Washington Jail humbug his property heavily mortgaged is eating him up with expense of interest, taxes & assessments amounting yearly to

17. Ibid., March 28, 1860.
over five thousand dollars, and not paying his taxes & assessments when due
his property is constantly sold & when redeemed costs 15 pct. and expenses
equal to 20 pct—enough to ruin any man. . . .

Only the week before, Theodore continued, he had paid $600 to
redeem a block of fifty-six lots in South Brooklyn which had been
sold two years previously for delinquent taxes. The period during
which they might be redeemed had expired in July, but fortunately
the purchaser was generous and allowed the property to be repur-
chased for only the usual fifteen percent interest and expenses. “I
am now having searches made against all the property and will clear
it off of corporation liens and will see if Thaddeus will keep it so,
if not then he must take charge of it himself. . . .” 18

In another letter of September 15 he wrote that he “could not
foresee Thad would waste since then [June] some $4,000.00 on that
cursed Brown-Washington affair instead of applying the money to
liquidate his debts then past due. . . .” Theodore said he had
received a letter from a creditor of Thaddeus requesting that the
whole or at least a part of the debt be paid, and remarking that
“while it was very laudable for Mr. Hyatt to go to Kansas to re-
lieve those in want there it was much more his duty to pay his
obligations here,” in which sentiment, added Theodore, “I most
fully concur. . . .” Thaddeus’ income for the February quarter
should be a handsome one, his brother remarked, and should yield
a handsome surplus over expenditures, unless he continued to be-
have as foolishly as he had in the past, “and here is just the trouble
with the confounded fellow. You can make no calculations on his
movements. Can’t tell where he will jump from one day to another.
I wish we could cage & keep him safely for only one year and I
could get his affairs in good shape—if he would go off to Europe
I would pay his expenses out and allow him $200 per month while
there, which would be ample for the support of any ordinary
man. . . .” 19

The three months of Hyatt’s imprisonment, if they were ben-
eficial to himself, were an added hardship to his brother, who was
regularly sending him cider, books, peaches, candles and various
odiments to make his stay in jail more comfortable, and who had
at the same time the usual responsibility of overseeing his financial
transactions. Theodore commented on the “long-day of rest and
freedom from care & anxiety of business” which Thaddeus was en-

18. Letter from Theodore, September 1, 1866.—Ibid.
19. Ibid. The two letters last cited were written after Hyatt’s release from jail and
after he had gone to Kansas to make arrangements for assisting the drought-beset residents
joying, adding that to get rid of such troubles himself for a season he would not mind taking his place for a few weeks. 20

While Hyatt was in jail the select committee continued its spasmodic gropings. According to the final printed report, which included the testimony heard, thirty-three persons were examined, the first on January 5 and the last on May 2, 1860. Twenty of these appeared before the committee during January and eleven during February, while only one was examined in March, none in April, and one in May. 21 Several others were summoned, but for various reasons did not appear. Of the so-called "secret six," those men who were said to be John Brown's principal backers and most familiar with his plans, Gerrit Smith was on the verge of insanity, Theodore Parker was dying in Italy, F. B. Sanborn and Dr. Samuel G. Howe had escaped to Canada, while Thomas Wentworth Higginson, coolly standing his ground in Worcester, was never called. George L. Stearns was the only one of the six who appeared and testified. 22 John Brown, Jr., who probably knew as much as anyone of the background of the Harper's Ferry episode, surrounded himself with armed bodyguards in Ohio and defied the senate's agents to arrest him. He, with Sanborn, James Redpath and Hyatt were ordered arrested by the committee for failing to appear, but Hyatt alone was taken into custody and jailed. 23

Finally the committee gave up the ghost. On May 29 the New York Tribune's Washington correspondent reported that the investigation was virtually at a standstill; no witnesses had been called for several weeks and for all practical purposes the inquisition was closed. 24 Senator Mason on June 15 submitted the majority report for himself, Davis and Fitch, the Democratic members, and Senators Collamer and Doolittle, the Republicans, handed in their minority report. The latter was concise, but comprehensive, said the Tribune, while Mason's longer document could only make the best of a bad case. 25 The select committee was discharged and Mason moved that Hyatt be released, saying:

... So far as I was instrumental in procuring the arrest of this man, and his committal to jail, it was done in vindication of the authority of the Senate;

20. Theodore to Thaddeus, May 2, 1860.—Ibid.
23. Ibid., p. 582. Although a warrant was issued in February for Redpath's arrest he had so little respect for it or for the committee that he actually visited Hyatt in jail, using the alias James Cotton. Another visitor was Richard J. Hinton, who called himself Richard Reed.—Letter of Thomas W. Hopkins (Thomas H. Webb) to Hyatt, April 24, 1860, in "Thaddeus Hyatt Papers," MSS. division. See, also, New York Daily Tribune, April 28.
25. Ibid., June 15.
and I should be, so far as I am concerned as a Senator, for detaining him there until his testimony was given; but the committee now being discharged from its duty, there is no committee before which the testimony can go; and, therefore, I move his discharge.26

Hyatt, a free man once more, wired friends in New York: "Have been kicked out; will be home tomorrow." 27

The issue involved in the Hyatt case was solely one of constitutional interpretation. It roused a brief public interest, and in certain circles a considerable controversy. As the New York Tribune's Washington correspondent put it:

The feeling of the hour turns on the question of the difference between the tweedle-dum and tweedle-dee of Mr. Hyatt. The Senate desire him to say whether he knows anything about the Harper's Ferry inroad. He says he don't know anything about it, and he will say so if the Senate will only invite him to answer, and not require him to answer. But the Senate says it will not abandon its right of inquiry. . . . 28

Hyatt was standing for what he believed to be an important point of democratic privilege—as indeed it was—and this fact was generally recognized even by those who considered his idea wrong and his course of action ill chosen. The Tribune, which might have been expected to support him both on grounds of party politics and social ideology, condemned his procedure as well intended but not well advised.

. . . We wish we could realize that his long and close confinement has been as beneficial to the public as it must have been irksome to himself. There was opportunity and necessity for a good blow in the direction he contemplated; yet we cannot see that Mr. Hyatt has struck that blow. The most that can be said is that he has helped to draw public attention to a grave danger to personal liberty and individual rights. If it be indeed lawful for either House of Congress to send a mere servant of one of its servants into any State or Territory and drag thence any number of citizens not accused nor even suspected of any crime, haul them to Washington, ask them whatever questions an irresponsible Committee may see fit to put, and imprison them indefinitely in case their answers are not deemed satisfactory, then it is clear that we hold our right to "life, liberty, and the pursuit of happiness" by a very frail tenure. . . . We thought Mr. Hyatt's resistance, though . . . well intended, not well advised, and we did not sustain it, though he was a Republican and his questioners were Democrats. We will hope, however, that his course has not been in vain, and that Congress will now be constrained to define by law its powers of inquisition and of constraint to answer.29

27. So says the Kansas City (Mo.) Journal, August 4, 1861, and neither the action nor the words would be inconsistent with Hyatt's character. Among the "Hyatt Papers," MSS. division, is a copy of a telegram he sent to a C. H. Brainard, on June 15: "Tell Webb faith is equal to powder. I am discharged. [Signed] Thad. Hyatt." 28. New York Daily Tribune, March 10, 1860. 29. Ibid., June 20, 1860. This statement amounts to an affirmation of policy previously stated in the issue of February 22.
Earlier the Washington correspondent of the *Tribune* had mockingly remarked:

... When we know that he merely stands for the defense of the right to defend an indefensible, or at least a very questionable position, if he or anybody else should ever happen to get into it, he reaches the vanishing point. Ordinary vision cannot see its merits. It is easy to talk about John Hampden and the forty shillings and all that, but as Mrs. Malaprop would say that is an unparalleled case. The difference is, that the power claimed in old Hampden's case, under the law, if exercised, might be made to ruin anybody or everybody; while in the case of our Hampden, it can hurt nobody, under the law as it stands, unless exposing criminals be a hurt. ... 30

In the issue of April 28 Hyatt commented sorrowfully on “the very ungenerous and untruthful” letter of the Washington correspondent, published without editorial note or comment. “I had supposed myself entitled to different treatment in The Tribune,” he complained, “though I did not look for it in The N. Y. Times or N. Y. Herald.”

The *Tribune* confessedly was interested in the practical aspects of the committee’s investigation, that is, in its political results for the Republican party, and it felt that while Hyatt’s position might have been sound in principle it was unwise from the viewpoint of party expediency. Editor Greeley, ever a realist, said editorially that since no one believed the investigation would succeed in its chief aim of uncovering evidence involving other persons “not present,” it should be allowed to go its way freely until in the end it “would react upon those who insisted upon it, and the mining party were doomed inevitably to be hoisted with their own petard.” To press to an issue at this time an abstract question of right, he claimed, “was to give aid and comfort to the enemy by permitting him to draw off the public attention to a new point, under cover of which he was glad to hide his own defeat at the real point of attack. Therein Mr. Hyatt was not wise, and the Mason Committee owe him an acknowledgment that he saved them from becoming ridiculous. ...” Further, Greeley agreed with Theodore Hyatt that if the senate’s attitude was to be changed it must come from a pressure of public opinion which was not yet created. And what had Hyatt gained by going to jail? Before he could hope to command sympathy he must show substantial reasons for his course.

... We have no respect for rose-water martyrdom. Martyrdom is a very serious and a very respectable thing, and we do not like to see it cheapened. If Mr. Hyatt chooses to put himself in the way of being provided with a residence in the Washington Jail, out of which he can walk the

moment he chooses, by following the example of men quite as wise and quite as conscientious as himself, we do not feel ourselves called upon to hold him up as a great sufferer for a great principle. He settles nothing and elucidates nothing by remaining in confinement, except the power of the Senate to punish for contempt; he does not avail himself of the privilege of the writ of habeas corpus to test the legality of his imprisonment; he does not ask, or does not induce, his friends in the Senate to bring up for discussion in that body the question of their power; he remains in jail on a technicality of legislative etiquette, and we have too much respect for martyrdom to acknowledge that it comes under that category. . . .

To this scorching attack Hyatt replied by submitting a letter from A. K. Ingalls, printed in the *Daily Tribune* on May 26, which supported his stand, and he followed this with two laudatory letters from F. B. Sanborn which appeared on June 9. He had earlier explained, to his own satisfaction, his reasons for not testing the constitutionality of his arrest in a state court. Before he had left Boston for Washington his attorney, S. E. Sewall, had asked the deputy United States marshal, Watson Freeman, Jr., whether an opportunity to go to a state court would be permitted, if Freeman were ordered to serve a precept for Hyatt's arrest. The marshal replied that if such an order were issued he would execute it promptly. Thus, when Hyatt was ordered to appear in Washington, Sewall and his co-counsel, John A. Andrew, advised him to obey, supposing that the senate would listen to Hyatt's argument. However, not only did they attempt to gag him, but when Senators Sumner and Hale insisted that he be heard many of the senators left the room, returning to pass judgment only after the defense had been read. A further influence against attempting a test through judicial process, he said, was the example of his friend Sanborn, who had narrowly escaped kidnaping by officers.

Whether Hyatt's view was sound in principle, there can be no question that the weight of precedent was against it. Inquiry by a legislative body obviously is necessary for acquiring information necessary to the enactment of law, or for the purpose of learning

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31. *Ibid.*, May 14. That Hyatt did believe his position constituted at least a minor martyrdom, and hoped for definitive results because of it, is shown by his remark that being in jail was the best service he could render the "unthinking world."—*Cf.* Theodore's letter of May 20 to Thaddeus, quoted on p. 221 supra. Goochey is not fair to Hyatt, nor accurate in his statement that no discussion took place in the senate on the question of their power to hold for contempt; hours of debate were given over to this point.

32. While he was in jail he received personal letters from George L. Stearns, Richard J. Hinton, Annie E. Sterling of Bridgeport, Conn., I. R. W. Steele and Nelson Sizer of New York, Henry R. Smith of Cleveland and many others, some of them complete strangers but all offering full measure of sympathy and encouragement.—"Thaddeus Hyatt Papers," MSS. division.

33. New York *Daily Tribune*, April 28, 1866. The story of the attempt on Sanborn was printed in the *Daily Tribune* on April 6 and 7. Sanborn later secured a writ of habeas corpus from the supreme court of Massachusetts (Sanborn v. Carlton, 35 Gray 299 Mass. 1866) on the ground that the senate's sergeant at arms had wrongly deputed his authority to arrest.
whether laws are properly executed. It is equally obvious that such inquiry to be effective must be accompanied by power to punish a recalcitrant witness. This power to "send for persons and papers," say authorities on constitutional law, is part of the ancient "Lex et Consuetudo Parliamenti," which is itself part of the English common law, and has been as repeatedly upheld by English and American courts as it has been insisted upon by colonial, state and national legislatures. The power to punish for contempt has frequently been used by American state legislatures, regardless of constitutional or statutory authority, because it is considered an ancillary power belonging to every sovereign legislature. In this respect it must, of course, belong equally to congress. In the United States it has always existed as a sine qua non of the legislative function, and has been used indiscriminately in cases of refusal to heed summonses or to answer questions, as well as in cases involving libel, fraud or physical attacks on members of legislatures. Wherever legislative power has been granted, it must be considered that the body exercising it has also an implied power to investigate.34

Although this case marked the first time that the issue of compulsory process had been brought to a head in the senate, there had been almost identical arguments in the house of representatives in 1827, and in 1857 a statute had been enacted "more effectually to enforce the attendance of witnesses on the summons of either House of Congress and to compel them to discover testimony" which provided specifically for the punishment of contumacious witnesses. In addition it disqualified any facts disclosed by a witness from being used against him in a subsequent criminal proceeding and even granted a complete pardon for any facts or acts to which he might be required to testify.35 This act of congress was disregarded by the senate in the Hyatt case, and was overlooked also by newspaper commentators. The Tribune, for example, remarked that Everybody knows that, if Mr. Hyatt can tell anything that the Senate wants to know, his evidence must incriminate himself—that he is arrested and catechised to that end. If he could tell anything to the purpose, he must tell that he had been privy to a conspiracy to instigate rebellion; and that is just what is wanted of him. If a culprit were on trial, he might be called to testify; but then he could decline to criminate himself; now he cannot.36

At least once, however, the 1857 statute was referred to; Sanborn used it as one of the six objections which he raised to the senate's order for his arrest because, he said, it was contrary to the principles of the common law to compel a witness to testify against himself.37

The end of the Hyatt case was also the end of the Harper's Ferry incident. John Brown was dead and those of his followers who still survived were scattered throughout America and abroad. The approach of secession made such affrays no longer of prime importance, and within a few months they were drowned out by the roar of Sumter's cannon. In August, 1861, some four months after the outbreak of war, Hyatt went to France as American consul at La Rochelle. While there he received a letter from Theodore, part of which must have stirred thoughts of the jail episode:

... The greatest latest sensation is created by the arrest on board of an English mail steamer of your old friend Senator Mason with Slidell of Louisiana the one as ambassador to England the other to France. they had run the blockade of Charleston & reached Cuba in safety. from there they sailed in the steamer but our consul informed Capt. Wilkes of the "Steam Frigate San Jacinto" of the matter and he sailed immediately determined to take them. he soon overtook the English steamer, sent his officers aboard and brought the gentlemen over. of course the British Capt made great fuss and when the news reaches England the papers, "Times" particularly will make greater fuss & howl terribly about the violation of the British flag. ... Mason & Slidell are now confined at Fort Warren in Boston Harbor and if you could only be here long enough to call on your old persecutor and see him through the bars or under guard you might ask him if he remembers making your acquaintance before under somewhat similar circumstances. ... 38

Subsequent investigations by both houses of congress have confirmed by usage the powers questioned in the Hyatt case, and the supreme court has given judicial sanction to such procedure. One of the most significant decisions of the court was that reported on January 18, 1927, in connection with the senate's investigation of the attorney general's department. The much-debated question of whether the senate or house could compel a private individual to appear and testify was here finally decided, in line with a long list of precedents, in the affirmative.39

37. Ibid., February 24, 1860.
38. Letter to Thaddeus Hyatt, November 23, 1861, in "Letter Press Book." The reference, of course, is to the famous Trent case, which nearly precipitated war with Great Britain.