PETITIONS, ETC.

Under clause 1 of rule XXII,

921. The SPEAKER presented a petition of Henry Stoner, Avon Park, Fla., relative to legislation to define the Constitution as it relates to entering into agreements with foreign powers, and States entering into agreements, without the consent of Congress; to the Committee on the Judiciary.

SENATE

TUESDAY, JUNE 9, 1964

(Legislative day of Monday, March 30, 1964)

The Senate met at 10 o'clock a.m., on the expiration of the recess, and was called to order by the Acting President pro tempore (Mr. METCALF).

The Chaplain, Rev. Frederick Brown Harris, D.D., offered the following prayer:

Merciful Father, whose faithfulness is constant, with all our fickleness, and whose forgiveness outlasts all our transgressions against Thy holy love: We bemoan the delusions which so often have led us to mistake shadows for substance. We confess that, as a nation, by the opiate of our own boastful achievements in the past, we have been lulled into a cushioned optimism.

May the costly agitations and testings of these embittered days be but as the refiner's fire for our democracy, consuming the dross and bringing out the pure gold of government by and for the people. Give us to realize that blind hatred wears itself out, that all violence spends itself in futile struggle, and that in the end only the gentle and the loving endure, and only that which selflessly serves is permanent, as at last the meekness which is not weakness will inherit a cleansed and redeemed earth.

We ask it in the name of the One in whom the might of meekness is forever revealed. Amen.

MESSAGES FROM THE PRESIDENT—APPROVAL OF BILLS

Messages in writing from the President of the United States were communicated to the Senate by Mr. Miller, one of his secretaries, and he announced that on June 6, 1964, the President had approved and signed the following acts:

S. 538. An act for the relief of Henry Bang Williams; and

S. 741. An act to amend title 18, United States Code, to prohibit schemes in interstate or foreign commerce to influence by bribery sporting contests, and for other purposes.

EXECUTIVE MESSAGES REFERRED

As in executive session,

The ACTING PRESIDENT pro tempore, laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(For nominations this day received, see the end of Senate proceedings.)

CALL OF THE ROLL

The ACTING PRESIDENT pro tempore. Under the unanimous-consent agreement, the clerk will call the roll, to ascertain the presence of a quorum.

The Chief Clerk called the roll, and the following Senators answered to their names:

[No. 275 Leg.]

Aiken	Gruening	Morse
Allott	Hart	Morton
Anderson	Hartke	Moss
Bartlett	Hayden	Mundt
Bayh	Hickenlooper	Muskie
Beall	Hill	Nelson
Bennett	Holland	Neuberger
Bible	Hruska	Pastore
Boggs	Humphrey	Pearson
Brewster	Inouye	Pell
Burdick	Jackson	Prouty
Byrd, Va.	Javits	Proxmire
Byrd, W. Va.	Johnston	Randolph
Cannon	Jordan, N.C.	Ribicoff
Carlson	Jordan, Idaho	Robertson
Case	Keating	Russell
Church	Kennedy	Saltonstall
Clark	Kuchel	Scott
Cooper	Lausche	Simpson
Cotton	Long, Mo.	Smathers
Curtis	Long, La.	Smith
Dirksen	Magnuson	Sparkman
Dodd	Mansfield	Stennis
Dominick	McCarthy	Symington
Douglas	McClellan	Talmadge
Eastland	McGee	Thurmond
Edmondson	McGovern	Tower
Ellender	McIntyre	Walters
Ervin	McNamara	Williams, N.J.
Fong	Mechem	Williams, Del.
Fulbright	Metcalf	Yarborough
Goldwater	Miller	Young, N. Dak.
Gore	Monroney	Young, Ohio

Mr. HUMPHREY. I announce that the Senator from California [Mr. ENGLE] is absent because of illness.

The ACTING PRESIDENT pro tempore. A quorum is present.

CIVIL RIGHTS ACT OF 1963

The Senate resumed the consideration of the bill (H.R. 7152) to enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States to provide injunctive relief against discrimination in public accommodations, to authorize the Attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes.

The ACTING PRESIDENT pro tempore. Under the unanimous-consent agreement, the question is now on agreeing to the Morton amendment No. 869, as modified, to the Talmadge amendment No. 513, relating to jury trial for criminal contempt.

The yeas and nays have been ordered, and the clerk will call the roll.

Mr. HUMPHREY. Mr. President, a parliamentary inquiry.

The ACTING PRESIDENT pro tempore. The Senator will state it.

Mr. HUMPHREY. Mr. President, the pending amendment would modify the Talmadge amendment, and if adopted, would deny a vote upon the Dirksen-Mansfield jury trial substitute. Is that correct?

The ACTING PRESIDENT pro tempore. It is a perfecting amendment modifying the Talmadge amendment.

Mr. HUMPHREY. Mr. President, what is its effect upon the Dirksen-Mansfield substitute jury trial amendment?

Mr. MORTON. Mr. President, it would have no effect on it. I ask to be heard on this point of order.

This amendment is to the Talmadge amendment, which is an amendment to the bill. It has nothing to do with the substitute.

The ACTING PRESIDENT pro tempore. It is an amendment to the Talmadge amendment No. 513. It is a perfecting amendment, and, if adopted, would perfect the Talmadge amendment.

Mr. HUMPHREY. Mr. President, my parliamentary point was as follows: If adopted, would an opportunity for the Dirksen-Mansfield jury trial amendment to be presented be denied?

The ACTING PRESIDENT pro tempore. That would be the next question that would be voted upon, if that were offered, unless another perfecting amendment to the Talmadge amendment No. 513 were offered.

Mrs. NEUBERGER. Mr. President, a point of order.

The ACTING PRESIDENT pro tempore. The Senator will state it.

Mrs. NEUBERGER. Before the vote is started, since it is so difficult to hear, may we ask that all those who are standing either leave the Chamber or be seated?

Mr. HUMPHREY. Or be quiet.

The ACTING PRESIDENT pro tempore. The point of order is well taken. Will all those in the rear of the Chamber either sit down or leave the Chamber?

Mr. HICKENLOOPER. Mr. President, I demand the regular order.

The ACTING PRESIDENT pro tempore. The rollcall will not proceed until the Senate is in order.

Mr. GORE. Mr. President, a parliamentary inquiry.

The ACTING PRESIDENT pro tempore. The Senator from Tennessee will state it.

Mr. GORE. Mr. President, will the Chair inform me who has the privilege of the floor of the U.S. Senate?

The ACTING PRESIDENT pro tempore. That is not a parliamentary inquiry. But every Senator has the privilege of the floor. The clerks have the privilege of the floor when they are here on official business in the performance of their regular duties.

The Senate is now voting. It is difficult for the Chair to understand how a clerk could be present in the performance of official duties while Senators are voting.

Mr. GORE. Mr. President, a point of order. Sometimes a Presiding Officer will ascertain who is present during a rollcall vote with or without proper consent.

The ACTING PRESIDENT pro tempore. The present Presiding Officer is now trying to obtain order, and has not removed the clerks from the Chamber. But if there is not order, the rule will be invoked so that Senators can be heard.

Mr. GORE. Mr. President, does not the Presiding Officer of the Senate have the power to direct the Sergeant at Arms to ascertain who is on the floor of the Senate without proper consent?

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

The ACTING PRESIDENT pro tempore. The present Presiding Officer believes that under the rule the Chair has the power to maintain order in the Senate.

Mr. GORE. Mr. President, it is respectfully suggested that either the present Presiding Officer—or such other Presiding Officer as may be presiding during the course of the many rollcalls that will apparently be necessary on this issue—should exercise such responsibility.

The ACTING PRESIDENT pro tempore. If order is not maintained in the Senate, the present Presiding Officer will attempt to maintain order. And there will be order.

Mr. GORE. Mr. President, a point of order. The Presiding Officer has just ruled that the clerks should not be present during the rollcall. I have not observed anyone depart.

Mr. HICKENLOOPER. The regular order.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HUMPHREY. I announce that the Senator from California [Mr. ENGLE] is absent because of illness.

I further announce that, if present and voting, the Senator from California [Mr. ENGLE] would vote "nay."

The result was announced—yeas 51, nays 48, as follows:

[No. 276 Leg.]

YEAS—51

Bennett	Gore	Morton
Bible	Hayden	Mundt
Boggs	Hickenlooper	Pearson
Byrd, Va.	Hill	Robertson
Byrd, W. Va.	Holland	Russell
Cannon	Hruska	Simpson
Carlson	Jackson	Smathers
Cooper	Johnston	Sparkman
Cotton	Jordan, N.C.	Stennis
Curtis	Jordan, Idaho	Symington
Dominick	Lausche	Talmadge
Eastland	Long, Mo.	Thurmond
Edmondson	Long, La.	Tower
Ellender	Magnuson	Walters
Ervin	McClellan	Williams, Del.
Fulbright	Mechem	Yarborough
Goldwater	Miller	Young, N. Dak.

NAYS—48

Aiken	Hart	Morse
Allott	Hartke	Moss
Anderson	Humphrey	Muskie
Bartlett	Inouye	Nelson
Bayh	Javits	Neuberger
Beall	Keating	Pastore
Brewster	Kennedy	Pell
Burdick	Kuchel	Prouty
Case	Mansfield	Proxmire
Church	McCarthy	Randolph
Clark	McGee	Ribicoff
Dirksen	McGovern	Saltonstall
Dodd	McIntyre	Scott
Douglas	McNamara	Smith
Fong	Metcalf	Williams, N.J.
Gruening	Monroney	Young, Ohio

NOT VOTING—1

Engle

So Mr. MORTON's amendment as modified, to the amendment of Mr. TALMADGE was agreed to.

Mr. MORTON. Mr. President, I move that the vote by which the Morton amendment (869), as modified, to the Talmadge amendment (513), was agreed to, be reconsidered.

Mr. MUNDT. Mr. President, I move that the motion to reconsider be laid on the table.

Mr. ELLENDER. Mr. President, I move that the motion to reconsider be laid on the table.

The motion to lay on the table was agreed to.

Subsequently——

Mr. LAUSCHE. Mr. President——

Mr. HICKENLOOPER. Mr. President, the Senator from Ohio has a special request; he seeks recognition in order to submit a unanimous-consent request, because he must leave the floor temporarily. I ask unanimous consent that I may yield one-half a minute to him, without losing my right to the floor.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered; and the Senator from Ohio is recognized for half a minute.

Mr. LAUSCHE. Mr. President, when the Morton amendment was originally before the Senate, I made two statements in which I gave my reasons for approving the amendment. I ask unanimous consent that those two statements be printed in the RECORD immediately after the vote taken earlier today, so as to show why today I voted for the Morton amendment.

In substance, those statements indicate that I followed the principle of equal justice for all. Under three acts of Congress, jury trials are allowed to labor leaders in criminal contempt cases. The last such provision was made in 1959, under the Landrum-Griffin Act. I cannot understand how the principle of equal justice for all is recognized when the Senate votes to allow jury trials to be had by labor leaders in criminal contempt cases, but refuses to allow jury trials to be had by offenders under the civil rights bill. That is why I voted today in favor of adoption of the Morton amendment.

I wish this statement to appear in the RECORD immediately following the vote. I was in Cleveland, yesterday, attending the Governors' conference, and therefore could not be here.

The ACTING PRESIDENT pro tempore. Is there objection?

There being no objection, the statements were ordered to be printed in the RECORD, as follows:

JURY TRIAL AMENDMENT

Mr. LAUSCHE. Mr. President, I desire to direct my remarks to the issue that is immediately before the Senate; namely, whether language should be included in the pending bill which would guarantee a trial by jury to an accused in criminal contempt cases.

I understand that the amendment offered by the Senator from Kentucky does not deal with civil contempt, but only criminal contempt, and that his language provides that whenever a criminal contempt proceeding is instituted, the aggrieved party shall have the right of a trial by jury if he so desires.

In approaching this issue, I wish to discuss a number of Federal statutes dealing with contempt trials under specific conditions. I shall also attempt to discuss what is supposed to be the difference between a criminal and a civil contempt proceeding.

I have obtained the language from four statutes dealing with trials in contempt cases. The first is the Clayton Act. The second is the Norris-La Guardia Act. The third is the Landrum-Griffin Act, which, of course, is an amendment of the Taft-Hartley Act. Fourth is the Civil Rights Act of 1957.

The Clayton Act was passed by Congress with the intention of prohibiting the formation of combinations purposed to fix prices and to engage in monopolies. In that act, injunctive relief is allowed. Manifestly, if injunctive relief is allowed, Congress must proceed to declare how the trial shall be had in the event proceedings are brought against an accused for insulting the court.

I now read from section 21 of the Clayton Act:

"Any person who shall willfully disobey any lawful writ, process, order, rule, decree, or command of any district court of the United States or any court of the District of Columbia by doing any act or thing therein, or thereby forbidden to be done by him, if the act or thing so done by him be of such character as to constitute also a criminal offense under any statute of the United States or under the laws of any State in which the act was committed, shall be proceeded against for his said contempt as hereinafter provided."

Section 22 of the Clayton Act provides, in paragraph 2:

"In all cases within the purview of this act such trial may be by the court, or, upon demand of the accused, by a jury; in which latter event a court may impanel a jury from the jurors then in attendance, or the court or the judge thereof in chambers may cause a sufficient number of jurors to be selected and summoned, as provided by law, to attend at the time and place of trial, at which time a jury shall be selected and impaneled as upon a trial for misdemeanor; * * *."

That is the end of the quotation, but not the end of the statute.

In that instance, Congress, in attempting to determine how a trial shall be held for a violation of the Clayton Act, specifically recognized the time-honored concept of the American people that trial by jury is one of the fundamental virtues of our Government. In that instance, Congress undoubtedly remembered how, at Runnymede, the English people demanded of King John that he cause to be set forth in writing certain inviolable rights of the citizenry of England. One of those rights was that when charged with crime, the citizen shall have a right to trial by jury, the jury to be made up of members constituting peers of the accused.

Thus, in a sincere approach to this problem, one might well ask, Why, with respect to the Clayton Act, in certain circumstances, did Congress grant the right of trial by jury, but now is it urged that the right of trial by jury shall not be granted to an accused under the civil rights bill? I cannot give a sound reason. In my judgment, the proponents of the bill cannot, on the basis of reason, demonstrate that under the Clayton Act a jury trial must be allowed, but that under the civil rights bill it shall be denied in criminal contempt proceedings.

Let us turn now to the next important act that was passed by Congress on this subject, namely, the Norris-La Guardia Act. This act was passed in 1932. It relates to injunctive proceedings against unions. The act itself is narrow in outlining the circumstances under which injunctive relief may be granted against a union. But within those narrow limits, a trial judge has the right to command unions not to perpetrate certain acts. Again, Congress had to decide, if an injunction was issued, and the union leaders disobeyed the injunction, how the accused should be tried. I shall now read section 11 of the Norris-La Guardia Act.

"In all cases arising under this act in which a person shall be charged with contempt in a court of the United States—"

Mark you, Mr. President, that the Norris-La Guardia Act does not speak of criminal contempt, but speaks of "contempt"—civil and criminal contempt. I shall reread.

"In all cases arising under this act in which a person shall be charged with contempt in a court of the United States (as herein defined), the accused shall enjoy the right to speedy and public trial by an impartial jury of the State and district wherein the contempt shall have been committed: *Provided*, That this right shall not apply to contempt committed in the presence of the court or so near thereto as to interfere directly with the administration of justice or to apply to the misbehavior, misconduct, or disobedience of any officer of the court in respect to the writs, orders, or process of the court * * *"

So we have another situation important to the people of the country—a statute which allows the issuance of an injunction against a union, a statute which envisions the possible violation of the injunction by a union leader. Congress again said that there shall be the right of trial by jury.

In the Norris-La Guardia Act, the right of trial by jury was given not only to the defendant who was charged with criminal contempt, but also to the defendant charged with civil contempt. I shall later discuss the difference between civil and criminal contempt.

Mr. President, I have used more time than I intended to use. To Senators who wish to read the most complete and accurate analysis of the difference between civil contempt and criminal contempt, I recommend a reading of the Gompers-Buck Stove and Range Co. case, which appears in 221 U.S. 418. In that case a judge of the district court sentenced Samuel Gompers to jail for violating an injunction. The sentence was rather severe. Gompers and other defendants were found guilty of contempt and sentenced to imprisonment for 12, 9, and 6 months, respectively. The proceeding from which I am now reading was one in which an effort was made to reverse the judgment. The Supreme Court of the United States finally reversed the judgment. I intended to read the entire case, but to do so would take too long. I shall try to summarize the difference between civil and criminal contempt. Civil contempt proceedings are instituted solely for the purpose of providing the remedy for the injured party. The remedy is relief to the injured person.

In criminal contempt, the proceedings are instituted normally by the Government. The relief sought is not a remedy for the benefit of the aggrieved party, but vindication of the honor and the dignity of the court. There are a number of tests by which a determination can be made as to whether a proceeding is criminal or civil. The opinion of the Court states:

"Contempts are neither wholly civil nor altogether criminal. And 'it may not always be easy to classify a particular act as belonging to either one of these two classes. It may partake of the characteristics of both.'"

That last quoted statement was made in the case of *Bessette* v. *W. B. Conkey Co.*, 194 U.S. 324, 329. Continuing to read from the opinion:

"But in either event, and whether the proceedings be civil or criminal, there must be an allegation that in contempt of court the defendant has disobeyed the order, and a prayer that he be attached and punished therefor. It is not the fact of punishment but rather its character and purpose that often serve to distinguish between the two classes of cases. If it is for civil contempt the punishment is remedial, and for the benefit of the complainant."

It is not for the benefit of the Government. It is in a controversy between the defendant and the aggrieved or injured party in the contempt proceedings.

"But if it is for criminal contempt the sentence is punitive, to vindicate the authority of the court. It is true that punishment by imprisonment can be remedial, as well as punitive, and many civil contempt proceedings have resulted not only in the imposition of a fine, payable by the complainant, but also in committing the defendant to prison. But imprisonment for civil contempt is ordered where the defendant has refused to do an affirmative act required by the provisions of an order which, either in form or substance, was mandatory in its character. Imprisonment in such cases is not inflicted as a punishment, but is intended to be remedial by coercing the defendant to do what he had refused to do."

I submit to the proponents of the bill that remedy by civil contempt instituted by the Government would bring to the complainant every relief that he needs in order to achieve a performance of the mandatory injunction. The court directs A to perform an act. A refuses to perform it. Civil contempt proceedings are instituted. The court declares to A, "You will either obey my order or go to jail until you do obey it." What greater relief do the proponents of nonjury trial want? They can get everything they need under the civil contempt proceedings, because the amendment of the Senator from Kentucky is applicable only to criminal contempts.

But that does not satisfy them. They want to go one step further and say that in criminal contempt, where there is no relief to be brought to the aggrieved party, but only a vindication of the honor of the judge, and the fine can be for a definite sentence and a definite mandatory amount, without the ability of the defendant to exculpate himself, there shall be no jury trial.

I cannot see it. What more could the injured party hope to attain? What more do the proponents of the nonjury provision think they will get in criminal contempt proceedings that they cannot get in civil contempt proceedings?

It has already been stated on the floor of the Senate that one of the tests of civil contempt is that the accused person has in his hands the key with which to open the jail door. The judge says to him, "You will remain in jail until you perform the act." The key is the performance of the act. If a hotel or inn or restaurant or place of entertainment discriminates on the basis of color and the operator is put in jail until he stops discriminating, have not the proponents achieved that which they want?

For example, in the matter of civil contempt, if a defendant should refuse to pay alimony or to surrender property ordered to be turned over to a receiver, or to make a conveyance required by a decree of specific performance, he could be committed until he complied with the order. When the order is once complied with, the remedy of civil contempt is achieved. It is final.

Another test: The fact that the purpose of the punishment could be examined with a view to determining whether civil or criminal contempt is involved is recognized in certain cases. While it is true that the fine imposed is not made payable to the opposite party, compliance with the order relieves the defendant from payment, and in that event there is no final judgment of either fine or imprisonment.

Based upon the study that I have made of cases and the best way to determine whether an action is in criminal or civil contempt, this question should be put: What is the purpose of the proceeding? Is it primarily to afford civil relief to the injured party? If it is, it is civil contempt. If the primary relief sought is to maintain the dignity and honor of the court, and the fine is fixed without the ability of the defendant to release himself by final compliance with the order, the proceeding is one for criminal contempt.

There is another difference. Proceedings for civil contempt are between original parties and are instituted and tried as a part of the main cause. On the other hand, proceedings at law for criminal contempt are between the public and the defendant, and are not a part of the original cause.

If it is a proceeding between the public and the defendant, the mighty United States on the one hand, and the little citizen on the other, it is proposed to have Congress say that in a criminal contempt proceeding there shall be no jury trial.

I have already stated that I will vote for the civil rights bill. I will vote to provide for every citizen full enjoyment of his constitutional rights—no more, no less. But I will not cast aside my reasoning power or stultify my conscience by saying that, while we granted the right of jury trial in the Clayton Act, in the Norris-La Guardia Act, and in the Landrum-Griffin Act, we will not grant it in the Civil Rights Act.

In the Gompers case, the court ruled that the defendants were to be relieved of that sentence. It did not specifically deal with whether a jury trial was allowable, but Samuel Gompers, a Mr. Morrison, and a third person were all freed by the Supreme Court of the United States.

Many Senators have served as judges on the bench. They have witnessed trial by jury. They have also sat as chancellors in equity. I sat on the bench. To me, there was no impact of greater sensitivity, wholesomeness, and cleanliness than the fact that the defendant, regardless of how rich or how poor, how strong or how weak he might be, in actions at law had the right to be judged by his peers.

I do not believe that the people of our country are prepared to throw that principle overboard. It is too deeply rooted in our system of government. It has been in existence for many years. It has been deeply embedded in the Anglo-Saxon method of trial. It will be used in our courts as long as we can boast that the goddess of justice is blind, knows not the richness nor the weakness nor the strength nor the poorness of the litigant before it, and will remain so as long as Members of Congress act consistently.

Why do we grant labor leaders the right to a trial by jury and refuse it to little John Galvioni on St. Clair Avenue, who might violate the civil rights law? We cannot answer it. It cannot be answered.

Mr. President, on the basis or what I have stated, I shall vote for the amendment offered by the Senator from Kentucky—that is, to provide jury trials in criminal contempt proceedings brought by the Government, just as jury trials are allowed under, A, the Clayton Act; B, the Norris-La Guardia Act; and, C, the Landrum-Griffin Act.

Mr. President, I do not wish to make it appear as though I drew these thoughts out of my mind through recent studies.

For 10 years I taught the subject of equity. The principles which I have discussed I have repeated year after year in the past. So, today, I am not saying anything new which I did not say 25 years ago on the subject.

I again put the question: Upon what character of reasoning can Congress, made up of honest and intelligent men and women, hold that the labor leader who insults and condemns shall have a jury trial, but that the U.S. citizen who violates the Civil Rights Act in an injunctive proceeding shall not have a jury trial? How can that question be answered reasonably? How can it be answered on the basis of conscience? Are we to admit that we are moved by political considerations? Are we to admit that because the power of the vote has greater effect upon us than the power of the conscience, therefore, in the one instance, the right of trial by jury shall be granted, but in the next instance it shall be denied?

Again I ask, on what basis can one rationalize it? How can it be said that a citizen of the United States who violates the proposed Civil Rights Act shall not have a

trial by jury, but a labor leader who violates the Norris-La Guardia Act shall have a trial by jury, when the violation is either civil contempt or criminal contempt?

I have had some experience in trying to be guided by principles of law. From the first day when I entered law school, there was impressed upon my mind the fact that in the administration of the law there must be equality of treatment for all individuals; and I submit that these differences between the two modes of trial cannot be reconciled. Under the Norris-La Guardia Act, in a prosecution for criminal contempt, before a jury, the accused was presumed to be innocent, and the case against him had to be established beyond a reasonable doubt, and the 12 jurors had to reach a unanimous verdict. But under the proposed Civil Rights Act, one man could make the decision and could be the sole judge of the facts.

The mode of trial is a significant aspect of the administration of our criminal laws. Trial by jury is entirely different from trial by a commissariat in Red Russia. When our Constitution was written and when the plans for it were being made, the language used was that a jury shall be composed of members who will be the peers of the accused.

Now I wish to refer to the Landrum-Griffin Act, which deals with labor. I read section 608 of the Landrum-Griffin Act:

"No person shall be punished for any criminal contempt allegedly committed outside the immediate presence of the court in connection with any civil action prosecuted by the Secretary," meaning the Secretary of Labor, "or any other person in any court of the United States under the provisions of this Act unless the facts constituting such criminal contempt are established by the verdict of a jury in a proceeding in the district court of the United States, which jury shall be chosen and empaneled in the manner prescribed by the law governing jury trials in criminal prosecutions in the district courts of the United States."

That is the third instance in which the Congress of the United States, having in mind the sacred principles which guided the writing of our Constitution, provided that no man shall be punished—in this instance, for violating the Landrum-Griffin Act, in a contempt proceeding criminal in character—unless his conviction has been declared by a jury.

So how can those who are the proponents of no trial by jury explain the fact that in the Landrum-Griffin Act, Congress required that in contempt proceedings of a criminal character there shall be a trial by jury, whereas in the pending civil rights bill it is provided that in a civil rights action there shall not be a trial by jury? The difference cannot be explained. I have tried to explain it to myself; I have tried to reconcile that difference; but I was unable to do so. I could have done so by being dishonest with myself, but I could not do so by responding to my reasoning and by being honest with myself.

The provision in respect to 45 days was a compromise which was not rooted in reason. As the bill left the Senate, it provided for a jury trial in criminal contempt proceedings. The bill was changed in conference.

Mr. President, it would be interesting to check the RECORD name for name and ascertain how Senators who today argue that there shall be no jury trial provision added to the bill voted on the Landrum-Griffin bill and said in relation to that bill that there should be a provision for a jury trial. It would be rather fascinating to see how, with respect to the civil rights bill, the argument is made now that the honored principle of a right to a jury trial by one's peers is proposed to be cast to the winds in the civil rights bill but remain inviolate in the Landrum-Griffin labor bill.

I should like to ingratiate myself with persons who desire a civil rights bill. I shall vote for a civil rights bill. But there is something more important than ingratiating one's self with the voters. Over and above ingratiation is the need for one to be true to himself. There is the need to be consistent. There is the need to be equal in one's consideration and treatment of his fellow citizens. If the Congress of the United States wishes to say that political expediency, by changing principles to suit the occasion, is the course to follow, I wonder what will become of the words of George Washington in his Farewell Address, when he said that morality must be the basis of the continued life of our country.

I say to the Senate respectfully that we cannot reconcile treating the little barber with one yardstick of justice and the labor unions with another. If the barber is not entitled to a jury trial, how can we give the right of a jury trial to the labor leader? If we give the right to the labor leader, how can we deny it to the barber under the Civil Rights Act? Those who try to answer those questions will lie in bed interminably trying to figure out how the question can be answered, and they will not be able to answer the question, except on one ground—if they disregard reason.

CIVIL RIGHTS ACT OF 1963: JURY TRIAL AMENDMENT

Mr. LAUSCHE. Mr. President, will the Senator yield?

Mr. ERVIN. I am glad to yield to the Senator from Ohio for a question. I would not put that restriction on the Senator, except for the compulsion placed on the Senate by the able manager of the bill.

Mr. LAUSCHE. I understand. Has the Senator from North Carolina given thought to the situation which now prevails under existing law, that under the Clayton Act, in criminal contempt proceedings, a trial by jury is mandatory?

Under the Norris-La Guardia Act, Congress has gone beyond what is provided in the Clayton Act and has declared that trial by jury shall be available both in civil and criminal contempt proceedings.

Third, in the Landrum-Griffin Act of 1959, the Senate, comprised of substantially the Members now serving, wrote into the law that trial by jury shall be allowed to labor leaders, did it not?

Mr. ERVIN. Yes; I discussed that point today. I placed in the RECORD what occurred in connection with the amendment granting the right of trial by jury in criminal contempt proceedings under the Landrum-Griffin Act, and stated that I had offered that amendment myself.

I heard the Senator from Ohio [Mr. LAUSCHE] speak on this subject last week. I have never heard a more eloquent exposition of the injustice of trying persons for criminal contempt without juries than the Senator from Ohio made on that occasion.

Mr. LAUSCHE. Does the Senator from North Carolina know that some Members of this body have taken the position that they will not provide for jury trials under the civil rights bill because it was alleged that in equity, anciently, trial by jury should not be granted in criminal contempt cases, but that those very Senators voted for trial by jury for labor leaders in the Landrum-Griffin bill?

Mr. ERVIN. Yes; that amendment to the Landrum-Griffin bill, which was written and proposed by me and cosponsored by the junior Senator from South Carolina [Mr. THURMOND], was adopted without opposition in the Senate. As I stated in my presentation, I could find no opposition to the amendment on either side of the aisle. That is why I find it strange that only 5 years later there is opposition to granting the right of trial by jury in criminal contempt cases arising under the so-called civil rights laws.

Mr. LAUSCHE. Is it not true that President Johnson was a Member of the Senate in 1959?

Mr. ERVIN. That is correct. He made a most eloquent appeal for the adoption of the O'Mahoney amendment to grant the right of trial by jury, a part of which is now in the Civil Rights Act of 1957.

Incidentally, I read that speech into the RECORD because I thought it was about as fine a speech as I have ever heard on the subject, with the exception of the speech made by the Senator from Wyoming, Mr. O'Mahoney, on that occasion, and the speech made by the distinguished senior Senator from Ohio [Mr. LAUSCHE] in the Senate Chamber a few days ago on the same subject.

Mr. LAUSCHE. Is it not also true that Senator O'Mahoney always took great pride in the fact that he was an exponent of what is known as liberalism?

Mr. ERVIN. That is true.

Mr. LAUSCHE. Is it not true that Senator O'Mahoney, as a liberal, stood on the floor of the Senate and argued that liberalism would be defeated if trial by jury were not allowed in criminal contempt cases?

Mr. ERVIN. That was the position which he took on that occasion and every other occasion throughout his life, so far as I am aware.

Mr. LAUSCHE. Is it not true also that in addition to the demand by former Senator Johnson for trial by jury in criminal contempt, the martyred President, John F. Kennedy, when he was a Senator from Massachusetts, joined the Senator from Texas in that argument?

Mr. ERVIN. He did. He spoke in behalf of the O'Mahoney amendment in 1957.

So far as I personally am concerned, I am willing to grant a verdict of not guilty to every person who claims to be a liberal and who is opposed to the right of trial by jury in criminal contempt proceedings. Such persons are entitled to an acquittal on the ground that they are more reactionary than was King John before Runnymede in this respect.

Mr. LAUSCHE. Yes. Will the Senator express his views about how reconciliation can be made of the inconsistent position that with respect to the Clayton Act, the Norris-La Guardia Act, and the Landrum-Griffin Act, jury trials are allowed in criminal contempt cases, with the attempt to deny jury trials in the pending civil rights bill?

Mr. ERVIN. I do not believe there can be any reconciliation of those different points of view. The only reconciliation that can be made with sound justice is to enact a provision to grant the right of trial by jury to all men in all criminal contempt cases. That is my personal view. I believe it is shared by the Senator from Ohio. I base that belief on the eloquent speech I heard him make on the floor of the Senate several days ago, and on speeches I have heard him make on previous occasions, as well.

Mr. LAUSCHE. Is the conclusion of the Senator from North Carolina based upon the proposition that one of the greatest boasts we have about our system of Government is that there shall be equality of treatment of all citizens, regardless of their position, before the courts and also before Congress?

Mr. ERVIN. I certainly share that view. It is one of the firmest convictions I have that any law that is consistent with sound justice must necessarily provide that all men shall be judged exactly alike under like circumstances.

Mr. LAUSCHE. Can it be said that in the Communist nations there is an equal yardstick of justice applying to those who believe in communism as compared with those who do not believe in communism?

Mr. ERVIN. No. From what I understand to be the distinction between the two groups in Communist nations, one group is judged by one standard, and the other by another standard. That is precisely what we do in

respect to criminal contempt under the several statutes and the lack of rights in other cases, as the Senator has pointed out.

Mr. LAUSCHE. Does the Senator from North Carolina understand that the wire services of the Nation have published a story that there are three statutes under which juries are provided, but that in the pending bill juries are not provided? Has the Senator read the news reports on that subject?

Mr. ERVIN. I have not read any news reports today. I do not know when the story to which the Senator refers appeared.

But I have attempted to point out that in the Clayton Act there is a statute of that kind; the Norris-La Guardia Act of 1932 is a second such statute; and the Civil Rights Act of 1957 contains a very peculiar provision in that field. So there are three separate statutes. I say "three separate statutes" because of the approximateness of the provision of the Landrum-Griffin Act of 1959 to the Norris-La Guardia Act of 1932.

Mr. LAUSCHE. Does the Senator know that some important commentators, broadcasting out of Washington on television and radio, in discussing the issue of trial by jury, have not distinguished between criminal contempt and civil contempt?

Mr. ERVIN. I do not know that that is true, but I assume it is, because—unfortunately—as the Senator from Ohio knows, in order to grasp these distinctions, a person must have some knowledge of legal principles and equitable principles, and of the different objectives of criminal contempts and civil contempts. However, I do not understand how anyone could be mistaken about the different objectives of criminal contempts and civil contempts, if he heard the Senator speak the other day and heard him quote from the decision in the Gompers case.

Mr. LAUSCHE. Mr. President, will the Senator from North Carolina yield for another question?

The PRESIDING OFFICER (Mr. MCGOVERN in the chair). Does the Senator from North Carolina yield to the Senator from Ohio for a question?

Mr. ERVIN. I yield for a question.

Mr. LAUSCHE. Would the Senator from North Carolina be surprised to hear that I have read newspaper articles and columns in which there have been statements or headlines such as "Jury trial in contempt cases denied," without any effort by the writer of the article to state that the issue before the Senate is jury trial in criminal contempt cases?

Mr. ERVIN. I would readily accept the Senator's statement. That is a tragic situation, because if a newspaper reporter or wire service gives such information without distinguishing between the two, it is not enlightening the American people in the way a free press should do. As the Senator from Ohio pointed out in his speech of several days ago, the line of demarcation between civil contempt proceedings and criminal contempt proceedings is very wide, for civil contempt proceedings are designed to secure compliance with the orders of the court, rather than to provide punishment, whereas criminal contempt proceedings are not designed to secure compliance with the orders of the court, but, rather, are designed to punish persons because of their past disobedience. In short, civil contempt proceedings are for the purpose of securing compliance with the orders of courts; criminal contempt proceedings are designed to punish those who are guilty of misdeeds.

Mr. LAUSCHE. Yes.

Has the Senator from North Carolina read in the newspapers or heard on the television or on the radio statements to the effect that under civil contempt proceedings, as distinguished from criminal contempt proceedings, all of the remedies needed to bring into execution the provisions of the civil rights bill are already available?

Mr. ERVIN. I must say that I do not recall reading a statement which made clear the fundamental difference between civil contempts and criminal contempts, and also made clear that those of us who are fighting for the right of trial by jury in criminal contempt cases are not seeking in any way to impair the capacity of the courts, through civil contempt proceedings, to enforce their orders or judgments. So I believe that any commentator or writer who would make that proposition clear to the American people would be rendering a real service to our country.

Mr. LAUSCHE. So the Senator from North Carolina understands—and so do the individuals who are acquainted with the powers which are vested in a court under civil contempt proceedings—that the courts would be able to compel, by means of putting offenders into prison, all violators of the civil rights bill to do what the civil rights bill requires; is that correct?

Mr. ERVIN. The Senator is undoubtedly correct in the implication of his question. We could actually abolish totally the power of the court to punish for criminal contempt without affecting in the slightest degree the power of the court to enforce its judgments by civil contempt proceedings.

Mr. LAUSCHE. I hope the Senator from North Carolina will understand that I am repeating these questions solely for the purpose of making clear that under the civil contempt proceedings of courts, every privilege and right vested in a citizen under the civil rights bill could be achieved without resorting to criminal contempt proceedings.

Mr. ERVIN. The Senator from Ohio is absolutely correct in that; and he is pointing out the effect of the proposed law in as clear a fashion as it could possibly be explained.

Mr. LAUSCHE. I am sure the Senator understands—and I shall ask him whether he does so understand—that many citizens are of the belief, because of the failure of radio commentators, television commentators, and the writers of newspaper articles to elucidate on the subject, that in the Southern States, unless there is denial of the right of trial by jury, the purposes of the civil rights bill cannot be achieved. I ask the Senator from North Carolina whether that conclusion is correct or is incorrect?

Mr. ERVIN. That conclusion is as far wrong as any conclusion could possibly be. If the amendment which calls for jury trials in criminal contempt proceedings were adopted, as it should be, it merely would give such persons the same right of trial by jury that all Americans consider that all murderers and others charged with the most heinous crimes should have. So if the amendment were adopted, it would not interfere with the power of the courts in the North or in the South or in the East or in the West to enforce their orders and to require compliance with their orders without a jury trial.

Mr. LAUSCHE. Is it not a fact that when an offender was brought before a court, charged with violating a court's order issued in a civil rights case, the court, under the civil contempt proceedings, could put the offender in jail for such length of time as would compel him to comply?

Mr. ERVIN. That is true. If the defendant failed to comply, after he had been imprisoned as a result of a civil contempt proceeding, the judge could leave him in jail until the last lingering echo of Gabriel's horn trembled into ultimate silence.

Mr. LAUSCHE. If that is a fact, what help would it be to those who were seeking protection under the civil rights bill to be denied the right of jury trial in criminal contempt cases and proceedings—proceedings completely distinct and separate from the proceedings in civil contempt cases?

Mr. ERVIN. It would not afford them the slightest help of any kind, for the very simple reason that the court could secure every right awarded by a judgment of the court in a civil contempt proceeding tried by the judge himself, without a jury.

Mr. LAUSCHE. Yes; and that is what was embraced in the Morton amendment—not jury trial for civil contempt, but jury trial for criminal contempt; is that correct?

Mr. ERVIN. That is correct. Neither the Morton amendment—which was rejected by a margin of about one vote—or the pending amendment would interfere in any degree whatever with the power of a court to secure to the party aggrieved any right he had under the decision of the court, after a trial by the judge, without a jury.

Mr. LAUSCHE. I should like to repeat the question which I posed some five or six times when I made my argument here, about a week ago: On the basis of what logic or what morality could three statutes passed by Congress grant jury trials to labor leaders in contempt cases, but refuse to grant the right of jury trial in civil contempt cases?

Mr. ERVIN. We cannot do it and comply with logic and meet the requirements of logic, or even meet the requirements of equal justice under the law. There is no equal justice under the law when a man in a certain profession or in a certain vocation is granted the right of a trial by jury in criminal contempt proceedings and other men are denied the right of a trial by jury in criminal contempt proceedings. Such a system is incompatible with logic. It is incompatible with sound law. It is incompatible with the great goal of America to administer equal justice under the law.

Mr. LAUSCHE. In the opinion of the Senator from North Carolina, can an individual who voted for the granting of jury trials in criminal contempt cases in the Landrum-Griffin bill, where labor leaders are involved, reconcile that vote with opposition to the granting of jury trials in criminal contempt cases in the civil rights bill?

Mr. ERVIN. I am somewhat reluctant to pass on what other men can do. But if they have the kind of conscience which I have, and have the convictions that I hold, and that the Senator from Ohio holds, that there should be equal justice under the law, I do not think they can make any such reconciliation.

Mr. LAUSCHE. That is merely an encomium to the Senator from North Carolina. When the Landrum-Griffin bill was before the Senate in 1959, the Senator from North Carolina wrote the provisions which provided for a jury trial in criminal contempt cases for labor leaders. Is that not a fact?

Mr. ERVIN. That is correct. And I am proud of the fact that I did.

Mr. LAUSCHE. What the Senator from North Carolina and the Senator from Ohio are doing today in arguing for a jury trial in criminal contempt, as distinguished from civil contempt, is completely consistent with what was done by the Senate in 1959, with Lyndon B. Johnson, the present President, and John F. Kennedy, then Senator, approving and voting for what was done.

Mr. ERVIN. The Senator from Ohio and the Senator from North Carolina are fighting at this moment for the same right of trial by jury in criminal contempt cases for which they fought in 1957. I thank the Senator for making crystal clear the fact that we are not seeking to diminish to any extent the power of the court to enforce its judgment in civil contempt proceedings, in which case the judge tries the case without a jury. But on the contrary, we are merely seeking to have equal justice under law administered to all people in criminal contempt cases, when they are haled before the court for the purpose of punishment, and not for the purpose of being compelled to comply with a decree of the court.

Mr. LAUSCHE. The Senator will understand when I ask this question that in my judg-

ment we have departed substantially from the sacred principles promulgated by our forefathers when they wrote the Declaration of Independence and the Constitution, and said there must be equality of treatment at the bar of justice and at the bar of the U.S. Congress.

Mr. ERVIN. I thoroughly agree with the Senator.

Mr. LAUSCHE. I thank the Senator.

The ACTING PRESIDENT pro tempore. The Senate will now proceed to the consideration of amendment No. 868, to strike sections 404, 405, and 406 to H.R. 7152.

Mr. HICKENLOOPER. Mr. President——

The ACTING PRESIDENT pro tempore. The Senator from Iowa [Mr. HICKENLOOPER] is recognized.

Mr. HICKENLOOPER. Mr. President, may we have order?

The ACTING PRESIDENT pro tempore. The Chair will suspend——

Mr. MAGNUSON. Mr. President——

The ACTING PRESIDENT pro tempore. The Senate will be in order. The Senate is not in order.

Mr. MAGNUSON. Mr. President——

The ACTING PRESIDENT pro tempore. Conferences in the rear of the Senate and congratulatory groups will please retire to the cloakroom. The Senate is not in order. Time is not yet running on the Senator from Iowa.

Mr. HICKENLOOPER. Mr. President, a parliamentary inquiry.

The ACTING PRESIDENT pro tempore. The Senator from Iowa will state it.

Mr. HICKENLOOPER. So far as I am concerned, I am satisfied with the order that is in the Chamber at the moment, although the Senate may not be quite in order. So long as Senators are in the Chamber, this will give me an opportunity to inform them concerning my amendment. With an audience of this kind, which is rarely congregated at the outset of consideration of an amendment, I should like to take advantage of the situation to explain it.

In a nutshell, sections 404, 405, and 406 which are proposed to be stricken from the bill by this amendment provide that the Commissioner of Education would be authorized to subsidize with Government funds universities, colleges, and educational institutions to pay the transportation expenses of those who wish to inform themselves and perfect themselves in teaching these special subjects, to pay the transportation to these colleges and universities, including their families and dependents, to pay their subsistence while there, and also to pay their salaries while there.

Those provisions are presently unlimited in the bill, subject only to limitations set by the Appropriations Committee.

I believe this is a dangerous precedent for the Federal Government to be starting. It is just as dangerous as to say that we will subsidize those who wish to go to law school again and learn more about their specialty in law, such as corporation law, or real estate law; and to pay persons who wish to learn more by going back to college by a subsidy from the Government.

I am for educational institutions enlarging their own curriculums, to take in specialized studies of courses in these affairs, as much as anyone else. It is the broad duty of the universities to establish courses in English, and other subjects; and it is also the duty of the universities under their curriculums, to provide for the universal training of teachers to go into any field, but not at Government expense and not to subsidize teachers for their pay, their transportation, and the subsistence of their families.

That is what is involved in these three sections. Having said that, I believe that is my argument, in the main.

I am not yielding back the remainder of my time.

If Senators wish to vote that type of legislation, if Senators wish to retain those three sections in the bill and start this rather unusual procedure on a specialized section of education and training, Senators should understand what they are voting for. I propose to strike those sections from the bill.

Mr. CURTIS. Mr. President, will the Senator from Iowa yield?

Mr. HICKENLOOPER. I am glad to yield to the distinguished Senator from Nebraska.

Mr. CURTIS. Is there any limitation on the amount granted or contracted that may be given one institution?

Mr. HICKENLOOPER. There is not, as I read these sections of the bill; and I believe as Senators read them they will find that there is no limitation on what is given to an institution or what is given to all institutions.

Mr. CURTIS. Or to a State?

Mr. HICKENLOOPER. Or to a State.

Mr. CURTIS. How about the individual?

Mr. HICKENLOOPER. There is no limitation on an individual while attending school, and no limitation on transportation expenses. There is also no limitation on the amount of subsistence. The provision is as wide open as it could possibly be. It is in the complete discretion of the Commissioner of Education. It is limited only by the Appropriations Committees of the Senate and House, subject to whatever recommendations the Appropriations Committees would like Congress to make.

Mr. CURTIS. Mr. President, will the Senator from Iowa yield further?

Mr. HOLLAND. Mr. President, will the Senator from Iowa yield?

Mr. HICKENLOOPER. I yield to the Senator from Nebraska.

Mr. CURTIS. Is there any connection between enforcing the basic constitutional rights of citizens and these sections?

Mr. HICKENLOOPER. None whatever.

Mr. CURTIS. It is an educational proposal that has no place in the proposed legislation?

Mr. HICKENLOOPER. It is an educational proposal on the general theory of a college establishing and enlarging departments for the study of this particular field. That does not meet with my objection, any more than enlarging the curricula of a college to study foreign languages, or certain other subjects.

That is the responsibility of the college or university or other institution. If a teacher desires, or it is desirable for teachers, to have this enlarged qualification, they should go under their own responsibility, the same as they go to college or normal school or other institution for their initial learning to teach English or French or social subjects which they have either already learned or wish to perfect. This is the whole burden of my argument.

Mr. HOLLAND. Mr. President, will the Senator yield?

Mr. HICKENLOOPER. I yield.

Mr. HOLLAND I am looking at section 404, which reads:

SEC. 404. The Commissioner is authorized to arrange, through grants or contracts, with institutions of higher education for the operation of short-term or regular session institutes for special training—

And so forth. Is there any limitation on the provision as to the grant of public funds to public higher institutions of learning, or may the grants be made to public, private, and religious institutions of higher learning?

Mr. HICKENLOOPER. Under my view, there is no limitation whatever. It is not limited to public institutions. It is left completely in the discretion of the Commissioner of Education. I tried to include that point in my answer to the question of the Senator from Nebraska. This is an open end situation, involving a wide discretionary innovation in the training of people, and we had better consider it carefully before we discharge our responsibility of acting on it.

I am not opposed to the training of these people. I believe that colleges and universities should enlarge their curriculums, perhaps, but that is their own responsibility. It is a part of the responsibility of the educational system. It should not depend on subsidization by the Federal Government for the cost of the training, the subsistence, the transportation, and the salaries for those who wish to educate themselves to be able to teach in these fields.

Mr. HOLLAND. Mr. President, will the Senator yield further?

Mr. HICKENLOOPER. I yield.

Mr. HOLLAND. Am I correct in my understanding that the grants to public institutions of higher learning and to private and religious institutions of higher learning could be designed and made not only for special sessions or institutes, but also for regular sessions of a full year or more?

Mr. HICKENLOOPER. There is no limitation. I see no reason why they could not be arranged for a 4-year period, for example, in the discretion of the Commissioner of Education.

Mr. SIMPSON. Mr. President, will the Senator yield?

Mr. HICKENLOOPER. I yield.

Mr. SIMPSON. I wish the Senator to know that I sponsored an amendment to section 404. I compliment him on his amendment, and I wish to join him in it.

Mr. HOLLAND. Mr. President, I ask that the Chamber be cleared of persons not now engaged in the business of the Senate.

The ACTING PRESIDENT pro tempore. The Senate is not in order. The Senator from Iowa will suspend until the Senate is in order. Persons who are not present on official business will leave the Chamber. The Chamber will be cleared of all staff members who are not here on business. The Senator from Iowa will suspend until the Senate is in order.

The Senator from Iowa may proceed.

Mr. HICKENLOOPER. I yield to the Senator from Wyoming.

Mr. SIMPSON. Mr. President, I support the amendment proposed by my friend and colleague the Senator from Iowa. Last week I proposed as an amendment to the substitute civil rights bill amendment No. 799 which would strike section 404. Section 404 of the civil rights bill would authorize the Commissioner of Education to arrange through grants or contracts with institutions of higher learning for the operation of short-term or regular-session institutes for special training designed to improve the ability of teachers and others to deal effectively with special educational problems occasioned by desegregation.

Assuming that there will be problems—and I do not know that there will be—I consider section 404 to be an insult to the great universities and colleges of America.

I believe that the universities of the Nation, if the University of Wyoming is indicative, will meet the problems that are presented by any change in the social structure without bribe or incentive held out by the Federal Government. It is degrading our institutions of higher learning to suggest that the Federal Government would have to finance or pay them for offering any courses that might be needed to train the teachers of elementary and secondary schools.

The Federal Government seems to take advantage of every opportunity to assert its power and authority. We are now discussing and considering an important piece of legislation dealing with the civil rights of American citizens. But the ever-present vigilance of the Washington bureaucrats once again has paid off for them. The empire builders have seen another opportunity where they can invade and make inroads on the rights, responsibilities, and jurisdictions of the State and private citizen.

I trust the University of Wyoming will meet the needs of Wyoming, and as usual the needs of other States, without surrendering its initiative, judgment, or responsibility to a Washington based bureaucrat.

If we continue to appropriate Federal money for every course or activity that we think a university or college should offer, we will be making the Federal Government and its responsibile agency the education czar of the Nation. I am sure that no responsible Senator would want that.

I ask the Senate to leave the question of school courses and programs to the respective educational institutions. My university is capable and competent to manage its affairs without the directives of the Federal Government.

The Hickenlooper amendment also would strike sections 405 and 406. This goes further than what I originally proposed to the Senate last week, but I believe it a wise and well-justified extension.

Section 405 would authorize the Commissioner, upon application of a school board, to make grants to that school board to help pay the cost of giving training to the teachers and to employ specialists to advise in problems incident to desegregation.

This section is certainly not needed. I would not anticipate any problems. But, we can be assured there will be problems if the Federal Government sends its so-called "specialists" out to enforce their will on the local school districts. The Federal Government's further intervention into a local community cannot do anything but cause problems. The local school districts in Wyoming can handle their problems without further Federal aid and control and I am confident they are no different from other school districts.

We should never pass legislation that would make the local school districts more dependent on the financial aid of the U.S. Government. This section would tend to do that.

I urge and hope that the Senate will strike these three sections from the bill.

I commend the Senator for offering his amendment.

Mr. MILLER. Mr. President, will the Senator from Iowa yield for a question and a comment?

Mr. HICKENLOOPER. I yield for a question first.

Mr. MILLER. I compliment the Senator from Iowa on this amendment. I note that the amendment proposes to strike sections 404, 405, and 406 from the bill, but contains no provision for striking section 403.

If it is proposed to strike section 403, I am opposed to the amendment. However, it leaves 403 completely unaffected. Section 403 provides:

> SEC. 403. The Commissioner is authorized, upon the application of any school board, State, municipality, school district, or other governmental unit legally responsible for operating a public school or schools, to render technical assistance to such applicant in the preparation, adoption, and implementation of plans for the desegregation of public schools. Such technical assistance may, among other activities, include making available to such agencies information regarding effective methods of coping with special educational problems occasioned by desegregation, and making available to such agencies personnel of the Office of Education or other persons specially equipped to advise and assist them in coping with such problems.

Is there anything in what I have read which does not include all the necessary mechanics for providing technical assistance to schools in order to implement the bill? Is there anything else which needs to be added by the sections that are proposed to be stricken in the Senator's amendment?

Mr. HICKENLOOPER. The sections to which the Senator refers enlarge and expand the power of the Commissioner of Education to an unconscionable degree and provide for his unlimited participation. They should be stricken.

Mr. MILLER. I agree. It seems to me that section 403 provides all the technical assistance and all the special information necessary to implement the program; and that if a local school board or State university needs some information in order to conduct its own institutes, it can obtain all this information under section 403. I cannot see what is added by section 404 and 405 except——

Mr. MUNDT. Money.

Mr. MILLER. Except the Federal Government's subsidies. Is that not correct?

Mr. HICKENLOOPER. My point in not including section 403 in my amendment is that I do not object to or want to stand in the way of the Commissioner of Education's rendering advice in various fields of education, and rendering cooperative assistance in various fields. Therefore, I did not move to strike section 403. It is under sections 404, 405, and 406 that the Federal Government would pay people to attend college or high school or normal school, and pay their subsistence and salaries. That is what I am objecting to. Section 403, to which the Senator refers, is not necessary, but I do not think it adds anything to the general advisory authority of the Commissioner of Education. I do not object to it.

Mr. RIBICOFF. Mr. President, will the Senator yield on that point?

Mr. HICKENLOOPER. If it is on this point, I yield, although I promised to yield to the Senator from Utah.

Mr. RIBICOFF. As I listened to the interchange between the Senators from Iowa, I thought it was ironical that the Senator who proposes this amendment should allow the U.S. Commissioner of Education to send his own specialists, yet propose language that strikes from the bill the provision which allows a local community to hire its own training specialists. If we are interested in States rights, if we are interested in removing the arm of the Federal Government from the program, it would seem much more consistent to strike section 403 and allow section 404 to remain.

What would be accomplished by this particular amendment would be to use Federal funds so that the Federal Commissioner could give advice, but prevent local governments and local school boards from getting funds for such advice.

Mr. HICKENLOOPER. In the first place, section 403 provides that the assistance must be at the request of the local authority. It involves only his cooperative suggestion to those people, from the Federal standpoint.

Mr. RIBICOFF. No; section 404 would be at the request of the local authority and, under section 405, the local school boards would employ their own people. The teachers would seek out their own universities in their own States for training institutes.

Mr. HICKENLOOPER. The Senator from Connecticut would probably prefer to alter his statement that section 404 is "at the request."

I do not find anything in section 404 which provides that local areas must request. It merely provides that the

Commissioner is authorized to arrange. It does not say that there must be a request by the local authority.

In any event, even if assistance were requested by the local people, I am against authorizing the Federal Government to move in with subsidies for salaries and transportation payments in a field where those who want to teach have always undertaken the responsibility of getting their own education, as is done in other fields.

Mr. RIBICOFF. With all due respect, the Senator from Iowa has confused the two bills. On this point, the Senator from Iowa is talking about the House bill, but the amendment submitted by the Senator from Illinois [Mr. DIRKSEN] and the Senator from Montana [Mr. MANSFIELD] specifically deletes this provision in the House bill.

Allowances for dependents have been removed from the bill. No subsistence for dependents is provided in the measure now before the Senate.

Mr. HICKENLOOPER. I suggest in reply that the Senator from Connecticut is the one who is confused. Probably he is confused because the amendment under consideration is an amendment to the House bill. The so-called package amendment submitted by the Senator from Illinois and the Senator from Montana is not yet before the Senate. It would apply only to the proposed substitute amendment, which will come up at a later date if cloture is voted. So we must deal with what is before the Senate, which is the House bill. That is what my amendment applies to.

Mr. HUMPHREY. Mr. President, will the Senator yield?

Mr. HICKENLOOPER. I yield.

Mr. HUMPHREY. I hope we are not going to have a double standard, because it was understood in the case of the Morton amendment that it was not only an amendment to the Talmadge amendment to the House bill, but also that it would come into the package. If the Senator wishes to cancel that understanding, I shall be delighted, because I see no great privilege in what I thought was going to be the privilege of calling up the Dirksen-Mansfield jury trial substitute.

Mr. HICKENLOOPER. I am not canceling anything out. I only say that this amendment applies to the business before the Senate, which is the House bill.

The Senator from Minnesota stated on the floor on Friday, I believe—possibly it was Saturday morning—what I thought was a sound principle. He said, "Of course, if these amendments, or any of them, which are to be directed to the House bill"—because that is what is now before the Senate—"are adopted, that should be considered as the will of the Senate, and we are normally bound to translate that will into the bill when it comes before the Senate."

I think that is sound philosophy. I am only trying to get the technical line straight and keep on the avenue of what we have to consider. I am trying to keep on that road, and not get off into a pasture.

Mr. HUMPHREY. The Senator is correct; but he also ought to keep in mind that when we vote on the Hickenlooper amendment, we are not voting merely on the Hickenlooper amendment to the House-passed bill, but also as it will affect the amendment in the nature of a substitute. Let it be crystal clear that the package substitute is much different in section 404 than it is in the House-passed bill. So we ought constantly to relate our remarks to what will be the real situation.

Mr. HICKENLOOPER. I admit that in some ways this question is technical; but the Senate operates under technical rules, and they are technically interpreted on many occasions.

The only approach I may have, the only thing I can do, is to offer an amendment to the business that is before the Senate, which is the House-passed bill.

We have no assurance—the Senator from Minnesota may be sure in his own mind, and other Senators may be sure in their minds—that the Senate will vote cloture tomorrow. It may not vote cloture tomorrow. It may adopt the package amendment; it may not adopt it. The package amendment is not before the Senate for consideration; and if it comes up for consideration, it may be amended repeatedly; I do not know. That question is not before us.

What is before the Senate today is the House-passed bill, and my amendment goes to sections 404, 405, and 406 of the House-passed bill. That is all I can discuss. That is what we must consider in this issue today.

Mr. BENNETT. Mr. President, will the Senator yield?

Mr. HICKENLOOPER. I yield.

Mr. BENNETT. I should like to ask the Senator from Iowa if there is anything in the proposed legislation that would prevent a teacher, if the bill became law, from accepting the money available to teachers under the bill, from getting his or her full salary for the full term of the special program, and then going into the gasoline station business.

Mr. HICKENLOOPER. I do not think there is anything in the bill that would prevent that from happening. I thought the Senator was going to ask if a person could draw a salary from the school in which he was teaching and then take special courses and get a stipend also. Probably two salaries would not be justified; but there is nothing in the bill to prevent it.

The Senator from Minnesota [Mr. HUMPHREY] and I—and the Senator from Minnesota is still in the Chamber—had a discussion on this subject. The only changes in the proposed package amendment that are made in this section are that section 404 as it reads in the House bill provides:

> Individuals who attend such an institute may be paid stipends for the period of their attendance.

The only difference between that language and the language in the package amendment is that the words "on a full-time basis" have been added in the package.

Mr. MUNDT. There is another difference.

Mr. HICKENLOOPER. Further, beginning in line 22, the present House bill reads: "at such institute in amounts specified by the Commission in regulations, including allowances for dependents and including allowances for travel to attend such institute."

The package amendment only eliminates the words: "including allowances for dependents."

That is the only phrase proposed to be eliminated by the package amendment. We might as well have that clear now.

Mr. BENNETT. I am merely raising the question that that was an open-ended authorization which would make it possible for people to go to school for the full term of the program, but with no obligation to make use of the training they received, for which they had been paid a salary.

Mr. HICKENLOOPER. Yes.

Mr. RIBICOFF. Is not that the situation that prevails in teaching institutes under the National Defense Education Act? I have some interesting statistics for the fiscal year 1964 concerning teacher training institutes under NDEA and the National Science Foundation Act.

There were 959 teaching institutes for science and mathematics, involving 42,000 teachers.

In modern foreign languages, there were 85 institutes involving 4,300 teachers.

In guidance and counseling there were 64 institutes, involving 1,900 teachers.

What we are following is a pattern that has been in existence under various acts of Congress since 1958. There is no State in the Union, North, South, East, or West, in which school teachers in institutes are not taking advantage of similar provisions.

In the State of Iowa, the University of Iowa, the State College of Iowa, and Coe College have various institutes for counseling and guidance, and also for modern languages. What is now proposed is a similar program, and the provisions of this bill are of the same type as those under which thousands and thousands of teachers throughout the United States are being trained. If schoolteachers are being trained for the purpose of improving their competence in various fields, certainly we must recognize that similar training should be available to those who will have to deal with the great problems facing the country after the civil rights bill is passed—and it will be passed.

One of the greatest tragedies which could occur would be to allow all these school districts that will be desegregated to be torn asunder by their problems and allowed to drift.

Mr. HICKENLOOPER. Mr. President, I believe the Senator from Connecticut [Mr. RIBICOFF] wishes to speak in opposition to this amendment.

Mr. RIBICOFF. I do.

Mr. HICKENLOOPER. So far as I am concerned, I am willing to suspend my remarks at this time.

Mr. RIBICOFF. I think I can make my statement in 10 minutes; I wish to give a complete analysis of the Hickenlooper amendment.

AMENDMENT NO. 943

Mr. HICKENLOOPER. Mr. President, the Senator from New Jersey [Mr. CASE] seeks recognition, in order to be able to submit an amendment. I am glad to accommodate him for that purpose, if there is no objection, and if I may do so without losing my right to the floor.

The ACTING PRESIDENT pro tempore. Is there objection? Without objection, it is so ordered.

Mr. CASE. I thank the Senator from Iowa.

Mr. President, on behalf of the Senator from Pennsylvania [Mr. CLARK] and myself, I submit an amendment to the pending bill, and ask that it be considered read, for the purpose of complying with all requirements of the rules in this connection.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered; and the amendment will lie on the table, and will be printed in the RECORD.

The amendment (No. 943) is as follows:

On page 60, line 10, strike out "Except as provided in subsection (d), every", and insert in lieu thereof "Every".

On page 61, beginning with line 17, strike out all through line 13 on page 62.

On page 62, line 14, strike out "(e)" and insert in lieu thereof "(d)".

AMENDMENT NO. 868

Mr. HICKENLOOPER. Mr. President, at this time I am willing to suspend my remarks to permit Senators on the other side of this question to proceed.

Mr. HUMPHREY. Mr. President, under the limitations of the unanimous-consent agreement, I yield now to the Senator from Connecticut [Mr. RIBICOFF].

The ACTING PRESIDENT pro tempore. The Senator from Connecticut is recognized.

Mr. RIBICOFF. Mr. President, I oppose the Hickenlooper amendment. In my judgment it is a most unfortunate amendment. Its adoption would be a tragedy. It would hinder the easing of many problems that will still remain after this bill becomes law.

Let us first be absolutely certain we understand what this amendment would do and what it would not do. Because it deals with the highly controversial issue of public school desegregation, this amendment can too easily get caught up in the strong attitudes and emotions that surround that subject. We must therefore be especially careful to see the precise significance of this amendment, and judge it solely on its own merit.

I recognize that many Senators oppose many portions of this bill, and some oppose some parts of title IV, dealing with school desegregation. All I ask is that those Senators not let their disapproval of some other sections of this title or this bill cause them to support an amendment to strike out the three sections of this bill which I believe should be supported by every Member of this body, regardless of his views on any other part of this bill.

Title IV deals with public school desegregation. In general, it authorizes two entirely different types of activity. One part of title IV authorizes the Attorney General of the United States in certain carefully defined circumstances to bring lawsuits to desegregate public schools and colleges. Five other sections of title IV authorize the U.S. Commissioner on Education to take certain steps to give some assistance, when it is requested, to those trying to resolve school desegregation problems. These five sections authorize the U.S. Commissioner to do the following:

First. Survey the lack of availability of equal educational opportunities—section 402.

Second. Render technical assistance, including the furnishing of information and personnel—section 403.

Third. Arrange with colleges for training institutes for teachers and other school personnel—section 404.

Fourth. Grant funds for inservice training of teachers and other school personnel and for the hiring of special advisers—section 405.

Fifth. Extend the authorized financial assistance in advance or by way of reimbursement—section 406.

The Hickenlooper amendment would strike from the bill only the last three items I have just described. Its sole effect would be to cut out the training institutes, the inservice training, and the hiring of special advisers.

The sections this amendment would strike out have nothing whatever to do with requiring a school to desegregate.

These sections have nothing whatever to do with lawsuits.

These sections have nothing whatever to do with requiring the admission or assignment of any pupil in any school. These sections impose no requirement on any person to do anything.

If these sections are taken out, the constitutional requirement that public schools be desegregated will not in any way have been altered, nor will the right of the Attorney General to bring lawsuits to enforce this requirement be affected in any way. But those who support this amendment are saying to the school districts of this country that face the tough problems of school desegregation: "We have no interest in answering your request for help. We are glad you recognize the need to train your teachers, but if you can't find the money in your already limited school budgets, you will just have to forget about the idea."

These sections, which the Hickenlooper amendment seeks to strike out, are entirely voluntary. They are constructive. They provide a very limited but very necessary form of help to those who request such help.

We know that this help is needed. We know that during the years to come, school districts throughout this country are going to be desegregated for the first time. We know these school districts are going to face difficult problems. We know that many of these school districts, learning from the lessons of the past, are going to plan ahead to make the transition as successful as possible. We know that one of the best steps they can take is to give their teachers special training to help them with the new problems they will encounter.

So the question before the Senate is very simple: Are we going to answer the request of farsighted school officials who see the need to give their teachers the necessary special training, or are we going to ignore them? Will we help them avoid trouble, or will we turn our backs on them?

Let us be frank with one another. Desegregation of many public school systems is not going to be easy. The teachers in these schools will have problems of curriculum, guidance and counseling, student testing, and discipline. Yet these problems have been solved in many communities, and other communities can gain much from the successful experience of the past.

St. Louis and Chattanooga are among the many communities that eased their desegregation problems by taking constructive action ahead of time with emphasis on special training for teachers. In St. Louis teachers were offered the opportunity to attend inservice training classes, institutes, and workshops. In Chattanooga the school superintendent, Benjamin Carmichael, arranged for a similar program for a professional staff of over 1,000 teachers and other school personnel. These programs were made possible by private help. The St. Louis program was financed by the National Conference of Christians and Jews, and consultants for the Chattanooga program were supplied without cost by private organizations and educational institutions.

This is the type of assistance needed by all communities facing the problems of desegregation, but not all can count on the voluntary, private help that was extended to these two cities.

Let us not deceive ourselves. Many of the communities involved will have very difficult financial problems. They will need all the help they can get. We should certainly help them in one of the most difficult periods in the existence of those communities.

These sections of the bill help those who want to help themselves. They make it possible for teachers who want to receive special training to find it, either at special institutes run by colleges or in their local inservice training programs. These sections that the Hickenlooper amendment seeks to strike also make it possible for local school boards to employ the specialists they want to employ to advise them on desegregation problems.

There is nothing extraordinary or unprecedented about these actions. They provide the kind of assistance we have been affording schools and teachers for years. Since 1958, the National Defense Education Act has authorized funds for teacher training institutes in modern foreign languages, guidance and counseling. The National Science Foundation has financed similar institutes in mathematics and science. Thousands of teachers in all parts of the country have attended these federally financed institutes. They have benefited from them and so have their students. These NDEA and NSF institutes have been run at colleges and universities in all parts of the country. They have been run in the North and in the South. They have

been run in Iowa and in Connecticut. If the teachers of Iowa can receive Federal assistance to prepare them to teach French to the boys and girls of Sioux City, I fail to see why we should deny similar training to the teachers in some southern community who want to prepare themselves to deal with the problems of desegregation.

Federal assistance for inservice training of teachers has been provided in the field of vocational education under the Smith-Hughes Act of 1917. The program has been an unqualified success.

Keep in mind that none of the training these sections provide is required of anyone. The training institutes will be run only by those colleges and universities that want to run them. The teachers who attend these institutes will be only those teachers who want to attend. The school districts which receive grants for inservice training will be only those districts that want to receive such funds.

The need for assistance of this sort has long been recognized by many Members of this body, even by some who frankly do not support other parts of this bill. In 1959, President Eisenhower recommended similar provisions to Congress. In his message of February 5, 1959, he said:

> I recommend legislation to provide a temporary program of financial and technical aid to State and local agencies to assist them in making the necessary adjustments required by school desegregation decisions.

So the issue here is in no sense a partisan one. Nor is it a sectional issue.

The issue here has nothing whatever to do with whether we think schools should be segregated or desegregated.

All that is involved here is whether we shall have foresight—whether we shall recognize the inevitable problems that lie ahead—and make it possible for those who want to prepare themselves to do so. The sections under attack in this amendment deserve the support of every Member of this body.

If this amendment were to succeed, our consciences would bear a heavy burden. Were we to read of a school beset with the problems of desegregation in the days ahead, we would have to say to ourselves: "We could have helped, but we lost the chance to do so."

I do not believe that will be our answer. Whatever our views on any other part of this bill, I believe we can put aside our differences and recognize the worth of these sections of the bill. I believe we will reject this amendment.

How ironical it is that this amendment is aimed not at section 403 but at section 405. The Senator from Iowa [Mr. HICKENLOOPER] would not strike section 403, which would make it possible for the U.S. Commissioner of Education to send into the southern areas a Federal employee. But the amendment of the Senator would strike out those sections which would allow any local school board, on its own, to get financial help to set up its own training program and to hire its own people. Those sections would be stricken. Is that what we mean when we say that we desire the community to solve the problem itself? The whole purpose of the sections this amendment seeks to strike is to give authority and to give help to the local community and let the local community, and not the U.S. Commissioner of Education, be the boss. That is the harm and the damage which would be done if the Hickenlooper amendment were adopted, because under section 403 of the bill the U.S. Commissioner of Education would be the absolute boss. Under section 405, which the Senator seeks to strike, the authority would be given to the local school board itself.

Mr. HICKENLOOPER. Mr. President——

Mr. HOLLAND. Mr. President——

The ACTING PRESIDENT pro tempore. Does the Senator from Connecticut yield and, if so, to whom?

Mr. RIBICOFF. I yield first to the distinguished Senator from Iowa, because I have used his name.

Mr. HICKENLOOPER. I merely wish to ask the Senator where in section 404 he finds the statement——

Mr. RIBICOFF. I am sorry. I intended to refer to section 405. I did not intend to say section 404; I referred to section 405.

I now yield to the Senator from Florida.

Mr. HOLLAND. I believe the distinguished Senator from Connecticut was unconsciously, perhaps, leaving an inaccurate impression with the Senate. Section 403 would not give the Commissioner of Education a free hand to send emissaries at will among the districts that need help, but instead he would be authorized to send technical assistance only upon the application of any school board, State, municipality, school district, or other governmental unit legally responsible for operating a public school or schools, which is a very different thing.

Mr. RIBICOFF. Yes.

Mr. HOLLAND. The Senator recognizes that fact.

Mr. RIBICOFF. Yes, but the difference is that the request would be for a Federal employee made available by the Office of Education. Under section 405 the employee would be an employee of a local school board, and not an employee of the U.S. Office of Education.

Mr. HOLLAND. If the Senator will allow me to go one step further, the Senator recognizes, does he not, that our Nation is rendering technical assistance to about 100 foreign nations at their request? Is there any good reason why we cannot render financial assistance to school districts upon the request of the officials of those districts who are trying to solve this difficult problem?

Mr. RIBICOFF. I certainly am for that. I am pleased that section 403 will remain in the bill. But what I am trying to argue is that the amendment would strike out the other provision that makes it impossible for the local school boards to hire their own technical assistants.

Mr. HOLLAND. Mr. President, will the Senator yield further?

Mr. RIBICOFF. I am pleased to yield.

Mr. HOLLAND. If the Senator wishes to recognize the Constitution, as he suggested in an earlier part of his statement, would not sections 404, 405, and 406 open the door to the expenditure of Federal funds as grants and subsidies to institutions of higher learning that are privately financed and operated or that are operated by religious groups?

Mr. RIBICOFF. There is no question of constitutionality. Since 1958 we have been doing just that in providing teaching institutes at private and public institutions to the extent of 959 institutes in science and mathematics, 85 in modern foreign languages, and 64 in guidance and counseling in just this last year. That program involves both private and public colleges and universities. No question has ever been raised. Many of those who now oppose the bill have been voting for such institutes. They are institutes that we have had and have continued to have since 1958; and they are a part of the education policy of our Nation.

Mr. HOLLAND. Mr. President, the Constitution was not changed in 1958. The Senator will recall that the liberals in the Senate have consistently refused to permit the adoption of amendments offered by the distinguished Senator from North Carolina and others which would give rights to citizens to present the problem to our courts, so that the Constitution could be interpreted. So the Senator's statement that we have been violating the Constitution since 1958, which I believe to be the case, does not meet the problem at all.

Mr. RIBICOFF. The Senator should not try to put words into my mouth. I do not think that there has ever been a violation of the Constitution. The distinguished Senator may believe so, but I do not believe so. I think it is absolutely constitutional to provide the funds for setting up these institutes, at both public and private colleges and universities.

Mr. HOLLAND. The Senator admits for the RECORD, does he not—because it is certainly clear from the unlimited nature of the words in sections 404, 405, and 406—that the purpose is to allow the making of grants in such amounts as Congress may approve from time to time under this unlimited authorization and in the discretion of the Commissioner of Education to institutions of higher learning which are religious or private as well as to those which are public.

Mr. RIBICOFF. It would involve contracts for institutions of higher education and grants to local boards of education. The contracts would follow the National Defense Education Act pattern. The Department of HEW enters into contracts under various terms with all of these institutions. The pattern that would be followed in these institutes would be exactly the same pattern as has prevailed since 1958. So we would not suddenly impose on our country a new system. We are trying to have a group of institutes patterned on institutes that have been in existence since the first National Defense Education Act was enacted in 1958.

Mr. HOLLAND. If the Senator will examine section 404, I feel certain that the Senator from Connecticut will understand that the words "grants or contracts" apply to institutions of higher education, without any limitation as to institutions of higher education which

are publicly operated or which are public institutions. Is that the understanding of the Senator from Connecticut?

Mr. RIBICOFF. The private schools are eligible. There is no question that private colleges and universities are eligible for grants and contracts just as they are for the other institutes.

Mr. HOLLAND. I understood the Senator in an earlier statement to limit the grants to public education. Now, as I understand, he agrees that grants as well as contracts may be entered into and made to private institutions of higher learning.

Mr. RIBICOFF. Following the pattern in which grants are made——

Mr. HOLLAND. The religious institutions of higher learning and public institutions.

Mr. RIBICOFF. Funds are being made available each year to the extent of many millions of dollars to private nonsectarian and sectarian colleges and universities throughout this country, and they continue to be made available.

Mr. McCLELLAN. Mr. President, will the Senator yield?

Mr. RIBICOFF. I yield.

Mr. McCLELLAN. The Senator points out that if the Hickenlooper amendment were adopted, that would not deny to the local school authorities the right to employ technical assistants of their own. Is that correct?

Mr. RIBICOFF. They could employ whatever assistance they wanted, but they would not get any Federal assistance. That is correct.

Mr. McCLELLAN. There is no Federal statute now that prohibits local school districts and school institutions from employing such technical assistants as they may desire?

Mr. RIBICOFF. They certainly can employ any assistants they desire to employ.

Mr. McCLELLAN. So if the Hickenlooper amendment were adopted, they would not be prevented from employing such technical assistants as they might desire.

Mr. RIBICOFF. But they would not get any of this assistance from the Federal Government. Under the Hickenlooper amendment they can ask for this assistance and have an employee of the U.S. Commissioner of Education give them the assistance. But under the Hickenlooper amendment, if they themselves wanted funds to employ or train these people at their own institution, they could not get such funds.

Mr. McCLELLAN. I want it to be clear that local school districts are not prohibited from employing such technical assistants as they may desire throughout the country.

Mr. RIBICOFF. They can do anything they wish.

Mr. McCLELLAN. With their own money.

Mr. RIBICOFF. That is correct.

Mr. McCLELLAN. The Hickenlooper amendment would leave the situation such that if they did not have the funds, or did not want to use the funds to employ technical assistants, they could call upon the Commissioner of Education to supply what assistance they thought they needed.

Mr. RIBICOFF. As Federal employees.

Mr. McCLELLAN. As Federal employees.

Mr. RIBICOFF. That is correct.

Mr. JAVITS. Mr. President, will the Senator yield?

Mr. RIBICOFF. I yield.

Mr. JAVITS. I should like to spell out the scheme of this legislation. No effort is being made to strike section 403. Section 403 is the provision which allows the Commissioner, upon proper application, to give technical assistance to desegregating school districts.

Does the Senator agree that sections 404 and 405 are designed to supply personnel to be used under section 403?

Mr. RIBICOFF. Not necessarily. As I look at section 403, a local school district could request the U.S. Commissioner of Education to furnish assistance. However, under sections 404 and 405, as I interpret the sections, a local school board could develop its own pattern and have its own employees. It could establish its own system to jump this gap, or work out its problem during a period of desegregation. The local school authorities would do the hiring. The employees would be their employees, and not the direct employees of the Federal Government.

Mr. JAVITS. Let us see if that is so. In the first place, section 405, which deals with grants for inservice training, can be used only on the application of a school board.

Mr. RIBICOFF. That is correct.

Mr. JAVITS. So sections 405 and 403 go together. In both the Commissioner can do what is called for only on the application of a school board. And section 405 obviously supplies one of the services called for by section 403.

Similarly, under section 404 a local school board could attempt to jump the gap by sending people for training under section 404, but individuals could not be sent for training except under arrangements with the Commissioner.

Therefore, everything in sections 403, 404, and 405 flows directly through the Commissioner, but only if the local school board animates itself and acts, under section 403 by calling for technical help from the Commissioner, under section 405 by applying for in-service training grants, under section 404 by sending people to be trained where the Commissioner has arranged for it.

Mr. RIBICOFF. Technically, everything flows through the Commissioner. That is correct.

Mr. JAVITS. My point is that all that sections 404 and 405 would do would be to implement the program of, and prescribe the detail for, technical assistance provided for by section 403, which the amendment would not touch. If we are to render technical assistance, we must render it through those who have certain kinds of training. That is the first point: we should implement section 403. Second, nothing could be done except on the volition of a school board. In-service training could take place only on application. Sending people to the institute is also a volitional act if the Commissioner sets up the program. But if no one is sent to attend, there is no program.

Mr. RIBICOFF. That is correct. The problems will be so great and vast that the best way to solve most of them will be by in-service training. This was demonstrated in Chattanooga, where afterhours training in the school system was provided for several thousand teachers to help meet this problem as it came along.

Mr. JAVITS. I think it is crystal clear from the terms of this proposed legislation that nothing will happen unless the local school authority makes it happen.

Mr. RIBICOFF. That is correct. Nothing can be imposed upon the local school board.

Mr. JAVITS. That is the essence of this issue. We are not going to train a bureaucracy which will enforce something on people who may not want it. We are only attempting to establish means by which, if a local school board seeks help, it can get the help it seeks; namely, technical assistance from the Commissioner, or technical help, or the ability to send people to the institute that he establishes.

Mr. RIBICOFF. That is correct.

Mr. JAVITS. That is exactly what we are arguing about on this amendment. Nothing will happen unless the people want it. No one will get anything unless application is made. Nobody has anything wished on him. No one is forced into getting anything; only if he asks for help can be get it.

Mr. RIBICOFF. On February 5, 1959, President Eisenhower in his message to the Congress stated:

> I recommend legislation to provide a temporary program of financial and technical aid to State and local agencies to assist them in making the necessary adjustments required by school desegregation decisions.

President Eisenhower recognized this problem in 1959. It was his understanding and desire to work with local agencies.

What worries me is that by striking out the sections that are sought to be stricken out by the Hickenlooper amendment, it makes it much harder to solve these problems.

Mr. HICKENLOOPER. Mr. President, will the Senator yield?

Mr. RIBICOFF. I yield.

Mr. HICKENLOOPER. The Senator from Connecticut has seen fit to refer to my statement. The Eisenhower statement still obtains under section 403, which I do not propose to strike. It is technical cooperation and technical assistance and advice.

So far as concerns the ingenious argument used by the Senator from New York, there may be a technical basis for it in that the Commissioner cannot rush in and establish these facilities in schools unless the schools want them.

I invite the attention of Senators to the fact that in county after county and in city after city in the United States, the people did not know it was a depressed area until some Government

agency came in with a check and stated, "We have decided that you are a depressed area." The local authorities asked, "Who? Us?" The Federal authorities stated, "Yes." Thereupon the local authorities asked, "Is there money involved?" And upon the Federal authorities replying in the affirmative, the local authorities then stated, "We will be a depresesd area; we will take the money."

If Government money is involved, an agency will be created to receive the Government checks. There is no problem on that score.

Mr. RIBICOFF. The Eisenhower statement went beyond technical aid. The Eisenhower statement was:

I recommend legislation to provide a temporary program of financial and technical aid——

Mr. HICKENLOOPER. Aid where?

Mr. RIBICOFF. It provided—

to State and local agencies to assist them in making the necessary adjustments required by school desegregation decisions.

Mr. HICKENLOOPER. But not to pay the salaries of individuals, or assistance for their families, or their transportation.

Mr. RIBICOFF. The amendment that will be found in the Mansfield-Dirksen proposal does not propose to pay salaries, either.

Mr. HICKENLOOPER. We are not talking about that. We are talking about the House bill. It does provide for salaries and for transportation.

The elimination of the package amendment means that individuals will be paid stipends to attend on a full-time basis. I suppose that under the package amendment, if one went in for only a week, he would not be paid a stipend, but on a full-time basis this provision would authorize such payment. Only the package amendment is eliminated from the House bill, containing the allowance for dependents. The provision does not eliminate transportation costs, and still takes care of subsistence.

Mr. HUMPHREY. Mr. President, will the Senator from Connecticut yield?

Mr. RIBICOFF. I yield.

Mr. HUMPHREY. I say most respectfully that the Government of the United States pays transportation costs, for example, to members of the military and the Military Establishment to attend particular, specialized training courses. It not only pays stipends, it not only pays travel allowances for Americans, but also for people from foreign countries who attend our schools or military establishments under the National Defense Education Act.

As the Senator from Connecticut has pointed out, these allowances are paid, and paid regularly. Congress votes these measures without even so much as a ripple. The language in the package substitute will be the item basically affected by this amendment, because while it technically is the House bill and the House language, it is well recognized that if cloture is invoked, the substitute will be called up. If we do not have the votes for the substitute, then surely we shall not have the votes for the House bill; and if we cannot obtain cloture, we shall not have any votes for anything.

Thus, we are dealing in the realm of reality and not in fiction. The language in the substitute is as follows:

Individuals who attend such an institute on a full-time basis may—

Not shall—

may be paid a stipend for the period of their attendance at such institute in amounts specified by the Commissioner in regulations, including allowances for travel to attend such institute.

That merely puts the responsibility for the funds that are available upon the appropriate committees of Congress. When the Appropriations Committees of the two Houses start to quiz the Commissioner as to the funds which are being asked for and to be appropriated, as to how they will be spent, and the amounts that will be spent, there will be plenty of detail available.

This will be the least of the Government alleged extravagance.

Take the cities which have already come through the process of desegregation, such as Baltimore and St. Louis, to mention only two. One of the reasons they were able to do this job with reasonable effectiveness was that they provided for the training of their teachers so that they would have this experience. They provided for specialized training.

The only purpose of section 404 in title IV is to ease the transition. The court has stated that the law of the land is that segregated schools must cease to exist. If, on the one hand, we are to use the power of law to enforce constitutional provisions and thereby do away with segregated schools, then why does not Congress show some sense and understanding, instead of being stubborn about it, and help to train people to make the program of desegregation workable.

For many groups, individuals, and communities this will be a traumatic experience. All that we seek to do in section 404 is to permit the Commissioner of Education, working in cooperation with State and local authorities, to arrange through grants or contracts with institutions of higher education for the operation of short term or regular session institutes, which provide training designed to improve the ability of teachers, supervisors, and counselors.

Every Senator knows that desegregation poses specialized educational problems. We know that if we can train teachers, supervisors, and counselors, and others to deal with this problem, and train them on the basis of other experiences on the part of other teachers in other parts of America, education will be better.

For the life of me, I cannot see why, on the one hand, we invest the power of the Federal Government to break down the barriers of segregated schools and then, on the other hand, do nothing to make the transition reasonable, to make it effective, or to recognize the problems inherent in such a social adjustment.

Everyone knows that there are serious problems involved in this situation.

Mr. RIBICOFF. In answer to the Senator from Minnesota, as to the question raised by the Senator from Iowa about the costs of transportation, what is being proposed is no different from what is now allowed in all teachers' institutes in the State of Iowa, the State of Connecticut, the State of Minnesota, or the State of New York. That is being done exactly on the same basis with transportation. There would be a monthly stipend of $75 available. This is something which has been in effect.

As the Senator pointed out cogently and clearly, some of the greatest problems facing the country today will come after the passage of the civil rights bill.

Time and again I have spoken on the floor of the Senate that I believe it is a mistake to try to gloss over these problems. What we are trying to do is to prepare for the transition period. This is so important for the future of our Nation. This is so important for the future of our people.

Let us be frank with one another. One of the greatest problems we shall face is how a teacher handles his classes, when he is suddenly faced with the education of children who have come from slum areas, with whom he has had no previous experience.

The type of school problems that children pose in the maple-lined streets of Iowa, or the maple-lined towns of Connecticut, or Minnesota, all coming from the same social background, the same economic background, the same racial background, and the same ties of heritage, are different problems from those we shall find with children who are so-called deprived children coming from the slum areas—children without fathers, children without discipline.

These are great problems, and we must recognize them for what they are. Today, America is a tinderbox, and if we do not solve problems of that character, we shall not be able to solve any other problems that will remain in this Nation after the civil rights bill has been enacted into law.

While it is important to enact the civil rights bill, let us help to ease the problem of transition which will come about upon its enactment. This is all that we are trying to do, and it is important for Senators to understand that.

I shall be frank. I did not fully understand these problems when I was Governor of the State of Connecticut. I do not believe that many of us can recognize them until we deal directly with the great problems of the slums, and the deep and grave problems that must be faced in their eradication. But I did come to recognize them more fully when I was Secretary of Health, Education, and Welfare. I suddenly found another type of America. I saw an America that so few of us understand, that so few of us have ever had any experience with. I have been in the slum areas, and I know the problems which exist there.

Let us not kid ourselves. The average teacher comes from a middle-class background. The average teacher has a middle-class philosophy. The average teacher has no experience in dealing with youngsters who come from slum areas, youngsters who do not even know the rudiments of ordinary behavior in a middle-class society.

What we are trying to say is that if we have a school board that wishes to ease the problems of its community as desegregation is taking place, if it wants to do it on a local basis, if it wants to have in-service training, in which it arranges on a Saturday or after 4 o'clock to help school personnel to take specialized courses in the community, then we should be willing to help. This will not be done primarily, as I see it, by sending teachers to institutes at a university; because not only is there a limited number of teachers that could be sent, but the job will have to be done in the cities where classes are arranged, and where classes are attended. Experts who have been through these experiences will come into the community and into the classroom to speak with parents, to speak with pupils, to speak with principals, and to speak with the administration.

What we are seeking is to have a program that will be helpful to communities that will have to live with the problem. I do not believe that in the villages of Iowa, Connecticut, or Minnesota we are going to solve all the problems that will arise in the desegregated communities of Mississippi, Alabama, and Georgia.

It is ironic that we stand here and plead with Senators from the very areas which are most affected. For heaven's sake, let us do it this way. I say to them, "We all know you will have great burdens, and we want to help ease those burdens."

Mr. President, this is not only a problem in Mississippi or Alabama or Louisiana. This is a national problem. The fact that we are dealing with civil rights today, the fact that we are about to pass a civil rights bill, indicates that this is a Federal problem, and a national problem.

If it is a Federal problem, and if it is a national problem, I am willing to have the tax dollars of the people of Connecticut used to ease the special, complicated, burdensome problems that will be faced by the people of Florida, Georgia, and Alabama. I do not think we can better spend tax dollars than to help people ease their problems, and to help them face the arduous tasks that they will have to face in trying to solve these problems.

Mr. PASTORE. Mr. President, will the Senator yield?

Mr. RIBICOFF. I am pleased to yield to the Senator from Rhode Island.

Mr. PASTORE. I congratulate the distinguished Senator from Connecticut for his eloquent presentation of what these sections attempt to do.

If I understand the Senator from Iowa correctly, he is under the impression that the language is drawn in such a broad fashion that this will be more or less a grab-bag provision, under which the Federal Government will pay subsistence allowances and vast amounts of money to bring about the institutes to which the Senator from Connecticut has referred.

Could he address himself to that point? Is this intended to be a giveaway program, a big program, a big grab-bag program? What are we trying to do?

Mr. RIBICOFF. We are trying to do exactly what now is being done in the State of Rhode Island, the State of Iowa, and the State of Connecticut. The distinguished Senator from Iowa knows of the institutes at Iowa State University. Teachers who teach in the schools of Iowa attend institutes in the summertime, and they receive the great big stipend of $75 a month.

While training at these institutes in Iowa, Connecticut, or Rhode Island, they receive their transportation from their home to the place where the school is located. They go there for a number of weeks. They are being trained in the fields of counseling, guidance, mathematics, science, and languages.

Mr. PASTORE. They live on the campus. Is that correct?

Mr. RIBICOFF. They live on the campus, and they receive $75 a month. It is estimated that the entire cost for fiscal year 1965, for the entire institute program, will be less than $10 million. The taxpayers of the State of Connecticut will contribute to that $10 million fund. As I have studied this problem, from my experience as Governor and from my experience as Secretary of Health, Education, and Welfare, I believe the big job will be done through in-service training. This is a vast job that cannot possibly be done solely in institutes on the campuses of colleges. The average teacher will not be able to give up his summer for $75 a month. He cannot do it. The average teacher today does not make enough money with which to support himself. The average teacher who must support a family must take another job as a ditchdigger, or as a grocery store clerk, or must take some other job. The average teacher, if he has a family, must use money to buy shoes and clothing for his children. He cannot afford to go to these institutes. As I envisioned the problem that our people will face I think of Chattanooga.

Mr. HICKENLOOPER. Mr. President, will the Senator yield?

Mr. RIBICOFF. I am pleased to yield.

Mr. HICKENLOOPER. I believe the amount is $75 a week, plus $15 a week for subsistence, not $75 a month.

Mr. RIBICOFF. I have the testimony before me.

Mr. HICKENLOOPER. I have just received the information. It may or may not be accurate, but I assume it is accurate.

Mr. RIBICOFF. It will be double-checked. As I see the problem and the program that took place in Chattanooga——

Mr. HICKENLOOPER. I have the National Defense Education Act before me. The provision is $75 a week for each individual and $15 for one or more dependents.

Mr. RIBICOFF. The dependents' allowance has been eliminated from the Mansfield-Dirksen substitute.

Mr. HUMPHREY. This was a matter which disturbed the Senator from Minnesota considerably, that under the National Defense Education Act there was the matter of the stipend and allowance for families. In the pending bill, despite the tremendous problems to which the bill addresses itself, and under which an individual would attend an institute on a full-time basis, not a part-time basis, he would be paid a stipend for the period of his attendance, at rates to be established by the Commissioner.

No family allowance is provided. It is not possible to get a trip for the family across the Nation, to a college that a teacher would like to attend, perhaps in Hawaii, Florida, Rhode Island, or in Massachusetts, Minnesota, or Montana. The stipend is limited. The teacher gets travel expenses for himself.

Mr. RIBICOFF. Let me explain what took place in Chattanooga, and what we are trying to do. When Chattanooga was first faced with the problem of desegregation, it had a very forward-looking superintendent of education, Benjamin Carmichael, who called in various educators who had lived with the problem of desegregated schools, to establish training programs in Chattanooga.

They first took a key group of high school principals and teachers who had received intensive training in the problems that would be met in Chattanooga.

Classes were organized in their spare time, after school hours. Other personnel from the Chattanooga school system were asked to come in and discuss the problems that would be faced.

When a community has segregated schools, and then suddenly is confronted with desegregated schools, the problems connected with it are many and complicated. They are full of heartaches and headaches. We recognize that fact. It is unfair to pass a bill like this and allow all these problems to accumulate. I have said time and time again that it is one of the greatest illusions in America to tell the people of this country that the day after the President signs the bill all of the problems will have been solved. The day after the President signs the bill, there will still be many problems. I feel that it is our duty as responsible Senators to help ease some of the problems that we shall face. Some of the toughest problems will be in the field of desegregation, when a community, after 100 years of segregated schools is suddenly confronted with a change in its educational and social patterns. The problems are tough and complicated, and will be hard to solve.

We intend to let the local people, at their request, provide their own programs. They will not merely ask the Commissioner of Education to sent technical assistants. That can be done under section 403. However, under sections 404 and 405, if the local communities wish to set up training programs in their school systems, they can do so. Federal grants will be provided to help ease the cost of those programs.

Mr. PASTORE. Mr. President, will the Senator yield further?

Mr. RIBICOFF. I am pleased to yield.

Mr. PASTORE. The Senator is telling us that the action must be initiated by the local authorities. Is that correct?

Mr. RIBICOFF. Without question. Under no circumstances could the Federal Government impose its will or send its people in unless specifically requested by the local community itself. Without such a request, the Federal Government

would be completely debarred from doing anything.

Mr. PASTORE. In other words, if a local community feels that its teachers should be informed, in order to better understand the problems of integration in their schools, and decides that it is without funds with which to carry out such a program, it can call on the National Government to provide certain grants to assist it in bettering the situation in its schools. Is that correct?

Mr. RIBICOFF. The Senator has stated it absolutely correctly.

Mr. PASTORE. I do not see how anyone could be opposed to it.

Mr. MAGNUSON. Mr. President, will the Senator yield?

Mr. RIBICOFF. I am pleased to yield.

Mr. MAGNUSON. As I understand, this is a laudable program, but it depends upon whatever money is appropriated for it. Is that correct?

Mr. RIBICOFF. The Senator is correct.

Mr. MAGNUSON. The Appropriations Committee will not allow a wasteful program in this respect, but only what is really necessary. Is that not correct?

Second, I know the Senator from Connecticut knows that when we discussed this amendment we made a very good history—if we did not make it then, we are making it now—showing that the teachers will attend colleges or institutes at the closest available place. They are not to travel all over the country, from one end to the other, merely because they want to go. They will have to attend the institute that is most closely available to them. The program will be a modest one. In my opinion, the Committee on Appropriations will not allow anything other than that.

Mr. RIBICOFF. What has been appropriated for such schools under the National Defense Education Act program? If a teacher can get training at the University of Iowa, she must take the training in Iowa. If a teacher in Washington can get training at the University of Washington, he must take it in Washington. If he or she can take classes at the University of Minnesota, he or she must take them in Minnesota. If in New York, the training can be obtained in New York at Syracuse University, Cornell, or Columbia.

Mr. MAGNUSON. As Secretary of Health, Education, and Welfare, the Senator from Connecticut carried out such a program.

Mr. RIBICOFF. Under no circumstances would I countenance a program that would have allowed a Connecticut teacher to go to California to get what he could have obtained in Connecticut. I do not believe any Secretary should.

Mr. HUMPHREY. Mr. President, will the Senator yield?

Mr. RIBICOFF. I yield.

Mr. HUMPHREY. Is it not also true that the State commissioner or superintendent of education first attempts to design the most helpful and appropriate programs, seeking only the cooperation of the U.S. Office of Education? The Federal Government only lays down the guidelines, and the local authorities work with the Federal officers, to see to it that the local program meets the local needs.

Mr. RIBICOFF. If we find that the local authorities want no part of it, there is no program to work out. It is established only when there is a specific request from a local authority.

Mr. JAVITS. Mr. President, will the Senator yield, so that I may propound two questions to the Senator from Minnesota, who is in charge of the bill?

The Senator understands the bill to provide that no technical service or personnel trained under the bill, or otherwise, may move to a local school board unless it is "upon the application of any school board, State, municipality, school district, or other governmental unit"—I refer to page 20, lines 21 through 23—"legally responsible for operating a public school or schools."

Mr. HUMPHREY. Is the Senator referring to the House bill?

Mr. JAVITS. I am referring to the House bill.

Mr. HUMPHREY. What page?

Mr. JAVITS. Page 20, lines 21 to 23, inclusive.

I am referring to the bill that is designated "Printed for the use of the Senate."

My question to the Senator from Minnesota is whether or not it is a fact that under section 403 the only technical assistance that will move to local school boards will be upon the application of the school board, State, municipality, school district, or other governmental unit legally responsible for operating a public school or schools, and that such assistance will be provided only upon such request and only with respect to the school or schools under the jurisdiction of such governmental unit.

Mr. HUMPHREY. The Senator is correct. Section 403 provides:

> The Commissioner is authorized, upon the application of any school board, State, municipality, school district, or other governmental unit legally responsible for operating the public school or schools, to render technical assistance.

This applies to the program of technical assistance of training institutes.

Mr. JAVITS. So any personnel "piped" in to be trained would come because they asked for it.

Mr. HUMPHREY. It would be on the initiation of the local school authority, either on the local or State level.

Mr. JAVITS. Is there anything in section 404 that would prevent the local authority from utilizing whatever facilities are available to it under State law, alone or together with Federal aid, to fulfill the purposes of the section? In other words, this section, instead of placing the responsibility on the Commissioner alone, enables the Commissioner to coordinate his responsibility with whatever the local authority is able to do; does it not?

Mr. HUMPHREY. I express the hope of those who are deeply interested in this subject that there will be a cooperative relationship, because if the local authority is to request assistance, it follows that the local authority is prepared to do something about the program.

Mr. JAVITS. To use its best efforts.

Mr. HUMPHREY. To use its best efforts and its available facilities. I would go further and say, as the Senator from Connecticut pointed out a moment ago, that in the training institutes, where a State college or university or some technical institute is competent, and has courses of instruction within the State, the teacher would go to the State institution within that particular area or within that particular region.

In other words, we are not legislating trips for teachers to take a look at "America the beautiful." We are attempting to legislate training institutes and specialized training for teachers who are going to face difficult, specialized problems. We are hopeful that by means of these institutes and through the cooperation of the Office of Education at the Federal level, plus the cooperation of State and local school authorities, it will be possible to develop a better teacher-training program for desegregated schools.

Mr. JAVITS. This question was thoroughly debated in the other body. Those who favor the bill are trying to improve it so that it will become law. Therefore, what the other body did in this case is important. An effort to strike these provisions in the other body was defeated. One thing the House did was to insert the language requiring that an applicant be a governmental unit, legally responsible for the operation of a public school or schools.

We are attempting to carry out, and even improve, in the package, the result of the debate in the other body.

Mr. HUMPHREY. I may add that in the package substitue we have deleted language that could have opened up what has been characterized as a "grab bag" approach.

Mr. JAVITS. Exactly.

Mr. HUMPHREY. We have seen to it that the individual who is involved as a teacher or supervisor or counselor is the one who will receive the training. We have not left the provision wide open, as in the National Defense Education Act.

If the distinguished Senator from Iowa [Mr. HICKENLOOPER] will examine the National Defense Education Act, he will see—and I believe we all voted for it—that a person could transport his whole family.

Frankly, it might not have been a bad idea to have allowed such a provision to remain in the substitute package; but this was one of the concessions we had to make. Nevertheless, a teacher who desires to take summer training in highly specialized programs relating to teaching in desegregated schools might very well want to take his family along with him.

He must move his family, find a home in the area for the family, and at the same time maintain his home where he came from. As Senators ought to know, that is a somewhat difficult problem. I might mention to the American people that Congress provides for its Members what we might call a little allowance. Every Senator receives an allowance to make up for his being away from home. We can deduct $3,000 for that purpose. But we do not provide it for any teacher. Senators might very well want to do for

teachers what they do for themselves. If we maintain a home in our home State and have a home here, we can deduct, for our attendance at this "training institute" called the Senate, which we do not provide under the program for desegregated education. When a teacher takes specialized training, it is a requirement that the teacher may not deduct for his living expenses. He pays out and pays out.

What we have attempted to do in the proposed legislation is to provide him assistance in the form of a minimum stipend. If it is $75 a week, that surely is not what I would call getting on the "gravy train." If it is, it is exceedingly thin gravy. If it is for travel expenses for the teacher, it does not represent any junket. We in Congress ought to be somewhat considerate of others who occasionally travel at Government expense.

Mr. JAVITS. Mr. President, will the Senator from Connecticut yield further, so that I may complete my statement?

Mr. RIBICOFF. I am pleased to yield to the Senator from New York.

The PRESIDING OFFICER (Mr. NELSON in the chair). The Senator from New York is recognized.

Mr. JAVITS. Mr. President, lest the public have any illusions about the $3,000 deduction, I point out that I am one Senator who pays out considerably more than that amount for that purpose, and the deduction is not at all adequate.

Mr. HUMPHREY. Indeed so; and I would just as soon debate that point and point out the inadequacy of the little penny ante involved. Certainly I should like to see something done for the teachers.

Mr. JAVITS. As has been pointed out, President Eisenhower asked the Congress for technical and financial assistance to desegregating school districts. He believed that it was a key to the civil rights program, and that it was the best way to facilitate the transition to desegregation.

In addition, the Republican national platform of 1960 stated, reaffirmed:

> Our continuing support of the President's proposal, to extend Federal aid and technical assistance to schools which in good faith attempted to desegregate.

The Democratic Party's 1960 platform called for the same thing, as follows:

> To facilitate compliance, technical and financial assistance should be given to school districts facing special problems of transition.

And in the 1963 report of the Civil Rights Commission, the Commission recommends exactly this, based on its studies and surveys. The part of the Commission's report dealing with education concludes with the following unanimous recommendation:

> That the Congress authorize the U.S. Commission on Civil Rights to provide technical and financial assistance to those school districts in all parts of the country which are attempting to meet problems resulting from school segregation or desegregation. Such technical assistance should include the results of long-range research on the development of methods and techniques to meet the educational needs of all underprivileged public school pupils.

In short, it seems to me that there has been widespread agreement that this is an effective and economical way to deal with the problem we face.

In a number of respects, technical assistance is definitely the best way to proceed. It answers the argument that many school districts need a little time and facilities for training, in order to make this transition.

Furthermore, if there is to be technical assistance under section 403, which is not touched by this amendment, we must include the training which is contemplated under section 404.

In addition, it is not sound to argue that a function should be performed, but that adequate means with which to perform it should not be provided because if sufficient funds were provided, their expenditure might be abused. After all, those who deal with the program will be adults; and if we believe that too much money is being spent or if we find that it is being used improvidently, the Appropriations Committee will recommend that the amount of the expenditure be reduced and the Congress will vote to reduce it. After all, that is what the Congress is for.

On the other hand, to take the position in advance that those in charge will not be wise enough to deal with the program in an intelligent and effective way, is an argument which I cannot support.

Therefore, I hope very much the pending amendment will be rejected.

Mr. RIBICOFF. Along that line, let me say I think it is also interesting, in connection with the question of in-service training, to note that under the Smith-Hughes Act on vocational training—and that act has been in effect for many years, and is for the purpose of upgrading the competence of teachers of vocational training—there are work shops and there is training to teach the teachers and to bring their education up to date. Two years ago, under the National Defense Education Act, more than 36,000 teachers attended in-service training sessions in their own States.

So instead of just providing technical assistance from the Office of Education or instead of just having some teachers go to universities, I hope we shall emphasize the in-service training, because I believe that is where the major amount of progress will be achieved.

Mr. JAVITS. I thank the Senator from Connecticut.

Mr. DOUGLAS. Mr. President, will the Senator from Connecticut yield?

Mr. RIBICOFF. I yield.

Mr. DOUGLAS. I thank the Senator from Connecticut for yielding.

As has previously been remarked, I wish to state that I hold in my hand the Legislative Calendar of the Senate for today. On page 3, I find set forth the composition of the Senate's standing committees. Will the Senator from Connecticut examine the roster of the Appropriations Committee, and state, based on his observation of the first 9 or 10 names on the list of the committee members, whether in his judgment there will be any real danger that the Appropriations Committee will vote to flood this work with excessive appropriations?

Mr. RIBICOFF. Of course, far be it for me to anticipate at this point what the Appropriations Committee would recommend or would not recommend; but in view of the composition of the committee, I imagine that each and every one of its members would give very, very close scrutiny to the requested appropriations with which to meet this need and to implement this provision. I do not imagine there will be any junkets or good times in connection with the efforts of the schools to jump the gap to desegregation.

Mr. DOUGLAS. Does the Senator from Connecticut imagine that the dominant members of the Appropriations Committee would vote to deluge this work with vast appropriations?

Mr. RIBICOFF. I am confident that once this measure is enacted, the Appropriations Committee will responsibly perform its duty and will recommend appropriations sufficient to enable this work to be done properly.

Mr. HICKENLOOPER. Mr. President, I yield 15 minutes, or such additional time, if it is needed, or more time if he desires to have it, to the Senator from South Dakota [Mr. MUNDT].

The PRESIDING OFFICER. The Senator from South Dakota [Mr. MUNDT] is recognized.

Mr. MUNDT. Mr. President, I have listened with great interest to the debate today on the pending Hickenlooper amendment.

It seems to me the purpose of this section of the bill is really quite clear. As has been pointed out—and I have not heard any successful or effective refutation of the statement—section 403, which is untouched by the Hickenlooper amendments, provides, and properly so, for the kind of necessary guidance and assistance that local school groups, school boards, school districts, and governmental units can logically desire or require, from the standpoint of dealing with the admittedly tricky problems of adjusting to the new integration programs set up under the bill, and established before now in accordance with the decisions of the Supreme Court.

I am glad the Hickenlooper amendment does not disturb section 403, for I believe it serves a useful purpose. I believe it important that when one of these local operating units makes a request of the Federal Government or of the Commissioner of Education, sufficient talent be provided, if it is available; and this provision should be left in the bill.

However, it is very curious to observe how sections 404, 405, and 406 would operate; and they are the ones which would be affected by this amendment, which I hope the Senate will adopt.

In the first place, they are totally unnecessary. They merely give another opportunity to local school entities or colleges or universities to dip into the funds supplied by the taxpayers at the Federal level. There is no other reason whatever for including these three sections in the bill. If these sections were proposed as separate legislation 2, 3, or 5 years from now, on the basis of a record showing that such a subsidy was necessary, I think it proponents then would

have some logic to their argument. But at this time they merely anticipate some needs which may or may not develop.

Certainly they know that when subsidies are made available, those who would be able to get the subsidies will seek them. That is exactly the situation provided for by this part of the bill. The first subsidy is to go to colleges and universities, but it would not be made available in the way that the usual Federal aid to education should be made available—in other words, by means of a subsidy of colleges and universities, which would treat them all equally, and with the establishment of criteria by which to determine who will receive the subsidies and who will not.

There is involved here a distribution of taxes paid by all to institutions supported and favored by some. This is certainly a most unhappy formula to become a precedent in any program of Federal assistance to education. I speak as one who has voted for a great number of programs of Federal aid to education, but who does not propose to vote for a development which would provide that the Commissioner of Education could use tax money collected from the general public and, by his own intuition or political impulse, or through use of an ouija board, determine which of the great universities and colleges should get the subsidies and which should not.

Mr. RIBICOFF. Mr. President, will the Senator yield?

Mr. MUNDT. I am happy to yield to the Senator from Connecticut, because he lives in an area of the country in which the universities have been very successful in getting these subsidies in the past.

Mr. RIBICOFF. Will the Senator name one Secretary of the Department of Health, Education, and Welfare, or one Commissioner of Education, who has played favoritism with any grant or program involving any of these institutes that have been established? Will the Senator name one college or university in the United States that has been prejudiced by such a decision?

Mr. MUNDT. I was not talking about prejudice resulting from such a decision. For example, I was talking about the amazing good fortune that the colleges and universities in the Ivy League have had in contrast with that of the colleges and universities of the Middle West. I do not know what the reason is. I know the results. I am not talking about prejudice. I say that I resent a program which takes taxes from all the people and distributes them to the colleges favored by some of the people. I do not believe that that is a firm basis for the distribution of any Federal assistance to education.

Mr. RIBICOFF. If the Senator will pause, I shall give him the statistics in respect to all the States in the Nation under various titles of the National Defense Education Act.

Mr. MUNDT. I shall be happy to let the Senator insert the statistics in the RECORD if he has them available.

Mr. RIBICOFF. I believe the Senator has been very unfair in casting a slur upon the Federal Government and the men who have occupied the position of Secretary of Health, Education, and Welfare or who have occupied the position of U.S. Commissioner of Education.

I stand behind the fairness of every one of my predecessors and the present occupant of that position. I do not recall any decision ever having been made during the time when I was Secretary, and I do not recall ever having been informed that any previous Secretary had ever made a decision, in which funds voted by the Congress of the United States were used as a grab bag in the field of education. The entire direction and the entire purpose has been an equal distribution throughout the country. In South Dakota, Wyoming, Iowa, New Hampshire, Georgia, and in every other State in the Union, colleges, both public and private, have been beneficiaries of the National Defense Education Act and its various programs. I believe it is very unfair of the Senator from South Dakota to stand on the floor of the Senate and slur the Department of Health, Education, and Welfare or the U.S. Office of Education.

Mr. MUNDT. The Senator from South Dakota is merely referring to the facts. He is not slurring anyone. He is unhappy about the way the money has been distributed. He does not know why it is distributed in the way it has been. He recognizes that it would not have been distributed in that manner had the legislative bodies of Congress done their duty by writing specific criteria into the law, so that there would be an automatic distribution in conformity with some formula other than impulse. That is not a slur on any Commissioner of Education. They all have their impulses, or perhaps a ouija board is available to them. All I know is that the results indicate that certain colleges are very successful and fortunate in what they get; others are not so successful and and fortunate.

Mr. RIBICOFF. I say to the distinguished Senator from South Dakota that the floor of the Senate should not be used for the purpose of making irresponsible statements. In the field of guidance and counseling last year the State University of South Dakota received a contract for $38,808 and the State University of Connecticut—and I think there is a much greater population in Connecticut than there is in South Dakota—received a contract for $31,348. What other State does the Senator want to know about? Name a State.

Mr. MUNDT. The Senator does not want to know any information about individual States and besides——

Mr. RIBICOFF. The Senator made a statement about favoritism. I wish to know where the favoritism is. Name the State. I have the figures here.

Mr. MUNDT. The Senator is talking about one particular program.

Mr. RIBICOFF. Name any program.

Mr. MUNDT. I am talking about the overall distribution of funds for colleges and universities on the basis of grants-in-aid where there are no specific criteria. I do not have the figures available, but I have seen them in committee meetings. I have been told on good authority, for example, that in Cambridge, Mass., alone, over $100 million annually goes from the Federal Government to the institutions of that fine community. They are great schools and they have had good fortune in getting the funds. I feel that we ought to write into the law criteria for the distribution of these funds. When we distribute taxpayers' money, we should not make it available to some and not to others. That in itself is discrimination.

Mr. RIBICOFF. The distinguished Senator is now talking about funds for defense research that go to institutions such as Harvard University. The Senator is not speaking about funds that go to institutes for teacher education. The Senator is speaking about research grants given for defense and NASA. Harvard, MIT, the University of California, and other schools, have the capacity to undertake a high volume of such research.

Mr. MUNDT. Of course, the schools which the Senator has named have the capacity and the great good fortune to obtain the funds, but they do not happen to have the exclusive capacity to undertake the work. There are many other fine institutions in other areas of the country that have not had the good fortune to obtain the money.

Mr. RIBICOFF. If that is how the Senator feels, I point out that I do not recall in my reading that the Senator from South Dakota has proposed an allocation formula on the floor of the Senate. I do not believe the floor of the Senate should be used for irresponsible statements.

Mr. MUNDT. The Senator from South Dakota will stand squarely on his statement.

Mr. RIBICOFF. On what statement does the Senator stand?

Mr. MUNDT. On whatever I have said.

Mr. RIBICOFF. Which has absolutely nothing to do with this field.

Mr. MUNDT. Then I stand on that. I stand on what I said. I repeat what I have stated.

I stand on the statement that I do not believe we should become more deeply involved in programs of Federal assistance to education whereby we would further permit the Government to take money which all taxpayers pay into the Federal Treasury and distribute it to certain schools and communities without governing criteria or without a formula but simply in accordance with the impulse of the administrator making the distribution. On that statement I stand.

Mr. President, continuing with my argument, I point out that we would have, first, a subsidy for certain segments of higher education, but not for all. There would be no criteria, rule, or standard for distribution of the funds. Under this program the Commissioner of Education would say that one school would receive the funds and another would not, although the money comes from all the people. I do not believe that such a program is sound.

Second, we would have subsidies to the individuals who would attend the schools. They would receive not only free tuition—and this is important—but, in addition, to a free education they would get a stipend. How much that would be

I do not know. Under the National Education Act, for example, in respect to a language school the amount might amount to as much as a couple of hundred dollars a month.

The terms of the stipend, incidentally, are not spelled out. There is another open end commitment. The stipend could be what the Commissioner of Education might say it should be. I happen to serve on the Committee on Appropriations, and I know that we do not write substantive legislation in that committee. We can determine the overall amount, but the manner in which the fund is administered, and the interpretation of the bill, is largely left up to the Commissioner.

This bill does not indicate whether the stipend would be large or small. But it would be more than a stipend, because expenses also would be paid. So a student could select the most distant college from where he lives and a college located in the most salubrious climate and there go to school and receive his expenses and his stipend.

Enthusiastic supporters of the measure tried to include a provision that the expenses of all dependents should also be paid.

In the Smith-Mundt bill, of which I happened to be one of the cosponsors, we had such a provision until it developed that a student appeared with several wives, I believe, 13 children and 4 wives—at least a family that could barely be carried in a Greyhound bus—and the student said, "I want expenses and allowances for myself and my family."

Finally, on the floor of Congress—and I disagree very definitely with my friend from Connecticut, for I maintain that Congress is the proper place to write such legislation—here on the floor we enacted a provision so that such a thing could not take place any more. We corrected that situation. Now we are moving in the same direction. True, the provision is in the House bill. Perhaps if the substitute bill is adopted it will not be there. But the impulse to include it is present, and at the first opportunity the proponents have to include it, there will be included tuition, stipend, traveling expenses, and compensation, if possible, for the families and all of their dependents.

Then there is involved a subsidy to school boards, because money would be made available to them to train teachers and employees, specialists, and the various terms for the grants would be left entirely in the hands of the Commissioner.

Mr. President, it does not seem to me that a responsible legislative body should delegate to a Federal Commissioner authority to spend the taxpayers' money according to his own impulse, with no guidelines, with no criteria at a time when no need has been established, and at a time when section 403 provides every conceivable kind of technical assistance and guidance, and personal consultation and examples so that local communities can get the benefit of the national experience in meeting their problems.

The Senator from Iowa is correct in his amendment that we should not make this open-end commitment, or open-end invitation to the school boards, colleges, and universities in this important area of public affairs.

It has been pointed out that something similar is done for language schools under the National Defense Education Act. That is true. But may I point out that one of the great reasons why it is so difficult to bring the Federal Government to the assistance of local communities in the field of public education is the very reasonable and understandable fear that the Federal Government then wants to muscle into the curriculum and to establish certain educational controls operating from the center. These Federal politicians want to have some modicum of control over what is taught the children. They want to impede the latitude of the school boards in determining what they want to have taught and by whom.

So, whenever we talk about Federal aid to education in any area, we try to provide every possible assurance that we are not going to destroy the concept of local control for local schools, which has built in America the greatest educational system in the world.

We write in every conceivable legislative safeguard in that connection. But here in this bill we do not write in any safeguards. We write in an open invitation instead to politicians and others to move into public areas, into public fields which do not involve public policies, such as the linguistic field or mathematics, but we are dealing here with social and political questions, with human beings as they are related in their conduct toward one another.

Nothing could lend itself more to political control, to thought control, to trying to determine from the Federal Government what we want the youngsters in the public schools to think, and what we want them to carry home to try to influence the concepts and thoughts of their elders and their parents.

Mr. HICKENLOOPER. Mr. President, will the Senator yield?

Mr. MUNDT. I yield.

Mr. HICKENLOOPER. I have heard a great deal of argument today that these grants or contracts will be done only upon the request of the school boards in a State, municipality, school district, or other government unit legally responsible for a regulated school district.

Mr. MUNDT. That is true in section 403 which the Senator leaves in the bill. But it is not true in other sections.

Mr. HICKENLOOPER. I understand that. That is in section 403, which is not touched by this amendment.

Mr. MUNDT. That is correct.

Mr. HICKENLOOPER. But the argument is used—and I have heard it used for almost 20 years on the floor of the Senate—that local school authorities will not take undue advantage of this program, that they will be circumspect and limited. But there is not a week that goes by that the Comptroller General of the United States—perhaps not every week, but almost every week, or every month—does not submit reports showing utter wastage of appropriated money, which may not be the fault of the Appropriations Committee. But when Federal money gets into the hands of the administrators, the evidence is legion of the waste and dissipation of that money.

Does the Senator know of a public institution in the United States, especially in his own State, where there is apparently the availability of some Federal funds to be acquired by an institution, where the institution does not send its representatives here to see when they can get the money, how much money they can get, and whether they can get more than they originally thought?

Mr. MUNDT. I say to the Senator from Iowa that under the concept provided for in the bill, any school board, university, or college which did not send its representatives to Washington would be derelict in its responsibility to its taxpayers. Its own taxpayers have to contribute to the fund. And unless they try to get their share of whatever the Appropriations Committee decides is the proper amount to be divided up, somebody else will get it. I believe that the wheel that does the squeaking will get the grease.

Mr. HICKENLOOPER. That is the point of the matter. I agree that this is the place to set the rules of the game, on the floor of the Senate. I have always understood that the House and the Senate constitute Congress and are the legislative branch of the Government.

Mr. MUNDT. It is an old-fashioned reactionary notion to some people, but I still think it is a good idea.

Mr. HICKENLOOPER. If money is available from the Federal Government, any municipality or public body can be criticized if it does not try to get every last dollar that is available through Federal appropriations and through the authorization acts. They all ask for every last cent they can get—the Commissioner of Education, as well as other bureaucrats. I think their institutions are just as subject to Parkinson's law as is any other institution. As bureaucrats get more and more authority, they expand their jurisdiction a little and get more employees. Then the supervisor will get a different rating and more salary because he has more employees under him. And so it goes. This is only another example of the Federal Government moving into an area that has heretofore been successfully operated in the United States as an area of private responsibility for teachers to equip themselves and for institutions to establish under their own power, as a rule, the courses which are necessary to give teachers adequate training. If this authorization is voted, the demand will arise. It is characteristic, and it always has been.

Mr. MUNDT. Especially in the area of defense contracts, which has been alluded to, they have been spread out and ramified to include a great many activities, so that now it has reached the point where colleges and universities which have had unusually good, four-leaf-clover success in obtaining large grants appear before our Appropriations Committee to make a complaint that can be heard around the world when we try to put some limitation on the funds to be used in administering the colleges and universities. They state, "We are so busy spending the Federal money, and it takes

so much time of the deans, the college presidents, the comptroller, and the faculty members to utilize this Federal money that we have to pay a part of the administrative salaries, and so forth, in order to get the job done." When we suggest a reasonable percentage as a top limit, they scream and say, "We are building our university on the concept of having this money come in from Uncle Sam. And if you limit the percentage of that which we pay to the college president, the dean, and the rest of the administrative officers, it will cripple us."

These arguments may be legitimate, but I point out what happens when a legislative body is derelict and does not place some criteria in the bill in the beginning rather than to rely on one individual man speaking for America. That is not my concept of how the Government should be operated. I say that without trying to cast any aspersions against anyone. I do not think there is any Commissioner of Education, born, or yet to be born, who is wise enough to distribute subsidies and contracts from the general public funds without a formula or criteria and do justice to the schools and colleges coming from areas which do not participate in the benefits, but are privileged to participate in the funds to be distributed.

Mr. SIMPSON. Mr. President, will the Senator yield?

Mr. MUNDT. I yield.

Mr. SIMPSON. I invite the attention of Senators to the fact that the substitute bill is replete with the delegation of unlimited authority. What we are trying to do is to curtail some of that authority so as to make it acceptable. I heard the eloquent arguments to the effect that there are other programs, and that this is only a continuation of them. That is like saying that because we have foisted off some bad things upon the Government in the educational institutions, the solution is to increase foisting them off on the Government. I wonder if this particular section and title are germane to the bill. I invite attention to the fact that it presupposes, because of difference in color, that there must be a change in the universities indulging in this type of thing because of the social changes being brought about.

I believe that the universities and colleges of America will be quicker to do this without any Federal compulsion and without any Federal interference whatsoever.

I believe that the colleges can accommodate themselves to change in the social structure better than we can do it by foisting off upon them some such a "plum" as this.

Let us face the situation—we know full well that the moment this fund is made available, the Commissioner may spread out over the line and try to get these institutions to accept some of this largess with the hope of putting more power in the Commissioner of Education.

I commend the Senator for the contribution he has made with respect to this problem. I cannot be influenced by the arguments with respect to adding one more bad thing to some other bad thing already in existence.

I invite attention to the fact that merely because there is a difference in color there will be no necessity to have large amounts of money available to universities, because they are quicker to accept their responsibilities and they can accommodate themselves better to it than we can by any type of Federal compulsion such as is inherent in sections 404, 405, and 406.

Mr. MUNDT. I appreciate what the Senator has added to this discussion.

Mr. President, I continue my point about the dubious desirability of enacting this proposed legislation designed upon the concept that we take from all and give to some, which is not in conformity with the legislative mandate or criteria, but instead is based upon the impulse of one individual man.

I read from page 20 of the Dirksen substitute as to just how the Commissioner would handle this vast new authority to extend bounty to certain universities and individuals while denying it to others:

(b) In determining whether to make a grant, and in fixing the amount thereof and the terms and conditions of which it will be made—

If I may make an interpolation, this vests new latitude which we did not provide for when we enacted the National Defense Education Act, where we spelled it out and wrote the formula and legislated as legislators, instead of legislating to delegate authority to someone else. But I continue:

(b) In determining whether to make a grant, and in fixing the amount thereof and the terms and conditions on which it will be made, the Commissioner shall take into consideration the amount available for grants under this section and there are applications which are pending before him; the financial condition of the applicant—

That is a curious one—

the financial condition of the applicant and the other resources available to it;

I wonder, are we dealing with civil rights?

Or, is this a part of the poverty program?

Is this some way to help some schools and deny help to others, to promote some and demote others, to build up some and to tear down others? I do not know why it should be in the section at all, but there it is.

The financial condition of the applicant and the other resources available to it; the nature, extent, and gravity of its problems incident to desegregation; and such other factors as he finds relevant.

Why in the world do we waste printer's ink with the suggested criteria? We have one at the end which is big enough to cover everyone and anything. This gives the Commissioner an "open sesame" to find any reference he wishes, and such other factors as he deems relevant, and then he makes the determination of what the relevant factor is and writes his own criteria. We can throw in the ashcan all the other considerations which are to be eliminated because we add, "such other factors as he finds relevant."

This, it seems to me, provides a bonus, or a bribe, or call it what one will, a bounty, which gives the Federal Government the right to use public funds to force its programs and its will and its philosophy on a school board or on a college or university, which to me is repugnant. The basic concepts of local control of education in America are violated by this proposed operation because while they do not bribe, they do not force it upon anyone. They merely advise that we have money which is available, provided you do what you are told. Provided you have your students taught what we ask them to be taught, and provided you follow certain patterns and programs you receive the grant or the attractive contract.

By this type of pressure and the Federal power to grant or withhold the largess of the public purse, the local administration of educational affairs and courses of instruction is challenged and curtailed.

While I do not contemplate that in this particular legislation we would automatically set up Federal control for education in its entirety, it is a step in the wrong direction. It is the kind of Federal assistance to education that we should repudiate, because it is not equitably controlled by legislative criteria. It violates the basic American concept of local control over the educational systems of America. It gives too much power to one political appointee in the Federal Government.

There are ways in which the Federal Government can be of assistance to education. I have supported many of them, including the National Defense Education Act. But to violate the concept that the legislature should write the criteria and the directives, and turn the authority over to an appointed official, for whom no one can vote, and against whom no one can vote, who happens to hold ephemerally the title of Commissioner of Education, to redistribute the wealth among the colleges, universities, and school boards of America, according to his impulse, is a great violation of my concepts of what the responsibilities of a legislative body really should be.

We should adopt the Hickenlooper amendment and strike out the unnecessary and unwise provisions, leaving in section 403, which is spelled out with definite regulations, which I believe are necessary, and which provides for the kind of assistance which the communities desire and which does not impose upon them or subject them to the compulsion to comply.

The compulsion to comply occurs when people are taxed for certain benefits which they are denied unless they succumb to the orders of a bureaucrat in Washington.

That can be just as serious a compulsion to comply as if the Commissioner himself were given dictatorial authority by the legislature to write and prescribe what is to be taught, what is to be established, what is to be studied, and what are to be the desiderata in order to obtain free tuition, a stipend, and traveling expenditures, or a contract by which the college, university, or school board is helped in the financing of its activities.

After we shall have some experience with the bill, if it then appears necessary to do something in addition to section 403, we can take the time to legislate in detail, and wisely, the manner and the method by which the Federal Government can be of assistance in eliminating the problems which experience may have made apparent.

So, Mr. President, I urge that we avoid this dangerous precedent, that we accept the Hickenlooper amendments, and that we get on with the business of legislating civil rights matters, and not go out on all these miscellaneous trails and byways, involving such things as new concepts in Federal aid to education, and the establishment of new and unneeded authorities in the Office of the Commissioner of Education.

I reserve the remainder of our time.

Mr. RIBICOFF. Mr. President, I yield 5 minutes to the Senator from Georgia.

AMENDMENTS NOS. 944 AND 945

Mr. RUSSELL. I appreciate the graciousness of the distinguished Senator from Connecticut in yielding to me a few minutes to present an amendment which deals with a subject not related to the pending amendment. I send to the desk two amendments, one to the substitute and one to the original bill, and ask that they may be printed and lie on the table and be considered as having been read for all purposes under the rule.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 944) is as follows:

On page 14, after line 23, insert the following new section:

"SEC. 208. This title shall take effect on November 15, 1965."

The amendment (No. 945) is as follows:

On page 11, between lines 17 and 18, insert the following new section:

"SEC. 206. This title shall take effect on November 15, 1965."

Mr. RUSSELL. Under the changes which have been made in title II of the so-called Dirksen substitute, a manifest unfairness is proposed against States which are not among the 32 or 33 which now have some kind of public accommodation laws.

The purpose of the amendment is to defer the effective date of title II until November 15, 1965, so that in the event the bill is passed, States which do not have public accommodation laws will have ample opportunity to have their legislative bodies consider this subject and decide whether or not they desire to have the protection that is afforded to the States by the amended version of title II.

I believe this will appeal to the sense of justice and fairplay of all Senators who wish to deal fairly in this matter. I know it will not appeal to those extremists who seek and hold office by their powers of vituperation in denouncing the South, and who have the scent of blood in their nostrils and think they see an opportunity to inflict punitive provisions on the Southern States, which do not have public accommodation laws.

I point out that the fair employment provisions, under title VII, are to be deferred for 1 year after the date of enactment of the bill, although there are a number of States which have so-called fair employment practice laws now and would have the protection that this language would give them. Certainly the same fairness and the same opportunity should be afforded to States which do not have public accommodation laws, to enable them to enact them, so that they may get the benefits that are extended to States which already have these laws.

A number of our colleagues in the Senate have written to their constituents, telling them that the bill does not affect their States, because they already have State laws. To make assurance doubly sure they have written their constituents that they have written into the bill additional provisions which would keep the heavy hand of the Federal Government off their States and off their constituents until the States had an opportunity to act.

The amendment would merely give all the States an opportunity to pass public accommodations laws in the event they should see fit to do so.

Mr. President, I am under no illusions that any States rights are involved in the bill. State coercion is involved, because the very purpose of the bill is to coerce States into passing laws on employment and on opening accommodations to the public which are privately owned and operated, against the wishes of the person who operates the establishment.

No States rights are involved. It is a matter of holding a pistol to a man's head and saying, "You sign, or we shoot." This is a matter of States rights in reverse.

I am amazed that Senators should be speaking about States rights, when what really is involved is the baldest form of coercion of States which do not have these laws. It is nothing but coercion to tell States, "You either enact a law or we will send an Army of Federal agents and investigators and, if necessary, the Armed Forces of the United States, the Army and Marine Corps, to enforce this Federal law."

Mr. GORE. Mr. President, will the Senator yield?

Mr. RUSSELL. I yield.

Mr. GORE. And also deny or threaten to deny all Federal funds to any person no matter how needy, or to any program or community no matter how meritorious the need may be, unless there is compliance with whatever requirements may be provided by the Federal administrative authority.

Mr. RUSSELL. The Senator is correct. I have been amazed to see some Senators, who have taken the floor on other occasions to inveigh against genocide, favor a provision which is in effect a genocide law, because it punishes the innocent along with all who might be guilty, not on the basis of any race or ethnic group, but on the ground of residence, because they happen to reside in a certain area of the country.

I shall support the Senator's amendment to strike title VI from the bill. It is very unfortunate that the leaders saw fit to extend a special benefit to those on the other side of the aisle—and some of my best friends are there—by allowing them an opportunity to debate their proposals before a vote is had on the gag rule, without extending the same opportunity to the Senator from Tennessee.

He is being treated unfairly, and I would be less than frank if I did not say so. In my judgment, his amendment is far more important than any one of the amendments that we are considering now under a unanimous-consent agreement.

Mr. GORE. Mr. President, will the Senator yield further?

Mr. RUSSELL. I am glad to yield to the Senator, if the Senator from Connecticut will yield to me. I may have already exceeded the time he allowed me.

Mr. RIBICOFF. I am pleased to yield 5 additional minutes to the Senator from Georgia [Mr. RUSSELL].

Mr. RUSSELL. I thank the Senator.

Mr. GORE. An amendment was adopted in the House of Representatives which apparently laid to rest a widespread apprehension that deposits insured by the Federal Deposit Insurance Corporation, and homes on which loans were insured by the FHA, were exempted from the bill. I propose to show beyond peradventure of doubt, when I am privileged to obtain the floor, that FHA insured loans on homes, and federally insured deposits are covered by title VI.

I suggest that Senators read section 601 of title VI. It is a broad and all-inclusive section.

Section 602, which provides the means of implementation of a portion of section 601, specifically exempts contracts of insurance or guarantee.

Therefore, Senators who believe that the bill has been thoroughly clarified by the Dirksen amendment need to examine the Dirksen amendment more carefully.

Mr. RUSSELL. I do not believe any Member of the Senate, however astute he may be and however much he may have been able to study the bill, could answer all the questions that arise with respect to its many obscure and poorly defined provisions.

Never has there been a bill before the Senate during my time here that has been so sweeping in its application or result. The bill leaves the definition of offenses against the law in the hands of the same officers who would prosecute for alleged violations. I shall await with interest the Senator's statement. I think he is undoubtedly correct. I agree with him that under title VI, regulations could still be imposed that would relate to housing and the withdrawal of benefits from any State or any portion of a State that did not conform to the regulations.

Mr. GORE. Mr. President, will the Senator from Georgia further yield?

Mr. RUSSELL. I yield.

The PRESIDING OFFICER. The time of the Senator from Georgia has expired.

Mr. RIBICOFF. Mr. President, I yield an additional 5 minutes to the Senator from Georgia.

Mr. RUSSELL. I yield to the Senator from Tennessee.

Mr. GORE. I have in my hand a recitation of amendments offered in the last 10 years by the distinguished senior Senator from New York [Mr. JAVITS] and by one of the Members of the House of Representatives, Representative POWELL and others, seeking to do to various programs precisely what title VI would do to all programs that provide financial assistance to persons, programs, or communities. The compilation contains 18 pages. Congress has rejected every single one of those amendments when offered to individual programs. Yet we have title VI which, as I say, amends every single act of Congress since this country began that provides financial assistance to programs, to States, to local communities, to persons, to institutions.

Mr. RUSSELL. I completely agree with the Senator.

I may say that the amendment to this title of the bill is offered with an appeal to the sense of fairness of the Senate. It would give to States which do not have public accommodation laws an opportunity to consider this question and to decide whether they wish to pass such laws and have the first chance to enforce them, as is provided to States that already have such laws, and whose Senators have proclaimed to their constituents that their States would not be covered by the proposed law.

That has been done in the case of the so-called equal employment section. The application of this title to let the Federal Government take over employment policies would be postponed until 1 year after the bill is enacted. After the year is over, the State laws would have priority. I am only asking that the application of title II, the public accommodations section, be postponed until November 15, 1965, in order to afford States that have general assemblies meeting in the interim an opportunity to decide whether they wish to pass their own public accommodation laws and exempt themselves from the Federal procedure by deferring the application of the Federal power, as would be the case in the 32 or 33 States that already have public accommodation laws.

I hope the Senate will rise above this tremedous pressure and will at least agree to this limited mode of fairplay to those States which have not had such laws.

I thank the Senator for yielding to me.

Mr. RIBICOFF. Mr. President, I yield 5 minutes to the distinguished Senator from Michigan.

Mr. HART. Mr. President, I shall oppose the amendment of the Senator from Iowa. I have listened to the debate and have enjoyed it; but at the risk of oversimplifying it a little, it seems to me that the Senate ought to reject the amendment.

The nub of the argument appears to be that no real problem has yet been established which would require the education of people for their role in assisting in the transition from segregated to integrated education.

For 2 months we have been told about many problems as to which we ought not do anything at all. For 2 months we have listened to arguments in which we were told that this bill, which would include desegregation of schools, would cause the American scene to have so many fractions that we cannot afford to do anything about it.

I have been sympathetic throughout, realizing that there will be transitional problems in many regions, perhaps in all, but that these problems are lesser in degree and have far less equity than action which is required to be taken to eliminate the basic problem.

Yet, after 2 months of lecturing, that the problems the bill would create would be too many, we are now being asked to eliminate a prudent preparation for a transition period—the use of educational institutions to give to men and women who will be placed on the firing lines the tools and the background of information that will assist them in the transition from a segregated to an integrated school system.

This is not a title to help schools. It is not a title to help teachers. It is not a title to help colleges. It is a title to help the people of America bridge the transition. The problems connected with it, to which we have listened for 2 months, have been described as so great that we ought not to try to make the bridge at all.

If someone had just landed from Mars this morning and had been in the gallery, listening, he would have said the Federal Government was light years away from doing anything about basic assistance to education, because the recitals to which we have listened really are cast in a setting or mold that would encourage those who feel that the Federal Government already has done too much to raise educational excellence in this country to think that, given a little more time, we would begin to go back on Federal aid to education, instead of extending it. This is the most sobering thing of all as one sits and listens to the debate.

I am sure that a majority of the Members of the Senate realize that in the change from a segregated to an integrated school system there will be problems. Failure to make the change will keep alive greater and more basic problems. To assist in making the change, it is prudent and right that we should encourage educational opportunity for those persons who, from day to day, in the classroom, will be in the key role to make easier the transition. That is the purpose of this title.

While we have listened to many statements, I hope we shall recognize what is basic in the debate. It is simply that this is a way in which the Federal Government, and Congress, can assist in the transition to be responsive in solving the problems that will be created. To fail to do this would be regrettable. I hope the amendment will be defeated.

Mr. RIBICOFF. Mr. President, I yield 5 minutes to the distinguished Senator from West Virginia [Mr. RANDOLPH].

Mr. RANDOLPH. Mr. President, as we approach, in the decision on cloture tomorrow and on the amendments pending today, the votes in reference to the proposed civil rights legislation, I feel it is not improper for me to observe that there are those persons who will not accept the fact of change. That is a truth that we should accept in connection with the proposal now before the Senate.

There was a time when men and women in policymaking positions, including Members of Congress, could polarize their opinions and convictions. We were told that there were two sides to a problem. In these complex times such restricted thinking is not sufficient. There are more than two sides. Today a proposition is not black or white; it is not liberal or conservative. As I view it, there are many sides to a question these days—as many sides as there are parties involved and issues that confront us.

So I think there is an oversimplification in which we are inclined to indulge, but which cannot be totally embraced, as we reach the more critical stages of debate on the pending legislation.

In connection with the amendment that is now before the Senate, I should like to state what has been happening in West Virginia.

I shall read from the lead editorial in the June 2 issue of the Charleston Daily Mail:

WITHOUT FEAR, INCIDENT OR COMPULSION, STATE COLLEGE WRITES A BRIGHT CHAPTER

Ten years after its historic decision on desegregation, the Supreme Court is still handing down decisions, trying to make its purpose clear and binding.

Throughout the Nation, both North and South, there are communities and even whole States which are strangely and stubbornly resistant to the "law of the land."

And the search for new laws to give the old ones more meaning and effect is enough to stall the U.S. Senate on dead center, where it may linger all summer, leaving some reason to doubt whether Congress and the courts can ever achieve that civil equality which is increasingly their concern.

I continue to read the meaningful message conveyed in the editorial:

One reason for thinking so is West Virginia State College at Institute. State desegregated almost overnight a decade ago. It has been quietly and fruitfully integrating ever since in an evolutionary process remarkable for its serenity and good sense.

It would be too much to say that there have been no tensions and anxieties. State College had its traditions, too, and the white man played only a small part in them. Through it all, Dr. Wallace and his faculty displayed an exemplary patience and understanding and a confident faith in the possibilities of orderly change.

Result: In increasing numbers, white and colored students have found at Institute just the education they wanted at a price they could afford. And they have enrolled, not because they were compelled to, but because they wanted to.

So far as we know, there have been no incidents of consequence, no demonstrations, none of the feverish posturing and embittering propaganda which is often inseparable from adjustment. It has never been necessary to call in the National Guard or fall back on the courts. In 10 years the State College story has generated scarcely half a dozen headlines.

I conclude by reading the final paragraph of the editorial:

For all that, we do not supose that it "just happened." It happened because Dr. Wallace, his faculty, the student body, and the people of Institute wanted it to happen and generously allowed for the chance that

it could. They fully deserve the congratulations pouring in on them at the 10th anniversary of their experiment in "integration in reverse."

Mr. President, I call attention to this editorial for a specific reason: to emphasize the premise stated in the opening several sentences of my remarks—namely, that this change is being wrought, but some are reluctant to accept it, or even to admit that we are in a period of transition.

The PRESIDING OFFICER. The time yielded to the Senator from West Virginia has expired.

Mr. RIBICOFF. Mr. President, I am pleased to yield 3 more minutes to the Senator from West Virginia.

The PRESIDING OFFICER. The Senator from West Virginia is recognized for 3 more minutes.

Mr. RANDOLPH. Mr. President, I do not criticize Senators whose opinions and convictions differ from mine. They have a right to form their own opinions and to assert their own convictions, and to express them here, not only by their remarks, but also by their votes.

But in the matter of the educational process, it seems to me the position which has been so well delineated by the Senator from Connecticut [Mr. RIBICOFF] is the one to which the Senate should adhere. With all deference to the Senator from Iowa [Mr. HICKENLOOPER], I say that I believe it is important that the Senate reject this amendment. It should be rejected because we believe the educational system in our country needs to be strengthened.

Certainly this program does not involve Federal compulsion or imperialism. Instead, it is a recognition by the Members of Congress which reflects the opinion of what I believe is a majority of the citizens of the United States. These men and women share the view that in our country there should be developed the strongest possible educational fabric, which will not be torn apart, but at all levels will stand as an institution where the truth and the facts will be sought, and where the future will be determined. It must be a road on which people who are working together and living together and profiting together can move forward, as I have indicated is possible as demonstrated by an institution in West Virginia.

Mr. RIBICOFF. Mr. President, I reserve the remainder of the time available to me.

Mr. HICKENLOOPER. Mr. President, I reserve the remainder of the time available to me; and at this time I suggest the absence of a quorum, and ask unanimous consent that the time required for the quorum call be charged equally to both sides.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered; and the clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HICKENLOOPER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HICKENLOOPER. Mr. President, I ask for the yeas and nays on the amendment.

The yeas and nays were ordered.

Mr. HICKENLOOPER. Mr. President, I yield back the remainder of my time.

Mr. RIBICOFF. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Iowa [Mr. HICKENLOOPER] (No. 868). All time having been yielded back, the clerk will call the roll.

The legislative clerk called the roll.

Mr. MANSFIELD (after having voted in the negative). On this vote I have voted "nay." I have a pair with the Senator from Florida [Mr. SMATHERS], who is absent on official business. If he were present and voting, he would vote "yea." If I were at liberty to vote, I would vote "nay." Therefore I withdraw my vote.

Mr. HUMPHREY. I announce that the Senator from Ohio [Mr. YOUNG] and the Senator from Florida [Mr. SMATHERS] are absent on official business.

I also announce that the Senator from California [Mr. ENGLE] is absent because of illness.

I further announce that, if present and voting, the Senator from California [Mr. ENGLE] and the Senator from Ohio [Mr. YOUNG] would each vote "nay."

The result was announced—40 yeas, 56 nays, as follows:

[No. 277 Leg.]

YEAS—40

Bennett	Hickenlooper	Pearson
Byrd, Va.	Hill	Robertson
Byrd, W. Va.	Holland	Russell
Carlson	Hruska	Simpson
Cotton	Johnston	Sparkman
Curtis	Jordan, N.C.	Stennis
Dominick	Jordan, Idaho	Talmadge
Eastland	Lausche	Thurmond
Ellender	Long, La.	Tower
Ervin	McClellan	Walters
Fulbright	Mechem	Williams, Del.
Goldwater	Miller	Young, N. Dak.
Gore	Morton	
Hayden	Mundt	

NAYS—56

Aiken	Fong	Monroney
Allott	Gruening	Morse
Anderson	Hart	Moss
Bartlett	Hartke	Muskie
Bayh	Humphrey	Nelson
Beall	Inouye	Neuberger
Bible	Jackson	Pastore
Boggs	Javits	Pell
Brewster	Keating	Prouty
Burdick	Kennedy	Proxmire
Cannon	Kuchel	Randolph
Case	Long, Mo.	Ribicoff
Church	Magnuson	Saltonstall
Clark	McCarthy	Scott
Cooper	McGee	Smith
Dirksen	McGovern	Symington
Dodd	McIntyre	Williams, N.J.
Douglas	McNamara	Yarborough
Edmondson	Metcalf	

NOT VOTING—4

Engle	Smathers	Young, Ohio
Mansfield		

So Mr. HICKENLOOPER's amendment was rejected.

Mr. RIBICOFF. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. HUMPHREY. Mr. President, I move to lay on the table the motion to reconsider.

The motion to reconsider was laid on the table.

The PRESIDING OFFICER. Under the unanimous-consent agreement, the Senate will now proceed to consider amendment No. 606 offered by the Senator from New Hampshire [Mr. COTTON] with 2 hours to the side.

Mr. COTTON. Mr. President, I yield 1 minute to the distinguished Senator from Texas [Mr. TOWER].

AMENDMENTS NOS. 946 THROUGH 963

Mr. TOWER. Mr. President, will the Senator from New Hampshire yield?

Mr. COTTON. Mr. President, I yield 1 minute to the distinguished Senator from Texas.

The PRESIDING OFFICER. The Senator from Texas is recognized for 1 minute.

Mr. TOWER. Mr. President, I send to the desk various amendments directed to the so-called civil rights compromise package offered in conformity with the previous parliamentary rule.

I ask unanimous consent that my amendments may be considered as offered for the purposes of substantive consideration during the course of debate, so that they may be considered during the course of continuance of the debate, or in case of cloture.

I ask unanimous consent that the amendments to H.R. 7152 as previously offered receive like consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendments are as follows:

AMENDMENT NO. 946

On page 70, line 21, immediately after "(a)" insert "(1)".

On page 71, between lines 9 and 10, insert the following new paragraph:

"(2) The Director shall appoint a local representative for each county, parish, or similar political subdivision from among a list of at least three individuals recommended by the Governor of the State involved. Each local representative shall serve for a term of two years, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the local representative whom he shall succeed. The term of the first local representative appointed for each county, parish, or similar political subdivision shall begin on the date of the enactment of this title. Whenever the Service provides its assistance in any community, the local representative for the county, parish, or similar political subdivision in which such community is located shall serve as an officer of the Service, and shall exercise all the powers of an officer of the Service, with respect to the activities of the Service while it is providing such assistance in such community. Each local representative, while engaged in duties as authorized under this pragraph, shall receive compensation at the rate of $75 per diem and shall be paid travel expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 73b–2) for persons in the Government service employed intermittently, but in no event shall any local representative receive compensation in the aggregate during any fiscal year which exceeds an annual rate of $20,000."

AMENDMENT NO. 947

On page 74, after line 23, insert the following new titles:

"TITLE XII—EFFECTIVE DATE

"SEC. 1201. The first eleven titles of this Act shall take effect only if the qualified voters of the several States signify their ap-

proval of this Act in the national referendum provided by title XIII. If the qualified voters of the several States signify their approval in such referendum, the first eleven titles of this Act shall become effective on the day on which the results of such referendum are declared under section 1311 of this Act.

"TITLE XIII—NATIONAL REFERENDUM

"SEC. 1301. (a) Each State is requested to conduct a referendum for the purpose of ascertaining whether the qualified voters of such State approve the provisions of the first eleven titles of this Act. Such referendum shall be conducted by each State consenting to do so at the general election to be held in such State in 1964 for the purpose of electing its Representative or Representatives in the House of Representatives of the United States.

"(b) (1) As used in the remaining sections of this title, the term 'referendum,' when used in reference to any State, means the national referendum referred to in section 1201 insofar as it is conducted within the jurisdiction of such State.

"(2) As used in sections 1302, 1303, and 1304, the term 'State' means only a State which consents to conduct the referendum within its jurisdiction.

"SEC. 1302. Each State shall be entitled to reimbursement for the expenses incurred by it in conducting the referendum. Reimbursement shall be made in the manner provided by section 1311.

"SEC. 1303. Except as otherwise specifically provided in this title, the referendum shall be conducted in each State according to the election laws and regulations of such State. Any State the constitution or laws of which authorize the submission of State laws to the voters of such State for their approval or disapproval may conduct such referendum in the same manner as referendums conducted with respect to its State laws. Each State, through its legislature or the proper State officers, shall be the sole judge of the manner of conduct of the referendum within its jurisdiction.

"SEC. 1304. The qualified voters in the referendum in each State shall be the persons who are qualified to vote for Representative in the House of Representatives of the United States in the election at which the referendum is conducted.

"SEC. 1305. (a) The Governor of each State which consents to conduct the referendum shall so notify the President before September 1, 1964. The President shall provide for the conduct of the referendum, in the manner provided in this section, in any State which does not consent, or is unable, to conduct the referendum. The referendum shall be held in any such State on the same day on which it would be held under section 1301 if it were conducted by such State.

"(b) The President may provide for the conduct of the referendum in any State or States under this section—

"(1) by any department or agency of the Federal Government, or

"(2) by a commission established for such purpose under the authority of subsection (c).

Subject to the provisions of subsection (e), the referendum conducted in any State under this section shall be conducted pursuant to such rules and regulations as the President may prescribe.

"(c) The President is authorized to establish a commission to conduct the referendum in any State or States which do not consent, or are unable, to conduct it. Any commission established pursuant to this subsection shall be composed of an even number of members and not more than one-half of the members shall be of the same political party. The President shall designate one of the members as chairman of the commission.

"(d) The President shall have such powers as may be necessary to enable him to carry out the duties and functions imposed on him by this section, including the power—

"(1) to appoint such experts, consultants, and other employees as may be necessary, and

"(2) to make such expenditures as may be necessary.

The President is authorized to delegate any of the powers conferred upon him by this subsection to any department or agency designated by him to conduct the referendum in any State, or to any commission established under subsection (c).

"(e) Except as otherwise specifically provided in this title, the referendum conducted in any State under this section shall be conducted, insofar as possible, in conformity with the election laws and regulations, and the referendum laws and regulations, if any, of such State. The qualified voters in the referendum in any such State shall be the persons who would be qualified voters if the referendum were conducted by such State. Such State is requested to furnish lists of such qualified voters to the President, and shall be entitled to reimbursement, out of funds appropriated to the President under section 1312, for expenses incurred in furnishing such lists. If such State refuses, or is unable, to furnish lists of such qualified voters, the determination as to the qualifications of any person to vote in the referendum in such State shall be made pursuant to rules and regulations prescribed by the President.

"SEC. 1306. (a) The Joint Committee on Printing shall have printed by the Government Printing Office copies of this Act, and copies of provisions of any laws amended by the first eleven titles of this Act in which the amendments thereto shall be indicated in boldface type. Such copies shall be in such form and style as to be suitable for exhibition at the polling places in the States for the information of the persons voting in the referendum.

"(b) The Joint Committee on Printing shall furnish to each State which conducts the referendum such number of the copies of of this Act and of provisions of any laws amended by the first eleven titles of this Act printed pursuant to subsection (a) as each State may request. The Joint Committee shall furnish to the President, for use in any State or States in which the referendum is conducted under section 1305, such number of such copies as the President may request.

"(c) Each State which conducts the referendum is requested to exhibit, in conformity with the laws of such State, at the polling places at which voting in the referendum is conducted such number of the copies of this Act and of provisions of any laws amended by the first eleven titles of this Act printed pursuant to subsection (a) as may be necessary for the information of the persons voting in the referendum.

"SEC. 1307. The form of the question to be presented at the referendum shall be substantially as follows:

" 'The Congress of the United States has enacted a law known as "The Civil Rights Act of 1964", which is divided into thirteen titles, the last two of which relate to this referendum. This law provides that the first eleven titles shall take effect only if approved by the qualified voters of the several States in this referendum. Indicate by making a cross (X) in the proper square (or by pulling the proper lever) whether you approve or disapprove of these titles.

" 'Approve---------- ( )
" 'Disapprove---------- ( )'

"SEC. 1308. (a) At the request of the Governor of any State, the Attorney General shall assign agents or employees of the Federal Bureau of Investigation to such of the polling places in such State as the Governor thereof may designate.

"(b) In any case in which the President deems it necessary or advisable, the Attorney General shall assign agents or employees of the Federal Bureau of Investigation to such of the polling places in any State as the President may designate.

"(c) It shall be the duty of any agent or employee of the Federal Bureau of Investigation assigned to any polling place under subsection (a) or (b)—

"(1) to observe the conduct of the referendum at such polling place,

"(2) to observe the counting and tabulation of the votes cast in the referendum at such polling place, and

"(3) to submit a report to the Attorney General with respect to the duties imposed on him by paragraphs (1) and (2).

"(d) Each agent or employee of the Federal Bureau of Investigation assigned to any polling place under subsection (a) or (b) shall be given access to such polling place and the place where votes cast in the referendum at such polling place are counted and tabulated in order that he may carry out the duties imposed on him by paragraphs (1) and (2) of subsection (c); but no such agent or employee shall interfere in the conduct of the referendum, or of the election in conjunction with which such referendum is held, by the State officials, or in the counting and tabulating by such officials of the votes cast in the referendum.

"(e) The Attorney General shall furnish to the Governor of any State in which agents or employees of the Federal Bureau of Investigation are assigned under subsection (a) or (b) a copy of the reports submitted to him under subsection (c) (3) by the agents or employees assigned in such State.

"(f) The Attorney General is authorized, for the purpose of carrying out the duties imposed on him by subsections (a) and (b), to appoint, without regard to the civil service laws and regulations, such temporary employees as may be necessary, and to fix their compensation in accordance with the Classification Act of 1949, except that the rate of compensation of such number of such temporary employees as he determines necessary may be fixed at rates not in excess of $75 per day.

"(g) The Attorney General shall, before January 10, 1965, submit a report to the Congress with respect to the duties imposed on him by this section, which shall contain a summary of the reports submitted to him pursuant to subsection (c) (3).

"SEC. 1309. (a) The Governor of each State which conducts the referendum shall certify the results of the referendum conducted in his State to the President of the Senate before January 10, 1965.

"(b) The President shall certify the results of the referendum conducted in any State or States under section 1305 to the President of the Senate before January 10, 1965.

"SEC. 1310. (a) The Senate and the House of Representatives shall assemble in a joint meeting in the Hall of the House of Representatives on January 15, 1965 (or as soon thereafter as possible), at which the certificates from the Governors of the States, and from the President, shall be opened, read, and the results thereof tabulated. The President of the Senate and the Speaker of the House of Representatives, acting jointly, shall declare the results of the referendum.

"(b) If a majority of the votes cast in the referendum approve of the first eleven titles of this Act, such titles shall become effective, except with respect to title VII which shall be subject to section 716, on the date on which the declaration of the President of the Senate and the Speaker of the House of Representatives is made.

"(c) If a majority of the votes cast in the referendum disapprove of the first eleven titles of this Act, such titles shall not become effective.

"SEC. 1311. Each State which conducts the referendum may, through its proper State officer, request reimbursement of the expenses incurred by it in conducting the referendum by submitting a statement of such expenses to the Chairman of the Committees on Appropriations of the Senate and the House of Representatives. Such requests shall be reviewed and allowed by the Committees on Appropriations of the Senate and the House of Representatives, acting jointly, and shall be certified by the chairmen of the two committees, acting jointly, to the Secretary of the Treasury for payment out of moneys appropriated therefor pursuant to section 1312.

"SEC. 1312. There are authorized to be appropriated to the President such sums as may be necessary to enable him to carry out the duties and functions imposed on him by section 1305. There are authorized to be appropriated to the Joint Committee on Printing such sums as may be necessary to enable it to carry out the provisions of section 1306, including such sums as may be necessary to reimburse the Government Printing Office for expenses incurred by it under such sections. There are authorized to be appropriated to the Attorney General such sums as may be necessary to enable him to carry out the provisions of section 1308. There are authorized to be appropriated to the Secretary of the Treasury such sums as may be necessary to reimburse the States pursuant to section 1311 for expenses incurred in conducting the referendum."

On page 67, line 23, strike out "of its enactment", and insert in lieu thereof "this Act becomes effective as provided in section 1201".

On page 68, immediately after "immediately", insert "upon the effective date of this Act as provided in section 1201".

On page 68, line 4, strike out "enactment of this title", and insert in lieu thereof "effective date of this title as provided in subsection (a)".

AMENDMENT NO. 948

On page 46, line 15, immediately after "(a)" insert "(1)".

On page 47, after line 14, insert the following new pararagaph:

"(2) The President shall appoint, by and with the advice and consent of the Senate, a State Representative for each State from among a list of at least three individuals recommended by the Governor of the State involved. Each State Representative shall serve for a term of two years, except that any indivdual chosen to fill a vacancy shall be appointed only for the unexpired term of the State Representative whom he shall succeed. The term of the first State Represeneative appointed for each State shall begin on the date of the enactment of this title. Whenever a charge is filed with the Commission pursuant to section 706, the State Representative for the State in which the unlawful employment practice charged is alleged to have been committed shall serve as an additional member of the Commission, and shall exercise all the powers of a member of the Commission, with respect to such charge. Each State Representative, while engaged in duties as authorized under this paragraph, shall receive compensation at the rate of $75 per diem and shall be paid travel expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 73b–2) for persons in the Government service employed intermittently, but in no event shall any State Representative receive compensation in the aggregate during any fiscal year which exceeds an annual rate of $20,000."

AMENDMENT NO. 949

On page 70, strike out lines 1, 2, 3, 4, 5, 6, 7, 8, and 9, and insert in lieu thereof the following:

"TITLE IX—INTERVENTION IN CIVIL RIGHTS CASES"

On page 70, line 10, strike out "SEC. 902." and insert in lieu thereof "SEC. 901.".

AMENDMENT NO. 950

On page 9, line 14, immediately after the period, insert the following: "This section shall not apply to private clubs of any kind, or to fraternities, civic clubs, or organizations of any kind in which membership is selective."

AMENDMENT NO. 951

On page 14, after line 23, insert the following new section:

"SEC. 208. Whenever, as a result of compliance with the provisions of this title by the owner or operator of any business covered by this title, such business suffers financial loss, it shall be held and considered that such business, to the extent of such financial loss, has been condemned and taken for public use by the United States; and the owner of such business shall be entitled to just compensation for such taking as provided by the laws and Constitution of the United States."

AMENDMENT NO. 952

On page 47, line 21, immediately after "shall" insert "at the middle and".

AMENDMENT NO. 953

On page 30, strike out lines 14, 15, 16, 17, 18, and 19, and in lieu thereof insert the following:

"(b) The Commission shall, not later than July 31 of each year, submit a report to the President and the Congress setting forth its activities and findings during the first six months of such calendar year and its recommendations with respect thereto, and not later than January 31 of each year, submit a report to the President and the Congress setting forth its activities and findings during the last six months of the preceding calendar year and its recommendations with respect thereto. The Commission shall submit such other reports to the President and to the Congress at such times as the Commission, the Congress, or the President may deem advisable."

AMENDMENT NO. 954

On page 74, after line 23, insert the following new section:

"SEC. 1106. Nothing in this Act shall be construed to authorize the imposition of any condition of involuntary servitude whereby any individual is required to render labor or service without his consent; nor shall anything in this Act be construed to authorize any court to issue any process under this Act imposing any condition of involuntary servitude whereby any individual is required to render labor or service without his consent."

AMENDMENT NO. 955

On page 35, beginning with line 10, strike out all through line 19, on page 68 (title VII).

Renumber the succeeding titles and sections of the bill, and cross references thereto, accordingly.

AMENDMENT NO. 956

On page 6, beginning with line 12, strike out all through line 23, on page 13 (title II).

Renumber the succeeding titles and sections of the bill, and cross references thereto, accordingly.

On page 72, line 21, strike out "sections 205 and" and insert in lieu thereof "section".

AMENDMENT NO. 957

On page 24, line 7, immediately after "Acting Chairman", insert a comma and the following: "with the concurrence of one other member present,".

AMENDMENT NO. 958

On page 50, between lines 2 and 3, insert the following new subsection:

"(j) No person may serve as a member, officer, agent, attorney, employee, or consultant of the Commission, unless a full field investigation of such person has been conducted by the Federal Bureau of Investigation, and it has been determined by the Attorney General upon the basis of the reports of such investigation that (1) such person is not, and within the preceding ten years has not been, a member of any Communist organization (as that term is defined by the Subversive Activities Control Act of 1950, as amended (50 U.S.C. 782)) or a member of any organization which the Attorney General has determined to be a subversive organization, and (2) such service by such person is clearly consistent with the interest of the national security."

On page 71, between lines 13 and 14, insert the following new subsection:

"(c) No person may serve as an officer, employee, or consultant of the Service, unless a full field investigation of such person has been conducted by the Federal Bureau of Investigation, and it has been determined by the Attorney General upon the basis of the reports of such investigation that (1) such person is not, and within the preceding ten years has not been, a member of any Communist organization (as that term is defined by that Subversive Activities Control Act of 1950, as amended (50 U.S.C. 782)) or a member of any organization which the Attorney General has determined to be a subversive organization, and (2) such service by such person is clearly consistent with the interest of the national security."

AMENDMENT NO. 959

On page 54, line 3, immediately after the period, insert the following new sentence: "No such civil action may be instituted against any employer by any person claiming to be aggrieved if within one year preceding the date of institution of such action such person has engaged or participated in, or has incited or assisted participants in, any riot or other disturbance of the peace upon the premises of such employer resulting in interference with the conduct of business by such employer.".

AMENDMENT NO. 960

On page 45, between lines 13 and 14, insert the following new subsection:

"(k) Nothing contained in this title shall be construed to require any employer to hire, promote, or retrain any individual if such individual does not possess the qualifications determined by such employer to be required for employment in, promotion to, or retraining for the particular position involved in the business or enterprise of such employer."

AMENDMENT NO. 961

On page 9, line 7, immediately after the period, insert the following new sentence: "Notwithstanding the exception contained in the preceding sentence, the provisions of this title shall not apply to a bona fide private club located in the premises of any inn, hotel, motel, or other establishment which provides lodging to transient guests, if a substantial portion of the business of such club is derived from serving members of such club."

AMENDMENT NO. 962

On page 68, between lines 19 and 20, insert the following new section:

"EXCLUSIVE REMEDY

"SEC. 717. Beginning on the effective date of sections 703, 704, 706, and 707 of this title,

as provided in section 716, the provisions of this title shall constitute the exclusive means whereby any department, agency, or instrumentality in the executive branch of the Government, or any independent agency of the United States, may grant or seek relief from, or pursue any remedy with respect to, any employment practice of any employer, employment agency, labor organization, or joint labor-management committee covered by this title, if such employment practice may be the subject of a charge or complaint filed under this title."

AMENDMENT NO. 963

On page 68, between lines 19 and 20, insert the following new section:

"IDENTIFICATION IN PERFORMANCE OF DUTIES OF COMMISSION

"SEC. 717. (a) Each member, officer, agent, attorney, or employee of the Commission shall, in the performance of his official duties, identify himself as such a member, officer, agent, attorney, or employee in any relations with any employer, labor organization, employment agency, joint labor-management committee, or any person other than a member, officer, agent, attorney, or employee of the Commission.

"(b) If any member, officer, agent, attorney, or employee of the Commission fails to comply with the provisions of subsection (a), no determination shall be made by the Commission, and no civil action may be filed under section 706 or 707, with respect to the unlawful employment practice alleged in the charge concerning which such failure to comply occurred."

Mr. COTTON. Mr. President, I yield myself 2 minutes.

I invite the attention of the majority leader to the fact that it is my understanding that the distinguished Senator from North Carolina [Mr. ERVIN] intends to offer a substitute amendment in place of my amendment, which would eliminate title VII of the pending bill. I am wondering whether the majority leader would consider a unanimous-consent agreement, under which one-half the time or the remainder of 1 hour could be surrendered for the discussion of that substitute, and the remaining time to go back on my amendment.

Mr. HUMPHREY. Mr. President, the majority leader has left the Chamber momentarily, but I am sure that he would permit me to speak for this side of the aisle.

An hour on the amendment by the proponents and those of us who oppose it, taken from the 2 hours of the majority leader's time would be satisfactory; in other words, the Ervin amendment would be limited to 1 hour for the proponents and 1 hour to the opposition, which would leave but 1 hour for the Senator from New Hampshire for his amendment and 1 hour for those of us who oppose his amendment.

Mr. COTTON. Would the majority leader believe it would be wise to vote at the end of the first hour on the substitute and then proceed with the next?

Mr. HUMPHREY. Yes; that seems to be appropriate, and I would fully concur. I understand that it is possible that a point of order could be made against the substitute, but I do not care to do so, because I believe this is an issue we have to face. The Senator from North Carolina is, in a sense, doing us a favor by bringing it up under this particular time limitation.

Mr. MANSFIELD. Mr. President, will the Senator from Minnesota yield?

Mr. HUMPHREY. I yield.

Mr. MANSFIELD. I am in wholehearted accord with the statement just made by the distinguished acting majority leader.

I ask unanimous consent that it be considered within the scope of the agreement already entered into, notwithstanding the fact that it touches parts of the bill not within the scope of the Cotton amendment.

The PRESIDING OFFICER. Is there objection?

Mr. McCLELLAN. Mr. President, will the Senator from New Hampshire yield?

Mr. COTTON. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator from New Hampshire will state it.

Mr. COTTON. If time is taken out after the first debate for a quorum call, and a rollcall on the substitute, that time does not come out of the remaining time of debate; am I correct?

Mr. HUMPHREY. Mr. President, I ask unanimous consent that the time for the rollcall and the recapitulation of the vote, and all the proceedings related to the vote on the Ervin amendment in the nature of a substitute, be excluded from the time limitation under the unanimous-consent agreement.

Mr. MANSFIELD. No; the time to be within the 4-hour limitation.

Mr. HUMPHREY. No. Separate and distinct from the 4 hours.

Mr. MANSFIELD. Within the 4 hours.

Mr. HUMPHREY. No.

Mr. President, as I understand, what has been agreed to is that there will be 1 hour on the Ervin amendment for the proponents, and 1 hour for the opponents, within the 4 hours which were agreed to under the original unanimous-consent agreement offered by the Senator from Iowa [Mr. HICKENLOOPER].

At the end of the 2 hours, on the Ervin amendment, if 2 hours of time is used, there would then be a rollcall on the amendment in the nature of a substitute by the Senator from North Carolina [Mr. ERVIN]; and it was my request that the time taken for that vote not be taken out of the remainder of the time that the Senator from New Hampshire has for his side, and that the Senator in charge of the bill has for his side.

Mr. BEALL. Mr. President, I object.

Mr. MANSFIELD. No, no, no——

Mr. BEALL. Mr. President, I withdraw my objection.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. McCLELLAN. Mr. President, is the amendment of the Senator from New Hampshire [Mr. COTTON] No. 606? Can it be related to the revised printed bill before the Senate? It is difficult to——

Mr. HUMPHREY. Yes; it can be.

Mr. McCLELLAN. Is it related to the bill?

Mr. COTTON. It applies to the original bill; but my understanding is that the leadership agreed that if it should be adopted, it would be considered as having been adopted to the substitute.

Mr. McCLELLAN. It is difficult to relate it to the substitute bill, to find out what it does.

Mr. HUMPHREY. Mr. President, I should like to take a minute of the time on this side of the aisle to discuss that point. It is related to and is a part of the House-passed bill and the package bill in the nature of a substitute. The Cotton amendment seeks to increase the number before application of Federal employment practice standards; in other words, the employer of 100 or more employees would come under title VII, but what the Senator from North Carolina [Mr. ERVIN] seeks to do is to strike out title VII.

Title VII is in both the bills.

Mr. McCLELLAN. The amendment refers to page 28, line 22. I do not find that reference in the revised bill. At what page does the amendment apply?

Mr. HUMPHREY. It applies in the Dirksen-Mansfield package substitute at page 36, line 3, where reference is made to:

Provided, That during the first year after the effective date prescribed in subsection (a) of section 716, persons having fewer than 100 employees—

And so forth.

Mr. McCLELLAN. I thank the Senator.

Mr. COTTON. How much time has been used?

The PRESIDING OFFICER. The Senator from New Hampshire has used 6 minutes. The Senator from Minnesota has used 5 minutes.

Mr. COTTON. I yield an hour to the distinguished Senator from North Carolina, or such portion of it as he may desire to use.

Mr. ERVIN. I ask for the yeas and nays.

The PRESIDING OFFICER. There are not enough Senators present to second the request.

Mr. ERVIN. Mr. President, I ask unanimous consent that the yeas and nays be ordered on my substitute amendment.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and the yeas and nays are ordered.

Mr. ERVIN. Mr. President, I call up my amendment, No. 898, which, it has been unanimously agreed, is deemed to be an amendment in the nature of a substitute for the amendment offered by the able and distinguished senior Senator from New Hampshire [Mr. COTTON], No. 606.

The PRESIDING OFFICER. The amendment will be stated.

The LEGISLATIVE CLERK. Beginning with the word and figure "TITLE VII" on line 10, page 35, strike out everything through the word "title" on line 19, page 68.

Renumber title VIII as title VII and section 801 as section 701.

Renumber title IX as title VIII and sections 901 and 902, respectively, as sections 801 and 802.

Renumber title X as title IX and sections 1001, 1002, 1003, and 1004, respectively, as sections 901, 902, 903, and 904.

Renumber title XI as title X and sections 1101, 1102, 1103, 1104, and 1105, as sections 1001, 1002, 1003, 1004, and 1005.

Mr. ERVIN. Mr. President, shortly after the end of what my geology professor used to call the "uncivil war," the 13th, the 14th, and 15th amendments to the Constitution of the United States were adopted.

I invite attention to some observations made by the Supreme Court of the United States in the case of Hodges against the United States, which observations appear in 203 U.S. at pages 19 and 20. In the opinion written by Mr. Justice Brewer the Court stated:

At the close of the Civil War, when the problem of the emancipated slaves was before the Nation, it might have left them in a condition of alienage, or established them as wards of the Government like the Indian tribes, and thus retained for the Nation jurisdiction over them, or it might, as it did, give them citizenship. It chose the latter. By the 14th amendment it made citizens of all born within the limits of the United States and subject to its jurisdiction. By the 15th it prohibited any State from denying the right of suffrage on account of race, color, or previous condition of servitude, and by the 13th it forbade slavery or involuntary servitude anywhere within the limits of the land. Whether this was or was not the wiser way to deal with the great problem is not a matter for the courts to consider. It is for us to accept the decision, which declined to constitute them wards of the Nation or leave them in a condition of alienage where they would be subject to the jurisdiction of Congress, but gave them citizenship, doubtless believing that thereby in the long run their best interests would be subserved, they taking their chances with other citizens in the States where they should make their homes.

Mr. President, I ask unanimous consent that the 13th amendment, the first section of the 14th amendment, and the 15th amendment be printed at this point in the body of the RECORD as a part of my remarks.

There being no objection, the amendments were ordered to be printed in the RECORD, as follows:

AMENDMENT XIII

SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SECTION 2. Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT XIV

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

AMENDMENT XV

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.

Mr. ERVIN. Mr. President, after the adoption of these amendments, Congress enacted certain statutes to implement them. The first of these statutes now appears in 42 U.S.C. 1971, and bears the title: "Voting Rights, Race, Color, or Previous Condition Not To Affect Right To Vote."

The second of these statutes appears in 42 U.S.C. 1981, and bears the title: "Equal Rights Under the Law."

The third of these statutes now is codified as 42 U.S.C. 1982, and bears the caption: "Property Rights of Citizens."

The first of these statutes, 42 U.S.C. 1971, reads as follows:

All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude; any constitution, law, custom, usage, of any State or Territory, or by or under its authority, to the contrary notwithstanding.

The second of these statutes, 42 U.S.C. 1981, reads as follows:

All persons within the jurisdiction of the United States shall have the same right in every State or territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishments, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

The third of these statutes, 42 U.S.C. 1982, reads as follows:

All citizens of the United States shall have the same right, in every State and territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

The assertion has been frequently made during the course of the debate that the objective of the pending bill, H.R. 7152 is to confer upon the Negro race the same civil and political rights which are enjoyed by the white race. If that is the purpose of the bill—and its proponents assure us it is—there is no necessity whatever for passing the bill, because the Supreme Court of the United States and the inferior Federal courts and the State courts have held many times that under the 14th and 15th amendments to the Constitution and under these three statutes which I have just read the Negro race enjoys every civil and every political right which is enjoyed by the white race.

Mr. President, I ask unanimous consent to have printed at this point in the RECORD an enumeration of certain decisions of the Supreme Court and of the lower Federal courts, laying down the proposition that under the 14th and 15th amendments and under these three acts of Congress the Negro race enjoys perfect equality of civil rights and political rights with the white race.

There being no objection, the tabulation was ordered to be printed in the RECORD, as follows:

Cases holding that the 14th amendment and the acts of Congress enacted under it confer upon the Negro race perfect equality of civil rights with the white race:

Slaughter House Cases (16 Wall. 36, 21 L. Ed. 394).

Strauder v. *West Virginia* (100 U.S. 303, 25 L. Ed. 664).

Virginia v. *Rives* (100 U.S. 313, 25 L. Ed. 667).

In re Virginia (100 U.S. 339, 25 L. Ed. 676).

United States v. *Harris* (106 U.S. 629, 27 L. Ed. 290).

Gibson v. *Mississippi* (162 U.S. 565, 40 L. Ed. 1075).

Kentucky v. *Powers* (201 U.S. 1, 50 L. Ed. 633).

O'Sullivan v. *Felix* (233 U.S. 318, 58 L. Ed. 980).

Buchanan v. *Warley* (245 U.S. 60, 62 L. Ed. 149).

Hague v. *CIO* (307 U.S. 500).

Railway Mail Association v. *Corsi* (326 U.S. 88, 89 L. Ed. 2072).

Shelley v. *Kraemer* (334 U.S. 1, 92 L. Ed. 1161).

Torao Takahashi v. *Fish and Game Commission* (334 U.S. 410, 92 L. Ed. 1478).

Bolling v. *Sharpe* (347 U.S. 497, 98 L. Ed. 884).

Ex parte Riggins (134 F. 404).

Agnew v. *City of Compton* (239 F. (2d) 226).

Mr. ERVIN. Mr. President, I wish to call attention to a few statements in a few of those decisions. I shall read a short extract from the case of *Virginia* v. *Rives*, 100 U.S. 313. The portion I read appears on page 318. Before I quote from the decision, I should like to state that it is interpretative of two of the statutes which I read into the RECORD a moment ago. The excerpt reads:

The plain object of these statutes, as of the Constitution which authorized them, was to place the colored race, in respect of civil rights, upon a level with whites. They made the rights and responsibilities, civil and criminal, of the two races exactly the same.

I wish to quote a sentence from the decision of the Supreme Court of the United States in the case of *Gibson* v. *Mississippi*, 162 U.S. 580:

The cases cited were held to have decided that the statutory enactments referred to were constitutional exertions of the power of Congress to enact appropriate legislation for the enforcement of the provisions of the 14th amendment, which was designed, primarily, to secure to the colored race, thereby invested with the rights, privileges, and responsibilities of citizenship, the enjoyment of all the civil rights that, under the law, are enjoyed by white persons.

In speaking of the same statutes, the Supreme Court of the United States, in the case of *O'Sullivan* v. *Felix*, 233 U.S. 318, at page 323, said:

These provisions secure to all citizens the same rights that white people enjoy.

Another decision which has to do with the construction of these statutes is in the case of *Hague* v. *CIO*, 307 U.S. 509. I ask unanimous consent that an extract from this decision be printed at this point in the RECORD.

There being no objection, the extract was ordered to be printed in the RECORD, as follows:

After the adoption of the 13th amendment, a bill, which became the first Civil Rights Act, was introduced in the 39th Congress, the major purpose of which was to secure to the recently freed Negroes all the civil rights secured to white men. This act declared that all persons born in the United States, and not subject to any foreign power,

excluding Indians not taxed, were citizens of the United States and should have the same rights in every State to make and enforce contracts, to sue, be parties, and give evidence, to inherit, purchase, lease, sell, hold, and convey real and personal property, and to enjoy the full and equal benefit of all laws and proceedings for the security of persons and property to the same extent as white citizens. None other than citizens of the United States were within the provisions of the act. It provided that "any person who, under color of any law, statute, ordinance, regulation, or custom, shall subject, or cause to be subjected, any inhabitant of any State * * * to the deprivation of any right secured or protected by this act" should be guilty of a misdemeanor. It also conferred on district courts jurisdiction of civil actions by persons deprived of rights secured to them by its terms.

By reason of doubts as to the power to enact the legislation, and because the policy thereby evidenced might be reversed by a subsequent Congress, there was introduced at the same session an additional amendment to the Constitution which became the 14th.

The first sentence of the amendment settled the old controversy as to citizenship by providing that "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." Thenceforward citizenship of the United States became primary and citizenship of a State secondary.

The first section of the amendment further provides: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

The second Civil Rights Act was passed by the 41st Congress. Its purpose was to enforce the provisions of the 14th amendment, pursuant to the authority granted Congress by the 5th section of the amendment. By section 18 it reenacted the Civil Rights Act of 1866.

A third Civil Rights Act, adopted April 20, 1871, provided "That any person who, under color of any law, statute, ordinance, regulation, custom, or usage of any State, shall subject, or cause to be subjected, any person within the jurisdiction of the United States to the deprivation of any rights, privileges, or immunities secured by the Constitution of the United States, shall, any such law, statute, ordinance, regulation, custom, or usage of the State to the contrary notwithstanding, be liable to the party injured in any action at law, suit in equity, or other proper proceeding for redress." This, with changes of the arrangement of clauses which were not intended to alter the scope of the provision, became R.S. 1979, now title 8, section 43, of the United States Code.

Mr. ERVIN. Mr. President, I wish to note, in connection with the insertion, that the Court declared in this case that "the major purpose of the civil rights acts, which are now upon the statute books, was to secure to the recently freed Negroes all the civil rights secured to white men."

In the case of *Bolling* v. *Sharpe,* 347 U.S. 499, the Supreme Court said on this subject:

As long ago as 1896, this Court declared the principle "that the Constitution of the United States, in its present form, forbids, so far as civil and political rights are concerned, discrimination by the General Government, or by the States, against any citizen because of his race."

Another opinion which dealt with the effect of the 14th amendment and the statutes that were enacted under it is in the case of *Buchanan* v. *Warley,* 245 U.S. 66. I desire to read the following extract as it appears on page 77 of the opinion:

It (the 14th amendment) was designed to assure to the colored race the enjoyment of all the civil rights that under the law are enjoyed by white persons, and to give to that race the protection of the General Government, in that enjoyment, whenever it should be denied by the States.

I shall content myself with calling attention to only two of the decisions of the lower courts on this point. There are multitudes of such decisions dealing with the effects of the statutes enacted in reliance upon the 14th amendment and upon the 15th amendment. One of them is in the case of *Ex parte Riggins,* 134 Fed. 404. The substance of the holding is given in the first headnote, which states that the civil rights acts, which are the statutes I read into the RECORD, gave the emancipated race perfect equality of civil rights with the white race.

The last of the decisions to which I wish to invite the attention of Senators is in the case of *Agnew* v. *City of Compton,* 239 Fed. 2d 226. I wish to read a short extract from the portion of the opinion in this case that appears on page 230:

The statutes next referred to are 42 U.S.C.A. 1981 and 1982. These are the first two sections of the Civil Rights Act, as now codified. The plain purpose of the statutes is to provide for equality of rights as between persons of different races. The complaint under review does not allege that appellant was deprived of any right which, under similar circumstances, would have been accorded a person of a different race. It follows that no cause of action is stated under these sections.

The statutes I have read to the Senate, the opinions I have cited, and the extracts from the opinions which I have enumerated make it clear beyond the shadow of a doubt that at the present moment members of the Negro race enjoy every civil right and every political right that belongs to members of the white race.

So the object of the bill is not to secure to Negroes any constitutional right or any right which they have under any act of Congress. They already have equality of rights with members of the white race both under the Constitution and under all the acts of Congress that implement the Constitution. Not only has Congress enacted these statutes, but it has made it clear that the Negro race has exactly the same civil rights and exactly the same political rights as does the white race. Moreover, Congress has enacted a number of statutes for the enforcement of those rights. I wish to call attention to those statutes.

Three of the statutes are criminal statutes, and are enforcible in criminal prosecutions instituted by the U.S. district attorney, at the direction of the Department of Justice.

The first is 18 U.S.C. 242, which bears the title "Deprivation of Rights Under Color of Law."

I shall not read this title at length; but I summarize it by saying that it makes it a misdemeanor, punishable by a fine not exceeding $1,000, or by imprisonment for not exceeding 1 year, or by both such fine and such imprisonment, for any State or local official to deprive any person of any right guaranteed him under the Constitution of the United States or under the acts of Congress implementing the Constitution.

The second of these statutes is 18 U.S.C. 241, which makes it a conspiracy, punishable by a fine of as much as $5,000 or by imprisonment for as long as 10 years, or by both such fine and such imprisonment, for any State or local official to conspire with a third person to deprive any person within the jurisdiction of the United States of any right secured to such person by the Constitution or laws of the United States.

The third of these statutes is title 18, United States Code, section 371, a general conspiracy statute. The courts have held that under this statute, any State or local official who conspires with another to deprive any person within the jurisdiction of the United States of any right secured to such person by the Constitution or laws of the United States, can be punished as provided by section 242 of title 18.

In addition to these three criminal statutes, under which the prosecution is by the Department of Justice, through the U.S. district attorneys of the districts concerned, and at the expense of the taxpayers, there are two civil statutes which give to any person who suffers a deprivation, or is threatened with a deprivation, of any right secured to him by the Constitution or laws of the United States, the right to institute civil actions. On the one hand, he can bring a civil action for damages, if he is actually deprived of his rights. On the other hand, he can bring a proceeding in equity—and such a proceeding is tried by a judge, without a jury—to prevent any threatened deprivation of any right secured to him by the Constitution or the laws of the United States.

These five statutes are designed to make certain that any citizen of the United States, of any race, shall have ample remedy, either by criminal prosecution or by a common-law action for damages or by a proceeding in equity, to vindicate his civil and political rights under the Constitution of the United States and the acts of Congress implementing the Constitution, and to obtain damages from any State or local official who may deprive him of any such rights.

So, Mr. President, there is no necessity to enact the pending bill in order to give members of the Negro race civil or political rights equal to those given the members of the white race. This is true because members of the Negro race already have such rights under existing law. Besides, they already have ample remedies for any violation or threatened violation of such rights.

The truth of the matter is that the purpose of this bill is to rob all Americans of some of their basic economic, legal, personal, and property rights, for the sole benefit of one segment of the population of our country.

Mr. SPARKMAN. Mr. President, will the Senator from North Carolina yield briefly to me?

Mr. ERVIN. I yield for a question.

Mr. SPARKMAN. With reference to the Senator's statement that the bill would take away certain economic rights, does not the Senator from North Carolina agree with me that is true with respect to certain rights secured under the National Labor Relations Act, the Railway Labor Act, and other acts, and that by means of the pending bill, those rights would be taken away from labor?

Mr. ERVIN. Yes. The pending bill would take away from all Americans many of their basic rights in connection with any dealings they might have with members of the Negro race.

Mr. SPARKMAN. Does not the bill also threaten the entire seniority system within the ranks of labor?

Mr. ERVIN. I so construe the bill.

Mr. SPARKMAN. So do I; and I had hoped to make a few remarks on this very point.

If the Senator from North Carolina will yield further to me——

Mr. ERVIN. I yield.

Mr. SPARKMAN. I wish to speak in favor of deleting title VII, the FEPC provisions of the civil rights bill, in its entirety. No better service could be rendered the laboring men, as well as employers, throughout the Nation than to defeat the entire title.

For some time now, and especially in the last few days, my office has received numerous messages and personal visits from representatives of organized labor in the State of Alabama, in opposition to title VII. Of course, I have been opposed to this whole bill from the start, and have been doing everything within my power to defeat it. On several occasions, I have stated openly my opposition to title VII, which would put the Federal Government and all disgruntled civil rights advocates in the position of dictating the terms of private employment throughout the whole Nation. I am equally opposed to the Mansfield-Dirksen substitute bill—amendment No. 656—as it relates to title VII. In many ways this substitute is worse than the House version of the bill, if that be found possible in comparing two proposals, when the whole purpose of both is wrong. The Attorney General would move into the picture under the substitute far more strongly than he would under the bill, and he could only intervene in law suits, but under section 707 he could file law suits on the ground that a pattern of resistance to title VII was building up in any area, region, or locality. Moreover, he could get a three-judge court. I not only hope the bill will be defeated, but I also hope the substitute will be defeated. I will vote for any amendment that will nullify title VII.

For many years it has been my purpose and pleasure to help the laboring man and organized labor. Several of the international and national leaders of organized labor are on record in favor of this bill; but the grassroots of labor know what Federal control of employment practices and the injection of the explosive racial discrimination issue under compulsory mandates can mean to the orderly conduct of the causes and procedures of organized labor. Those who have contacted me are strenuously opposed to it, as they should be.

For one thing it would hurt the seniority system and the merit system, and would infringe deeply on the freedom of choice of union leaders, union members, and employers. Title VII, together with title VI and other parts of the bill, would be detrimental to union rights and benefits due under the National Labor Relations Act, the Railway Labor Act, the Davis-Bacon Act, the Walsh-Healey Act, and under other beneficial legislation.

The substitute amendment—No. 656—attempts to offset the damage of the House version of the bill to the seniority and merit systems, by recognizing them in section 703(h) at page 44; but this is offset by the added power of the Attorney General to institute employment pattern suits with practically no limitations thereon. Moreover, the racial imbalance question and the quota system rise wherever we turn in title VII, regardless of the so-called mitigating language found on pages 44 and 45 of the substitute, because even there, and especially in the House version of the bill, there is nothing to say that the matter of racial imbalance—which is something that we can hardly regulate by law—and the percentage of persons of any given race employed in any area or in a given plant or on the rolls of a labor union, cannot be presented in evidence to the Equal Employment Opportunity Commission. In the hands of a Commission such as this, it would no doubt have a damaging effect on both employers and labor unions, in the ultimate result. This would also be detrimental to well qualified and perhaps unemployed people of the majority race, because this bill would carry with it the power of enforcement. In the South, it would carry with it the power of immediate enforcement. In fact, the sum total of the omissions as well as the specific and technical language of title VII is that it is aimed at the South, as one of its purposes.

Mr. President, an FEPC bill has never passed the Senate. I hope one never will pass this great body. Title VII proposes entry into an area which the Federal Government has absolutely no right to enter; namely, private employment. It is begging the question to debate whether an employer should have 100 or should have 25 employees before the Federal Government would take jurisdiction over his employment practices, and over labor unions, according to the same figures. The fundamental point is that the Federal Government should not in this instance enter the field of private employment at all.

If we let the Government get its foot in the door, whether it be on a basis of 100 or of 25, it will not be long, if history runs true to form, before the door will be wide open.

The innumerable hardships of keeping records and of being inspected and being subject to the mandates of a Commission, and ultimately of the courts, should not be foisted upon private employers. There is simply no justification for doing so; and the same reasoning applies for labor unions and employment agencies. Our traditional American concept of freedom of choice and the freedom to run one's own private affairs as he sees fit should compel us to reject this proposed invasion of our traditional rights.

Private employment often is involved indirectly, as in the case of contractors undertaking a Government contract with departments and agencies of the Federal Government. In many cases, only a part of a contractor's employees are concerned with supplying materials or with actually working on the Government contract. In a case such as this, titles VI and VII could combine to make a devastating situation for a private employer. He could be caught from all angles in the vice of Federal dictates, inspections, the withholding of funds, and court action in enforcement of vague language. Title VI states that:

> No person shall be subjected to discrimination under any program or receiving Federal financial assistance.

The title then directs all Government agencies to enforce this language. It authorizes the withholding of funds and all other means under existing law, including court action, for enforcement. If a contractor should have a need for plumbers, and if the union supplied him qualified plumbers, whom he hired instead of a less qualified member of a minority race, then a dual title VI and title VII case could arise. The power proposed by title VI would be tremendous. When coupled with title VII, so as to bring in all employees of the contractor not related to the Government contract, this power could make practically meaningless what labor organizations have fought for in a period of 100 years of sometimes frustrating, and always strenuous struggle. The employer would soon realize that he was faced with a question of sheer Federal power—a power that would be hard to fight.

This whole bill is an invasion of personal and property rights that are more sacred to me under the Constitution than the so-called duty to bring about compulsory racial integration and compulsory dictates from the Government as to how a private employer should conduct his own business. We should not sacrifice important constitutional personal and property rights of the many for something of doubtful benefit to the few. Therefore, we should delete title VII.

Mr. ERVIN. Mr. President, I thank the Senator from Alabama for his contributions.

I point out that the demand for passage of the pending bill, which would rob all Americans of many of their most precious rights for the supposed benefit of only one segment of the American people, is understandable when one reads, for example, an editorial which was published in the Wall Street Journal. I quote from it:

> In recent times, among other things, America's traditional tolerance toward minorities has shown a tendency to get twisted; if a person is a member of a minority, his rights are sometimes alleged to be superior

to the majority's, by virtue of his minority status.

This country had a public accommodations law at one time similar to title II of the pending bill which was passed by Congress in 1875. The U.S. Supreme Court struck down that law as unconstitutional, in the Civil Rights cases, which are reported in 109 U.S. at page 3.

I am surprised by the inclusion of the public accommodations title in the pending bill, because under every decision of every court handed down from 1883 to this moment, this provision is unconstitutional. I cannot guarantee what the Supreme Court, as now constituted, will decide; but I do not believe that the Supreme Court, as now constituted, is so lacking in intellectual integrity and judicial stability that it would go so far as to hold the public accommodations title of the bill constitutional under the 14th amendment or the commerce clause.

In the Civil Rights cases of 1883, Mr. Justice Bradley, one of the greatest lawyers ever to adorn the Supreme Court of the United States, wrote the majority opinion, which was concurred in by all of the Justices of the Supreme Court except one Justice of the Court, who dissented. On page 25 of his opinion, he placed his finger squarely upon the fatal defect in the pending civil rights bill and in every other civil rights bill of modern vintage. Here is what he said in that respect:

> When a man has emerged from slavery, and by the aid of beneficient legislation has shaken off the inseparable concomitants of that state, there must be some stage in the progress of his elevation when he takes the rank of a mere citizen, and ceases to be the special favorite of the laws, and when his rights as a citizen, or a man, are to be protected in the ordinary modes by which other men's rights are protected.

That statement from the opinion of Mr. Justice Bradley in the Civil Rights cases of 1883 is directly applicable to the pending bill and virtually every provision of the pending bill. The bill evidences a purpose on the part of the proponents that members of the Negro race should not take their rank as mere citizens as white people do but, on the contrary, should be made special favorites of the laws. The bill proposes to let the Department of Justice bring lawsuits for the supposed beneficiaries of the bill, an authority which will never be executed in behalf of members of the Caucasian race in this Nation. The bill would thereby make the Negro race a special favorite of the laws by excusing them from having their rights adjudicated by the same laws by which all other men's rights are adjudicated.

What would title VII of the bill do? I wish to read from the substitute offered by the Senator from Illinois [Mr. DIRKSEN] for himself, the majority leader, the Senator from Montana [Mr. MANSFIELD], the majority whip, the Senator from Minnesota [Mr. HUMPHREY], and the minority whip, the Senator from California [Mr. KUCHEL], on May 26. I call attention specifically to section 703, subsection (a):

> It shall be an unlawful employment practice for an employer—
>
> (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or
>
> (2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.
>
> (b) It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, sex, or national origin.

One of the things which has made America great has been the free enterprise system. The men and women who founded America came here in order that they might enjoy certain liberties which were denied to them in the lands of their origin. One of those liberties was economic liberty. Those men and women had been denied the benefit of the fruits of their own labor, in many cases, in the lands of their origin by confiscatory taxation. Also they were denied the right to own property in fee simple in many of the countries from which they had come. So they came to this country in order that they might have an opportunity to better their lot economically, and they desired to have that opportunity in the land of freedom where the free enterprise system would be permitted to work. So men invested their resources and talents in business or industry in the United States. They gambled upon the success of that business or industry. One of the great rights which they exercised in carrying on their business or industry was the right to select for themselves those whose services they desired to have in the carrying on of their business or industry.

They wanted to have the right, and they were allowed the right, free from Government control and free from Government dictation, to determine which of their employees by reason of their loyalty and by reason of their superior services should be entitled to promotion. They wanted to have the right, and they were allowed the right, to determine what skills were necessary in their employees to make their business or industry a success. They wanted to have the right, and they were accorded the right, under our law, to discharge from their employment those who were not loyal to them or those whose services were of such an inferior quality that they did not contribute to the success of the enterprise. They wanted to have the right, and they were accorded the right, to determine in what parts of their business or industry their employees should work. They wanted to have the right, and they were accorded the right, to determine what the workload of their employees should be within reasonable bounds. Also, they wanted to have the right, and they were given the right, to arrange the compensation of their employees so as to reward their employees for their loyalty and skill in proportion to their loyalty and their skill. Those were the rights which made the free enterprise system work.

Those were precious rights. They were precious rights because a man who goes into business or industry gambles his resources, his time, and his energies upon the success of the venture in which he engages. No one else has any such stake in it.

Title VII of the bill would rob every American having as many as 25 employees in any business or industrial enterprise affecting interstate commerce of those precious rights which the founders of our country came here to enjoy. The bill would give the Federal Government the power to go into any business or industry in the United States having as many as 25 employees and affecting interstate commerce and tell the operator of that business whom he had to hire. It would give the Federal Government the power to go into any such business or any such industry and determine whom the employer had to promote. It would give the Federal Government the power to go into any such business or industry and tell the operator of that business whom he should lay off and whom he should retain in times of financial adversity.

Mr. President, the bill would go further than that. It would give the Federal Government the power to go into such business and industry, and even direct the operator of such business or industry as to how he should fix the rates of compensation as between employees.

The bill is broad enough in its provisions in respect to terms, conditions, and privileges of employment to authorize the Federal Government to undertake to tell the operator of a business or industry what the workload of his employees should be. Section 703(a)(2) states that it shall be an unlawful employment practice for an employer to limit his employees.

Under this provision of the bill the Federal Government would have the power to say to a business or an industry how many employees it should have.

All those powers would be given to the Federal Government, to the end that the Federal Government might prevent the owner of a business or industry from discriminating in his own mind between a man of one race and a man of another in any aspect of employment.

It is absurd to contend that the Constitution gives one man a civil right to compel another to hire him.

The provisions of section 703 make it an unlawful employment practice for an employer "to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin." Under this provision the Federal Government would have the power to go into a business, or an industry, and direct the operators of that business or that industry as to what rooms, or what departments of that business or industry they would have to assign particular employees to in order to prevent segregation

of the races within various rooms and various departments.

Mr. COOPER. Mr. President, will the Senator yield?

Mr. ERVIN. I yield.

Mr. COOPER. I know that the Senator has studied the bill very thoroughly. I realize that title VII has aroused concern and fears among some employers. The argument the Senator is making if it were accurate would justify those fears. But, with all deference, I believe his statement is extreme. The Senator has declared that this title would give to the Federal Government extensive and indeed unprecedented powers. But my interpretation of title VII, derived from study and the extensive discussions we had with the author of the substitute bill, Senator DIRKSEN, is that the Federal Government would not be given the powers which the Senator has detailed namely, the power to tell an employer whom he should employ, or whom he should dismiss, or whom he should promote, or what priorities employees should be given in jobs.

As I understand title VII, an employer could employ the usual standards which any employer uses in employing—in dismissing, in promoting, or in assigning those who work for him. There would be only one limitation; he could not discriminate, he could not deny a person a job, or dismiss a person from a job, or promote on the sole ground of his color, or his religion, other factors being equal.

I think this should be made clear, because the Senator's remarks may frighten people all over the country who do not have the time to study this bill with the thoroughness it deserves.

Mr. ERVIN. I suggest to the Senator from Kentucky that he request the Senator from Illinois to read the decision in the Motorola case, which decision was handed down by a trial examiner in the State of Illinois, under the Illinois FEPC law. In that decision, the employer was told flatly that he had to hire a colored man in preference to a white man, even though the white man had passed, and the colored man had failed to pass, the examination which experts employed by the employer had set up to determine the skills needed for the work. The trial examiner flatly told the employer that he had to hire the Negro, even though he had failed the examination. Not only that, but the trial examiner told him that he could not use the examination in the future because the record showed that more white men than colored men had passed the examination.

Mr. COOPER. I know about the Motorola case. I know that it was brought under the Illinois law. But today we are talking about a particular title of the bill. It will be determined upon the language in the bill, upon the interpretation and the legislative history. The interpretation which the Senator is giving to title VII is very extreme and, I do not think, it is correct.

Mr. ERVIN. There is even a provision in the bill that if the employer does not hire a man whom the Government later finds is qualified, the employer can be compelled to pay back wages to the man from the date he had applied for the job.

I am on limited time. Unless the Senator can borrow time from the opposition, I shall proceed.

Mr. CLARK. Mr. President, I am in charge of time for the opposition. I yield 5 minutes for the purpose of engaging in a brief colloquy with the Senator from North Carolina.

I must say to the Senator from North Carolina, whose judicial experience and wise judgment we all honor, that I have been rather startled to hear some of the arguments he has been making in support of his very radical amendment this afternoon.

Does not the Senator know that the Motorola case has absolutely no bearing on the legislation we are now considering? The Senator is a good lawyer. He was a good judge. He knows that the Motorola case has nothing to do with title VII of the bill.

Mr. ERVIN. The decision in the Motorola case was handed down pursuant to a State act on which this title is based.

Mr. CLARK. I do not like to see the Senator go out on a limb that way. This law is far different from the Illinois law under which the trial examiner made a preliminary decision which has not yet been reviewed by the court, and which, in my opinion, is certain to be overruled. That Illinois law is so different from the proposed law that it is difficult for me to understand how as good a lawyer and as good a judge as the Senator from North Carolina can intimate that there is the slightest similarity between the two.

Mr. ERVIN. I say that the Illinois law and the proposed bill are as alike as two peas in a pod.

Mr. CLARK. Someone has a bad case of indigestion or is colorblind. It must be either the Senator from North Carolina or I. We shall have to leave it to the judgment of the Senate.

Mr. ERVIN. The Senator has said that all other things being equal, the provision would apply. Who will determine whether other things are equal? The person concerned would not have the right or the authority to determine it. That power will be turned over to the Commission, and then to the courts. There will be a bureau with as many employees as the locusts which go abroad and eat up the substance of the people. The decision as to whether things were equal and what the state of the mind of the employer was will be made, in the first instance, by Federal bureaucrats, and, in the second instance, by Federal courts. The investigators can say that the employer made the wrong decision because of bias and that the two applicants were equal. He can be penalized.

Mr. CLARK. Mr. President, will the Senator yield?

Mr. ERVIN. I will yield for a question, but I do not believe I will yield for a speech. The Senator can make a speech on his own time.

Mr. CLARK. I will withhold my questions. I was about to ask the Senator some Socratic questions. They might even be known as leading questions in the law.

Mr. ERVIN. I have very limited time. I yielded to the Senator and the Senator made speeches every time instead of asking questions. I think I had better use my own time and let the Senator use his.

Mr. CLARK. I appreciate the Senator's unfailing courtesy.

Mr. ERVIN. Mr. President, the purpose of the bill is to let the Federal Government take charge of the hiring practices in every business and every industry in the United States having as many as 25 employees, and affecting interstate commerce in the slightest degree. The employer could act in good faith. He could say "I want this man of this race to work in my plant, because he fits in better than a man of another race." But under the bill the Federal Government can make him fire the man that he hired, and give the other man a job and pay him for lost time from the time he applied for the job to the time the decision is rendered.

It will be stated that this cannot be done and that only the courts can compel one to act. But the average American citizen does not like to become embroiled in a lawsuit, especially with Uncle Sam. The Commission, or the Department of Justice, or the applicants will threaten employers with lawsuits, and they will surrender to the dictates of the Commission, or the Attorney General, or the applicants rather than to be harassed by lawsuits.

This bill undertakes to control the thoughts of the American people in respect to racial matters, and to compel the American people to conform their thoughts in this field to the dictation of the Government.

It is a thought control bill. No man will be adjudged guilty of an illegal act under title VII of the bill on account of the nature or quality of his act. He will be judged guilty or innocent on the basis of the contents of his mind at the time he commits the act, because discrimination is a mental process. He is to be charged and condemned on the basis of the content of his mind, not upon the nature or the quality of his external act.

The idea that Congress can legislate equality among men is an idea which history explodes. It cannot be done. There is only one field in which a free society can legislate equality, and that is equality before the law.

Under the statutes which I have read, under the decisions which I have cited, and under the decisions which I have quoted, it is obvious that the United States has already established equality before the law for all American citizens, regardless of their race.

This is an effort to go far beyond that, and to legislate equality in other fields. The bill ignores the fact that when a free society undertakes to legislate equality in any area except equality before the law, it destroys its own freedom.

That is what this bill would do. It would rob employers of the right to hire, to discharge, to promote, and to fix the compensation of their own employees in any case where a Federal bureaucrat or a Federal court rules that they were actuated by any racial motive in their action.

There was a very wise Negro in North Carolina, C. C. Spaulding, one of the founders of the largest insurance com-

pany on the face of the earth, owned, operated, and controlled by members of the Negro race, who said:

Equality is a thing which should not be demanded because it cannot be granted. It has to be earned. No utopian dreamer can achieve it for another man. You cannot drink from the spring high on the mountain unless you climb to it. If the Negro wants equality, except for opportunity, he must pay for it. And the unalterable price is character and achievement.

This is a bad bill. Many of those who advocate its enactment have deceived multitudes of members of the Negro race into believing that passage of the bill will solve their economic and social problems. Indeed, some of the proponents of the bill have assured its supposed beneficiaries that the bill alone will transport them to economic, social, and political skies on flowery beds of ease. The tragic truth is that little can be done to better employment opportunities for people of any race as long as 895,000 nonwhites and 3,629,000 whites are without employment.

The supposed beneficiaries of the bill will be bitterly disappointed because the bill will not do much to better their status.

So far as title VII is concerned, the bill will be used to harass businessmen and industrialists throughout the United States. One of the worst features in the bill is its centralization of the Government in Washington. It would take and transfer from the States, from the localities, and from the people themselves the power to regulate commercial, business, and industrial enterprises. It would vest that power in the Federal Government and centralize it on the banks of the Potomac River. It would thrust the long arm of Federal regulation into every commercial enterprise, every business enterprise, and every industrial enterprise of any consequence throughout the land.

It would rob investors and employers of some of their basic economic rights. It would destroy some of the most precious and most valuable parts of the private enterprise system.

This bill is not a bill to give equality of opportunity. It is a bill to vest in the Federal Government powers which rightly belong to business and industry.

The bill would make the members of a particular race special favorites of the laws. It would excuse them from having their rights adjudicated by the same laws by which other men's rights are adjudged if the Attorney General exercises his discretionary powers to sue at public expense for their special benefit.

I believe the greatest expert in government ever to occupy the White House was Woodrow Wilson. He studied law and practiced it for a time, and thereafter devoted his entire mature life, until he became Governor of the State of New Jersey, to the study and teaching of government. After that, he spent the remainder of his life in the practice of government.

Woodrow Wilson made a profound observation, which is directly applicable to this bill.

Liberty has never come from the government. Liberty has always come from the subjects of it. The history of liberty is the history of limitation of governmental power, not the increase of it. When we resist, therefore, the concentration of power, we are resisting the processes of death, because concentration of power is what always precedes the destruction of human liberties.

The bill would concentrate in the Federal Government in Washington the power to control the hiring practices of virtually all the commercial, business, and industrial enterprises of any significance throughout the United States. It would thereby destroy many liberties.

I repeat, this is a thought-control bill. Under the bill, no man would be judged on the basis of the nature or quality of his external act. He would be judged solely upon the basis of the supposed contents of his mind at the time he commits the act.

Why anyone should be so foolish as to believe that the Government can control the thoughts of people in this area any more than in any other area of life is something which I am incapable of comprehending.

At one time the law undertook to interfere with the personal habits of people. It undertook to prohibit the use of intoxicating liquors. In short, Congress, through the Volstead Act, tried to regulate the contents of the stomachs of men. It sent its agents into every nook and corner of the country, to enforce the law under which the Government undertook to control the contents of the stomachs of men, and it failed miserably.

A government which is incapable of controlling the contents of a man's stomach cannot possibly regulate the contents of a man's mind.

It is a fine thing that the Government cannot regulate the contents of people's minds, because if that power did reside in government, the tyrants of the past would have long since placed humanity in a mental straitjacket and made it incapable of exercising freedom of thought.

I respectfully submit that if we wish to keep America "the land of the free and the home of the brave," instead of making it "the land of the coerced and the home of the governmentally regimented," we should strike out title VII of the pending civil rights bill, as my amendment proposes.

Mr. CLARK. Mr. President——

The PRESIDING OFFICER (Mr. McNAMARA in the chair). The Senator from Pennsylvania is recognized. How much time does the Senator from Pennsylvania require?

Mr. CLARK. I yield myself as much time as I may require, unless the Senator from New York would like to take some time at this point.

Mr. KEATING. I thank the Senator from Pennsylvania, but I do not need time now. I am sure that the Senator is opposed to the proposal, as I am, and I shall listen to his arguments with great interest and undoubtedly will not need to add anything to them.

Mr. CLARK. Mr. President, would the Senator from New Jersey [Mr. CASE] like to have some time at this point?

Mr. CASE. I should be happy, indeed, if the Senator from Pennsylvania made his remarks first, and then possibly we might have some colloquy during the course thereof.

Mr. CLARK. Mr. President, I yield to myself such time as I may require. I ask whether I am correct in assuming that I have approximately 55 minutes left?

The PRESIDING OFFICER. That is correct.

Mr. CLARK. Mr. President, since this filibuster began on March 9, some rather extraordinary speeches have been made on the floor of the Senate about the bill in general and about title VII in particular.

As one of the floor managers of title VII, I undertook to speak at some length in support of the title on April 8. I shall do no more than summarize very briefly the arguments I then made in support of the title. At the same time the able senior Senator from New Jersey [Mr. CASE], who is the floor manager of the bill on the Republican side, made a very distinguished speech in support of the title.

There has been so much oratory, and so many really extravagant statements have been made about what title VII does, that it is perhaps difficult to speak objectively and carefully about what the title is intended to do, without being diverted into an effort to rebut some of what can only be called fantastic misstatements about what the title does, which have been made from time to time, not only on the floor of the Senate but also by a large number of individuals serving in the press corps, without their having taken the trouble to read the title or being quite careless in what they had to say about it.

Let me deal first with the suggestion, made over and over again, that title VII might conceivably be unconstitutional. No lawyer worthy of the name thinks that. The constitutionality of title VII under the commerce clause of the Federal Constitution has been amply demonstrated time after time.

On the 8th of April I put in the RECORD an opinion from 32 of the ablest constitutional lawyers in the United States, stating their clear view that there was not a shadow of doubt about the constitutionality of title VII. That opinion was buttressed by an excellent opinion of the Attorney General of the United States, signed by the Deputy Attorney General, Mr. Katzenbach, and by another excellent opinion provided by the Solicitor of the Department of Labor.

I say again—and I challenge the opponents of title VII to show that I am wrong—that there is not a scintilla of doubt about its constitutionality. A lawyer cannot make a tenable argument that title VII is unconstitutional.

I was rather startled to hear my good friend from North Carolina make the statement, which I believe I took down accurately, that this was a title to rob all Americans of important rights for the benefit of one segment of the population.

Mr. President, this title would not deprive anyone of any rights. All it does is to say that no American, individual, labor union, or corporation, has the right to deny any other American the very basic civil right of equal job opportunity.

The bill does not make anyone higher than anyone else. It establishes no quotas. It leaves an employer free to select whomever he wishes to employ. It enables a labor union to admit anyone it wishes to take in. It tells an employment agency that it can get a job for anyone for whom it wishes to get a job.

All this is subject to one qualification, and that qualification is to state: "In your activity as an employer, as a labor union, as an employment agency, you must not discriminate because of the color of a man's skin. You may not discriminate on the basis of race, color, religion, national origin, or sex."

That is all this provision does. It would establish a legislative civil right for what has always been a sacred American constitutional right, the right to equal protection of the laws. That phrase does not come from the commerce clause, but the philosophy behind it is the philosophy behind the fair employment practice title.

It merely says, "When you deal in interstate commerce, you must not discriminate on the basis of race, religion, color, national origin, or sex."

Title VII as it presently exists, and as modified—as many of us agreed, reluctantly, including myself, that it should be modified by the Dirksen amendment—is one of the mildest Fair Employment Practices acts ever to be brought before the Congress.

I had the privilege of serving as the chairman of the Subcommittee on Manpower and Employment of the Committee on Labor and Public Welfare. We took a great deal of testimony for a great many days. The details are set forth in my speech of April 8.

We reported a fair employment practice bill to the Senate by a vote of 12 to 3, a bipartisan vote, because among the honored Republicans who voted in support of the bill was the junior Senator from Idaho [Mr. JORDAN], who is now in the Chamber, the Senator from New York [Mr. JAVITS], and the Senator from Vermont [Mr. PROUTY]. Only three Senators voted against reporting the fair employment practice bill to the Senate. It came from the Committee on Labor and Public Welfare by a vote of 12 to 3. That bill was a much stronger bill than the one now before the Senate.

I preferred that bill. It gave teeth to the enforcement of fair employment practices by a Fair Employment Practices Commission, established by law, with an administrator, who had important executive duties, and with the right of appeal, not to the district court, but to the circuit court of appeals.

The relatively mild fair employment practices bill which passed the House was far weaker than the Senate bill. To my way of thinking, the Dirksen amendments have weakened the House bill in several unfortunate respects. I commented on this point on the floor of the Senate several days ago.

Now, we have a pretty mild fair employment practices proposal. It is intolerable to me that the Senate should fail to retain this title in the bill when it comes to be finally passed. To my way of thinking, the most important civil right for disadvantaged citizens is the right of equal job opportunity.

Of course, that ties in very closely, as the present occupant of the chair, the former distinguished Secretary of Health, Education, and Welfare [Mr. RIBICOFF] knows, with the right to equal educational opportunities, for unless American citizens, regardless of race and color can have equal educational opportunities, there is little likelihood that they can receive equal job opportunity in a free enterprise system.

With respect to the present labor force, to a man or woman whose education has for all practical purposes been completed, the right to equal job opportunity is the most important civil right of all. What good does it do to allow a man to go into a restaurant, to obtain a room in a hotel or a motel, regardless of his race, creed, or color, if he does not have the money with which to pay for such services? How can he have the money if he cannot get a job without discrimination, which will enable him to earn money, which can make the access to public accommodations a real and living thing, as opposed to an empty constitutional right incapable of being enforced?

So when we strike, or speak of striking title VII from the bill in my judgment we strike at the very heart of the bill itself. In my judgment, the adoption of the Ervin amendment would be the gravest catastrophe that could overcome the cause of civil rights since this long and tedious filibuster began so many months ago, back on the 9th of March.

The moral question raised by the bill is particularly applicable to the fair employment practices title. The moral issue is clear, indeed. It is merely a question of right and wrong. We cannot duck it. There is no way we can avoid searching out our own consciences. The bill clearly raises this important moral question.

We had before us, in hearings held by the committee, eloquent and articulate representatives of the churches of the United States. In our record, at page 180, the representatives of the National Catholic Welfare Conference, the Synagogue Council of America, and the National Council of Churches of Christ in America said:

> The religious conscience of America condemns racism as blasphemy against God. It recognizes that the racial segregation and discrimination that flow from it are a denial of the worth which God has given to all persons. We hold that God is the Father of all men. Consequently in every person there is an innate dignity which is the basis of human rights. These rights constitute a moral claim which must be honored both by all persons and by the state. Denial of such rights is immoral.

The second reason why this mild provision of title VII, dealing with fair employment practices, should be adopted by the Senate, and the pending amendment defeated, is that of the great economic need. Economics is at the heart of the racial situation. The Negro has been condemned to poverty because of a lack of equal job opportunities. This poverty has kept the Negro out of the main stream of American life. This is the issue that confronts us on the economic side.

In my speech of April 8, I documented, over and over again, with statistic after statistic and table after table, drawn from sources the accuracy of which it is not possible to contest, the shocking inequality of the Negro in America, resulting in large part, although not in whole, from racial discrimination in terms of employment. I say again, "Not in whole," because obviously racial discrimination in education plays a very important part in the inferior economic status of those who are as entitled to equality of opportunity in employment as any other American citizens, regardless of their color.

The third reason why I say the bill is so important is that legislation is needed at the Federal level to enforce these rights. This contention was documented at great length in my speech of April 8. I pointed out then that it is true that in 28 States and some 48 cities there are fair employment practices laws or ordinances. Every single State east of the Mississippi and north of the Ohio, except Maine and New Hampshire, has fair employment practice legislation. One may point out that the number of Negroes in the two States which do not have such legislation is really minimal.

West Virginia, Kansas, Oklahoma, Colorado, and New Mexico also have such legislation. The three Pacific Coast States and Idaho and Nevada have fair employment practice legislation. But mark this well: Not a single State of the Old Confederacy has such a law. [Manifestations of applause in the galleries.] This is the most cogent argument of all in support of the need for title VII.

The PRESIDING OFFICER (Mr. RIBICOFF in the chair). The occupants of the galleries will refrain from any demonstrations; otherwise the galleries will be cleared.

Mr. CLARK. Sixty percent of the nonwhite population of America lives in 22 States where there are no fair employment practices laws. Moreover, the State and local acts vary widely in their effectiveness. In many areas, effective enforcement is hampered by inadequate legislation, inadequate procedures, or an inadequate budget. Big interstate industry cannot effectively be handled by the States. Interstate commerce is the primary responsibility of the Federal Government.

The States which have the best FEPC laws—and I count my own State of Pennsylvania as one; I am proud of our law—are those which most articulately demand and request a Federal law to assist them. Five very able men testified before the Senate Committee on Manpower and Employment. They are the men who administer the fair employment practice laws in New York, New Jersey, Missouri, Minnesota, and California. Those five men were unanimous in their support of fair employment practices legislation at the Federal level.

The Governors or the representatives of Governors of 15 States are also on record as supporting a Federal FEPC law.

I documented that statement at some length in my speech of April 8.

Mr. President, these are the major reasons why we should defeat this amendment and retain in the bill the very mild fair employment practices title which is now incorporated in the Dirksen-Mansfield amendment.

Before I close, let me nail one inaccuracy which is repeated time after time after time. We are told about the great Federal bureaucracy that the bill would create. Yet time after time it has been made clear that if title VII were adopted, the total number of additional Federal employees would be 190. If we had not written sex into the bill, the number would be only 145.

How much would it cost? We hear about the billions of dollars for enforcement by the Federal bureaucracy to secure the property rights of the American people. Yet we know that human rights are more important that property rights. Still, the bill would not do a single thing to a property right.

How much would it cost? Four million seven hundred and fifty thousand dollars a year over a 5-year period.

I rarely become amazed or surprised any more at anything that happens in the Senate. My capacity for indignation is growing less as I grow older. I am sure that is a good thing. It does no good to argue the merits and demerits of the bill any longer. The time has gone by for that. I think it important that delicate personal relationships inside the Chamber should be maintained in that friendly manner which has characterized them ever since I came to the Senate more than 7 years ago. I would not want to say anything in this speech or later in the debate which might in any way prejudice the cordiality of those relationships.

I can only say that I hope the pending amendment will be overwhelmingly defeated and that we can move on to cloture and the passage of the bill, so that almost 100 years after the Civil War amendments to the Constitution were approved, the Negro in America can, for once, have effective legislation to secure those just rights for which governments were instituted among men.

I am happy to yield to the Senator from New Jersey.

Mr. CASE. Mr. President, first, let me say how much, as a Member of this body, I appreciate the clear exposition and stirring statement just made by the Senator from Pennsylvania. It has been my pleasure personally to be associated with him in the development of and the defense of title VII. I share with him the wish that we had been able to strengthen the House bill in this respect rather than perhaps in some respects weakening it. That seemed not advisable.

Nevertheless, we have title VII in the form of the leadership amendments, which on the whole I believe, will do a very effective job as they stand now. But I must say that they cannot be in any respect weakened without almost destroying any value whatever that they may have.

The Senator from Pennsylvania has referred to remarks which he made and remarks which I made when this matter, in the form of the House version of the bill, was before us. Inasmuch as the Senator from Pennsylvania has not repeated the remarks he made at that time, I shall not repeat the remarks I made then, either.

Clearly, under the mechanics of the bill in the form with which the leadership is concerned, more concern or more deference could not be given to the rights of the States. For example, the Federal agency which would be able to mediate in this connection could not consider taking any action for 2 months, if there were any State machinery at all. The States will be given that much time in which to deal with complaints. Only when the States have no colorable claim to give consideration to such matters, can they be considered by the Federal Government in the time specified; and, of course, that amount of time is to be doubled in the first year.

So it is very difficult, in my opinion, for anyone to claim that anyone will be harassed under the provisions of the bill—even if we assume that some one of the enforcement officials might be overly zealous. No employer of less than 100 employees would be affected the first year; the next year, the limit would be 75; the next year, the limit would be 50; and the next year, the limit would be 25; and even then there would be the requirement in regard to affecting commerce, and also the other requirements of the bill. All of them would have to be met. So it is clear that the bill could not be used to harass anyone.

The provision which struck out the right of litigation by the Federal Commission is important in this regard. Such a suit can be brought only by the Attorney General, an official subject to political pressures—although I do not use that term in an unfavorable sense. But if a section of the country felt it was being persecuted, it would have this remedy, because, so far as the courts are concerned, the enforcement will rest in a political official, the Attorney General. So there could be no claim of harassment, inasmuch as the enforcement provision has been whittled down to the minimum, including the requirements in regard to the production of books and documents. Every consideration is to be given to the rights of the individual, and no attempt at harassment is to be made.

Mr. CLARK. Mr. President, will the Senator from New Jersey yield?

Mr. CASE. I yield.

Mr. CLARK. I was amazed at the reference, a moment ago, to the alleged applicability of the so-called Motorola case to title VII. Will the Senator from New Jersey state why he believes the Motorola case has no possible analogy to the pending measure?

Mr. CASE. Yes. That case came up under an Illinois law, under a State statute which gives the State commission the right, after hearing such matters, to issue orders. It provides that a hearing is to be held by ad hoc examiners, who are not really officers or employees of the commission, except for those particular cases; and therefore they are not subject to regulation by the agency.

In the Motorola case, an examiner was appointed, and held hearings, and then recommended a finding and an order. In my opinion, they went too far. I believe that is evident when they are viewed from any point of view.

Mr. CLARK. I agree.

Mr. CASE. However, that was only the action of the examiner, and it has no effect whatever until the Illinois commission, acting under the Illinois law, approves it. I see no possibility that the Illinois commission would approve it, under the Illinois law.

Mr. CLARK. As I understand, an appeal is being taken both to the commission and to the courts. Is that correct?

Mr. CASE. That is correct.

Mr. CLARK. Will the Senator from New Jersey point out how different this title is from the Illinois law?

Mr. CASE. Yes. Under title VII, as both the Senator from Pennsylvania and I have indicated, the Federal Commission would have no power whatever to make any order; all it could do would be to hold hearings and investigate complaints, subject to the restrictions the Senator from Pennsylvania and I have mentioned. If the Commission then found the existence of some discrimination on grounds prohibited by the act, the Commission could then endeavor by persuasion and conciliation to remove it. If the Commission failed to do so, it could only recommend that the Attorney General, on behalf of the United States of America, institute legal action.

Mr. CLARK. And in the meantime, if there had been discrimination, it would continue, would it not, and the Commission would have no power whatever to enforce its views?

Mr. CASE. Yes, it could only make a recommendation that the Attorney General bring suit in the courts; and the Attorney General need not abide by that recommendation or request, unless he found there was a pattern or practice of discrimination, not a single act of discrimination.

Mr. CLARK. And even then the Attorney General could not act until he obtained a court order, could he?

Mr. CASE. That is true; and he would have to prove, de novo, a violation of the statute; and he would not have the benefit of any of the findings he had made or of any of those made by the investigators, but he would have to make that showing before the court would act. So there is no parallel whatever between the situation in the Motorola case and the situation under this measure.

Furthermore, I believe that everyone now understands that the Motorola case involves only the tentative action of one man, and has no effect unless and until the Illinois commission adopts—but I am sure it never will adopt them—the examiner's views and makes his findings its own.

Mr. HUMPHREY. Mr. President, will the Senator from New Jersey yield?

Mr. CASE. I yield.

Mr. HUMPHREY. The Motorola case has been selected by some of the opponents of the bill as "a horrible example"; but the fact that is not mentioned is that the so-called decision in

the Motorola case is nothing but a preliminary finding, and has no binding effect. Is not that correct?

Mr. CASE. That is absolutely true.

Mr. HUMPHREY. No court would reach such a finding, would it?

Mr. CASE. Of course not. In other words, the Motorola case is a so-called "red herring," so some might call it, which has been dragged across the trail, in an attempt to obscure the situation. But we have been very careful in dealing with this measure.

Mr. HUMPHREY. Indeed, we have.

Mr. CASE. And the Attorney General and his office and the leadership concerned with civil rights organizations have all worked diligently to avoid any possibility of such abuse. I believe that by means of these provisions they have succeeded in their endeavor.

So, Mr. President, as the Senator from Pennsylvania has well said, we have here a mild title dealing with unemployment practices. We wish it were stronger; the Senator from Pennsylvania wishes it were, and so do I, and so do many others. But we still feel it is very worth while having; and we feel that if this title were to be eliminated, the heart would be cut out of an important part of the bill which the Senate has been considering for so long.

I wish to come now to a further point: When I hear it argued that a part of the bill would destroy the rights of Americans, and now it is specifically said that this title would do it, I cannot believe that those who make that statement really mean it. Is it claimed that any American has a right to discriminate on the ground of color in his employment practices? Does any opponent of this title claim the right on the part of any American to engage in such discrimination on the ground of color?

Is that what is meant when they talk about American liberty? Does American liberty consist of a bundle of rights which includes the right to discriminate on the ground of color against fellow citizens and fellow human beings? If anyone seriously makes such a claim, he does not understand what liberty is, because it seems utterly clear to me that liberty has no meaning and no value except that it is liberty shared by each of us with all the rest of us. Unless that is what liberty means to us, I suggest that liberty is not likely to survive in this world.

Several years ago, John W. Gardner, in his little book "Excellence," made the point very clear. He said:

> We talk about freedom as perhaps the greatest value. We think it is an acme. We assume that everyone believes as we do; namely, that it is the greatest thing in the world. But—

He pointed out—and, of course, it is true—

> that statement is not correct.

The greater number of the people in the world do not believe in individual liberty as a very important thing in life, if they believe in it at all. It is very low in their scale of values.

It is up to us to prove that liberty is a great good. We shall surely never do it if it means only liberty for the individual to indulge his appetites, to indulge a propensity for acquiring this world's goods, the liberty to grow fat, the liberty to acquire power for the sake of the gratification which the exercise of power gives its possessor, and liberty to exclude others from opportunities which he claims for himself.

Such liberty is not worth having, I suggest, and such liberty will not survive the attack of those—Communists or otherwise—who say that selfish liberty is not as great a good as the care which people get from a State which denies their liberty but takes care of their material well being.

Mr. President, unless we come to a realization that liberty has value only as it is shared with all human beings, regardless of any factor of difference, I doubt that liberty will survive on this earth.

Mr. CLARK. Mr. President, I ask the Chair how much time remains on our side?

The PRESIDING OFFICER. The Senator has 21 minutes remaining.

Mr. CLARK. How much time have the proponents of the amendment?

The PRESIDING OFFICER. Ten minutes.

Mr. CLARK. Mr. President, I yield to the Senator from Minnesota as much time as he may desire.

Mr. HUMPHREY. Mr. President, may I ask the Senator from North Carolina [Mr. ERVIN] whether he cares to yield back the remainder of his time, if there is an agreement between the proponents and the opponents of the amendment?

Mr. ERVIN. I would rather reserve the remainder of my time.

Mr. HUMPHREY. I would like 5 minutes.

Mr. CLARK. I yield the Senator 5 minutes.

Mr. HUMPHREY. Mr. President, title VII of the bill has received more study, discussion and debate than any other title in the bill. Title VII of the bill was neither conceived in haste nor written on the basis of speculation. Title VII, which relates to racial discrimination in employment, is based upon the accumulated experience of 25 States which have fair employment practices laws.

Many Senators have carefully examined the bill that was sent to us by the House of Representatives. After a great deal of discussion the fair employment provisions of the House-passed bill have been substantially altered in the substitute package submitted by the leadership.

To be frank about it, title VII was substantially altered and modified as a result of the conferences and the decisions arrived at by a number of Senators who analyzed this bill thoroughly in the course of developing the substitute package.

To strike this title VII from the bill would be to strike one of the basic provisions of the proposed civil rights legislation. It should be remembered that the Senate Committee on Labor and Public Welfare, after exhaustive hearings, reported a bill which would go far beyond anything that is proposed in either the House-passed bill or the substitute amendment that has been offered on the part of the leadership.

The Senator from Pennsylvania [Mr. CLARK] was the chairman of the subcommittee that took testimony on the subject of fair employment practices. As I recall, that bill was reported by a huge majority, and a majority that was arrived at after very careful study. Therefore, whenever Senators have studied the problem of fair employment practices, they have decided in favor of legislation in this area.

The Senator from New Jersey has told us what the substitute bill would do and what it would not do. One point that needs to be emphasized is that the substitute package bill calls upon the States and localities to take on the job of eliminating racial discrimination in employment.

We know that there is such discrimination. Elaborate studies of this subject have been made by universities, private foundations, and Government agencies.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. HUMPHREY. Mr. President, I ask for 5 additional minutes.

Mr. CLARK. I yield the Senator 5 additional minutes.

Mr. HUMPHREY. The leadership group of Senators that worked on the substitute attempted to find a way and a means on the one hand of enabling an individual to secure his own rights through the courts of law; and, second, these Senators wanted to encourage State and local government action in this area. The goal was to see to it that people were employed on the basis of merit rather than on false standards such as color or race.

Finally, because citizens of our country are citizens of the United States, the National Commission on Fair Employment Practices may recommend to the Attorney General, as an officer of the Government and of the people to the United States, that action be taken to put an end to certain discriminatory practices in the field of employment.

To strike from the bill the title that would do this would be in essence to say that racial discrimination in housing is perfectly acceptable.

It would be saying that if there is discrimination on the basis of race, the Congress of the United States shall ignore it, even though a citizen of the United States is entitled to equal opportunity to succeed.

I am for title VII, because I believe it would help America. I believe that our country needs the best that everyone has. I believe that our weaknesses are generally the result of our fears and our lack of understanding. There was a long period of time when it was believed that women were incapable of working in industrial employment, particularly in certain lines of it. We found that that was not the case at all. To the contrary, at times because of the necessities of war, women have manned our factories and have done as good a job as men, if not better.

There was a time, for example, when it was thought that it was economical and sound business to employ children

and exploit child labor. Apparently business thought it was right, because this practice continued for generations. Then Congress decided that such practice was wrong—not only morally but economically. Congress was right.

Now, we have come to a point where we can no longer tolerate discrimination in employment. The Government of the United States in its contracts with employers who are providing goods and services to the Government has seen fit to insist upon equal employment opportunities. At the Federal level, under the Executive orders of the President of the United States, action against employment discrimination has been taken. President Franklin Roosevelt during World War II, and then President Eisenhower, and then President Kennedy, and now President Johnson—all have acted to secure equal employment opportunities, fair employment practices on the part of the Federal Government within the Federal service, and by the Federal Government in its contractual relationships with industries that produce goods and services for the United States.

Executive orders to secure equal employment opportunities have been a success. The large companies of America find that action against discrimination works. It tends to eliminate labor-management trouble. It promotes domestic tranquillity and increases production. It helps profits. It stabilizes and strengthens the private enterprise system. I know of no large employer in America today who has come under the rules of the Executive order on equal employment opportunities who has said that it has worked to the detriment of the country, the company, management, or labor. I think the burden of proof in this matter rests upon those who would try now to eliminate the principle of fair employment from this proposed law.

The most successful companies in America today are the ones which are eliminating employment discrimination voluntarily, or under Government order such as the Executive orders that I have mentioned, or under State fair employment practices laws.

We have had our administrative difficulties with these programs, but through experience we have been able to overcome these difficulties. Today we know how these standards work. We know how the commissions operate. We have case law on fair employment practices. It appears to me that it has been to the benefit of the Nation. Whenever people are denied work opportunities because of race, religion, or ethnic origin, it is not only the individual that is injured, but it is the Nation.

America has enjoyed many great scientific advances because we opened our doors to immigrants from other countries, immigrants who could not find freedom to live and work until they came to this country.

I am of the opinion that some of the great discoveries yet to come will be because America kept its door open, because America kept its mind open, because America kept its heart open. I am of the opinion also that when industries deny jobs to people because of race, they **really** deny opportunity to themselves. We cannot afford this artificial restriction on the productive capacity of free men.

I want it known throughout the world that in a country which believes in free enterprise and private property, that free enterprise is for everyone, that the only aristocracy that America knows is that of merit and ability, and that we do not go around imposing false standards either by tacit consent or by overt action.

Mr. President, the record is clear. There has been discrimination in employment. It has been on account of race. It has been on account of color. It has been because of national origin. Fortunately, as time went on, some of these areas of discrimination have been eroded away. But there are still such patterns. All we seek to do, in a very restrained, limited, and modified manner in the package substitute which will be before us, is to see to it that the evil of discrimination in employment is abolished.

Mr. JAVITS. Mr. President, will the Senator yield?

Mr. HUMPHREY. Mr. President, I yield 2 minutes to the Senator from New York.

Mr. JAVITS. Mr. President, I rise for two reasons. New York has the longest standing fair employment practices act. It goes back to 1945. Every one of the forecasts—that the employer would be told what to do, that the workers would not work, and that individuals would be bedeviled with lawsuits—was made in New York in 1945. In the past 19 years, those forecasts have been found to be invalid. We have approximately 10 percent of the working force of the country, about 6 million employees. We have had 7,500 complaints, and have only had the necessity for 18 hearings and only 5 court actions. In all of the States with fair employment practices laws, there have been, in round figures, 19,000 complaints up to the end of 1962, and only a total of 62 hearings and 18 court actions.

The fears, the hobgoblins which have been raised, are valueless. They do not stand up to the light of day of the States experience, including that of my own State, the most active industrial State in the Nation.

My second point is that we have been warned time and again not to emasculate this bill, that if we should do so, it would create an element of instability in the country.

Mr. President, I state advisedly that if we strike title VII, or materially restrict the impact of title VII, I believe we shall emasculate the bill in the eyes of all the people who are deeply interested in civil rights legislation. This bill will at least cover the bases that have to be covered. Employment is a critical one. Whenever we ask people what causes their sense of injustice, they will mention the denial of equal opportunity in jobs, housing, and educational opportunities. This is one of the trilogy, in short, one of the absolutely essential matters which must be covered in this legislation. So I say to Senators who do not wish to emasculate the bill that I hope they vote "No" on this amendment.

Mr. ERVIN. Mr. President, I yield the remainder of my time to the Senator from Florida [Mr. HOLLAND].

Mr. HOLLAND. Mr. President, I have heard many Senators who come from FEPC States state so often during debate that FEPC is the remedy, that the record is good, and that the record in 25 States proves it.

I am beginning to wonder whether they are not trying to persuade themselves into believing it by repeating it so often. Everyone who has paid any attention to FEPC knows that it has not served to bring an end to the problem but that, instead, the FEPC States today have a much poorer record of employment of nonwhite citizens than have the Southern States.

No one dares to deny that, because I am speaking the truth.

Senators who say that the record in 25 FEPC States shows that FEPC presents the answer to this problem either have their tongues in cheek, or have their fingers crossed, or are merely trying to whistle as they go by the graveyard, because the record shows a far different result.

Let me quote from the record as presented by the Bureau of the Census and the Department of Labor. These figures were true in 1960. Today, the disparity is even greater.

It has been admitted on the floor of the Senate in earlier debate by the Senator from Pennsylvania, and by the Senator from New York, that unemployment among the nonwhites is greater now than it was in 1960. But let us see what the official records show for 1960.

They show, for example, that in Pennsylvania, in 1960, 5.8 percent of white laborers were unemployed, and 11.3 percent, or nearly twice as many, of Negro laborers were unemployed. Today, the record is worse, the disparity is greater.

Let us see what it shows in Minnesota. I heard the distinguished majority whip state that the record of the 25 FEPC States shows FEPC to be the answer. In Minnesota, in 1960, 5 percent of the white labor force was unemployed, and 12.8 percent of the Negro labor force unemployed—or a good deal more than twice as many.

Let us see what happened in New Jersey in 1960. I heard the distinguished Senator from New Jersey state that FEPC gave the answer. In 1960, in New Jersey, 4.1 percent of the white labor force was unemployed, and 9.5 percent of the Negro labor force was unemployed.

In the State of Illinois—and I have heard the same kind of statements made about Illinois—in 1960, 3.8 percent of the white labor force was unemployed, and 11.5 percent, or three times as many of the Negro labor force was unemployed. This, in the State of Illinois, in 1960.

What is the record in the State of Michigan? I have heard the same kind of statement made on the floor of the Senate by both Senators from the State of Michigan during the course of this debate. In 1960, according to the official U.S. compilation, Michigan showed 6 percent of the white labor force unemployed, and 16.3 percent of the Negro labor force unemployed—or more than two and a half times as many unemployed, proportionately, among the Negroes.

It is fair to look at my own State of Florida. Today the record is better than is shown by these figures, but the disparity between what occurred in Florida in 1960, and what was occurring in every FEPC State in that year, is already great, as of 1960.

In 1960, in Florida, 4.6 percent of the white labor force was unemployed, and only 6.7 percent of the Negro labor force was unemployed.

Mr. HUMPHREY. Mr. President, will the Senator yield?

Mr. HOLLAND. In 1 minute.

In the State of Georgia, our next door neighbor, 3.8 percent of the white force was unemployed, and 6.3 percent of the Negro labor force was unemployed.

Mr. HUMPHREY. Mr. President, I wish to ask a question of the Senator for information.

Mr. HOLLAND. I am glad to yield to the Senator from Minnesota for a question.

Mr. HUMPHREY. As I recall, those statistics on unemployment show, for example, that if a citizen has a little plot of ground and is a tenant farmer or sharecropper, eking out a pitiful existence, earning perhaps only two or three hundred dollars a year, or a thousand dollars a year, he is considered employed. Is that not so in the State of Florida?

Mr. HOLLAND. I do not understand that there is any different rule applying in one State than in another. I understand that the figures are compiled on the basis of persons who are employed of the two races as against persons who are unemployed, those who are making a living of the two races against people who are living on a dole. I believe the statistics are clear. Today they are worse. Every Senator knows that——

Mr. HUMPHREY. That is not the case, of course.

Mr. HOLLAND. Every Senator has seen the pictures in New York in public places of employment; for example, in the construction of schools, where Negroes have chained themselves in front and in back of tractors and trucks so that they could not get in, so that work had to be stopped.

Everyone has heard of the pitiful story from Pennsylvania of the same kind of situation. Everyone knows that the unemployment situation is worse now in nearly every FEPC State than it was then. But the point that I am making is that it is completely wrong, and out of accord with every fact and figure which we have for anyone to state that the record in the FEPC States shows that the FEPC laws are the answer to the problem, because that does not happen to be the case.

Mr. HUMPHREY. Mr. President, will the Senator from Florida yield further?

Mr. HOLLAND. There are Census Bureau figures, and also figures from the Labor Department.

Mr. HUMPHREY. Mr. President, will the Senator yield?

Mr. HOLLAND. I yield.

Mr. HUMPHREY. Is the Senator unaware of the fact that in the State of Michigan the colored population is almost entirely urban, and that in the State of Florida, for example, a substantial part of the colored population is rural; and that to be a sharecropper with a small plot of ground is considered to be self-employed, even if he starves?

Mr. HOLLAND. The Senator may know something about his own State. He does not know much about the State of Florida. The State of Florida is largely urbanized. Most Negroes in our State—and we have over 900,000 of them—live in the large cities of our State—namely, Jacksonville, Miami, Tampa, St. Petersburg, Orlando, Pensacola—and the record has to be compiled in my State as against a Negro population that has been largely urbanized.

The Senator has heard of the voting statistics for my State, which were eloquently presented by the Senator from Illinois [Mr. DOUGLAS] several times during the course of this debate. Those voting statistics clearly show that the great majority of the Negro people are located in the cities of our State.

The point I am getting at is that it is wrong for Senators to represent that FEPC is the answer to the question of employment of the minority race, when such is not the case.

It has been stated, only today, that 60 percent of the Negro race live in the South—the South and border States; and in the rest of the Nation about 40 percent. Perhaps that is true. In that part of the country where the percentage of the Negro people to white is greatest—and that is the South and the border States—the percentage of employment of Negroes is best, and the degree of discrimination is least, so far as employment is concerned.

The PRESIDING OFFICER (Mr. RIBICOFF in the chair). All time of the Senator has now expired.

Mr. HUMPHREY. Mr. President, I yield myself 1 minute.

The PRESIDING OFFICER. The Senator from Minnesota is recognized for 1 minute.

Mr. HUMPHREY. Mr. President, the issue here is not how many people are employed. The issue is whether a man shall be denied the opportunity to be employed on the basis of his merit, and whether we shall provide a legal instrument to have justice done in employment.

If Senators wish to argue about per capita income, let me say that the per capita income in the State of Minnesota will stand a good comparison with the per capita income of the State of Florida, or of Alabama, or Mississippi. The eminent record of the State of Michigan in 1964 will also stand a good record test with any other State in the Union.

What we are debating is not whether someone has a job, but whether a man who has a college education shall be entitled to a job on the basis of his education, without regard to race, or whether he shall be permitted to have a job that is beneath his training, or that he shall be denied an opportunity under fair employment practices because of his race. That is the whole issue.

The PRESIDING OFFICER. The time of the Senator from Minnesota has expired.

Mr. HUMPHREY. Mr. President, I yield the remainder of the time to the distinguished minority leader.

The PRESIDING OFFICER. Three minutes remain.

Mr. DIRKSEN. Mr. President, it is now a year since the late President Kennedy called a conference at the White House for the purpose of discussing the civil rights package. That conference took place on the 3d of June 1963. There was an additional conference on June 5. Then there was a meeting of the joint leadership with the President on the 11th of June. That was also a year ago.

At long last, on the 17th of June, the President indicated that he would send his package. He said he was not going to include the FEPC title; nor was an FEPC title in the bill when it finally came to the Senate and was then referred by section to the Judiciary Committee and to the Commerce Committee.

The House of Representatives has written this title into the bill. To repeal it now or to strike it would leave a gaping hole with respect to equal employment opportunity.

The distinguished Senator from Minnesota is absolutely correct, that the title does not deal with the volume of employment or the number of people assigned to jobs. It deals with equal employment opportunity; nothing more.

The Committee on Labor and Public Welfare, in February of this year, reported a bill which is now on the Calendar of the Senate. It is Calendar No. 844, S. 1937. It deals with all employers who employ eight or more persons. The proposal has been bouncing around in the House of Representatives and the Senate for quite a long time.

We have come to grips with the issue; and it would seem to me to be an imprudent thing, to say the least, to strike the title from the bill.

At least 28 States have State fair employment practice laws at the present time, and commissions to enforce them.

The time is now, in States where this situation does not apply, to give them an opportunity to lay their case before the proper State commission.

I earnestly hope that the Senate will not strike the title from the bill or the modified title as it now appears in the substitute.

The PRESIDING OFFICER. The time of the Senator has expired.

The question is on agreeing to the amendment of the Senator from North Carolina [Mr. ERVIN], in the nature of a substitute for the amendment offered by the Senator from New Hampshire [Mr. COTTON].

The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. YOUNG of North Dakota (when his name was called). On this vote I have a pair with the senior Senator from Ohio [Mr. LAUSCHE]. If he were present and voting, he would vote "nay"; if I were at liberty to vote, I would vote "yea." I withhold my vote.

The rollcall was concluded.

Mr. HUMPHREY. I announce that the Senator from Ohio [Mr. LAUSCHE] is absent on official business.

I also announce that the Senator from California [Mr. ENGLE] is absent because of illness.

I further announce that, if present and voting the Senator from California [Mr. ENGLE] would vote "nay."

The result was announced—yeas 33, nays 64, as follows:

[No. 278 Leg.]

YEAS—33

Bennett	Hickenlooper	Robertson
Byrd, Va.	Hill	Russell
Byrd, W. Va.	Holland	Simpson
Cotton	Hruska	Smathers
Curtis	Johnston	Sparkman
Eastland	Jordan, N.C.	Stennis
Ellender	Long, La.	Talmadge
Ervin	McClellan	Thurmond
Fulbright	Mechem	Tower
Goldwater	Morton	Walters
Gore	Mundt	Williams, Del.

NAYS—64

Aiken	Gruening	Monroney
Allott	Hart	Morse
Anderson	Hartke	Moss
Bartlett	Hayden	Muskie
Bayh	Humphrey	Nelson
Beall	Inouye	Neuberger
Bible	Jackson	Pastore
Boggs	Javits	Pearson
Brewster	Jordan, Idaho	Pell
Burdick	Keating	Prouty
Cannon	Kennedy	Proxmire
Carlson	Kuchel	Randolph
Case	Long, Mo.	Ribicoff
Church	Magnuson	Saltonstall
Clark	Mansfield	Scott
Cooper	McCarthy	Smith
Dirksen	McGee	Symington
Dodd	McGovern	Williams, N.J.
Dominick	McIntyre	Yarborough
Douglas	McNamara	Young, Ohio
Edmondson	Metcalf	
Fong	Miller	

NOT VOTING—3

Engle	Lausche	Young, N. Dak.

So Mr. ERVIN'S amendment (No. 898) was rejected.

Mr. DIRKSEN. Mr. President, I move that the Senate reconsider the vote by which the amendment was rejected.

Mr. HUMPHREY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question now is on agreeing to the amendment of the Senator from New Hampshire [Mr. COTTON], No. 606.

Mr. COTTON. Mr. President, I yield myself 10 minutes.

On my amendment, I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. COTTON. Mr. President, for the benefit of Senators who are in the Chamber, I see no reason, so far as I am concerned, for using the hour on each side for this amendment. It is my intention to hold what I have to say to a period of 15 or 20 minutes, at the outside. I have not had other requests for time. I shall be glad to cooperate and move toward a vote as soon as possible, for the benefit of the Senate.

Mr. HUMPHREY. We shall try to maintain some balance of time. I agree that there is no need to use the entire allotted time. It should be possible to have a vote in the next 30 or 40 minutes.

Mr. COTTON. The debate on the previous amendment was long enough and the discussion when the unanimous-consent agreement was entered into was sufficient so that probably every Senator knows exactly what my amendment provides.

It merely relates to the part of the bill which states that the FEPC provision, title VII, will apply immediately only to establishments with 100 or more employees, and that by gradations, over a period of 4 or 5 or 6 years, the application will be reduced to 75 employees, then to 50 employes, and eventually to 25 employees. My amendment would strike out that portion, so that the provision would apply permanently, under this bill, only to establishments with 100 or more employees.

The principal reason for proposing the adoption of this amendment is, first, the problem of enforcement. If it became necessary for the Federal Government to investigate every complaint and to take steps in every situation brought to its attention, in connection with the small businesses of the country employing only 25 or 35 or 40 or 50 or 60 persons, enforcement would become well nigh impossible; and the enforcement which did occur would be found to be spotty.

I am not suggesting that those to be entrusted with enforcement of this law, if it is enacted, would purposely or necessarily harass the business community; but I am suggesting that when we enact a law, we do so, not in light of what reasonable men would do in enforcing it, but in light of what unreasonable men might do.

Mr. STENNIS. Mr. President, I ask that the Chair obtain order in the Chamber.

The PRESIDING OFFICER (Mr. MCINTYRE in the chair). The Senator from New Hampshire will suspend his remarks.

Senators will take their seats, and will cease conversation; and the Senate will be in order.

The Senator from New Hampshire may now proceed.

Mr. COTTON. Mr. President, I was saying that the problem of obtaining fair, impartial, and uniform enforcement in all parts of the country and in the thousands upon thousands of small businesses throughout the country, whenever and wherever difficulties would arise or complaints would be lodged, would be so great that, it seems to me—forgetting for the moment the question of liberty or freedom or right or wrong or free enterprise or the solidarity of business—this will be an impracticable and unenforcible provision if eventually the requirement is dropped to 25 employees.

But the principal reason why title VII is so repugnant, at least to me, lies in the fact that in a small business which employes 30 or 40 persons, the personal relationship is predominant. I can understand how the Federal Government could operate in connection with large factories and industries and in dealing with their employment practices, and in seeking, whenever it finds it necessary to do so, to enforce these provisions—although I think there are even objections to that. But when a small businessman who employs 30 or 25 or 26 persons selects an employee, he comes very close to selecting a partner; and when a businessman selects a partner, he comes dangerously close to the situation he faces when he selects a wife. A small business—for example, an insurance agency or a real estate business or a small manufacturing business with only a few employees—stands or falls, in this age of competition, on the congeniality and skill and ability of the man or the partners who own it and the persons who work for them and work with them. In many parts of the country, if a person of another race has the ability to sell real estate or insurance or if he is a good accountant and is a useful and efficient worker, I doubt very much that the doors will be closed to him very long, even if they are closed to him now.

So it seems to me we would be taking a step far greater than any ever before taken in this country if we were to provide that the Federal Government and its bureaucrats would have the power and authority and duty, whenever complaints were made, to investigate and inspect, and perhaps to harass the small business people of this country.

As I said the other day, during the years I have served in Congress, I have seen more tender tears flow and more pathetic arguments made in behalf of the small businesses in this country than I have seen in behalf of almost any other operation or business activity. We have heard, and we know, that the small businesses along the main streets or in the villages and towns and cities are the backbone of our country and of our free enterprise system. We know the Federal Government has made it very hard for them to operate. We know that the Federal Government burdens them with taxes, and we know that the Federal Government has them investigated on all sorts and kinds of scores. We know that the Attorney General and his agents watch them; and we know that all small manufacturing establishments are required to abide by the minimum wage law and the wages and hours law; and we know that whenever a problem of national origin or religion arises, either this law will not be enforced or else it will become a monstrosity.

Now I shall refer briefly to the objections made to my amendment.

The first objection is that it would not cover a great many persons now covered by title VII.

However, but when there is a reference to 80 percent, that reference is not to employees, but is to employers and to the number of businesses. I do not know where accurate figures can be obtained; but I did the best I could, and I obtained from the Department of Labor statistics based on social security returns.

The total numbers run to mammoth proportions because everyone who has a maid in his house is under social security as an employer. But, according to the statistics from the Department of Labor, employers in this country having 25 or more employees number 259,343. Employers with 100 or more employees number only 56,366. In other words, if the amendment were adopted, 78 percent of the employers would not come under the statute.

But let us look at the situation from the standpoint of employees. After all, they are the people with whom we are concerned in dealing with title VII of the proposed legislation. The employees in establishments having 25 or more employees in our country number 29,390,000. In establishments having 100 or more employees the number of employees is 21,191,000. So as far as employees are concerned, adoption of the amendment would take only 27½ percent of the employees out from under the statute.

Whenever I have had occasion to discuss the subject with a friend or fellow Senator who disagreed with me, the answer has always been the same. I can hear the words coming in a moment. The answer is that the FEPC statutes of Illinois, New York, or some other State, cover employers who employ as few as five employees, four employees, or two employees. Therefore, it is ridiculous to cavil here at the prospect of a Federal statute that would include or cover employers who employ 25 employees.

Mr. President, if there is any Senator who has served in the Congress of the United States more than 6 months—and I believe that there are none who have not—and has not learned that the enforcement of law by Federal bureaucracy and the enforcement of law by a State in this Union are horses of different colors entirely, I do not know who it is.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. COTTON. Mr. President, I yield myself an additional 5 minutes.

It is a far cry from a situation in which a State FEPC is in effect, where investigations are made by examiners or investigators living in the county where the business is conducted, where the parties involved reside, where the people know the local conditions, the local situation, and deal with it from the standpoint of their knowledge of their community and their interest in the community. That is a far, far cry from having someone from Washington come in and send out investigators from the Federal Government.

So it is of little interest to me. I do not object to any State that desires an FEPC, and I am not here to criticize the administration and enforcement of such statutes. But every time that we open a door in the Federal Government to reach a little further down into the rank and file of the people of our country who are trying to live and earn a living, first, we must employ a small army of people to enforce the law; second, we get the kind of enforcement that causes my desk and the desks of other Senators to have piles of letters fall upon them because some government department has dealt with the cases of the writers of the letters.

How many letters do Senators receive day by day and week by week regarding problems involving various Government Departments and concerning which a Senator must take up the cudgel for someone and obtain a rehearing, another investigation, or another opportunity?

When we get down into all of the establishments involved—every little business on Main Street in this land—we shall find that there is a vast difference between State enforcement and Federal enforcement and between local enforcement and Federal enforcement.

Furthermore, how about bigotry and prejudice in connection with a small business?

Mr. President, I would willingly vote—and I have said so in other years and would do so again today—for a Federal FEPC with full enforcement powers which would apply to every business in our country, big or small, that has received 1 cent from the Federal Government, be it by way of grant, loan or contract, because taxes are collected from all people, including those who are black and white. When a business enjoys special benefits from the Federal Government, I believe that that business should be subjected to the policy of the Federal Government, and I believe the policy of the Federal Government should be sternly turned against any kind of discrimination.

But when a man owns a business which he himself has built up, having borrowed the money, worked long hours, saved and scrimped, and when it is owned by himself, perhaps his wife and his son—a little family business or business of his own, in which Uncle Sam has not contributed 1 single cent—is there any real reason why that man, if he is employing fewer than 100 employees, should not be allowed to pick and choose employees congenial to himself?

Arguments can be made relating to large industries where employment is impersonal and employees are selected according to an employment policy.

I would assume that anyone who will administer the laws in future years will not discriminate between the races. If I were a Negro, and by dint of education, training, and hard work I had amassed enough property as a Negro so that I had a business of my own—and there are many of them in this country—and I felt that, having made a success of it myself, I wanted to help people of my own race to step up as I had stepped up, I think I should have the right to do so. I think I should have the right to employ Negroes in my own establishment and put out a helping hand to them if I so desired. I do not believe that anyone in Washington should be permitted to come in and say, "You cannot employ all Negroes. You must have some Poles. You must have some Yankees." The latter would not be available down South to any extent, but there are other places that would be affected.

One from Washington should not be permitted to say, "You have to have some Yankees; you have to have some white people; you have to have some Puerto Ricans. You cannot employ merely your own people. You have earned your own money. You have built up your own business. You cannot help whomever you want to help."

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. COTTON. Mr. President, I yield myself 5 additional minutes, and I shall conclude. I should like to state an actual case. I have a friend who is an ardent, dedicated, and devoted Baptist—so much so that all his life he has tithed and turned over 10 percent of everything he has earned either to a Baptist church, a Baptist school, or a Baptist hospital. He employs almost 100 workers. He has a little business that he has built up which he and his son own. It is in a college town. So far as he is able to do so, he employs only Baptists, because he desires to help the young people of his church. Then he encourages them to tithe and to support the church. In the summertime, when he puts on extra help, he gives preference to the students in the college in the town who are studying for the Baptist ministry. So far as I know, he would employ a colored Baptist if he came along. He does this not because he is prejudiced against Methodists, against Catholics, or against anyone else. He does it because he has earned his own money, he has his own business, and he would like to help his own people.

Mr. President, if we have reached the state in this great so-called land of the free when a man with a small business cannot do that, there is no more freedom in this land and we might as well resign ourselves to the kind of country where all our personal affairs are determined in Washington under the heavy finger of Federal interference.

There are people who are leaving countries across the sea because they become so socialistic that they have no more opportunity.

It is our duty to elevate every race in this country, to give them the opportunity to elevate themselves, to give them education, to give them job freedom, to give them an opportunity to advance.

I believe that is the honest feeling of every Senator, no matter how he may feel regarding the far-reaching provisions of the bill.

Mr. CURTIS. Mr. President, will the Senator yield?

Mr. COTTON. I yield.

Mr. CURTIS. Mr. President, very briefly, I commend the distinguished Senator from New Hampshire for his clear, concise, and convincing argument.

The Senator made reference to the fact that a member of a minority race might become an employer and should have a right to employ members of his race in order to give them opportunity. Would not the same thing follow, that a member of a majority race might wish to employ almost entirely, or entirely, members of a minority race in order to enhance their opportunity? And is it not true that under title VII as written, that would constitute discrimination?

Mr. COTTON. It certainly would, if someone complained about it and felt that he had been deprived of a job, and that it had been given to a member of a minority race because of his race and not because of some other reason.

Mr. CURTIS. Is it not the opinion of the Senator that any individuals who provide jobs for a class of people who have perhaps not had sufficient opportunity for jobs should be commended rather than outlawed?

Mr. COTTON. Indeed it is.

Let us deal with this issue as reasonable men. I am not suggesting that if this measure becomes law, Federal officers will invade every small business in the country and harass it, and tell it whom it must employ.

So-called minority races would have much more latitude than so-called majority races. I am beginning to wonder which is which. But I am not suggesting that these things will necessarily be done in many cases.

I listened to the statement of the able Senator from New York [Mr. JAVITS] who told how little difficulty New York has had with enforcement through the years. There must be some difficulty in New York somewhere along the line. I would not say that all was sweetness and sunshine up there. There may not be trouble in the matter of employment.

Mr. President, if the proposed legislation would not necessitate going into small business establishments and putting the heavy hand of the Federal Government on the employers, why is such power desired? Why do the proponents fight every time someone wants to amend the bill in the slightest degree? You know right well it is the intent of those who are pushing this bill and will be clothed with its powers, with the cooperation of certain organizations, to put their finger on every small business in this country they can reach. And if you want to really provoke bitterness and hatred, yes, and violence, this is the way to get it.

I suggest that if the FEPC title had been brought into either the Senate or our companion body as a bill, and not covered under the sheltering tent of the many worthwhile and necessary titles in the overall bill, it would not pass.

The PRESIDING OFFICER. The time the Senator indicated is up. Eleven minutes remain.

Mr. COTTON. The Senator from New Hampshire is not seeking to eliminate the entire title. He is not seeking to cripple the bill. I assume that Congress will retain the provision, and, if it is necessary, extend it. It can be extended, but at least for the time being, let us not reach the small underdog. I have heard much pleading for the small fellow. Everyone who raises any question on the bill is supposed to be some kind of aristocrat who is trying to accomplish something evil. In this case, small business is the underdog. In this case, it is proposed to give the Government blanket authority in the very beginning, when we have never had a Fair Employment Practices Commission under the Federal Government, when it is a new departure, a new venture, and men must be trained. The operatives and the administrators must be chosen and hired. We cannot wait. We must go into every little establishment in the country.

Mr. President, in the interest of reason, in the interest of safety, in the interest of adhering to what we have always believed were the fundamental tenets of this country, I ask consideration of this small proposal which would merely eliminate establishments with fewer than 100 employees.

The bill itself does that gradually. Even the framers of the bill were not going to do it right off, full blast. I suggest that we give the provision a chance to see how it works. But let us not take this step, because if we do, I cannot imagine any proposition that can be made in the Senate for Government control that we would not have to accede to. None of them could be more drastic than this one.

Mr. President, I reserve the remainder of my time.

Mr. HUMPHREY. Mr. President, I yield 10 minutes to the minority leader.

Mr. DIRKSEN. Mr. President, I trust that the amendment offered by the distinguished Senator from New Hampshire [Mr. COTTON] will be rejected, even as the Senate rejected an effort to strike title VII from the bill.

Frankly, at the very outset, in an examination of the entire civil rights package, I started with title VII. I did so because of its far-reaching character, for one thing. Second, a number of States have FEPC laws and have State-enforcing commissions. I thought if there were anything vulnerable in the bill, it would be title VII.

We have spent several months now in an exhaustive effort, including the services of an excellent staff, for the purpose of making this as practical and workable as a title of this kind could be.

Accordingly, the House bill was modified in some particulars. In the first place, we undertook to provide for seasonal workers, by taking the language out of the Unemployment Compensation Act, to the effect that the definition of the term "employer" would apply to 25 or more who were employees for each working day, in each of 20 or more calendar weeks, in the current or preceding calendar year. We went through that matter with the Department of Labor and others, in order to make sure that we were on good ground.

Second, with respect to the enforcement of the title, we undertook to keep primary, exclusive jurisdiction in the hands of the State commissions for a sufficient period of time to let them work out their own problems at the local level.

It was a knotty problem, to say the least, because of the differences in approach of the Federal provision and the acts which are on the statute books today. All that, however, was worked out.

Now if we undertake to make the cutoff 100 employees or more, I am afraid we shall really be subject to the charge that we are undertaking to emasculate the bill.

Of the entire number of people in the working force today, about 69 percent are covered by State acts. As I recall from the figures, there must be in the neighborhood of approximately 21 million people, or 31 percent, who are not covered. That presents something of a void in our employment pattern.

On February 4, a committee of the Senate reported a bill on this subject. I have the report before me, dealing with employment opportunities. It is now on the Senate calendar, and its calendar number is 844. When that bill was reported, it contained a definition of "employer," which will be found on page 17 of the committee report. It is as follows:

> "Employer" is defined in subsection 3(f) to mean any person with eight or more employees engaged in any industry affecting commerce.

The committee took exhaustive testimony on the subject and finally agreed to put the cutoff at eight employees. Many of the statutes begin with one. In others it is four. In some cases it is five and six, and in some cases it is eight. However, I believe there are 8 or 10 States today which begin with as few as 1 employee.

Are we going to make fish of one and fowl of another? Are we going to set 31 percent of our working people over in one category and say that the law does not apply to them; whereas in the case of the remaining 69 percent, the law would apply?

That seems to me to be a patent inequity; and well might we be subject to the charge of emasculation if we undertook to modify the bill in that particular.

When it comes to administration, I believe that we have done a reasonably good job on the substitute, hoping in every case that administration might be kept at the local level, because many cases are disposed of in a matter of days, and certainly not more than a few weeks. In the case of California, FEPC cases are disposed of in an average of about 5 days. In my own State it is approximately 14 days.

That will be the first point of contact when it comes to enforcement. It will be in the hands of the States. There are now 28 States which have FEPC acts containing enforcement provisions, and there are 3 additional States where enforcement is on a rather voluntary and conciliatory basis.

However, I earnestly hope that the number of employees set forth in the definition of "employer" will not be modified, so as to produce a gaping hole in the bill and make it appear that we are trying to show partiality on one side and impartiality on another.

That is the weakness of the amendment offered by my distinguished friend the Senator from New Hampshire [Mr. COTTON].

There is another element that enters into the case and that is the question of competition in every case. Business, of course, is highly competitive today; and if we apply a Federal statute in one case and not in another then what happens competitively? If an employer has 100 employees in one case, it applies. If 99, it does not apply. That would be a singular way to apply and administer a Federal act.

Frankly, in the interest of fairness, and in the interest of equity, I do not believe that it should be done. We have had no difficulty in obtaining figures to show the number of employees, the number of reporting units, and the total amount of employment in every case. For manufacturing, standing by itself, we start with firms which have from 1 to 3 employees; there were more than 77,000

reporting units, with a total of 140,000 employees.

Then we jump to the bracket from 4 to 7 employees, in which there were more than 49,000 reporting units, with 261,000 people.

Then we go on up the scale, and when we reach the point of over 500 employees, we have 5,000 reporting units and a little more than 7 million employees.

What an amazing thing. If we are going to make that kind of distinction in this kind of bill, and make it only half effective or two-thirds effective, when it should be effective in every section, and with respect to every employer with a given number of employees, how can we justify it after all, in the light of what is being done in the States today?

My own State, oddly enough, has probably the highest exemption of any State in the Union.

The PRESIDING OFFICER. The time of the Senator from Illinois has expired.

Mr. DIRKSEN. Mr. President, I ask unanimous consent that I may proceed for 1 additional minute.

The PRESIDING OFFICER. Without objection, the Senator from Illinois is recognized for 1 additional minute.

Mr. DIRKSEN. Another applies in the case of 50 or more. I believe we have taken what is perhaps a sensible figure on the bill, and then nailed it down to make a proper exception for seasonal employees. Under those circumstances, I earnestly hope that this measure will not be modified, and that the Cotton amendment will be repudiated.

Mr. HUMPHREY. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator from Minnesota is recognized for 5 minutes.

Mr. HUMPHREY. The able and distinguished minority leader, who had such an important role in designing the revised title VII of the leadership's package substitute, has stated the case against the Cotton amendment as precisely and as persuasively as possible.

I would emphasize only the point that nothing in title VII or, in fact, in the amendment of the Senator from New Hampshire, tells any employer whom he may hire. What the bill does, as was pointed out so ably earlier today by the distinguished senior Senator from New Jersey [Mr. CASE] and the distinguished senior Senator from Pennsylvania [Mr. CLARK], is simply to make it an illegal practice to use race as a factor in denying employment. It provides that men and women shall be employed on the basis of their qualifications, not as Catholic citizens, not as Protestant citizens, not as Jewish citizens, not as colored citizens, but as citizens of the United States.

There is considerable evidence to demonstrate that permitting people to be hired on the basis of their qualifications not only helps business, but also improves the total national economy.

Nothing in the bill or in the amendments requires racial quotas. The bill does not provide that people shall be hired on the basis of being Polish or Scandinavian or German, or Negro, or members of a particular religious faith. It provides that employers shall seek and recruit employees on the basis of their talents, their merit, and their qualifications for the job.

The employer will outline the qualifications to be met for the job. The employer, not the Government will establish the standards. This is an equal employment opportunity provision.

On March 6, 1961, the late President of the United States, John F. Kennedy, issued an Executive order which combined the President's Committee on Government Contracts with the President's Committee on Employment Policy. There was formed a single President's Committee on Equal Employment Opportunity. That Executive order established an office, which was presided over by the then Vice President and now President, Lyndon B. Johnson. That Executive order applied to any firm, regardless of size or location, which did any business with the Government of the United States in the form of providing goods or services to the Government of the United States.

These business firms have not complained because of this requirement; to the contrary, it is to the everlasting credit of American free enterprise that they have cooperated. It is to the great credit and honor of President Johnson that when he served as chairman of the Equal Employment Opportunity Committee, during the period that he occupied the vice-presidency, much outstanding work was accomplished in providing equal employment opportunity to thousands and thousands of qualified workers.

What we provide in the leadership substitute or, in fact, in the House bill, is much less stringent language, and much less in coverage than what was provided by the executive order that applies to business establishments doing business with the Federal Government. There are many. The Federal Government is the largest purchaser of goods and services of any establishment in the world.

I repeat that the order applies to a firm that hires 5 persons, 1 person, 100 persons, 1,000 persons, or 50,000, or 100,000.

What do we provide in the bill? First of all, as the distinguished Senator from Illinois [Mr. DIRKSEN] has indicated, we provide for local and State enforcement wherever there are local and State instrumentalities. We have simplified the recordkeeping to the point where State records suffice, with whatever notations may be necessary to indicate employment.

We have provided that in the first year after enactment of the civil rights statute there will be no enforcement at all. We have provided, for States which do not now have fair employment practice laws, that there will be an additional 180 days before there is any impact of the law.

We have provided that in the second year employers of 100 or more shall come under the act. In the third year, employers of 75 or more shall come under the act; in the fourth year, employers of 50 or more; in the fifth year, employers of 25 or more.

A large number of small businesses in America, the kind of small businesses that we know in Minnesota, South Dakota, New Hampshire, Wyoming, or any other State, are small businesses that employ fewer than 25 persons. When they get above 25, they get into some reasonable degree of gross product in terms of income or output or salaries or goods or services. They also lose most of whatever intimate, personal character they might have had.

What does the bill do without the Cotton amendment? There are 3 million employers in America registered under the social security system. Of this number, 259,343, or only about 8 percent of the total employers, employ 25 or more persons.

In other words, under the bill as now drafted, 92 percent of the employers of America would not be covered. They would not be touched by the Federal statute. A State might extend the coverage to them, but, insofar as the Federal requirements are concerned, 92 percent would be exempted. That cannot be regarded as a drastic imposition on the business community.

There are only 56,366 employers in the entire Nation who employ 100 or more employees.

Thus the Cotton amendment would cover somewhat less than 2 percent of the total employers in America.

The House bill or the substitute would apply to only 8 percent of the employers in the United States. Insofar as employees are concerned, if the bill's coverage extended to 25 employees or more, 29,736,000 employees would be covered. If the Cotton amendment were adopted, about 21 million employees would be covered.

The difference in coverage, as the Senator from New Hampshire has indicated, is about 8 million.

However, what is more important than the coverage of the people is the manner in which those of us who worked upon the substitute package have sought to simplify the administration of the bill, the recordkeeping, the rights of employers, the rights of employees, the inclusion of State and local authority, and the time factor involved, in terms of seeking a solution by mediation of disputes, rather than forcing every case before the Commission or into a court of law.

I hope the Senate will reject the amendment of the Senator from New Hampshire.

I remind the Senate that Senators voted for a fair labor standards bill, which covers employers who employ two or more persons. We voted for the Landrum-Griffin Act, which applies to every union and every employer without reference to coverage, whether it be one or more.

I did not hear anyone say it was an imposition upon free enterprise, or that it would hamper small business, when we applied the provisions of the Landrum-Griffin Act to every employer and every union without regard to the degree of coverage.

Mr. MORSE. Mr. President, will the Senator yield?

Mr. HUMPHREY. I yield.

Mr. MORSE. I do not believe that the Landrum-Griffin Act or any other act that could be cited by the distinguished Senator from Minnesota really has any bearing upon the issue which is before the Senate in the Cotton amendment.

To me, the issue is very simple. It is whether or not we will permit, in this democracy, discrimination against people because of the color of their skin. That is a moral issue as well as a great legal issue. I am at a loss to understand how it can be immoral to have an employer of 100 or more employees denied the exercise of discrimination and have it granted to an employer of fewer than 100 employees.

I do not intend to take my eyes off the basic issue, and that is the immorality of discrimination based upon race or the color of one's skin.

It is just as wrong for an employer who employs two people to have that right to discriminate as the basis of his employment as it is for an employer of 2,000 employees to have it.

Mr. HUMPHREY. The Senator's argument is irrefutable. It is a solid moral argument. It is also solid economically, because in this instance, as in all other instances, to do what is right is generally to be helpful to oneself and to others.

Mr. CLARK. Mr. President, will the Senator yield?

Mr. HUMPHREY. I yield.

Mr. CLARK. I have no doubt that the Senator from Minnesota has covered, in his usual eloquent manner, the principal reasons why I hope the amendment will be defeated. But I should like to pose a question to him. I suppose it is a leading question, perhaps a Socratic one.

It seems to me the Cotton amendment would make second-class citizens out of employees of every small businessman, of every middle-sized businessman, of every businessman who has fewer than 100 employees. Also, the Cotton amendment would make second-class citizens out of the members of every small labor union. That, as I understand, includes the majority of the labor unions in the country. It would do so by denying equal employment opportunity to every individual who happened, by luck of the draw, to be a member of a smaller labor union or an employee of a small businessman. I can see absolutely no equity in that.

I went along with the "Mrs. Murphy" suggestion with respect to the public accommodations title. I might be willing to go along now with a proposal that an employer of 5 or fewer employees could discriminate, if he wanted to, whereas an employer of 10 or 15 employees could not.

Actually, the Dirksen-Mansfield substitute, as everyone knows, provides a limit of 100 the first year, and the limit is reduced annually until the number of 25 is reached.

The Senate bill, which I had the honor to bring to the floor, eliminated only employers of eight employees or fewer. I thought that was sound.

We must admit that in terms of appropriation and enforcement there are limits in terms of number of employees. But I think that to limit the proposal to 100 employees, and say that anyone who has 99 employees may discriminate all he wishes to, and that any labor union having 99 members may discriminate, makes second-class citizens of a great number of Americans. We can give no legitimate excuse for lifting them out from under equal job opportunity protection of this title. I hope the amendment will be rejected.

The PRESIDING OFFICER. Does the Senator from Minnesota yield himself more time?

Mr. HUMPHREY. I yield myself an additional 10 minutes.

I wish to note, in this sense, that I do not consider that the amendment of the Senator from New Hampshire would encourage discrimination. I know the Senator from New Hampshire too well for that. He is a man of great honor, compassion, and personal and public integrity. What he has offered is an amendment which he believes, as some people might put it, cuts the bill down to a certain size. To me, it cuts into the heart of the bill.

I oppose his amendment primarily because it makes title VII truly a less-than-effective title for vast numbers of employees in the country. It would permit discrimination with respect to large numbers of employees. But I believe we debate the merits of the bill, and I believe what we had better do is point out that if we establish the cutoff at 100 employees, for all practical purposes we shall have established a system in which substantial numbers of States will have a different coverage, and in which the Federal Government will have very limited coverage under the bill, because the Federal Government, in terms of other employers with whom it does business all the time in the same community, will have coverage under the employment order that cuts down to one or more employees. So there would be confusion worse confounded.

Mr. CLARK. Mr. President, in view of what the Senator from Minnesota has just said, I shall ask him to yield further, because I believe he vastly misunderstood the purport of my argument.

Mr. HUMPHREY. I hope the Senator will give me an opportunity to yield, first, to the Senator from Massachusetts.

Mr. CLARK. The Senator from Minnesota made a statement which I believe misrepresents the intent of my statement.

Mr. HUMPHREY. I yield to the Senator from Pennsylvania.

Mr. CLARK. The Senator from New Hampshire knows me well enough to know that I cast no aspersions on his motivations. I had no critical comment whatever to make concerning what he was trying to do. I was speaking only of the inevitable consequences of what he proposes.

There is no Member of the Senate whom I respect more than I do the Senator from New Hampshire. Under no circumstances would I question his motivation. I believe his amendment is unsound and unwise. I am sure he honors me for that view and would be the first to agree that I intended no affront.

Mr. COTTON. I understand that.

Mr. SALTONSTALL. Mr. President, will the Senator yield?

Mr. HUMPHREY. I yield to the Senator from Massachusetts.

Mr. SALTONSTALL. Of course, we are talking objectively, without imputing improper motives to anyone.

With reference to the discussion on the pending amendment, three things appeal to me in title VII as it is written in the Dirksen-Mansfield substitute amendment. The first is that we want to give every citizen a fair break in employment. We want to afford him the opportunity to obtain a job for which he is trained and has the qualifications to hold.

The second thing that appeals to me—and the Senator from Minnesota will recall that he and I are members of the Select Committee on Small Business—is that the figures will show that more than 90 percent of the business of this country is so-called small business. Some of these businesses employ 25 people or less. Others employ over 25 people. In general, the number of employees is small. Title VII provides that over a period of 5 years the coverage of this act will be gradually extended to industries and unions with 25 or more people. This covers an important segment of our work force.

The other point I wish to make is that the Dirksen-Mansfield substitute provides greater opportunity for fair employment problems to be settled locally. This is very important in the 30 States which already have fair employment laws and which settle their problems locally, in one way or another.

In Massachusetts, where the State act applies to employers with six or more employees, about 3,500 complaints have been filed against employers, employment agencies and unions over the past 17 years. In total the Massachusetts Commission Against Discrimination has handled about 4,700 civil rights complaints in that time, only two of which have been adjudicated in the courts. Neither of these cases related to an unfair employment practice. All the rest of the cases have been settled by the Commission dealing personally with the problems and settling the disputes without resort to court action.

So I believe that title VII as contained in the Dirksen-Mansfield substitute is helpful. I hope the amendment of the Senator from New Hampshire will be rejected, because I believe it will eliminate many employees who should be covered under the terms of the bill.

Mr. HUMPHREY. Mr. President, I yield to the Senator from New York.

Mr. JAVITS. Mr. President, I wish also to make one or two points. The first is that we are speaking of established standards to which people can repair. We will not be establishing an adequate standard if we limit the bill to only 56,000 employers in the United States as contrasted with 260,000 employers throughout the country who would be covered by a standard of 25 or fewer employees.

We know that compliance in a particular situation may be better achieved by conciliation and accommodation, and that is the very purpose of the substitute

package. It makes the standard, which will be applied in this way, more widespread in its application to employers.

I bear out what the Senator from Massachusetts has just said. In the 13 industrial States of the Nation, since the first law of this kind was passed, in New York, there have been only 19,439 cases. Of that number, only 18 have actually gone to court. Indeed, even hearings have been held in only 62. So fears about this proposal are unwarranted.

Finally, I should like to say a personal word. I heard the Senator from New Hampshire speak on his proposal. I join with my colleagues in my respect for him and his feelings in this matter. I heard the Senator from New Hampshire say, "All that my amendment does," and then go on to point out that all it does is to set a standard of 100.

I respectfully submit that all it does is to mark the difference, to tip the balance, as against the razor-thin agreement the Senator from Illinois [Mr. DIRKSEN] worked out with respect to title VII, which many of us accepted as the very least thing we could possibly accept in terms of the effectiveness of this title. What the Senator's amendment would do would be to push the balance over.

It makes it less acceptable. It is that razor-thin margin which, in my judgment, justifies the belief that this amendment, unlike the Dirksen substitute, will really emasculate a critically important part of the bill. It seems to me that rather than to defeat our own purposes, if we are going into this subject at all, we ought to reject the amendment.

Mr. HUMPHREY. Mr. President, I yield to the Senator from New Jersey.

The PRESIDING OFFICER. The Senator from New Jersey is recognized.

Mr. CASE. I thank the Senator from Minnesota.

Mr. President, as the Senator from Minnesota has already pointed out, the leadership amendment would cover, under title VII, only 8 percent of the employers of the country, and the Cotton amendment would reduce the percentage to 2. Similarly, the Dirksen leadership amendment would withhold guarantees from more than 60 percent of the labor force; and the Cotton amendment would increase that to 70 percent—thus still further reducing the effective coverage of this measure.

I believe all of us agree, and I think the Senator from New Hampshire takes the same view, that such discrimination is wrong. So there is no division of opinion among us on that point.

The concern of the Senator from New Hampshire is in regard to the possible harassment of small businessmen. I believe we have already made proper provision in regard to possible areas of harassment by Federal bureaucracy. We have done that by means of the carefully drafted provisions of the bill which require that if there is possible reason to believe that a State agency will deal with the matter, it will have 60 days in which to deal with it, before the Federal agency can be called in; and, even then, the Federal agency can only investigate and attempt to persuade, but will not have any power of enforcement.

We have also narrowly restricted the requirements in regard to recordkeeping by employers and their vulnerability in connection with Federal inspection and examination.

In short, we believe we have done the most careful job that conscientious legislators concerned with States rights and the maintenance of State control wherever possible could possibly do.

Therefore, I believe this is a complete answer to the concerns and worries of the Senator from New Hampshire.

Mr. HUMPHREY. I thank the Senator from New Jersey. His explanation should be very reassuring to Senators.

Mr. MAGNUSON. Mr. President, will the Senator from Minnesota yield briefly to me?

Mr. HUMPHREY. I yield.

Mr. MAGNUSON. I wish to refer to one aspect of the bill which I believe has not been very well brought out. It is a very practical aspect. Under conditions existing in the country—some of them unfortunate—in the opinion of some businessmen in my State, the effect of the proposed Federal law plus the State law, would be to provide them with some protection if they were incorrectly charged with engaging in discrimination, whereas they had not actually been engaging in it. They believe this measure will give them a forum in which the facts can be developed and disclosed, with the result that if they had not actually been discriminating or if there had been a misunderstanding, the real facts could be brought out, whereas in the absence of such a law, rumors of discrimination could continue, and could be very harmful to a business.

The proof of the pudding is that in most States, 95 to 98 percent of such cases are settled amicably, because often there are misunderstandings. But in the absence of such a forum, such conditions could continue for a long time without being corrected.

Mr. HUMPHREY. I thank the distinguished and eloquent Senator from Washington. I would like to sum up the case against the amendment proposed by the Senator from New Hampshire [Mr. COTTON]. This amendment would limit the coverage of title VII to businesses that employed 100 or more persons. I believe that this amendment would drastically reduce the effectiveness and impact of title VII. At the outset, let me again summarize the coverage of title VII as now written.

First, it is well to emphasize that the enforcement provisions of title VII do not become effective until 1 year after the date of the enactment of the Civil Rights Act of 1964. Thus, the pending bill provides for an entire year of transition for all employers. After this 1-year grace period, the bill will become effective but its coverage during this first year will be limited. During the first year, only employers with 100 or more employees will be covered. In subsequent years, the bill will take hold of employers with lesser numbers of employees. Thus, 3 years from when the bill is enacted, it will be extended to employers with 75 or more employees; 4 years from enactment coverage will reach employers with 50 or more employees and, finally, 5 years from the date the bill is passed, it will cover employers of 25 or more employees.

Certainly, this gradual progression of coverage is moderate, indeed. New duties are not suddenly imposed. Rather, the business community is given ample time to adjust. And what are they being asked to adjust to? They are being asked to adjust to a principle of fairness that is so morally and ethically correct that its validity should long ago have been universally recognized.

Now, let us see what the amendment proposed by Senator COTTON would do. First, let us consider employer coverage. There are 3,300,000 employers that report to the social security system. Of this number, only 259,343—about 8 percent of the total—employ 25 or more employees. In other words, under the bill as presently drafted, about 92 percent of all employers would be exempt from the provisions. Surely this cannot be regarded as a drastic imposition on the business community. Senator COTTON's amendment would further reduce substantially even this minimual coverage. The fact is that there only are 56,366 employers in this country that employ 100 or more employees. Thus, what Senator COTTON is suggesting is that title VII should cover somewhat less than 1¾ percent of the employers of this country—an infinitesimal number. On the other hand, the pending bill would cover less than 300,000 of the 3,300,000 employers, about 8 percent of the employers who report to the social security system. Plainly, the coverage is modest enough and to reduce it to the extent proposed by Senator COTTON is a step of drastic proportions that has no justification whatsoever.

Viewing Senator COTTON's amendment from the viewpoint of employee coverage, the effect is equally disturbing. There are currently in this country 73 million persons classified as employees. If the bill's coverage extends to employers of 25 or more persons, 29 million of these 73 million persons would be covered. Thus, even when the pending bill becomes fully effective, 44 million workers will be exempted from its coverage. Now if the bill is limited to employers of 100 or more workers, only 21 million workers would be covered. Senator COTTON's amendment, therefore, would cut out 8 million persons from coverage under title VII. This would leave a total of 53 million of our 73 million employees uncovered by the act—clearly a shockingly large exclusion.

In addition, Senator COTTON's proposal is a dramatic departure from the body of legislation that already exists in this field. It should be remembered that 25 States have fair employment laws. The laws of 23 of these States have more liberal coverage than the pending bill. Thus in States such as Connecticut, Delaware, and Wisconsin, there is no minimum number of employees that are required for an employer to be covered. In California, there is a minimum of five employees, in Michigan eight, and in Oregon six. Only Missouri and Illinois limit coverage to employers of 50 or more

workers but even these two States are twice as liberal as what Senator COTTON proposes.

There is a special significance to the coverage of the State laws which I have just discussed—beyond the fact that the coverage of 23 of these laws is more pervasive than the pending bill and, obviously, more so than that proposed by Senator COTTON. The amendments that have been introduced to the pending Civil Rights Act by Senator DIRKSEN, Senator KUCHEL, Senator MANSFIELD, and myself have been directed largely at one goal—to give the States first opportunity to deal with the problems covered by such titles as title II and title VII. Great emphasis has been placed on State law and its enforcement. It is important, therefore, that there be some consistency between State and Federal law to make this cooperative venture operate smoothly. Certainly, many problems can be foreseen if there is a wide discrepancy between the coverage of State law and Federal law. Federal and State law should be nearly as coextensive as possible. For this reason, it appears sound to include within the Federal statute as many of the employees covered by State law as possible. This goal is most nearly achieved by the pending civil rights bill the coverage of which is in line with the vast majority of State laws. Senator COTTON's proposal, on the other hand, would tremendously increase the gap between Federal and State law coverage.

Other Federal statutes also provide precedent for our consideration of the coverage of title VII. In the past, when Congress has enacted legislation to deal with significant community problems, the goal always has been to make coverage as broad as possible. When Congress has recognized an existing problem, it has tried to deal with that problem to the full extent permitted by the Constitution. Why should employment discrimination be treated any differently? When we were faced with the necessity of dealing with labor unrest we enacted the National Labor Relations Act and made its coverage as broad as possible. Thus, that act has no minimum requirement for coverage. Similarly, to deal with wage inequities, we passed the Fair Labor Standards Act. This statute, too, is broad in its coverage; it reaches enterprises with two or more employees. Certainly the problem resulting from employment discrimination is of great magnitude and deserves treatment on a broad basis.

Senator COTTON's proposal minimizes the impact of employment discrimination and attempts to exempt the vast majority of employers from the remedies provided by title VII. But let me emphasize again that the problem with which title VII is intended to deal is a pervasive and overriding one and should be dealt with on that basis.

As I emphasized in my initial remarks on title VII, racial prejudice in employment is one of the most wasteful practices for the economy. Senators and Members of the House of Representatives who are worried about waste would do well to see to it that this waste is eliminated. The Council of Economic Advisers has recently estimated that full utilization of the present educational attainment of nonwhites in the country would add about $13 billion to our gross national product. Every bit of evidence we have in connection with fair employment practice laws indicates that such statutes not only are good law, good morals, and good labor-management practice, but also good economics. Now that we are about to pass such a statute, we should do so without extensive limitations.

Anyone who believes that title VII should be limited is overlooking the great problem with which it is intended to deal. According to Labor Department statistics, the unemployment rate among nonwhites is over twice as much as among whites. More significantly, among white family breadwinners, those with dependents to support, the unemployment rate is three times as high among nonwhites as among whites and although nonwhites contribute only 11 percent of the total work force, they account for 25 percent of all workers unemployed for 6 months or more.

Discrimination also affects the kind of jobs nonwhites can get. Generally, it is the lower paid and less desirable jobs which are filled by nonwhites. For example, 17 percent of nonwhite workers have white-collar jobs; among white workers, the figure is 47 percent. On the other hand, only 4 percent of the whites who are employed work at unskilled jobs in nonagricultural industries; among nonwhites, the figure is 14 percent.

This situation is not due solely to differences in educational attainment. The shameful fact is that educated Negroes often are denied the chance to get jobs for which they are trained and qualified. A recent study of the Department of Labor revealed that only 43 percent of all nonwhites with technical training held jobs on which they used the training compared to 60 percent of all workers. Eighty percent of white college graduates have professional, technical, or managerial jobs, but only 70 percent of Negro college graduates have such positions commensurate with their education. At lower educational levels the situation is worse. Only 2 percent of white women who have graduated from high school are domestic workers, but fully 20 percent of Negro women with this much education can find only domestic work.

Even within their professions, nonwhites earn much less than white people. It is a depressing fact that a Negro with 4 years of college can expect to earn less in his lifetime than a white man who quit school after the eighth grade. In fact, Negro college graduates have only half the lifetime earnings of white college graduates.

It is wishful thinking to believe that this situation is improving and will gradually correct itself. While progress can be shown in some areas, for example employment in Federal, State, and local government, in other respects the relative position of the Negro worker is steadily worsening. In 1947, the nonwhite unemployment rate was only 64 percent higher than the white rate; in 1962 it was 124 percent higher.

This is a momentous problem, and it requires imaginative and far-reaching solutions. The need is for drastic action—not feeble, limited steps. The approach exemplified by the Cotton amendment just will not do the job.

But why is there a desire to exempt as many employers as possible from the coverage of title VII? I suppose there is some feeling that employers already are subjected to sufficient regulation and should not be further burdened. But is this a legitimate reason? Certainly it is a burden to require employers to negotiate with unions rather than unilaterally establishing working conditions, but the National Labor Relations Act imposes this burden even on small employers. Likewise, it is a burden to require an employer to pay a minimum wage, but this is no excuse to escape from the coverage of the Fair Labor Standards Act. Obviously, many employers would have been relieved of burdens if the coverage of the Food and Drug Acts had been limited, but Congress was not receptive to the argument that an employer's life would be easier if he could adulterate and label his products as he chose. There were evils to remedy and Congress sought to remedy them on the widest basis possible.

And—let me emphasize again—under the leadership substitute itself only about 8 percent of the employers of this country will be affected.

The need for fair employment legislation is imperative. Its scope should be broad and encompassing. Congress now has the opportunity to take a significant step in dealing with a great social problem in this country. The step should not be a timid, hesitating one. It should be a forward-looking movement in the direction of bringing this country closer to the principles of equality that have made us great and are the source of admiration and emulation throughout the world.

Mr. President, I yield the floor.

Mr. COTTON. Mr. President, I shall speak only a little longer. In view of the fact that the acting majority leader and the minority leader and other distinguished Senators have, with virtually one accord, opposed the suggestions made by means of this amendment, I wish to make several points crystal clear.

In the first place, no Member of this body, and certainly not the Senator from New Hampshire, would claim for a moment that discrimination because of race or color or national origin is not immoral. It makes not the slightest difference whether that discrimination is practiced in a plant which has 10,000 employees or is practiced by a businessman who runs a real estate office with 30 employees. Morally, the result is the same, if discrimination exists because of the color of a man's skin or because of his race or his creed.

However, here we are dealing with rules which the Federal Government should be able properly, efficiently, and effectively to enforce.

The only difference between a large business and a very small one lies in the situation which faces the small businessman because of the necessities of his business.

First of all, I say to the Senator from Minnesota that when he said such an order would be binding on anyone who does business with the Federal Government, even including an employer who had only one employee, I point out that I have already said I believe that, too, would be sound law—namely that anyone who does business with the Federal Government or who benefits from the Federal Government should be subject to Federal control in regard to his hiring practices.

However, I recall very well that in the early days of the Wagner Act, when I was practicing law in a small town, a small businessman had occasion to discharge an employee. An investigation was made. In the early days of the Wagner Act, those who did the investigating had, largely, a labor union background. It was discovered that the discharged employee was the secretary of a small union in that plant. The investigator recommended that the discharged employee be reemployed and also be paid his back wages.

The businessman came to me; and we went to Boston, and appeared there before the examiner. The testimony showed that the discharged employee was a drunk and was disorderly, and on two occasions had endangered the safety of his fellow employees. However, because the discharged employee was the secretary of the labor organization that was organizing the union in that plant, the examiner ruled that the employee had been discharged because of his union activities; and the order was that he be reemployed and be paid his back wages. I said to the businessman, "Of course, you have recourse to appeal to the Federal court."

He replied, "I cannot afford to do that. I will pay this fellow's back wages, and will reemploy him; that will be the cheapest way for me out of the situation."

In short, it is all very well to talk about enforcing morality; and large industries encounter no hardship in handling such matters, for they have teams of lawyers organized to deal with them.

But Senators should think twice before they vote in favor of the passage of a bill which would make it possible for an investigator or a Federal administrative officer to reach a conclusion, and thus make it incumbent on the small businessman to carry the case to the courts if he is to get justice. In addition, let us remember that when we deal with such overt acts, although one can "slice" title VII any way he wishes or as thin as he may wish to slice it, or can spell it any way he wishes to spell it, in any case it is clear that this title deals with a state of mind; namely, that if it is charged that Mr. A or Mr. B was not promoted because of his race, his church, or his nationality, the question will be: What was the employer's intent?

I am not interested in the razor-thin margin by which the majority leader, the minority leader, the Attorney General, or anyone else found themselves in accord. No Senator is under any obligation to vote for a measure in which he does not believe because some others have made an agreement and he might upset it.

For at least 13 weeks I have heard Senator after Senator shake his finger and talk about violence and demonstrations. We have heard that we must act by the deadline of a certain date or we shall be responsible for bloodshed and violence. I have heard Senators in complete sincerity deplore race prejudice, race hatred, and race war. I do not believe there is any one of us who does not deplore that sort of thing. But in the light of the very lulling arguments made by the proponents of the title about how good, sweet, gentle, fair, and noble will be everyone—even straight through all the ranks of the army of people that we shall have to have to check, enforce and examine the complaints—I wish to make a prediction. I point out, first, that I do not think it would make any great difference in the State that I represent whether the amendment were adopted or not.

We can enforce voting rights. In my opinion, the weapon of the Negro is the ballot box and a fight for the privilege of its use. We can enforce equal rights in the fields of integration, in education, and the use of public facilities in every State of the Union; that would be fair and just, because such action would turn the face of our Nation against discrimination, and that is what we want to do.

But should we write into the bill a provision which would take the Federal Government into every little business establishment where men are making a living, we shall see a reaction. When a man who is making his living by operating a business hires a man, he hires one who can do the best job for him. In most instances, employers do not hire a man because he is a relative or because he is of one color or another color. If I should be operating an insurance agency and I should find a man who could sell insurance, I would try to hire him, because I am a New Hampshire Yankee, and the almighty dollar looms very large to me.

But if we should write into the bill the title as it now stands, one of two things would happen: Either the provision would not be enforced, and the enforcement officers would be wise enough not to go into small businesses, or, if it were enforced, we should have in that provision the seeds of more bitterness, more hatred, more race prejudice, and more strife than we had when we started to integrate the public schools.

If we desire violence, bitterness, and hatred among the races in this country, I suggest that we put the Federal Government with a club into the livelihood of every small businessman, and that we deal with the businessman's motives and tell him what he must do.

I am not impressed by the argument about all the peaceful settlements that have been suggested. I have practiced law too many years, and I know that many peaceful settlements do not result because such settlements are fair. Rather they are made because a man must yield or he must go through the courts. It is the threat—the pistol at one's head.

I do not say that all these dire things will happen, but I do say that we have a bill which is all encompassing. Title VII is the most dangerous part of it, because it would lead the Federal Government with all of its power, majesty and bureaucracy into the way of dealing with a small businessman who can ill afford to protect himself, and in many cases his actions will be judged by the facts of the race or color involved and not by the facts of the case.

Mr. MORSE. Mr. President, will the Senator yield to me?

Mr. HUMPHREY. I yield 5 minutes to the Senator from Oregon.

Mr. MORSE. Mr. President, I rise to express my disagreement with the observation and conclusions of the Senator from New Hampshire. It seems to me that two issues are involved in the discussion. One is to seek to enact legislation that will be helpful in bringing to an end unfair economic discrimination against Negroes, because we know that there exists in our economy the practice of discrimination against Negroes when it comes to employment.

Second, as I said before, and repeat, we have an obligation, it seems to me, to do what we can to bring to an end acts of immorality in our democracy based upon discrimination against Negroes because of the color of their skin. If we are going to promote discrimination practiced against the largest percentage of our working force in this country because they are employed by businesses that would come under the exemption clause of the Cotton amendment and seek to try to bring to an end economic discrimination based upon race and so-called big business, we shall automatically discriminate against employers of 100 or more employees. That itself is a form of discrimination with regard to a matter that ought to be universal and uniform in its application.

I am not persuaded by the argument that we shall have a problem of enforcement in small business or we shall put the small businessman into a position in which he may have to resort to legal defenses, because that adds up in my book really to putting economic values above human values. Basically we are dealing with a problem which is charged with discrimination in respect to human values. Once we pass the bill without the Cotton amendment, I think we shall be surprised how it will be self-executing in most instances. There is a price one has to pay to be free, even though he is a businessmen. There is a price one has to pay to live in a democracy, even though one is a small businessman. I know of no reason why we should set small businessmen aside and say, "You can continue discrimination with immunity." We shall have to have evidence. When the evidence can be presented under the legal requirement of the act that a small businessman in fact is denying equality of economic opportunity to the Negroes of the country, why should he not come under the act?

It was for the same reason that I voted against the Landrum-Griffin Act—because of the no man's land provision in it. I saw no reason why Walter Reuther, for example, should have the protection that goes along with protecting employees in large plants within his union, but employees in small plants would have no protection under the no man's land provision in that act.

I thought we made a mistake then. But it would be no greater mistake than would be made this afternoon when we are dealing here with human rights, and with the rights of Negroes to be protected from discrimination by the small businessman as opposed to the large businessman. We would have to discriminate against a big businessman.

I think if we proceed in the matter of guaranteeing first-class citizenship to the Negroes of the country, or to put it another way, as I have said before in the Senate Chamber, deliver to the Negroes of the country for the first time in our history the Constitution of the United States, we cannot start this afternoon by creating the kind of exception which permits discrimination on the part of the small businessman but not on the part of the large businessman.

Mr. JAVITS. Mr. President, will the Senator yield for this one observation?

Mr. MORSE. I yield.

Mr. JAVITS. Mr. President, I heard with great interest the argument of the Senator. The same thing is true with regard to the pure food and drug laws and the securities acts and many other laws under which the small businessman may be involved in litigation.

When I said what I did about the Mansfield-Dirksen compromise being on the very thin edge of agreement, I had in mind some things which put them on that edge. One of them is counsel fees. If an individual sues in one of these cases and loses, the court will have the authority under a provision in the Dirksen-Mansfield substitute to impose the defendant's counsel fees upon him. That is a most unusual sanction. The sanction is in there only because of the fact that the title would affect a good many small businessmen. If the title does not affect a good many small businessmen, then this sanction becomes a threat to the individual who asserts his rights. Certainly we do not want to make such a provision in the case of General Motors or General Electric. We have already taken into consideration the fact that the small businessman should be covered as well as the large businessman—as he is in a whole string of other laws across the board. Do we think that if we leave him out of this provision, we will save him from litigation with the Department of Justice, the SEC, or the other departments? Of course not.

Mr. COTTON. Mr. President, I yield back the remainder of my time.

Mr. HUMPHREY. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time is yielded back. The question is on the amendment of the senior Senator from New Hampshire [Mr. COTTON].

Mr. HUMPHREY. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WALTERS (when his name was called). On this vote I have a pair with the distinguished Senator from Ohio [Mr. LAUSCHE]. If he were present and voting, he would vote "nay." If I were at liberty to vote, I would vote "yea." I therefore withhold my vote.

The rollcall was concluded.

Mr. HUMPHREY. I announce that the Senator from Ohio [Mr. LAUSCHE] is absent on official business.

I also announce that the Senator from California [Mr. ENGLE] is absent because of illness.

I further announce that, if present and voting, the Senator from California [Mr. ENGLE] would vote "nay."

The result was announced—yeas 34, nays 63, as follows:

[No. 279 Leg.]

YEAS—34

Bennett	Hill	Robertson
Byrd, Va.	Holland	Russell
Byrd, W. Va.	Hruska	Simpson
Cotton	Johnston	Smathers
Curtis	Jordan, N.C.	Sparkman
Eastland	Long, La.	Stennis
Edmondson	McClellan	Talmadge
Ellender	McIntyre	Thurmond
Ervin	Mechem	Tower
Fulbright	Monroney	Yarborough
Goldwater	Morton	
Hickenlooper	Mundt	

NAYS—63

Aiken	Gore	Miller
Allott	Gruening	Morse
Anderson	Hart	Moss
Bartlett	Hartke	Muskie
Bayh	Hayden	Nelson
Beall	Humphrey	Neuberger
Bible	Inouye	Pastore
Boggs	Jackson	Pearson
Brewster	Javits	Pell
Burdick	Jordan, Idaho	Prouty
Cannon	Keating	Proxmire
Carlson	Kennedy	Randolph
Case	Kuchel	Ribicoff
Church	Long, Mo.	Saltonstall
Clark	Magnuson	Scott
Cooper	Mansfield	Smith
Dirksen	McCarthy	Symington
Dodd	McGee	Williams, N.J.
Dominick	McGovern	Williams, Del.
Douglas	McNamara	Young, N. Dak.
Fong	Metcalf	Young, Ohio

NOT VOTING—3

Engle	Lausche	Walters

So Mr. COTTON's amendment was rejected.

Mr. DIRKSEN. Mr. President, I move that the vote by which the amendment was rejected be reconsidered.

Mr. HUMPHREY. Mr. President, I move that the motion to reconsider be laid on the table.

The motion to lay on the table was agreed to.

The question now recurs on amendments No. 577, offered by the Senator from Louisiana [Mr. LONG] to the amendments No. 513, offered by the Senator from Georgia [Mr. TALMADGE] and other Senators, relating to jury trials in criminal contempt cases.

AMENDMENTS NOS. 964–1007

Mr. LONG of Louisiana. Mr. President, I do not plan to insist on my amendments in view of the fact that the Morton amendment was agreed to earlier in the day.

I ask unanimous consent that I may submit some conforming amendments which apply to the bill at the desk so that they may be offered to the Dirksen substitute.

I ask unanimous consent that the amendments may be considered as having been read for all purposes under the rule.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendments are as follows:

AMENDMENT NO. 964

On page 14, after line 23, insert the following new section:

"SEC. 208. (a) Section 7 of the Small Business Act is amended by adding at the end thereof a new subsection as follows:

"'(e) (1) If the Administration finds (A) that any person is deprived, at any establishment described in section 201(b) of title II of the Civil Rights Act of 1964, of any right or privilege secured by section 201 or 202 of such Act, and that such deprivation is pursuant to a pattern or practice within the area of the State in which such establishment is situated, or (B) that, with respect to a substantial percentage of such establishments in any area of a State offering comparable goods, services, facilities, privileges, advantages, or accommodations, compliance with the requirements of such title is being made only because of resignation to the fact that there are provisions of such title which may be used to compel compliance in the event of a violation of such title, the Administration is empowered to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administration may determine to be necessary or appropriate to provide establishments within such area which will offer goods, services, facilities, privileges, advantages, or accommodations comparable to those offered by such establishment or establishments, respectively, in compliance with the concept and spirit of such title, and which will encourage integration at such establishments among persons of different races, colors, religions, and national origins.

"'(2) Financial assistance under this subsection shall be subject to the following limitations:

"'(A) No financial assistance shall be extended pursuant to this subsection unless the borrower agrees to provide to all persons the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any establishment to be provided by such financial assistance without discrimination or segregation on the ground of race, color, religion, or national origin, and to encourage the integration at such establishment of persons of all races, colors, religions, and national origins.

"'(B) No financial assistance shall be extended unless such assistance is not otherwise available on reasonable terms.

"'(C) In agreements to participate in loans on a deferred basis, such participation shall not be in excess of 90 per centum of the balance of the loan outstanding at the time of disbursement.

"'(D) No loan, including renewals and extensions thereof, shall be made for a period or periods exceeding twenty years.

"'(E) The rate of interest for the Administration's share of any loan shall not exceed 5 per centum per annum.'

"(b) Section 4(c) of such Act is amended by—

"(1) striking out '$1,666,000,000' and inserting in lieu thereof '$2,166,000,000'; and

"(2) inserting after the fourth sentence the following: 'Not to exceed an aggregate of $500,000,000 shall be outstanding from the

fund at any one time for the purposes described in section 7(e) of this Act.'"

AMENDMENT No. 965

On page 9, strike out all on lines 3, 4, 5, 6, and 7, and insert in lieu thereof the following:

"(e) The provisions of this title shall not apply to a private club or other establishment not open to the public."

AMENDMENT No. 966

On page 6, beginning with line 12, strike out all through line 23 on page 14 (title II), and in lieu thereof insert the following:

"TITLE II—LOANS TO PROVIDE PLACES OF PUBLIC ACCOMMODATION WHICH SERVE THE PUBLIC WITHOUT DISCRIMINATION

"SEC. 201. (a) Section 7 of the Small Business Act is amended by adding at the end thereof a new subsection as follows:

"'(e)(1) If the Administration finds that any person is deprived of the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation, on account of his race, color, religion, or national origin, and that such deprivation is pursuant to a pattern or practice within the area of the State in which such place of public accommodation is situated, the Administration is empowered to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administration may determine to be necessary or appropriate to provide places of public accommodation within such area offering comparable goods, services, facilities, privileges, advantages, or accommodations without discrimination or segregation on the ground of race, color, religion, or national origin. For purposes of this subsection each of the following establishments which serves the public is a place of public accommodation:

"'(A) any inn, hotel, motel, or other place of business which provides lodging to transient guests;

"'(B) any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including but not limited to, any such facility located on the premises of any retail establishment; and any gasoline station;

"'(C) any motion picture house, theater, concert hall, sports arena, stadium, or other place of exhibition or entertainment; and

"'(D) any establishment (i) which is physically located within the premises of any establishment otherwise described in this subsection, or within the premises of which is physically located any such described establishment, and (ii) which holds itself out as serving patrons of such described establishment.

"'(2) Financial assistance under this subsection shall be subject to the following limitations:

"'(A) No financial assistance shall be extended pursuant to this subsection unless the borrower agrees to provide to all persons the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation to be provided by such financial assistance without discrimination or segregation on the ground of race, color, religion, or national origin.

"'(B) No financial assistance shall be extended unless such assistance is not otherwise available on reasonable terms.

"'(C) In agreements to participate in loans on a deferred basis, such participation shall not be in excess of 90 per centum of the balance of the loan outstanding at the time of disbursement.

"'(D) No loan, including renewals and extensions thereof, shall be made for a period or periods exceeding twenty years.

"'(E) The rate of interest for the administration's share of any loan shall not exceed 5 per centum per annum.'

"(b) Section 4(e) of such Act is amended by—

"(1) striking out '$1,666,000,000' and inserting in lieu thereof '$2,166,000,000'; and

"(2) inserting after the fourth sentence the following: 'Not to exceed an aggregate of $500,000,000 shall be outstanding from the fund at any one time for the purposes described in section 7(e) of this Act.'"

On page 74, after line 23, insert the following matter:

"Amend the title so as to read: 'A bill to enforce the constitutional right to vote, to authorize loans to provide places of public accommodation which serve the public without discrimination, to authorize the Attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes.'"

AMENDMENT No. 967

On page 9, beginning with the comma on line 5, strike out all through "(b)" on line 7.

AMENDMENT No. 968

On page 9, lines 3 and 4, strike out "bona fide".

AMENDMENT No. 969

Beginning with line 12, page 6, strike out all to and including line 23, page 14.

AMENDMENT No. 970

On page 6, line 20, immediately after the period, insert the following new sentence: "As used in this title, the phrase 'discrimination or segregation on the ground of race, color, religion, or national origin' means any arbitrary and unreasonable differentiation in the treatment regularly and habitually accorded to members of differing races, colors, religions, or national origins which is based solely upon race, color, religion, or national origin."

AMENDMENT No. 971

On page 6, line 20, immediately after the period, insert the following new sentence: "No right, privilege, or remedy conferred by this title to or upon any person may be exercised or enforced in derogation of any right, privilege, or remedy of any other person conferred or secured by the Constitution or any statute of the United States or by valid law of any State or political subdivision thereof."

AMENDMENT No. 972

On page 6, lines 21 and 22, strike out the words "serves the public", and insert in lieu thereof the words "is engaged in business for profit and holds itself out as serving patrons without restriction or limitation".

AMENDMENT No. 973

On page 6, line 21, strike out the word "serves", and insert in lieu thereof the words "is regularly engaged for profit in the business of serving".

AMENDMENT No. 974

Beginning with the comma in line 23, page 6, strike out all to and including the word "action" in line 25, page 6.

Beginning with line 20, page 8, strike out all to and including line 2, page 9.

Beginning with line 8, page 9, strike out all to and including line 14, page 9.

On page 9, line 18, strike out the words "or 202".

On page 9, line 21, strike out the words "or 202".

On page 9, line 23, strike out the words "or 202".

AMENDMENT No. 975

On page 6, line 24, immediately after the words "by it", insert the words "on the ground of race, color, religion, or national origin".

AMENDMENT No. 976

Beginning with line 1, page 7, strike out all to and including line 6, page 7, and insert in lieu thereof the following:

"(1) any inn, hotel, motel, or other establishment regularly engaged in the business of providing to the general public lodging facilities for transient guests, if such establishment contains more than five rooms for rent or hire;".

AMENDMENT No. 977

Beginning with line 10, page 7, strike out all to and including line 12, page 7, and insert in lieu thereof the following: "if such facility is situated (A) within the structure occupied by any establishment described in paragraph (1), or (B) in close proximity to any facility regularly used for or in connection with the transportation of persons or property in commerce;".

AMENDMENT No. 978

On page 7, line 15, immediately after the word "entertainment", insert a comma and the following: "if such place is situated (A) within the structure occupied by any establishment described in paragraph (1), or (B) in close proximity to any such establishment or to any facility regularly used for or in connection with the transportation of persons or property in commerce".

AMENDMENT No. 979

On page 7, line 15, immediately after the word "entertainment", insert the words "not situated within the residence of the operator or proprietor thereof".

AMENDMENT No. 980

Beginning with line 16, page 7, strike out all to and including line 21, page 7, and insert in lieu thereof the following:

"(4) any other establishment, if free access to the facilities, goods, or services thereof is necessary for the use of, or free access to, the facilities, goods, or services of an establishment of a kind described in paragraph (1), (2), or (3) of this subsection."

AMENDMENT No. 981

On page 7, line 17, immediately after the words "premises of", insert the words "and in close proximity to".

On page 7, line 19, immediately after the words "physically located", insert the words "and in close proximity to".

AMENDMENT No. 982

On page 7, line 20, immediately after the word "serving", insert the words "in the regular course of the conduct of a business for profit".

AMENDMENT No. 983

Beginning with line 22, page 7, strike out all to and including the period in line 12, page 8, and insert in lieu thereof the following:

"(c) The operations of an establishment affect commerce within the meaning of this title if such operations substantially affect commerce directly or indirectly."

AMENDMENT No. 984

On page 7, line 24, immediately after the words "subsection (b)", insert the words "which serves or offers to serve interstate travelers".

AMENDMENT No. 985

On page 7, line 24, immediately after the words "of subsection (b)", insert the words "and a substantial portion of its patronage is provided by individuals who are interstate travelers".

AMENDMENT No. 986

On page 7, line 24, immediately after the words "of subsection (b)", insert the words "and its operations substantially affect commerce".

AMENDMENT No. 987

On page 8, line 7, immediately after the word "entertainment", insert the words "a substantial proportion of".

AMENDMENT No. 988

On page 8, line 11, immediately after the words "of which", insert the word "substantially".

AMENDMENT No. 989

On page 9, line 6, immediately after the word "available", insert the words "in the regular course of a business conducted for profit".

AMENDMENT No. 990

On page 9, line 7, immediately after the period, insert the following new sentence: "Nothing contained in this title shall require any establishment engaged in the preparation or sale of food to prepare, sell, or offer for sale or consumption, any food of a kind, or prepared in a manner, required for (1) the observance of any dietary rule or observance of any religious faith, or (2) conformity to the dietary customs or preferences of persons of any race, color, or national origin."

AMENDMENT No. 991

Beginning with the word "That" in line 8, page 73, strike out all to and including line 16, page 73, and insert in lieu thereof the following: "That notwithstanding any provision contained in section 402, title 18, United States Code, all such proceedings for criminal contempt shall be subject to the provisions of section 3691 of title 18, United States Code, except that in any such case the accused, at the discretion of the judge, may be tried with a jury.".

AMENDMENT No. 992

On page 14, line 23, immediately after the period, insert the following new sentence: "Nothing contained in this title shall be construed to amend, modify, supersede, or repeal, or to impair the administration and enforcement of, or to deprive any person of any right or remedy under or with respect to, any provision contained in any statute of the United States heretofore enacted (1) for the regulation or protection of the trade or commerce of the United States or (2) to prevent unlawful restraints upon, or unfair methods of competition or acts or practices in, such trade or commerce."

AMENDMENT No. 993

On page 14, line 21, immediately after the word "accommodations", insert the words "and any statute or ordinance for the preservation of the peace or for the protection of the life, safety, or property of individuals or organizations".

AMENDMENT No. 994

On page 14, lines 12 and 13, strike out the words "without regard to whether", and insert in lieu thereof the word "after".

AMENDMENT No. 995

On page 14, line 10, immediately after the words "United States", insert the words "and the courts of the several States".

On page 14, line 11, immediately after the words "shall have", insert the word "concurrent".

AMENDMENT No. 996

On page 14, after line 23, insert the following new section:

"SEC. 208. It shall be unlawful for any person other than a duly authorized law enforcement officer (1) to engage in the practice of soliciting other persons to make complaints concerning alleged acts or practices prohibited by this title, or (2) to induce or attempt to induce other persons to institute, attempt to institute, or threaten to institute legal actions under this title for on account of such alleged acts or practices. Whenever any person is injured in his business, profession, or occupation by reason of the violation of this section by any other person, the person so injured shall be entitled to recover from such other person threefold the amount of the damages so sustained and a reasonable attorney's fee. The district courts of the United States shall have jurisdiction to hear and determine actions instituted under this section without regard to the amount in controversy. Process of the district court for any judicial district in any action under this section may be served in any other judicial district of the United States by the United States marshal thereof. Whenever it appears to the court in which any such action is pending that other parties should be brought before the court in such action, the court may cause such other parties to be summoned from any judicial district of the United States. As used in this section, the term 'person' means any individual and any partnership, corporation, association, or other legal entity."

AMENDMENT No. 997

On page 14, after line 23, insert the following new section:

"SEC. 208. It shall be unlawful for any person other than a duly authorized law enforcement officer (1) to engage in the practice of soliciting other persons to make complaints concerning alleged acts or practices prohibited by this title, or (2) to induce or to attempt to induce other persons to institute, attempt to institute, or threaten to institute, legal actions under this title for or on account of such alleged acts or practices. Whoever violates, attempts to violate, or combines or conspires with any other person to violate any prohibition contained in this section shall be fined not more than $5,000, or imprisoned not more than one year, or both. The district courts of the United States shall have jurisdiction to prevent and restrain violations and threatened violations of this section, and to enter such restraining orders and such temporary and permanent injunctions as may be required to prevent and restrain violations and threatened violations of this section. It shall be the duty of the several United States district attorneys, in their respective districts, to institute proceedings to prevent and restrain violations and threatened violations of this section. Whenever any such violation occurs or is threatened within any State, the Attorney General thereof or his designee may institute in any State or United States court of competent jurisdiction proceedings under this section to prevent and restrain such violation or threatened violation. As used in this subsection, the term 'person' means any individual and any partnership, corporation, association, or other legal entity."

AMENDMENT No. 998

On page 11, between lines 19 and 20, insert the following new subsection:

"(e) Before the Attorney General intervenes in any case instituted under this section, he shall cause to be conducted a full and complete investigation to determine whether probable cause exists for belief that the alleged act or practice prohibited by this title has occurred or is threatened. Upon a determination by the Attorney General, upon the basis of such investigation, that such probable cause does exist, he shall transmit a true and correct copy of the report of such investigation to the appropriate State or local officer with request that an attempt be made by such officer to secure compliance with the provisions of this title by voluntary procedures. If such officer declines to make such attempt, or if such attempt has not been made successfully within a reasonable period of time, the Attorney General may apply to intervene in such case pursuant to the provisions of this section."

AMENDMENT No. 999

On page 11, line 5, immediately after the period, insert the following new sentence: "The Attorney General shall not intervene in any such case until he has conducted an appropriate investigation to determine whether probable cause exists for belief that the alleged act or practice prohibited by this title has occurred or is threatened. Upon a determination by the Attorney General, upon the basis of such investigation, that such probable cause does exist, he shall transmit a true and correct copy of the report of such investigation to the appropriate State or local authority.".

AMENDMENT No. 1000

On page 10, line 13, strike out the words "this title,", and insert in lieu thereof the words "subsection (a),".

On page 11, between lines 19 and 20, insert the following new subsection:

"(e) It shall be unlawful for any person to institute or cause to be instituted, to attempt to institute or cause to be instituted, to make any threat to institute or cause to be instituted, or to combine or conspire with any other person to institute or cause to be instituted, any action under subsection (a) without just cause for the purpose of injuring any person in his business, profession, or occupation. The district courts of the United States shall have jurisdiction to prevent and restrain violations and threatened violations of this subsection, and to enter such restraining orders and such temporary and permanent injunctions as may be required to prevent and restrain such violations. It shall be the duty of the several United States district attorneys, in their respective districts, to institute proceedings to prevent and restrain violations and threatened violations of this subsection."

AMENDMENT No. 1001

On page 10, line 12, immediately after the period, insert the following new sentence: "No such injunction or order may be granted in any such action by any person unless such person shows that such action was instituted by the plaintiff in good faith to secure for himself a right conferred upon him by section 201 or section 202 of this Act."

AMENDMENT No. 1002

On page 10, line 15, immediately after the word "instituted", insert a comma and the following: "upon a showing of good cause therefor,".

On page 10, line 8, immediately after the word "action" insert the words "if the Attorney General certifies to the court the basis for his belief that the purposes of this title will be materially furthered by such intervention".

AMENDMENT NO. 1003

On page 9, line 15, immediately after the word "shall", insert the word "willfully".

AMENDMENT NO. 1004

On page 9, line 14, immediately after the period, insert the following new sentence: "Nothing contained in this title shall affect or impair the right of any individual or any group of individuals to exercise freely the right to discriminate or segregate on the basis of race, color, religion, or national origin in any social relationship or in any transaction or association which is not related to the operation of a place of public accommodation."

AMENDMENT NO. 1005

On page 9, line 14, immediately after the word "thereof", insert a comma and the following: "and such discrimination accomplishes or would accomplish substantial deprivation of any right secured by this title."

AMENDMENT NO. 1006

On page 9, line 9, strike out the words "establishment or place", and insert in lieu thereof "place of public accommodation".

AMENDMENT NO. 1007

On page 14, after line 23, insert the following new section:

"SEC. 208. Nothing contained in this title shall be construed to require any place of public accommodation to accord to any person of any race, color, religion, or national origin any preference, priority, or advantage over any person of any other race, color, religion, or national origin with respect to access to or use of any facility or service of such place of public accommodation or any article or commodity available for sale or use therein."

AMENDMENTS NOS. 1008 THROUGH 1013

Mr. LONG of Louisiana. Mr. President, I have several additional amendments, which would apply to the bill and also apply to the Dirksen substitute. I ask unanimous consent that they be considered as having been read for all purposes under the rule, and that they may lie at the desk, and that a statement explaining each amendment may be printed in connection with each one.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendments are as follows:

AMENDMENT NO. 1008

On page 55, after line 4, insert the following new section:

"SEC. 1105. No Federal department or agency shall take any action to require, directly or indirectly, any person, in the sale, leasing, rental, or other disposition of private residential housing and related facilities (including land to be developed for residential use), to negotiate, or enter into any contract, with any other person not of his choosing."

The statement accompanying amendment No. 1008 is as follows:

STATEMENT OF SENATOR LONG OF LOUISIANA ON "FREEDOM TO CHOOSE HOUSING" AMENDMENT

This amendment prevents the Federal Government from requiring in any way a person to sell, lease, rent, or otherwise dispose of private housing to someone not of his choosing.

This amendment would supersede the major aspects of Executive Order No. 11063 issued by President Kennedy in November 1962 which prohibited discrimination in housing built, purchased, or financed with Federal assistance. The Executive order would no longer apply to any person selling, leasing, renting, or otherwise disposing of private residential housing and related facilities. By this amendment, I am not saying that the Federal Government cannot insist on nondiscrimination in public housing, college housing, and the like where a government instrumentality is the landlord, but I am saying that the Federal Government cannot tell the owner of a private residence to whom he must sell or rent, even if a Federal agency such as FHA or the Veterans' Administration has a part in helping him acquire the property. If the house is essentially a private residence, its owner should be able to dispose of it to persons of his choosing.

It is said that there is nothing in H.R. 7152 concerned with discrimination in housing. That may be true, but I believe the Senate should be on record on the subject of "open housing" or "nondiscrimination in housing."

Voters all over the country have gone on record on so-called open housing ordinances, and, wherever they have, the result has been a resounding "No." People in all sections of the country want to retain their historic right to sell or rent their houses to whomever they wish. They do not wish to be forced by the Government into disposing of their private property to someone not of their choosing.

Since the people have been heard on this issue, I believe it only fair for us as their elected representatives to be heard on the issue also. A vote for the amendment places a Senator on record in behalf of a person's right to choose to whom he wishes to sell or rent his house. A vote against the amendment places a Senator on record in favor of the Federal Government telling a homeowner to whom he must sell or rent his property.

It is a clear and simple issue on which I am ready to be counted. I hope my colleagues are, too.

AMENDMENT NO. 1009

On page 6, beginning with line 1, strike out all through line 17 on page 11 (title II), and in lieu thereof insert the following:

"TITLE II—LOANS TO PROVIDE PLACES OF PUBLIC ACCOMMODATION WHICH SERVE THE PUBLIC WITHOUT DISCRIMINATION

"SEC. 201. (a) Section 7 of the Small Business Act is amended by adding at the end thereof a new subsection as follows:

"'(e)(1) If the Administration finds that any person is deprived of the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation, on account of his race, color, religion, or national origin, and that such deprivation is pursuant to a pattern or practice within the area of the State in which such place of public accommodation is situated, the Administration is empowered to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administration may determine to be necessary or appropriate to provide places of public accommodation within such area offering comparable goods, services, facilities, privileges, advantages, or accommodations without discrimination or segregation on the ground of race, color, religious, or national origin. For purposes of this subsection each of the following establishments which serves the public is a place of public accommodation:

"'(A) any inn, hotel, motel, or other place of business which provides lodging to transient guests;

"'(B) any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any such facility located on the premises of any retail establishment; and any gasoline station;

"'(C) any motion picture house, theater, concert hall, sports arena, stadium, or other place of exhibition or entertainment; and

"'(D) any establishment (i) which is physically located within the premises of any establishment otherwise described in this subsection, or within the premises of which is physically located any such described establishment, and (ii) which holds itself out as serving patrons of such described establishment.

"'(2) Financial assistance under this subsection shall be subject to the following limitations:

"'(A) No financial assistance shall be extended pursuant to this subsection unless the borrower agrees to provide to all persons the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation to be provided by such financial assistance without discrimination or segregation on the ground of race, color, religion, or national origin.

"'(B) No financial assistance shall be extended unless such assistance is not otherwise available on reasonable terms.

"'(C) In agreements to participate in loans on a deferred basis, such participation shall not be in excess of 90 per centum of the balance of the loan outstanding at the time of disbursement.

"'(D) No loan, including renewals and extensions thereof, shall be made for a period or periods exceeding twenty years.

"'(E) The rate of interest for the Administration's share of any loan shall not exceed 5 per centum per annum.'

"(b) Section 4(c) of such Act is amended by—

"(1) striking out '$1,666,000,000' and inserting in lieu thereof '$2,166,000,000'; and

"(2) inserting after the fourth sentence the following: 'Not to exceed an aggregate of $500,000,000 shall be outstanding from the fund at any one time for the purposes described in section 7(e) of this Act.'"

Amend the title so as to read: "A bill to enforce the constitutional right to vote, to authorize loans to provide places of public accommodation which serve the public without discrimination, to authorize the Attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes."

The statement accompanying Senate amendment No. 1009 is as follows:

STATEMENT OF SENATOR LONG OF LOUISIANA ON AMENDMENT TO PROVIDE SMALL BUSINESS LOANS TO PUBLIC ACCOMMODATIONS

This amendment creates a new category of Small Business Administration loans to provide places of public accommodation, as defined in title II of H.R. 7152, which would offer goods and services without discrimination or segregation on the ground of race, color, religion, or national origin.

Such loans on usual Small Business Administration terms could be made whenever the Administrator of SBA finds that, in the area where the loan applicant is located, either there is a pattern or practice of depriving persons on account of race, color, religion, or national origin of the use of so-

called public accommodations or that so-called public accommodations are made available to all persons only in compliance with the law and not willingly or voluntarily. SBA's lending authority would be increased by $500 million to take care of such loans. The loans would be made to places which, rather than discriminate against one class of persons, would encourage integration among all types of people.

If the Federal Government wants to foster integration as it most certainly does by the terms of the bill before us, then I believe the proper way is by helping those who are willing to integrate. But, in the process of encouraging integration, the Federal Government should not force those who wish to remain among their own kind and who wish to do business among their own kind to do something they don't want to do. That is the very antithesis of the freedom and liberty which forms the cornerstone of our great democracy.

If hotels, restaurants, and the like wish to serve only whites, these private establishments should be allowed to conduct business in such a manner; and, if some white people wish to patronize only these places, they should be permitted to do so. That is the free, American way. The Federal Government need not contribute to the financial success of such businesses, but neither should the Federal Government prohibit these businesses from continuing to follow such customs.

Instead, the Federal Government would be better disposed to aid establishments which do want to serve all persons. Under my amendment, the Government would be launching all across the country thousands of new and remodeled, up-to-date, attractive businesses which would seek and encourage an integrated clientele. And persons who wished to associate and mingle with those of other races, colors, religions, or national origins would find readily available just as good, perhaps better, establishments than those which continued to cater only to a segregated clientele.

AMENDMENT NO. 1010

On page 8, line 19, strike out "bona fide".

AMENDMENT NO. 1011

On page 8, strike out all on lines 18, 19, 20, 21, 22, and 23, and insert in lieu thereof the following:

"(e) The provisions of this title shall not apply to a private club or other establishment not open to the public."

AMENDMENT NO. 1012

On page 8, beginning with the comma on line 20, strike out all through "(b)" on line 23.

AMENDMENT NO. 1013

On page 11, after line 17, insert the following new section:

"SEC. 206. (a) Section 7 of the Small Business Act is amended by adding at the end thereof a new subsection as follows:

"'(e)(1) If the Administration finds (A) that any person is deprived, at any establishment described in section 201(b) of title II of the Civil Rights Act of 1963, of any right or privilege secured by section 201 or 202 of such Act, and that such deprivation is pursuant to a pattern or practice within the area of the State in which such establishment is situated, or (B) that, with respect to a substantial percentage of such establishments in any area of a State offering comparable goods, services, facilities, privileges, advantages, or accommodations, compliance with the requirements of such title is being made only because of resignation to the fact that there are provisions of such title which may be used to compel compliance in the event of a violation of such title, the Administration is empowered to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administration may determine to be necessary or appropriate to provide establishments within such area which will offer goods, services, facilities, privileges, advantages, or accommodations comparable to those offered by such establishment or establishments, respectively, in compliance with the concept and spirit of such title, and which will encourage integration at such establishments among persons of different races, colors, religions, and national origins.

"'(2) Financial assistance under this subsection shall be subject to the following limitations:

"'(A) No financial assistance shall be extended pursuant to this subsection unless the borrower agrees to provide to all persons the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any establishment to be provided by such financial assistance without discrimination or segregation on the ground of race, color, religion, or national origin, and to encourage the integration at such establishment of persons of all races, colors, religions, and national origins.

"'(B) No financial assistance shall be extended unless such assistance is not otherwise available on reasonable terms.

"'(C) In agreements to participate in loans on a deferred basis, such participation shall not be in excess of 90 per centum of the balance of the loan outstanding at the time of disbursement.

"'(D) No loan, including renewals and extensions thereof, shall be made for a period or periods exceeding twenty years.

"'(E) The rate of interest for the Administration's share of any loan shall not exceed 5 per centum per annum.'

"(b) Section 4(c) of such Act is amended by—

"(1) striking out '$1,666,000,000' and inserting in lieu thereof '$2,166,000,000'; and

"(2) inserting after the fourth sentence the following: 'Not to exceed an aggregate of $500,000,000 shall be outstanding from the fund at any one time for the purposes described in section 7(e) of this Act.'"

AMENDMENTS NOS. 1014–1037

Mr. THURMOND. Mr. President, I ask unanimous consent that I may submit at this time some amendments to the amendment in the nature of a substitute, amendment No. 656, to H.R. 7152, and the bill, H.R. 7152.

I also ask unanimous consent that these amendments may be printed at this point in the body of the RECORD.

I also ask unanimous consent that they may be printed otherwise and lie upon the table until called up.

I also ask unanimous consent that the reading of these amendments be waived and be considered as having been read for all purposes under the rules of the Senate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendments are as follows:

AMENDMENT NO. 1014

On page 74, after line 23, insert the following new section:

"SEC. 1106. (a) No treaty or agreement of the United States with any tribe, band, or other identifiable group of American Indians residing within the territorial limits of the United States shall hereafter be abrogated, modified, or otherwise altered except in conformity with legislation hereafter enacted by the Congress. Whenever any governmental officer or agency has taken any action, or there is reasonable ground for belief that any such officer or agency is about to take any action, which is prohibited by this section, a civil action for preventive relief may be instituted against such officer or agency by any such tribe, band, group, or member thereof who is or would be aggrieved by such action.

"(b) Any action instituted under this section may be instituted in the district court of the United States for any judicial district in which the plaintiff resides or is found. Such court shall have jurisdiction to hear and determine such action, and to enter such restraining orders and such temporary or permanent injunctions as it may deem proper. Process of the district court for any judicial district in any action instituted under this section may be served in any other judicial district of the United States by the United States marshal thereof.

AMENDMENT NO. 1015

On page 27, line 22, delete "$75" and insert in lieu thereof "$50".

AMENDMENT NO. 1016

On page 25, line 13, change the period to a comma, and add the following: "*Provided, however,* That nothing in this section shall be construed as making it unlawful for any employee to give any such information to any authorized committee or subcommittee of the Congress.

AMENDMENT NO. 1017

On page 30, beginning on line 20, delete through line 23.

AMENDMENT NO. 1018

On page 32, line 20, change the period to a comma and add the following: "*Provided, however,* That such rules shall become effective only after affirmatively approved by an Act of Congress."

AMENDMENT NO. 1019

On page 33, line 13, delete the words "the President" and insert in lieu thereof the words "the Congress."

AMENDMENT NO. 1020

On page 35, line 19, delete the word "affecting" and insert in lieu thereof the words "engaged in interstate."

On page 39, beginning on line 11, delete down through line 16.

AMENDMENT NO. 1021

On page 49, beginning on line 14, delete down through line 19.

AMENDMENT NO. 1022

On page 53, beginning on line 17, delete down through the period on line 21.

AMENDMENT NO. 1023

On page 53, beginning with the word "Upon" on line 21, delete all through the word "action" on line 23.

AMENDMENT NO. 1024

On page 55, line 21, delete the word "not."

AMENDMENT NO. 1025

On page 65, line 19, change the period to a comma, and insert the following: "*Provided, however,* That failure to comply with requirements of this section shall not constitute more than one offense until after notice in writing has been given to the employer, employment agency, or labor organization, as the case may be, by the Commission, of the past or existing noncompliance."

AMENDMENT NO. 1026

On page 66, line 14, delete the word "written."

On page 66, line 15, between the comma and the word "or," insert the words "or its employees or agents."

AMENDMENT No. 1027

On page 67, beginning on line 10, delete all down through line 20.

AMENDMENT No. 1028

On page 67, line 23, change the period to a comma, and add the following: "or January 1, 1966, whichever is later."

AMENDMENT No. 1029

On page 69, line 1, beginning with the word "in," delete down through the word "Rights" on line 2.

On page 69, on line 3, beginning with the comma, delete down through the comma on line 4.

AMENDMENT No. 1030

On page 70, lines 15 and 16, delete "Attorney General" and insert in lieu thereof "Court wherein the suit was originally filed determines and".

AMENDMENT No. 1031

On page 70, between lines 18 and 19, insert the following new subsection: *"Provided, however*, That no such action shall be classed as a class action, but the order therein shall be limited to the individuals named in the complaint."

AMENDMENT No. 1032

On page 71, line 5 between the words "personnel" and "as" insert a comma and the following: "not to exceed 6,".

AMENDMENT No. 1033

On page 71, line 5 between the words "personnel" and "as" insert a comma and the following: "not to exceed 10,".

AMENDMENT No. 1034

On page 71, line 20, delete "or may affect".

AMENDMENT No. 1035

On page 71, line 22, delete "in its judgment", and insert in lieu thereof "in the judgment of the community involved".

AMENDMENT No. 1036

On page 15, line 7, after the comma following the word "religion," add "sex,".

AMENDMENT No. 1037

On page 11, line 24, after the comma following the word "religion," add "sex,".

On page 13, line 7, after the comma following the word "religion" add "sex,".

ORDER OF BUSINESS

Mr. MANSFIELD. Is it the understanding of the Chair that at the conclusion of business today, or if the business goes beyond the hour of midnight, the Senate will meet, under the motion for cloture laid down, at 10 o'clock on Wednesday morning?

The PRESIDING OFFICER. The Senator from Montana is correct.

Mr. MANSFIELD. Is it the understanding of the Chair that at that time there will be 1 hour of debate, beginning at the conclusion of the prayer and ending at 11 o'clock, approximately?

The PRESIDING OFFICER. The Parliamentarian informs the Chair that 1 hour after the Senate convenes there will be a quorum call. Upon the ascertainment of a quorum a vote will be had, by yeas and nays, on the cloture motion.

Mr. MANSFIELD. A quorum call is mandatory?

The PRESIDING OFFICER. It is mandatory.

Mr. MANSFIELD. At the end of an hour?

The PRESIDING OFFICER. Yes.

Mr. MANSFIELD. The yeas and nays are mandatory?

The PRESIDING OFFICER. Under the rule, the yeas and nays are mandatory.

Mr. MANSFIELD. I raise these questions now because I understand that some Members of the Senate may desire to speak, now that the voting for today has been concluded under the unanimous-consent agreement entered into last Saturday.

I merely wished to make it absolutely certain that the Senate can and will convene at 10 o'clock tomorrow morning, that there will be an hour's debate on the motion to invoke cloture, that then there will be a quorum call, and that under the rule, at the conclusion of that quorum call, the yeas and nays will be ordered on the motion to attempt to invoke cloture.

The PRESIDING OFFICER. The Senator is correct.

Mr. MANSFIELD. I thank the Chair.

Mr. RUSSELL. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. RUSSELL. I had understood that some days ago a unanimous-consent agreement had been reached that all amendments which were offered to the original House bill would likewise be applicable to the troika or Dirksen-Humphrey package. I should like to ask if I am correct in that understanding.

The PRESIDING OFFICER. The Parliamentarian informs the Chair that all amendments which have been read and all amendments at the desk that are applicable to the House bill will be applicable to the so-called package Dirksen-Mansfield bill in the nature of a substitute, with appropriate changes made.

Mr. RUSSELL. It is not necessary to have them read as amendments to the troika substitute; is that correct?

The PRESIDING OFFICER. They do not all have to be read again.

Mr. MANSFIELD. Mr. President, it is my understanding that there may be speeches beyond the hour of 12 o'clock midnight tonight. Under the rules of the Senate, when a motion for cloture is submitted, 1 calendar day must intervene, and then on the next day, 1 hour after the Senate convenes, there is a quorum call and then the vote on the cloture motion.

In order to preclude any possibility that the procedure agreed to under the Senate rules may be forestalled, and with the full accord of the distinguished Senator from West Virginia [Mr. BYRD], I ask unanimous consent that the cloture vote be taken tomorrow, Wednesday, after determining that a quorum is present, beginning at the hour of 11 a.m.

The PRESIDING OFFICER. Is there objection? The Chair hears none——

Mr. GORE. Mr. President, reserving the right to object, I request that I be permitted to address the Senate briefly this evening on an amendment to eliminate title VI, and that after an equal amount of time to be under the control of the majority leader on tomorrow the vote on cloture be held following a vote upon my amendment.

Mr. MANSFIELD. Mr. President, has the Senator from Tennessee made a unanimous-consent request?

Mr. GORE. I was suggesting that the majority leader, with his usual compassion for his fellow Senators, add that provision to his consent request.

Mr. MANSFIELD. Compassion can only run a certain course and for a certain period of time. I would hope that the Senator from Tennessee would take a little compassion on the majority leader and understand the predicament in which he is, and that, as he almost always does, the Senator would support the leader in this request, which will clear up the situation and leave no question that the will of the Senate, under its rules, will be carried out as everyone thought it would, and still thinks it will.

Mr. GORE. Mr. President, further reserving the right to object, I am not inclined to obstinacy. I have sought diligently to bring to the attention of the Senate the extremely far-reaching provisions in title VI. This, in my opinion, is the sledgehammer provision of the bill. I think I can demonstrate tonight that title VI in the Dirksen-Mansfield substitute would, under one interpretation of its provisions, provide statutory authority for an open housing order affecting the entire United States. The Senate may be ready to vote that. I am not. I have tried to bring this to the attention of the Senate, and I have sought to obtain a vote on an amendment with respect to title VI before the cloture motion is acted on. I have been unsuccessful.

If the distinguished Senator from Montana, the majority leader, has some suggestion as to how I might secure the same privilege which three other Senators have had today, I shall certainly be willing to withhold my further right to object.

Mr. MANSFIELD. The Senator from Tennessee knows that I have no further objections to make. He says he is not an obstinate man.

Mr. GORE. Usually.

Mr. MANSFIELD. At least, he is a determined man. He has been talking about title VI, not only yesterday and today, but for weeks, to my personal knowledge. So I know he has a great interest in this subject and believes completely in the arguments which he has been advancing.

However, in view of the fact that if cloture is invoked, an opportunity will be available for the Senator to offer his motion to strike title VI, I would hope that, with his compassion and understanding, he would allow the Senate to clear up this minor point at this time.

If cloture is not invoked—and frankly, I do not know whether it will be or not—then, of course, we shall start another runaround, and the Lord only knows where we shall end.

Mr. GORE. Mr. President, further reserving the right to object—and I do not think I shall object—title VI, if enacted, could be the most oppressive provision in the bill. It would authorize the denial of Federal aid to needy people, to worthy programs, to communities of great need, even though those people and those particular communities were guilty of no wrongdoing.

But I realize that the majority leader is under great restraint, so once again I shall not object. But I expect to make some remarks tonight which I hope some of my colleagues will read before they vote on the cloture motion.

The Dirksen-Mansfield substitute is an ill-defined, far-reaching measure which, in my opinion, should not pass without further refinement and definition.

I withdraw the right to object.

Mr. MANSFIELD. I thank the Senator from Tennessee.

Mr. President, I believe the Senator from Georgia wishes to propound a parliamentary question.

Mr. RUSSELL. Mr. President, I was curious, from a parliamentary standpoint, as to what would transpire, since the majority leader has raised this question. If some Senator were to obtain the floor and hold it until, say, 12 o'clock noon tomorrow, when would the cloture vote be had?

The PRESIDING OFFICER (Mr. McINTYRE in the chair). The Parliamentarian states that under rule XXII, "1 hour after the Senate meets on the following calendar day but one," is when the vote would come. If the Senate remained in session even until 1 o'clock, the vote would have to come at that time following the ascertainment of a quorum.

Mr. MANSFIELD. Mr. President, could the Senate, in understandable language, get an answer from the Chair, through the Parliamentarian, to the question raised by the distinguished Senator from Georgia?

Mr. RUSSELL. I am perfectly familiar with rule XXII. I think I can recite it word for word, line by line. The question I asked was, How would rule XXII ever become operative if a Senator were to speak from now until 12 o'clock noon tomorrow, when there is a unanimous-consent agreement to have the Senate reconvene tomorrow at 10 o'clock?

The PRESIDING OFFICER. If a Senator were to take the floor at this time and were to speak past midnight tonight and through the night, he could not hold the floor after 1 a.m. tomorrow morning, which would be 1 hour after the session on tomorrow began; and, therefore, at 1 a.m. tomorrow there would be a quorum call, and immediately following the quorum call the Senate would vote on the cloture motion.

Mr. RUSSELL. Is the Chair's ruling based on the fact that ordinarily the Senate convenes at noon on each day, unless the Senate has ordered otherwise?

The PRESIDING OFFICER. The Parliamentarian informs the Chair it is based on rule XXII. Ordinarily the Senate convenes at noon, each day. In such case, there would be a quorum call at 1 p.m., and the quorum call would be followed immediately by the vote on the cloture motion. But if the Senate were to be in continuous session from this time until tomorrow, a new problem would arise; and in such case, a Senator who was speaking at 1 a.m. tomorrow morning would at that time lose the floor; and commencing at 1 a.m. there would be a quorum call; and immediately after the presence of a quorum was ascertained, the Senate would vote on the cloture motion.

Mr. RUSSELL. Mr. President, I know that under the precedents a Senator who is speaking can be interrupted at any time, to permit another Senator to file a cloture motion. That right has been established by numerous rulings; and that is one of the few occasions when a Senator who has the floor and is speaking can be interrupted.

So I had assumed that if a Senator undertook to speak from tonight until noon tomorrow, when noon—the normal hour of the convening of the Senate—arrived, the Senator then speaking would lose the floor. I should like to have the ruling of the Chair on that point.

The PRESIDING OFFICER. The Parliamentarian informs the Chair that a Senator then speaking would lose his right to the floor—at 1 a.m. tomorrow.

Mr. RUSSELL. In other words, such a Senator would not lose the floor until 1 a.m. tomorrow?

The PRESIDING OFFICER. That is correct.

Mr. RUSSELL. At that time, such Senator would be compelled to take his seat; and then the Chair would have a quorum call commenced, to ascertain the presence of a quorum; and immediately after the ascertainment of the presence of a quorum, the Chair would lay before the Senate the cloture motion, and would put the motion to a vote, to determine whether it was the sense of the Senate that the debate be closed; is that correct?

The PRESIDING OFFICER. That is correct.

Is there objection to the unanimous-consent request of the Senator from Montana?

Mr. KUCHEL. Mr. President, I should like to have the request read, so I can understand it, or try to understand it.

Mr. MANSFIELD. Mr. President, the request is as follows: I ask unanimous consent that the vote on the cloture motion be taken tomorrow, Wednesday, after the ascertainment of the presence of a quorum, beginning at the hour of 11 a.m.

The PRESIDING OFFICER. Is there objection?

Mr. KUCHEL. Mr. President, I shall not object; but, reserving the right to object, I wish to ask whether I correctly understand that if this request is agreed to, and if a Senator tries to speak all night, and also all tomorrow morning, the Chair will require him to lose the floor and take his seat, so that the Senate can then proceed to vote?

The PRESIDING OFFICER. Yes; at 11 o'clock, such Senator would lose the floor.

Mr. MANSFIELD. The point is that 1 hour is allocated for debate tomorrow. If a Senator were to speak all night long and all tomorrow morning—although I am not sure that would happen—there would be no time for the 1 hour of debate to be allocated and divided equally between the Senator from Georgia [Mr. RUSSELL] and the majority leader.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Montana?

Mr. HUMPHREY. Mr. President, I rise to a point of information: 11 a.m. tomorrow is the hour at which the presence of a quorum is to be ascertained, is it?

The PRESIDING OFFICER. That is correct.

Mr. HUMPHREY. That will mean that, under the previous unanimous-consent agreement, the Senate will convene at 10 a.m tomorrow; is that correct?

The PRESIDING OFFICER. That is correct if it recesses in the meantime.

Mr. HUMPHREY. So the Senate will then have 1 hour for debate, will it?

The PRESIDING OFFICER. That is correct.

Is there objection to the unanimous-consent request?

Mr. LONG of Louisiana. Mr. President, reserving the right to object, I wish to state that I think every Senator who has an amendment at the desk would like to have his amendment eligible for consideration and vote following the invoking of cloture, if it is invoked. Therefore, I ask that if by any chance an amendment which is at the desk has not been considered as having been read, in order to comply with the rule, it now be considered as having been read, under the rule.

The PRESIDING OFFICER. Is there objection to both of these requests?

Mr. MANSFIELD. Mr. President, I ask the Chair whether the request of the Senator from Louisiana has already been agreed to?

The PRESIDING OFFICER. Yes, in effect.

Mr. LONG of Louisiana. Then I ask this question: If a Senator has, through inadvertence, failed to have his amendment read or ordered considered as having been read, I do not understand that provision has been made to care for that situation? So I wish to have an order entered that any such amendments are to be considered as having been read.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Louisiana?

The Chair hears none; and it is so ordered.

Mr. MANSFIELD. Mr. President, I ask that my request be acted on.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Montana? The Chair hears none, and it is so ordered.

TRANSACTION OF ROUTINE BUSINESS

By unanimous consent, the following routine business was transacted:

EXECUTIVE COMMUNICATIONS, ETC.

The ACTING PRESIDENT pro tempore laid before the Senate the following letters, which were referred as indicated:

REPORT ON NUMBER OF OFFICERS ON DUTY WITH HEADQUARTERS, DEPARTMENT OF THE ARMY, AND ARMY GENERAL STAFF

A letter from the Secretary of the Army, transmitting, pursuant to law, a report on the number of officers on duty with Headquarters, Department of the Army, and the Army General Staff, as of March 31, 1964 (with an accompanying report); to the Committee on Armed Services.

TEMPORARY ADMISSION INTO THE UNITED STATES OF CERTAIN ALIENS

A letter from the Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, copies of orders entered granting temporary admission into the United States of certain aliens (with accompanying papers); to the Committee on the Judiciary.

ADMISSION INTO THE UNITED STATES OF CERTAIN DEFECTOR ALIENS

A letter from the Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, copies of orders entered granting admission into the United States of certain defector aliens (with accompanying papers); to the Committee on the Judiciary.

PETITION AND MEMORIAL

Petitions, etc., were laid before the Senate, and referred as indicated:

By the ACTING PRESIDENT pro tempore:

The memorial of H. B. Sullivan, of Farmville, Va., remonstrating against the enactment of House bill 7152, the so-called civil rights bill; ordered to lie on the table.

The petition of Mr. and Mrs. Jay Graham, of Los Angeles, Calif., praying for the enactment of House bill 7152, the so-called civil rights bill; ordered to lie on the table.

EXECUTIVE REPORTS OF COMMITTEES

As in executive session,

The following favorable reports of nominations were submitted:

By Mr. ROBERTSON, from the Committee on Banking and Currency:

Elizabeth S. May, of Massachusetts, to be a member of the Board of Directors of the Export-Import Bank of Washington.

By Mr. MAGNUSON, from the Committee on Commerce:

Robert A. Ganse, and sundry other persons, for appointment in the Coast and Geodetic Survey.

BILLS INTRODUCED

Bills were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. TALMADGE:

S. 2897. A bill for the relief of Richard K. Jones; to the Committee on the Judiciary.

By Mr. BOGGS:

S. 2898. A bill for the relief of Ioannis (John) Van Vures; to the Committee on the Judiciary.

By Mr. LONG of Louisiana (for himself and Mr. ELLENDER):

S. 2899. A bill authorizing construction of hurricane-flood protection works at Lake Pontchartrain and vicinity, Louisiana;

S. 2900. A bill authorizing construction of hurricane-flood protection works at Morgan City and vicinity, Louisiana; and

S. 2901. A bill authorizing construction of hurricane-flood protection works at Grand Isle and vicinity, Louisiana; to the Committee on Public Works.

(See the remarks of Mr. LONG of Louisiana when he introduced the above bills, which appear under a separate heading.)

PROVISION OF HURRICANE PROTECTION FOR VITAL AREAS ALONG THE GULF COAST

Mr. LONG of Louisiana. Mr. President, I introduce, on behalf of myself and my colleague, the senior Senator from Louisiana [Mr. ELLENDER], three bills designed to provide hurricane protection for vital areas along the gulf coast.

Recent hurricanes in the gulf coast area have demonstrated the tremendous damage that can be inflicted upon life and property if definite steps are not taken to provide needed protection. The horrible destruction of life by Hurricane Audrey at Cameron, La., a few years ago, is an outstanding example of this.

The areas covered by these three bills are the vicinity of Lake Pontchartrain near New Orleans, La.; the vicinity of Morgan City, La.; and the vicinity of Grand Isle, La., which is located below the city of New Orleans, La.

It is my understanding that all three of these projects are thoroughly justified by savings that can be effected and I would urge the earliest possible passage of these measures.

The PRESIDING OFFICER. The bills will be received and appropriately referred.

The bills, introduced by Mr. LONG of Louisiana (for himself and Mr. ELLENDER), were received, read twice by their titles, and referred to the Committee on Public Works, as follows:

S. 2899. A bill authorizing construction of hurricane-flood protection works at Lake Pontchartrain and vicinity, Louisiana;

S. 2900. A bill authorizing construction of hurricane-flood protection works at Morgan City and vicinity, Louisiana; and

S. 2901. A bill authorizing construction of hurricane-flood protection works at Grand Isle and vicinity, Louisiana.

CIVIL RIGHTS—AMENDMENTS

AMENDMENT NO. 943

Mr. CASE (for himself and Mr. CLARK) submitted amendments, intended to be proposed by them, jointly, to the amendment in the nature of a substitute (No. 656) intended to be proposed by Mr. DIRKSEN (for himself and other Senators) to the bill (H.R. 7152) to enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States to provide injunctive relief against discrimination in public accommodations, to authorize the Attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes, which was ordered to lie on the table and to be printed.

AMENDMENTS NOS. 944 AND 945

Mr. RUSSELL submitted an amendment (No. 944), intended to be proposed by him, to the amendment in the nature of a substitute (No. 656) intended to be proposed by Mr. DIRKSEN (for himself and other Senators) to H.R. 7152, which was ordered to lie on the table and to be printed.

Mr. RUSSELL also submitted an amendment (No. 945), intended to be proposed by him, to H.R. 7152, the so-called civil rights bill, which was ordered to lie on the table and to be printed.

AMENDMENTS NOS. 946 THROUGH 963

Mr. TOWER submitted amendments (Nos. 946 through 963), intended to be proposed by him to the amendment in the nature of a substitute (No. 656), intended to be proposed by Mr. DIRKSEN (for himself and other Senators) to H.R. 7152, the so-called civil rights bill, which were ordered to lie on the table and to be printed.

AMENDMENTS NOS. 964 THROUGH 1007

Mr. LONG of Louisiana submitted 44 amendments (Nos. 964 through 1007), intended to be proposed by him to the amendment in the nature of a substitute (No. 656) intended to be proposed by Mr. DIRKSEN (for himself and other Senators) to H.R. 7152, the so-called civil rights bill, which were ordered to lie on the table and to be printed.

AMENDMENTS NOS. 1008 THROUGH 1013

Mr. LONG of Louisiana also submitted six amendments (Nos. 1008 through 1013), intended to be proposed by him, to H.R. 7152, the so-called civil rights bill, which were ordered to lie on the table and to be printed.

AMENDMENTS NOS. 1014 THROUGH 1036

Mr. THURMOND submitted 23 amendments (Nos. 1014 through 1036), intended to be proposed by him, to the amendment in the nature of a substitute (No. 656) intended to be proposed by Mr. DIRKSEN (for himself and other Senators) to H.R. 7152, the so-called civil rights bill, which were ordered to lie on the table and to be printed.

AMENDMENT NO. 1037

Mr. THURMOND also submitted an amendment (No. 1037), intended to be proposed by him, to H.R. 7152, the so-called civil rights bill, which was ordered to lie on the table and to be printed.

AMENDMENTS NOS. 1038 AND 1039

Mr. STENNIS submitted two amendments (Nos. 1038 and 1039), intended to be proposed by him to H.R. 7152, the so-called civil rights bill, which were ordered to lie on the table and to be printed.

AMENDMENT NO. 1040

Mr. STENNIS also submitted an amendment (No. 1040), intended to be

proposed by him, to the amendment in the nature of a substitute (No. 656) intended to be proposed by Mr. DIRKSEN (for himself and other Senators) to H.R. 7152, the so-called civil rights bill, which was ordered to lie on the table and to be printed.

AMENDMENTS NOS. 1041 THROUGH 1044

Mr. COOPER submitted four amendments (Nos. 1041 through 1044), intended to be proposed by him, to the amendment in the nature of a substitute (No. 656) intended to be proposed by Mr. DIRKSEN (for himself and other Senators) to H.R. 7152, the so-called civil rights bill, which were ordered to lie on the table and to be printed.

AMENDMENT OF ALASKA OMNIBUS ACT—AMENDMENT

AMENDMENT NO. 1045

Mr. GRUENING submitted an amendment, intended to be proposed by him, to the bill (S. 2881) to amend the Alaska Omnibus Act to provide assistance to the State of Alaska for the reconstruction of areas damaged by the earthquake of March 1964, and subsequent seismic waves, and for other purposes, which was received, ordered to be printed, and referred to the Committee on Interior and Insular Affairs.

ADDRESS BY FORMER PRESIDENT EISENHOWER AT GOVERNORS' CONFERENCE, CLEVELAND, OHIO, JUNE 8, 1964

Mr. GOLDWATER. Mr. President, last night, in Cleveland, Ohio, speaking before the Governors' Conference, former President Dwight D. Eisenhower gave a very thought-provoking speech on States' rights and the general problems facing America today as he sees them.

I ask unanimous consent to have his address printed in the RECORD.

There being no objection, the address was ordered to be printed in the RECORD, as follows:

SPEECH OF GEN. DWIGHT D. EISENHOWER, GOVERNORS' CONFERENCE, CLEVELAND, OHIO, JUNE 8, 1964

As in periods of contemplation, I reflect over my own lifetime of experiences and those of others, I have grown ever more convinced that the human family rises or falls according to fidelity to a few religious, political and ethical principles which have persisted, and been reaffirmed, in almost every epoch of history.

Stated very simply, they include faith in the Almighty; respect for your neighbor; men are created equal; the individual is the most important element in a free society; freedom and justice are inseparable; responsibility accompanies privilege; liberty is man's most valuable possession; and character is the measure of his worth.

Sure progress toward an evermore satisfying life depends, I believe, upon how well men—and Nations, too—can discipline themselves to adhere to such unchanging truths.

Since time unending, it has been such fundamentals of faith and conduct that have kept alive the hopes of the world's multitudes that some day there might be achieved a worldwide reign of peace, of justice, of individual liberty, of satisfaction of human need.

Merely to state this timeless yearning of mankind is to summon to our minds visions of work and effort and partial defeat—and then still more work and still more effort.

To reach the summit of our hopes it is the human lot, regardless of disappointments and fatigue, to disdain the plateaus of ease and the downward slopes of complacency, for we have learned from ages past that these, in spite of their enticing foreground, dead end, inevitably, in despair and anguish.

Yet, to many among us in these times, the plateaus and slopes seem to have an irresistible appeal.

Viewed in this perspective, the developing posture of our country cannot comfort any thoughtful person, in or out of government.

In pondering the reasons for this modern trend, my mind goes back to almost two centuries ago, when a youthful colonist, destined for immortality, took up his pen to define his concept of the inalienable rights of free men.

In the golden words of Thomas Jefferson, these rights included "life, liberty and the pursuit of happiness."

It is clear, I believe, that he was one who did not equate happiness with affluence, self-indulgence, or idleness, but we wonder, whether in some modern misinterpretation of this revered phrase—known to every generation of Americans from childhood—is to be found the origin of some of our anxieties today.

Had Jefferson foreseen any possibility that "pursuit of happiness" might one day be read as justifying selfish and empty purposes, I suspect he would have, at the very least, added a footnote of explanation, if not of caution, for our current benefit.

A famous Frenchman once said, "Liberty is the opportunity for self-discipline."

How right he was—for certain it is that self-discipline, national and personal, is indispensable to the long-term survival of freedom.

But discipline is not necessarily compatible with the short-range pursuit of happiness.

Indeed, in some circumstances, self-discipline requires self-denial and fortitude and a willingness to forgo the heart's immediate desire.

But if, in the long view, Jefferson's "pursuit of happiness" is to be construed—as he intended—to mean self-control today that there may be stability and progress tomorrow, then the phrase stands as a noble expression of a national aim.

If we let it mean self-indulgence today, at the expense of tomorrow, then the term could well lead us astray.

Now, to me, self-indulgence includes failure to fulfill the recognized responsibilities of citizenship.

It is the worst form of laziness and leads, inevitably, to centralization of power.

That power corrupts, and absolute power corrupts absolutely, is wisdom distilled from ages of tragic human experience.

It was in that wisdom that the forefathers built a system to perpetuate the capability of the citizen to govern himself—a system in which the exercise of power would be so dispersed and so counterbalanced that no one person and no one group could dominate others.

The system requires that each citizen, to the utmost of his ability, be an individual of responsibility, and of sturdy self-reliance.

The delicately balanced structure which our forebears so painstakingly contrived was intended to insure us against ourselves—that, in this land, liberty would survive.

And survive it has, for two centuries, an achievement that is today the core of our heritage.

But I repeat my opinion that in the current century we have begun noticeably to breach the barricades, erected with such care nine score years ago in Philadelphia, against the propensity within us to destroy liberty.

The divergence, deliberate or not, from the guidelines laid down by the Founding Fathers has grown apace, and the end is not in sight.

Twelve years ago I put aside the Nation's uniform, worn for 40 years, in a pledge to help restore political balance to a system that, in my personal view was becoming definitely tilted toward one philosophy and one grouping in our society, both leading toward an all-pervasive Federal intrusion into our lives.

For 8 years thereafter in the Presidency, a constant purpose and a constant striving were to fulfill that pledge.

I would like here to recite a few of the directions into which our efforts were channeled during those years, not as self-justification (and, of course, there were defeats as well as successes) but to provide a backdrop for a specific proposal I made 7 years ago to a body similar to this, and for other proposals I shall suggest today.

Beginning in 1953 the then new administration sought, for example, to reinstill a national respect for the Congress of the United States as an equal partner in the tripartite Federal structure. In this there was measurable success.

But balance is essential not only among the executive, legislative, and judicial branches of government, it is equally necessary for satisfactory relations between the several echelons of government.

Our 8-year program to shore up the structure of liberty included many things—discouragement of direct appeals to Washington by lesser officials than Governors; efforts to restore farming to farmers; better protection of the rights of individual workers; establishment of workable partnerships in power development; and reaching into such things as elimination of various forms of governmental competition with private enterprise, development of cooperative programs to improve health and education, and a myriad of others.

As part of the entire effort we worked to harness Federal spending to demonstrated need, and so help protect the value of the citizen's savings. This effort, though far from the results I had envisioned, resulted promptly in a budgetary surplus, permitting a then unmatched tax reduction with larger revenue sources for the States.

All these measures comprised a package of apparently unrelated items; but all were threaded on one theme—the commonsense redirection of citizen interest to his own responsibilities; to his own locality's affairs, his own State's affairs, and limitation of the Federal Government to its intended role. The specific proposal of 7 years ago to which I adverted earlier and which relates directly to this meeting was initiated in an address before a conference of your predecessors in the capital of colonial Virginia at Williamsburg.

Time and time again over the earlier years of my administration I had met with State Governors singly and in groups.

Invariably we agreed on the theory of returning more power, more responsibility, more tax revenues to the States.

In practice, however, difficulties—sometimes apparently insuperable—always presented themselves.

Finally at Williamsburg I suggested that the Governors' conference and the Federal administration together create a joint committee, charged with three responsibilities:

First, to identify specific functions for the States to assume and finance that were then performed or financed wholly or in part by the Federal Government;

Second, to recommend Federal and State revenue adjustments so that the States could assume such functions; and,

Third, to pinpoint functions and responsibilities likely to require future State or Federal attention and to recommend the level of State effort, or Federal effort, or both, needed for effective action.

These proposals constituted a concrete and earnest attempt to revert tax revenues to the States to enable them to take back responsibilities previously siphoned off to Washington.

The joint Federal-State Action Committee developed recommendations for reform in numerous fields, but the critical test of the whole undertaking came in a plan to transfer to the States, in return for a portion of the Federal telephone tax, the Federal vocational education, and waste treatment facilities programs.

This, I was convinced, was exactly the sort of program that States rights proponents had long called for.

For the moment I was fired with hope.

To my regret, however, there was little meaningful State support.

One reason was illustrated by this incident: A group of Governors visited me to say, "Mr. President, don't eliminate from the Federal tax money you want us to receive.

"Should you do so, we doubt that our legislatures would give us the authority to collect an equal amount.

"Let the Federal Government collect the money and then give it to us as a grant."

As a result of this attitude, the Congress, feeling no pressure, failed to act.

That failure I deplore still. Perhaps—just perhaps—a step forward here would have inclined the Nation away from its continuing drift toward aggregating ever more power and ever more influence in Washington, D.C.

Parenthetically, I remind you that some 20 of the U.S. Senators today—one-fifth of the Senate membership—were previously State Governors.

By contrast I know of no Governor today who reached his office by way of the U.S. Senate.

Perhaps, then, I should have opened these remarks with the salutation: "Greetings, future Senators."

But, gentlemen, if one of these offices has to be a stepping stone to the other, I would personally prefer to see the order reversed.

But let us not dwell too long on opportunities lost to enhance the dignity and power of the States, or in decrying the pyramiding of Federal authority.

With your indulgence, I suggest that new attempts be made, and I offer some possibilities.

First, our best protection against bigger Government in Washington is better government in the States.

I would hope that in each State, where improvements have fallen behind, a major effort could be launched to maximize efficiency and to streamline the governmental structure.

For, as all America knows, and as you know best of all, State governments have expanded enormously, many in Topsy fashion, since the turn of the century.

One State now has 360 State boards, commissions, and agencies.

Doubtless others represented here are equally encumbered.

A nationwide, State-by-State, energetically advocated program to prune and update State administrative activities would save considerable State revenue, win widespread citizen approbation, and do much to slow the march on Washington.

Intimately related, of course—perhaps, in some instances, a prerequisite—is constitutional revision.

I am told of one State with 217,000 words in its constitution, with 407 amendments.

The index alone for another constitution takes 60 pages.

It was only 3 years ago that one State repealed a constitutional clause voiding land grants given by the King of England after October 14, 1775.

Clearly, past solutions for past problems, imbedded in State constitutions, should be allowed no longer to impair the ability of State governments to meet their present needs.

Other possible improvements—often pondered, I am sure by each Governor present—include reevaluation of the functions of our 7,000 State legislators.

In most instances State responsibilities in these times require more of legislators than 30- to 90-day sessions; staff assistance of greater competence and numbers is surely desirable; and the compensation of legislators needs to be increased above today's median salary of approximately $4,000 a year.

At least two States, I understand, still pay their representatives $5 a day; another, the equivalent of $3 a day, which works out, younger friends remind me, to something less than babysitters get for an evening's work.

Far too short terms for Governors and prohibitions against more than one term should likewise be studied.

But there is far more to be done than mere improvement of the mechanisms of State government.

Think of some of the glaring problems that clearly fall within the purview of State responsibility.

Strong moral and political leadership is called for if we are to do better in diminishing the erosive influence of juvenile delinquency, of crime, of lack of educational recreational opportunities, and the annual slaughter by motor vehicles on our highways.

To find better solutions than so far we have, the Federal Government can assist in many ways.

But in all these things responsibility resides definitely in the States, and leadership in their Governors.

The better the States do their jobs, the better the chance that the Federal Government will cooperate properly and effectively with them and stop seeking to dominate such programs.

The so-called war on poverty is a case in point.

Just as political power resides in the people and is generated from bottom upward—so should political correction of local problems be initiated normally at the grassroots.

Moving to a different but related field, I remind this body that, collectively, the States posses a national power of monumental significance.

I refer to the constitutional provision, till now unused, that amendments to our basic charter may be proposed by a convention that must be convened by Congress on application of two-thirds of the State legislatures.

The resulting amendments, when ratified by State conventions or legislatures in three-fourths of the States, become an integral part of the Constitution of the United States.

The point I wish to highlight is this: Contrary to the popular impression, the collective will of the people of this country can, in important areas, make itself effective through the States themselves, acting in concert.

There is no need for endless waiting on congressional action; there is no need for grovelling before any part of the Federal Government.

Consider the so-called item veto, which Presidents, one after another, have urged upon Congress for years on end.

Almost four-fifths of the State Governors hold this power today respecting appropriations bills.

And to my southern friends present I offer this reminder—the item veto was first developed in the Confederate Constitution of 1861, and it first flowered in the Southern States.

On the national level, the refusal of Congress to grant this power to the President has resulted in blatant abuses.

Yet those States already granting their Governors this authority could by themselves, using constitutional procedures, endow the President of the United States with the same authority, and all America would be better.

There would be an end to the costly "pork barrels," so beloved by self-serving politicians—an end also, to one of the many devices which centralize power in Washington.

Another constitutional amendment might, with some wisdom, provide, on the one hand, that (except in an emergency declared by Congress) the President must submit to Congress Federal budgets which balance at least biennially.

On the other hand, it should provide that Congress can increase items in the President's budgetary recommendations only by a two-thirds vote.

Obviously an amendment of this kind would have to come through State initiative, for the power to spend irresponsibly and to charge the bills to the unborn through deficit financing is a mighty political weapon.

Such an amendment would work miracles for responsibility on the Federal level, and would bring to a sudden halt much of the Federal trespassing on State preserves.

You are aware, of course, that several of our States have limits upon their legislatures to prevent increases in appropriations recommendations, so the concept I have mentioned is not new to the American system.

Such proposals I mention, however, not so much in a spirit of advocacy but rather as examples whereby the States, acting together, can enforce their will on the national stage.

Amendment to our Constitution is, of course, not to be lightly undertaken. But I am sure that out of your collective knowledge and experience you may well conceive of other proposals worthy of earnest study, particularly if their purpose is to keep Government responsible, and keep it closer to the people.

I repeat—this constitutional amending process has never been used.

But once used, those in Washington power centers would never again feel at ease in their restless work to extend the Federal reach, or to use tax money to attract votes.

Gentlemen, many among you are personal friends of mine of many years standing.

Some of you have already moved courageously, and coincidentally with burgeoning need, to remedy flaws in State government.

I know that every one of you is dedicated to advancing the well-being of the people of your respective areas, and have a zeal no less burning than mine to do everything in your power to strengthen freedom.

Even more, perhaps, than you yourselves can appreciate, upon you and the forcefulness of your leadership and the efficiency of your State administrations—upon the initiatives which you may take—rests in major degree the arresting of power concentration in this Nation.

Thus, in your hands may rest the restoration of the self-discipline and the restraint so essential, now and in the future, to the preservation of individual liberty and the freedom of America.

No cause could be more important; most earnestly do I hope you will adopt it as your own, and most sincerely do I wish you success in its accomplishment.

THE 300TH ANNIVERSARY OF THE TOWN OF DARTMOUTH, MASS.

Mr. SALTONSTALL. Mr. President, this week marks the beginning of a summer-long celebration marking the 300th anniversary of the town of Dartmouth, Mass. The town was named for Dartmouth, England, where the *Mayflower* stopped for repairs after sailing from Southampton. Surviving a devastating Indian attack during King Philip's

War, the community became engaged in the whaling industry, and then began there one of the most colorful periods in American history. This industry attracted so many new inhabitants to the area that one small village in Dartmouth became, in the last century, the fourth largest seaport in the United States. Dartmouth's activity placed her not only in the mainstream of American history, but world history as well. I am very pleased to bring this important anniversary to the attention of my colleagues in the Senate and hope that if any of them are planning to come to Massachusetts this year, they will make Dartmouth part of their itinerary.

BACCALAUREATE ADDRESS DELIVERED BY MRS. LYNDON B. JOHNSON AT RADCLIFFE COLLEGE, CAMBRIDGE, MASS.

Mr. SALTONSTALL. Mr. President, today Radcliffe College, the sister institution to my alma mater, Harvard University, is honored by the presence of our First Lady. The Radcliffe baccalaureate address was delivered today by Mrs. Lyndon B. Johnson, in which she urged their graduates to take an active part in the building of our country both through their families and outside interests. On a nonpartisan basis, because we all believe this encouragement is so necessary, and because of my long interest in Harvard, I ask that Mrs. Johnson's speech be printed in the RECORD.

There being no objection, the address was ordered to be printed in the RECORD, as follows:

BACCALAUREATE ADDRESS BY MRS. LYNDON B. JOHNSON AT RADCLIFFE COLLEGE, CAMBRIDGE, MASS., JUNE 9, 1964

It is 4 years since that anxiously awaited enveloped postmarked "Cambridge, Mass.," arrived in your home. This day marks the culmination of those years. You have struggled, groaned, and grown within the demanding and rigorous intellectual life of this remarkable institution, and here you are today—ready to turn your knowledge and skills to new fields.

But with all your perception, with all your brainpower, I wonder if you know how great is the pride in you of those who are in this hall today?

What can I say to make you know, too, how much the world reaches out for you? For if you are to be the anointed generation—the one to do the most to build a society of the highest order—then I hope you will consider your diploma not the accolade of a job past, but a passport to the world and a license to be a practicing member of it.

The last 4 years have probably taught you how to be a knowledgeable critic; now you must learn how to be a knowledgeable citizen. You must contribute peace, not disorder. And to give peace you must have peace within yourself.

This is no easy task in a world of experts on women with every bookstore offering up the joys of emancipation and every newsstand proffering the delights of femininity. But actually, amid all the worries and uncertainties—and the provocative doctrines about the role of the educated woman today, a quite remarkable young woman has been emerging in the United States. She is your sister, your roommate, and if you look closely enough, probably, yourself. She might be the natural woman, the complete woman. She has taken from the past what is vital and discarded the irrelevant or misleading. She has taken over the right to participate fully—whether in jobs, professions, or the political life of the community. She has rejected a number of overtones of the emancipation movement as clearly unworkable. She does not want to be the long-striding feminist in low heels, engaged in a conscious war with men. But she wants to be—while being equally involved—preeminently a woman, a wife, a mother, a thinking citizen.

Time has brought the emergence of the woman with the dual role, but necessity first created her in the expanding West. As we moved west, the American type, as contrasted with the woman influence by European customs and attitudes, emerged. Dauntless in spirit, she moved with her man to hew out the forests and found the schools and the churches.

It was in the Western States that women first took the leadership in political and social movements. It was no happenstance that the first part of our country to give suffrage to women was Wyoming, even when it was a territory; the Western States sent the first woman to the House and the Senate.

She was a doer in things outside the home—whether fighting the Indians or plowing the fields; she was always the wife and mother because that's what she wanted to be. And—alas—the pony express brought no magazines to ask her complicated questions about whether she liked the dual responsibilities.

The confusion of roles for women today is still very real. The strains are real. But many women have been able to master the confusion.

Your own Mary Bunting, who has been a pioneer in keeping women in training for the labor market, is a remarkable example. How grateful we are that she practices what she preaches. For, it means that despite a great many other demands, she has found the way to give her country time to serve on the Atomic Energy Commission.

You should be as pleased as I that on the day her appointment was announced, a young mother said to me, "I just feel better knowing that an intelligent woman—a mother of four—is going to have a voice in what fallout means for my children."

There are many other women who are both working mothers and thinking citizens. I have been meeting them in the Cumberland Mountains in Kentucky and in the Government machinery in Washington.

You have been trained here at Radcliffe to contribute as much of yourselves to the future of your country as to your own present. The country needs your trained intelligence—whether in the humanities or the sciences, in Government, in the public services of health and welfare, in the enormously and grievously understaffed field of education.

The easy way, the easy life, is no longer the good life and the good people of this world know they cannot afford to live it.

The woman pioneer—you—will learn to master a number of fears. One—the closest to the female heart of 20—is the fear that your intelligence is a threat to your femininity—that whatever you may achieve in your chosen work outside the home competes dangerously with your desirability as wife and mother. It can, but it needn't.

I know you Radcliffe girls pride yourselves on your casual dress; nevertheless, I do not see among you any of those ungainly Thurber females with stones poised to crush the nearest male skull—and I trust your male acquaintances include none of those equally ungainly Thurber men, hissing, "Where did you get those great brown eyes and that tiny mind?"

It is an awesome task, but you can organize life as you have learned to organize study. It is important to retain those qualities of warmth and tact and sensitivity which a real woman possesses. The man you marry will want you to be what you are—not only his wife and the mother of his children, but a person in your own right, with drives and desires, talents and skills of your own.

Ultimately, it comes back to the spirit in which you can direct your own life—how happily you can marry both man and job; or how happily you can marry one of them.

You graduate into a world of "outlets unlimited." A great deal has been written about how to help the 40-year-old woman reenter the labor market—a very real problem—but I am sure what is most on your minds right now is how to spend the next 20 years as you raise a family. I would like to see young women from the outset consider their lives in the longer perspective—looking to the time after your children are grown when you will still have time for an ongoing part in the human drama.

The difficulty immediately ahead for you lies in working it out in our servantless world. Unremitting domestic labor on your part tends to dissipate academic capital. It dulls the intellectual edge and can even end, by reducing self-confidence and initiative. I don't say this is a universal picture, but I say it is general enough to merit closer attention and, where possible, appropriate countermeasures—such as Radcliffe itself has undertaken, with its institute of independent study.

Not all of you, of course, will contribute to our society as young married women. There will be many whose contribution will grow from their job or their profession—very often after years of meeting the intense demands of graduate training. I salute you because the world needs your talents.

Specifically, the role of the natural, young woman today is:

First, to remember in the most local, realistic terms that education is a loan to be repaid by gift of self. Your energy and intellect turned to your school or your children's schools can help to alleviate the most crippling weakness in our democratic society.

The drifters, the dropouts, the soon-to-be delinquents are all too often the fallout from our inadequate school systems and overtaxed teachers.

Second, to improve the esthetics of our cities where 70 percent of the people now live. More than 90 percent of our population growth will occur in our metropolitan areas. If our cities are cement and asphalt jungles, the children may be wolf-cubs.

Third, to make your frontline of freedom your front door. Happy women, with a sense of what they can do and where they are going, must create the homes in which children can learn young that habit of happiness which, more than anything else, lessens the darker strain in human nature and gives us hope for a stable future. It is an awesome task, creating the atmosphere of joy, giving young natures the taste of love, sending them out single-minded and confident. Do not shortchange this task.

Of course, as a fourth point, I would like, as the wife of a lifelong laborer in the political vineyard, to put in a plea for those great voluntary societies—our political parties.

When you consider that the majority of potential voters are female and the majority of actual voters male, you can see there is a vast job to be done simply in stirring up the civic interest of women voters. We haven't yet, as lay citizens, searched out all the constructive pathways for peace. We haven't the lobby we need for the war on poverty and prejudice at home or abroad.

Anyone with imagination, zeal, and brains has many opportunities in unfinished America. A number of you already participate in this through the Phillips-Brooks House.

I can tell you firsthand that Appalachia cries out for young women with the pioneer spirit who are willing to teach in one-room schools. There is good raw material there. I saw it in the eyes of 20 youngsters in Lick Branch School. Perhaps someone here will organize a rural teachers corps. You don't have to build Rome, you can build Lick Branch.

The housing needs of the aged are far from satisfied. You have only to step inside such a model housing program as the Golden Age Center in Cleveland to know that while giant steps are being taken, this is only the beginning of an ideal way to meet man's new lifespan.

I urge you to enter these outlets, not as superwoman—but as a total woman, a natural woman, a happy woman. If you can achieve the precious balance between women's domestic and civic life, you can do more for zest and sanity in our society than by any other achievement.

I profoundly believe what will best sustain the young woman today is not, on the one hand, glamorous images of herself as ambassadress or dreams of glory as she takes over the presidency of General Motors. What you can do may never see the light of print. It is the integrity that comes from attempting without fuss or self-preoccupation to see a good job well done. Its value is the work itself, what you have given others, whether your product is a better school in Harlem, or an inspired husband and children, or both. I assure you, you will have no greater satisfaction than to pour back vitality into the mainstream of this country which has so richly endowed you with brains and ability. No city is so perfect—or so remote—that it does not need your talented hand. Start wherever you go.

Two weeks ago, I sat on the stage of the high school in Johnson City, Tex., where my husband graduated 40 years before with 6 pupils in his class.

Lyndon recalled how, right after high school graduation, his restlessness had driven him to the west coast to seek his fortune. After 2 months he returned because he discovered "right here in Johnson City is where it all begins."

If I would give you any ringing message today it would be to say, that while indeed the world beckons and the problems of Zanzibar are your inheritance and your challenge, it still all begins right with you, in your job or studies, in your home, in your husband's work, and in your community and the way you want it to look. The way it looks to you it looks to the world.

I have no fear that you will not use all you have learned. Women have done this for more than 2,000 years and you will do it today with fewer handicaps than ever.

Perhaps you remember the most beautiful description in literature of the ideal woman. In the words of Solomon:

"She looketh well to the ways of her household and eateth not the bread of idleness. Her husband is known in the gates where he sitteth among the olders of the land; she stretcheth out her hand to the poor; yea, she reacheth forth her hands to the needy; her children arise up and call her blessed; her husband, also, and he praiseth her. Strength and beauty are her clothing and she shall laugh in the latter day."

AMERICAN YOUTH

Mr. THURMOND. Mr. President, the American Security Council is noted for its outstanding and eloquent reports which are issued each week on important subjects involving the security of our Nation. I have been particularly impressed this week with the report of the message contained in the ASC's Washington Report of June 8, 1964, entitled "American Youth, Still a Target." This report was written by Mr. Herbert Romerstein, a recognized expert on communism, having spent 4 years in the Communist movement while he was a youth. Since breaking with communism in 1950, Mr. Romerstein has devoted himself to the study of the problem of subversion, particularly in relation to youth. He serves as a consultant to a number of State and Federal agencies and has written extensively on Communist youth activities. Mr. Romerstein has also worked for the Senate Internal Security Subcommittee as a consultant and observer of Communist efforts to subvert the youth of the world.

Mr. President, FBI Director J. Edgar Hoover has repeatedly warned of the efforts being put forth by the Communists in this country to influence our young people in the direction of communism. He recently reemphasized this important goal of the Communist Party U.S.A. in testimony before the House Appropriations Committee on January 29, 1964.

In view of the importance of this subject, Mr. President, I ask unanimous consent that the ASC Washington Report of June 8, 1964, be printed in the RECORD at the conclusion of these remarks.

There being no objection, the report was ordered to be printed in the RECORD, as follows:

AMERICAN YOUTH, STILL A TARGET

Despite recent setbacks, the Communist Party, U.S.A. has again decided to form a nationwide youth group. This organization has been in the planning stages since 1959, but internal dissent and the activities of the Federal Bureau of Investigation have delayed its start. An abortive effort, undertaken in late December 1960, got such immediate public exposure that it never had a chance.

The May 9 issue of the Communist-oriented National Guardian has now announced another try by about 400 young people from across the country when they convene in Chicago June 20–22. A somewhat aging youngster, Terrence (Kayo) Hallinan, spokesman for the group, described it in a flurry of double negativism, as an action-oriented non-anti-Communist Socialist youth group. Since the 1957 collapse of the Labor Youth League, the Communist Party has not had a national young Communist organization, and the need for new blood is becoming acute.

The first step in the party's rebuilding plans was to set up local Marxist youth groups under the control of the party. In December 1959, Mortimer Daniel Rubin was appointed national youth director to supervise these activities, and New York was chosen to be the site of the pilot project.

In February of 1960, the founding convention of Advance, a Marxist youth organization was held in New York City. Among the Communist Party members who were assigned to leadership of Advance, were Marvin Markman, Mike Stein, Jake Rosen, and Fred Jerome. Advance was to serve as an example for the building of similar groups throughout the country. Dan Rubin was transferred from Philadelphia to New York to supervise the operation personally. With him came a number of other active young Philadelphia Communists to strengthen the New York organization.

The first blow to Advance came when Jake Rosen and Fred Jerome bolted and led a group of their followers into the pro-Peiping Progressive Labor movement. Its most serious setback came in September 1963 when the Justice Department initiated hearings before the Subversive Activities Control Board in an effort to force Advance to register as a Communist front. The hearings not only exposed Advance to public view but also revealed to the Communist Party the extent to which the FBI had penetrated their apparatus. Among the witnesses who testified at the hearings were several FBI informants who had risen in the Communist Party's youth circles.

Allen Prince had been acting as an informant for the FBI since 1953. A member of the Communist Party's New York State Youth Commission, Prince had been present at many of the meetings at which the party had passed along its orders to Advance. His report, submitted the day after a youth commission meeting on April 3, 1961, and produced during the hearing, showed that this Communist Party commission drew up the list of persons who were subsequently "elected" to office at the Advance convention 5 days later.

One of the most important purposes of Advance was to develop likely young recruits for the Communist Party. Two of the most promising such recruits were Daniel Esposito and Dean Roberts. Both Roberts and Esposito were sent to Communist Party training classes and Roberts was being groomed for an important assignment in the international Communist youth movement. These plans came to an end when both Roberts and Esposito appeared on the witness stand and revealed that they too were informants. Roberts testified that he is a member of Young Americans for Freedom, a conservative youth organization, and that he had agreed to operate as an undercover agent for the FBI as a patriotic activity.

While Advance was conducting its losing fight before the Subversive Activities Control Board, its membership rapidly dwindled. At the same time, however, the Progressive Labor Movement, took over many of the activities that would otherwise have been run by the Communist Party.

The most spectacular Progressive Labor youth activity was the organization of an illegal trip to Cuba by 58 students in the summer of 1963. The expenses which included plane fare from the United States to Europe, from there to Cuba, and back by the same route, were paid by the Castro government. The students paid a token registration fee of $100. While most of the students were not Progressive Labor members, it was the PL people who controlled the group and made the public statements. Broadcasts were made over Radio Havana in which the students defended Fidel Castro and attacked the United States. While the students were in Cuba, Mao Tse-tung issued a statement calling for world support for the "Negro people's struggle" in the United States. Progressive Labor member, 22-year-od Larry Phelps, a student at the University of North Carolina, said, "As an American citizen, I should like to thank the Chinese people for their support for the black people's struggle as exemplified by Chairman Mao Tze-tung's statement and the August 12 rally held in Peiping." According to Phelps, "wherever the American flag flies, American imperialist racism follows in its wake." Wendy Nakashima, 23-year-old wife of Jake Rosen, stated, "U.S. imperialism has spread its repressive, greedy hands all over the world, exploiting men, pocketing wealth, and under the banner of liberty it brutally suppresses the sovereign rights of many nations to independence." A similar statement was made jointly by 20-year-old Catherine Jo Prensky of City College of New York and 23-year-old Patricia Sopiak of the University of Michigan.

Meanwhile the Communist Party U.S.A., continues its program aimed at capturing American youth. When the plans to reestab-

lish a nationwide Communist youth organization were projected it was decided by the party that a monthly periodical should be published. At a meeting in Chicago in March 1960, Dan Rubin suggested such a publication and in October 1960, the first issue of "New Horizons for Youth" was published as a four-page newspaper with Rubin as editor. The managing editor was listed as Joseph Bauer who was, in fact, a Communist Party member named Seymore Joseph who writes for the party newspaper, The Worker, under the name Fred Gilman. Rubin was later replaced as editor by Lionel Lipson who moved it to Philadelphia. Lipson, like Rubin has been identified as a member of the Communist Party National Youth Commission and hearings have been held before the Subversive Activities Control Board to compel him to register as a Communist under the Internal Security Act of 1950. Lionel Lipson and his brother, Aaron, have both been among the organizers of the "Socialist Youth Union" in Philadelphia, a group which is scheduled to be the Philadelphia branch of the new national Communist youth organization.

The west coast has become the new concentration area for the Communist youth apparatus. A conference held March 21 to 22, 1964, in San Francisco brought together 244 young people to plan west coast participation for the Chicago conference in June. The San Francisco meeting was organized by the Youth Action Union of Los Angeles, the W. E. B. Du Bois Clubs of San Francisco and Berkeley, and the Focus Club of Reed College, Portland, Oreg. Kayo Hallinan is a leader of the W. E. B. Du Bois Club which runs a Marxist training school called the San Francisco School of Social Science. The Youth Action Union of Los Angeles which was formerly called Youth for Peace and Socialism is under the direct control of the Communist Party of southern California. Leonard Potash, a member of the Youth Commission of the Southern California District of the Communist Party, directed formation of Youth for Peace and Socialism in 1962.

The party has begun organizing groups at various colleges to participate in the Chicago conference. Under the direction of Illinois Communist youth leader Daniel Queen, Illinois and Wisconsin Communists are arranging tours of the Midwest. Other organizers are operating in Ohio, Indiana, Maryland, Virginia, and North Carolina.

A conference was held on May 3, 1964, at Columbia University to organize participation by students from colleges in and around New York. However, as a result of FBI penetration of the Communist youth apparatus in New York City, activities there have been deemphasized by the party. The east coast coordinator for the new organization will be a Philadelphia Communist and it is planned that he will have his headquarters in that city. Daniel Rubin, now in his thirties, has been removed from youth work and has been appointed national organizational secretary of the party. In this new post he will have a mechanical job and the creative work of organizing among youth will be left to others.

The Communist Party and the splinter groups of the revolutionary left are attempting to capitalize on the natural idealism and exuberance of young people. They have had remarkable success in Latin America and the less sophisticated nations of Asia and Africa but, thus far, have apparently made relatively little direct headway with the great mass of American youth. They have, however, met with some success through the traditional front group approach. The Socialist discussion club, the ad hoc committee for such and such and the protest picket line have all drawn some activists. Through them, the party is able to screen likely prospects and concentrate its recruiting efforts on the most promising. The party has also gained some measure of "respectability" by having its functionaries invited to speak at colleges and universities.

American youngsters are still considerably wiser than their contemporaries in most others nations. Given communism in its raw form, they have, for the most part, rejected it and the current crop of young Communists is largely the second generation—the sons and daughters of veteran party people or sympathizers. The public exposure of Communist and Communist-front groups has been, for the most part, particularly effective in minimizing their influence. These groups are persistent however and some older Americans must be reminded that the Communist Party, U.S.A. functions, not as a political organism, but as an arm of the Soviet Union, bent on the forceful overthrow of our form of government. We must also continually remind ourselves that the pliable minds of young people are still prime Communist targets.

HERBERT ROMERSTEIN,
Guest Editor.

A SCIENTIFIC POSTMORTEM ON ALASKA'S EARTHQUAKE

Mr. GRUENING. Mr. President, an article by Mr. John Walsh on the Alaska earthquake appeared in the May 1, 1964, issue of Science. Because the author points up the need for an emphasis on development planning and reconstruction, I am pleased to bring it to the attention of readers of the RECORD.

Alaska, writes Mr. Walsh, is an important defense outpost today, but, supposes the author, what will happen if the Alaska garrison is slimmed down when the current reevaluation of grand strategy, tactics, weapons, and dispositions made by Secretary of Defense McNamara is completed? His answer is:

> Should this happen, there would be even greater pressure on the Federal Government to foster the economic development of its former territorial ward.

Mr. Walsh notes that the Alaska commission significantly has the words "development planning" in its title, "and its work is expected to extend beyond the emergency period."

I ask unanimous consent that the article entitled "Alaska: A Thorough Postmortem on Earthquake Urged on Behalf of Both Science, Reconstruction," be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

ALASKA: A THOROUGH POSTMORTEM ON EARTHQUAKE URGED ON BEHALF OF BOTH SCIENCE, RECONSTRUCTION

(By John Walsh)

In the weeks since the big Alaskan earthquake, the Coast and Geodetic Survey and the Geological Survey, two old-line, relatively small, low-budget Federal science agencies with unglamorous missions, have been receiving unaccustomed attention and deference in Washington.[1]

Both agencies have been analyzing data and surveying damage in the field since the main quake on March 27, and they are regarded as the Government's expert counsels on earthquakes.

For example, the two Federal agencies charged with funneling Federal loan funds into reconstruction of private dwellings and commercial buildings—the Federal Housing Administration and the Small Business Administration—have indicated that they will govern the flow of funds according to information gained from the surveys on the effects of the earthquake and prognoses for the future as applied to specific construction sites.

This solicitous attitude toward science advice seems to be fully shared by the Federal Reconstruction and Development Planning Commission for Alaska, established by the President after the quake to assure coordination in Federal and State efforts and the most effective use of public funds for relief and reconstruction. The Commission is made up of officials of the major departments and agencies involved in Alaskan operations and is chaired by Senator CLINTON P. ANDERSON, Democrat, of New Mexico.

ANDERSON is looking for more than immediate, utilitarian returns. He has asked for a coordinated major investigation of scientific and technical aspects of the Alaskan earthquakes, to help penetrate the enigma of earthquakes which makes their cause a subject of continued debate and their prediction impossible.

Such an effort would require detailed analysis of a mass of seismographic data on the Alaskan main shock and aftershocks, and of information on the seismic sea waves which followed the quake, plus an extensive survey of geological and geomorphic changes and of damage to manmade structures. An investigation on the scale ANDERSON and others contemplate has not been made on earthquakes before and would heavily involve not only Government and university scientists but other Government elements, such as the Air Force, with its aerial photography capability.

The two survey agencies last week made their early findings available at the annual meeting of the American Geophysical Union in Washington—the Coast and Geodetic Survey in a preliminary report and the Geological Survey in an informal briefing which was to be followed this week by a first report.

The interested reception given the reports at the meeting seems to indicate enthusiasm for a study in depth of the Alaska earthquake swarm. And there appears to be technical grounds for such a study in the fact that the Good Friday earthquake was the best-documented major earthquake in history.

It happens that a new worldwide standard seismographic system, supervised by the Coast and Geodetic Survey, is nearing completion and has some 98 stations operating in more than 50 countries and territories. The instruments in these stations are standardized, and officials involved in operating the network feel that these instruments provide much more accurate measurements of amplitude and time of shocks than were available in the past.

The new siesmograph network grew, indirectly at least, out of the so-called conference of experts in Geneva in 1958, which was convened to assess the technical capability for the detection of nuclear detonations. The conference called attention to the sketchy state of knowledge about seismic activity in general, and the worldwide network was, in part, a result of a sharpened interest in theoretical seismology here and abroad. The system itself could not be employed as a monitoring network, but it does provide basic data which would be of use if a test-detection net were required.

The network will have 125 stations in more than 60 countries and territories when it is completed in 1965. The Coast and Geodetic Survey provides instruments, supplies, and services to stations in other countries.

On the basis of the data recorded, the Coast and Geodetic Survey calls the Alaska

[1] The Coast and Geodetic Survey is a bureau of the Department of Commerce and the Geological Survey is lodged in the Department of the Interior.

quake "one of the largest to occur in the United States, at least since the beginning of instrumental recording late in the last century."

Both the Coast and Geodetic Survey (known familiarly as CGS) and the Geological Survey (called by its friends simply "the Survey") report that, so far, no evidence of faulting has been discovered in connection with the Good Friday quake or its aftershocks. The epicenter of the main shock, located on the eastern shore of the northern part of Prince William Sound, and the epicenters of the aftershocks were clustered along a belt of previous earthquake epicenters extending southwest beyond Kodiak Island.

While no faulting was evident, there were definite signs of "bending," along a fairly definite line, which, according to provisional reports, left Kodiak town some 1.8 meters lower than it had been and Seward and Seldovia a meter or so lower, while Cordova was raised some 1½ meters and Valdez, 3 to 4 meters.

The earthquake generated seismic sea waves (tsunami), which caused damage throughout the Gulf of Alaska, along the west coast of North America, and in the Hawaiian Islands. Hardest hit by the waves were the Alaskan port cities of Seward, Whittier, Valdez, and Kodiak. The big wave at Seward, Kodiak, and Cordova was 9 meters high. At Seward most of the business district was destroyed, and flaming oil from ruptured storage tanks swept into the city. At Kodiak, 40 percent of the downtown area was destroyed, and the Kodiak fishing fleet and waterfront fishing industry were heavily damaged. Some 27 blocks in Crescent City, Calif., were inundated when the fourth and fifth waves of the tsunami reached a height of 3½ meters.

The combined effects of the earthquake and the tsunami on the Alaska fishing industry is still being assessed. It appears that the salmon and halibut fishing industries—salmon is the major catch in Alaska, and halibut the second most important—escaped with relatively minor damage to fleet, gear, major canneries, and freeze plants. The salmon fishing season does not begin until June, and thus there will be time for repairs. Changes in underwater topography, however, may adversely affect some of the important salmon beds. In the Port William Sound area the raising of land in the mouths of streams and in intertidal waters may disturb salmon breeding.

Razor clam beds in a 110-kilometer area of the Copper River delta were shoved upward, and the effect on the animals cannot yet be determined.

The king crab industry sustained extensive damage. Fishing had begun, and this reportedly contributed to the loss of most of the vessels as well as to destruction or severe damage of plants and docks.

The Department of Commerce's Bureau of Commercial Fisheries has been surveying the condition of the fisheries and acting as an intermediary for aid. Rough estimates put the damage to the industry at $15 million, not including damage to wharves used by the fishermen but not belonging to them or to the processing plants. On Kodiak Island, the next high tides may prove some more plants unusable and thus raise damage figures.

Heaviest losses from the earthquake itself were sustained at Anchorage, some 130 kilometers from the epicenter, where extensive damage was dealt by ground movement and "slumping." The Office of Emergency Planning, in a report on the impact of the earthquake on the economy of Alaska, estimated that 75 percent of the city's "total developed worth has suffered some degree of measurable damage." Early estimates put damage to municipal facilities at about $40 million, to the airport at $1 million, and to private property at $165 million. The last figure is not far short of half the prequake value of the private property.

In a section on "engineering seismology aspects" in its report, the CGS concentrated on Anchorage, where there was a concentration of buildings and effects of seismic sea waves could be ignored. The pattern of destruction in Anchorage followed that observed in other cities which were fairly far removed from the epicenters of earthquakes elsewhere but sustained severe damage.

Small, low buildings generally came through the quake with minor damage or escaped harm entirely, unless they were affected by the slumps or slides which occurred in several sections of Anchorage.

"Conversely," as the report puts it, "large one- and two-story structures as well as tall buildings took the brunt of the vibratory damage." After the quake, 95 percent of Anchorage's high-rise apartments were condemned.

The report also suggests that damage was a function of the duration of shaking. It appears that a longer period of ground motion occurred at Anchorage, for instance, than at the epicenter. Quality of workmanship and the presence or absence of earthquake bracing in buildings were also cited as significantly affecting buildings' resistance to damage.

Events at Anchorage confirmed what has been established in earlier earthquakes about a direct relation of the firmness of substratum to damage. Survey officials at their briefing pointed out that bedrock, when subjected to seismic waves, does not move as much as less solid substances do—that the softer and wetter the ground, the greater the amplitude of earthquake waves. One official noted that the occurrence of the quake before the frost was out of the ground probably helped to limit damage.

Anchorage is built largely on unconsolidated deposits, and landslides, slumps, and fissures abounded. Seward is built on a similar base, and a portion of the town slid into Resurrection Bay.

The violence of the Alaskan quake is perhaps somewhat underestimated by the public because of the fortunate circumstance that loss of life—about 100 dead, or missing and presumed dead—is lower than in other recent, severe earthquakes. The Chilean earthquakes of May and June 1960, for example, claimed 1,500 lives. About 1,000 persons died as a result of shocks and the resulting collapse of buildings, and another 500 were killed by the seismic sea waves (maremoto is the Spanish equivalent of the Japanese tsunami in the international earthquake glossary).

The main shock in Alaska was of considerably greater magnitude than the main shock in Chile—8.4 on the Richter scale compared with 7.5 in Chile. Earthquake casualties, however, are determined not only by the violence of a quake but by the pattern and timing of the shocks, the "depth" of the quake, the concentration of population, the building construction, and the behavior of people in the quake zone.

What the earthquake areas in China and Alaska had very much in common was topography and geology. Both areas have long faults, and in both places glaciers gouged out ground rock and left a high and low pattern of escarpments and alluvial deposits.

South-central Alaska, where the quake struck, lies in a particularly lively sector of the "circum-Pacific" earthquake belt. The terrain and the development of commerce and transportation in a frontier State has led many Alaskans to build at the water's edge on shaky underpinnings and made them vulnerable to earthquakes and the sea waves that follow.

Under these circumstances, it seems eminently reasonable for Alaskans to seek the best scientific and engineering advice obtainable on reconstruction.

Relocation of some buildings and, indeed, portions of some cities, would appear to be in order. The State's present lack of a building code prescribing for earthquake-resistant structures should be remedied. There was little earthquake insurance written in Alaska before the quake, but the market is sure to improve, and insurance companies are demanding detailed information which will enable them to link coverage and premiums to criteria of vulnerability in specific areas.

THE FEDERAL ROLE

Some Alaskan officials and businessmen are impatient with the pace of the Federal Government in providing assistance for reconstruction. The construction season is short and the winter long and hard, and the Alaskans want action. Heavy pressure is being exerted on the Federal agencies and on Congress.

The Federal Government's role in the Alaskan emergency, however, is different from what it might be in, for example, an Ohio River Valley flood or a Plains State drought, where the Government provides disaster relief and makes available loans for recovery.

In Alaska, a major portion of the population and economy were affected by the quakes, and the State does not have a strong private enterprise sector to finance recovery, for the main industry in Alaska is still the Federal Government.

Personal income in Alaska in 1963 was $700 million, half of it derived from Government salaries. Two-fifths of the total $700 million came from the Federal Government, twice the national average.

The military makes up about 33 percent of the labor force in Alaska, and another 27.3 percent is made up of civilian employees of local, State, and Federal Governments.

Nearly half of Alaska's 265,000 population lives in the south-central area, which was struck by the earthquakes. About 100,000 people live in the area of Anchorage, which is the State's biggest city and main transportation communications center.

Although Alaska has attained statehood, it is clearly still tied economically to the Federal Government's apron strings.

Alaska's location has made it an important outpost, and the military investment in the State has been regarded generally as a necessary and reasonable one. The Defense Department, after the earthquake, committed itself to an extensive repair and rebuilding program, but some have suggested that the current reevaluation of grand strategy, tactics, weapons, and dispositions going on under Secretary McNamara could result in a slimming down of the Alaskan garrison.

Should this happen, there would be even greater pressure on the Federal Government to foster the economic development of its former territorial ward.

The new Federal Alaska Commission, headed by ANDERSON, is itself a version of a resources development commission proposed by John F. Kennedy when he was campaigning for the Presidency, which materialized only in the aftermath of the earthquake.

ANDERSON, as long ago as 1950, chaired a round of statehood hearings on Alaska and is well acquainted with economic facts of life in the 49th State. The Commission, significantly, has "development planning" in its title, and its work is expected to extend beyond the emergency period.

A broad-based study of earthquake effects, which is now being given earnest attention within the executive branch, would be a practical indication of the Federal Government's interest in seeing Alaska build on firm foundations.

NATIONAL CONGRESS OF PARENTS AND TEACHERS, AFL–CIO, AND ILWU SUPPORT LOWER INTEREST RATES FOR LOANS TO ALASKA'S DISASTER VICTIMS

Mr. GRUENING. Mr. President, I am pleased to report that the board of managers of the National Congress of Parents and Teachers, representing more than 12 million members, has unanimously approved a resolution urging that the Federal Government and private lending institutions make long-term, low-interest-rate disaster loans to businessmen and homeowners in Alaska who have experienced problems caused by the March 27 earthquake and subsequent seismic waves.

This heartwarming action by the parent-teachers' association means a great deal to Alaska.

It brings encouragement at a time when encouragement is needed.

It endorses similar support given by such organizations as the AFL–CIO and the ILWU and by thousands of individuals.

It dramatically proves that people do not forget their neighbors.

The members of the PTA board of managers come from each of the 50 States, plus the District of Columbia, and from the European Congress of Parents.

The resolution was approved during the PTA's 1964 annual convention, held in Chicago, Ill., May 25–28. The test of that resolution was brought to my attention yesterday by the PTA's new national president, Mrs. Jennelle Moorehead, of Eugene, Oreg.

The text of the resolution is direct and meaningful. It reads:

Whereas Alaska has experienced the single greatest disaster ever experienced by any State, and

Whereas an emergency exists because it has been estimated that 50 percent of the economic base of the State has been lost because of the earthquake: Therefore be it

Resolved, That the National Congress of Parents and Teachers board of managers go on record urging that assistance be made available at a low interest (three-fourths of 1 percent) on long-term disaster loans made by the Federal Government and agencies and private lending institutions to businessmen and homeowners in Alaska.

I concur in the resolution approved by the National Congress of Parents and Teachers; and, on behalf of the citizens of Alaska, I welcome this support, which endorses the opinion held by citizens across this land.

We are 50 United States. We are as strong as one single link in that Union. Alaska seeks to rebuild, and to move ahead in this remarkable century. To do so, Alaska must for today have the necessary tools with which to rebuild, without fear of bankruptcy or overwhelming indebtedness.

As the resolution of the PTA notes, the March 27 disaster on Good Friday destroyed 50 percent of the economic base of the State's private sector. Long-term, low-interest-rate loans will help correct this appalling situation. The board of managers of the National Congress of Parents and Teachers suggests that such loans be made at three-fourths of 1 percent interest by the Federal Government and agencies and by private lending institutions. I hope the resolution will prompt the taking of this desirable and necessary action.

CIVIL RIGHTS ACT OF 1963—CLOTURE MOTION—ADDITIONAL SIGNATURE

Mr. GRUENING. Mr. President, I ask unanimous consent that my name be added to the signatures on the cloture motion.

The PRESIDING OFFICER. Without objection, it is so ordered.

MEYNER KEY TO CODE

Mrs. NEUBERGER. Mr. President, today the New York Times carries an article announcing the appointment of Gov. Robert Meyner, of New Jersey, as administrator of the cigarette advertising code. It has been my pleasure to have known Governor Meyner for many years. He certainly has the potential to be the strong, vigorous, no-nonsense-type of administrator that is necessary if the cigarette advertising code is to be more than a simple statement of good intentions.

The administration of the code will not be an easy task. As a working instrument it has, of course, not been tested. Its language is broad and general, capable of extreme variations in interpretation. A recent edition of Broadcasting magazine, cited expert opinion as estimating that anywhere from 0 to 90 percent of the cigarette commercials currently being displayed could run afoul of the code provisions, depending upon the firmness of the administrator.

For example, the code provides that cigarette advertising shall not appear on programs "directed primarily to persons under 21 years of age." The evident purpose of such restriction is to restrict cigarette advertising to those programs which have a minimal teenage appeal. It would be hard put to say whether the "Beverly Hillbillies" program is "directed primarily to persons under 21 years of age" but the Federal Trade Commission has reported that 12.6 million children and 6.5 million teenagers view the "Beverly Hillbillies" sponsored by R. J. Reynolds, each Wednesday evening. No semantic quibble should bar the elimination of advertising on programs with such an audience. It may well be that it is this vagueness of the code language which has caused the Justice Department to place the code under close scrutiny before granting it absolution from the antitrust laws. I am confident that as a result of the interest of the Justice Department the code as administered by Governor Meyner will convey upon him sufficient authority and power to do that which is necessary to effect the fundamental reforms in cigarette advertising.

A clear and meaningful test of industry intentions and self-discipline is readily at hand. The April 20 issue of Advertising Age has prepared, based on Federal Trade Commission figures, a list of the top 10 TV shows sponsored by cigarette companies, ranked by size of children audiences. I can think of no greater test of the good faith of the industry than the prompt abandonment of cigarette sponsorship for each of these programs.

Mr. President, I ask unanimous consent that the table listing the network TV shows ranked by size of teenage and child audiences and also the article from the New York Times announcing the appointment of Governor Meyner be printed in the RECORD.

There being no objection, the table and the article were ordered to be printed in the RECORD, as follows:

[From Advertising Age, Apr. 20, 1964]

Network TV shows ranked by size of child audiences

Program	Sponsor	Network	Time	Total	Teens	Children
1. Beverly Hillbillies	R. J. Reynolds	CBS	Wednesdays, 9 to 9:30	50.0	6.5	12.6
2. Jackie Gleason	Philip Morris	CBS	Saturdays, 7:30 to 8:30	33.1	3.0	9.5
3. Combat	American Tobacco	ABC	Tuesdays, 7:30 to 8:30	27.1	3.3	8.9
4. Red Skelton	Philip Morris	CBS	Tuesdays, 8 to 9	22.6	3.2	8.8
5. Joey Bishop	P. Lorillard	NBC	Saturdays, 8:30 to 9	23.7	2.8	7.7
6. Dick Van Dyke	do	CBS	Wednesdays, 9:30 to 10	36.5	5.0	6.9
6. McHale's Navy	R. J. Reynolds	ABC	Tuesdays, 8:30 to 9	27.7	4.1	6.9
7. Outer Limits	Liggett & Myers	ABC	Mondays, 7:30 to 8:30	20.6	3.3	6.2
8. Ed Sullivan	P. Lorillard	CBS	Sundays, 8 to 9	31.2	2.4	5.3
9. Virginian	Liggett & Myers	NBC	Wednesdays, 7:30 to 9	28.6	2.5	5.1
9. The Lieutenant	R. J. Reynolds	NBC	Saturdays, 7:30 to 8:30	20.1	2.4	5.1
10. Saturday Night at Movies	American, R. J. Reynolds.	NBC	Saturdays, 9 to 11	30.2	4.1	5.0

Source: ARB, "The U.S. Television Audience, November 1963," reported in app. B; FTC staff study, "A Report on Cigarette Advertising and Output."

[From the New York Times, May 8, 1964]

MEYNER TO DIRECT TOBACCO AD CODE—FORMER JERSEY GOVERNOR WILL JUDGE ADVERTISING OF CIGARETTE INDUSTRY—NINE CONCERNS NAME HIM—HE WILL HAVE POWER TO FINE COMPANIES THAT VIOLATE RULES ADOPTED IN APRIL

(By Emanuel Perlmutter)

The Nation's cigarette industry announced yesterday the appointment of Robert B. Meyner, former Governor of New Jersey, as administrator of its advertising code.

The code, which was adopted by the nine major companies in April, is designed to minimize advertising aimed at young persons, particularly advertising that represents cigarette smoking as "essential to social prominence, distinction, success or sexual attraction."

Mr. Meyner will take office after the industry's code is cleared by the Antitrust Division of the Department of Justice. He will have power to impose fines up to $100,000 on violators.

Mr. Meyner, who was Governor of New Jersey from 1954 to 1962, has long been a national figure in the Democratic Party. He is close to President Johnson and was one

of a group of Democrats who organized a movement in 1960 aimed at stopping the presidential nomination of John F. Kennedy.

APPOINTED FOR 5 YEARS

Mr. Meyner's salary was not disclosed. His appointment is for 5 years. He will have the power to appoint scientific panels to advise him, and no cigarette company will be able to place advertising until it has been submitted to his office and cleared by it. His office will be in New York.

The industry adopted its code when it was faced with proposed restrictions by the Federal Trade Commission, regulatory bills pending in Congress and a proposed code under consideration by the National Association of Broadcasters.

The code proposes banning cigarette ads from college media and from television shows directed mainly at those younger than 21 years of age.

It bars claims involving health, filters, tars, resins, and similar assertions unless the administrator is satisfied that the claims can be verified.

Also restricted are ads that contain virility appeal because they show smokers indulging in athletic contests.

Mr. Meyner, who was born in 1908, is a member of the Newark law firm of Meyner & Wiley. He resides in Princeton.

The companies that announced Mr. Meyner's appointment were the American Tobacco Co., the Brown & Williamson Tobacco Corp., the Larus & Bro. Co., the Liggett & Myers Tobacco Co., the P. Lorillard Co., Philip Morris, Inc., the R. J. Reynolds Tobacco Co., Stephano Bros., Inc., and the United States Tobacco Co.

UPPER COLUMBIA RIVER DEVELOPMENT GOAL IS NEAR FOR UNITED STATES AND CANADA

Mrs. NEUBERGER. Mr. President, the end of the trail is in sight for successful completion of the agreement between the United States and Canada for joint development of the water resources of the upper Columbia River. Last Friday, June 5, the House of Commons in Ottawa voted 108 to 16 in support of a resolution approving the treaty originally signed by both countries in 1961.

Endorsement by the Canadian Senate and approval by the Prime Minister's Cabinet is anticipated in the near future. The United States has already completed legislative and executive action on the treaty.

Thus, the year 1964 will mark the start of a new era in development of the international river system which possesses some 40 percent of the hydroelectric potential of the North American Continent. The agreements which have been executed will bring widespread benefits to the citizens of both countries. Most of all, the development program will move us closer to the goal of complete harnessing of the mighty Columbia. The action of the majority of the Canadian House of Commons can be hailed as another example of the good relationship between our two nations, for sharing and use of natural resources in a manner which is advantageous to both.

I ask consent to include in the RECORD, with my remarks, an article from the New York Times of Saturday, June 6, 1964, entitled "Canada Advances Columbia Treaty."

There being no objection, the article was ordered to be printed in the RECORD, as follows:

CANADA ADVANCES COLUMBIA TREATY—COMMONS APPROVES PACT TO DEVELOP RIVER WITH UNITED STATES

(By Raymond Daniell)

OTTAWA, June 5.—The House of Commons approved today the treaty with the United States for joint development of flood control and power resources of the Columbia River.

The vote, in a sparsely attended session, was 108 to 16. Only 15 members of the New Democratic Party and one Conservative voted against the Liberal Government's resolution.

A similar resolution now goes before the Senate, where it is certain to be endorsed. After approval there, Prime Minister Lester B. Pearson's Cabinet will, by order in council, formally ratify the treaty.

A treaty providing for joint development of the river was signed by both countries in 1961. It was ratified by the United States but not by Canada because of objections from W. A. C. Bennett, Premier of British Columbia.

PROTOCOL ERASES OBJECTIONS

Mr. Pearson and President Kennedy agreed at Hyannis Port last spring that the objections could be overcome by a protocol to the existing agreement rather than renegotiation. The protocol was signed at Washington last January 22 by President Johnson and Mr. Pearson.

The protocol provides that the United States would pay for dams built in Canada and a flat rate payment for flood control benefits.

The initial project consists of three dams to be built by British Columbia in the next 9 years. They would cost under $400 million and be situated at Arrow Lake, Duncan Lake, and Mica Creek.

The dams, by controlling the upper reaches of the 1,200-mile Columbia River, will make available more than 1 million kilowatts of extra power at existing U.S. dams.

Under the treaty, the United States would pay British Columbia $344.4 million in Canadian funds, including $274.8 million in advance next October 1.

CONTRACT TO LAST 30 YEARS

The power sale is for 30 years. The new agreement means possibly $100 million more in benefits than the old treaty provided for. Full benefits could total at least $501 million by 1973.

The money invested over the 9-year construction period will be sufficient to cover costs. Generators at Mica Creek are expected to produce about 1 million horsepower of electricity for British Columbia consumption.

Ultimately, five more dams will be built and additions will be made to existing dams at Lower Bonnington and Brilliant.

The total cost will be about $1 billion. The power capacity will be almost 4.5 million kilowatts, twice the amount now used by the whole Province.

At the same time, the Peace River in British Columbia is being developed at an ultimate cost of about $800 million to produce 3.5 million more kilowatts.

STATEMENT IN SUPPORT OF CIVIL RIGHTS BILL

Mr. SCOTT. Mr. President, I ask unanimous consent that a statement in support of the civil rights bill by an interreligious delegation representing the Religious Advisory Consultation on Equality—RACE—of Greater Philadelphia be printed in the RECORD.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

We have come here today to present to you a very tangible demonstration of the support of citizens in the Philadelphia area for passage of civil rights legislation now. Affixed to these petitions which we give to you are the names of a mere fraction of our citizens who believe firmly that civil rights legislation will do much to fulfill the destiny of our Nation in terms of its democratic heritage.

These signatures were collected on Sunday, May 24, when hundreds of advocates of racial justice gathered in an interreligious witness to show that the moral forces of our community are behind you and those of a like mind who are determined to provide this Nation with effective machinery that will help remove the stains of racial and religious prejudice and discrimination.

We sought to demonstrate our growing impatience with the drawnout debate that serves only to make a mockery of our Nation, steeped as it is in democratic principles of equality and justice. The witness was held to show you our concern over any efforts to severely weaken the proposed civil rights bill through crippling amendments.

While we differ, one from the other, by race and religion, we are one in our fervent desire and hope your positive influence and that of your constituents will prevail. We trust our Nation will enact this vital legislation as a primary and very important step toward helping all Americans face up to the eternal truth of the oneness and equality of man under God.

Finally, we implore you to stand firm against the forces of bigotry and intolerance and continue in your determination to uphold the dignity and worth of all mankind, of all races, colors, and creeds.

REPORT ON DEVELOPMENTS IN THE FEDERAL PROBATION SYSTEM, 1964

Mr. JOHNSTON. Mr. President, I would like to present a report on developments in the Federal Probation System, 1964, by Luther W. Youngdahl, judge, U.S. District Court for the District of Columbia and Chairman of the Committee of the Judicial Conference of the United States on the administration of the probation system.

A short time ago information was inserted into the RECORD in which unfounded criticism was made of our Federal Probation Service. This report presents the latest and true picture of this fine service.

I ask unanimous consent that the full report be printed in the RECORD.

There being no objection, the report was ordered to be printed in the RECORD, as follows:

REPORT ON DEVELOPMENTS IN THE FEDERAL PROBATION SYSTEM, 1964

(Address by Luther W. Youngdahl, judge, U.S. District Court for the District of Columbia and chairman of the Committee of the Judicial Conference of the United States on the Administration of the Probation System—Prepared for delivery before the Advisory Council of Judges, National Council on Crime and Delinquency 12th annual meeting, Minneapolis, Minn., Friday, June 5, 1964, 12:15 p.m.)

The National Council on Crime and Delinquency has always had a deep interest in the Federal Probation Service. This is only natural since that organization, which established our Advisory Council of Judges, was in large part responsible for the creation of the

service by procuring the enactment of the Federal Probation Act of 1925. In the years that have elapsed since that beginning there has been no lessening of interest on the part of the National Council on Crime and Delinquency in probation and parole in the courts of the United States; and yet, at the annual meetings of our Advisory Council of Judges over the years, we have had little discussion of the Federal system. Federal probation has not received separate attention, because I believe it has been assumed that the Federal Probation Service was included in our discussion of general principles and practices. This has been due, I think, to the fact, especially during the last 10 or 15 years, that there has not been much change in the use of probation and parole in the Federal courts, and such changes as have occurred have been so gradual as not to attract much attention.

Last year I had the privilege of addressing the annual meeting of the Advisory Council of Judges at the joint meeting with the New York Citizens Council on the subject of "Preventing Delinquency and Crime," and on that occasion all that I was able to report, with respect to Federal probation and parole, was the fact that at its meeting during the preceding March, the judicial conference of the United States had approved the appointment of a permanent standing committee on probation; that under this authority Chief Justice Earl Warren had appointed a committee of nine U.S. district court judges, naming me to serve as chairman, and that our committee had held one meeting.

Today, 1 year later, it is with much satisfaction and some pride that I am prepared to report to you on what has happened in the meantime. There has been such a ferment of activity that I find that in the time available I can do no more than list the more important of our activities and describe only a few in detail.

One project on which very real progress has been made is a proposed revision of the official monograph on the preparation of presentence reports, including the presentence report format. The judges working on this are Chief Judge Thomas Madden, of the U.S. District Court for the District of New Jersey, and Judge James B. Parsons, of the U.S. District Court for the Northern District of Illinois, assisted by a staff committee consisting of seven probation officers, two representatives of the Bureau of Prisons, a psychiatrist, a forensic psychologist, and Mr. Paul W. Keve, one of the country's best-known authorities on presentence investigations and reports.

They have already completed and submitted to the full committee their recommendations for revision of the monograph, running to some 50 pages, together with a recommended standard outline and format for presentence reports. The purpose of this is to establish a format and a standard of content that will not only meet the needs of the district judge in pronouncing judgment but will also supply information essential to the Bureau of Prisons and to the Board of Parole. This should eliminate the need for a great deal of reinvestigation which is now required by the Bureau of Prisons and the Board of Parole and which is costing a great deal of money. It should serve also to raise substantially the quality of presentence reports in general.

Another study where progress is being made relates to psychiatric and medical services. This work is being carried on by a subcommittee of which Judge John W. Oliver, of the U.S. District Court for the Western District of Missouri, is chairman, and Judge Francis L. Van Dusen, of the U.S. District Court for the Eastern District of Pennsylvania, is a member.

There seems to be some misunderstanding as to the nature and extent of the use made of medical and psychiatric examinations and facilities in the Federal correctional process. Perhaps the mistaken inference that the Federal Probation Service makes little, if any, use of psychiatric examinations arises from the fact that the allotment for psychiatric examinations for the Federal Probation Service in the annual budget of the Administrative Office of the U.S. Courts is only $4,000 a year. But this is no index at all of the use actually being made of psychiatry and medicine.

The allotment in the budget is merely to meet the exceptional necessity for paying a private psychiatrist on a case-by-case basis for examinations that are occasionally necessary when public psychiatric facilities are not available. There has never been a year when the requests for such special examinations have been too great for the funds available.

No attempt has been or is being made to staff Federal probation offices with psychiatrists, even in metropolitan districts, for the reason that adequate service is available without cost in State and local clinics and hospitals, particularly in the metropolitan areas. For example, the Philadelphia Probation Office obtains, without charge, psychiatric examinations prior to sentence from the Neuropsychiatric Division of the Court of Quarter Sessions; and examinations, without cost, are conducted for the office by the Mills Clinic of the Philadelphia General Hospital. This is service of high quality. It would be impossible to duplicate it by the assignment of a psychiatrist to the probation office staff. This is generally true in the metropolitan areas around the country.

In addition to these services, many district courts use the observation and study facilities of the Bureau of Prisons' institutions under the provisions of sections 4208(b), 5010(e), and 5034 of title 18. During the fiscal year 1963 a total of 459 examinations were made under 4208(b), 140 under 5010(e), and 55 under 5034. Other public psychiatric and medical facilities are also frequently used, such as those of the Veterans' Administration, U.S. Public Health Service, and the departments of medicine, psychology, and psychiatry of many universities.

All of this is under review by Judge Oliver's subcommittee to determine whether the best use is being made of facilities and services presently available and what more may be needed along this line.

In the District of Columbia, which has such a heavy volume of criminal cases that in other areas would be tried in State courts, we make heavy use of the facilities of St. Elizabeths Hospital for mental examinations before trial; also, the chief psychologist attached to the staff of the Legal Psychiatric Services spends 3 hours biweekly with the staff of the probation office in helping develop the probation program. He has also been acting as psychological consultant for the group counseling program with which our probation office has been experimenting for more than 5 years. There are, in addition, instances of which no formal record is kept, but which number, in the estimate of our chief probation officer, as more than a hundred a year, when probation officers request and receive special psychiatric consultations.

The District of Columbia Probation Office, as I have mentioned, has been experimenting with considerable success for more than 5 years with the use of group counseling as a technique in rehabilitation. I have, myself, observed these groups in operation and am much impressed with what seems to me to be substantial achievements. At its meeting in March of this year the Judicial Conference authorized our Committee to seek funds to underwrite a scientific evaluation by outside experts of our group counseling program with the idea that if it proves to be as valuable as some of us think it is, we will be justified in encouraging its use elsewhere.

Through a subcommittee, of which Judge William B. Herlands, of the U.S. District Court for the Southern District of New York, is chairman, and Judges Walter E. Hoffman, of the U.S. District Court for the Eastern District of Virginia, and Albert C. Wollenberg, of the U.S. District Court for the Northern District of California, are members, our Committee has made progress in formulating a statement of the principles and essentials of probation and parole. The subcommittee has completed a tentative draft consisting of three working papers covering the purpose, scope, and functions of probation and developing the philosophy and principles upon which our administration of probation and parole are based. These papers, however, are not ready for publication because they are regarded as a draft rather than a final formulation, which should receive much more extensive consideration by judges, probation and parole administrators, and other competent authorities. They should, however, prove to be very useful, even in draft form, as a basis of discussion at future sentencing institutes and joint councils.

All of this diverse activity must sound as though our Probation Committee met with very great frequency. Yet this has not been necessary. During the last year we held one meeting in Washington and a second in Denver last February coincident with a sentencing institute for newly appointed judges, which we sponsored at the same time and place.

You will recall that in 1958 the Congress passed a law authorizing institutes and joint councils on sentencing to be held under the auspices of the Judicial Conference of the United States, having the very broad purpose of studying, discussing and formulating the objectives, policies, standards, and criteria for sentencing those convicted of crimes and offenses in the courts of the United States. Prior to the creation of the Probation Committee last year, only two meetings that would justify the title of "Sentencing Institutes" had been authorized by the Judicial Conference. The first, which was attended by judges invited from all parts of the United States, was held in July of 1959 at Boulder, Colo.; the second, attended by the judges of the sixth, seventh, and eighth circuits, was held at Highland Park, Ill., in October of 1961. There had been held, in addition, one or more sentencing programs in each of the 11 circuits, these programs being incidental to the annual meetings of the judicial conferences of the circuits and the attendance usually being limited to the judges of the circuits.

When our Probation Committee was created the Judicial Conference charged us with the responsibility for planning future programs and developing future institutes and joint councils on sentencing, and this responsibility is being carried out by a subcommittee chairmaned by Judge Francis L. Van Dusen, of the U.S. District Court for the Eastern District of Pennsylvania, and Judges John W. Oliver of the western district of Missouri, William B. Herlands, of the southern district of New York, and James B. Parsons, of the northern district of Illinois, as members. We also have as a member of this subcommittee, Mr. James V. Bennett, the distinguished and always helpful Director of the Bureau of Prisons, whose personal contribution to the programs of every institute so far held has been a major reason for their success.

During the past year our Committee has sponsored a sentencing institute, held, under the statute, at Denver, Colo., February 1964. The sentencing program, which covered 2½ days, was conducted for reasons of economy as a part of a seminar for newly appointed judges. The seminar lasted a week. It was attended by 42 newly appointed judges from all parts of the country.

The sentencing program was broad in its scope. Discussion was organized on such matters as the problem of disparity; aids in sentencing, such as the presentence report; a briefing on the Federal correctional system; a tour of the Federal correctional institution at Englewood, Colo., including a most fascinating demonstration of the observation and study procedures and techniques used in the institution; parole board procedures; the application of psychiatry to study, observation and treatment of the Federal offender; competency determination; the use of probation; the use of commitment; the proper conduct of the hearing on sentence; and probation supervision and revocation.

I detail the broad sweep of the program because there seems to be a mistaken idea that these institutes are directed toward the narrow objective of eliminating the disparity in sentences. Demonstrably, this is not the case. It has also been asserted that we are spending hundreds of thousands of dollars conducting these sentencing institutes. The fact is that the total cost of all the institutes, joint councils, and other programs on sentencing held since the enactment of the authorizing statute in 1958, is less than $45,000.

Our Committee is presently planning another regional sentencing institute to be held somewhere on the west coast this coming October.

I should mention here the outstanding work of the Advisory Council of Judges in preparing "Guides for Sentencing" and the "Model Penal Code," which I believe will have a tremendous impact in eliminating disparity in sentencing.

I now come to a far-reaching proposal developed by our committee during the past year which has been approved by the Judicial Conference of the United States. This proposal is in the form of a bill which we transmitted to the Congress only last week. I am glad to say that the bill has already been introduced in the House by our good friend Congressman EMANUEL CELLER, chairman of the Judiciary Committee, and is numbered H.R. 11414. Congressman CELLER hopes for action at this session of the Congress.

The bill would authorize the establishment of a Research and Development Center in the correctional field, the Center to be administered under the general direction of a corrections council, the establishment of which would also be authorized by the bill. While the proposed legislation originates with our committee and the Judicial Conference, it has received extensive consideration and approval by the other interested departments and agencies of Government that would be affected by its enactment.

The Judicial Conference has become increasingly concerned over a period of some years about the responsibility placed upon the judiciary for the administration of the Federal probation system and has felt an increasing need for the development of better standards in all aspects of probation administration, and especially with respect to the supervision of probationers and parolees released into the community.

This interest has led to the realization of the need for continuous systematic analysis, investigation, testing and experiment to develop a sound body of knowledge upon which intelligent training materials and proven practical techniques of probation administration might be based. However, because probation and parole can only be evaluated by comparison with other correctional alternatives, it is also realized that it is impracticable to attempt research in probation and parole independent of other correctional techniques, such as imprisonment, the administration of which is in the Bureau of Prisons and the Department of Justice and not in the Judiciary.

The common objective of probation and parole, as administered by the Judiciary, and imprisonment in all its varieties, as administered by the Bureau of Prisons and the Department of Justice, is to bring about change in the deportment of persons convicted of criminal offenses. The National Institute of Mental Health with its unmatched experience, competence, and resources has a special interest in this kind of mental, moral, and psychological change. Accordingly, the proposed legislation, though originally sponsored by the Judicial Conference because of its interest in probation and parole, would create a center for research and development covering the entire correctional field and would provide that its activities be conducted under the general direction of a corrections council with appropriate representation in its membership of the agencies, departments and branches of government concerned, i.e.: the Judiciary, the Bureau of Prisons, the Department of Justice, and the National Institute of Mental Health.

The Corrections Council proposed in the bill would be created by amending the present section 5002 of title 28, United States Code, which creates an Advisory Corrections Council. The proposed amendment would not only drop "Advisory" from the name of the Council but would give it more specific authority to instigate and direct studies relating to the problems of treatment and correction of all offenders. Also the proposal would require the Council to make its recommendations to the Attorney General and the Judicial Conference of the United States instead of to the President and Congress as provided in the existing statute. Further, the proposed amendment would drop the present provision for a public member of the Council and in his place would name the Director of the National Institute of Mental Health to serve as Chairman.

The proposed Research and Development Center in the Correctional Field would be located on the grounds of the National Institute of Mental Health at Bethesda, Md. In terms of the number of people involved, the proposed Center would be quite small. Although small in size, the Center could meet the great need for a focal point in the Federal Government where the results of the numerous research projects, both public and private, presently being conducted in the correctional field on a more or less hit-and-miss basis, could be collected, coordinated, and made more useful and from which continuing systematic analysis, including testing and experimentation of all aspects of supervision in the community, as well as institutional treatment, could be conducted. The Center should prove to be a fertile source for improved and much-needed training materials for all the people engaged in the many different aspects of correctional work and rehabilitation.

A recently issued report from the Bureau of Prisons states that the Federal prison population decreased about 7 percent in the last 24 months, notwithstanding the fact that during the same period the number of persons convicted increased substantially. On the other hand, the number of persons placed on probation last year is greater than the number the year before by more than a thousand, an increase of about 9 percent. Changes like this indicate the increasing need for the development of better standards and techniques in all aspects of probation administration. The Judicial Conference believes the proposed Research and Development Center is essential to meet this need.

So far in my report I have been talking mostly about the activities of the Judicial Conference Probation Committee. Now I must mention a tremendously important contribution to our work on probation and parole by another and separate committee of the Judicial Conference. I refer to the Conference Committee on Judicial Statistics of which Chief Judge Harvey M. Johnsen, of the Court of Appeals of the Eighth Circuit, is Chairman.

As you know, in past years we have not had a comprehensive statistical procedure and the resultant lack of information has made any real evaluation of the practices of probation and parole extremely difficult, if not impossible. But, since 1959, under the leadership and with the support of Judge Johnsen's Committee, the Administrative Office of the U.S. Courts has been actively engaged in devising new methods of reporting more complete information by Federal court clerks and probation offices. This has now culminated in the development of a system of reporting and statistics which, for the first time, accounts for all persons who were or are during the year the responsibility of the Federal Probation System. This includes all persons who, in the administration of the Federal courts, have been placed on probation, released under parole supervision, who are under supervision while on conditional release, who are placed on probation by U.S. commissioners, or whose prosecution is deferred under the so-called Brooklyn plan. This statistical system also includes full information as to the sentencing statutes that have been utilized and the sentences imposed under each, and, finally, the system includes full information about probationers and parolees removed from supervision, distinguishing between those who have successfully met the condition imposed by a court and those whose supervision is terminated either by major or minor violations.

This vitally important new statistical information was released by the Administrative Office of the U.S. Courts on February 4, 1964, in a report entitled "Federal Offenders in the U.S. District Courts 1963," and in a second report released May 18, 1964, under the title "Persons Under the Supervision of the Federal Probation System fiscal year 1963." A third report covering the District of Columbia exclusively has also been released.

In referring to this development, Chief Justice Earl Warren, in a recent address to the American Law Institute, observed:

"Scientific progress is largely dependent on the ability to make better measurements. This is as true of the social as it is of the physical sciences. Therefore, much of the research in the correctional field in recent years has been directed toward the development of new kinds of techniques for measuring the results of the correctional process."

Referring specifically to the recently issued reports on Federal offenders and persons under the supervision of the Federal Probation System, the Chief Justice commented:

"* * * in my opinion they amount to a major breakthrough in the barrier of official ignorance as to what kind of people are processed through the Federal criminal courts and what actually happens to those released on probation under varying terms, to those who are incarcerated in institutions for varying periods and to those who are placed on parole or conditional release under varying conditions."

I am sure I do not need to emphasize the usefulness of this body of statistical information in the programs and activities of the proposed Research and Development Center.

From the total statistical information now available about the Federal correctional process, the facts can be developed which will effectively answer many of the questions that have plagued us for a long time. There has been much criticism of looseness in the administration of probation; some of it justified and some of it not justified.

In my opinion two basic requisites for an effective system are (1) careful selection of those offenders who are to be placed on parole or probation and (2) assurance of proper supervision.

But, now, with complete statistics and comprehensive reporting on what happens, we have an accurate measure of our successes and blunders in granting probation and parole and of the weaknesses in the extent and methods of supervision.

I must mention a few of the interesting things we have learned from these first reports. We have learned that in 1963—taking into account those offenses subject to the possible use of probation—that probation was granted to about 50 percent of all defendants sentenced. This represents approximately a 3-percent decrease in sentences of imprisonment and a 9-percent increase in the use of probation over the previous year. We have learned that in 1963 approximately 12 percent of the probationers who were removed from supervision during the year were removed because of a violation of a major nature. While it might be expected that those districts which used probation extensively would presumably have a much higher violation rate than those districts that made much less use of probation, this report shows very little difference in violation rates. This would suggest that a much greater use could be made of probation in those districts that use it more sparingly without any substantial increase in the number of major violations, provided, of course, that the probation offices in those districts are adequately staffed.

Some of this new information concerning persons received for supervision by the Federal Probation System will come, I believe, as a distinct surprise to many district judges. It now appears as a fact that the imprisonment actually served by persons sentenced under the Youth Corrections Act is substantially longer than it is for adults or juveniles sentenced under the Federal Juvenile Delinquency Act for like offenses and that, with respect to the time to be served under supervision under parole, the term for Youth Corrections Act offenders is four times as long as for adults and two times that of juvenile delinquents. Furthermore, when the rate of parole violation is compared, it appears that the major violation rate in adult cases of auto theft was 24.9 percent, in juvenile cases 30.3 percent, and Youth Corrections Act cases 47 percent. There seems to be no question but that the Youth Corrections Act cases not only serve greater time in custody before release on parole than other classes but that after release they have a much higher violation rate. Why? Is it because of the fact that recidivism in auto theft cases tends to be greater among youth offenders than among juvenile or adult offenders, or is it because of lack of staffing and adequate facilities in our youth institutions?

Because I am such a strong supporter of the youth corrections philosophy I believe that facts such as these, now available for the first time, clearly demonstrate that this information must be very carefully studied by the judiciary, the Federal Probation Service, the Board of Parole, and the Bureau of Prisons, and it is most convincing proof of the pressing need for constant research in the correctional field.

The development by the Administrative Office of accurate statistical information concerning Federal violations of probation and parole suggests, we believe, that the Administrative Office is in a position to be of real assistance to at least some of the States by supplying similar information concerning State probation and parole.

During the past few years an increasing number of States have recognized how essential accurate statistical information is to the successful administration of the probation and parole process and have developed quite adequate systems for reporting the basic information to their own State statistical centers concerning all persons put on probation or parole in their own courts. But, useful as this information is, all the States have been handicapped by their inability to obtain and include accurate information as to what happens to the very considerable number of such persons who move outside the State. Clearly there is no way of obtaining this information excepting through some Federal agency.

The National Council on Crime and Delinquency has long been aware of this. More than 5 years ago Mr. Will Turnbladh, who was then Director, and Mr. Milton Rector, who is Director now, conferred at some length with the Director of the Administrative Office and other Federal officials as to whether there was any Federal agency that could possibly fill this need. But at that time the Administrative Office did not have the basic statistical information about probation and parole violators even in Federal cases, let alone State cases, and consequently could be of no assistance. Now, however, the Administrative Office is receiving full information on Federal probation and parole violators from the Federal Bureau of Investigation, and it would seem possible to expand the system to include information as to violators from selected States. I say "selected" States because the basic statistical information concerning persons under supervision in the State courts is only obtainable in those States that have already developed a proper system of reporting to some State statistical center. It is for this reason that the cooperation of the Federal statistical agencies with the States must of necessity be limited to those States having well-developed statistical systems of their own.

As I have mentioned, the statistics kept by the Administrative Office, even those relating to probation and parole, are not the concern primarily of the Judicial Conference Committee on Probation. Nevertheless, Mr. Warren Olney, the Director of the Administrative Office, and Mr. Ronald H. Beattie, the talented Chief of the Division of Procedural Studies and Statistics, have suggested that I let it be known at this meeting, where so many States are represented, that they believe the time has come when it is feasible to reopen these discussions about the possibility of making the statistical information about State probation and parole violators available to States having their own statistical centers. There are, of course, many obstacles to this, but the main difficulties with respect to Federal statistics seem to have been cleared away and now perhaps a way can be found for supplying State statistical centers with this vital information concerning violators which they cannot get for themselves.

I cannot close without paying tribute to the devoted efforts of my fellow members on the Probation Committee, expressing my admiration for the farsighted accomplishments of Judge Johnsen's Committee on Statistics, and speaking of my pride and satisfaction in the vision, energy and wisdom of the Judicial Conference of the United States. Moreover, I would be remiss, indeed, if I did not add a word of commendation to Milton Rector and his able staff of the National Council on Crime and Delinquency and to our dedicated group of judges in the Advisory Council under the able leadership of the former chairman, Hon. Bolitha Laws, and our present distinguished chairman, Hon. Alfred Murrah, for their dedicated work in behalf of probation, parole, delinquency and crime and the general improvement of the administration of justice.

HIGH SCHOOL DEBATES, 1964–65

Mr. HAYDEN. Mr. President, for the information of all Members of the Senate, the high school debate material for 1964–65, printed, pursuant to Public Law 88–246, as Senate Document 72 and entitled "Should Weapons Be Placed Under International Control?" is now available in the Senate warehouse. Two hundred copies are allotted to each Member for 30 days. Thereafter, all copies remaining in the warehouse will be pooled by the Joint Committee on Printing and, upon request, will be furnished to Members to the extent available.

ORDER OF BUSINESS

Mr. BYRD of West Virginia obtained the floor.

Mr. METCALF. Mr. President——

Mr. BYRD of West Virginia. Mr. President, I yield to the Senator from Montana, with the understanding that I shall not lose my rights to the floor, and also that his remarks will be printed in the RECORD before my own remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

NOMINATION OF HAMER H. BUDGE TO SECURITIES AND EXCHANGE COMMISSION

Mr. METCALF. Mr. President, I ask unanimous consent to have printed in the RECORD, as part of my remarks, an editorial published today in the New York Times, relating to the nomination of Hamer H. Budge to be a member of the Securities and Exchange System.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

[From the New York Times, June 9, 1964]

AN UNPROFESSIONAL APPOINTMENT

When President Johnson made his first group of appointments to posts in Federal agencies, his nominations were encouragingly from professional rather than from political ranks.

His most recent appointment, the naming of Hamer H. Budge, a Republican ex-Congressman from Idaho, to the Securities and Exchange Commission reverses this sensible policy. The term of J. M. Whitney, a Republican, had expired, and a Republican or independent had to be appointed because the law states that no more than three members of one party can serve on the SEC. But Mr. Budge, who calls himself a conservative and favors cooperation rather than control of industry, has had no experience in the field of security regulation. His lack of professional background and his unsympathetic attitude toward reform is in striking contrast to the attributes of his predecessor and to the prevailing policy of the SEC itself.

The naming of Mr. Budge assumes special importance due to the fact that William L. Cary, the SEC's exceptionally able chairman, will soon be leaving his post. Under Mr. Cary, the SEC, watchdog of the marketplace, has been completely revitalized. It is no longer enfeebled or insensitive to the many changes taking place in the sale and distribution of stock. On the contrary, it has played an active, reformist role, taking the lead in raising standards in the securities industry. Its position will be strengthened by congressional passage of the proposed securities reforms bill; but it will still require a conscientious and professional chairman like Mr. Cary, one who has the devotion and support of its staff, to insure that regulation is both intelligent and effective.

We hope that the naming of Mr. Budge will not set a precedent. Professionals should be chosen for the regulatory agencies. There is always a grave risk that political

regulators will either succumb to industry pressure or simply go to seed. It is a risk that we cannot afford to run.

PROTECTION AND PRESERVATION OF AIR RESOURCES

Mr. METCALF. Mr. President, I ask unanimous consent that an address by Senator MUSKIE relating to the protection and preservation of our air resources be printed in the RECORD.

Senator MUSKIE has done an outstanding job as chairman of the Special Subcommittee on Air and Water Pollution of the Senate Public Works Committee. He conducted extensive hearings last year and this year on the problems of air pollution and provided the leadership which led to the passage by the Senate of legislation which was subsequently enacted into law and is known as the Clean Air Act. During this year Senator MUSKIE has conducted a series of field hearings to learn more about the problems of air pollution and the techniques used to control air pollution. His address reveals his great knowledge of the subject and I recommend that it be read by each of you.

There being no objection, the address was ordered to be printed in the RECORD, as follows:

ADDRESS BY SENATOR MUSKIE AT METROPOLITAN WASHINGTON AREA CLEANER AIR WEEK LUNCHEON AWARD CEREMONY, MAY 14, 1964

It may seem strange to some of you that in the middle of a Senate filibuster a Senator is being called upon to represent the forces of cleaner air. I offer two justifications for my presence: (1) As a native of the State of Maine I know what clean air really is; and (2) as a Member of the Senate hemmed in by the filibuster I appreciate the need for fresh air.

We are celebrating a happy occasion, today, on the achievement of our National Capital Area in the fight for cleaner air. At the same time, the fact that such an occasion is necessary highlights a growing problem which is adversely affecting the health, economic capacity, and quality of living in these United States.

For years men have been aware of the sooty deposits which accompany industrialization and we have been aware of the nuisance of unpleasant odors from manufacturing processes in certain industries. But so long as these side effects of industry and modern technology seemed to be nuisances and no more, we accepted them as one of the necessary drawbacks in our modern civilization.

With the outbreak of sickness and death associated with air pollution, our scientists became concerned that air contaminants could cause harm to man. Now, the Nation is aroused, and there is today a national recognition of the air pollution problem.

In the recent hearing of the Special Subcommittee on Air and Water Pollution of the Senate Committee on Public Works, civic leaders, industrialists, medical doctors, and technicians all agreed that air pollution is a growing menace and that it must be controlled.

Air is life. We all know that we need fresh air every few seconds if we are to live. What we are not always aware of is that air is needed to sustain the kind of world in which we live, but the use of air in heating our homes, running our factories, driving our cars, and burning our wastes discharges pollutants into the air, and resumes in physical and economic damage to the Nation.

Air pollution is injurious to health. We know, for example, that air pollution cost 4,000 lives in London in December 1952, 340 deaths in the same city 10 years later, 17 lives in Donora, Pa., in October 1948, and 200 lives in New York in November 1953. Untold thousands of Americans have suffered and died as a result of the long-term injurious effects of air pollution.

As the staff report on air pollution, prepared for the Special Subcommittee on Air and Water Pollution, has pointed out: "Of much greater overall significance than acute episodes (of air pollution) is a growing body of evidence that long-term, low-level air pollution can contribute to and aggravate certain diseases." We do not know all we want to know about the relationship between certain harmful agents in the air and disease, but we do know enough to establish a connection between various substances in the air and numerous respiratory ailments. These include: (1) the common cold and other upper respiratory tract infections; (2) chronic bronchitis; (3) chronic constrictive ventilatory diseases; (4) pulminary emphysema; (5) bronchial asthma; and (6) lung cancer. Close correlations have been shown between all of these diseases and the level of air pollution. In addition, there is a close correlation between the size of cities, the amount of air pollution, and the incidents of respiratory disease as a result of air pollution.

There are those who say that not enough is known to justify cleaning up air pollution now. They say we must wait until we have more specific evidence on the connection between air pollution and disease before we insist on cleanup in the air. I say there is no time to wait. We are not experimenting with the mortality of fungus, or of plants, or of mice. We are faced with problems of injury and death to human beings—to ourselves, to our neighbors, and to our children. This is a national problem, requiring the closest cooperation between the Federal Government, State, interstate, and local agencies. If we place any value on human life, we will act now.

Air pollution is not only a menace to health, it is a source of economic loss in agriculture, in the conservation of fish and wildlife, and in the upkeep of homes and the maintenance of personal property.

Air pollution injures plants and causes hundreds of millions of dollars of losses to our agricultural economy every year. Recent research in plant pathology has demonstrated that the kinds of plants affected and the nature of injury produced vary with the agent. This has made it possible to identify some of the specific pollutants which injure plants and to prove, in some cases, that they have caused damage as far away as 100 miles or more from the point where they originate. Eastern white pine, grapevines, tobacco, spinach, grains, fresh vegetables, and flowers have suffered from air pollution. Livestock have suffered serious adverse effects from airborne fluorides. Corn and peaches are susceptible to hydrogen fluorides.

The annual cost of air pollution damage to property has been estimated at $11 billion for the Nation. Air pollution accelerates deterioration of metals, fabrics, leather, rubber, paint, concrete and building stone, glass, and paper.

For the homeowner air pollution adds to the cost of painting, cleaning of clothing and furniture, and the replacement of many items. For industry, the cost of air pollution is measured in the replacement and protection of precision instruments and other complex control systems which are so important to modern technology.

Travel is affected by air pollution. In at least two recent instances—one in Pennsylvania and another in Louisiana—major turnpike crashes were attributed to poor visibility caused by air pollution. Air pollution, aggravated by atmospheric conditions, has increased transportation costs for air carriers. It has been estimated that 15 to 20 air crashes in the United States in 1962 could be attributed to air pollution.

To these health and economic hazards we may add the nuisances of irritated eyes, unsightly haze, soiled clothing and buildings, and unpleasant smells. Air pollution makes life difficult, costly, and unpleasant.

Air pollution is no respecter of persons, property lines, community boundaries or State lines. Subject only to the laws of nature, it moves across the face of the earth in the envelope of air which surrounds and sustains us. Air pollution is local in origin, but its effects are widespread. Only a forceful and coordinated attack on the problem will bring us to a meaningful solution.

Our supply of air is limited. It cannot be increased. The supply of air is fixed as are our supplies of other natural resources such as coal, petroleum, iron ore, uranium, and water. We realize that these are not limitless and must be conserved. We must take the same view of our air resources.

Our population is increasing, and our standard of living is going up. Our industries, homes, and office buildings and motor vehicles take the air, combine it with fuels and return the air polluting compounds to the air. The more we prosper, the more we foul the air we breathe.

Approximately a ton of air is required for every tank full of gasoline used by a motor vehicle. The billion gallons of fuel consumed annually by motor vehicles in the United States use 94 trillion cubic feet—640 cubic miles of air.

Other fuels need comparable quantities of air. Burning a ton of coal consumes about 27,000 pounds of air, and a gallon of fuel oil about 90 pounds of air while approximately 18 pounds of air are used in burning a pound of natural gas. About 3,000 cubic miles of air must be provided annually to satisfy the oxygen requirements of the fossil fuels presently used in the United States alone.

If we do not halt the present rate of pollution from all major sources we will be heading down a one-way road to physical and economic disaster.

We are doing something about air pollution. But our efforts have been late in coming and they have been very limited.

One-third of the States have established programs to deal with air pollution. Most of these, however, are quite limited in scope. Local government programs, where they exist, are generally understaffed and without sufficient financial and trained manpower resources to meet their needs. Only 34 local programs have annual budgets exceeding $25,000. Seven of these are in California. Of the other 51 local air pollution control agencies, 21 tried to function on less than $10,000 per year. In the past decade, despite a 30-percent increase in urban population, there has been, outside of California, no overall increase in manpower to combat air pollution at the local level.

Our Federal air pollution program really got underway, in a very limited fashion, in 1955. Last fall, however, after extensive hearings by our subcommittee, Congress enacted a new and improved Clean Air Act which I hope will be a major weapon in our struggle to keep our air free from dangerous pollution. Its passage by overwhelming majorities in both Houses of the Congress with the strong support of the administration is concrete proof that the Federal Government is convinced that air pollution presents a genuine threat to the health and economy of our entire Nation.

The Clean Air Act, which was signed into law by President Johnson on December 17, 1963, is based upon the realization that air pollution is not confined to a single jurisdiction. It is a national problem requiring

a national program of research, technical assistance, and support. At the same time, we continue to recognize the primary role of local and State programs to control air pollution.

The Clean Air Act marks the beginning of a renewed Federal recognition of air pollution as a national problem, demanding attention by and support from all American citizens.

The act will not of itself lift the veil of smog which too often conceals the faces of our great cities, but it will in several important ways assist those cities in their struggle for cleaner air.

The act authorizes the U.S. Department of Health, Education, and Welfare, for the first time to grant Federal funds to help local, State, and regional air pollution agencies initiate, expand, or improve their programs. It outlines procedures for Federal action to cope with interstate as well as certain intrastate problems; and it expands the research, training, and technical assistance programs the Department has conducted and supported for the last 8 years.

The act singles out for special attention two of the major unsolved air pollution problems, motor vehicle exhaust and high sulfur content fuels. One entire section of the act is devoted to the problem of preventing the discharge of pollutants from automotive vehicles. The Secretary of the Department of Health, Education, and Welfare is directed to appoint a technical committee of representatives from the Department and from the automotive vehicle, exhaust control device, and fuels industries. That committee is charged with evaluating progress in the development of devices and fuels, and with recommending research which would lead to the development of appropriate devices and fuels. The Secretary is further required to report to Congress, at specified periods, on the progress of measures taken toward the resolution of the automotive vehicle and fuels pollution problem.

In its totality, the Clean Air Act reaffirms and gives impetus to the point of view that the solution of the problem can best be reached through the constructive cooperative efforts of all levels of Government, industry, and the public, all of whom contribute to and suffer the consequences of polluted air.

Air pollution is a major domestic problem. But it can be met and solved; if we plan together and work together, with the help and suggestions of interested and alert organizations such as yours, America can win this battle.

ORDER OF BUSINESS

Mr. McGOVERN. Mr. President——

Mr. BYRD of West Virginia. Mr. President, I yield to the Senator from South Dakota [Mr. McGOVERN], with the understanding that I shall not lose my right to the floor, and that his remarks will be printed in the RECORD prior to the printing of my remarks in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. McGOVERN. I thank the Senator from West Virginia.

ADMINISTRATION STEPS TO RELIEVE THE BEEF SUPPLY SITUATION

Mr. McGOVERN. Mr. President, I have just been supplied a copy of remarks of Secretary of Agriculture Orville Freeman earlier today, in a press conference, on the beef supply problem.

The Secretary summarizes the steps which have been taken by the administration to relieve the situation, including a rollback of imports to the 1959–63 average, stepped up purchases of beef, sales promotion at home and abroad, and the proposed establishment of a Commission on Food Marketing, now in conference between the House and Senate.

The Secretary's statement reveals that there are now buyers representing both Italy and France in the United States seeking to purchase U.S. beef.

Because of the interest in this subject, I ask unanimous consent to have the Secretary's news conference statement on beef printed in the RECORD.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

NEWS CONFERENCE STATEMENT ON BEEF BY SECRETARY FREEMAN

Secretary of Agriculture Orville L. Freeman said today that actions by the administration to reduce beef imports have achieved for this year the objectives sought by those who would restrict imports by law.

The Secretary noted that beef and veal imports in 1964 will be at about the 1959–63 average, the level advocated by many groups in the cattle industry and specified in legislation now pending in the Congress.

"We will not face an import problem for at least 18 months," the Secretary said. "This being the case, it would be a serious mistake to legislate quotas which, while serving no immediate purpose, would weaken the position of our Government in attempting to expand markets for all of American agriculture in the current GATT negotiations."

Secretary Freeman said exports have been rolled back to about the 1959–63 average. At the same time the Department has also cut into the domestic oversupply of beef by stepping up its purchase program and by cooperating with the beef industry in a sustained promotion program and export sales drive. He indicated that the Department purchase program has been increased to the point where purchases in one recent week equaled 5 percent of the total production.

"The administration from President Johnson on down has given a great deal of attention to the very difficult price situation facing cattle producers and feeders during the past 18 months. Briefly, prices of choice fed steers in Chicago dropped from an average of $27.67 per hundredweight in 1962 to just under $24 in 1963 and to under $21 this year.

"With cattle and calves accounting for almost a fourth of total farm marketings, this has a serious effect on the whole farm economy as well as being a highly personal and difficult problem for individual farmers and ranchers. We are deeply concerned. The President has given a great deal of his own time to the matter and has instructed me to give it the highest priority.

"I would like to recount some of the things that are being done—and then to comment on the export-import situation as it affects beef.

"No. 1, the Government has stepped up its purchases of beef. The Department of Agriculture—buying for schools and needy persons—has jumped its purchases sharply. In 3 months of the special purchase program, we have spent $52 million for 90 million pounds of frozen and canned beef. Meanwhile, the Department of Defense has also increased its buying of beef.

"Second, the Department of Agriculture is working with industry in vigorous promotional efforts. This is helping to boost retail sales, which most of the larger retailers report are between 8 and 25 percent above a year ago.

"Third, we have created a National Advisory Committee which met here in May and made some very constructive recommendations on behalf of the cattle industry.

"Fourth, the administration has moved to reduce beef imports. The Government has worked closely with other countries which export to us with the result that imports this year will be cut back to the 5-year 1959–63 average called for in legislation pending in the Congress.

"Fifth, the administration has moved to expand our own export markets for beef. A Presidential mission representing the industry and the Department flew to Europe last month and found an export market potential there—especially for our medium grades of beef. The Department signed a market development agreement with the American Meat Institute 2 weeks ago today—and the program to seek new markets in Europe is already underway. Exploratory sales have already been made in Western Europe.

"Sixth, buyers representing both Italy and France are now in this country seeking to purchase U.S. beef.

"Finally, the administration has asked the Congress to establish a Commission on Food Marketing to study marketing costs and margins in the wholesale and retail marketing structure. This legislation has now passed both the House and the Senate, and is now awaiting a conference to iron out differences.

"With the cooperation of our major beef suppliers, we now expect shipments of beef and veal to the United States this year will be one-fourth below last year—or about equal to the 1959–63 average. Certainly this achieves the objectives of the legislative proposals to restrict imports for at least a period of 18 months. At the end of that time, we can reassess our situation.

"But for now, legislation to establish quotas would weaken our position in the so-called Kennedy round negotiations at Geneva. In those negotiations, we will be working toward more liberal trade arrangements throughout the world, and particularly to insure access to the Common Market nations for American agriculture. To carry forward these negotiations in the shadow of a major protectionist act by our own Congress—repudiating voluntary agreements—would certainly create new resistance, especially if the commodity affected were one that would not be immediately helped by such protection.

"This is not to overlook that the United States is the only important cattle-producing country that does not now have major restrictions on beef imports. Our trade policy is oriented to increase trade. But if that policy is not accepted among other nations—if it fails to get results—then we will reexamine our position and act accordingly for beef and other agricultural commodities. Meanwhile, we have at least 18 months of grace, during which we can expect little or no import problem in beef and veal.

"The Geneva negotiations could affect the future course of expanding trade throughout the world. Every American, as well as every farmer, has a stake in what happens to agricultural trade prospects. We export today what we produce on about 1 out of every 4 acres we harvest. Agriculture has consistently been a dollar earner in export trade. Farm exports this year alone will amount to a record $6 billion, and some $4.2 billion of that will be commercial sales for dollars. Some States such as Illinois and Texas, export farm products of greater value than the value of imports of beef into this country. Most States export farm products of substantially greater value than the value of beef imports into those States.

"In order to develop programs to correct the problem of low beef prices, we must face

realistically the fact that the major cause is domestic overproduction.

"I might point out that since feed cattle prices have not increased under the Department's action of the past 3 months, it seems fair to assume that prices would have been still lower without these actions. Beef cattle numbers have increased from 43 million to 79 million since 1950, and the number of cattle on feed in major States has doubled since that time. The resulting increase in fed beef production within the United States has simply overwhelmed the market—even in a prosperous nation where people are eating more beef than ever."

ORDER OF BUSINESS

Mr. HART. Mr. President——

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that I may yield to the Senator from Michigan [Mr. HART], without losing my right to the floor, and with the understanding that his remarks will be printed in the RECORD prior to the printing of my remarks in the RECORD

The PRESIDING OFFICER. Without objection, it is so ordered.

THE CIVIL RIGHTS BILL—EXPRESSIONS OF OPINION

Mr. HART. Mr. President, as the Senate aproaches a very significant vote, I ask unanimous consent to have printed in the RECORD three expressions of opinion on the civil rights bill.

The first is a stimulating address which was delivered by the senior rabbi of Temple Beth'el of Detroit, Dr. Richard C. Hertz. He delivered the address at a convocation on civil rights at Wayne State University. The convocation was sponsored by the Metropolitan Conference on Religion and Race, and was an interfaith event.

There being no objection, the address was ordered to be printed in the RECORD, as follows:

ADDRESS OF RABBI RICHARD C. HERTZ, INTERRELIGIOUS CONVOCATION ON CIVIL RIGHTS, WAYNE STATE UNIVERSITY, APRIL 28, 1964

There is assembling this very day in the Nation's Capital an Interreligious Convocation on Civil Rights, representing Roman Catholic, Protestant, and Jewish leadership, both clergy and lay leadership, in order to demonstrate in the Nation's Capital and in the offices of the Senators of the United States, our common concern on behalf of the resolution now before the Senate. The House has already passed the civil rights bill, H.R. 7152, by an overwhelming majority. It now remains for the Senate of the United States to speak and to vote.

We are here today in order to parallel in Detroit what is going on in Washington and all over the country this very day. In cities throughout the Nation, there will be exhibited a concern on the part of the religious leadership of the country with the demonstration today in Washington.

We are here to voice our concern over what is happening to civil rights in America, and especially to the civil rights bill that is now in the U.S. Senate.

We are here to demonstrate our responsible actions in an orderly manner guaranteed by the Constitution—the right of peaceful assembly. We are convinced that civil wrongs do not bring civil rights; that civil disobedience does not bring equal protection under the law.

We are not here today to implant disregard of the law in the young generation who sit as part of this audience. As a matter of fact, Friday of this week, May 1, will be observed as Law Day. We believe in law. We believe that law is a powerful instrument for education and equal opportunity. We are here today because we want a law passed by the U.S. Congress, a very certain, definite law about civil rights.

We are here because we want no white backlash movements that will oppose Negro grievances due to any reckless demonstrations. We are here today because the responsible leadership of our community, the Archdiocese of Detroit, the Council of Eastern Orthodox Churches, the Jewish Community Council of Metropolitan Detroit, and the Metropolitan Detroit Council of Churches—the responsible leadership of the community—feels it has the right and the duty to protest and demonstrate our legitimate concern over what is happening to the civil rights bill in the Senate.

We, therefore, are here to tell our city and our community that thoughtful people have come together at this hour, on this great campus of Wayne State University, to say to our city and our Nation:

We have had enough of filibusters.

We have had enough of delay and doubletalk.

We want this bill pasesd and we want it passed—not sooner or later, not next summer, not next fall—but now.

We are here to say to America—as it is being said all over the Nation—from the steps of the Capitol in Washington, down into every hamlet and city of our country: this is not the Negroes' battle. This is the battle for the conscience and for the soul of America.

The central issue involved, as we see it, is justice, and there can be no justice for any of us while one-tenth of our people are kept in the state of second-class citizenship. If the indivisability of justice remains our touchstone through the long dreary weeks of Congressional discussion, then the outcome must be a strong new shield to defend and to make real the constitutional guarantee of equal treatment for every citizen.

We have heard from the President that a national assault on poverty and on illiteracy coupled with the reassessment of individual attitudes and practices, is now in the making. But we believe that the start for making this country into the land of the free for all of its citizens lies in the passing of the kind of legislation that both President Kennedy and President Johnson have tried to seek—legislation that would bar discrimination in employment, in voting, in access to stores, restaurants and other places of public assembly, and public accommodations.

Congress has been laggard, all too laggard, in the great civil rights revolution that has been shaking the Nation. There should be debate, but there is neither need nor excuse for hippodrome tactics on or off Capitol Hill.

This audience and those who are listening to me on the radio do not need to have spelled out the specifics of the bill before the Senate. Indeed, the bill changes from day to day with new crippling amendments added every day.

America's legislative system demands that this bill be discussed in valid debate—but debate, not filibuster; debate, not battles in the street; debate, not blood, or riot, nor police dogs. Filibuster which prevent the expression of the national will must be denounced for what it is—a calculated conspiracy to obstruct justice and to squander the rights of citizens. This is not just a national crisis—it becomes a national disgrace.

The whole purpose of this bill is not to make bad people good, but rather to make good people safe—safe enough to vote, safe enough to go to places of public accommodations, safe enough for people to be in places of public facilities, safe enough for children to be in public schools, safe enough for their fathers and mothers to get a job.

The aim of the civil rights bill is to correct injustices for the Negro in various areas of American life, injustices that have created uncontainable resentments and justifiable bitterness among Negro citizens. These are injustices that have become an affront to the sense of responsibility of all Americans. This, therefore, becomes a transcendent national challenge, above and beyond politics or sectionalism or economic positions.

But there is another reason why we are here today. We are here because of our deep religious concern for justice. This is a concern which is part of the tradition and heritage of all the great religions represented on this program today. We find that in Christian and Jewish alike a common commitment to justice as a moral imperative.

This is not just a crisis of civil rights. This is a crisis of conscience. Justice for the Negro has been a long time coming. I am not here to catalog the outrages done in the name of democracy nor in the name of freedom. The Kremlin has been doing this all too often to repeat it now. Our vulnerability over what we have done or failed to do for the Negro has been too well rehearsed on the Communist propaganda machines to bear repetition here. Most uncommitted nations have heard it often enough. The United Nations has heard it often enough.

Nor am I here to recite the law's delay, the insolence of office, the denial of dignity, the disenfranchisement and discrimination in this "the land of the free." The Negro has been a second-class citizen and suffered for 300 years and more.

What I am here to say is that civil rights is not a racial problem but a national problem. It is America's problem of conscience. The civil rights crisis in education, housing, employment, and public accommodations is essentially a moral crisis. The churches and the synagogues have at long last recognized the moral nature of this crisis and have joined forces today to blot it out.

A new spirit has come over the religious leadership of America. When Martin Luther King, Jr. shamed the Protestant churches, saying that unless the churches recapture the prophetic field, they will become little more than an irrelevant social club with a thin veneer of religiosity, he was speaking right to the heart of the truth.

Catholics were jolted by Pope John XXIII who opened the windows of the church and told the people to go out and mingle with the non-Catholics fighting for justice and peace.

Jews have been reminded by history that the Negro fight against discrimination is the very fight that Jews have been fighting for generations: The fight against prejudice, and bigotry, and hatred.

The result is that in joining forces together as Catholic, Protestant, and Jew, a new power has come to religion—linked together in a new alliance for brotherhood. What we talk about is not just about brotherhood; we talk for specific redress of grievances. This was the signfiance of the Detroit Conference on Open Occupancy held a year ago in January 1963—the first in the Nation. Some of those present today, including myself, took part.

We believe that our Negro fellow citizens have waited too long for religion to recognize the moral nature of his cause. The Negro has learned that the white man's heaven is the black man's hell. He is tired of waiting for freedom from discrimination in employment, from segregation in education, from ghettoization in housing. He wants his freedom and he wants his freedom now. He is not asking to receive jobs because of race,

color, or creed—only that he not be denied them because of race, color, or creed.

You remember the freedom march to Washington last summer? We have heard much about it as a great demonstration, but one point that was not particularly well remembered was the speech that Rabbi Joachim Prinz of Newark, N.J., made in an address that ought not to be forgotten. He said, "When I was a rabbi of the Jewish community in Berlin, under the Hitler regime, I learned many things. The most important thing I learned under those tragic circumstances, is that bigotry and hatred are not the most urgent problem. The most urgent, the most disgraceful, the most shameful, the most tragic problem is silence. A great people which created a great civilization had become a nation of silent onlookers. America must not remain silent. It must speak up and act and not for the sake of the Negro, but for the sake of the image, the ideal, the aspiration of America itself."

What he was saying that day is what Edmund Burke reminded us in words that have always been a motto for me: "For the triumph of evil, it is only necessary for good people to do nothing."

This is our concern. I speak not just as a rabbi. I speak not just as a Jew fighting for Negro rights. I speak as a Jew fighting for what is morally right and decent. I speak for freedom and democracy. For when there is equality of opportunity for all citizens, when they can live and not be ghettoized to restricted areas as in a pressure cooker, or corralled in some dilapidated central city scheduled for the bulldozer of urban renewal, only then can we dare to call this city of Detroit a worthy city of America.

This, then, is why we are here today: To protest, to demonstrate, to say to our city and to our neighbors, that what is right with the civil rights bill is that it must be passed. This bill, H.R. 7152, is meant to assure all citizens regardless of race, color, religion, and national origin their equal rights in voting, in access to hotels, theaters, and other places of public accommodations, in other public places such as libraries, parks, education, and federally assisted programs and employment.

We say that this bill must be passed now.

This is our concern and we want to know what the U.S. Senate is going to do about civil rights.

We want to know whether America is going to have a long, hot summer over civil rights with blood in the streets, or whether the U.S. Senate is going to hear the will of the people.

America is at a crossroad. There is no turning back. We must go forward boldly and courageously to put our religious preachments about justice into practice, into action.

We must be strong in our own moral convictions about civil wrongs; strong in our determination to right those wrongs. We must be fearless in our decision to stand up where we are and be counted; to stand up for civil rights, to stand up for justice, to stand up for brotherhood, and in this crisis, to stand up for America.

Mr. HART. Mr. President, I also ask unanimous consent to have printed in the RECORD two of the many letters—literally thousands of letters—that have been received by me in recent weeks. These statements express perhaps more movingly than many of the magnificent speeches that we have heard in recent weeks a point of view which I hope will prevail tomorrow. The first is from a Negro college graduate by the name of Mrs. J. L. Parker, of Detroit. The second is from a young citizen of Dearborn, Mich., by the name of Mark Veach. Those voices are eloquent even though their styles and composition differ dramatically.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

DETROIT, MICH.,
June 1, 1964.

Senator PHILIP HART,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HART: I am writing in regards to the civil rights bill.

I know that you are voting for this piece of legislation, and I want you to know that you have my full support. I realize that the passing of the bill will not completely destroy or erase the prejudices that have built up and flourished so flagrantly in our country, but I feel that this bill is for what is right, and basically what the Founding Fathers stood for.

I am a Negro. I am very proud to be a Negro. But I am first an American citizen, born and raised in this country. I am not asking for anyone to give me anything on a silver platter, but I would like to have the opportunity to be able to advance as far as I can, to be able to walk in and apply for a job, and be accepted because I am right for the job.

At times I feel so degraded and depressed knowing that I possess a college education and knowing that I am denied the right to advance on my own merits and qualifications, that I am underemployed, that I am denied the right to live in certain areas. Why? Simply because my skin is black.

I am not too concerned about the social aspects. All I want is to lose this feeling of inferiority, to be able to hold my head high, to lose this feeling of degradation.

So, sir, if it is in your power, do what you can to enable all people in my position to really be proud of our country.

I can't help but admire you on your stand, and I sincerely believe that what we all want will come to pass, simply because this is what is right.

God go with you.

Sincerely,

Mrs. JOHNNIE L. PARKER.

DEARBORN, MICH.,
May 21, 1964.

DEAR SENATOR: Please pass the civil rights bill because when the three kings went to Bethlehem on the first Christmas one of the kings was colored. So if the one who was colored was good enough for Christ he is good enough for me.

Sincerely yours,

MARK VEACH.

Mr. HART. Mr. President, I ask unanimous consent that some of the material that has been collected in a mimeograph publication of the sixth grade of the Central School of East Lansing, Mich., be printed in the RECORD so that all of those may be available to Senators as we approach the rollcall tomorrow.

Interestingly, the sixth grade of the Central School of East Lansing has been studying the Federal Government over much of the present year under the direction of their teacher, Josephine Bartlett. Many of the students, as the foreword of the publication shows, have been following the civil rights debate.

Their teacher in the foreword says:

Many had said, "I wish we could vote on this bill."

The publication expresses their thoughts and speaks clearly and strongly their feeling with respect to the decision that the Senate ought to make tomorrow. These are the makers of American opinion tomorrow—the tomorrows of the years that confront these youthful citizens. I think these excerpts from their publication "Freedom" should be available to each Senator as we approach the vote tomorrow.

There being no objection, the publication was ordered to be printed in the RECORD, as follows:

FREEDOM

(Central School, sixth grade, East Lansing, Mich.)

FOREWORD

(By Josephine Bartlett, teacher)

Throughout the year the sixth grade studied the Federal Government. They had learned much about the Presidency, the responsibilities of the Cabinet and those of Congress. They became interested in legislation before Congress, particularly the civil rights bill.

In their realistic study of America, they, as an all-white class, learned about the contributions of Negroes to American life and history. And, they learned about the Negro revolution.

They discussed such affairs, and they wrote about them. Many, in following the civil rights debate, had said "I wish we could vote on this bill." They compiled such materials which they had written pertinent to this issue into this booklet.

In expressing their thoughts and passing them on in this form, they feel that they are actively participating in their Government.

They speak clearly and strongly, these makers of tomorrow. Their prose, their simple verse is the real voice of America. They lobby for freedom.

OUR FREE COUNTRY

(By Heather Cripps)

If our ancestors had not brought the Negroes over to this country, the free country, we wouldn't have this trouble. But, we do so we must do something about it.

I do believe in the civil rights bill and I think all Negroes are entitled to their rights and when they get their rights, if they ever do, they should not misuse them.

Why should we have dominion over someone else? After all, the intention of the Lord was to have created everyone equal, and although it's put down in words in the Constitution, it doesn't seem to be put into action.

The backbone of our country has been the little people. I shouldn't call them little people because all of them have been important in many different ways, including the Negroes. Our Nation couldn't have survived in industrial ways without the Negroes.

When Negroes hear "America the land of the free," sometimes they rebel against the whites because it's not really true. I hope that in the future the phrase "all men are created equal," will be more meaningful and people will use the Golden Rule.

EQUAL RIGHTS

(By Caryn Thornton)

I think everybody should have equal rights. If they're white or black they're still people and they should have the same rights. You shouldn't look at the color of a person. You should look at his character.

CIVIL RIGHTS

(By Charlotte Stewart)

Now Negroes are fighting for their rights. I don't see why white people should turn down Negroes from buying a house or staying in a hotel or motel or even from eating in a restaurant.

The Negroes are just like white men only they are a different color. White people should stop and think about what they would feel like if they were unable to eat in

a restaurant, or buy a house to live in. I think the Negroes should have just as many rights to stay in a motel or hotel as white people do. So I want the Negroes to get their rights.

PLEASE SON! DO SOMETHING!

(By Joy Rimpau)

Those were the days, my son, my son.
Those were the days, my son.
When they thought their rights were won, my son.
When they thought their rights were won.
They were the Negroes, my son, my son.
They were the Negroes, my son.
When the Civil War was done, my son.
It was hardly a thing they'd won.
Things haven't improved, my son, my son.
Things haven't improved, my son.
I hope that you're moved, my son, my son.
I hope that you're moved, my son.

LIBERTY

(By Bill Bisard)

We want our Liberty—
We want to be free.
I believe in liberty
Like any other living being,
White or black.
As they pass
They are our brothers,
Not our enemies.

FREEDOM

(By Roger Weaver)

What is freedom? Ask yourself what freedom really is. Do you think that Americans love and are willing to fight for freedom? Yes? Then why are the Negroes in the South discriminated against and prohibited from eating with the whites, from voting, from entering white schools? Why are they given a hard time in finding a home? Just because he is black he can't do those things.

Many Negroes do not have an education. Why? Because they were not allowed to enter good schools. When they do try to enter schools or vote, they are fined or jailed for violation of a law that was made against the U.S. Constitution.

The Negroes aren't breaking any laws. It is the whites who are breaking the laws.

ARE YOU FOR THE CIVIL RIGHTS BILL?

(By Barbara Walsh)

They say the Negroes have their rights
Then how come all the mobs and fights
Some of the whites are filled with hate
And the Negroes can only guess their fate
The Negroes hope the bill will go
Now their standard of living's too low
For then they'd live much more humane
And their children wouldn't feel the pain.

FREEDOM

(By Pamela Van Zanten)

Freedom is like a cloud in the sky,
Nobody owns it, not you nor I.
Freedom is like a bird in a tree;
He's setting an example for you and me.
Freedom is like the wind in a storm
Where many humans are left all forlorn.
Freedom is like a tree in a forest,
Like angels busy singing a chorus.
Freedom is like a babbling brook;
Freedom is something we mustn't overlook.

FREEDOM FOR NEGROES

(By Pam Van Zanten)

I believe that Negroes should have more rights, the right to go places and to stay where they like, to go to schools without white people blocking the way to education.

Someday I believe that the Negroes will become the leaders of the United States and repay the white people for all the misery and injustice done them when they first came to our country.

Someday their rights will be given them, and I hope it will be soon.

THE WORLD I DO NOT KNOW

(By Becky Vore)

Why did you bring me here—
You came to me
And put out your hand
And in my misery I took it.

You said I'd be happy
You said I'd be free
And then, you put chains on me.

You showed me desolation
You showed me slavery and hate
And then you left me here
In a place I should not be,
In a world I did not know.

OUR WORLD TODAY

(By Connie Mercer)

Our world today has more trouble than ever before. Whenever a Negro moves into a white neighborhood white people move out, jut because a Negro moved in. That I don't understand.

Personally, I would not mind living next to one if he was a very nice person and if he kept his house and yard up.

I think Negroes should have more rights. I think they're being mistreated.

They can't go into a restaurant and get a decent meal or a hotel or motel for a decent rest. What's wrong with them? Their money still has the same value even though their skin is a different color. How would we like it if it was the other way around? I still say Negroes should have just as many rights as we.

PREJUDICE

(By Carolyne Cantlen)

Why can't he get an education?
Why does he have to get up and pack?
Why can't he have fun?
Is it because he's black?

Why can't he find work?
When he does, why does he have to break his back?
Why is he treated like dirt?
Is it because he's black?

ANOTHER REVOLUTION

(By Meg Beegle)

In 1865 Negroes were declared free. But were they really free? What does freedom mean? It means a home of your own, a right to vote like all other American citizens, a right to learn, to go to school, a right to sleep in a hotel for the night, a right, a right. Negroes are alive. They breathe, talk, and sing. They have veins and blood, and some were even kings. Why do we, humans too, think we're better than they. We're no more intelligent nor kind.

BOTH BLACK AND WHITE

(By Sally Janson)

Both black and white
Can laugh and play
Both black and white
Should have their say.

Both black and white
Should do as they please
Working and talking
With complete ease.

Both black and white
Can love and give
Both black and white
Have a right to live.

For liberty
Is a sacred thing
Not to be taken
From a human being.

WE WILL FIGHT

(By Fritz Beeson)

I am writing my composition as though I were a Negro. I am trying to put myself in the place of a Negro because I sympathize with him. Although I am a white person, I still think and hope they will win in their civil rights battle. Here is my composition:

January 1, 1863, freedom or was it? Not quite.

Now, 1964, we still fight for freedom hoping that we will win someday. Someday soon. We have fought in Birmingham, in Chicago, in Detroit, in Mississippi, in Alabama, in Georgia, in Florida, in every prejudiced part of America.

Today as tomorrow we'll fight on until we win, and win we must. It won't be easy but we have the spirit to win.

Some white people have helped us. Some have definitely opposed us. Still we will fight. We will not use guns or bombs but we will fight. We will fight through demonstrations. Some may fail and we may be jailed but we'll fight on. And we will win.

CIVIL RIGHTS

(By Janice Wilson)

Civil rights is a familiar phrase;
It is talked about often these days.
The Negroes' fight is far from won
Because much is said, but nothing done.

NEGROES AND THEIR RIGHTS

(By Allan Rood)

Why are people prejudiced against Negroes? In fact some Negroes are nicer, better, and more intelligent than some whites. Negroes need rights. Why can't Negroes get houses, stay in motels, hotels, or eat in restaurants? Why? Because of their color? What have they done to us? Negroes and their history are hardly known. And their history is just as important as ours.

THE NEGROES' RIGHTS

(By Tia Maxwell)

I think that Negroes should be entitled to have their rights to vote and to buy houses where they can. They should be entitled to go to school with white children without fear of fighting and being kicked around, and left out by the others. They should be able to go to motels and restaurants along with other people. I hope that in the future the Negroes will have as much independence and equality as most Americans do.

NEGRO CRISIS

(By Lynn Budde)

Through the past and to present years,
Negroes haven't rebelled their troubles and fears.
Their yearning at first a spark, not bold,
Has become a roaring fire we can no longer hold.
Some Negroes are now deciding their fate
Slavery is more than one can tolerate.
Negroes I feel shouldn't be the ones
To ask for freedom they've already won.

PUBLIC ACCOMMODATIONS

(By Tim Allen)

A Negro moves in
The whites move away;
Let's talk to these whites;
What will they say?
"I don't dislike Negroes
I'm sure I do not;
I just moved away
To a nicer spot."
Another says,
"I enjoy my cash;
It'll hurt my business—
Civil rights is too rash."
Freedom and rights
Are easy to root for
Except when a Negro
Moves in next door.

FREEDOM FOR ALL

(By Tim Allen)

What race, what color
We don't care.
We all eat food;
We all breathe air.

We must pass "civil rights"
No "why" and no "how"
Not after tomorrow
We must pass it now.

CIVIL RIGHTS

(By Carolyn Sarafyan)

How would you like to be a Negro? I wouldn't because of how some of us treat the Negroes.

Suppose you were a Negro and you had traveled all day long and you and your family were very tired. Then you went to a motel and the manager said the last room had just been rented for the night. Then when you went outside you saw 5 cars for 20 rooms. Wouldn't you be angry? Who wouldn't? Don't you now realize what a hard life a Negro has?

Don't you wish people like the manager would wake up and realize what difficulties a Negro has and it's partly their hatred and their fault?

What's wrong with Negroes having the same rights as we do? Why are people so against it?

These are just some of the reasons why I want the civil rights bill to go through.

A FREE LAND

(By Nancy Hocking)

I think that Negroes and whites
Should have equal rights.
What are the feelings of a Negro?
Does any white man know?
There are so many fights
About the bill on civil rights.
There's only one conclusion
And it's not an illusion.
This is a free land
Where all people can stand.

INTERVIEW WITH A HUMAN BEING

(By Mark Merton)

They say there is Communist influence in the Negro riotings of today, but I can't understand how this can be. Since we can't decide whether or not to give fellow humans their rights they seem to be taking things into their own hands. I wish everyone would stop their joy and festivities right now and look at the situation. It is a grim one.

Right now I am going to talk with a human being. You must know the fact that he is a human being. He has brown skin. Because of this he is classified as a Negro. I have a white skin. I am classified as a Caucasian. This fellow goes to the school that I go to. He goes to the fourth grade. His name is Matt Evans. I am going to ask him a few questions. Matt is going to answer them.

I. Matt, do you like this town?

MATT. Sure, I guess it's OK.

I. Do you feel that anyone doesn't like you here?

MATT. No.

I. When you were in Florida, did you like it?

MATT. Yeah.

I. Did anyone not like you? Did you get along well?

MATT. Yes. I got along fine.

Here there is no prejudice. From Matt's answers I gather there is no prejudice in Florida. Then, why is there prejudice in Alabama and Georgia?

I suppose there is no reason except that southerners once were masters and want to be the masters now. I hope civil rights passes. I don't want any watered-down versions either. I hope I proved my point.

ALL MEN CREATED EQUAL

(By Nancy Diggins)

Are all men created equal? Sometimes I think this is untrue. I wonder if a Negro child ever hopes to be President. What would happen if a Negro did become President? What would happen to our rights? Those last two questions come to my mind immediately when anyone mentions the civil rights bill. I do believe though, that the bill should definitely go through.

It makes me mad to think that Oswald would surely have been sentenced to death for the assassination of President Kennedy, but the killer of Medger Evers will more than likely get a light sentence, if any.

The civil rights bill is a good thing, and after a hundred years of waiting, they, Americans, are ready for the final step of civil rights, complete rights like ours.

AS I WALK ALONG

(By Liz Telford)

Hatred, hatred,
As I walk along.
Prejudice, prejudice,
I think some whites are wrong.
Freedom, freedom,
It is only fair.
Hatred, hatred,
Brother Negro, don't despair.

THIS WORLD

(By Becky Vore)

Darkness
This day of blackness,
This world of hate.

Prejudice
People fighting,
People killed.

Freedom
A beautiful thing,
There is no such thing
For Negroes.

Hatred
A fight,
A never ending fight.

Darkness
So much darkness —
When will it end?

Death
Freedom,
The very first moment of freedom
For me.

FAIRNESS

(By Margaret Schoonmaker)

The whites don't treat
The Negroes fair
It's just not right
That they don't care.

All the Negroes want to do
Is just to be treated
Like me and you.

COMPLETE FREEDOM AT LAST

(By Ralph Evans)

I hope complete freedom will come at last in the civil rights bill. It doesn't have to come for the whites. The Negroes are the ones who really need their rights. The Negroes have made many contributions to our country in industry, business, music, art, sports, and countless other ways. I hope the Negroes can finally win their freedom. From early days through time today, our country could not be as great as it is without the Negroes.

THE GOLDEN RULE

(By Ted Press)

A person that disobeys the church should not be a Senator. The Bible said that all men were created equal. What do some people think they are. Don't they know that they are disobeying the Bible? They say that the civil rights bill is sugar coated too. Well, jellybeans are sugar coated, and don't jellybeans have good stuff inside?

FEDERAL POWER COMMISSION—APPOINTMENT OF CHARLES ROSS

Mr. PROXMIRE. Mr. President, will the Senator yield?

Mr. BYRD of West Virginia. Mr. President. I yield to the Senator from Wisconsin with the understanding that I shall not lose my right to the floor.

Mr. PROXMIRE. I thank the Senator from West Virginia.

Mr. President, for the past few days I have been making a series of statements on the floor in support of the reappointment of Charles Ross to the Federal Power Commission. There are many eloquent arguments for the reappointment. Certainly the most telling in my view is the record of the Federal Power Commission since Mr. Ross was appointed. I should like to give a brief list of some of the things that the Federal Power Commission has accomplished since Mr. Ross became a member.

First. It has prescribed guideline prices which are ceilings above which price increases are suspended and new producer sales applications are rejected;

Second. It has taken steps to fix the initial inline rate in all areas where either the producers or the consumers have contended that the guideline ceiling is inappropriate;

Third. It has established procedures which have drastically shortened the time required to process both contested and uncontested certificate applications; a routine certificate application is now completed in 6 weeks to 2 months;

Fourth. It has encouraged reasonable settlements of outstanding producer rate and certificate proceeding so that all parties could enjoy firm prices at a reasonable level, subject only to the outcome of the area rate proceedings as applied to prices in effect after the conclusion of those proceedings;

Fifth. It has set for immediate disposition those few rate increase proceedings which, if allowed to go into effect, might trigger many new price increases under outstanding certificates.

The results of these various efforts are impressive. Field prices of natural gas have practically leveled off in the past 2 years after a steady period of rapid climb. In the period between July 1, 1961, and January 31, 1964, Commission orders have resulted in refunds by producers of $55 million and prospective reductions of rates amounting to $33 million annually. Moreover, these figures do not reflect the limits of the savings to consumers resulting from other Commission regulatory efforts. Since the development of the area pricing concept hundreds of permanent and temporary certificates have been granted which authorized producers to initiate service at prices below those provided under contracts and applied for in their applications.

The halt in the upward spiral of producer prices has benefited consumers. The purchased gas costs of the pipelines have been stabilized and in the past 2½ years the Commission has ordered the pipelines to refund approximately $550 million in cash and to reduce rates for the future. Recent evidence of the success of the Commission's program was the announcement of the Bureau of Labor Statistics on March 31 that the major factor in the reduction in the cost

of living index in February of 1964 was the gas service refunds ordered by the Federal Power Commission.

Mr. President, the appointment is crucial because it is recognized by all those who have followed the Federal Power Commission that those votes have been on a 3-to-2 margin with Mr. Ross in the paper-thin majority. If he is replaced by a Commissioner who is less sympathetic to that kind of progress and regulation, there is no question in my mind that the consumers of America will suffer.

I thank the Senator for yielding.

CIVIL RIGHTS ACT OF 1963

The Senate resumed the consideration of the bill (H.R. 7152) to enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States to provide injunctive relief against discrimination in public accommodations, to authorize the Attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes.

AMENDMENTS NOS. 1041 THROUGH 1044

Mr. COOPER. Mr. President, will the Senator yield?

Mr. BYRD of West Virginia. I yield to the senior Senator from Kentucky.

Mr. COOPER. I thank the Senator for his courtesy.

Mr. President, I send to the desk four amendments to the bill H.R. 7152. I ask unanimous consent that they be considered read and be considered as meeting all the requirements for the offering of amendments before the vote on cloture.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. COOPER. I shall take a minute or two to explain the purpose of these amendments. I know that once cloture is voted, it is very doubtful that any amendments will be accepted other than those which receive the approval of the majority leader and the minority leader. I submit these amendments because they reflect views that I have stated in the past, and which I have presented as proposed legislation, in the past 4 or 5 years. These amendments also relate to several titles of the present civil rights bill.

My first amendment would provide a new section to the public accommodations section title II. The section which I offer would place title II squarely on the basis of the 14th amendment. Last year the Senator from Connecticut [Mr. DODD] and I, before the administration bill was offered, introduced a bill which would prohibit discrimination in public accommodations. It was based solely upon the 14th amendment. It is still my belief that if the court had had the opportunity to pass upon the applicability of the 14th amendment to discrimination in public accommodations, it would have declared the right to use public accommodations to be a constitutional right. I make that statement, first, because I believe, the civil rights cases of 1883, have been misconstrued in the course of this debate. The Supreme Court stated in that decision that it was not passing upon the question of whether the right to use public accommodations was a constitutional right. It merely denied relief in that case because the Federal statute, in those cases, was not drafted in a manner which referred to State action under the 14th amendment, as its constitutional basis. I cannot believe that after all these years it has suddenly been found that discrimination in public accommodations is an obstruction of interstate commerce. I think interstate commerce is a valid ground upon which to base the right to use such accommodations, but I think the 14th amendment is a much stronger ground; it specifically provides for equality, and I think it is a better basis for a bill, which deals with the rights of individuals. I also believe it is more appropriate on moral grounds.

I offer it as another section—section 202(b). It would follow the present section 202; it would not supplant nor be a substitute for any of the present language of the bill. I offer a second amendment to title II, in the event that Congress maintains the commerce clause as the basis for that title. If the commerce clause is retained as the basis of title II there will be no constitutional right defined or involved. It would then be a question for the judgment of Congress as to how large the exception under 201(b)(1)—the so-called Mrs. Murphy exception—should be. My amendment would enlarge the exclusion in the case of rooming houses. I believe it would provide a more practical basis for the exception, by excluding establishments which provides lodging to transient guests, which contain 10 rooms—rather than 5 rooms—for rent or hire.

My third amendment relates to title I. Title I, with the exception of the literacy test presumption in section 101(b), is, in its language, almost the same bill which Senator DODD and I introduced last year. I have two amendments to title I.

First, I have always believed that a sixth grade presumption of literacy, as established by Federal law, would not be constitutional; it would establish a qualification for voters, a right reserved to the States under the Constitution. I may be wrong; but this is my understanding of the Constitution, and the cases on this subject. My amendment would strike section 101(b) of title I because I believe it is not constitutional.

My fourth and final amendment would reach the proviso in title I—section 101(a)(2)(C)—which I believe would give to the Attorney General authority to enter into agreements with some certain States indicating that their literacy test requirements are valid, while attacking literacy tests as used in other States as being invalid. It seems to me a very curious thing that the Attorney General could single out some States and say that they should be required to meet the requirements of the literacy test provisions of the bill while telling other States they need not do so. I do not believe such wide discretion should be vested in any one official, to sit in judgment on the validity of such provisions. The constitutionality of such State literacy laws, if called into question, should be a question for the courts to decide. I doubt if the courts would hold that the Attorney General could single States out in this manner, and enter into agreement with some and not others.

I would strike the proviso in section 101(a)(2)(C) and make the literacy test requirement under section 101(a) applicable in an equal manner to all States.

As I stated in the beginning, I doubt that any of these amendments, mine or any others, will be voted upon very seriously. I offer them because they represent viewpoints that I have expressed in speeches on the floor of the Senate, and in bills which I have introduced over a period of 3 or 4 years.

I offer there amendments and say that I expect to support strongly the substitute which has been offered by Senator DIRKSEN and Senator MANSFIELD, and that I expect eventually to vote for the civil rights bill.

I thank the Senator from West Virginia.

The amendments (Nos. 1041, 1042, 1043, and 1044) are as follows:

AMENDMENT NO. 1041

On page 9, line 8, immediately after "Sec. 202.", insert "(a)".

On page 9, between lines 14 and 15, insert the following new subsection:

"(b) (1) All persons shall be entitled, without discrimination or segregation on account of race, color, religion, or national origin, to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any public accommodation which is operated under State authority.

"(2) For purposes of paragraph (1), the term 'public accommodation' means any place of business which holds itself out as offering to the public goods, services, facilities, or accommodations for sale, use, rent, or hire, including but not limited to the following:

"(A) any hotel, motel, or other place of business engaged in furnishing lodging;

"(B) any motion picture house, theater, sports arena, stadium, exhibition hall, amusement park, or other place of business engaged in offering amusement or entertainment; and

"(C) any retail shop, department store, market, drugstore, gasoline station, or other place of business which keeps goods for sale; any restaurant, lunchroom, lunch counter, soda fountain, or other place of business engaged in selling food for consumption on the premises; and any other place of business where goods, services, facilities, or accommodations are held out to the public for sale, use, rent, or hire.

"(3) For purposes of paragraph (1), a public accommodation is operated under State authority if the State in any of its manifestations becomes involved to some significant extent in its operation or regulation, as where such accommodation is operated, or the business of such accommodation is conducted—

"(A) under a State license, or

"(B) subject to conditions, regulations, or requirements imposed for the protection of the public by or under a State law which imposes civil or criminal penalties for failure to comply with such conditions, regulations, or requirements.

For purposes of this paragraph, the term "State license" includes, with respect to any public accommodation, any license (by whatever name designated) which is required, un-

der the laws of the State in which such public accommodation is located or under rules or regulations of any agency or instrumentality of such State, as a condition for operating such accommodation or conducting the business of such accommodation.

"(4) For purposes of this subsection, the term "State" includes the District of Columbia and the political subdivisions of a State.

"(5) Notwithstanding the exception contained in section 201(e), the provisions of paragraph (A) shall not apply to a bona fide private club or other establishment not open to the public."

AMENDMENT NO. 1042

On page 3, line 14, strike out "including such special provisions as ", and insert in lieu thereof "which".

AMENDMENT NO. 1043

On page 3, beginning with line 25, strike out all through line 10, on page 4.

On page 4, line 11, strike out "(c)" and insert in lieu thereof "(b)".

On page 4, line 13, strike out "or (c)".

On page 4, line 19, strike out "(d)" and insert in lieu thereof "(c)".

AMENDMENT NO. 1044

On page 7, line 4, strike out "five" and insert in lieu thereof "ten".

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that I may yield to the Senator from New Jersey with the understanding that I do not lose my rights to the floor and that any subsequent remarks will not constitute an additional speech.

The PRESIDING OFFICER. Without objection, it is so ordered.

INVESTIGATION OF ROBERT G. BAKER, BY THE COMMITTEE ON RULES AND ADMINISTRATION

Mr. CASE. Mr. President, I was interviewed this past weekend on a television program shown in New Jersey as well as in the New York City and Philadelphia areas. My interviewer was James McCartney, Washington correspondent for the Chicago Daily News. We talked mainly about the Bobby Baker case.

Some of the points brought out by Mr. McCartney deserve a wider audience. It was Mr. McCartney who first reported in his paper that Bobby Baker had told a visiting group that he had 10 Senators in the palm of his hand. During our interview, Mr. McCarthy brought out some additional details which make the Bobby Baker case seem all the more shocking. According to Mr. McCartney, when he confronted Baker with his reported statement, Baker only smiled broadly. He did not deny it. Still worse, upon further checking, the reporter discovered that Baker had made this same boast of his influence over individual Senators on at least three different occasions over the course of 3 years.

The Senate Rules Committee has shown no inclination to get to the bottom of reports like this. These reports reflect badly not on Bobby Baker alone but on the reputation of this entire body as well. Unfortunately, the job of awakening is being done not by the Senate but by the press and by the public. The mail and newspaper comments that come to my desk daily from all over the country is proof that the country is not content by any means to let the Baker case die. I now ask unanimous consent that more of this editorial support be printed in the RECORD at this point together with excerpts from my interview on television.

There being no objection, the editorials and excerpts of television interview were ordered to be printed in the RECORD, as follows:

PARTIAL TRANSCRIPT OF INTERVIEW OF SENATOR CLIFFORD P. CASE OF NEW JERSEY

(Senator CLIFFORD P. CASE was interviewed by James McCartney, Washington correspondent for the Chicago Daily News, in a program recorded for showing by WOR–TV, New York City, on Sunday, June 7, 1964, at 10 a.m., and by WFIL–TV, Philadelphia. The program was also carried by radio stations WAWZ (Zarephath, N.J.); WCAM (Camden); WFIL (Philadelphia); WHN (New York); WJRZ (Newark); WMVB (Millville); WSNJ (Bridgeton), and WVNJ (Newark).)

Senator CASE. I'm glad to be back on another of my regular reports and happy especially to have with me this time as my guest and interviewer, James McCartney, of the Chicago Daily News, one of Washington's first-rate newspapermen. Actually, Jim's had the added distinction recently of being a Nieman fellow at Harvard.

JAMES MCCARTNEY. Senator, I know you've had a particular interest during my absence in the affair involving Robert G. Baker. I've been particularly interested in this for a long time, and I've been interested in your own activities involved in the broad cause of congressional reform. I've been interested in some proposals that you've made recently that have grown out of the Bobby Baker case. I wonder if we could start by your bringing me up to date on whether you think there's any possibility now of any legislation in this session involving congressional reform.

Senator CASE. Well, my quick answer—and then we can develop it as much as you want—is that I think there is a chance. I think the chance is better than it has been. I still don't think the chance is as good as 50–50, and that's our job—to try to improve it. I think the interest in the Baker case has heightened interest in congressional reform in recent weeks.

Actually, Jim, if I can digress just for a moment, I want to say something about your interest in this matter, which I have known about myself. As a matter of fact, you got me interested in it. It was you who wrote the story, for example, that Bobby Baker had told a group, I think it was congressional interns, that he had 10 Senators in the palm of his hand. This came up the other day when I was testifying before the Rules Committee in support of my bill, the bill which several colleagues have joined me in for some years, for full disclosure as one of the preventive measures to be recommended by the committee, we hope.

This matter came up, and one of the Senators asked, in substance, whether I didn't agree with him that we were hurting the reputation of the Senate in talking about these unfounded rumors, when I mentioned strongly this particular matter which you had first reported. In the first place, it's my understanding, because we don't say these things or pick them up casually either, that you had made your usual careful check of the story before you wrote it; that this was a group of highly adult people—American Political Science Association interns who were here for advance work, these were people trained in the business—and it was to this group that Baker made his statement; that you checked it up and three or four people you talked to said, "Yes, this was so," and you figured that was not bad, but you gave Bobby Baker himself a chance to comment on the statement. Now, what did he say?

JIM MCCARTNEY. Well, this is one of the more interesting aspects of it. When I asked Bobby Baker if he had ever said, "I have 10 Senators in the palm of my hand," he and I were sitting not too far from here up in the Senate restaurant, and a broad smile spread over his cherubic face, and he said (silently spreading hands). It pleased him, I think, a great deal to mention this.

I think probably, if the whole story were known, you would find that Bobby Baker had made this statement not once, or twice, but many times over a period of years in his appearances before groups of this particular kind. I haven't looked this up lately, but I believe my checking on it suggested that he had said it at least three times in three different years, and many people who participated in this particular program thought it was part of the regular routine for him to bring this up. There's a great deal of humanity in this kind of situation because Bobby Baker really did have, I think, a great deal of influence in the Senate and he also was virtually unknown, even here in Washington, by many people who knew a great many things about the Government in other respects.

Senator CASE. In other words—not that there was ever any doubt about this in my mind once I saw it in your paper under your byline—this was an understatement of the facts, rather than an overstatement, and, in any event, thoroughly documented and completely clear as far as the event goes. The curious thing is that, as far as I know—and I would like you to tell me, now maybe since I talked with you last things have changed. Has the committee ever asked you to come before it since last week when they doubted that this had happened to tell them what the story was? Has the committee said anything to you about it at all?

JIM MCCARTNEY. No. I haven't had any contact with the committee.

Senator CASE. This seems most extraordinary. I cannot see, Jim, how the committee feels it has done its job when it lets this kind of thing go, which is really the thing they ought to be interested in—not the number of dollars Bobby Baker may have made or anything else, but the question of whether the Senate of the United States was under the heel, or under the thumb, of some relatively unimportant individual, scarcely more than a youth, who came out of nowhere to manipulate this great instrumentality of government. If the committee does not feel that this is its real job, then I have some despair about the future of the Senate—since I don't really have that despair, I believe instead that the committee will be waked up to its duty by an outraged press, by an outraged public, and by the Senate itself, once it really looks at the thing in its true light.

JIM MCCARTNEY. You believe then, Senator, as I understand it, that the Senate Rules Committee has been less than enthusiastic in its investigation of the case?

Senator CASE. You are so delicate in the way you understate things, Jim, always. Of course, I do, exactly that, and I would put much more emphasis on it. Of course the way you say it, it carries greater weight because of the understatement. The committee has taken the position—not once, but again and again, no matter how heavily taunted, and the same is now true, I am sorry to say, of the administration leadership in the Senate—that its job is not to go out and get the facts, not to get to the bottom of this mess, but to sit and wait to see if somebody comes to it with information voluntarily. Now, that is just about a fair statement, I think, of its position with regard to this matter, and I think it is a shocking thing.

JIM MCCARTNEY. Do you believe, Senator, that Bobby Baker had any particular role, or that the hearings have shown that Bobby Baker had any particular role, in financing the campaigns of any Senators through the State Democratic finance committee?

Senator CASE. Well, the only thing I know in this area, as well as in the area with regard to what he said about 10 Senators in the palm of his hand, is what I read in the columns of the newspapers under the bylines of very reputable reporters. On several occasions in other newspapers, as well as in some stories of your own, stories of this sort, and dealing with this matter, have been written and published and, so far as I know, never denied. Senator X and Senator Y have said that they were offered and refused campaign contributions. In one case, I am quite sure Bobby Baker's name was mentioned directly as the offerer, and in another the person in the background of the offer, on condition that they vote against the filibuster rule change, for instance—rule XXII—or to maintain oil depletion rates the same as they are now, this kind of thing, and that they turned this down.

There have been other stories, as, of course, you know better than I, about Bobby Baker's exercising great influence in the selection of members of committees on the Democratic side, withholding his favor to those who refused to go along with policies that he and his sponsors approved and granting it to those who did go along with him and his sponsors—this kind of thing. Again, the operation of the Senate of the United States, decisions by Senators, taken away from the people elected by sovereign States and used for whatever purpose—I'm sure I don't know, but not for the purposes for which they were sent down here—by Bobby Baker. This, I think, is shocking, and I will not be silenced about it. I think unless we can get somewhere this time, I cannot regard the Senate of the United States as august and as sacred and as fine an institution as I always did in the past.

JIM MCCARTNEY. So the Senate can save itself very simply in this institution by a thorough and deeper attempt to investigate where the money is coming from that Bobby Baker allegedly has helped to distribute and how it may have been used to control votes on key issues in the Senate?

Senator CASE. I'm sure of this, Jim. Now the committee has made a draft report. It's under discussion. I haven't seen it; we've heard a bit about what's in it. We've heard that it has concluded * * * at least the counsel has prepared a report stating that Bobby Baker was bad, that the things he did were not good, and it recites some of them. I'm sure there are leads there to the kind of information that you're talking about. I myself made a suggestion, perhaps before you got back, that the committee ask every Member of the Senate whether he'd had any dealings with Bobby Baker, and, if so, what they were. They turned a deaf ear to this, though I have recently discovered and have given to them a precedent where this was done back in 1894, 70 years ago. So I think we can do the job and I think we will, but only if people like you keep up the pressure and the kind of fine reporting that you've done before.

Thank you so much, Jim, for coming up on the program.

[From the Trentonian, Trenton, N.J.]

CASE INTEGRITY DRIVE GATHERS SUPPORT

(By J. Willard Hoffman)

New Jersey's senior Senator CLIFFORD P. CASE, has given ample assurance that he means to pursue his campaign in behalf of the integrity of Congress, and events of the past week indicate that he is making progress.

Senator CASE is conducting a two-pronged attack, (1) a campaign to get his disclosure bill enacted into law, and (2) a continuing effort to force the Senate Rules Committee to extend its investigation of the Bobby Baker case.

The two aims are, of course, tied closely together. The main issue in the Baker affair is that Members of the Senate were involved in Baker's meteoric rise to affluence; the former majority secretary boasted that he had 10 Senators "in the palm of his hand." If CASE's disclosure proposal had been in existence, it would not have been possible for Senators to conceal any dealings they had with Baker from which they benefited.

Even now, concealment would not be possible if the Rules Committee's investigation were extended to include questioning of Members of the Senate. But the Democratic majority on the committee has carefully refrained from pressing the inquiry that far, and as a result the Nation has been given a totally unsatisfactory summary of Baker's activities, with more unrevealed than was revealed.

Baker was, of course, summarily chopped down; but those who made it possible for him to operate remain sheltered behind Washington's political curtain.

But Senator CASE is unrelenting in his pursuit of the facts, and indeed has incurred the wrath of the Senate's majority party in pressing his demands.

He did not let another chance slip by last week when he testified at a hearing before the Rules Committee on his disclosure bill, which would require each Member of Congress, and each employee in the legislative and executive branches who is paid $15,000 or more a year, to submit annually a financial report to the comptroller general, and would make it mandatory that anyone contacting a Federal regulatory agency regarding a matter before it be so recorded.

CASE said that public disclosure is the most effective way to protect the integrity of the Congress and the legislative process and that the need for such a requirement rests on the simple fact that Congress is not going to police itself, adding that one need look no further than to the current inquiry.

He seems to be gathering support. In the first place, the Rules Committee's special counsel, Maj. L. P. McLendon, has recommended that the financial holdings of Senators be revealed to discourage conflicts of interest. Some Republican Senators are, naturally, firmly behind CASE, along with the Republican National Committee. And among the cosponsors of his bill are three Democratic solons, MAURINE B. NEUBERGER, of Oregon, PHILIP A. HART, of Michigan, and Pennsylvania's JOSEPH CLARK. Another Democrat, Oregon's WAYNE MORSE, said that the "effort of some to offer Mr. Bobby Baker as the sacrifice to public opinion in the hopes of avoiding an inquiry into the activities of Senators themselves is a hopeless effort."

And from his home State CASE received some concrete support when New Jersey's junior Senator, HARRISON A. WILLIAMS, JR., filed a statement of his financial interests as of May 20 and also those of his three top staff members who make in excess of $7,500 annually.

There is no doubt that Senator CASE has got the ball rolling, and there doesn't seem to be any doubt that he is going to do everything in his power to keep it rolling. He has driven it to this point: Unless the Rules Committee widens its Baker investigation to include the questioning of Senators, the public is going to take the view that the Senate as a whole has been indicted on charges of the utmost gravity.

[From the Scranton (Pa.) Tribune]

REOPEN THE BAKER PROBE?

Although a Senate committee has, to all intents and purposes, ended its investigation of Robert G. Baker, resigned secretary to the Senate's Democratic majority, Republicans have not given up hope of reopening the probe.

This was manifest with the appearance before the committee Tuesday of Senator CLIFFORD CASE, New Jersey Republican. Senator CASE demanded that the committee call in and interrogate Senators who may have had dealings with Baker, who is reported to have pyramided his $19,500 salary to $2 million on paper.

The appearance of Senator CASE fomented a row between him and the Democratic majority on the committee which has been severely criticized as having performed a "whitewash" of the Bobby Baker inquiry.

CASE emphasized that the committee "has a sacred duty to go out and get the facts, not just to sit here and listen to what people come and tell it." He pointed out that Baker refused to tell the committee anything of his business affairs and hence, it was the committee's responsibility to seek the information from other sources. These other sources, he made quite clear, included Senators who had had dealings with Baker.

The New Jersey Senator proposed that the committee ask each Senator if he ever had dealings with Baker and the nature of these dealings. Further, he suggested that the Senators be asked if Baker ever gave them, offered them, or offered to get for them any campaign contributions or any help to make up campaign deficits. The Senators should be asked to, he argued, if Baker ever offered or obtained for them any employment or retainer, any preferment in committee assignments or anything of value.

Senator B. EVERETT JORDAN, North Carolina Democrat, the committee chairman, expressed the view that the committee does not have the authority to question Senators.

Senator JOHN J. WILLIAMS, Delaware Republican, who initiated the Baker inquiry, is prepared to meet this objection with a proposed resolution specifically authorizing the committee to summon Senators for questioning.

What will come of this effort to reopen the inquiry is, of course, speculative but there are indications that it will get some Democratic support. How much is questionable, for the overall atmosphere of the situation leans heavily to the suspicion that many Democrats, on and off the committee, don't want a full exposure of the Baker affair.

[From the Daily Home News, New Brunswick, N.J.]

CASE FIGHTS GOOD FIGHT

We have unbounded admiration for the man who fights the good fight when the odds seem to be against him and when the fighting appears to be making little dent upon his opponents.

That's why we are hopeful that some people who are in a position to help the good fight will have the courage to take their places beside the valiant Senator CLIFFORD CASE, of New Jersey, as he almost single handedly in the Senate—but with tremendous support from the press of the Nation—attempts to force the Senate to place the whole story of the Bobby Baker case upon the record.

Senator CASE urgently pleaded with the Senate Rules Committee to send a questionnaire to each Member of the Senate asking about individual Senator relations with Bobby Baker, the latter having taken the fifth amendment and refused to answer these questions himself. The committee turned CASE down flatly, even though the members realize that the Senators themselves now represent the only persons who can give the full picture of the Baker case.

Senator CASE has showed a precedent for the questionnaire which he wants used, a precedent set when a similar procedure was followed in the Senate in 1894.

The Rules Committee cannot be forced to act against its will. But the Senate itself has the constitutional power to punish or expel its own Members. This may not be a direct constitutional duty, but it is a moral duty.

There is so much disturbing fact and unsavory rumor about Bobby Baker and his relations with Senators—including the remark attributed to Baker, that he had 10 Senators in the palm of his hand—that the Senate, as the highest legislative body in the land, owes it to itself and to the people of the Nation to investigate whether there are Senators who should be punished, or expelled, for conduct about which Bobby Baker refuses to talk, under protection from the fifth amendment.

We are disturbed by the failure of other Senators to see the issue as clearly as Senator CASE sees it and to fight at his side the good fight. We are particularly disturbed that the Johnson administration, which today appears to enjoy rather broadly the confidence and the trust of the American people, is not taking firm steps to justify that confidence and trust with respect to the Bobby Baker case. If there is a scandal here, the administration would fare better politically by helping expose it now, rather than wait for the scandal to come to light—as scandals almost inevitably do—later on. Perhaps on the eve of the presidential election.

[From the Aberdeen (S. Dak.) American-News]

BAKER CASE LIKELY CAMPAIGN ISSUE

The explosive debate in the Senate Thursday in connection with efforts to expand the probe of the questionable financial and social activities of Bobby Baker, the Senate employee who went from rags to riches in a few years, was described as the most bitter in many a day.

The result was the Democratic majority, for whom Baker had been secretary, rejected the attempt to learn more about Baker and about the activity of any Senator involved in "giving or receiving campaign funds under questionable circumstances."

This round of the Bobby Baker bout was lost by Senator CLIFFORD CASE, Republican, of New Jersey, who had submitted the proposal to look into alleged illegal and immoral activities of the Senators themselves. Winner of the round was Senator MIKE MANSFIELD, Democrat, of Montana, the majority leader.

But there are many persons well versed in politics who suspect an effort to end investigation by the Senate Rules Committee will not cause the Bobby Baker case to be forgotten.

Enough information was revealed during the investigations and hearings to make Baker and others the objects of suspicion. It would appear that the only way the suspicion can be removed and the guilt or innocence assessed would be by a complete investigation.

If the facts are not established there may be no limit to the allegations that will be discussed during the political campaign this fall.

Senator JOHN WILLIAMS, Republican, of Delaware, is a studious and determined public servant. He has devoted many months of his time trying to bring the facts into the open. He and Republicans who believe the Senate should not be used as a means of private gain can be expected to talk about the Bobby Baker affair during the presidential campaign.

The so-called mess in Washington during the Truman administration is believed by political analysts to have been a major factor in the election of General Eisenhower in 1952.

[From the Harrisburg (Pa.) Patriot]

SENATE HURTS ITSELF

The Bobby Baker investigation is dead. Some Republican Senators tried last week to flog it back to life. They failed. Senator JOHN WILLIAMS, of Delaware, joined by Senator CLIFFORD CASE, of New Jersey, introduced a resolution to broaden the probe to include improper activities by Senators. The Senate turned it down, and in a partisan squabble marked by uncommon bitterness Majority Leader MIKE MANSFIELD, of Montana, denounced the resolution as "impugning the integrity of the whole Senate with sly innuendo."

Senator MANSFIELD is mistaken. What impugns the Senate's integrity is its refusal to restore public confidence in itself.

This would not be so hard to do if Senators of both parties were willing to put away the partisan sideshow and concentrate on the main event.

Bobby Baker is a symbol. The reality is the existence of two separate codes of ethics, one for members of the world's most exclusive club, the other for the nonmembers appointed to high office by the executive branch.

When Eisenhower appointees George Humphrey and Charles E. Wilson appeared before Senate committees for confirmation as, respectively, Secretary of the Treasury and Secretary of Defense, the Senators went over their finances with the finest of fine-tooth combs. Humphrey and Wilson, and their colleagues and successors, had to make all kinds of sacrifices for the privilege of serving their country. As for the Senators themselves, however, their finances are a closed book—except for those, like Pennsylvania's JOSEPH CLARK and HUGH SCOTT, who voluntarily have revealed their sources of income. And so far the Senate seems determined to keep it that way.

The Baker affair has created public doubts about the Senate's double standard that will not die. But some good may come of it if it persuades the Senate to reform. For it makes no sense for the Senate to insist that Presidential appointees divulge all and divest themselves of much lest there be some remote possibility of conflict of interest, while at the same time the Senators blithely carry on their private affairs with no requirement for public accountability—and no or few qualms about intervening with Federal agencies on contracts for the benefit of their constituents or themselves.

The Baker business may remain forever in limbo or, hopefully, it may not. But the Senate's responsibility to compel its Members to disclose their sources of income must not be dodged.

[From the Bismarck (N. Dak.) Tribune]

THE SENATE UNDER A CLOUD

Majority leader MIKE MANSFIELD and the Senate Democrats who voted against investigating Senators in connection with the Bobby Baker affair have done the august body in which they serve no good.

They have given the country the impression that the Senate, and some of its Members can't stand investigation. The Baker probe takes on more than ever the look of a coverup job.

Senator CLIFFORD CASE, Republican, of New Jersey, gave the argument a few days ago for a thoroughgoing inquiry to bring out the full truth in the scandal. Said CASE:

"When I hear of an employee of the Senate boasting that he has 10 Members of this body in the palm of his hand, I do a slow burn. It is difficult for me to contain my anger when I hear the talk, which everyone has heard, of Bobby Baker's dealings in committee assignments—granting or withholding his favor to persons elected by sovereign States to the greatest deliberative body in the world * * *.

If no Senators are guilty of wrongdoing, none need be fearful of what open hearings in which they are questioned might disclose. But if some Senators have indeed, profited by Bobby Baker's suspect doings, in ways which might be considered reprehensible, they should be forced to reveal it. Either the stain on the Senate should be removed or we should start to clean out what rottenness corrupts it.

Senators, for all their prestige and power, are nevertheless mere mortals, and still put on their pants one leg at a time, like taxi drivers, lawyers, teachers and other men. They are subject to the same drives, concerns, and temptations as all of us are. We cannot ever assume that because a man is a Senator he is beyond suggestion of reproachful error.

The probability is that Bobby Baker's brag that he deals with Senators as though they were his pawns is only a brag and nothing more. As a demonstrated liar, his word on any subject is suspect. But until the Senate itself decides that its reputation is worth defending the stain of Bobby Baker will continue to mar its honor.

[From the Greensburg (Pa.) Tribune-Review]

TO THE BITTER END

Partisan politics may be lurking in the wings as Senator CASE, of New Jersey, occupies the stage with his demands that all Senators be questioned about any dealings they may have had with Bobby Baker. CASE is a Republican. Because Baker was close to high Democratic figures and was secretary to the Senate majority before resigning under fire, the scandal is an embarrassment to Democrats.

Partisan or not, Senator CASE is right in his insistence that the Senate has an obligation to pursue this matter to its quite possibly bitter end. Reasons given in his testimony before the Senate Rules Committee—at his request, and at a public hearing even though a majority of the committee at first sought to keep the hearing secret—are most persuasive.

CASE wants the Rules Committee to ask all Members of the Senate whether they had any business or financial dealings with Baker, and whether they received anything of value from him. He correctly believes that this is the only way the Senate can get to the bottom of a sordid matter, and that until this is done the public will not be satisfied and the Senate's image will be badly stained.

There have been persistent rumors about Baker's hold on certain Senators. CASE referred to them thus: "When I hear of an employee of the Senate boasting that he has 10 Members of this body in the palm of his hands, I do a slow burn. It is difficult for me to contain my anger when I hear the talk, which everyone has heard, of Bobby Baker's dealings in committee assignments—granting or withholding his favor to persons elected by sovereign States to the greatest deliberative body in the world." He went into even greater detail, but this is enough to suggest that such rumors cannot be ignored. The Senate would be wise to follow CASE's advice.

[From the Easton (Pa.) Express]

SENATE SCENE: 10 WEEKS LATER

The current calm of the U.S. Senate is the calm after the storm, but it has an uneasy cast. It may turn out to be a calm between storms, so maybe it would be better to call it a lull.

Whatever it is, it set in shortly after Senator EDWARD M. KENNEDY had that conference with the Senate Parliamentarian. Before it arrived, concord was in what might be called short supply.

You see, Senator CLIFFORD P. CASE had suggested that it would be nice if the Senate

went on investigating Bobby Baker, and that it would be particularly helpful if the Senate should decide to investigate itself, to ask all Senators to describe their dealings with Bobby Baker, if any, on the premise, apparently that if any Senators should remember dealings with Bobby Baker, and discuss them, the Senate would be learning something about the elusive Bobby Baker.

Senator MIKE MANSFIELD was maintaining that the Senate certainly should not ask Senators to tell whether they had ever had dealings with Bobby Baker when Senator CASE tried to announce that Senator MANSFIELD had imputed to him conduct unworthy of a Senator. Senator MANSFIELD said he had imputed no such thing, and he went on contending that Senators should not be asked whether they had ever had dealings with Bobby Baker, and when Senator CASE tried to bring up the imputation matter again, Senator KENNEDY, who was presiding at the time, told him to sit down.

Senator CASE appealed the ruling that he was not entitled to talk about imputation, and that was the point at which Senator KENNEDY conferred with the Senate parliamentarian, and when the conference ended, he said the time for debating the proposed resolution had been used.

Whether Senator CASE had a right to maintain that Senator MANSFIELD had suggested that his conduct was unsenatorial, Senator KENNEDY didn't say. He simply said it was time to vote on the proposed resolution, so the Senators voted.

The Case resolution was defeated by a vote of 42 to 33; but right away, the cease-fire began to look a little tentative. The next day, Senator CASE and Senator HUGH SCOTT suggested that there were Senators who were interested in preserving the right of a Senator to be heard, even if he happened to be a minority Senator, and maybe especially if he happened to be a minority Senator. Some of those Senators, they said, might be reluctant to support any effort to halt debate on the civil rights bill. The next day, the Senate ended 10 weeks of civil rights debate, without, apparently, turning up any trail that might lead to the end of the debate.

President Johnson, of course, needs a civil rights law now. If cloture continues to look impractical, Congress may still be in session when Democratic legislators ought to be bird dogging over the country, blasting Republicans, and especially Republicans who are curious about the legend of Bobby Baker.

The proposed investigation, incidentally, would have been concerned with finding out whether Bobby Baker had any influence in a past and flamboyant period of Washington history. There is, too, the question of whether the Bobby Baker issue is having an impact on current history, and perhaps it could be suggested that this one is being answered.

[From the York (Pa.) Dispatch]

BAKER CASE WON'T DOWN

The Bobby Baker investigation may, for practical purposes, be officially buried, but its ghost is haunting Washington.

Not everyone, least of all Republicans, is satisfied that the influence-peddling probe was pursued with the greatest of New Frontier vigor by the Democratic-controlled Senate Rules Committee. After all, Baker was secretary to the Democratic Senate majority.

At any rate, U.S. Senator CLIFFORD P. CASE, Republican, of New Jersey, has called upon his Senate colleagues to state any business dealings they may have had with Baker, and to report any campaign assistance given or offered by the ex-Senate aid who became a wealthy man in a short period of time.

The chairman of the Rules Committee, Senator EVERETT JORDAN, Democrat, of North Carolina, called CASE's request the "height of demagoguery."

Moreover, in JORDAN'S mind, CASE'S proposal "would be an insult to a Senator."

Insult or not, CASE'S request is hardly unreasonable.

The American public has a right to know all in the Baker case.

Mere name calling, such as JORDAN'S jab at CASE, does not put the U.S. Senate in a position like Caesar's wife, above suspicion.

[From the St. Louis (Mo.) Globe-Democrat]

LETTING SENATORS TELL THE SENATE

In the languishing Bobby Baker affair, Senator CLIFFORD P. CASE has come up with an ingenious plan by which a congressional committee can get the better of recalcitrant witnesses who take the fifth amendment on the grounds that their testimony would incriminate them.

Since Bobby refuses to talk about his activities while he was secretary of the Democratic Senate majority, why not simply reverse the processes by having the Senators tell their Rules Committee about their dealings with Bobby?

Next week, Senator CASE is scheduled to meet with the committee to submit his proposal formally, and we can't see anything in it that could embarrass a Senator who has nothing to hide.

All he wants the committee to do is to ask every Senator these questions:

Did you ever have any business or financial dealings with Bobby Baker, directly or indirectly? If so, what were they?

Did Bobby Baker ever give you, get for you, offer you or offer to get for you any campaign contributions, any help in making up campaign deficits by gifts, purchase of tickets or otherwise, any retainer or employment, any preferment in committee assignments, or otherwise anything of value?

As matters stand today with Bobby not talking, Senator CASE rightly says the Senate must "cleanse itself of the stain which this affair has placed on our institution." And the Senate has long been known as "the most exclusive club in the world."

Why can't all the Members now come forward for the good of the "club" and lay their statements on the line?

[From the Champaign (Ill.) Courier]

PERSISTENT BAKER CASE

Every time the Bobby Baker case begins to go away, some maverick Member of the Senate hustles out and retrieves it. The latest to fetch it back before the uncomfortable upper house is Senator CLIFFORD CASE, Republican, of New Jersey.

Senator CASE is demanding that the Senate Rules Committee reopen its investigation of Bobby Baker, former secretary to the Democratic majority in the Senate. Moreover, the Senator wants the committee to question Senators who may have had dealings with the young South Carolinian as he was amassing a considerable fortune, allegedly by peddling his Capitol Hill influence to persons who could profit from favors he could grant.

Republican Senator JOHN J. WILLIAMS, of Delaware, who last fall initiated the investigation of the Baker case, at once said he would introduce a Senate resolution specifically authorizing the Rules Committee to summon Members of the Senate for testimony.

This would put many Senators in a difficult position. Voting against such a resolution could be construed as favoring immunity for Senators in matters of questionable conduct—matters such as those involved in the Baker case. Voting in favor of such a resolution goes against a venerable Senate tradition; namely, that a Senator must answer only to himself and his constituency for his actions.

Certainly, however, the implications of the Baker case override such a tradition.

The Senate must show itself willing to investigate possible shady dealings in its own affairs, or it will dwell under a cloud of suspicion which will do lasting harm to that legislative chamber.

[From the New York (N.Y.) Post]

PUBLIC HAS NO WAY OF KNOWING WHETHER CONGRESSMAN SELLS OUT

(By James McCartney)

WASHINGTON, May 28.—Your Congressman or Senator could openly be on the take and you'd have no way of knowing it.

He could sell his votes.

He could jack up his speaking fees so that wealthy lobbyists could pay him off by giving him $1,000 fees for two-bit speeches.

He could, in fact—to the astonishment of special counsel Lennox McLendon, who is handling the Bobby Baker probe—let private corporations pick up the tab for part of his office expenses.

FINAL PHASE

He could use these devices, or any one of a number of others, to fatten his purse, and John Q. Public—the voter—would be none the wiser. That's what the final phase of the Bobby Baker probe is all about. And it's probably the most important phase of all, for it's close to the central core of the problems of modern, big-time politics.

The point is that as matters now stand the voter has almost no way of knowing who is buying whom, and for how much, in American politics.

Congress has long held the whip hand over the executive branch and over the judiciary in demanding that appointments be clean and aboveboard—that conflicts of interest be forbidden.

Cabinet members have been forced to divest themselves of stock and appointments have been rejected because of private business interests.

But a Federal legislator can have any kind of conflict of interest he wants and must report to no one.

As Senator NEUBERGER, Democrat, of Oregon, put it in testimony before Bobby Baker probers Monday: "How is a voter to know that the member of, say the Agriculture Committee, is making a killing in cotton futures * * *?"

This has all been true for years, but the Bobby Baker case, in which the former secretary to the Senate's Democratic majority amassed a fortune on the side, has thrown a new spotlight on the problem.

And the Senate's traditional core of reformers are now arguing for what they call "disclosure" legislation.

By that they mean legislation that would require Members of Congress to tell how much money they have and where they got it.

The question, as Senator SCOTT, Republican, of Pennsylvania, put it is whether a gift or favor is designed to "move the mind of a recipient."

Some Senators are arguing for a code of ethics for Congress, but this is considered the weaker of the approaches. Senator CASE, Republican, of New Jersey, reminded the committee that all Government workers have operated under a "code of ethics" since 1958, when one was adopted by Congress.

"The code," he said "did not deter Bobby Baker."

[From the Syracuse (N.Y.) Post-Standard]

LET SENATORS TALK

Senator CLIFFORD P. CASE, of New Jersey, is right in demanding that the Senate Rules Committee dig further in the Bobby Baker case.

CASE feels that Baker has blackened the name of every Senator, and that it can only be cleared if Members of the upper House

tell the committee what dealings they had with Baker.

He would do this by means of a questionnaire. He wants the committee to ask every Senator these questions:

Did you ever have any business or financial dealings with Bobby Baker, directly or indirectly? If so, what were they?

Did Bobby Baker ever give you, get for you, offer you or offer to get for you any campaign contributions, any help in making up campaign deficits by gifts, purchase of tickets or otherwise, any retainer or employment, any preferment in committee assignments or otherwise anything of value?

These are simple questions that should embarrass no Senator if he has nothing to hide. CASE takes the view that since Baker refuses to talk, the Senators should cleanse that body of the stain the Baker affair has placed upon it.

What is wrong with asking that the investigation be extended to include Senators? The Democratic majority on the Rules Committee is closing the door on the investigation without completing it.

[From the Newport News (Va.) Press]

THE ISSUE THAT JUST WON'T DIE

The administration's effort to tiptoe around the Bobby Baker issue, in hopes that it will be forgotten when electiontime rolls around, suffered a severe setback this past week. An attempt to expand the Senate Rules Committee's investigation and to extend it beyond the May 31 deadline was defeated on the floor of the Senate, but at the cost of big black headlines; obviously Bobby Baker's name will play a considerable role in the upcoming campaign.

Two outspoken Republicans—Senators CLIFFORD P. CASE, of New Jersey, and JOHN J. WILLIAMS, of Delaware—spearheaded the move to include Senators in the probe; it's been essentially a GOP effort from the beginning. However, nine Democrats joined the Republicans when the showdown vote came. The tally went against the broadening of the inquiry, but only by a margin of 9 ballots—42 to 33.

The administration persists in looking upon this as nothing more than a partisan gambit, an attempt to embarrass the party in power in an election year. But the Republicans are merely taking advantage of a situation—they didn't create it.

The Rules Committee, dominated and led by Democrats, has pursued the investigation in a fumbling, halfhearted fashion, as though afraid of what it might find. It may well be that nothing untoward went on between any Senators and the former Senate majority secretary; but this reluctance to have the Senators put on the record is inevitably arousing public suspicion that something has been amiss.

The Senate has conducted rousing investigations in many fields in the past, but when it comes to the point of investigating itself—that's another matter. By failing to include Senators in the scope of this inquiry, this most powerful and respected of legislative bodies is letting the public down, and endangering its own reputation.

[From the Chicago (Ill.) American]

AN INSULT TO THE SENATE

We don't see how anyone can argue against the demand of Senator CLIFFORD P. CASE, Republican, of New Jersey, that the Senate Rules Committee question every Member of the Senate about his business or financial dealings with Bobby Baker. Baker was employed by the Senate Democratic majority. He resigned last fall, announcing that he had made $2 million.

Senator EVERETT JORDAN, Democrat, of North Carolina, chairman of the Rules Committee, has said that Senators would not be investigated. We agree with Senator CASE that they should be because Baker's boast that he had 10 Senators "in the palm of his hand" was an insult to the entire Senate. It is true, as CASE told the Rules Committee at its meeting Monday, that "every Member of the Senate has had his reputation, his good name, diminished by the Bobby Baker case." We join Senator CASE in his resentment of Baker's "ability to tarnish the Senate's name."

The Senate Rules Committee has been accused by Republicans of trying to shut off the investigation of Baker's profitable deals so that the candidacy of President Johnson and that of other Democrats will not be damaged in the election next November. The committee started hearing CASE in closed session, but the Senator demanded that the hearing be made public.

"I will not be stopped," said CASE. The committee called in reporters and CASE urged it not to drop the investigation of Baker's dealings until all the facts had been gathered.

The committee should do that, regardless of any political considerations, because, as CASE said, the standing of the entire Senate in the estimation of the public is involved. Those Senators who let Baker manipulate them for his own profit should be required to take individual responsibility for their actions, so that those who didn't let themselves be handled should be freed completely of public suspicion.

[From the Staunton (Va.) Leader]

Senator JOHN J. WILLIAMS, Delaware Republican, has stirred up a new fuss with his resolution proposing that the Rules Committee investigate Senators who were alleged to have had financial dealings with Robert G. Baker.

The Democratic majority takes the view that Senator WILLIAMS' demand is a political gambit designed to embarrass them in an election year. They have the votes to defeat the resolution and to prevent a broadening of the Baker investigation. But they cannot remove the cloud of suspicion that now hovers over the Nation's most exclusive club.

From the beginning of the Baker affair, the Rules Committee has acted in a manner bearing little or no resemblance to the zeal normally displayed in senatorial investigations, except only in one phase in which it bore down excessively on witnesses' use of the fifth amendment. For the rest, the committee severely limited the scope of the inquiry; it displayed an unusual timidity in failing to follow up obvious leads; indeed, it roused itself from somnolence mainly in trying to bury the case. It obviously has no stomach for extending the investigation to Members of the Senate itself.

The majority of the Rules Committee have only themselves to blame for the long and continuing life of the Baker affair. They are responsible for weakening the prestige and dignity of the Senate; by rendering immunity to its Members, they have left the implication that there may be something to hide.

Public suspicion will not be dispelled until the Senate is prepared to investigate itself. There may be nothing unethical about the conduct of any Senator in the Baker affair; but the public cannot help being skeptical as long as the Senate refuses publicly to face the facts, whatever the facts may be.

[From the Worcester (Mass.) Gazette]

CASE AND THE BAKER CASE

Senator CLIFFORD P. CASE, the New Jersey Republican has tried valiantly to put the Bobby Baker case, stalled for weeks by obvious senatorial disinterest, back on the track. He says that the Senate Rules Committee has a "sacred duty to go out and get the facts, not just to sit here, and listen to what people come to tell it." He is right.

If Bobby Baker simply refused to explain how he ran $11,000 in 1954 to $2.3 million in 1963 while working for the U.S. Senate majority at a moderate salary, why not ask individual Senators what, if any, financial dealings they had with him? This is the new Case approach: Question any Senator who may have been involved with Baker. Quiz all of them, if necessary.

Yet Senator B. EVERETT JORDAN, Democrat, of North Carolina, chairman of the Rules Committee, continues to throw up roadblocks. The supposition is that further revelations could be extremely embarrassing to his party this election year. Baker, who grew up in the Senate as page, aid, and finally secretary to the Senate Democratic majority, was known as "Lyndon's boy." He was at one time a protege of Lyndon B. Johnson, now President.

"We aren't investigating Senators," JORDAN said months ago. But he and his committee members should be investigating the integrity of the Senate as related to the Bobby Baker case. How did Baker make his millions on a top salary of $19,500? Did he enjoy special influence or favors? It is already known that one Senator cut him in on a land deal. Government contractors used his vending machines. What else went on from 1954 to 1963?

If the Senators have nothing to hide, they should support Senator CASE'S proposal to clear up this situation.

[From the Riverside (Calif.) Enterprise]

THE SENATE'S INTEGRITY

New Jersey's excellent senior Senator, CLIFFORD CASE, is not ready to let the Senate Rules Subcommittee off the hook on the Bobby Baker case. More important, Senator CASE is not prepared to let the Senate off the hook.

In contrast to the subcommittee chairman's affrontive excuse that "we're not investigating Senators," Senator CASE has bluntly told Chairman EVERETT JORDAN and his colleagues that their investigation of the Baker case is woefully incomplete until they do just that. Senator CASE shares this sentiment with his fellow Republican, JOHN WILLIAMS, of Delaware, who prompted the Baker investigation in the first place.

Senator CASE proposes a questionnaire directly asking each Senator about possible business dealings with Bobby Baker and any campaign assistance given or offered by the former secretary of the Senate Democratic majority.

It is an unusual sort of thing, of course. But so is the whole Baker affair. And it has put the Senate in what Senator CASE properly describes as a sorry state, one which should in that body's own interest be cleaned up.

For surely it is obvious that no Baker investigation can have any real meaning without an investigation of the relations of members of the Senate with Bobby Baker.

And we hope Senators like CLIFFORD CASE and JOHN WILLIAMS will continue to prod their colleagues, whatever the expectations of their success.

[From the (Boise) Idaho Statesman]

DOES THE COMMITTEE MISRULE?

The Democratic-controlled Senate must live with its conscience. Its daydreams of purity must not mix very well with the nightmarish aspect of the untold Bobby Baker scandal.

One of the constitutional privileges given the Senate is that it may determine the rules of its proceedings and punish its Members for disorderly behavior. But does this privilege give the distinguished body the right to close a scandal in an attempt to hide from the public activity which may floodlight any misbehavior on the part of Baker, the former Senate Majority Secretary, and Members of the Senate?

This august body set itself back, following a partisan verbal fight on the floor. The Senate voted down a Republican resolution which would have widened the Baker probe to include investigation of any improper activities of Senators themselves. In so doing, the Senate went against the intent of the Constitution which was cognizant of the belief that to err is human, but that the integrity of the Nation rests with its leaders, its lawmakers, its Chief Executive and his Cabinet.

The Senate's refusal to broaden the investigation meant the august body itself was taking the fifth amendment—the Senators refused to testify just as Bobby Baker took the fifth. In the same proceedings there was no effort made to summon Walter Jenkins, Special Assistant to President Johnson, to inquire further into Baker's gift of an expensive stereophonic set to Mr. Johnson. Also played down was the plush settings in which a number of Senators were allegedly entertained. Was the host, Mr. Baker, supplying these delightful repasts solely to prove his statement: "I hold 10 Senators in the palm of my hand." Wasn't it Mr. Baker who stated that some people were only too happy to pick up a campagin debt of $10,000 for Senators in need?

The public may never know—at least until after the November election—unless the Senate finds itself unable to live with its smarting conscience.

Wednesday, Senator B. EVERETT JORDAN, Democrat, of North Carolina, chairman of the Rules Committee, confessed he thinks it will take "a long time" before agreement is reached in the committee on how to report the Baker case to the Senate and give it a good public airing.

This leadership of the North Carolina solon is not to be questioned as being politically astute, but such negative action of the Rules Committee only adds to the suspicion and controversy which involves the Senators as well as Baker.

It is interesting to go back to that day when by a vote of 42 to 33 the Senate voted down the resolution to widen the investigation. Senator EDWARD M. (TED) KENNEDY, Democrat, of Massachusetts, was presiding during the rough and tumble debate. Mr. KENNEDY, no professional parliamentarian, gaveled down the request of Senator CLIFFORD CASE, Republican, of New Jersey, to be heard on a "point of personal privilege." Senator CASE is championing the cause of a wide-open investigation, but his Democratic colleagues fail to listen. Senator KENNEDY's promptness in halting the debate discredits him somewhat, although he ruled with keen knowledge acquired from the Democratic majority.

Why don't the Democrats want to fulfill an honest obligation to deal truthfully and honestly with the Baker scandal?

One can only presume that a number of the solons would be embarrassed, that President Johnson's rise to power and his one-time affection for Bobby Baker might be subject to closer scrutiny.

[From the North Adams (Mass.) Transcript]

A DOUBLE STANDARD

Sauce for the goose is not necessarily sauce for the gander in legislative circles as developments on both the Federal and State level illustrated this week.

In the U.S. Senate a long-seething controversy over the Bobby Baker investigation came to a head Thursday when a 42-to-33 vote downed a proposal to reopen and widen the scope of the investigation.

The earlier investigation into the Senate majority secretary's activities by the Senate Rules Committee was widely considered a whitewash as the committee repeatedly failed to follow up leads or resolve conflicting testimony. In fact, as one commentator observed, it expended most of its effort in a successful attempt to bring the investigation to a premature close.

The case touches a very basic detriment to good government—excessive influence peddling and unregulated gifts to legislators. Obviously the incomplete investigation made many Senators uncomfortable. Thus it was almost a foregone conclusion that the resolution offered by Senators JOHN J. WILLIAMS, Republican, of Delaware, and CLIFFORD P. CASE, Republican, of New Jersey, would be downed. The vote largely followed party lines with 42 Democrats opposing and 24 Republicans and 9 Democrats supporting.

The vote illustrated the double standard that has long been evident: the Senate is much more willing to investigate the conduct of Government agencies than its own behavior.

The future of Bobby Baker is unimportant. What is important is that an investigation might dramatically reveal abuses that could be remedied by legislation that would regulate both gifts and influence peddling. Such legislation has been sought annually by Senator CASE. It would go a long way toward restoring the public's confidence in the integrity of its officials.

Closer to home the double standard was revealed in the statehouse this week when two attempts to oust House Speaker John F. Thompson failed. The speaker was indicted last week on 26 charges of bribery and conspiracy.

But unwilling as it was to remove Thompson, the house a couple of years ago passed the so-called Perry law which requires officials under indictment to step down from their posts. Only recently, the law was applied in the case of Frank S. Giles, indicted commissioner of public safety. But when one of their own kind is involved, the legislators balk, even though the votes in Thompson were close.

Both the Federal and State cases involved the double standard. And both reflected little glory on those who cast the majority votes.

[From the Pensacola (Fla.) Journal]

SENATORS IMMUNE IN BAKER PROBE

Vehement demand by Senator CLIFFORD P. CASE, New Jersey Republican, that all U.S. Senators be called by the Rules Committee to testify as to whether or not they have had business dealings with Bobby Baker, former secretary to Senate Democrats, can be viewed from two angles.

The first assumption, which may have some grounding, is that the Republicans are trying to get all the mileage they can out of the Baker investigation in an effort to embarrass President Johnson, a former Senate Democrat, and the party as a whole prior to the presidential primaries in election this year.

That angle has been played up by the Democrats, of course, and there is little doubt that other Republicans, if not Senator CASE, have been interested in keeping the Baker hearing going, while the Democrats have appeared inclined to get through as soon as possible. Senator B. EVERETT JORDAN, Democrat, of North Carolina and Senator JOSEPH S. CLARK, Democrat, of Pennsylvania, especially have been on the spot.

However, Senator CASE seems to have another, or at least a second motive, if we ascribe the first to him also. That is to pin the blame on those Senators who have been guilty of playing footsie with Baker in return for favors they have received from the ubiquitous operator.

For instance, the question as to why Senator SMATHERS cut Baker in on a very profitable Florida real estate deal has not been answered except in a statement by the Florida Senator that he felt Baker needed and deserved the financial lift. But the Rules Committee decided not to call SMATHERS or any other Senators to explain their dealings with Baker and Baker has refused to testify, using the fifth amendment to protect himself.

This seemingly has infuriated CASE, who claims that Baker has blackened the good name of all Senators and he wants his name cleared and those of other Senators who have not dealt with Baker. This would be a wholesome step, whether it hits at Democrats or Republicans. Most likely it would strike at Democrats as Baker was their man. He would not likely be dealing with the opposite party.

But Senator CLARK doubts the committee has the right to question Senators about offers of campaign assistance from Baker or any other transactions and Chairman JORDAN has denied Republicans' implications of a whitewash.

However, the investigation has been notably limited and the offer to allow Senators to appear and testify if they desired is certainly sidestepping the issue brought up by CASE.

The situation reminds us once more of the Senate Club atmosphere. We may be certain if a mere civilian were involved there would be no hesitancy as to his being subjected to a grilling.

[From Philadelphia (Pa.) News]

BOBBY BAKER'S SMOG KILLER

Robert G. "Bobby" Baker, former Senate majority secretary, has announced that he is working with an inventor on a project that will "rid the world of smog."

We think the very first place this remarkable machine should be employed is in the U.S. Senate, where political smog moved in to becloud the probe into Baker's wheelings and dealings.

Meanwhile Senator CLIFFORD CASE, Republican, of New Jersey, will attempt to clear the Senate air next week by going before the Senate Rules Committee to ask that every Member of the upper House be asked to disclose any financial dealings he may have had with Baker.

It is quite likely that CASE may have to borrow Baker's remarkable invention to make any progress in that area.

[From the Rockford (Ill.) Register-Republic]

EXHUME SKELETONS IN BAKER CASE

Senator CLIFFORD CASE, Republican, of New Jersey, had good reason to be angry when he demanded this week that the Senate Rules Committee question every Member of the upper House on the Bobby Baker case.

"When I hear of an employee of the Senate (Baker) boasting that he has 10 Members of this body in the palm of his hand, I do a slow burn," CASE said.

The New Jersey Senator has been clamoring for some time to extend the investigation to all Members of the Senate. Yet the Democratic-dominated committee in March showed an obvious intent to slam the door shut on further investigation of the former Senate majority secretary who in a few years parlayed a $19,600 annual salary into some $2 million worth of assets.

CASE resents Baker's ability to tarnish the Senate's name. The Senator pointed out that "every Member of the Senate has had his reputation, his good name, diminished by the Bobby Baker case." And his anger has been intensified because the committee has held many closed-door sessions, so only the committee members know all that has been disclosed.

Any Senator, regardless of party, should not object to a thorough, public airing of Baker's business and financial dealings. The ex-majority secretary obviously used his position and friendship with influential Senators to gain favors and monetary benefits. Yet Baker as a Senate employee was a public

servant, answerable to the people and to the branch of Government which hired him.

When the committee called Baker to testify, the affluent young man took refuge under the first, fourth, fifth, and sixth amendments to the Constitution and refused to answer more than 100 questions.

Answers to a long list of pertinent questions are still to be given. Among these are:

Who told the truth about the purchase of advertising over the Lyndon Johnson family-owned TV station in Austin, Tex., and the sale of a $100,000 life insurance policy to the former Senate majority leader? Insurance agent Don Reynolds said he sold the policy to Mr. Johnson, after which Walter Jenkins, a Johnson aid, brought pressure upon Reynolds to purchase the TV advertising.

How did Baker persuade banks in several States to lend him $1,700,000?

Where did Baker get the money to launch a variety of businesses, including a motel and distribution of vending machines?

What about the German girl who was whisked back to Germany after she was described as having been "friendly" with Baker and high-ranking Government officials?

What role was played by Nancy Carole Tyler, Baker's so-called secretary, who also refused to answer the Senate investigators' questions?

There are many other unanswered questions in the case, which should not be swept under the rug in a presidential election year. Let the chips fall where they may.

[From the Sunbury (Pa.) Item]

BOBBY BAKER

A constant critic of the U.S. Senate is Senator JOSEPH S. CLARK, of Pennsylvania. Repeatedly and at great length he has spelled out the shortcomings of the Nation's highest legislative body, not only with regard to archaic procedures but the personal attitudes of many of its Members, one notable example having been in the matter of self-serving action on legislation. In this latter connection the Senator, making public a list of his own personal assets, challenged all his colleagues to disclose their holdings.

Senator CLARK took exception, however, when Senator CLIFFORD CASE, Republican liberal from New Jersey, took the Senate to task Tuesday for refusing to allow Bobby Baker, former secretary of the Senate Democratic majority, to testify before the Rules Committee investigating wheeling and dealing which netted Baker upward of $2 million in personal profit. CASE was accused of repeating a false charge against the Democratic majority.

The fact of the matter is that the Baker story has not been fully told. The involvement of Senators and other high public officials remains a matter of conjecture.

Neither Senators nor any other group in Government have a right to consider themselves a privileged class, as charged by Senator CASE. Senator CLARK, whose name has not at any time been linked with that of Baker, should in view of his previous stand for righteousness, concur in the demand for a thorough airing of the Baker scandal.

[From the Plainfield (N.J.) Courier-News]

PUBLIC DISCLOSURE

It is hardly time to call the Bobby Baker case a closed deal. We are sure to hear more about it during the election campaign this summer. We think it should be discussed further and that the Members of the Senate should not be beyond censure where it is deserved.

One of the most outspoken advocates for a stronger code of ethics in the Senate has been Senator CLIFFORD P. CASE, Republican, of New Jersey. Senator HARRISON A. WILLIAMS, JR., Democrat, of New Jersey, recently joined with him in a public disclosure of financial interests and transactions.

Senator CASE said last week before the Senate Rules Committee: "Public disclosure is, I have long been convinced, the most effective way to protect the integrity of the Congress and the legislative process. The need for such a requirement rests on a simple fact, which is, I think, universally recognized—outside of Congress. That is the fact that Congress is not going to police itself. One need look no further than to the current inquiry."

We agree. And we note with interest the insertion in Senator CASE's remarks—"outside of Congress." The Congress should not hesitate to police its own Members and to heighten the concern that Members of that legislative body should not only be right but also seem right in the public view.

[From the Fort Lauderdale (Fla.) News]

SENATORS STIR MUCH DOUBT WHEN THEY DUCK ANY PROBE OF THEIR TIES WITH BAKER

Despite outraged howls from certain Members of the U.S. Senate, there is an overriding element of simple justice and fairness in a resolution offered this past Wednesday by Senator JOHN J. WILLIAMS authorizing the Senate Rules Committee to broaden the Bobby Baker investigation to cover the conduct of Senators and the handling of campaign contributions.

When Senator WILLIAMS introduced his resolution one might have thought from the uproar that followed that he had committed some kind of heinous crime instead of merely asking the Members of the Nation's most venerable legislative body to apply the same rules to themselves they invoke against others.

Senator after Senator got to his feet and cried out in anguish over the proposal they submit themselves to the scrutiny they have given so many others in the Baker case.

Typical were the comments of Senators WARREN MAGNUSON, of Washington, PAT MCNAMARA, of Michigan, and of EVERETT JORDAN, of North Carolina, who is the chairman of the committee conducting the Baker inquiry.

Senator MAGNUSON accused Senator WILLIAMS of making a "blanket indictment" of the entire Senate and angrily declared that if Senator WILLIAMS had any reason to believe any Senator had done anything wrong he ought to name those involved.

Senator MCNAMARA was equally vitriolic when he declared:

"I've had enough of this. If there is anything wrong with my conduct, start telling us about it. Let's not have this blanket indictment."

Senator JORDAN spoke in a similar vein. He termed any suggestion that Senators investigate themselves as "the height of demagoguery" and stated that it added up to nothing more than "an insult to a Senator."

The imperturbable Senator WILLIAMS, who has sent more people to jail and uncovered more scandals in Government, than all three of these "holier than thou" deriders put together, had a most proper answer to these protest screamers.

"There have been questions," he stated, "in the minds of many people as to whether or not the Senate has the nerve or the integrity to carry through this investigation which involves our own house."

He said his proposal was designed to end any question as to whether the conduct of Senators was a legitimate avenue of investigation for the Rules Committee.

What Senator WILLIAMS proposed was in direct line with what Senator CLIFFORD CASE had sought the previous day before the committee. Senator CASE suggested that each Senator be asked about his business dealings with Bobby Baker and whether or not he had received any campaign contributions or other forms of assistance from Baker. Democratic Senators refused, and they defeated the resolution 42 to 33 yesterday.

Personally, we see nothing horrible or out of line either with the Williams proposal or the suggestion put forward by Senator CASE. Whether they think so or not, members of the Senate have no special immunity from answering questions about their official conduct. In fact, as elected public servants there is even more reason for them to come clean on any dealings they have had with Baker than there is for private citizens.

This goes for Republicans and Democrats alike, and if a Senator has nothing to hide or nothing to fear from having to answer a few simple questions under oath about his conduct, there is no legitimate reason to raise such a loud ruckus as these protesting Senators have done.

As Senator WILLIAMS has pointed out, the people of this country have good grounds to wonder just how thoroughly this Baker investigation has been carried out to date, and the hot-tempered outbursts by various Senators condemning any action to include Members of the Senate in the investigation certainly tend to increase public suspicion that this whole matter is being deliberately given a thick coat of whitewash.

More than that, the unwillingness of many Senators, particularly on the Democratic side of the fence, to expose themselves and their activities to questioning from one of their own investigative committees raises a very serious doubt in this election year as to whether or not a majority of the Senate Members really want the full story of Bobby Baker's influence-peddling activities brought to light.

No investigative body in this Nation can retain public confidence in its thoroughness and impartiality if it considers its own Members as untouchables not subject to procedures applied to everybody else.

This is exactly what the Democratic majority is doing as regards this Bobby Baker case today, and the more that certain Senators oppose any broadening of the probe the more convinced the man on the street becomes that there's a lot more dirt in this case that remains to be brought out into the open.

CIVIL RIGHTS ACT OF 1963

The Senate resumed the consideration of the bill (H.R. 7152) to enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States to provide injunctive relief against discrimination in public accommodations, to authorize the Attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on civil rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that I may be permitted to yield to the Senator from Tennessee [Mr. GORE] for a statement and such colloquy as he may wish to engage in with the Senator from Connecticut [Mr. RIBICOFF] without losing my rights to the floor, and without my subsequent remarks constituting an additional speech.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GORE. Mr. President, it is my purpose to discuss the provisions of the Dirksen-Mansfield substitute insofar as the provisions thereof relate to title VI. I am fully aware that a vote will be held on cloture on tomorrow, and that the

hour is late. Perhaps it is too much to hope, but nevertheless, I do hope that Senators will, before the vote on cloture tomorrow, read what I have to say, and I hope they will decide against voting for cloture until title VI has been clarified.

On the 25th of April, I addressed the Senate at some length, at which time I outlined my serious reservations about the provisions of title VI in the bill before the Senate. Among other things, I was concerned about ambiguities in the language, the lack of precise limitations on the coverage of the bill, and the manner in which the prohibitions of title VI were to be implemented. On the basis of my review of the language in the Dirksen-Mansfield substitute, I am pleased to note that, though still far from satisfactory, this language is a substantial improvement over the language of the bill, insofar as clarity is concerned.

In the substitute, the language of section 602 has been revised to eliminate the confusion caused by the use of the word "may" in the original bill, rather than the word "shall" on line 6 of page 26.

As I have previously indicated to the Senate, it seemed clear to me that the use of the word "may" would have the effect of authorizing alternate methods of implementing the provisions of section 601. Under the language of the bill, action might be taken to terminate Federal aid either by using the procedure specified in section 602, or by using some other method which is not specified in the bill and not limited or restricted in any way.

The revised language makes it clear that if the departments and agencies of the Federal Government described in section 602 take any action to withhold or terminate Federal financial assistance, such action must be taken in conformity with the so-called safeguard provisions outlined in section 602 and section 603.

I hasten to add, however, that not all Federal aid programs are described or are included in section 602. As I shall indicate in greater detail later, the revised language of the substitute does not resolve certain questions about the relationship between sections 601 and 602. It does, however, clear up in a manner satisfactory to me the ambiguity as to the type of procedure which the bill would require the departments and agencies referred to in section 602 to follow.

In one other respect the language in title VI of the substitute constitutes an improvement over the language in the original bill. The additional language inserted in section 602 is apparently designed to express an intent, that if Federal aid is withheld or terminated such action will be taken only with respect to the particular geographic areas of the State in which discrimination is found.

Concern had been expressed by some, including myself, that the language of the bill would authorize termination of aid to an entire State, even though the discrimination might be alleged to exist in only one county of that State. The language of the substitute, even though intended to prevent this result, does not, in my opinion, do so in many programs. There are many types of Federal aid programs. The procedures by which these programs are administered vary substantially. Under those programs which are administered by the States, statutory requirements may preclude the termination or the withholding of aid on any basis other than a statewide basis. In such cases those who would administer the provisions of title VI, under either the language of the substitute or the language of the original bill, might well find that they must terminate aid to the entire State or not terminate it at all. In many aid programs, the State is the "recipient" of the "assistance." In such cases, there is no direct relationship, contractual or otherwise, between the Federal Government and a local political subdivision.

Mr. RIBICOFF. Mr. President, will the Senator from Tennessee yield at that point?

The PRESIDING OFFICER (Mr. KENNEDY in the chair). Does the Senator from Tennessee yield to the Senator from Connecticut?

Mr. GORE. I am glad to yield.

Mr. RIBICOFF. The Senator from Tennessee has been consistent throughout in his arguments. The additional language placed in the so-called Mansfield-Dirksen substitute has been the result of some of the fears and doubts continuously expressed by the Senator from Tennessee.

It should be pointed out that the new language mentioned by the Senator from Tennessee provides that any fund cutoff must be limited not only to the particular program in which discrimination occurs, but also must be limited to the part of the program in which discrimination occurs.

It is my understanding, with the language placed in the Dirksen-Mansfield substitute, that what now takes place, and let us use a simple example, is that in a State having 100 counties and receiving $100,000, each county receiving $1,000, should one county discriminate, under the language previously used, it could have been argued that the State would lose $100,000. Under the present language of the Dirksen-Mansfield substitute, it is my understanding that what would actually take place, under those circumstances, would be that the State would receive $99,000, and that they would distribute the $99,000, $1,000 to each of the 99 counties, but would not make any distribution to the one county that was in the process of discriminating.

In this respect, we would be most careful not to punish the innocent part of the State, the 99 counties which have not discriminated.

Mr. GORE. The difficulty there might arise within a State. Distribution of school funds, for instance, is accomplished by formula. In most States it is distributed in accordance with, among other things, the school population—enrollment, in other words. There may be other reasons and other criteria for the distribution of funds. The hypothetical situation which the Senator has described is one which is overly simplified. I doubt that such a situation would exist in any State.

What this boils down to is the inability of the Federal Government to reach a county or a township if the State itself is the recipient of the financial assistance.

The word "recipient," is the key to the interpretation of the provision. Of course, there are a number of Federal aid programs in which the contractual relationship is between the Federal Government and the local political subdivision; such, for instance, as aid to federally impacted school districts. Here there would be no major problem about limiting geographically application of an order terminating aid. In that case, termination of aid would not be affected by State law. But the situation is different in a great many other programs, such, for instance, as aid to vocational agriculture teaching, or aid in the agricultural extension program for home economics teachers. The Senator has been Governor of his State, and I have, before coming to the Senate, been associated with educational programs in my State, so that both of us are familiar with how these programs operate. The contractual relationship in those cases is between the Federal Government and the State.

Mr. RIBICOFF. The Senator is correct.

Mr. GORE. What the Senator has described is a situation in which the Federal Government would put the onus upon the States to discriminate as between counties and communities by withholding funds from some of them, and unless it did so, the Federal funds would be withheld from the entire State.

Mr. RIBICOFF. No. If the Senator will yield further——

Mr. GORE. I am glad to yield.

Mr. RIBICOFF. The Federal Government is not placing the onus upon the State. The Federal Government does say to the State, "There is a Federal law which prohibits discrimination. We do not believe that your State should have a part in this discrimination. It should not cooperate with one segment of your State which is discriminating."

Take an example in the field of public assistance. Public assistance is made available to a State on a statewide basis. Let us say that an audit by the Department of Health, Education, and Welfare indicates that one county is violating the law, or discriminating on some basis that has to do or does not have to do with the problem of race. Today, under those circumstances, the Federal Government, without all the safeguards and exceptions that we now find in the modified title VI, could cut out a proportionate part of the total payment that goes to any State, with the prohibition against giving any of that remaining sum of money to that particular county.

I can understand the problem which is bothering the distinguished Senator from Tennessee. Let us say that in his State there is a State law which requires, by State formula, an equal contribution per child or per district. When funds come in from the Federal Government and are commingled with State matching funds, there is an equality in the distribution formula, the State not wishing to lose Federal funds for its other 99 counties which are not in violation.

I do believe, under those circumstances, that the commissioner of education of a State, or the Governor, could well say—and this is the law—that where there is a conflict between State law and Federal law, there is Federal supremacy. As soon as Federal law makes definite provisions against discrimination, in the use of Federal funds under those circumstances, that part of the State formula in conflict with Federal law would not prevail, and no valid State provisions could require the distribution of Federal funds to a county that was discriminating in violation of Federal law. Under those circumstances, the State and its Governor would be in compliance with Federal law, and it would seem to me, on constitutional grounds, to say to county X, "You are in violation and, under those circumstances, we cannot make a payment of Federal funds to you."

I can understand the fear the distinguished Senator had. He has been consistent in expressing his fear. The modified language was placed in the bill as a result of the questions raised by the distinguished Senator from Tennessee. I believe he has accomplished much to eliminate a basic doubt which always hung over the bill. I think the Senator has accomplished much. If through this colloquy we can straighten out the problem, and indicate what the intention really is, I believe the able Senator from Tennessee has performed a great service.

Mr. GORE. I am very grateful for the very generous comments of my able and distinguished friend, with whom I served in the House of Representatives and in whose home I visited while he was chief executive of his State. I am genuinely grateful to him. I think that in some respects the substitute has made an improvement in title VI, and I am pleased to think that it may be in part the result of my efforts.

I wish, before going to the issue of the colloquy, to make it perfectly plain that I do not support discrimination in the use of public funds in any respect whatever. It seems to me, if there is any area in which discrimination is wholly unjustified, it is in the collection of governmental revenue, the levying of taxes, and the distribution and expenditure of public funds.

This is not a simple question, however. What I have sought to do has been to prevent, or if not prevent, at least to minimize the extent to which innocent people would be made to suffer for the actions of those over whom they have no control.

I wish to refer specifically to old-age assistance, to which the Senator has referred.

Mr. GORE. Mr. President, I ask unanimous consent that I may yield to the Senator from Mississippi.

AMENDMENTS NOS. 1038 THROUGH 1040

Mr. STENNIS. Mr. President, I thank the Senator. I ask unanimous consent that I may submit, out of order, three amendments, that they may be considered as read, in compliance with all the rules of the Senate, and that they may lie on the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendments are as follows:

AMENDMENT NO. 1038

On page 13, strike out lines 4, 5, 6, 7, 8, 9, and 10.

On page 13, line 11, strike out "SEC. 303." and insert in lieu thereof "SEC. 302.".

On page 13, line 14, strike out "SEC. 304." and insert in lieu thereof "SEC. 303.".

AMENDMENT NO. 1039

On page 17, beginning with line 1, strike out all through line 23 on page 18.

AMENDMENT NO. 1040

On page 70, line 1, strike out "INTERVENTION AND".

On page 70, strike out lines 10, 11, 12, 13, 14, 15, 16, 17, and 18.

Mr. GORE. Mr. President, as the distinguished Senator from Connecticut knows, the old-age assistance program is a matching fund program. The Federal Government provides funds, which are matched by State funds and, in turn, matched in smaller part by county funds.

Once the Federal aid is distributed to a State, it is commingled with State funds; indeed, it becomes a part of the State's funds. It is administered as a State fund. I believe this raises serious legal questions as to the supremacy theory, to which the Senator has referred. That is why I said earlier that I thought the keyword here is "recipient."

Mr. RIBICOFF. Mr. President, will the Senator yield?

Mr. GORE. I should like to proceed one step further before yielding. Once the State is the recipient, the funds are commingled, and then the funds must be distributed and administered under the terms of State law. I would hope that there would be no discrimination in the old-age assistance program anywhere. I know of none in my State. I would denounce the existence of any if I knew of it.

Mr. RIBICOFF. From my experience as Secretary of Health, Education, and Welfare, and in reviewing these programs, I have never come across a situation in which the Federal Government had to step into Tennessee and say, "Tennessee, you are doing the wrong thing in not properly administering Federal funds." That should be made clear.

Going further, with the point the Senator was developing, it is true that these funds go into the State treasury and then are administered by the State. But if there were a Federal cutoff, there would not be an impact on State funds, because the Federal law would follow only the Federal portion that the State received. In other words, as I see it, if we take the sum of $100,000 and it were matched by $100,000 of State funds, and each county received $2,000, and there was discrimination, the State could take its own $1,000, if it wished to do so, and, so far as title VI is concerned, give it to county X, but it could not give the $1,000 of Federal funds to county X.

Therefore, so far as title VI is concerned, the State could administer its own funds and comply with its State requirements, but it could not utilize the Federal matching contribution to go into county X for the particular program in which there was discrimination.

Mr. GORE. Let us suppose that, because of constitutional limitations, conviction or even stubbornness on the part of the legislature, or the decision of the Governor, a State is unwilling or legally unable to withhold funds from a given county. The State might thus fail to comply with the stricture of the Federal agency. Would not the Federal Government, under the terms of this bill, of necessity withhold the funds from the entire State?

Mr. RIBICOFF. Yes; it could. But under those circumstances we would have a situation in which the Governor of a State had entered into complicity with the offending county, and he himself would be putting the State in violation. Under those circumstances the Senator from Tennessee is correct. If he refused to cut off the Federal flow of a particular program into the county, but, in violation of the requirement of Federal law, continued to pay those funds or a part of those Federal funds to a county that was discriminating in the use of those Federal funds, the State itself would then be in violation. It would be my hope, however, that the Governor of each State would be in compliance with Federal law, which would be the supreme law of the land in those circumstances.

Mr. GORE. Mr. President, this is an illustration of what to me is a sad and tragic fact. The theory of the pending bill, the thrust of the bill, the premise of the bill, is that there is no longer room for moderation; there may no longer be gradual progress in this vexatious field, but that this social revolution must be accomplished overnight.

I am sad because I have regarded myself as a moderate on this troublesome question. I have been sincere about it. I have never, one time, gainsaid the Supreme Court decision in the school cases being the law of the land. I did not sign the southern manifesto. I did not undertake to mislead the people of my State into believing that the Supreme Court Justices could be impeached or that Congress could quickly settle the question of race relations. Yet, as I say, it seems that there is no room any more for a moderate. There seems to be no patience with one who believes that better relationships between our races can only come with good will, education, and gradual progress.

Yes, there may be counties, there may be States, in which a majority of the legislature would not enact a law to permit termination or withholding of Federal aid to various counties that may not have accomplished full integration of their schools. Yet if such State failed to withhold funds with respect to Federal aid to education, or other programs, as the Senator has acknowledged, the Federal Government might cut off aid to the entire State. This would punish the people, including the children who may be receiving their only good meal every day from the hot lunch school program, in those counties which had complied fully and in those schools where there had been compliance, because of the action or the refusal to act on the part of

others, over which the children had no control and for which they were not responsible.

Mr. RIBICOFF. Mr. President, will the Senator yield?

Mr. GORE. I yield.

Mr. RIBICOFF. First, there is always room in the Senate for a man like the Senator from Tennessee. I believe that if he went back in his files, going back even to 1956—and my memory takes me back to an interesting correspondence I had with the Senator from Tennessee involving a man who subsequently became the President of the United States—the Senator may recall that—the Senator would know that I have long been an admirer of his. I was an admirer of his when we served together in the House. I have continued my admiration for him as I have sat with him in intimate discussions as a member of the Committee on Finance.

I believe that there have been few men in the history of the U.S. Senate who have been as constructive in their thinking and as sharp in their perceptions as is the Senator from Tennessee.

It is my feeling that even in the case he is talking about, the cutoff is not the first step but the last step. There are other means that could be used and should be used.

So long as we are in the process of making a record, and so long as this subject is an important one and means so much in this discussion and for the future of the administration of the proposed law, I should like to take a few extra moments, if the Senator would be kind enough to yield further to me, to set out the various steps involved as an alternative to cutoff, the way I think a bill like this should be administered, and the way a department or a bureau should administer it, and the way the President should administer it.

I should like to outline the various steps required by title VI so that there may be an understanding and a meeting of the minds, even though the amendment for which the Senator from Tennessee contends may not be adopted before the bill is finally passed.

Mr. COOPER. Mr. President, will the Senator yield to me for 1 moment?

Mr. BYRD of West Virginia. I yield.

Mr. COOPER. I understand from the Senator's remarks that he intends to outline his views and the alternatives that might be used in eliminating discrimination in programs of Federal financial assistance without cutting off Federal funds or terminating a particular program. I understand that he may become engaged in some lengthy colloquy over that point. Before he does so, would he permit me to make a remark about my colleague, my neighbor from Tennessee?

Mr. RIBICOFF. I should always be pleased to do so, but the Senator from Tennessee has the floor.

Mr. COOPER. Will the Senator from Tennessee yield?

Mr. BYRD of West Virginia. The Senator from West Virginia has the floor.

Mr. RIBICOFF. That is correct.

Mr. COOPER. Mr. President, will the Senator from West Virginia yield to permit me to intervene and make a remark about my neighbor, the distinguished senior Senator from Tennessee?

Mr. BYRD of West Virginia. Mr. President, I yield to the Senator from Kentucky so long as the Senator from Tennessee and the Senator from Connecticut may engage in whatever colloquy they may wish to engage in concerning the matter under discussion.

Mr. COOPER. Mr. President, I have listened today and in past days to the Senator's questions about title VI. Some of the doubts which he has, with regard to title VI have also raised questions in my mind. I have raised these questions on the floor of the Senate. They engaged my attention and interest to such that I submitted certain questions on title VI to the Attorney General in order to secure his views. I have placed in the CONGRESSIONAL RECORD the views which he gave me in his response. I found them to be very fair. But I did not rise to speak about title VI at this time.

A few moments ago I heard the Senator from Tennessee mention his attitude and practice throughout the years on this difficult and controversial question of civil rights. I think I understand how he feels. I live in the neighboring State of Kentucky. In many ways, our States have the same problems. The question of civil rights is a difficult question in his State, as it is in mine. It is also a controversial question.

Throughout the years, I have admired the just approach which the Senator from Tennessee has made toward this question. I have observed his reasonableness, his moderation, his fairness, and his leadership in working to see to it that this problem might be solved. I have admired his great courage.

I wanted to say this to my friend and neighbor, because I appreciate the difficulties a Senator may have who lives in a Southern State, and in a border State, as we both do.

Mr. GORE. I am deeply moved by the generous remarks of my neighbor, my personal friend, the senior Senator from Kentucky. He was a better basketball player than I and he chose to join a political party other than mine. But we both live in the valley of the Cumberland River. He comes from Kentucky; I from Tennessee. Nevertheless, we are neighbors, we are friends. Upon many questions our views are similar. This is but natural, because the sentiments, the aspirations, and the perspectives of the people whom we represent are similar.

I am most grateful to the Senator from Kentucky, and I thank him over and over.

What I was lamenting was that there no longer seems to be an area in which those who are moderates on the civil rights problem can be effective. In both 1957 and 1960, I assisted in writing the civil rights bills which were enacted. I am disappointed that a course has not developed so that we who take a moderate view have not had an opportunity to have a more effective part in the development of the pending bill which in some form will probably ultimately become law.

Some persons may be glad that a moderate has had little voice and little opportunity to influence the shape of this legislation. Many persons feel, quite sincerely, that the day for gradualism and for moderation has passed. But I wonder whether it is wise to conclude that this cataclysmic change can be accomplished and should be accomplished immediately. I doubt it; and I would not like to see innocent persons and worthy programs denied Federal funds and hurt or crippled because of the prevailing sentiment that we must be quickly on with this business and must be quickly through with it. I do not think we shall be quickly through with it, regardless of the laws we enact. It is only by education, tolerance, understanding, good will, and gradual improvement that relations worthy of the great races which inhabit this country can be achieved.

Mr. RIBICOFF. Mr. President, will the Senator from Tennessee yield?

Mr. GORE. I yield.

Mr. RIBICOFF. I wish to comment briefly on the remarks of the Senator from Tennessee. Like the Senator from Tennessee, who is a Senator of great understanding, vision, and compassion, I believe I do understand the situation which exists in the border States; and I believe one of the reasons why Tennessee sends men of such high caliber to Congress is to be found in its makeup, its complexion, and its understanding, for the various points of view do cross in that area. During the debate on the question of agreeing to the Hickenlooper amendment earlier today, I noticed that one of the cities that did the best job in preparing for school desegregation was Chattanooga, Tenn., which did that fine work voluntarily; and another city which did an excellent job was Louisville, Ky. So great credit goes to both of those States.

I opposed the Hickenlooper amendment. I was speaking of desegregation. I believe that Chattanooga, Tenn., will be one of the models to be studied in connection with the achievement of desegregation, and people should study the results achieved in Chattanooga in working toward school desegregation.

The Senator from Tennessee has raised serious questions, and they deserve serious consideration and discussion. I have been given part of the responsibility, by the floor manager of the bill, the Senator from Minnesota [Mr. HUMPHREY], to put forth the case for title VI and to help make the legislative history on this title, and for that reason I was asked to participate in the colloquy with the Senator from Tennessee so that an important record would be made. I agree with the Senator from Tennessee that the problems facing us will not be solved by the passage of the pending bill. It is my feeling that for the next two decades the Senate will be wrestling with various phases of civil rights.

In order to indicate the thinking of the Senate in regard to title VI, I believe it should be made clear that title VI is not intended to be punitive. I believe title VI should be used to end discrimination, not to punish, and the cut-

ting off of funds should be the last resort, not the first one.

I wish to have the RECORD show at this point how I believe title VI should work and how I believe it will work.

Mr. GORE. I think it would be very helpful to have that statement made for the RECORD at this point; and I appreciate the diligence of the distinguished Senator from Connecticut, a former member of the Cabinet of the late President of the United States. I realize that certain steps will be taken and so-called safeguard procedures will be followed. Nevertheless, the power to cut off the funds would remain.

However, I shall not comment on the Senator's point before he submits it. Therefore, at this time I yield.

Mr. RIBICOFF. The procedure under title VI would be as follows:

First. The agency would adopt a nondiscrimination requirement by rule, regulation, or order of general applicability.

Second. Such rule, regulation, or order must be approved by the President. I, for one, cannot imagine that there would be a time when any President of the United States would act capriciously.

Third. If discrimination occurred, the agency must advise the appropriate persons of the failure to comply with the nondiscrimination requirement. So if a county—which might be one of 100 counties in a State—discriminated, it must be advised of what it had done or what it had failed to do.

Fourth. The agency must then determine that compliance cannot be secured by voluntary means.

The agency could not immediately cut off the funds. As I view this matter, I hope that in the case of every agency and every county involved, the officials of the agency would sit down with the officials of the county, and would try to settle the problems voluntarily, before any action would be taken, including action to cut off funds, which would be the last resort.

Fifth. If enforcement action was necessary, the agency must then afford the recipients a hearing appropriate to the type of enforcement action that may be necessary. For example, the hearing preliminary to any withholding of funds would have to be more extensive than the hearing that preceded court action in which factfinding would occur de novo under judicial supervision.

Sixth. If, on the basis of the hearing, enforcement action was warranted, the agency then would make its choice of appropriate remedies, bearing in mind the requirement of section 602 that all action to implement section 601 "shall be consistent with achievement of the objectives of the statute authorizing the financial assistance."

The remedies provided by section 602 are withholding of assistance and any other means authorized by law. In general, the consistent-with-the-objectives requirement would make withholding of funds a last resort, to be used only when other means authorized by law were unavailable or ineffective.

To make that clear: The withholding of funds would be the last step to be taken only after the administrator or the agency had used every other possible means to persuade or to influence the person or the agency offending to stop the discrimination.

I can give an example of that: The first day that I became Secretary of the Department of Health, Education, and Welfare, I was confronted with a problem which had arisen in Louisiana. Because of rules and regulations under a statute of the Louisiana Legislature, a situation of discrimination arose in connection with making payments under the program of aid for dependent children.

My predecessor indicated that such action was wrong, and therefore funds had to be cut off. I as Secretary had a right to do so, and my predecessor had a right to do so also.

If my memory serves me rightly, about 70,000 children, both colored and white, were involved. The innocent would have suffered with the guilty if funds had been cut off. That is the problem which is concerning the distinguished Senator from Tennessee.

The Senator from Louisiana [Mr. LONG] and other members of the congressional delegation saw me because their Governor was concerned, they were concerned and the people involved in public welfare were concerned. Plain, common humanitarianism was involved. It was necessary that Louisiana comply.

The Louisiana Legislature was not in session. Even if it were the intention of the Governor and the Louisiana Legislature to change the law, they would not come into session until the following year.

I recall many conferences being held with the congressional delegation from Louisiana and attorney general of the State of Louisiana. I recall the many conferences and consultations in which I, personally, played the major part, not allowing it to be left to the staff of the Department. We granted a number of stays in the program to the following year in order to give the Louisiana Legislature time to come into its regular session and then to change the law and eliminate the offending clauses.

The following year the State of Louisiana Legislature met and corrected the law that had been enacted, which was an offending law and which gave me the power to cut off funds.

By a little patience and by waiting a year, although there was pressure from many throughout the country to cut off funds from Louisiana, which I refused to do until the matter was straightened out, the innocent did not suffer and Louisiana did not suffer. Louisiana came into compliance.

My view is that in a State containing 100 counties, something must be involved if 99 counties comply and 1 county does not comply. It seems to me that in such a State there is a general philosophy for compliance. I would feel that public opinion would be most persuasive against the offending county not to jeopardize the funds or to place the Governor in the embarrassing position in which he would be placed because of a conflict between Federal and State law, with the element of supremacy being involved. I believe that under those circumstances the Governor, the agency head, and public opinion would bring about compliance to try to eliminate the discrimination.

I am stating the practical way in which I believe the situation could be worked out, and I believe in many instances it would work out as I have described what took place with the State of Louisiana when I met a problem similar to the one which is worrying the distinguished Senator from Tennessee.

Mr. GORE. The Senator has cited a most interesting example. I was aware of his record with respect to the Louisiana episode. I admire it. I applaud him for his action. It is an example of good will and good administration on the part of a Federal official, and good will on the part of State officials and the State legislature. It worked out satisfactorily.

The illustration also provides, however, an instance in which an order was made by the predecessor of the distinguished Senator as Secretary of Health, Education, and Welfare in which all funds were cut off from the State of Louisiana. I am glad that it was corrected. I applaud the Senator for his record as Secretary of Health, Education, and Welfare.

But suppose that the Senator had followed the course which he was implored to follow by many, as he has related, and had cut off funds from that State. Many an old person would have suffered and many dependent children, the blind, and crippled, would have been denied aid during the year before which the legislature convened.

I do not see the necessity of giving such power to a Federal official. True, the situation worked out well, thanks to the goodness of heart, the tolerance, and the patience of the distinguished Senator when he was Secretary. But we may not always have men of such good will in the future. I do not question the good faith of the present administration or of any future administration, but I must vote as a prudent legislator, not so much on the basis of what probably would happen under a given statute, but on the basis of what could happen.

We must consider the extent of the power granted as well as the probability of whether it will be used. We must assume that sometime in the course of the future the power conferred upon the executive branch will be used.

Mr. RIBICOFF. One of the main thrusts of this colloquy is to indicate to administrators, present and future, how Congress looks upon the utilization of this power. But it should be added—and this ironical—that long before we had the civil rights bill—and we are talking about title VI—there was reposed in agency after agency of the Government, power to cut off funds to different States for various reasons, including discrimination, without the safeguards that are now in title VI. Title VI is more moderate. Title VI would give much greater scope consistent with the philosophy being expressed by the Senator from Tennessee than now prevails in many programs with which we are dealing and which the Congress year after year has enacted. So to that extent title VI would

be even an improvement over the point of view taken by the Senator from Tennessee.

Mr. GORE. As the Senator knows, I have expressed appreciation for the improvement which has been made in the draft of the substitute. Unquestionably the statement which the able Senator has made is correct. Yet there are other instances that stand out boldly which appear to me to pose a danger of hurtful action. For example, I cite the payments by the TVA in lieu of taxes to the States and counties in the TVA area. As I understand, the TVA makes payments in lieu of taxes to counties and States in which its properties are located. This is in consequence of a Federal statute. Once the TVA funds are paid to the county, the funds are commingled with other county funds. From those commingled funds a school system is operated. The county may have integrated its central high school but not all of its schools. Under the bill the TVA would be authorized and directed to proceed to promulgate rules and regulations, subject to the approval of the President, under which it could cut off funds to any county in which so much as one local rural school was operated on a segregated basis. Moreover, under this authority, funds payable by TVA to a State might be withheld because of an allegation of discrimination in some State program in only one section of the State.

I do not say that this would be done immediately. Under the present administration, it certainly would not likely be done. But, again I must take my position on the bill on the basis of what could be done, rather than what would be done.

Mr. RIBICOFF. Seventh. Looking first to the "other means authorized by law," the agency could, for example, ask the Attorney General to initiate a lawsuit under title IV, if the recipient were a school district or public college; or the agency could use any of the remedies available to it by virtue of its own "rule, regulation, or order of general applicability." For example, the most effective way for an agency to proceed would often be to adopt a rule that made the nondiscrimination requirement part of a contractual obligation on the part of the recipient. Then violation of such a requirement would normally give the agency the right to bring a lawsuit to enforce its own contract; or, in the absence of a technical contract, the agency would have authority to sue to enforce compliance with its own regulations. All of these remedies have the obvious advantage of seeking to end the discrimination, rather than to end the assistance.

Eighth. If "other means authorized by law" were unavailable or ineffective, then withholding the assistance might be necessary. And, in such event, the consistent-with-the-objectives rule could not be used to undermine the overriding requirement of title VI that some action must be taken to implement the nondiscrimination principle. The withholding could take the form of a termination of existing assistance or a refusal to grant or continue additional assistance.

The procedure for carrying out the fund cutoff remedy would be as follows:

8a. The cutoff must be limited to the program or part of the program in which there was discrimination.

8b. Only the recipient who had failed to comply with the nondiscrimination requirement could be denied the assistance.

Mr. GORE. Now we come to the crucial term, it seems to me, and that is the word "recipient." In the case of a portion of the TVA payments, the State is a recipient. For the remainder the county is the recipient. Funds are paid to both, and yet a part of the county, or a part of the State, may have some segregated schools. I daresay that will be true in many States for a very long while. Moreover, discrimination sought to be eliminated by the bill is not confined to segregation in schools. Discrimination is nowhere defined.

I realize that we must hope that all administrators will be men of compassion and good will. And I indulge in that hope. Without such a hope, one would have fears for the future of self-government.

There is this quality of man that causes our system to survive. And yet, there are unfortunately certain exceptions. Funds might be cut off from an entire State. I know that many people rely upon the provision that the President must approve the regulations to be promulgated under title VI. With all the duties of his high office, the President is not likely to be able to devote his attention to the details of implementing the broad regulations which would be adopted.

Within the framework of such rules and regulations, lesser appointed officials would be determining what constitutes discrimination, and whether or not aid would be withheld because of whatever allegations may have been made.

It seems to me that this is a power which it would be unnecessary and unwise to vest. As the Senator has stated, there are other ways to eliminate discrimination and I would hope that the other ways would be used. What the able Senator is saying is very helpful. It demonstrates that insofar as he is concerned, the passage of this bill is a matter of good will. He does not, as he has expressed it, anticipate that the sledge hammer will fall upon local communities quickly and easily. For myself, I doubt if we should go so far as to grant such authority.

Mr. RIBICOFF. I point out, adding to what the Senator from Tennessee has stated, that not only is the cutting off of funds limited to the recipient who discriminates, but there is another requirement in the new amendment which is, as I said before, a result of the efforts of the Senator from Tennessee. This second requirement limits the effect of any fund cutoff to the particular program or part thereof in which such noncompliance has been so found. The new language spells out very carefully that we do not intend to adopt a sledge hammer approach, taking the entire State, or taking all of the programs, but confining whatever cutoff eventually comes into play to the offending recipient, and then only to the particular program or part thereof, and not to the rest of the program operating elsewhere in the State.

I cannot emphasize this too many times, because I think it is quite important. Although the Senator from Tennessee may not prevail, I think the Senator from Tennessee should have the satisfaction of knowing that his efforts and his persistence have definitely led to a spelling out—to make sure for every Federal agency, and the knowledge of every State—that we are not going to cut off the funds of every State for all programs, but only for that part of the State and that part of the program in which discrimination is involved. I give great credit for this achievement and action in the bill to the Senator from Tennessee.

(At this point Mr. WILLIAMS of New Jersey took the chair as Presiding Officer.)

Mr. GORE. I am very grateful. I hope that our mutual efforts will prevent hardships being worked upon the needy, and will prevent punishment being meted out to the innocent. I do not see the necessity of granting such power as would be conferred by title VI. Unfortunately, the history of government is such that we must assume that a power granted will eventually be used. This will become permanent law if enacted and, therefore, I believe it is the better part of wisdom to proceed cautiously.

I should like to see a more thorough examination of title VI. The colloquy we have engaged in constitutes the most thorough examination that this title has had on the floor of the Senate on this point. I would that there could be more colloquy, but we are faced with a cloture vote tomorrow. I fear that, once cloture is voted, scant consideration will be given to amendments which are offered.

Mr. RIBICOFF. Continuing with the procedure—

8c. There must be an express finding on the record, after opportunity for hearing, that such recipient had failed to comply with the nondiscrimination requirement.

8d. The head of the department or agency involved must file a full, written report to the appropriate committees of Congress, explaining the circumstances and the grounds for the proposed action.

8e. Thirty days must then elapse after the filing of such report before cutoff of funds could occur.

8f. The recipient could obtain judicial review of the agency's action under section 10 of the Administrative Procedure Act, which includes authority for a stay pending review.

Ninth. Section 603 makes clear, in addition to the specific judicial review of any fund cutoff action that all other agency action taken under section 602 would be subject to the same type of judicial review provided by law for similar action taken on other grounds.

That is the procedure of title VI. I believe that it is fair and reasonable. It authorizes no action beyond that needed to secure a right that all agree should be secured, the right of nondiscrimination

in federally aided programs. At the same time, it is difficult to see how that right could be secured with anything less than what will be authorized in title VI.

Now, that I have had this colloquy with the Senator from Tennessee, I realize how deeply he feels about this subject, and how important it is for Congress and for the future to make the record clear.

I have tried in my small way to add to the explanation being made by the Senator from Tennessee.

I conclude with very high praise for the good will, the good intentions, and the great ability of the Senator from Tennessee.

Mr. GORE. I thank my distinguished friend the Senator from Connecticut very deeply. I am most grateful for his generous remarks, and for his willingness to engage in this colloquy at this late hour.

Perhaps the colloquy itself, should the bill become law in its present form, will prove to be helpful.

Through all of the colloquy looms the extent of the power which this bill would confer upon the Federal Government to withhold financial assistance to community programs, to projects, and to people, as a means of forcing conformity.

It is true that safeguard procedures would obtain. The 30-day waiting period would be worth something. I doubt whether appeal to the courts under the Administrative Procedure Act would be worth much. All these safeguard provisions, however, are worth while. They stand between the innocent people, the worthy programs, and the needy communities and the ultimate cutoff of funds. But these procedures constitute only a procedural matter, a timelag. The ultimate authority is vested in the bill to cut off the funds.

Federal aid has so permeated our system, our way of life, that there is hardly any segment of the economy or the social order that is not affected directly or indirectly by Federal aid.

Our merchant marine sails the high seas only because of Federal aid. Our airports are constructed, many of our homes are constructed, farm-to-market roads and Federal highway systems are constructed with Federal aid—in fact, there are so many Federal aid programs that the Library of Congress has been unable to enumerate them all.

Many amendments have been offered in the last 10 years to authorize or direct termination of Federal aid in various programs unless certain civil rights requirements were met. The list of these amendments is a long one. Suffice it to say that up to now Congress has rejected each amendment offered for this purpose. But title VI of the pending bill would affect every law that we have which provides for Federal financial assistance—every program, without describing exactly how it would affect any of them.

Mr. President, this points up the difficulty of finding language adequate to meet the problem sought to be reached by title VI. We do not even have an enumeration of the programs which would be affected by title VI, much less do we know the precise way in which some programs might be affected.

Some weeks ago, I asked the Legislative Reference Service of the Library of Congress to prepare for me a list of the Federal programs which would fall within the purview of title VI. In response to that request, I received a memorandum under date of April 30 with which was enclosed a compilation of programs involving Federal aid to State and local governments. The list of Federal programs is 11 pages long. Significantly, the Library of Congress experts were unable to certify either that the list is complete or that all the programs listed thereon would actually be affected. I quote one sentence from the memorandum which accompanied the list. It states:

> The most that can be said by way of a general statement is that the programs listed may fall within the scope of that title.

I ask unanimous consent that the memorandum from the Library of Congress together with the compiled list of Federal programs may be printed in the RECORD.

There being no objection, the memorandum and list were ordered to be printed in the RECORD, as follows:

THE LIBRARY OF CONGRESS,
LEGISLATIVE REFERENCE SERVICE,
Washington, D.C., April 30, 1964.

To: Hon. ALBERT GORE.
From: American law division.
Subject: Federal aid to State and local governments.

In response to your inquiry of April 30, 1964, we have prepared the annexed compilation detailing Federal aid to State and local governments and federally assisted education programs.

For a variety of reasons, it is difficult, if not impossible, to compile an all-inclusive list of programs and activities which potentially fall within the provisions of title VI. The following list should not, therefore, be taken as definitive or all inclusive. Nor, is it meant to suggest that every program reflected therein would be affected by title VI, if enacted. The most that can be said by way of a general statement is that the programs listed may fall within the scope of that title.

The information contained on the list has been taken from the Budget of the U.S. Government, fiscal year ending June 30, 1965 (Appendix, H. Doc. 266, 88th Cong., 2d sess.), and special analysis I, "Federal Aid to State and Local Governments." New programs which, although listed in the budget, are not yet authorized, have been omitted.

RAYMOND J. CELADA,
Legislative Attorney.

FEDERAL AID TO STATE AND LOCAL GOVERNMENTS

(As reflected in the budget of the United States Government for the fiscal year ending June 30, 1965. Statutory citations added.)

NOTE.—Types of Federal aid: Federal financial assistance to State and local governments takes the form of direct grants-in-aid, shared revenue, and net loans and repayable advances. Grants to States and localities are the most significant type of Federal aid. In 1965, it is estimated that $10.2 billion or 96 percent of total expenditures for all three types of aid will take the form of grants-in-aid. Shared revenue will account for $183 million, or 1.7 percent, and net loans and repayable advances, $203 million, or 1.9 percent of the grand total. Apart from these types of Federal aid, many other Federal expenditures * * * such as contractual payments or grants to public institutions for research and training in special fields, affect the finances of State and local governments. [Special analysis I, "Federal Aid to State and Local Governments," Bureau of the Budget, January 1964.]

(Follows table I–3, Federal aid to State and local governments, special analysis I, Id. at 431.)

I. Grants-in-aid (Budget accounts).

A. National defense:

1. (1) Office of Emergency Planning: Federal contributions to the States for civil defense purposes, 50 App. U.S.C. 2281.

2. (2) Department of Defense-Military: Civil defense shelters and financial assistance for civil defense purposes, 50 App. U.S.C. 2271 note.

3. (3) Construction of Army National Guard centers, 10 U.S.C. 2231–2238.

B. International affairs and finance:

4. Department of State: East-West Cultural and Technical Interchange Center, 22 U.S.C. 2452.

C. Agriculture and agricultural resources: Department of Agriculture:

5. (1) Commodity Credit Corporation and Agricultural Marketing Service: Removal of surplus agricultural commodities and value of commodities donated, 7 U.S.C. 612–626, 1431 et, seq.

6. (2) Watershed protection, flood prevention, and resource conservation and development, 16 U.S.C. 1001–1009.

7. (3) Cooperative agricultural extension work, 7 U.S.C. 341–346.

8. (4) Agricultural experiment stations, 7 U.S.C. 361a–389a; Public Law 88–74.

9. (5) Payments to States, territories, and possessions, Agricultural Marketing Service, 7 U.S.C. 1621–1630.

D. Natural resources:

10. (1) Department of Agriculture: Forest protection and utilization, 16 U.S.C. 502a–502a–507.

11. (2) Department of Defense-Civil: Corps of Engineers: Payment to California, flood control, 33 U.S.C. 511–523, 540, 701.

3. Department of the Interior:

12. (a) Bureau of Reclamation: Disposal of Boulder City and Coulee Dam communities, 71 Stat. 530.

13. (b) Bureau of Indian Affairs: Resources management, 25 U.S.C. 7, 13, etc. See page 481, House Document No. 266, 88th Congress, 2d session.

14. (c) Drainage of anthracite mines, 30 U.S.C. 572.

15. (d) Federal aid for fish and wildlife restoration, 16 U.S.C. 777–777k; 669–669j.

E. Commerce and transportation:

16. (1) Funds appropriated to the President: Public works acceleration, 40 U.S.C. 462; 42 U.S.C. 2641–2643.

2. Department of Commerce:

17. (a) State marine schools, 46 U.S.C. 1381–1388.

18. (b) Forest and public lands highways, 23 U.S.C. 201.

19. (c) Control of outdoor advertising, 23 U.S.C. 131.

20. (d) Area redevelopment assistance, 42 U.S.C. 2501–2525.

21. (3) Federal Aviation Agency: Federal-aid airport program, 49 U.S.C. 1101–1119.

22. (4) Small Business Administration: Research and management counseling, 15 U.S.C. 636.

F. Housing and community development:

1. Housing and Home Finance Agency:

23. (a) Low-income housing demonstration program, 42 U.S.C. 1436.

24. (b) Low-rent public housing program, 42 U.S.C. 1401–1435.

25. (c) Urban renewal and planning, 40 U.S.C. 461–462; 42 U.S.C. 1450–1462.

26. (d) Open space program, 42 U.S.C. 1500–1500e.

27. (2) National Capital Planning Commission: Acquisition of lands in Maryland, 40 U.S.C. 70–72.

28. (3) District of Columbia: Federal payment and contribution, annual authorization.

G. Health, labor, and welfare:

29. (1) Funds appropriated to the President: Disaster relief, 42 U.S.C. 1855.

30. (2) Department of Agriculture: School lunch, special milk, and food stamp programs, 42 U.S.C. 1751–1760; 7 U.S.C. 1446; 7 U.S.C. 612.

3. Department of Health, Education, and Welfare:

31. (a) Hospital construction activities, 42 U.S.C. 291–291n.

32. (b) Portion to private, nonprofit institutions, ibid.

33. (c) Construction of waste-treatment facilities, 33 U.S.C. 466e.

34. (d) Community health activities, 42 U.S.C. 247a.

35. (e) Environmental health grants, 42 U.S.C. 1857–57f.

36. (f) National Institutes of Health: (1) Operating grants, 42 U.S.C. 246; (2) Mental health facilities, 42 U.S.C. 242b.

37. (g) Maternal and child welfare, 42 U.S.C. 701–705.

38. (h) Mental health facilities, Alaska, 42 U.S.C. 273.

39. (i) Hospital and medical care, Hawaii, 42 U.S.C. 255.

40. (j) Indian health facilities, 42 U.S.C. 2001–2005a.

41. (k) Public assistance, 42 U.S.C. 303.

42. (l) Vocational rehabilitation, 29 U.S.C. 31–41.

H. Education: 1. Department of Health, Education, and Welfare:

43. (a) Assistance to schools in federally affected areas, 20 U.S.C. 631–645; 20 U.S.C. 236–244; b. Defense educational activities:

44. (1) Assistance for elementary and secondary education, 20 U.S.C. 441–445, 481–484.

45. (2) Other aid to education, 20 U.S.C. 461–465 (graduate studies); 421–429 (students in institutions of higher learning); 20 U.S.C. 441–445 (mathematics, science, foreign language training); 331–332 (cooperative research).

46. (3) Higher education construction, Public Law 88–204.

47. (4) Assistance to land-grant colleges, 7 U.S.C. 301–308, 321–331.

48. (5) Vocational education, 20 U.S.C. 11–34.

49. (6) Grants for library services, 20 U.S.C. 351–358.

50. (7) Teaching for the blind, 20 U.S.C. 101–105.

51. (8) Training teachers of the handicapped, 20 U.S.C. 611–617 (mentally retarded); 671–676 (deaf).

52. (9) Educational television facilities, 20 U.S.C. 541–542.

53. (c) Department of the Interior: Bureau of Indian Affairs: Education and welfare services, 25 U.S.C. 452–454.

I. Veterans benefits and services: 1. Veterans Administration:

54. (a) Aid to State homes, 38 U.S.C. 641–643.

55. (b) State supervision of schools and training establishments, 38 U.S.C. 1645, 1774.

J. General government:

56. (1) Funds appropriated to the President: Transitional grants to Alaska, 48 U.S.C. (prec.) 21 (Alaska Omnibus Act).

57. (2) Department of the Interior: Grants to territories and Alaska public works, 48 U.S.C. 486i.

58. (3) General Services Administration: Hospital facilities in the District of Columbia, see p. 703, H. Doc. No. 266, 88th Cong., 2d sess.

II. Shared revenue (Budget accounts):

A. Natural resources:

59. (1) Department of Agriculture: National forest and grassland funds, payments to States and counties, 7 U.S.C. 1012; 16 U.S.C. 500.

60. (2) Department of Defense-Civil: Corps of Engineers: Flood Control Act of 1964 payments, 16 U.S.C. 460d.

3. Department of the Interior:

61. (a) Payments to States and counties from graying receipts, sales of public lands and proceeds, and national grasslands, 43 U.S.C. 315i, 315j.

62. (b) Boulder Canyon project, payments to Arizona and Nevada, 43 U.S.C. 1607a.

63. (c) Oregon and California land-grant fund payments, 16 U.S.C. 583, 594; 4 U.S.C. 1, 2.

64. (d) Payments to Coos and Douglas Counties, Oregon, 53 Stat. 753–54.

65. (e) Mineral Leasing Act payments, 30 U.S.C. 191, 285.

66. (f) Payments to counties, Migratory Bird Conservation Act and national grasslands, and payments to Alaska, Alaska Game Law and Privilof fund, 7 U.S.C. 1012, 16 U.S.C. 631e, 715e, 48 U.S.C. 166k.

67. (4) Tennessee Valley Authority: Payment in lieu of taxes, 16 U.S.C. 8311.

68. (5) Miscellaneous shared revenue.

B. General government:

69. (1) Department of the Interior: Internal revenue collections, Virgin Islands, 48 U.S.C. 1642.

70. (2) Treasury Department: Tax collections for Puerto Rico, 48 U.S.C. 734.

III. Loans and repayable advances (Budget accounts):

A. Agriculture and agricultural resources:

1. Department of Agriculture:

71. (a) Rural renewal, 40 U.S.C. 440.

72. (b) Watershed protection, flood prevention and resource conservation and development, 16 U.S.C. 1006a.

B. Natural resources:

73. (1) Department of Interior: Irrigation projects, 43 U.S.C. 421c.

C. Commerce and transportation:

74. (1) Department of Commerce: Area redevelopment, 42 U.S.C. 2505, 2506.

D. Housing and community development:

1. Housing and Home Finance Agency:

75. (a) Liquidation programs: Community facilities loans, 42 U.S.C. 1492.

76. (b) Low rent public housing program, 42 U.S.C. 1410.

77. (c) Public facilities, 42 U.S.C. 1491–1496.

78. (d) Public works planning, 40 U.S.C. 462.

79. (e) Urban renewal fund, 42 U.S.C. 1452.

80. (2) District of Columbia: Capital outlays and operations, see p. 893, H. Doc. No. 266, 88th Cong., 2d sess.

E. Education:

81. (1) Housing and Home Finance Agency: College housing, 12 U.S.C. 1749–1749d.

82. (2) Department of Health, Education, and Welfare: Higher education construction, Public Law 88–204.

F. General government:

83. (1) Department of Defense—Civil: Corps of Engineers: Construction of power systems, Ryukyu Islands, 74 Stat. 461, as amended 76 Stat. 742.

84. (2) Department of the Interior: Alaska public works, 48 U.S.C. 486–486j.

IV. Grants-in-aid (trust funds).

A. Commerce and transportation:

85. (1) Department of Commerce: Highway trust fund: Federal-aid highway program, 23 U.S.C. 120 note.

B. Health, labor, and welfare:

86. (1) Department of Labor: Unemployment trust fund: Administration of employment security programs, 42 U.S.C. 1104, 1321.

V. Shared revenue (trust funds).

A. General government:

87. (1) Treasury Department: Bureau of Customs: refunds, transfers, and expenses of operations, Puerto Rico and Virgin Islands, 48 U.S.C. 740; 48 U.S.C. 1642.

FEDERAL ASSISTED EDUCATION PROGRAMS

1. Colleges of Agriculture and Mining, 7 U.S.C. 329.

2. Cooperative vocational education, 29 U.S.C. 31.

3. Assistance for school construction (impacted areas) 20 U.S.C. 631–645.

4. Maintenance and operation of schools (impacted areas), 20 U.S.C. 236–244.

5. Library services, 20 U.S.C. 351–358.

6. Defense education activities:

(a) Loans to students in institutions of higher education, 20 U.S.C. 421–429.

(b) Financial assistance for strengthening science, mathematics, and modern foreign language instruction, 20 U.S.C. 441–445.

(c) Aid to graduate fellowships, 20 U.S.C. 461–465.

(d) Aid to State educational agencies for guidance, counseling, and testing, 20 U.S.C. 481–484.

(e) Language development, 20 U.S.C. 511–521.

(f) Aid to research and experimentation in more effective utilization of television, radio, motion pictures, and related media for educational purposes, 20 U.S.C. 541–542.

7. Expansion of teaching in education of the mentally retarded (to States), 20 U.S.C. 612.

8. Expansion of teaching in education of the mentally retarded (to individuals), 20 U.S.C. 611.

9. Cooperative research in education, 20 U.S.C. 331–332.

10. Fellowships and assistance to schools (Atomic Energy Commission), 42 U.S.C. 2201.

11. Research grants awards (National Science Foundation), 42 U.S.C. 241.

12. Fellowship Awards (National Science Foundation), 42 U.S.C. 289c.

13. Higher education, construction, Public Law 88–204.

Mr. GORE. Mr. President, I recognize the difficulty of drafting language which would authorize termination of an aid program in only one county or in only several counties of a State when the funds are actually administered and used by the State itself. I have sought to draft such language, but without entirely satisfactory results. I have concluded on the basis of my own study that there are a number of Federal aid programs under which it would not be feasible to terminate aid on a county-by-county basis. Faced with a decision of whether to terminate aid on a statewide basis or not to terminate it at all, administrators might well decide to terminate aid in an entire State even though the allegation of discrimination pertained only to one county. The result would be penalizing citizens in one area of a State for actions or omissions by persons in another area of the State over whom the penalized citizens have no control whatever.

From the standpoint of clarity, the language of the substitute is, as I have said, an improvement over title VI of the pending bill. Aside from the question about whether the revised language concerning the pinpointing of aid termination is effective, however, there are other serious questions about title VI of the bill that are not resolved by the new language at all.

There still remains the question of whether the broad language of section 601 is fully limited by the language of section 602. If the provisions of 601 are not so limited, as I believe to be the case, then section 601 might well be interpreted as conferring statutory authority which might be implemented by means other than those prescribed by section 602.

Section 601 of the substitute provides:

> No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

I emphasize the words "any program."

Section 602 states the procedures by which section 601 will be implemented by:

> Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guarantee.

The quoted language from section 602 includes most of the Federal programs or activities receiving Federal financial assistance. But it does not include them all. Clearly the insurance and guarantee programs of the Federal Housing Administration and the Veterans' Administration are excluded from the provisions of section 602. So are the programs for Federal deposit insurance, Federal savings and loan insurance, Federal crop insurance, and perhaps others.

The agencies excluded from the language of section 602, it would seem clear, are not authorized to take any action whatever under the provisions of section 602. It is just as clear, on the other hand, that these programs are included within the broad terms of section 601. If the insurance and guarantee program administrators are not to follow the procedures of section 602 in eliminating discrimination, what procedures are they to follow? On this question this bill is silent.

It has been suggested that this bill is not intended to affect the inherent authority of the President nor to diminish whatever statutory authority the President now has to eliminate discrimination in Federal aid programs. While that may be the intent of some of the proponents of the bill, that is not necessarily how the bill would be construed by the courts. The most fundamental of all rules of construction is that the Congress intended to do what it did do.

If section 601 should be construed as creating rights or as affecting existing statutes—and unless it does one or the other, it serves no purpose—we should be certain how the rights created are to be protected with respect to all Federal programs—not just some of them or most of them.

I am concerned that section 601 under the language of the substitute might be interpreted as creating a statutory basis for a wide range of Executive orders which could be implemented outside the scope of the safeguard provisions of section 602. From a careful reading of the substitute, the conclusion is inescapable that section 602 does not apply at all to some of the more important programs of Federal financial assistance.

The substitute, like the original bill, fails to include religious discrimination as an evil which should be eliminated from programs of Federal financial assistance. Religious discrimination is prohibited in the titles relating to voting, public education, public accommodations, public facilities, and employment. Only title VI and title X—the latter relating to the community relations service—fail to make provisions for elimination of religious discrimination. Indeed, these examples constitute the only legislative language I can recall being proposed in the Congress in the field of civil rights that would not seek to ban discrimination on the basis of religious beliefs.

I discussed this omission at some length when I addressed the Senate on April 25. No answer satisfactory to me was offered then as to why we should suddenly forget about religious discrimination when discussing Federal aid. I am not persuaded that religious discrimination has been eliminated from national life, nor has any reason been suggested as to why religious discrimination must be prohibited by Federal law in public facilities operated by the States and municipalities but not mentioned in programs financed with Federal tax dollars. Surely, to the extent that it exists, there is no more invidious discrimination than that which has as its basis the religious beliefs of a citizen.

We seek to eliminate religious discrimination from the ballot box—and we should. The pending bill would seek to prohibit religious discrimination by a private citizen in the operation of his privately owned business and in the employment of persons he hires with his own money. If the Congress is to seek to compel private citizens not to discriminate on the basis of religious belief, surely, we should include religion as a type of discrimination not to be tolerated in programs financed by the Government itself.

If title VI is to be enacted into law and if it is to achieve its announced objectives, it should rest solidly upon principle and conviction. There is enough politics in the bill already. The Congress should not compound the political implications by resorting to a type of expediency so blatant as to undermine faith in the overall congressional intent.

Finally, Mr. President, the substitute language of title VI suffers from the same basic defect in approach as does title VI of the bill. It fails to define the evil it is suposed to correct. Discrimination is no more defined in the substitute than in the original version of title VI.

Whatever coverage may be specified, whatever procedures may be prescribed, whatever safeguards may be written into the bill, Congress will still be delegating to the Executive the authority to specify the terms and conditions upon which Federal aid will be made available.

I have previously referred to a memorandum from the Library of Congress which indicates that the Legislative Reference Service has been unable even to compile a complete list of the Federal programs which might be affected by title VI. No standards are prescribed, no guidelines are set forth by which those who would administer the title would determine what constitutes discrimination. Those who administer the various programs presumably would determine in each case the circumstances by which a "recipient" would be determined to have subjected someone to discrimination. The Congress should reserve such authority to itself. Otherwise, it will have suffered a serious diminution of its capacity to influence the affairs of our society.

Mr. BYRD of West Virginia. Mr. President, I take the floor at this time to urge Senators not to vote to invoke cloture tomorrow.

There is a serious question in the judgment of many Senators, and many persons outside the Senate, regarding the constitutionality, the wisdom, and the enforceability of the proposed legislation.

It is several highly controversial bills rolled into one bill. It constitutes government by injunction. It would not create civil rights. It would destroy civil rights.

What are the civil rights of Americans? The right to serve on juries, the right to a jury trial, the right of the accused to be confronted with the witnesses against him, the right to be secure in one's person, his house, his papers, and his effects from unreasonable searches and seizures; the right to own property; the freedom, within certain bounds, to speak; the freedom to petition one's government concerning grievances.

These are among the civil rights of Americans, and they are not confined to white Americans; they are assured to all Americans, white and nonwhite, by the Federal Constitution, the Federal Bill of Rights, and the amendments thereto.

Mr. Justice Douglas, in *Lerner* v. *Casey*, 357 U.S. 468, said:

> Among the liberties of the citizens that are guaranteed by the 14th amendment are those contained in the first amendment * * *. These include the right to believe what one chooses, the right to differ from his neighbor, the right to pick and choose the political philosophy that he likes best, the right to associate with whomever he chooses, the right to join the groups whom he prefers, the privilege of selecting his own path to salvation.

I have enumerated but a few civil rights of the American people. These are civil rights which they already possess.

As I have indicated and as I repeat, the bill would not create any new civil rights.

In my judgment it would impair the civil rights of all Americans. It cannot be justified on any basis—legal, economic, moral, or religious.

The only weapon in the hands of those of us whose deep, conscientious convictions lead us to oppose certain provisions of this bill is the weapon of continued discussion and debate.

If closure is adopted, and if the gag rule is invoked, all will be lost. We do not have the votes to delete titles which are bad. It is sheer folly to vote for closure believing that we can subsequently amend the bill so as to eliminate its faulty provisions.

We are urged by some to vote on the bill, so it will be out of the way before the presidential nomination conventions. This is no excuse for passing a bad bill. We are told that we must pass this bill or remain here all summer. Even though we were forced to stay here through Christmas, it would be all right with me, because in my judgment this is no good reason for passing a bad bill.

Some say we should pass this measure so that we can move on to other legislative matters which await our attention. This is not justification for passing a bad bill.

The leadership can simply set the bill aside, and the Senate can get on with other business.

The people are becoming more and more aware that this is not a bill which is in the best interests of the Nation. They are becoming aware, or they should become aware, that it is only a political grab for votes.

If cloture fails, and the Members of the House and the Senate have an opportunity to go home and sound out the sentiments of the people at the grassroots, the bill in its present form will never again be before the Senate.

If the proponents are able to secure the necessary two-thirds to invoke closure and shut off debate, millions of our well-meaning but unknowing citizens who have exerted pressure in behalf of this bill will find out, when it is too late, that they have made a mistake.

Mr. President, I voted for the 1957 Civil Rights Act. I voted for the 1960 Civil Rights Act. I voted for the resolution proposing a constitutional amendment to abolish the poll tax as a prerequisite for voting in Federal elections.

There are some titles in the pending bill and some provisions in other titles that I could support. However, I am under no illusions, if cloture is invoked, that we shall be able to strike those titles which I consider to be dangerous, unconstitutional or unwise or unenforcible. I am aware that the leadership has the votes to beat down all amendments, or at least I presume that the leadership has the votes so to do. Once cloture is invoked, the Senate will adopt the amendments that are agreeable to the combined leadership on both sides of the aisle. In my judgment, there is probably an understanding that all amendments other than those included in the so-called substitute are to be tabled or voted down; and it would be an exercise in futility to attempt to delete any objectionable provision.

So whatever hope one may have to delete objectionable titles will certainly be in vain if and when cloture is invoked.

I know there is much criticism concerning the so-called filibuster. But I do not consider the debate that has taken place on the bill to have been a filibuster. The debate has been germane and to the point. Naturally, it has been redundant and repetitious at times. It could not be otherwise, having extended over as long a period as it has extended. I feel that history will not be unkind to those who have resorted to this final weapon in order to protect constitutional government in this Republic.

I am not a member of the southern bloc, and I am not a member of any other bloc, whether it be northern, eastern, or western. I do not consider myself to be joined to any group in the Senate in connection with this bill or any other bill. I view this bill as one which is not at all sectional in its impact. Its impact will be upon all sections of the country. Consequently, I feel that it is my duty to present my views in the matter and to stand in opposition to those provisions which I find objectionable.

First of all, I am opposed to the procedures under which the bill has reached its present status. One must place one's objections in the overall context of the life of the bill, beginning even in the other body. Knowledge of the manner in which the bill was railroaded out of committee in the House of Representatives should alarm anyone who views with concern arbitrary and authoritarian procedures which serve to circumvent and to thwart adequate deliberation and consideration of highly controversial legislation such as this.

A reading of the House minority report which accompanied H.R. 7152 in its hasty and premature birth will, figuratively, shake one's teeth and perhaps curl one's hair if one has any respect whatsoever for orderly legislative methods and procedures.

Beginning at page 62 of the House report which accompanied H.R. 7152, the so-called civil rights bill, we find this statement:

> This legislation is being reported to the House without the benefit of any consideration, debate, or study of the bill by any subcommittee or committee of the House and without any member of any committee or subcommittee being granted an opportunity to offer amendments to the bill. This legislation is the most radical proposal in the field of civil rights ever recommended by any committee of the House or Senate. It was drawn in secret meetings held between certain members of this committee, the Attorney General and members of his staff and certain select persons, to the exclusion of other committee members.
>
> Sometime prior to October 22, 1963, Subcommittee No. 5 of the Judiciary Committee of the House of Representatives had prepared a substitute bill for H.R. 7152. Title I of the substitute was read and discussed by the full Judiciary Committee prior to October 22, and at a meeting held on that date a motion was made by the gentleman from West Virginia—

Meaning Mr. MOORE—

> to report the subcommittee substitute to the House of Representatives. Before final action could be had on this motion, a point of order was made that the House of Representatives was then in session. The chairman of the committee called a meeting for the following morning, the 23d, and then on the 23d, within an hour of the time of the meeting it was postponed to the 24th, and then on the 24th, a short while before the meeting was scheduled, it was postponed again, and later postponed to Tuesday, October 29. These various postponements were made by the chairman without any prior consultation with any of the signers of this report.
>
> On October 29, the full committee met at 10:30 a.m. The motion of the gentleman from West Virginia—

Again referring to Mr. MOORE—

> was promptly voted down, after which Chairman CELLER offered a 56-page mimeographed substitute which he described as an amendment and moved that the committee approve the bill. The chairman announced that he would recognize a member of the committee to move the previous question and in it were ordered that no amendments could be offered to his proposal; no debate had; and no questions asked or answered.
>
> The bill was, upon order of the chairman, read hastily by the clerk, without pause or opportunity for amendment. Several members of the committee repeatedly requested to be permitted to ask questions, have an explanation of the bill, discuss it, consider its provisions, and offer amendments. The Chair refused to grant such requests or to recognize these members of the committee for any purpose. After the reading of the bill in the fashion hereinabove described, the chairman announced that he would allow himself 1 minute to discuss the bill, after which he would recognize for 1 minute the ranking minority member, the gentleman from Ohio. This was an ostensible attempt to comply, technically, with the rules of the House but did not amount to debate, as debate is generally understood. Neither of these gentlemen discussed the bill for more than 1 minute; both of them refused to yield to any other member of the committee; and neither of them debated the bill nor discussed it in any fashion other than to say that they favored it. They made no effort in the 2 minutes consumed by both together to even so much as explain the provisions of the bill. In short, there was no actual debate or even any opportunity for debate.
>
> Immediately upon the conclusion of the remarks from the gentleman from Ohio, the ranking minority member, the chairman recognized a member of the committee friendly to the chairman's proposal who moved for the previous question. The clerk of the committee immediately called the roll upon the motion to approve the bill and before the tally could be completed or the vote announced, the House was in session. The committee met later in the afternoon and, the tally of vote upon the motion to approve the bill having been completed and announced at the morning meeting after the House session had commenced, a motion was made and adopted that H.R. 7152 be reported to the House. The chairman treated the vote taken upon the bill at the morning session as being valid.
>
> The signers of this minority report in reciting these facts relating to the procedures employed in the full committee do not do so in any captious spirit, but relate these facts to inform the Congress of the tactics employed to bring this bill before the House.

That is an excerpt from the minority report of the House Judiciary Committee on House bill 7152. It was signed by the following Members of the House of Representatives: E. E. WILLIS, E. L. FORRESTER, WILLIAM M. TUCK, ROBERT T. ASHMORE, JOHN DOWDY, BASIL L. WHITENER.

An excerpt from the separate minority views submitted by Representative RICHARD H. POFF and Representative RICHARD CRAMER is as follows:

> We regard it as our duty to protest the manner in which this legislation was handled in committee. Without duplicating what others have developed in detail, we must underscore what has been said. If such procedural departures and parliamentary irregularities are countenanced in the future, then the committee system as a functional part of traditional legislative mechanics has expired.

Mr. President, I have read into the RECORD views expressed by Members of the other body, on both sides of the aisle, constituting part of their minority report.

It is evident that the bill now before the Senate did not receive adequate consideration by the appropriate committee of the other body.

It is apparent that the bill was railroaded to the floor of the House of Rep-

resentatives, with Members having been given only short notice, as I have already stated, and with Members, other than the chairman and the ranking minority Member, not having any opportunity to ask questions or offer amendments, and with only 1 minute allotted to the chairman and only 1 minute allotted to the ranking minority Member.

When the bill was before the other body, Mr. President, 146 amendments were offered. Of course, some of them were amendments to amendments; and some were substitute amendments.

Seventy-nine of those amendments were adopted or were rejected by voice votes. Therefore, there is no indication as to how many Members of the other body were present when the voice votes were taken on those 79 amendments.

Six amendments were ruled out of order.

Two amendments were withdrawn.

In the case of one amendment, consideration of it was objected to.

Fifty-eight amendments were decided either by division or by teller votes.

I have searched the RECORD, Mr. President, and I have found that on only 37 of those amendments, decided either by division or by teller votes, there was not present a majority of the Members elected to the other body. In other words, on only 21 amendments, regarding which a vote count was taken, did a majority of the Members elected to the other body participate in voting on the amendments.

Let me also say, Mr. President, that this means that on 63.7 percent of the amendments in the other body, on which the votes were counted, less than a majority of the Members elected were present. So one might say that less than a majority of the Members of the other body were present in the case of two out of every three of the votes taken there on amendments on which the votes were taken in any way by which a count could be had.

There were no rollcall votes on any of the amendments. Therefore, not only was the bill brought to the floor of the other body under strange and arbitrary procedures, but also one must judge by looking at the RECORD that at least in the case of those amendments which were voted on by count, less than a majority of the Members elected to that body were present to make their views known either in support of or in opposition to the amendments in two of every three instances.

The tactics employed to bring the bill before the other body were shocking, to say the least, and it would be difficult to envision a situation in which those tactics could be surpassed were it not for the fact that such a situation did indeed come to pass.

I have reference to the refusal of the Senate even to refer the bill to the appropriate standing committee or to a specially constituted committee. Some expressed the fear that if the bill were referred to the appropriate committee—the Judiciary Committee—the bill would there die. But the Senate, of course, could refer the bill with instructions that it be reported back to the Senate. Moreover, the Senate could have arranged for a reference of the bill to a specially constituted committee. Such rape of orderly legislative procedures—procedures which have evolved out of long experience—merely indicates the emotionally charged atmosphere in which H.R. 7152, a product of passion, has been conceived, nurtured, and given birth.

Regardless of the significance of the bill, it clearly did not warrant treatment different from that which is customarily accorded to other bills which come before the Senate. The reports of standing committees may be regarded by the courts as the best exposition of legislative intent in a case in which otherwise the meaning of the statute is ambiguous or obscure. It is important, as was pointed out during the debate preceding the vote by which the Senate refused to refer the bill to a committee, that the courts be furnished with committee reports to aid them in determining congressional intent with reference to legislation so controversial as is the civil rights bill, and which poses so many unsolved questions as to what word after word, phrase after phrase, clause after clause, and sentence after sentence really mean. There will be no such Senate reports available.

The courts will have, of course, the House Judiciary Committee report. But it deals only with the bill as it went to the House floor, and not as it came from the House floor. The House report is very cryptic; and virtually all of it is a section-by-section analysis, which is only descriptive of the proposed legislation. As the senior Senator from Oregon pointed out a few days ago, the section entitled "Purposes and Content of the Legislation" consists of only one paragraph.

Mr. President, there need be no illusion as to the difficulty of enforcing the proposed legislation if indeed all provisions of it are capable of enforcement, and the courts will have been deprived of scholarly majority and minority reports to aid them in the highly contested litigation that will surely take place in innumerable cases in the next decade if the bill is passed as it came from the House of Representatives.

So, in the first place, I object to the procedures that have been followed in both bodies of the Congress on the bill. The procedures have been manifestly unwise; and I feel that the bill should even yet receive committee consideration before it is finally voted upon by this body.

Mr. President, I also object to the passage of the bill in consideration of the events which have transpired over the past 18 months and which are largely responsible for the bill's present stage of development. The bill would not be before the Senate today were it not for the demonstrations that have taken place in the South, in the North, in the West, and in the East.

It would not be before the Senate had willful acts of civil disobedience not been countenanced and condoned, and, as a matter of fact, aided and abetted by high-ranking public officials throughout the land.

There are many news stories which could be cited to support my contention. I offer but a few.

Mr. President, I ask unanimous consent that there may be printed in the RECORD at this point a number of such news stories.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

TEAR GAS ROUTS FLORIDA NEGROES—225 ARRESTED IN 2 PROTEST MARCHES DEFYING ORDER OF TALLAHASSEE COURT

(By R. Hart Phillips)

TALLAHASSEE, FLA., May 30.—Policemen used tear gas tonight to disperse about 150 Negro youths marching through the city and shouting against segregation.

About 25 were arrested.

Earlier today, about 200 Negroes were arrested in front of the all-white Florida Theater in midtown Tallahassee. The group marched from the Florida Agricultural and Mechanical College to the motion picture theater to protest for the 10th time their exclusion from the theater.

Police headquarters said the marchers dispersed by tear gas were students from Florida A. & M., a Negro institution, and from high schools here. It was necessary to use tear gas, the police said, when the angry young Negroes refused to disperse on orders and became more violent in their protests.

Before today's protests Judge Ben C. Willis of the circuit court here issued an order for the arrest of any Negro participating in demonstrations. The order came after the demonstrators refused to obey a temporary restraining order issued by the judge yesterday.

About 50 policemen, State highway patrolmen and deputies of the sheriff's office were waiting at the theater when the first group of Negroes began their protest. The group stopped in front of the theater, some carrying placards demanding desegregation, and the deputies moved in, arrested them and marched them off to the nearby county jail.

The sidewalks on the opposite side of Monroe Street were crowded with white spectators and traffic was thick with onlookers. There were a few derisive shouts from young white men as the Negroes were arrested, but most of the white people as well as Negroes stood watching silently.

Among the group arrested at the theater was Mrs. Patricia Stephens Due, 23-year-old student at Florida A. & M., who is president of the local chapter of the Congress of Racial Equality.

The mayor of Tallahassee, Samuel Teague, issued a statement tonight deploring the incidents, but he said that the ruling of the court must be upheld.

At the hearing this afternoon Judge Willis granted the petition of the owners of the theaters to amend the temporary restraining order that he issued yesterday so that violators might be arrested. The judge said the court was reluctant to use this power but had to uphold the rights of the owners and operators of the theaters.

Mrs. Due failed to appear at the hearing. Her husband, John Due, a young lawyer who has just been graduated from the college, said the restraining order was served on her erroneously yesterday in the name of Priscilla Stephens, her sister.

Mr. Due is also a member of the CORE chapter here, which is composed of students of Florida A. & M.

Mrs. Due, born in Quincy, Fla., organized the CORE chapter at the college in 1959 after learning the sit-in and stand-in techniques at the CORE workshop in Miami. She was arrested in February 1960, in Greensboro, N.C., for participating in a sit-in demonstration at a Woolworth store. She served 49 days in jail.

Later she made a lecture tour of 11 Northern cities and participated in many anti-segregation demonstrations.

FIGHTING ERUPTS AT BIRMINGHAM—NEGROES PROTESTING ARRESTS, HURL ROCKS AT POLICE—30 SEIZED—MANY CLUBBED

(By Foster Hailey)

BIRMINGHAM, ALA., April 14.—Negroes protesting the arrest of leaders of an attempted march hurled rocks at policemen today.

Several Negroes were clubbed as the police tried to hold in check a crowd of about 2,000.

It was the most serious incident since the beginning of a direct-action campaign against segregation here 12 days ago.

The outbreak took place in the center of a large Negro district. It began when a line of marchers, led by the Reverend A. E. King of nearby Ensley, left a church at 11th Street and Seventh Avenue and started in the general direction of the South Side jail. His brother, the Reverend Dr. Martin Luther King, Jr., has been held there since Friday night.

Early Negro worshipers were admitted to the First Baptist Church and the First Christian Church for Easter services this morning, but were turned away at several other churches.

NO INCIDENT AT CHURCHES

They left quietly when stopped at the doors, making no effort to kneel and pray as Negroes had done previously when entry was denied them at white churches.

Negroes had attended white churches before in Birmingham, but this was the first time they had not been segregated during services.

As the Negro march developed, the police blocked off a street beyond Fifth Avenue, but instead of proceeding to that area, Mr. King and the marchers turned up a narrow alley, then went back through a vacant lot toward Sixth Avenue. They were intercepted there by police reserves. The Reverend John Porter, a local minister, and 25 others were arrested.

There was a delay in the arrival of patrol wagons, which permitted hundreds of Negroes who had been gathered near the church to reach the scene.

* * * * *

No policemen seemed to have been hit. But a large rock shattered the windshield of a police motorcycle.

As policemen moved toward the rock throwers, a young Negro started running across the street. He was caught, clubbed to the ground and held there by several officers.

The force of about 50 policemen, most on foot, had difficulty in restraining the crowds, which jammed the sidewalks and spilled into the street.

Two or three more protesting bystanders were arrested. As soon as the van had left with these prisoners, the crowds started to disperse.

The march began with hundreds of Negroes streaming alongside and behind the marchers, clapping hands and singing the integration song, "We shall overcome some day; deep in our hearts we know we will be free."

In the confusion at the scene of the outbreak, an out-of-town reporter was taken by the arm and escorted away by a policeman. When another newsmen protested, he was pushed aside.

After the police had withdrawn, many of the crowd came back toward the Thirgood C.M.E. Church, from which the march had started.

For half an hour before the march, John Palmer, a Negro insurance man who was arrested several days ago in a demonstration, had stood on the church steps seeking contributions from those outside.

While he shouted for those who "want their freedom" to come forward with dollars, several persons scattered through the crowd singing the integration song and leading the clapping of hands.

The crowd around the church, then only about 500, seemed in a gay mood. They laughed at Mr. Palmer's sallies and swayed rhythmically with the music and the clapping. When Mr. King and a large group emerged from the church to begin the march, fervor had mounted to that of an oldtime revival meeting.

A few elderly persons were in the crowd, but it was composed mostly of teenagers and young men and women.

When the marchers had proceeded a block all semblance of order disappeared. It was difficult to pick out the black-robed ministers who had started out as the leaders. They were almost lost in the cheering, shouting crowd.

The outbreak occurred after what had seemed to be the quietest day since the opening of the campaign. It was a beautiful spring morning, bright and cool. Church members, white and Negro, were out in great numbers in Easter finery.

The Negroes who attempted to enter white churches did not wear blue jeans and Mother Hubbards, as it had been hinted they might to dramatize a boycott against white stores. They wore their best clothes, the men in dark suits, the women in bright dresses and fancy Easter bonnets.

The three admitted to the First Baptist were the Reverend Andrew Young, a Congregationalist from Atlanta, and two women accompanying him. Mr. Young is a member of the Southern Christian Leadership Conference, which has led integration efforts in Albany, Ga., Jackson, Miss., and elsewhere.

The three were seated midway down the aisle. Mr. Young attempted to shake hands with the usher at the door and give him an envelope with contribution. Both gestures were ignored.

After the services, however, the pastor, the Reverend Earl Stallings, shook hands with the three Negroes.

Two young women who did not identify themselves were admitted to the First Christian. They said later "it was a lovely service."

Dr. King, head of the Leadership Conference, who was arrested wtih more than 50 others Friday, remained in jail. He was permitted visits by his attorney yesterday and today.

He and the others were being held only on the charge of parading without a permit. In their protest march Friday, however, they were in defiance of an injunction forbidding all such demonstrations. It was issued Wednesday night by Circuit Court Judge W. A. Jenkins, Jr.

In a few days Federal Judge Clarence W. Allgood is to rule whether the arrests of Dr. King and a few other demonstrators here during the last 2 weeks violated their constitutional rights and put them within Federal jurisdiction. A section of the Federal code dating to Reconstruction days has been invoked to bring the matter before Judge Allgood.

A further legal effort to breach Alabama segregation walls will be made tomorrow. Attorneys for three Negro students who have been denied admission to the University of Alabama are expected to file original complaints in Federal court in an attempt to force State authorities to admit the Negroes.

The three, who attend Negro colleges in Alabama and Georgia, are Vivian J. Malone, Sandy English and James Hood, all Alabama residents. They seek immediate transfers from their present schools to the university of Tuscaloosa.

Local leaders of the direct-action compaign made public tonight the text of telegrams sent to President Kennedy and Attorney General Robert F. Kennedy protesting what they called the poor treatment of Dr. King and Dr. Abernathy in jail.

The telegram to President Kennedy said partly:

"Both were arrested, along with 50 other citizens, in violation of the constitutional guarantees of the 1st and 14th amendments. Both are now in solitary confinement, allegedly 'for their own safety.'

"We submit that these two distinguished Americans are political prisoners, and not criminals. We ask that you use the influence of your high office to persuade the city officials of Birmingham to afford at least a modicum of humane treatment. Neither of these men have mattress or bed linen."

The telegram to the Attorney General emphasized:

"We remind you that these men are not criminals, they are political prisoners. Their present solitary confinement constitutes police brutality."

Both telegrams were signed by the Reverend Wyatt Tee Walker, executive assistant to Dr. King in the Leadership Conference.

TWO THOUSAND NEGROES MARCH IN GREENSBORO PROTEST

GREENSBORO, N.C., May 22.—A silent, solemn throng of about 2,000 Negroes protesting segregation marched through the downtown section of this textile city today shortly after 50 highway patrolmen were ordered into the area to guard against violence.

The march came at the height of the afternoon rush hour, with the demonstrators trooping through the streets, five abreast.

About 1,300 Negro demonstrators—most of them students—have been arrested here in recent days.

But in sharp contrast to the earlier demonstrations, today's marchers were mostly adults. Very few of the college students were on hand.

The demonstrators paraded but did not stop at any time except for traffic signals and then they left the scene as soon as they had marched by two theaters and one cafeteria which have been longtime targets of desegregation efforts here.

The decision to move State troopers into position came as Mayor David Schenck announced formation of a new committee to try to resolve the local situation.

The mayor said the committee would include representatives of the NAACP; Congress of Racial Equality, the Greensboro Merchants Association, Greensboro Ministerial Association, the Greensboro Ministerial Forum, and the mayor's Goodwill Human Relations Committee.

Schenck urged Negroes to abandon their demonstrations and allow normal relations to return to the community. He made the statement a few hours after about 600 Negro college students being held in temporary jails at a National Guard armory and a vacated hospital were ordered to leave by Guilford County Sheriff Clayton Jones.

GREENSBORO SEIZES NINE IN MAYOR'S OFFICE

GREENSBORO, N.C., May 24.—Nine Negro college students were carried in chairs from the mayor's office and arrested today. They had staged a sit-in demonstration to protest Mayor David Schenck's refusal to call a special city council meeting to act in this city's segregation impasse.

Outside city hall, 30 more students prayed on their knees "for the city of Greensboro and particularly Mayor Schenck."

Tonight several hundred Negro students marched silently through the downtown area.

As they had last night, some 60 white youths carrying Confederate flags also marched through the streets chanting anti-integration verses.

Mayor Schenck said that equal treatment "should be encouraged," but that the city does not have authority to pass an ordinance requiring integration.

NEGRO TRAINS CORPS FOR JACKSON SIT-INS

(By Jack Langguth)

JACKSON, MISS., May 30.—The husky young Negro pushed a white girl out of her chair for the third time. She fell limply to the floor, brought here knees up toward her chin and clasped her hands behind her neck.

"That's better," said a second young Negro, David Dennis.

He turned to the girl, who was getting to her feet.

"But you're still looking up," he said. "We can see your face."

Mr. Dennis, Mississippi director for the Congress of Racial Equality, addressed the audience of 30 Negroes, another white girl and a few white newsmen.

"That's the trouble with women," he remarked. "They just can't help flirting a little, even when they are getting knocked off their feet at lunch counters."

Each morning in the last week, Mr. Dennis has conducted an hour-long class in nonviolent picketing and sit-in methods for the Negroes who go downtown later in the day to demonstrate against segregation. He holds classes in the rear of an auditorium in the building housing the National Association for the Advancement of Colored People.

Mr. Dennis, and another instructor, George Raymond, wear coveralls during the class and later on downtown streets.

"They're a symbol of protest, the CORE director said, "and a reminder that we're boycotting the downtown shopping area."

Beckoning to a Negro girl, Mr. Dennis placed her between two chairs.

"Now you stand here and don't let anybody carrying signs pass you," he told her. "You are a white agitator."

The girl glowered as a Negro youth advanced with a sign reading, "Don't Buy on Capitol Street."

On coaching from the instructor, she tore the sign from around the picket's neck.

The man turned without comment and began marching in the other direction.

"If the white agitator wants the sign, let him have it," Mr. Dennis called. "Get the point?"

The girl turned to her girlfriend seated nearby and said.

"You see, I'm a white agitator."

ADVISES RELAXATION

Mr. Dennis emphasized the need for a relaxed attitude during the demonstrations.

"Don't tense or you will get the full impact of the blows," he said, "Probably it's a good thing to chew some gum. Of course, the Jackson papers may have something to say about gum-smacking niggers on the picket lines, but I think the gum helps."

"What happens," a young Negro asked, "when some cat reaches around like this and pulls at you?"

He demonstrated with Mr. Raymond.

"I go," answered Mr. Dennis.

"What if you're approached with a dangerous weapon?" asked the white girl who had practiced being knocked from her chair. She said later she preferred not to give her name.

"Anybody here got a knife?" Mr. Dennis asked. No one responded.

A white television cameraman dug in his pocket and produced a small pocket knife.

BACKS AWAY FROM KNIFE

Mr. Dennis took the knife and brandished it at another Negro, who retreated slowly.

"You're not going to let me get that close with a knife," Mr. Dennis told him, "brotherly love or no brotherly love."

Joan Trumpauer, the second white girl, asked:

"What if someone comes at you from behind?"

Miss Trumpauer, a student at Tougaloo College, was one of the sit-in demonstrators who was covered with catsup and mustard on Tuesday by a white crowd during a 3-hour clash at the F. W. Woolworth Co.

"If he comes from behind," Mr. Dennis said, "you have to hope and pray that you reach that man's conscience before it's too late."

Some of the young Negroes stirred restlessly, and Mr. Dennis addressed himself to them.

"We're trying to change a system with love and understanding," he said. "It's very difficult.

"Maybe it sounds stupid, but if any of you know what violence will accomplish, let me know."

He paused and looked around the room.

"Now," Mr. Dennis said, continuing with the class, "let's get us another picket line up here. And some more white agitators—some more people who just don't understand the problem."

TENSION GROWING OVER RACE ISSUE

(Watch for the Birmingham pattern to show up in other cities around the country.

(It's something new in the Negro campaign to break down racial barriers. And Negro leaders are convinced it can get results elsewhere.

(The idea: Use waves of protest marchers to put pressure on segregation. In Birmingham, thousands were involved, including children.

(The odds are for more and more of the same thing as the campaign spreads out.)

BIRMINGHAM, ALA.—A new Negro strategy is taking shape as the battle over racial segregation spreads across the country.

The new strategy was tested here in Birmingham. It got some results. Now Negro leaders are talking of putting it to work in other cities.

What Negroes tried here was a new kind of mass demonstration.

Negroes marched by the thousands. They marched in waves. One human wave followed another. Children by the hundreds marched with their elders.

Police arrested more than 2,400 Negroes. Birmingham's jails were overflowing. Fairgrounds barracks were turned into jails for teenagers. But still more Negroes came—marching and singing.

"We shall overcome," they sang.

SUCCESS IN PART

Finally, just when it seemed that a bloody racial conflict was about to erupt, the Negroes began to "overcome."

On May 8, a truce was reached. White leaders agreed to negotiate on Negro demands and Negro leaders agreed to suspend demonstrations during talks.

On May 9—with the Kennedy administration keeping a close eye on the proceedings—white leaders consented to grant three Negro demands:

To throw open to Negroes some facilities in Birmingham's downtown stores, such as lunch counters.

To make better jobs available to Negroes in Birmingham.

To set up a biracial commission to study general integration of Birmingham's public facilities, including the public schools.

On May 10, city authorities began releasing on bail the hundreds of Negro demonstrators still in jail.

CRISIS AVERTED, BUT

In Birmingham, for the moment at least, a crisis appeared to have been averted.

In other parts of the country, however, the racial dispute appeared to be warming up and more troubles were seen developing.

What Negroes have been demanding here in Birmingham is what Negroes want everywhere in the United States: an end to racial discrimination.

In one place after another, this spring, Negroes have set out to enforce their demands by action.

In Atlanta, Ga., in early May, Negroes renewed a campaign of sit-ins to open downtown eating places to Negroes. A Negro leader warned that Atlanta may become another Birmingham.

In Nashville, Tenn., on May 8 and 9, hundreds of Negro students marched on segregated restaurants. Some got into fights with white youngsters.

New trouble broke out in Albany, Ga., scene of racial conflict last year. In 3 days early in May, 49 Negroes were arrested as they picketed a white-owned grocery store, and Negroes began a series of mass meetings.

On May 8, in Raleigh, N.C., nearly 100 Negro college students were arrested for attempts to integrate two downtown restaurants and two theaters.

Violence was reported in the Mississippi Delta, where a drive is underway to spur Negro voter registration.

Some Negroes are attempting to enter the University of Alabama for the summer term opening in June. Alabama's Gov. George Wallace has vowed to block their entry. On May 7 he told Alabama legislators he will engage in legal defiance to all efforts to break down racial segregation in his State.

NOT ONLY IN THE SOUTH

In the North, also, Negro activity is rising.

Negroes in Englewood, N.J., are boycotting schools that are almost all-Negro in enrollment. Some Negro youngsters staged a sit-down in school classrooms to gain admission to a predominantly white Englewood school.

In one big northern city after another, Negroes are challenging school systems, housing patterns, and employment practices that they call discriminatory.

Negro Author James Baldwin warned that what has happened in Birmingham is only "a foretaste of what's going to happen throughout the country." He said: "Any northern city with a big Negro population is on the edge of disaster."

President Kennedy noted the dangers in a news conference May 8. He called it an ugly situation in Birmingham which has so far only narrowly avoided widespread violence and fatalities.

The President expressed hope that it "will remind every State, every community, and every citizen how urgent it is that all bars to equal opportunity and treatment be removed as promptly as possible."

TROUBLE WAS FORESEEN

The situation in Birmingham had been building up for months.

Birmingham has the reputation of being the most segregated big city in the South. About 40 percent of this industrial city's 342,000 residents are Negroes. But about the only thing integrated here has been public transportation. The city's parks, swimming pools, and golf courses were closed after a Federal judge ordered their integration.

Negro leaders chose Birmingham as a place to push for a showdown. The Reverend Dr. Martin Luther King, Jr., leader of the demonstrations, explained why:

"If we can crack Birmingham, I am convinced we can crack the South. Birmingham is a symbol of segregation for the entire South."

The latest series of demonstrations began April 3 and grew steadily in size.

In early May, the Negroes began enlisting schoolchildren in the campaign. Children were told to skip school and march for freedom. About 1,000 of the marchers arrested were juveniles—some of them only 12 years of age.

BY THE NUMBERS

The demonstrations were run off with almost military precision. The Negroes would gather in a church to listen to exhortations and instructions, then set off in waves toward downtown Birmingham.

Police, using trained dogs and firehoses, turned back wave after wave of the marchers.

Hundreds were arrested daily under an ordinance which forbids parading without a permit.

Eventually, however, police were overwhelmed. On May 7, hordes of Negroes escaped police control and surged through downtown streets and stores, snarling traffic and shoving white people from their path.

Then, on May 8, several hundred Alabama State troopers were ordered into Birmingham to reinforce the police. The troopers were armed with tear gas, shotguns, submachineguns, and carbines.

Facing the steel-helmeted troopers were long lines of angry Negroes.

One spark, during those tense hours, could have ignited a race conflict.

It was at this point that some white leaders decided that things had gone far enough and agreed to negotiate.

The white negotiators, cautious about provoking strong segregationists, tried to remain anonymous. But they included some of the city's most influential business and professional men.

The Kennedy administration also played a deliberately quiet role.

Attorney General Robert Kennedy sent an Assistant Attorney General, Burke Marshall, to Birmingham to work behind the scenes in bringing white and Negro leaders together. The Attorney General himself kept in close touch by telephone.

President Kennedy, at his May 8 news conference, took the position that there had been no violation of Federal laws that required Federal intervention.

VICTORY STATEMENT

Negro leaders clearly regarded the concessions they had wrung from whites in Birmingham as a triumph for their new technique of mass demonstration.

Dr. King said:

"No demonstrations anywhere in the United States ever before have been so indicative of the enormous amount of injustice the Negro suffers. They have been of tremendous educational value for the white community."

It was the mass demonstrations, he said, that convinced Birmingham's business leaders that concessions must be made—"and the economic power structure of the city determines what the political power structure will do."

Asked if the new technique will be used in other cities, Dr. King said: "Yes, that's a real possibility."

The use of children as demonstrators was also praised by Dr. King as a "new development" that can be used effectively in the future.

"Now," he said, "the children know what it means to take part in the struggle for freedom."

On May 6, at the height of the demonstrations, all but 887 of the 7,386 pupils enrolled in Birmingham's 7 Negro high schools were absent—most of them to join the demonstrations.

Talk with the youngsters arrested and you get an idea of the militant attitude growing among Negro youth in the South. Here are sample comments:

"I marched for freedom—freedom to eat and work and go to school with whites. It's no sin to be born black."

"We have to demonstrate. It's the only way we can break the wall. If we have to get arrested to do it, then it's worth the price."

"Our preacher told us it would be cowardly to go to school when other kids were marching for freedom. So we played hookey and got arrested."

INJURIES: FEW AND MINOR

Despite the size of the demonstrations, injuries were relatively few and minor—18 policemen and firemen and about the same number of Negroes reported hurt. Both sides avoided gunplay.

"We have met this crisis in such a way that nobody has been seriously hurt," said Birmingham's public safety commissioner, Eugene "Bull" Conner. "The white population of Birmingham has cooperated 100 percent in avoiding really bad trouble. I've kept the Ku Klux Klan and the citizens councils out of this—and I'm going to try to make sure they stay out."

However slight the casualty toll, race relations in Birmingham have deteriorated badly. Said one white merchant:

"We have been forced to capitulate by a gun in our back. This has set race relations here back 40 years."

A Negro businessman commented:

"I am sick at heart. For the first time, as I walk the street, I find white men and white women looking at me with hatred in their eyes."

WHO'S NEXT?

As word of the Birmingham Negroes' new technique of mass demonstration spread, officials here began to get inquiries from worried leaders in other southern cities. They wanted to know: "Where are the Negroes going to strike next? Is our city a target?"

In Birmingham, Negroes have shown they can mobilize masses of Negroes—children as well as adults—who will go to jail for their cause.

They have shown also that they have the power to disrupt the life of a big city and make segregation a dangerous and expensive practice. The outlook: more demonstrations like Birmingham's.

Mr. BYRD of West Virginia. Mr. President, I shall refer to excerpts from some of them at this point. The first excerpt is from a story which appeared in the New York Times in the month of May 1963, which is captioned: "Negro Trains Corps for Jackson Sit-Ins." This article tells the story of a training school in which whites and Negroes were trained to participate in racial protests in Jackson, Miss.

Another article which appeared in the New York Times in May 1963, referred to nine Negro college students who were carried in chairs from the mayor's office in Greensboro, N.C., where they had staged a sit-in demonstration to protest the mayor's refusal to call a special city council meeting to act in a segregation impasse in that city. The article stated that just outside of the city hall, students prayed on their knees, and that several hundred students marched through the downtown area.

A New York Times story of April 15, 1963, told about the fighting which erupted in Birmingham, Ala. The headlines told about Negroes protesting arrests and said that they hurled rocks at police, that 30 were seized and many were clubbed. The story related:

The outbreak took place in the center of a large Negro district. It began when a line of marchers, led by the Reverend A. E. King, of nearby Ensley, left a church at 11th Street and 7th Avenue, and started in the general direction of the Southside Jail. His brother, the Reverend Dr. Martin Luther King, Jr., has been held there since Friday night.

A story appeared in the New York Times, datelined May 30, 1963. The headline reads thusly: "Tear Gas Routs Florida Negroes—225 Arrests in Two Protest Marches Defying Order of Tallahassee Court."

Reading from the story, one finds that a judge of the circuit court in Tallahassee, Fla., had issued an order for the arrest of any Negroes participating in demonstrations. The order came after the demonstrators refused to obey a temporary restraining order issued by the judge.

In the U.S. News & World Report of May 20, 1963, one will find an article entitled: "Tension Growing Over Race Issue." It is datelined Birmingham, Ala. I read from it in part:

A new Negro strategy is taking shape as the battle over racial segregation spreads over the country. The new strategy was tested here in Birmingham. It got some results. Now, Negro leaders are talking of putting it to work in other cities. What the Negroes tried here was a new kind of mass demonstration. Negroes marched by the thousands. They marched in waves, one human wave followed another. Children by the hundreds marched with their elders. Police arrested more than 2,400 Negroes. Birmingham's jails were overflowing. Fairgrounds barracks were turned into jails for teenagers. But still more Negroes came marching and singing. "We Shall Overcome," they sang.

Mr. President, here is an example of what has been taking place in this country, which has finally resulted in the passage of a so-called civil rights bill by the House of Representatives, and its consideration by this body.

Thousands of Negro citizens, joined by white citizens, have participated in demonstrations throughout the country. Many of those participating in the demonstrations have been teenagers.

Many have been children who have marched with their elders.

(At this point Mr. BAYH took the chair as Presiding Officer.)

Mr. BYRD of West Virginia. Mr. President, I have not been favorably impressed by these demonstrations. I recognize the fact that some of our colored citizens have not been properly treated, but I do not condone nor do I believe other leaders and public officials should condone acts of civil disobedience committed by citizens of any color. I do not believe that we should condone the lying down of citizens in streets to block traffic, or the forming of human walls in front of privately owned businesses. I appreciate the fact that our people have a constitutional right to petition the Government regarding their grievances; but I feel that there is a limitation to be placed on such a right, just as every American can claim the right to freedom of speech, but he should not be permitted to shout "fire" in a crowded theater.

Continuing with my reference to news articles concerning demonstrations and acts of civil disobedience, I refer to a May 15, 1963, article which was published in the Washington Post under the headline, "Kennedy Reported Concerned About Negro Extremism."

I quote a few paragraphs from the story:

President Kennedy was said yesterday to feel concerned about an apparent trend toward extremism among Negro leaders.

The President reportedly expressed the concern to a group of visiting Alabama newspaper executives in urging cooperation be-

tween Negro and white local leaders to settle problems like the Birmingham crisis.

The President was said to have cited the Black Muslim sect as an example of extreme leadership.

Mr. Kennedy stressed the need to handle problems such as Birmingham's on the local level with local leadership.

Mr. Kennedy was reported to be "cautiously optimistic" that local authorities would be able to resolve Birmingham's racial crisis without Federal troops being used.

Mr. President, on May 4, 1963, a newspaper article carried the headline, "One Thousand Defy Police In Birmingham; Ministers Help to Head Off Riot."

I read a few paragraphs therefrom.

A taunting crowd of more than 1,000 Negroes defied policemen, dogs, and high-velocity water hoses today before their own leaders persuaded them to disperse. Yelling, waving their arms and dancing about, the Negro spectators challenged police officials to use water hoses and leashed dogs.

Note, Mr. President, that the demonstrators challenged the police officials to use the water hoses and to use the leashed dogs.

Some of the Negroes threw rocks and other missiles. A fireman, Billie Boak, was treated for a head injury from a flying brick.

This was one of those so-called nonviolent demonstrations in which rocks and other missiles were thrown, and as a result of which people were injured.

Police said nearly 200 Negroes were arrested—including 111 children under 16.

I have noted, as I viewed such demonstrations on television, that in practically every instance many or most of the demonstrators are children—they are teenagers—some of them are not yet in their teens.

That is a tragic situation, when parents permit their children to participate in such near riots as was this one in Birmingham, Ala., to which I have just referred.

I believe that the police and the public officials in the city of Birmingham and other cities are to be congratulated upon having avoided injury to children who participated in the demonstrations.

I can envision the headlines; I can envision the cry which would go up all over the country should a child be injured, or should a child lose its life as a result of the act of a police official attempting to do his duty to restore the peace of the community, when confronted with such demonstrations as we have become accustomed to witnessing and reading about day after day.

It requires a great deal of restraint, much planning, and a tremendous amount of courage to deal as our police officers have had to deal with such demonstrations and to avoid visiting injury upon high school students and elementary school students who have been urged by their parents and by professional, highly paid outside agitators to participate in the demonstrations which have become the order of the day.

I fear for this country, in view of the fact that we have reached the point where the children of some parents are not taught to observe the law, are not taught to reverence the law, even though that law be a city ordinance, but are taught to violate the law. Not only are they taught to violate the law, but their parents provide the example of violating the law before their eyes.

I wonder how these children can grow into manhood and womanhood with respect for law and order. One hears that they are protesting the present status of things. Protests can be heard, and protests can be made in a proper and orderly way. But in recent months they have not been made always in an orderly fashion. I continue to select newspaper articles which indicate the activities which have generated pressure upon Congress to enact a civil rights bill. These demonstrations have not all occurred in the South, by any means.

In the New York Times of March 7, there appeared an article headlined "Bridge Sitdown by CORE Blocks the Triborough. Six Held After Demonstration on 125th Street Approach During Evening Rush. Motorists Pelt Group. Seven at Police Headquarters Seized. Three Handcuff Themselves to Grille."

The article states that seven of the demonstrators had sat down on the Manhattan approach to the Triborough Bridge during the evening and that they had delayed thousands of rush-hour motorists for 20 minutes. The article stated that another demonstration took place at police headquarters, where several persons were arrested as they protested alleged police brutality.

We have seen such demonstrations, in which people violate the laws and then, when they are arrested, they protest and accuse the police of brutality. Of course, they do not want to be arrested.

We have read about great mobs gathering at the jailhouse entrance in protest against the arrest of demonstrators, demanding that they be released. I am confident that in many instances those arrested were released sooner than they would have been under ordinary circumstances.

Mr. James C. Tanner, in the Wall Street Journal in February of this year, wrote a lengthy article entitled "New Race Troubles. Negroes Ready Another Wave of Demonstration Against Bias in South. 'Resegregation' and Unkept Promises Charged; CORE To Expand Drive in North."

I read from certain paragraphs:

Even as Congress debates the civil rights bill, a new round of race troubles is threatening the South.

Southern Negro leaders are meeting this week to complete plans for a renewal of the demonstrations which kept Dixie in a turmoil last summer. Quick passage of the civil rights bill isn't likely to head off the disturbances, either, though it may bring about a shift in targets. If the controversial public accommodations proposal goes through as expected, for example, it would simply enable Negroes to turn their attention more to the equally thorny issues of discrimination in voting, jobs, and housing.

Behind the new push is growing Negro resentment over what they see as unkept promises from whites on desegregation. Negro leaders charge that not only have many southern communities failed to carry out pledges to help wipe out discrimination, but in some instances segregation practices which had been dropped have been reinstated lately.

* * * * *

Any revival of racial disturbances this year isn't likely to be limited to such segregated spots as Birmingham, Baton Rouge and Jackson, Miss.

* * * * *

And there's evidence the protests won't be confined to the South. Civil rights leaders expect them to spread to the North just as they did last year. "We're stepping up our drive on all fronts," says Val Coleman, an official of the Congress of Racial Equality (CORE) in New York, "and that includes our whole northern push on housing, unemployment, education, and voter registration." He cites Monday's 1-day boycott of schools in New York City, as an example, can be expected.

So we can expect these demonstrations to continue, much to the chagrin and disappointment of many of the people who have urged the passage of the bill on the basis that it will bring an end to such lawlessness and to threats of violence. We are told by the leaders of the Negro organizations themselves that the passage of the bill will not bring an end to demonstrations, but that they will continue to go forward in various sections throughout the country.

U.S. News & World Report in February 1964, published an article entitled "Race Trouble in a 'Model City.'" I read excerpts therefrom:

Just as Atlanta, Ga., began to think it had the integration problem licked, militant groups took over from peaceful negotiators to demonstrate in the streets.

* * * * *

Bands of young Negroes began sit-in demonstrations at hotels and restaurants that barred Negroes.

* * * * *

Police at first refrained from arrests. In the past, many business proprietors have failed to follow up with legal complaints against demonstrators arrested in their places of business, and police recently have followed a policy of refusing to make arrests under the State's antitrespass law unless proprietors obtained warrants.

Arrests began, however, when demonstrators started to lie down in restaurant entrances, blocking sidewalks and scuffling with police. Several policemen and Negroes were injured.

A group of Negroes remained in one restaurant for several hours after it closed.

The restaurant owner charged that the demonstrators damaged the booths, coffee urns, glasses, and other equipment in his restaurant and that demonstrators urinated on the floors after he locked the restrooms.

Arrests mounted, filling jails with nearly 200 Negroes, many of whom continued their demonstrations behind bars.

Police reported that jail furniture was broken and that prisoners spat on turnkeys and hurled wet toilet paper.

Mr. President, any fairminded reader of such a story would rebel at this type of activity. This does not constitute the petitioning of one's government regarding grievances. It goes beyond that. This is lawlessness. It cannot be countenanced. Yet the bill that is before the Senate today is here precisely because of such ruthless, lawless acts as those to which I have just referred. The people of the country have reacted in fear, and legislators have been intimidated. They have responded to threats. They are afraid. People all over the country, not knowing the contents of the bill, but having heard only about its title, which is an

innocuous one, have urged their Representatives and Senators to pass the bill.

The people of the country want peace. They want peace in their own communities. They want peace in other communities. They feel that the passage of the bill will achieve this objective. But it will not.

In September 1962, the Saturday Evening Post published an article entitled "Negro Youth's New March on Dixie." A picture was shown over the cutline, and under it is the following:

Demonstrating for civil rights, youthful Negroes kneel and pray before the city hall in Albany, Ga. They were arrested by police when they refused to disperse.

The Negroes had a right to kneel and pray before the city hall. They had a right to voice their grievances in this manner. But they should have dispersed when they were ordered to disperse. They had no right to refuse to disperse. One paragraph of the article carries the caption "The New Status Symbol: Prison."

The paragraph reads:

Last year Branda Travis, a 16-year-old high school student in McComb, Miss., asked for service at a "white" lunchcounter in a bus station. Later, when she was expelled from school for the sit-in, she joined a student protest march. She was sentenced to a year's detention. Recently, after serving 6 months, she was released on condition that she leave her home county.

* * * * *

These are members of a generation that talks constantly of "the movement" and "the struggle" and asks newcomers seriously, "Have you been to jail?"

On office walls of Negroes in cities all over the county are hanging self-made "diplomas" proclaiming that the holder has served time in a southern prison.

It is a generation that is willing to follow these grim rules:

"You may choose to face physical assault without protecting yourself, hands at the sides, unclenched; or you may choose to protect yourself, making plain you do not intend to hit back. If you choose to protect yourself, you practice positions such as these:"

We are told that the demonstrations are nonviolent; but one should note that there is instruction for those who choose to protect themselves, as follows:

"To protect the skull, fold the hands over the head.

"To prevent disfigurement of the face, bring the elbows together in front of the eyes.

"For girls, to prevent internal injury from kicks, lie on the side and bring the knees upward to the chin; for boys, kneel down and arch over, with skull and face protected."

In the last 2 years more than 5,000 Negro college-age men and women have learned such techniques in special "workshops" held at almost every college campus and in churches, Masonic lodges, and private homes.

Certainly every citizen has a right to protect himself, Mr. President; but so many of the demonstrators have gone beyond that.

A Washington Post article, dated June 16, 1963, carries the following headline:

Danville Negroes Defy New Ordinance, Jailed.

The first paragraph of an article entitled "Negroes Defy Ruling; 35 Jailed in Danville," reads as follows:

DANVILLE, VA., June 15.—The leader of Danville's racial protest movement and 34 followers were arrested today as they marched in defiance of the city's new anti-demonstration ordinance.

I also read the second paragraph, as follows:

The Reverend L. W. Chase, president of the Danville Christian Progressive Association, was jailed after leading the first of several protest marches designed to fill the city's jails and force public officials and businessmen to meet the Negroes' segregation demands.

So, Mr. President, we see that the demonstrations have, in many instances, been designed to fill the city jails, and to force public officials and businessmen to meet the demands.

On the basis of the article, Mr. President, it appears that some of the demonstrators take pride in being arrested and in going to jail. But, Mr. President, little do they know that the record of those arrests will follow each of them to the grave; and such a record of arrest will impair—to a certain extent, at least—the individual's chances in later years to obtain employment.

Under the pending bill, if it is enacted, such individuals may, under title VII, charge discrimination on the part of employers who refuse to employ them; but the record of arrests as demonstrators will, when they apply for employment, constitute a "black eye" to the applicants, when the prospective employers become informed that the applicants participated in demonstrations, committed acts of civil disobedience, were arrested, and went to jail.

A New York Times article dated April 13, 1963, was captioned as follows:

Dr. King Arrested at Birmingham.

I read from the first paragraph of the article:

The Reverend Dr. Martin Luther King, Jr., was arrested this afternoon when he defied a court injunction and led a march of Negroes toward the downtown section.

I read the following from a later point in the article:

Dr. King was among the first to be put behind bars.

Mr. President, he was arrested because he defied a court injunction. He is a member of the clergy, a man of the cloth, a man who is supposed to set proper examples, in terms of obeying the law. He may not like a law, and he has a constitutional right to express his views and to petition his government. However, he chose to disobey the law, and he chose to defy the court injunction.

In other words, that leader of his people chooses to select those laws which he will obey and to defy those laws which he does not wish to obey. That is the kind of example that we have become accustomed to seeing in this country—examples that all too often have been set by leaders of church congregations, ministers, Sunday school teachers, church fathers, and so on.

Mr. President, I shall include the various articles to which I have referred in the RECORD at this point. I have already asked unanimous consent that they may be included.

The PRESIDING OFFICER. Unanimous consent has been granted.

The articles are as follows:

[From the Saturday Evening Post, Sept. 8, 1962]

NEGRO YOUTH'S NEW MARCH ON DIXIE—A NEW GENERATION OF NEGRO LEADERS IS PRESSING HOME THE BITTER BATTLE AGAINST SEGREGATION IN THE DEEP SOUTH

(By Ben H. Bagdikian)

Robert Parris Moses is a 27-year-old Negro of soft voice and hesitant manner whose life up to February of 1960 was focused on his native New York City, scholarly work in the Ivy League and teaching in an expensive private school. He had never been in the South and had never wanted to go. But he did go at last.

On the morning of August 29, 1961, Moses was walking in khaki chinos and a T-shirt down the dusty main street of Liberty, Miss. (population, 642). There he was struck down by a cousin of the local sheriff and beaten on the head until his face and clothes were covered with blood.

Considering where he was and what he was up to, the violence is not surprising. Moses, A.B. Hamilton College, M.A. Harvard, Ph. D. candidate, was trying to upset the social structure of the Deep South and change party politics in the United States. His method: helping rural Negroes register to vote.

"One day at home in New York," Moses told me, "I saw a picture in the New York Times of Negro college students 'sitting in' at a lunch counter in North Carolina. That was in February 1960. The students in that picture had a certain look on their faces—sort of sullen, angry, determined. Before, the Negro in the South had always looked on the defensive, cringing. This time they were taking the initiative. They were kids my age, and I knew this had something to do with my own life. It made me realize that for a long time I had been troubled by the problem of being a Negro and at the same time being an American. This was the answer."

Robert Moses and his project are significant, but more significant still is the new generation of American Negro that he typifies. It is a body of young men and women who will make an impression on the history of their country. It is the first generation of American Negroes to grow up with the assumption, "Segregation is dead." It has transformed integration from a legal contest to a mass movement, fighting not for future change but for results here and now. Sensitive to the emergence of colored men all over the world, conscious that there is a time bomb ticking in the crowded Negro slums of the United States, the Negro college students of 1962 are welded into one of the most fiercely united, dynamic, and optimistic social movements of our time.

Characteristically, they seek out the toughest problems in the toughest places. Liberty, Miss., is the county seat of Amite County, where 54 percent of the population is Negro. Of the 5,000 voting-age Negroes, one is registered to vote. Moses and his friends were—and are—conducting semisecret schools to coach local Negroes how to pass registration tests. What happened to Moses is not unique; a week later a colleague was kicked to semiconsciousness, a month later another was shot dead. Much is at stake, for Amite is one of 137 counties in the South where Negroes are a majority but have few votes. Such counties are the backbone of a power-

ful conservative white force in American politics. When Negroes begin voting in these counties there will be profound changes in Southern and national politics.

Nonviolent themselves, the students appear unmoved by the violence of others. In 1960 their battleground was the lunch counters. In 1961 it was freedom rides on buses. From 1962 onward it will be the ballot box, and in this they march with a massive army. With them are all major Negro civil rights groups, strengthened by $325,000 in cash from the Field Foundation in Chicago and the Taconic Foundation in New York. Backing the vast drive to register Southern Negroes to vote is the U.S. Department of Justice, which gives the movement moral support and intervenes with lawsuits and court orders to strike down barriers.

Who are these young Negro revolutionaries? How did they get this way? Why are they so different from their parents? How do they work? What have they done so far?

In 2 years they have revolutionized the drive for integration. With sit-ins and freedom rides they have won equal treatment at lunch counters, buses, terminals, public parks, swimming pools, theaters, churches, libraries, museums, and beaches in many cities and towns of the Deep South which orthodox civil rights groups had privately written off for decades.

They have done it with the sophisticated technique of nonviolent protest, adopted from their patron saint, the Indian Mahatma Gandhi. They ask politely for equal service in a public place and wait until something happens. If they are insulted, they do not answer back. If they are attacked physically, they do not hit back. If they are arrested, they stay in jail as long as they can in order to dramatize their point and add the expense of imprisonment to the cost of maintaining segregation. If they are tried and convicted, they proceed to challenge the constitutionality of the whole procedure.

If some are jailed or hospitalized, others take their place, for the new Negro generation has reversed a historic trend. For 300 years the most ambitious and militant Negroes fled the rural South, leaving colored communities without aggressive leadership. Today the most vigorous young Negroes are pouring back to Dixie and what was once enough to suppress Negro protest only invites more into battle.

AFTER EACH BATTLE, MORE RECRUITS

In Orangeburg, S.C., for example, when a few Negro students were refused service at a lunch counter, 25 classmates demonstrated in protest. When their college threatened to expel the students, 500 others marched downtown. When the city said it would arrest all demonstrators, 1,400 paraded silently on city hall. Within 12 months of the first incident that called this generation to battle—a sit-in at Greensboro, N.C., on February 1, 1960—a total of 1,600 demonstrated in Mississippi, 4,000 in South Carolina, 4,200 in North Carolina, 5,500 in Alabama, 7,000 in Georgia, 10,000 in Louisiana, 16,000 in Tennessee. In 1 year this silent rebellion of 70,000 Negroes, with some white sympathizers, challenged public authority in the South; 3,600 were arrested.

They have shaken the old certainty of white segregationists. Twenty years ago I could live in a Deep South community and know that my fellow whites believed implicitly that segregation would never change. In the turbulent years of school integration, I could return as a reporter and still find most working-class whites proclaiming that in the Deep South integration would never come. But today doubt is replacing certainty. I have just finished talking with Negro leaders in New York, Washington, and Atlanta, and with Negro students and their leaders through the Deep South. I listened as well to whites. For the first time, in places like Birmingham and Jackson, one could hear the hard core cracking. There was the Mississippi farmer in town for the day saying, "I suppose integration's coming, what with the Federal Government pushing it"—and then with bitter puzzlement—"and those damn young niggers."

NEW HEROES, NEW EXPECTATIONS

"Those damn young niggers" not only puzzle older whites of the Deep South, but they sometimes astonish their own elders. They behave like no other generation of Negroes in American history, perhaps because no previous generation has seen so many colored men rise in other nations. Theirs are new heroes, new rules, and new expectations. Parents measure how far Negroes have advanced since World War II; the children measure how far they have yet to go. Most older Americans look upon the 1954 Supreme Court decision as the historic foundation of modern desegregation; not one Negro student in over a hundred interviewed had any vivid personal recollection of the day of that decision. They all regard it as a failure.

But almost every student could remember precisely where he was and what time of day it was when he first heard of the event that galvanized them all and launched the new Negro generation into contemporary history: the sit-in at Greensboro. Students, faculties, and college presidents testified that after the Greensboro incident a strange fever swept the campuses of the country's 120 Negro colleges. Within a week of Greensboro there was scarcely another topic of conversation on Negro campuses. Students began organizing sit-ins and protests in their own college towns. The subtle alterations of history, the tide of change throughout the world and the painstaking groundwork of older organizations and earlier generations had prepared the new Negro for that particular moment.

After his first demonstration in a picket line, Moses felt the same emotions that many students describe.

"I had a feeling of release. From the first time a Negro gets involved in white society, he goes through the business of repressing, repressing, repressing. My whole reaction through life to such humiliation was to avoid it, keep it down, hold it in, play it cool. This is the kind of self-repression every Negro builds into himself. But when you do something personally to fight prejudice there is a feeling of great release."

Something like this was happening to other college Negroes. Charles Frederick McDew had been a high-school athlete in Massillon, Ohio, so accepted by everyone in his town that he grew up without race consciousness. His father had gone to a Negro college in South Carolina, and to please him McDew went to the Deep South for the first time, to go to college. In his first 3 months he was arrested three times and struck by a policeman for doing or saying things that had been normal back in Massillon—trying to enter the main YMCA in town with his Ohio membership card or sitting in a "white" railroad car.

During Religious Emphasis Week several white Protestant ministers described their denominations to the Negro college students. When McDew asked them if he could attend their churches, they said he could not. McDew asked a rabbi who was present and was invited to the temple. Ultimately McDew left Christianity and adopted Judaism. Still, he felt no urge to take up the civil-rights fight. Like many northern Negroes he tended to look down on the South and on the southern Negro.

"I felt," he said, "that it was the southern Negro's problem, not mine. Then one night I was reading the Talmud when I came across this: 'If I am not for myself, then who is for me? If I am for myself alone, then what am I? If not now, when?' "

COMMITMENT TO THE STRUGGLE

McDew read the Talmudic passage just after the Greensboro incident. Within a week he had enlisted in the movement at his own college, had become a leader, had been arrested and jailed. Today he is chairman of the Student Nonviolent Coordinating Committee, a small band of former students working as full-time professionals in the Deep South. (Like Moses, McDew tried to register Negroes to vote in Liberty, but he first called Washington and told the Department of Justice. When McDew and two local Negroes appeared in the town, there were some well-dressed strangers, recognizable to all as FBI agents, keeping an eye on the courthouse. There was no violence that day; there was no registration either. Every door on the courthouse was padlocked.)

Or take the case of a girl I shall call Emma, a bright, lively freshman in a Negro college, whose commitment to the struggle began 7 years ago when she was still in junior high school. It was only this year, however, that she burst to the surface. In 1955 when she was 12 years old, Emma was a member of the secret student integration club in her school—in a Deep South town which still has no integration—preparing to demonstrate for integration sometime in the future. This year, her first in college, she led a campus group that asked for service in a white lunch counter in the college town. She spent a week in jail awaiting trial for trespassing, and she watched from her cell window as hundreds of her fellow students paraded in protest before a stunned white community. "Don't use my real name," she cautioned me. "If you do, my mother will lose her job back home."

THE NEW STATUS SYMBOL: PRISON

Last year Brenda Travis, a 16-year-old high school student in McComb, Miss., asked for service at a white lunch counter in a bus station. Later, when she was expelled from school for the sit-in, she joined a student protest march. She was sentenced to a year's detention. Recently, after serving 6 months, she was released on condition that she leave here home county—preferably the entire State of Mississippi. When I asked if she would ever protest again, she said, "Of course."

These are members of a generation that talks constantly of the movement and the struggle and asks newcomers seriously, "Have you been to jail?" On office walls of Negroes in cities all over the country are hanging self-made diplomas proclaiming that the holder has served time in a southern prison.

It is a generation that is willing to follow these grim rules:

"You may choose to face physical assault without protecting yourself, hands at the sides, unclenched; or you may choose to protect yourself, making plain you do not intend to hit back. If you choose to protect yourself, you practice positions such as these:

"To protect the skull, fold the hands over the head.

"To prevent disfigurement of the face, bring the elbows together in front of the eyes.

"For girls, to prevent internal injury from kicks, lie on the side and bring the knees upward to the chin; for boys, kneel down and arch over, with skull and face protected."

In the last 2 years more than 5,000 Negro college-age men and women have learned such techniques in special workshops held at almost every college campus and in churches, Masonic lodges, and private homes.

It is a generation that takes for granted that telephones are tapped, that the local police are their enemy, that the local courts are against them. The atmosphere of an underground is enhanced by the conviction that they are spied upon, that special State commissions hire Negroes to infiltrate civil rights groups. "Did you see that guy trying to volunteer back at the restaurant?" one

leader asked me. "He informed on us 2 months ago and thinks we don't know. Now nobody will talk to him."

Typically, these young revolutionaries are the children of veterans who came back from World War II determined to change things but did not succeed.

"You have no idea how bitter my father is," a student said. "He came home after 'fighting for democracy,' and when he tried to vote they beat him up. He kept his bitterness bottled up inside him, but I never learned to keep it inside me and I never will."

The leaders are Negroes who grew up in the North and went South, like Moses and McDew, or Negroes who grew up in the South and went North, like Frank Dukes.

LOW MAN ON THE TOTEM POLE

Dukes is 31, a senior at Miles College, Alabama, a serious, cool, and aggressive man leading a citywide boycott against Birmingham stores. He was born and bred in Alabama, and after high school he left the State determined never to return. He knocked around northern cities doing odd jobs, spent 5 years in the Army, including 18 months in Korea, and then decided that as a Negro he ought to go to college—in Alabama.

"Wherever I went in the United States, the Negro was low man on the totem pole. But in no State in these United States did I find things as bad as they are here in Alabama. I'm president of the student body and I figured, 'This is the place for a man to start. Right here. Right now.'"

The new generation of Negroes is profoundly moved by the emergence of colored men in Asia and Africa. Their heroes tend to be Africans. In Jackson the field secretary for the National Association for the Advancement of Colored People named his son Kenyatta, after the leader of Mau Mau rebels in Kenya. Students listed as inspirations such men as Kwame Nkrumah, Tom Mboya, Julius Nyerere, and Patrice Lumumba. James Forman, executive secretary of the Student Nonviolent Coordinating Committee did postgraduate work in African studies and says he plans some of his strategy in the South on the pattern of African independence movements.

When students began describing "how I got into the movement" it became apparent that the explosive effect of the Greensboro sit-in in early 1960 was closely related to the news in late 1959 that 14 West African states would declare their independence from white rule. African leaders—some descended from the same tribes as American Negroes—were addressing the United Nations in clipped British accents acquired at the London School of Economics, or in the mellifluous French of the Sobonne. "I began to realize," said one student in Mississippi "what a disadvantage it was to be an American Negro. We are almost the last colored people in the world to get equal rights with white men."

These young people grew up in the era of television, in which they were deeply impressed by the sight and sound of Negroes in world news. The students in turn produced action recorded by television cameras which, for the first time, sent direct reproduction of racial incidents from the deepest South into homes of both Negroes and whites all over the country.

They have an earnest faith in the power of education to guarantee success in life and to bring salvation to the Negro. Dave Jones, 23, is a student at Tougaloo College, near Jackson, Miss., son of a sharecropper, who says he was changed during his first college vacation when a white boy he knew laughingly asked him why a Negro would go to college. "I realized that he thought it was impossible for a Negro to better himself. His laugh made me aggressive. I want to be a biochemist or a doctor, but in Mississippi a Negro has trouble rising. So I'm aggressive. I hate do-gooders, the kind of person who says, 'Oh, I am sorry for you. I will help you.' I hate that. I'm aware of what's expected of me as a man, and I do it. I work late in lab. I'm learning how to speak properly, how to write well. I'm getting rid of the undesirable traits of ghetto living, remaining clean, being concerned with the fine arts, learning to appreciate beauty in life. Moreover, as a southerner and a college student, I have an obligation to act, to protest, to demand equal rights."

INTEGRATION ON A YES, BUT BASIS

These young Negroes take for granted that the old pattern of race relations in the South will be gone in their lifetime and that in the end Negroes and whites will get along better in the South than in the North.

"In the North," said one student leader from the North, "they're all in favor of integration on a 'yes, but' basis. 'Yes, but not now. Yes, but not here. Yes, but not next door.' I'm not saying there's no difference between the North and South, because there's a world of difference.

"But in a way the South is healthier and less frustrating. Both sides know where they stand. The white South says 'No.' We say 'Yes.' It's right out there between us where we can all see it and kick at it in public. I get the feeling that when integration comes in the South it will be with eyes open on both sides, and life down here will be healthier than in the North."

As might be expected, there is a poignant relationship between Negro students and their parents. Students are defensive for their parents with outsiders, but they disapprove of their parents' failure to rebel in their time. Most parents seem to approve the actions of their children. Dr. Arthur D. Gray, president of Talladega College in Alabama, said, "The calls I get from parents are almost all concerned with the effect on grades. The mothers and fathers don't mind that their children are arrested. They worry if they stay in jail and get behind in their studies."

There is some tension between religious leaders and students, since the campus seems to have replaced the Negro church as the center for social action. Students tend to strike the first blow, while ministers join later. Yet religion continues to be a strong thread in the student movement.

ACTIVISTS STILL A MINORITY

There is even some tension with the NAACP, the basic organization for Negro civil rights. Many students expressed sentiments like one in Georgia: "When you ask the N-double-A, 'What can I do personally, right now?' they have no answer." Many students regard the NAACP as stodgy and slow, an ironic opinion considering the accusations of radicalism the NAACP is accustomed to hearing from the white community. On the other hand, the NAACP continues to have the loyalty of most students, who admit that after they dash ahead they often have to ask the NAACP for legal help.

Putting all the Negro civil-rights fighters together—maybe 400,000 in the NAACP another 40,000 in CORE, 250,000 college students—they are still only a small minority of the country's 19 million Negroes. To be sure, they are the leaders, the activists with hope and a belief that they can improve their lot. But they are still a minority.

Sixty percent of Negro youth are "the children of the ghetto," cramped into city slums, largely undereducated, unretrained, unemployed. Like the college students, they are rebelling against things as they are, but the slum kids have no constructive means of expressing their frustrations. They are without hope for their own careers. Whitney Young, Jr., executive director of the Urban League, national social-work agency says: "Either this year or next there is great danger of massive teenage violence by the children of the Negro slums against the outside world."

For such despairing Negroes there is another group that makes fewer headlines in "white" papers than the students, but which permeates the slums in large cities. These are the Black Muslims.

Muslims mean business. They pray to Mecca five times daily, they dress soberly, work hard, pay their bills, forbid drinking and smoking, manage their own apartment houses and department stores, and teach in their State-accredited schools that the white race is rotten and the colored races will inherit the earth, including the United States. They teach members not to strike first, but if struck to be prepared to die in retaliation.

For millions of Negroes unable to accept the Muslim theology or puritanical life, the Muslim message still has a powerful, emotional appeal. The influence is strong in every large Northern city and seems to be growing in Southern ones. The group had 100,000 practicing members in 1960; spokesmen said it would have 1 million by the end of this year.

Thus the Negro masses are moving, but in what direction no one can guarantee. The move can be bitter and destructive, like the program of the Muslims. Or it can be channeled into the traditional pattern of protest, reform, and ultimate cooperation, on which the students have placed their faith.

Even the agitation of the students, however, causes deep fear and resentment among many whites in the Deep South. A white cabdriver in Birmingham told me, "Everyone knows this whole integration business is Communist. The old niggers in town, they don't want no part of it. They like it the way it is. See that old nigger at the stand on the corner? I asked him about it and he said he wanted no part of it. But these younger ones."

PRIVATE PRAISE FROM THEIR ELDERS

Two hours later I talked to the old man at the corner stand. What did he think of the student campaign? He gave me a long, hard look and said, "I'm with them. The only way our people can move ahead is to stick together."

Thus, if the students seem to be rejected by older Negroes speaking to their white bosses, they are privately praised and supported. If the students rely on dangerous direct action, it is nevertheless significant that they reject personal violence and plan for ultimate peace with the white community.

"It's a race against time," one man put it. "At one end you've got groups like the Muslims saying, 'To hell with the white man.' At the other end you have the student movement saying, 'Stand up for your rights with nonviolence.' I think the students are gaining. If they aren't, then God help us all."

[From the Washington Post, June 16, 1963]

NEGROES DEFY RULING; 35 JAILED IN DANVILLE

(By William Chapman)

DANVILLE, VA., June 15.—The leader of Danville's racial protest movement and 34 followers were arrested today as they marched in defiance of the city's new antidemonstration ordinance.

The Reverend L. W. Chase, president of the Danville Christian Progressive Association, was jailed after leading the first of several protest marches designed to fill the city's jails and force public officials and businessmen to meet the Negroes' desegregation demands.

But the newest round of protests was slow and faltering. A call for 200 adults to risk arrest this morning brought only about 40 volunteers.

Although 250 Negroes gathered at night in the Bible Way Church in the Negro district, a potential night demonstration was called off. Some of the leaders appeared concerned about the apparent lack of en-

thusiasm for continuing mass protests. There was an air of uncertainty about how long the demonstrations would continue.

The Reverend Lawrence Campbell, who is steering the demonstration now, said he was not disappointed. Many potential marchers had to make family plans before beginning extended jail terms, he said.

"We will demonstrate every day and will have 200 in jail this weekend," he said. "They are trying to make us afraid. If we stop now, we may as well pick up and move out of town."

SITUATION OUTLINED

As the second week of protests ended in this southside Virginia city, this was the situation:

More than 125 demonstrators had been arrested for violating a court injunction on a city ordinance restricting protests, but for the first time Negroes today were refusing to put up bond for their release.

Mayor Julian C. Stinson's new committee of businessmen had done nothing officially to satisfy Negro demands for more municipal employment and desegregation of schools and public accommodations.

One Negro leader who has not participated in the demonstrations was attempting to assemble a group to meet with Stinson's committee next week.

Observers here believe the mayor's committee is willing to arrange some desegregation concessions and has enough community influence to make them stick. Whether the more militant Negro leaders would accept them as sufficient and call off the protests is another question.

Mr. Chase, who became more militant as demonstrations were suppressed by police this week, led the first march with 18 followers about 1:30 p.m.

The remaining 17 marched and sang downtown and, like the latter group of 16 young Negroes, were carried into cruisers and a prison farm truck when halted.

All were charged with violating a court restraining order issued last week and a city ordinance enacted Friday. They were held under $500 bond for a hearing Monday.

[From the Washington Evening Star, June 16, 1963]

DANVILLE NEGROES DEFY NEW ORDINANCE, JAILED

(By Alex R. Preston)

DANVILLE, VA., June 15.—Police were making large-scale arrests here today as Negroes resumed their antidiscrimination marches in the fact of tough new city laws which carry a year in jail and a $500 fine for demonstrators.

Thirty-five demonstrators, mostly women and teenagers, were jailed as the renewed demonstrations got underway in defiance of the city laws. Two of those arrested were white participants in the antidiscrimination marches.

Police, their tempers apparently growing shorter on this hot, sultry Saturday, had to lift the marchers bodily from streets and sidewalks where they slumped limply as soon as they were touched by the arm of the law.

Bond was set at $500 each, but none requested it, apparently because of the Negroes' plan to "pack the jail."

CITY COUNCIL MEETS

The city council, in an emergency session yesterday, lasting only 15 minutes, unanimously approved the "get-tough" ordinance.

Among its provisions is a provision against anyone under 18 years of age from picketing or marching in any type of protest demonstrations.

When the first group of 19 marchers, mostly women, boys and girls, piled out of the High Street Baptist Church, the youngest among them was a boy of 12.

The determined display by Negroes seemed to surprise members of the white community. Local newspapers had played up the new city ordinance in terms which readers might take to mean the struggle had ended.

MARCH OUT OF CHURCH

But the demonstrators, led by the Reverend L. W. Chase and John Robert Zellner, marched out of the church at 1:30 p.m.

A block and a half away Mr. Chase, pastor of the church, and Mr. Zellner, a white field secretary for the Student Nonviolent Coordinating Committee, collapsed and forced police to pick them up and put them in patrol cars.

The demonstrators resumed their march, crossing the main street of this southside Virginia city of 47,000.

Police closed in at Market and Main streets. As they approached, the marchers, who had been walking two abreast, sat on the sidewalk.

The police picked them up and loaded them into squad cars.

Some of the 22 Negroes against whom warrants had been issued for violating an earlier court injunction against demonstrations had spent the night in the church where the march began. Fourteen warrants were served yesterday and an undisclosed number were served today.

Among those who had found sanctuary in the church overnight, because police declined to enter it, were Mr. Chase and Mr. Zellner.

Police attempted to hand both their warrants as they took them into custody today on the street, but Mr. Zellner was so relaxed the paper fell from his hands and remained on the sidewalk.

Zellner and Mr. Chase were taken into custody.

The other marchers were allowed to continue for approximately six more blocks before they were halted.

A second group consisting almost entirely of teenagers left the church at 3:40 p.m. singing "We shall overcome. God is on our side." They, like those before them, marched two abreast and were allowed to proceed about five blocks before State and city police assembled and caught them about midway between Main Street and the Municipal Building.

All of those arrested today were charged with violating the new ordinance as well as demonstrating in spite of the corporation court injunction.

There was no violence in today's demonstrations similar to that of Monday night when police and firemen used hoses and night sticks to break up a demonstration at the city jail.

Earlier this week, police cars patrolling in Negro residential areas had been fired upon, though no one was hurt. Helmeted police had chased some 100 Negroes from the city hall steps Thursday night.

NAZIS MARCH

Meanwhile, the American Nazi Party sent four demonstrators here who obtained a permit to march for 1 hour in front of the post office building with placards asserting that white people, as well as Negroes, have picketing rights.

A joint statement was issued by three motel and hotel operators:

"We deplore the coming of the Nazis to our city, and will neither admit them to, nor serve them, in our restaurants."

None of the three restaurants serve Negroes, who staged sit-in demonstrations earlier this week, but one manager expressed a willingness to do so if a general agreement could be reached throughout the trade.

[From the New York Times, May 18, 1963]

FOUR HUNDRED MORE SEIZED IN GREENSBORO IN NEGRO SEGREGATION PROTESTS

GREENSBORO, N.C., May 17.—Negro college students patiently and quietly lined up in front of segregated downtown cafeterias and theaters tonight and invited arrest.

The police took about 400 of the 600 demonstrators to jail, where they were booked on charges of trespass or violation of fire laws by blocking public entrances. No violence was reported. The demonstration was the third protest by students from North Carolina Agricultural and Technical College.

Cash bond of $100 each was set after tonight's demonstration for those previously arrested. About 240 had been jailed Wednesday night on trespass charges.

The S&W Cafeteria, one of the main targets of the weeklong integration effort, closed its doors 10 minutes before the scheduled closing time when the demonstrators showed up. The Mayfair Cafeteria also closed.

"You will not move?" an officer asked a group of demonstrators at the S&W. "Then this group here at the door is under arrest."

About 20 were put into patrol wagons.

At the Center Theater, the demonstrators changed tactics and lined up along the outside walls, leaving the entranceways open. They remained there about 15 minutes while small groups of three or four bypassed the ticket booth and moved directly into the theater lobby. There they were arrested.

Bill Thomas, 20-year-old leader among the Negro youths, said the demonstrations would continue every night until their goals were reached.

"We're prepared to go to jail if necessary," said Mr. Thomas, a local leader of the Congress of Racial Equality. He said CORE commends—but is not satisfied with—a concerted move yesterday by business groups to integrate the downtown area.

Directors of the Chamber of Commerce and the Merchants Association adopted resolutions yesterday urging that all business establishments serve everyone, regardless of race.

But several establishments, including cafeterias and movie houses, said they would continue to turn away Negroes.

[From the Washington Evening Star, Feb. 19, 1964]

INTIMIDATING SENATOR DIRKSEN

(By William S. White)

The United States has, in the old phrase, now seized the issue of civil rights. A long and bitter struggle over that bill, as already passed by the House of Representatives, now opens.

Now opens, too, the most powerful and open pressure upon a single Senator—EVERETT MCKINLEY DIRKSEN, of Illinois—ever applied in the memory of old Washington hands.

Senator DIRKSEN, the Republican leader of the Senate, has long been an advocate of civil rights in general. He has, however, been opposed to any unqualified grant of power to the Federal Government to compel privately owned businesses to serve Negro customers against their will. He does not like or support such discrimination. But he honestly questions whether Federal compulsion would not be an unconstitutional intrusion on the right of private property.

All the same, the proposed ban on this form of discrimination is the heart of this whole bill, as the Negro organizations now see it. To oppose it is to be treated as against civil rights.

The Negro organizations frankly intend to drive Senator DIRKSEN from his present position of resistance on principle by the most extraordinary demonstrations against a single public officeholder ever seen in the United

States since those directed a century ago against individual Senators not willing to vote a verdict of impeachment against President Andrew Johnson in the Reconstruction aftermath of the Civil War.

PERSONAL DEMONSTRATIONS

James Farmer, national director of the Congress of Racial Equality, has publicly declared that there will be "extensive demonstrations" in Illinois against the Senator personally. He has added that "people will march en masse to the post offices there to file handwritten letters" protesting Senator DIRKSEN'S attitude.

The Senator himself, whose courage and high sense of responsibility have rightly become familiar to a Senate which once had reason not quite so highly to regard him, has retorted:

"All the picketing they may do in my home State and all the picketing they may do here is nothing more than a form of unjustified duress to secure a judgment against my convictions." If the day should come when such pressure could force him to change honestly held convictions, he has added, on that day he would leave the Senate.

Without going at the moment into the merits and demerits of the public accommodations section of the civil rights bill, some observations are now essential.

MOBISM

This sort of naked attempted intimidation of a U.S. Senator is not a part of anybody's civil rights. It is, instead, a profound civil wrong. This is not the way of fair men in a free society. This is moral and intellectual mobism. And those who condone it, either out of a confusion of motives or a lack of courage, will live to regret a shameful surrender to hysteria and demagoguery.

What happens to Senator DIRKSEN personally in itself is important. For he has behaved with civility and honor in a high post in a forum whose whole tradition is the assumption that great public issues are to be settled in the minds of men and not by crude menace, in whatever form it might take.

But what happens to Senator DIRKSEN as a symbol is even more important. If pressure groups, however earnestly motivated, can picket a Senator in the exercise of his duty and conscience, as though he were some industrial plant refusing a wage increase, where does the picketing stop?

Can a judge be terrorized to turn from an unpopular to a popular decision in a case at law? Can a jury be swayed in the very courtroom by the chants of pickets under the courthouse windows, or thrust from its convictions by the physical pressures of marching men shouldering and elbowing it as it goes out to lunch?

Can a somber and infinitely complicated national issue be decided by the simple process of selecting a single man of responsibility and pouring out upon him, day and night, the angry "demands" of one set of partisans in the dispute? Is this "legislation"? Or is this the thin and terrible end of a wedge that might one day be driven into the whole fabric of orderly responsibility in this Nation?

[From the Washington Post, Apr. 6, 1963]

MANY HOLD BIRMINGHAM SIT-INS ILL-TIMED TO ACHIEVE GOALS

(By Robert E. Baker)

BIRMINGHAM, ALA., April 5.—The Reverend Foley, S.J., was the main speaker at a dinner meeting of the Birmingham Frontiers International, a Negro civic group here.

He told the 200 Negro leaders the story of a rabbi, a Catholic priest and Protestant minister who went fishing.

The rabbi and the priest got out of the boat and walked across the water. The minister stepped out and sank to the bottom.

After he was rescued, the minister explained to his colleagues: "I can't understand it. My faith is as strong as yours."

"Yes," replied the priest. "But we know where the rocks are."

Father Foley's point was that Negroes have various ways of getting to their goal of equality. But the present desegregation demonstrations in Birmingham, he indicated, are likely to be ineffective, much like the minister's attempt to walk across the water.

Father Foley is a faculty member of Spring Hill College in Mobile, a veteran fighter for equality for Negroes and chairman of the Alabama State Advisory Committee to the U.S. Civil Rights Commission.

ACTION HELD ILL TIMED

Many Birmingham white moderates and some Negro leaders agree with Father Foley, who made his talk Wednesday night. They think the demonstrations that began that morning are ill timed.

Only the day before, the city's voters chose a new mayor and nine-member council to replace the commission form of government.

Ousted from control was Police Commissioner Eugene (Bull) Connor who was defeated in his effort to become the new mayor by Albert Boutwell.

The mayor-elect had campaigned on a platform providing a new progressive image for Birmingham. Negro voters played a vital role in the change, their 8,500 votes providing the margin of victory. The demonstrations were launched on the day after the election under the guidance of the Southern Christian Leadership Conference under the Reverend Martin Luther King, Jr.

The campaign had been bitter. Boutwell and the council had hoped to take office April 15 in an era of calm and get on with the job of establishing Birmingham's new image.

But the mayor-elect found himself in the midst of discord. The present commission announced its plan to serve out its full term until 1965 unless ousted by the courts.

The sit-ins and protests and arrests gave Connor a chance to air his tough segregationist views.

"If the demonstrations continue," said Connor, "we'll fill the jails full." He said he would seek legislation to increase the bond in trespass cases from $300 to $5,000.

MUST FACE OUTCRIES

Dr. King, Negro leader of nonviolent protests in Montgomery and Albany, Ga., was asked at a press conference yesterday whether the Birmingham demonstrations were illtimed.

"I feel that in any movement, we must face the outcries from people who say, it is illtimed," said Dr. King.

He told how the Negroes had postponed demonstrations three times to keep the racial issue at a minimum in political campaigns. He explained that the demonstrations were planned for the day after election this time, regardless of who won the mayor's race.

"Our cup of endurance runneth over," he said. "This may test the good faith of the new image in this city. We feel Mr. Boutwell will never desegregate Birmingham voluntarily."

At a rally at St. James Baptist Church last night, he called for a complete economic boycott of downtown stores.

Influential Birmingham citizens worked around the clock to find a solution that would quiet the community and remove the disruptive atmosphere that could play into the hands of Connor and Governor Wallace until the new city government can take office.

It appeared that a 30-day cooling-off period was a possibility, with the new government promising to sit down and talk over Negro grievances in return for Dr. King's withdrawal.

IMPETUS SEEN

In his talk to the Negro business leaders, Father Foley noted that the Negro political power as evidenced in Tuesday's election probably forecast an impetus to negotiations that already had been making progress. Direct action was useful in North and South Carolina, when the communities were ready, Father Foley said.

But direct action in Montgomery and Albany had been dismal failures, promoting ill will and inviting violence, he said.

At his news conference, Dr. King denied that Albany was a failure.

"You can't ride a man's back unless it is bent," he said. "The Negro in Albany is standing straight.

"We don't say victory will come overnight. Gandhi worked 40 years in India."

But to many people it seemed that a few weeks more without direct action in Birmingham was a short time to wait to see if political action were successful.

[From the New York Times, Apr. 12, 1964]

NEGROES DEFYING BIRMINGHAM WRIT—12 PICKETS ARE ARRESTED—DR. KING AND AIDS TO LEAD NEW PROTEST TODAY

(By Foster Hailey)

BIRMINGHAM, ALA., April 11.—Negroes defied a county court injunction and continued demonstrations today against segregation here.

The Reverend Dr. Martin Luther King, Jr., and local leaders of the direct action campaign announced their intentions to defy the injunction at noon. Three hours later seven pickets appeared before the Pizitz Department Store.

Five more were arrested before the day's demonstrations came to a halt.

All 12 were charged only with parading without a permit or with loitering, not with violation of the injunction.

Dr. King told a news conference that he and other leaders expected to lead a protest march of Negro ministers tomorrow.

"I am prepared to go to jail and stay as long as necessary," he said.

NO VIOLENCE IN ACTIONS

Two large rallies were held tonight in Negro sections of the city. At the second, in a sports park, Al Hibbler, the blind Negro singer, performed. Admission of $2 was charged.

There was no violence in any of today's demonstrations, although the white driver of a passing truck called to television camermen:

"Why don't you put buckshot in those things and shoot those black bastards?"

The store pickets were arrested immediately and taken to southside jail to join more than 100 other demonstrators seized since the campaign began 9 days ago.

The injunction—against Dr. King; other leaders of the Southern Christian Leadership Conference of Atlanta, which he heads; the Rev. Fred L. Shuttlesworth, head of the local Alabama Christian Movement for Human Rights, and 134 other persons—was issued last night by Circuit Court Judge W. A. Jenkins. It was served on Dr. King at 1:30 o'clock this morning.

The injunction prohibits a wide variety of protest activities—boycotts, sit-ins, parades, picketing, and kneel-ins at churches.

Anyone arrested now will presumably be charged with contempt of court. That would carry a considerably higher penalty than the maximum that can be assessed in city recorder's court.

The maximum there is a jail term of 180 days and a fine of $100.

The injunction was issued on the complaint of Safety Commissioner T. Eugene (Bull) Connor and Police Chief Jamie Moore.

They said that they feared that continued acts of protest by the Negroes "will cause

incidents of violence and bloodshed" and that the complainants had "no other adequate remedy to prevent irreparable injury to persons and property in the city of Birmingham."

Although Dr. King has been here for a week, he has not participated in public demonstrations. Instead, he has been attempting to rally the Negro community of 100,000 behind the direct-action campaign.

One of his aids, Dr. Frank Abernathy, an Atlanta minister, said that tomorrow was selected for the first public demonstration because it was Good Friday.

"Almost 2,000 years ago Christ died on the cross for us," he said. "Tomorrow we will take it up for our people, and die if necessary."

Dr. King said that the demonstrations would continue to Easter Sunday, with kneel-ins at white churches.

"I will be here," he said, in answer to a question, "until we get some good-faith demonstration of an intent to grant the things we are asking for."

Among the demands are desegregation of snackbars in downtown stores, fair hiring policies in the stores and city departments, reopening of parks and other public facilities on a nonsegregated basis, desegregation of schools, and formation of an interracial group to work out common problems.

[From the New York Times, Apr. 13, 1964]

DR. KING ARRESTED AT BIRMINGHAM—HE DEFIES A COURT INJUNCTION BY LEADING NEGRO MARCH—60 OTHERS SEIZED

(By Foster Hailey)

BIRMINGHAM, ALA., April 12.—The Reverend Dr. Martin Luther King, Jr., was arrested this afternoon when he defied a court injunction and led a march of Negroes toward the downtown section.

The marchers were halted after four and a half blocks—but not before more than a thousand shouting, singing Negroes had joined in the demonstration.

In addition to Dr. King, the Reverend Dr. Ralph D. Abernathy, secretary of the Southern Christian Leadership Conference, and more than 60 others were taken into custody. There was no violence.

(In Clarksdale, Miss., firebombs were thrown at a Negro leader's home where Representative CHARLES C. DIGGS, JR., of Michigan was staying, but no one was hurt. Two young men were arrested and admitted the bombing, but said they were "just having fun.")

WHITE CLERGYMAN HELD

For the second time a white man joined the Birmingham Negro demonstrators and was arrested.

Today it was Dr. Robert Fulton, a middle-aged Presbyterian clergyman who is teaching at Miles College, a coeducational Negro school in Birmingham. Several days ago Carl Keith, of Evanston, Ill., was arrested when he joined a group of pickets at a downtown store. He is still in jail.

Dr. King was among the first to be put behind bars.

Safety Commissioner T. Eugene Connor, who directed the arrests, said Dr. King would be charged with violation of a city ordinance in parading without a permit and also with defying a State court injunction against demonstrations.

The penalty on conviction of the city charge is 180 days in jail and a fine of $100. Punishment for the injunction violation could be much more severe. The injunction was issued by Circuit Court Judge W. A. Jenkins Wednesday night. Dr. King announced yesterday his intention to defy it.

OPPOSITION TO KING

The march was the most spectacular of many demonstrations held since a direct action assault on Birmingham racial barriers was begun 10 days ago under the leadership of the local affiliate of the Southern Christian Leadership Conference.

It was the first in which Dr. King has taken part. His major effort here the last 10 days has been to rally support behind the direct action campaign.

There has been much opposition in the Negro community here of more than 100,000 to pressing the campaign just as a new and moderate city administration is taking office and to the participation of Dr. King, even though he has said he was invited to come. There also has been some reported grumbling that Dr. King was letting local people get arrested and staying safely behind the lines himself.

Counting today's arrests, more than 150 persons have been taken into custody.

More than 40 of that number, several of them leaders of the campaign, have been released on cash bail of $300. Twenty-four have been tried, convicted, and given maximum sentences. Trials of the others were halted when defense attorneys invoked a 95-year-old section of the Federal Criminal Code concerning civil rights and the Federal court here agreed to rule on its validity. A hearing will be held next week.

Today's march was the most widely advertised demonstration yet held and was viewed by larger groups of Negroes than any of the others. It was originally scheduled to start at noon from the Sixth Avenue Zion Hill Baptist Church, a small church at 14th Street and Sixth Avenue North, three blocks inside the main Negro section of the city.

It was 2:40 p.m., however, before Dr. King and the others emerged from the church doors and started east up Sixth Avenue. Dr. King and Dr. Abernathy were at the head of a procession of 40 or 50 marchers. They were dressed in blue jeans and blue cotton shirts to dramatize the efforts they have been making to bring about a Negro boycott of Easter buying at downtown white stores.

The march continued up Sixth Avenue to 17th Street, where police had sealed off a whole block, obviously hoping to trap the marchers there and keep onlookers back. It was at that corner that the only violence of the last 10 days occurred last Sunday when police dogs were used to drive back onlookers.

Instead of proceeding up Sixth Avenue toward city hall, as the police had expected, the marchers turned south at the corner and marched on toward Fifth Avenue and the downtown business section.

STOP THEM THERE

At Fifth Avenue they turned east again. The police, meanwhile, had redeployed their forces and were waiting halfway down the block. As the head of the march passed behind some trucks at the entrance to a garage, Commissioner Connor told his forces, "Stop them there."

Two motorcycle patrolmen and two detectives grabbed Dr. King and Dr. Abernathy and hustled them into a police van a few steps away. The order of the marchers, which had started out two abreast, had been disrupted as eager onlookers joined in behind them and on either side. Thus police had difficulty trying to sort the marchers from spectators.

Most of the marchers, however, including Dr. Fulton, voluntarily stepped forward and lined up to enter other waiting police vans. One of those who did not was the Reverend Fred L. Shuttlesworth, head of the local Christian Movement for Human Rights, which initiated the campaign here. He was arrested last Saturday but was released on bail Monday night.

Mr. Shuttlesworth was arrested later at a motel.

There were shouts of anger from the several hundred Negroes who were in sight of the downtown arrests and who had been singing and clapping hands as they walked or ran alongside the marchers.

When police moved toward them and ordered them back west down Fifth Avenue most of them gave way freely. Three who stopped to argue with policemen were arrested.

The police quickly cleared the streets and sidewalks for two blocks and even moved onlookers out of a small park on 17th Street, but Mr. Connor ordered them to let the people in the park alone.

"Let them stay there and sing all they want to," he said.

When the demonstration started, Mr. Connor asked an onlooker what he thought of the parade, but without pausing for an answer, inquired:

"Was King in that bunch?"

Told that he was, Mr. Connor said:

"That's what he came down here for, to get arrested. Now he's got it."

What effect Dr. King's arrest will have on the campaign is problematical. His father and brother, the latter a clergyman at nearby Ensley, Ala., are still here and all the local leaders are now out of jail.

Mass kneel-ins had been planned at white churches Sunday and those presumably will be attempted. Dr. King and the others have rebuffed efforts to get them to halt their direct action campaign until Mayor-elect Arthur Boutwell and the new city council form of government takes office Monday.

Dr. King and the local leaders say that no matter who is arrested others will step forward to take their place. They say that the campaign will be continued until there is at least a beginning made in easing discrimination.

UNITED STATES SENDS TROOPS INTO ALABAMA AFTER RIOTS SWEEP BIRMINGHAM; KENNEDY ALERTS STATE'S GUARD—WARNING ISSUED—PRESIDENT APPEALS FOR PEACE AND VOWS TO KEEP ORDER

(By Anthony Lewis)

WASHINGTON, May 12.—President Kennedy tonight dispatched Federal troops to bases near Birmingham, Ala., for use if racial violence breaks out again.

His action followed 3 hours of rioting early this morning in which 50 persons were injured. The rioting erupted after two buildings were bombed.

The President also ordered all "necessary preliminary steps" be taken to call the Alabama National Guard into Federal service. The actual call can then be accomplished in minutes if the President decides it is needed.

These emergency moves were announced by the President at the White House tonight. He appeared before the press and television cameras at 8:48 p.m. to read a grave statement on the Birmingham crisis. The President declared:

"This Government will do whatever must be done to preserve order, to protect the lives of its citizens and to uphold the law of the land. I am certain that the vast majority of the citizens of Birmingham, both white and Negro—particularly those who labored so hard to achieve the peaceful, constructive settlement of last week—can feel nothing but dismay at the efforts of those who would replace conciliation and good will with violence and hate."

UNITS MOVE TO BASES

Even as he spoke, units of the Armed Forces specially trained in riot control were arriving at military bases near Birmingham. The Defense Department would not identify the units or indicate their size, except to say that all came from outside Alabama.

Later, the Pentagon said that the troops had moved into Maxwell Air Force Base near Montgomery and Fort McClellan near Anniston.

Mr. Kennedy acted after conferring for 3 hours with Secretary of Defense Robert S. McNamara, Attorney General Robert F.

Kennedy, Secretary of the Army Cyrus Vance and other officials.

The President's statement made clear the deep concern of the Administration over last night's bombings of Negro residences in Birmingham and the resulting riots and police action.

Government sources said the events of the night have an entirely new cast to the Birmingham racial crisis. From a protest demonstration, they said, it had become an ugly, violent struggle.

CONCERNED OVER POLICE

In addition to concern over the bombings and the rioting, officials were disturbed by the police reaction. It was reported that the Birmingham police, behaving efficiently and fairly, had the situation under control when state troopers came in and revived tensions.

The eruption of violence threatened the agreement reached last week, with the help of Federal mediation, to end the Negro protest demonstrations. White business leaders had agreed to gradual desegregation of their facilities.

President Kennedy emphasized tonight the need to preserve that agreement. He said:

"It recognized the fundamental right of all citizens to be accorded equal treatment and opportunity. It was a tribute to the process of peaceful negotiation and to the good faith of both parties.

"The Federal Government will not permit it to be sabotaged by a few extremists on either side who think they can defy both the law and the wishes of responsible citizens by inciting or inviting violence."

He called on all citizens of Birmingham, Negro and white, "to restore the atmosphere in which last week's agreement can be carried out." He added, bluntly and with an implied warning:

"There must be no repetition of last night's incidents by any groups."

VOICES HOPE OF PEACE

The President expressed the hope that Birmingham's citizens would "make outside intervention unnecessary."

Evidently the Administration was concerned about a fresh outbreak tonight or tomorrow morning. It hoped by a show of determination to avoid the ultimate step of using Federal force.

But the third severe test of Mr. Kennedy's racial policy was plainly at hand. Two years ago Federal marshals protected Freedom Riders and others from violence in Montgomery, Ala. Last fall troops intervened to rescue beleaguered marshals in Oxford, Miss., but two civilians were killed.

President Kennedy flew back from Camp David, Md., by helicopter late this afternoon for the emergency meeting on the Birmingham situation. He had been in touch with his brother, the Attorney General, by telephone during the day.

Also at the meeting were the Deputy Attorney General, Nicholas deB. Katzenbach; Burke Marshall, Assistant Attorney General for Civil Rights; Gen. Earle G. Wheeler, Army Chief of Staff, and Theodore C. Sorensen, the President's special counsel.

Mr. Marshall, who played a major role in negotiating last week's agreement in Birmingham, went back this evening at the President's direction.

FBI IN BIRMINGHAM

Other Justice Department officials were already there, led by Assistant Deputy Attorney General Joseph F. Dolan. Agents of the Federal Bureau of Investigation were at the scene of the rioting early this morning.

It was Mr. Marshall who got the first word of the rioting. He was with his family at their farm in Berkeley Springs, W. Va., when a telephone call from Birmingham awakened him at 2 o'clock this morning.

Robert Kennedy was called a little later, as was Pierre Salinger, the President's press secretary. The President was informed when he woke up in the Presidential cabin at Camp David.

The Attorney General, Mr. Marshall and others talked to various leading figures in Birmingham, white and Negro, to get the facts and to try to calm things down. Then, at 1 p.m., a Government helicopter was sent to Berkeley Springs to get Mr. Marshall.

CONFER IN M'LEAN

He met with the Attorney General at the latter's home in McLean, Va., at 3 p.m. They then went to the Justice Department for a conference with their aids.

At the meeting were Mr. Katzenbach; Assistant Attorneys General Norbert A. Schlei and John Douglas; Mr. Marshall's assistant, John Döar; Mr. Schlei's assistant, Harold F. Reiss, and the Justice Department's public information director, Edwin O. Guthman.

The Attorney General had also brought with him the family's large black Newfoundland dog, Brumus. He lunged around the office while the grim session went on.

Just before 6 p.m., Messrs. Kennedy, Katzenbach, and Marshall went to the White House to join the President's meeting, which was already underway.

Secretary McNamara and General Wheeler left the meeting for the Pentagon at 7:15 p.m., presumably to start the troops moving.

Mr. Salinger announced about that time that there would be a statement at 8 p.m. It actually came 48 minutes later, when the President strode into the "Fish Room," a large meeting room off the West Wing lobby in the White House.

[From Life magazine, May 17, 1964]

PROVOCATION, REPRISAL WIDEN THE BITTER GULF

The pictures on these pages are frightening. They are frightening because of the brutal methods being used by white policemen in Birmingham, Ala., against Negro demonstrators. They are frightening because the Negro strategy of "nonviolent direct action" invites that very brutality—and welcomes it as a way to promote the Negroes' cause, which, under the law, is right. And they are especially frightening because the gulf between black and white is here visibly deepened.

For a half century, Birmingham has been known as the "South's toughest city." A large Negro population combined with a dominant class of white industrial workers has made for a climate of simmering racial hatred that has frequently erupted into open conflict.

Personally led by the Reverend Martin Luther King, the Birmingham campaign is now the cause célèbre of the entire American Negro movement. Elsewhere in the South, by such "nonviolent" techniques as sit-ins and "kneel-ins" in white churches, King and his followers have forced white communities to start desegregating their city facilities—and to sit on biracial panels to discuss further desegregation. This is what the Negroes in Birmingham want, and they are prepared to go to jail—or to face hoses and police dogs—to get it.

Up to now, open conflict has erupted only between the "direct action" group and police; at midweek a truce had been agreed on. Still the Negroes—aware they are trying to crack "the toughest city in the South"—and the police, with their dogs and fire hoses, have set an ominous precedent of provocation and reprisal.

Attack dogs: With vicious guard dogs the police attacked the marchers—and thus rewarded them with an outrage that would win support all over the world for Birmingham's Negroes. If the Negroes themselves had written the script, they could hardly have asked for greater help for their cause than City Police Commissioner Eugene "Bull" Connor freely gave. Ordering his men to let white spectators come near, he said, "I want 'em to see the dogs work. Look at those niggers run." This extraordinary sequence—brutal as it is as a Negro gets his trousers ripped off by Connor's dogs—is the attention-getting jackpot of the Negroes' provocation.

[From the Wall Street Journal, Feb. 5, 1964]

NEW RACE TROUBLES—NEGROES READY ANOTHER WAVE OF DEMONSTRATIONS AGAINST BIAS IN SOUTH—"RESEGREGATION" AND UNKEPT PROMISES CHARGED; CORE TO EXPAND DRIVE IN NORTH—AN IMPACT ON CIVIL RIGHTS BILL?

(By James C. Tanner)

Even as Congress debates the civil rights bill, a new round of race troubles is threatening the South.

Southern Negro leaders are meeting this week to complete plans for a renewal of the demonstrations which kept Dixie in a turmoil last summer. Quick passage of the civil rights bill isn't likely to head off the disturbances, either, though it may bring about a shift in targets. If the controversial public accommodations proposal goes through as expected, for example, it would simply enable Negroes to turn their attention more to the equally thorny issues of discrimination in voting, jobs, and housing.

Behind the new push is growing Negro resentment over what they see as unkept promises from whites on desegregation. Negro leaders charge that not only have many southern communities failed to carry out pledges to help wipe out discrimination, but in some instances segregation practices which had been dropped have been reinstated lately. "We have concluded that we progress only by crisis," says the Reverend Kelly Miller Smith, a Nashville Negro leader.

Any revival of racial disturbances this year isn't likely to be limited to such segregated spots as Birmingham, Baton Rouge, and Jackson, Miss. As the current demonstrations in Atlanta indicate, model southern cities in race relations, including Dallas, Memphis, and Nashville—which has been called a hotbed of itegration by the (white) Citizens Councils of America—may be in for trouble, too.

MORE PROTESTS IN NORTH

And there's evidence the protests won't be confined to the South. Civil rights leaders expect them to spread to the North just as they did last year. "We're stepping up our drive on all fronts," says Val Coleman, an official of the Congress of Racial Equality (CORE) in New York, "and that includes our whole northern push on housing, unemployment, education, and voter registration." He cites Monday's 1-day boycott of schools in New York City as an example of what can be expected.

But current Negro efforts are concentrated primarily in the South and Negro leaders generally feel there's no time like now to get the demonstrations under way. "This is the month we start again," says the Reverend Arthur Jelks, president of the Baton Rouge chapter of the National Association for the Advancement of Colored People. He adds: "The intensity of the demonstrations will be so powerful that people are going to talk about 1964, not 1963, as the year the Negro fought for his rights."

Similar words are heard elsewhere. In Memphis, where Negroes last Saturday checked 50 restaurants and found only 14 that would serve them, Negro leaders will meet today to go "right into a program of direct action—probably sit-in demonstrations" by Saturday afternoon, says Maxine Smith, executive secretary for the NAACP branch there. In Birmingham, officials of the Alabama Christian Movement, headed by the Reverend Fred Shuttlesworth, also will meet

today to plan new demonstrations in that city. He says it's only a matter of deciding when to start demonstrations. "Civil rights will get warm before the weather," he insisted.

MEETING IN VIRGINIA

Next Saturday, NAACP representatives from across Virginia will meet in Richmond to draft civil rights moves for that State. CORE has called its members to New Orleans a week from tomorrow to plan new drives over the South. At Tulsa, "stand-ins" are scheduled to begin in the mayor's office February 15 unless city fathers have acted favorably by then on complaints against segregated commercial facilities.

Demonstrations are already under way in Chapel Hill, N.C., a city noted for its efforts to ease tension, and are to be stepped up this week following the passing last Saturday of a "deadline" for all restaurants and hotels to open to Negroes. In Atlanta, conservative Negro leaders are joining demonstrations begun by the more impatient youngsters of the Student Nonviolent Coordinating Committee (SNICK). Says Harry Boyte, special assistant to the Reverend Martin Luther King of the Southern Christian Leadership Conference; "Atlanta faces a really massive direct action movement that will be developing over the next 2 or 3 weeks."

While Mr. Boyte and other spokesmen for civil rights groups insist that this year's demonstration will dwarf those of last year, one big difference can already be detected. Though the 1963 tactics of sending waves of marchers through downtown streets won't be entirely abandoned, the emphasis now is on selected targets such as a holdout restaurant—LEB's in Atlanta, for example—or a department store which has reneged on promises to hire Negro clerks. Negroes already are picketing four New Orleans stores for this reason.

A prime factor in the shift of strategy, confides Gloster B. Current, NAACP director of branches, New York, is that the marching tactics didn't always pay off. "In Jackson," he says, "our marches were smothered. We found that the opposition had developed some countermeasures of their own." Some of the measures—speedy arrests and high bails for demonstrators—not only have tied up much of the organization's legal talent but also $350,000 of its funds, adds Mr. Current.

NEARLY 20,000 ARRESTED LAST YEAR

Last year, according to tabulations of the Southern Regional Council, civil rights groups staged 930 protest demonstrations in 115 towns in the 11 Southern States. Although more than 20,000 demonstrators were arrested, they won sweeping concessions. Since the Washington march last August, however, there has been a notable lull in the Southern racial push except for scattered and surprising outbreaks in communities like Atlanta. This was due in part, say Negro leaders, to an anticipated letdown following the massive move on the Capital. In some cases, it was a breathing spell to regroup and to give whites time to come through on promises. By the time they were set to go again, Negroes note, President Kennedy was assassinated. Then came the holidays.

Even now, some of the more conservative Negroes fret that the timing on the new demonstrations is bad. They fear disturbances might ruffle tempers of Congressmen wrangling over the civil rights bill. They argue that the energy of the civil rights groups would be better devoted to lobbying for the legislation rather than dissipated in the streets of the South. And they note that approval of a civil rights bill probably would remove the need for some of the pending demonstrations. But they are in the minority, and Negro leaders generally agree that the new wave of demonstrations will begin to roll across Dixie ahead of the time that a civil rights act could become effective.

Why the urgency? Much of it can be traced to the impatience of Negroes of high school and college age who were the sparkplugs of last year's racial revolt. "The leaders of the nonviolent movement realize there has to be a new push, or they are out," observes a prominent southern Negro. "The youngsters are chafing at the bit and aren't willing to wait and see how the civil rights bill shapes up," he adds, "and we oldsters can't hold back any longer."

BACKSLIDING ANGERS OTHERS

Equally significant is the growing bitterness of even conservative Negro adults over the apparent apathy of whites in many southern communities, plus a great deal of "backsliding" on concessions and subtle "resegregation" in one form or another in facilities formerly opened to both races.

"We have tried to give city officials time," says Reverend Shuttlesworth of Birmingham, "but there has been only vacillation and procrastination. There's not a single bit of evidence that the city is going to hire any Negro employees, and they've got 40 or 50 boards they could put Negroes on. The department stores desegregated lunch counters, but they have not yet hired salespeople as agreed."

In New Orleans, CORE field secretary Isaac Reynolds talks of Negro unrest because, he says, the city's stores aren't living up to an agreement to hire and promote more Negroes. He cites a so-called promotion list by a department store in its automotive section where a Negro clean-up man was given the duties of mounting tires on cars. "We still have a few Negroes in other than menial jobs," he contends.

In Baton Rouge, better jobs will be a key goal of new demonstrations. Reverend Jelks recalls that stores appeared eager to hire Negroes as clerks to help end disturbances there last summer. "But when we ceased (demonstrations), they ceased (hiring)," he says.

STILL A SORE SPOT

The question of treatment in public facilities still rankles many Negroes and promises to be a sore spot at least until a strong civil rights bill can change things.

Chagrined civil rights leaders, for example, are finding that backsliding restaurants and hotels are common across the South. In Atlanta, Negroes claim they had been led to believe 35 eating establishments were going to desegregate last summer. Only 13 or 14 did, and one or two of those shortly resegregated, they say. Last May most Houston restaurants agreed to accept Negroes. By October, 15 of them had reneged, according to a check by one civil rights group which suspects that the number may be even larger now.

In Huntsville, Ala., eight motels and a restaurant agreed to desegregate in September to meet Negro demands. The restaurant resegregated within a month. "The owner said the pressure was too great," says Mrs. John L. Cashin, Jr., member of the Huntsville Biracial Committee. Rev. Heslip Lee, executive director of the Virginia Council on Human Relations, reports that some of the restaurants desegregating in Richmond last year have resegregated and claims one grill closed shop rather than serve Negroes.

PROBLEM OF SUBTLE SEGREGATION

Particularly galling to Negroes is subtle segregation practiced within an establishment that is assumed to be integrated. A Baton Rouge variety store desegregated its lunch counter a few months ago but hung curtains between the stools. On occasion, Negroes—including a visiting St. Louis alderman—have complained that while stopping for a cup of coffee at a lunch counter in the Dallas railroad station, they are often directed to a distant corner table.

In some instances, Negroes become confused by the subtleties of segregation. At Wewoka, Okla., Berry's Waffle House has on occasion served Negroes but this policy applied only when Bird Berry, one of the brothers operating the place, was the man on duty. When brother Fred was doing the serving, Negroes weren't welcome. Now, according to Fred, Negroes aren't being served at any time.

At least a part of the resegregation of southern commercial firms can be credited to the increasing efforts of segregationists who are now using the same tactics proved successful by the integrationists. In Columbia, S.C., the National Association for the Preservation of White People has pickets parading in front of city hall and the desegregated Downtowner Motel. Reports L. Maurice Bessinger, operator of Columbia's four Piggy Park restaurants and founder of the fledgling NAPWP: "Our strategy is counter reaction. As a result of our picketing, we are holding the line on integration. All the hotels were going to integrate in December, but we stopped that with our pickets. Two of the theaters which integrated now are negotiating with us to go back to segregated business if we'll pull off our pickets."

[From the New York Times, Mar. 7, 1964]

BRIDGE SITDOWN BY CORE BLOCKS THE TRIBOROUGH—SIX HELD AFTER DEMONSTRATION ON 125TH STREET APPROACH DURING EVENING RUSH: MOTORISTS PELT GROUP—SEVEN AT POLICE HEADQUARTERS SEIZED—THREE HANDCUFF THEMSELVES TO GRILLE

(By Leonard Buder)

Seven civil rights demonstrators sat down on the Manhattan approach to the Triborough Bridge last evening, delaying thousands of rush-hour motorists for 20 minutes.

By the time the police could take away the demonstrators, traffic had backed up on 125th Street and was snarled on Second Avenue.

Many motorists shouted invectives at the demonstrators. Some threw garbage that had been dumped on the bridge by the demonstrators to symbolize conditions in East Harlem.

Another demonstration took place at police headquarters, 240 Centre Street, where seven persons were arrested as they protested alleged police brutality. Three of the demonstrators had handcuffed themselves to an iron grille outside the office of Commissioner Michael J. Murphy.

SCHOOL CONDITIONS ASSAILED

The Triborough Bridge demonstration resulted in six arrests. The 6 who were seized and about 30 other persons who did not obstruct the roadway were protesting overcrowding and allegedly unsafe conditions in East Harlem schools. All are members of the East River Congress of Racial Equality, which has a total membership of 120.

Leaders of CORE announced last week that they intended to intensify efforts to achieve complete school integration here. The demonstration by the East Side chapter, the first move of the new campaign, indicated that new tactics would be used.

Although the sitdown on the bridge came as a surprise to the police and motorists, it was not unexpected by newsmen. A CORE spokesman had alerted news media to be prepared for something drastic and far out by the East Side chapter. The rallying point and the time were given, but details were not disclosed.

At 4:20 p.m.—10 minutes ahead of schedule—24 members of the chapter filed out of Chambers Memorial Church, at 219 East 123d Street, east of Third Avenue. They carried signs reading, "Are Crowded Roads Worse Than Crowded Schools?" and "In East Harlem, Children Are Integrated With Rats and Garbage."

As they marched they sang "We Shall Overcome" and other songs of the civil rights movement. When they reached the corner of Second Avenue, a tavern jukebox momentarily drowned them out.

The marchers went north to 124th Street and crossed the avenue to a triangular-shaped concrete island, where a few elderly persons dozed on benches. The island is directly in front of the approach to the bridge.

The demonstrators began marching around the island, singing, "Ain't Going to Let Nobody Turn Me Around" and "Woke Up This Morning With My Mind Set on Freedom."

Neighborhood youngsters soon flocked around the marchers. A 13-year-old boy had a conga drum and he added his beat to the demonstration.

The police, led by Inspector Thomas Pendergast of the Sixth Division, also arrived, but for awhile they had nothing to do.

The number of demonstrators grew to about 30, about half of them white. Most of them looked to be in the late teens or early twenties, and Blyden Jackson, the 27-year-old chapter president, was asked whether they were college students.

"The whites are," he said. "The Negroes are unemployed from the neighborhood."

At 4:50, as motorists headed home across the bridge, a marcher said, "Let's all take a walk to the Bronx."

Meanwhile, the demonstration, which had started with almost theatrical fanfare, began to resemble a military campaign. Seven members of the chapter quietly made their way to the rendezvous point on the bridge unnoticed by the police.

REFUSE DUMPED ON ROAD

At the point where large green-and-white overhead signs proclaim that the left lanes are for Long Island and the right lanes go to the Bronx, the seven dumped empty cans, glass bottles, and other refuse. Then they sat down and linked arms before startled motorists who honked and shouted.

One driver, who said he was a teacher, pleaded with the demonstrators to allow traffic to pass. He said he was taking a pregnant woman to the hospital.

The seven—three young women and four young men—ignored pleas by the police to move, and Inspector Pendergast told his men to move them as gently as possible. When the demonstrators resisted, the police had to drag them away.

The six who were arrested were Penn Kimble, 23 years old, of 520 East 12th Street; Paul Feldman, 30, of 99 St. Mark's Place; Donald Arthur, 19, of 61 Hamilton Place; Joe Louis, 20, of 129 Suffolk Street; Elizabeth Adler, 23, of 250 East 105th Street, and Zungara T. Lawrence, 23, of 1102 Longfellow Avenue, the Bronx.

All were booked at the harbor precinct station house on Randalls Island on charges of interfering with the police, disorderly conduct, obstructing automobiles, and violating traffic regulations.

The seventh demonstrator, a young woman, was not arrested.

The protest at police headquarters also started uneventfully. Five of the demonstrators arrived shortly before 2 p.m. They identified themselves as Herbert Callender, the chairman of the Bronx CORE; Isaiah Brunson, chairman of the Brooklyn CORE; Rev. Laurie Walker and Raphael Martinez, of the New York CORE, and Howard Quander, of the Bronx CORE.

The group met for about 30 minutes with Deputy Inspector Arthur H. Savitt, who is in charge of the department's civilian complaint review board. They told Inspector Savitt that Jesse Roberts, a man who is serving time for a narcotics violation, was beaten by the police after his arrest last November 2.

After the five left the inspector's office, they crossed the lobby toward Commissioner Murphy's office. Three of them, Mr. Callender, Mr. Brunson, and Mr. Quander, took out handcuffs and locked themselves to the grill. Two representatives of the Progressive Youth of Puerto Rico, Flora Santiago and Jose Sanchez, then arrived.

When the seven refused to leave, the police clipped the handcuffs with metal cutters and arrested the demonstrators on charges of unlawful assembly, intrusion on real property, interfering with the police, and disorderly conduct.

Commissioner Murphy later said allegations of police brutality were always carefully investigated. But, he declared, "no group can be permitted to disrupt police functions and thus endanger the well-being of the city."

[From the U.S. News & World Report, Feb. 10, 1964]

RACE TROUBLES IN A "MODEL CITY"

(NOTE.—Just as Atlanta, Ga., began to think it had the integration problem licked—

(Militant groups took over from peaceful negotiators to demonstrate in the streets.

(One of the results: a rising tide of white resentment.)

ATLANTA.—Suddenly, in mid-January, Atlanta's racial peace was shattered.

Up to that time this big city, the capital of Georgia, had been a model for integration in the Deep South. The change came overnight.

Bands of young Negroes began sit-in demonstrations at hotels and restaurants that barred Negroes. Ku Klux Klansmen picketed hotels and restaurants that had agreed to serve Negroes.

VISITORS FROM U.N.

A delegation from the United Nations came here on January 25, expecting to see an example of interracial harmony in the South. What the U.N. visiotrs saw, instead, was a pushing, shoving, fist-swinging brawl between Negroes and Klansmen.

Many people in Atlanta wondered whether the presence of the U.N. delegates had not served to touch off the demonstrations.

The day after the international group came to town, Negroes demonstrated for 12 hours in downtown Atlanta. They tried to force their way into a segregated restaurant. Day after day, the disturbances continued.

Police at first refrained from arrests. In the past, many business proprietors have failed to follow up with legal complaints against demonstrators arrested in their places of business, and police recently have followed a policy of refusing to make arrests under the State's antitrespass law unless proprietors obtained warrants.

Arrests began, however, when demonstrators started to lie down in restaurant entrances, blocking sidewalks, and scuffling with police. Several policemen and Negroes were injured.

A group of Negroes remained in one restaurant for several hours after it closed. The Atlanta Journal reported:

"The restaurant owner charged that the demonstrators damaged booths, coffee urns, glasses, and other equipment in his restaurant and that demonstrators urinated on the floors after he locked the restrooms."

AGITATION IN JAIL

Arrests mounted, filling jails with nearly 200 Negroes, many of whom continued their demonstrations behind bars.

Police reported that jail furniture was broken and that prisoners spat on turnkeys and hurled wet toilet paper.

An isolated incident on January 16 may have been a hint that racial tension was developing in Atlanta. On that day a group of white high school girls was stoned in a racially mixed neighborhood.

One of the group was thrown down and choked by a Negro girl. A white girl who intervened was struck on the head with a stick with such force that an eye was dislocated.

The new trouble comes mainly from a small band of young Negroes who have broken away from their elders and turned from peaceful negotiations to turbulent street demonstrations.

Their announced goal is "immediate and total" desegregation of all phases of life in Atlanta.

Many Negro leaders feel that the younger Negroes are trying to go too far too fast.

A NEGRO'S WARNING

Speaking at a biracial meeting here on January 29, Roy Wilkins, executive secretary of the National Association for the Advancement of Colored People, warned Negroes against exclusive reliance on the "direct-action approach."

The NAACP leader pointed out that Negroes are a minority of 18 million among 186 million Americans, and said:

"Thus, even elementary reasoning would seem to indicate that allies among the majority must be won and held if the minority's efforts are not to end in frustration and failure."

Mayor Ivan Allen has called for a 30-day cooling-off period, with Negroes suspending their demonstrations while an interracial committee tries to work out a peace pact. The request met defiance from the Negro leader of the demonstrations, James Forman, the executive secretary of the Student Nonviolent Coordinating Committee.

Atlanta already has integrated its public transport, parks, swimming pools, libraries, lunch counters in drug and variety stores, and many of its theaters.

It employs Negroes as firemen and policemen. A Negro serves on the school board. Negro membership on other boards and commissions has been increased. Negroes have been getting more and better city jobs. Negroes vote in large and increasing numbers.

"Events of the past few days have threatened the progress which already has been made," said "the Atlanta Constitution" in an editorial. "Atlanta has traveled too far on the road to ending discriminatory practices to have the drive sidetracked by a few hotheads."

ATTITUDE OF WHITES

Meanwhile, white resentment is growing. Resistance to Negro demands is stiffening. Negro leadership has been split.

There is widespread fear that January's troubles will bring a halt to years of quiet progress in interracial cooperation in Atlanta.

Mr. BYRD of West Virginia. I should like to refer to one other item which appeared in the U.S. News & World Report in March of this year which is captioned "Some New Tactics in Civil Rights Push." The article states:

Negroes now are trying out some new tactics in their civil rights demonstrations. New tactics include:

"Shop-ins": In practicing this technique, introduced in San Francisco in late February, Negroes enter a supermarket accused of hiring too few Negroes. There they fill shopping carts with groceries, take them to the checkout counters and allow the merchandise to be rung up by clerks on the cash register.

Then the Negroes walk out, paying no money and leaving behind the bags of groceries—which then must be returned to the shelves. Store owners complain that this tactic causes spoilage of perishables, breakage of some items—and much wasted time.

The article refers to another technique known as "cross-filing." It is a

variation of the shop-in. The article states:

"Cross-filing": This is a variation of the "shop-in." Negroes posing as customers of a supermarket take items from one shelf and put them on another shelf—again forcing clerks to waste time restoring the merchandise to its right place.

Some students of the University of California have countered with "reverse shop-ins," in which they help merchants return the mixed-up items to their proper shelves.

Then there are rent strikes, to which the article refers:

"Rent strikes": This tactic is simply the refusal of tenants to pay their rent unless the owner meets their demands for repairs on their buildings. It is used mostly in New York City. Owners complain the tactic is sometimes used as an excuse for nonpayment even when buildings are in good repair.

Negroes say the new methods will supplement—but not replace—the older tactics.

Mr. President, those are but a few of the thousands of newspaper stories which have appeared in newspapers throughout this country concerning acts of civil disobedience and violations of local laws. I say again that but for the so-called demonstrations, the bill would not be before the Senate today.

Since the bill first came to the Senate, and even prior thereto, we have heard nothing but the echo of liberty from those who habitually support any measure which is designated a civil rights measure. But while we follow the sound, let us take care that we do not lose the substance. I am as eager to further the preservation of the inestimable blessings of civil rights as is any other Member of this body, but I am persuaded that the sanguine patrons of the bill are mistaken in their views, and that enacting the bill into law would weaken rather than add strength to individual rights and private freedom.

The policy enunciated in the bill does not confine itself to the present moment but brings future generations into its sphere. It involves an issue which is national in scope, and does not confine itself to the region which comprised the old Confederacy. The bill would affect not only the lives of Negro citizens, but it would affect the lives of all citizens. It does not deal alone with one aspect of our national life.

If the bill were enacted into law as it was passed by the House of Representatives, it would embark this Nation upon a course which could ultimately alter certain basic principles of our freedom of government. Its reverberations would be political, economic, and social. Its passage would achieve the satisfaction of no group, nor would it assure or even promise to assure peace and tranquillity.

Mr. President, many of the people who have written to me urging that I support the bill are laboring under the illusion that its passage would bring peace and tranquillity to communities throughout this country. They fail to perceive that the leaders of these protest demonstrations are professional agitators who are paid salaries—undoubtedly good salaries—for this kind of activity. Once the bill is passed, those leaders will wish to perpetuate their grip upon the various groups. They will wish to continue to impress their followers with the necessity for a continued salary. They will, of course, conjure up new plans, new tactics, and new objectives; and we can expect to see new demonstrations throughout the country.

Mr. RUSSELL. Mr. President, will the Senator yield?

Mr. BYRD of West Virginia. I yield to the senior Senator from Georgia.

Mr. RUSSELL. I am sure that the distinguished Senator from West Virginia has read the many articles that have appeared in the press in which many Negro leaders have said that they do not regard the present bill as anything, and that it would have no effect whatever on conditions in New York, Philadelphia, Pittsburgh, and other areas.

A Member of the other body—ADAM CLAYTON POWELL, from New York—has said that the bill meant nothing to the Negroes of New York, and that they will continue to demonstrate with increasing vigor—they did not say it, but the assumption was with increasing violence—because the bill did not offer them anything.

Several weeks ago there was a meeting in Washington in which various leaders gathered and stated that the supporters of the bill were, in effect, "Uncle Toms," because the bill goes so far as to practically strike down the rights of property in this country. The bill would limit and circumscribe them to the point at which they would not have the vitality that the Founding Fathers expected when they spelled out in the Constitution the three primary civil rights—life, liberty, and property. But the leaders said that the bill means nothing because it holds out no promise to the Negro populations of New York, Chicago, Philadelphia, and Pittsburgh. That is what has caused me a great deal of wonder.

The State of New York, so we are told by their representatives here in the Chamber, has passed every law that the Negro population has requested. It has passed public accommodation laws. It has FEPC laws in abundance. I think there is both a State law and a city law. They have not failed to act immediately whenever there has been any demand from the Negro population. And, yet, the Negro leaders are unhappy there and say that they are being imposed upon. That leads one to wonder just how far we can go, and whether it will be possible to ever satisfy these leaders unless we adopt the Communist doctrine of dividing up all of the property every Saturday evening at a certain hour and distributing it equitably among all the citizens without regard to their race, creed, color, religion, or national origin.

I wonder if the distinguished Senator from West Virginia, who has made a detailed study of this entire subject, has been able to determine just exactly what the objective of the Negro leaders is in New York City and other cities. They are unhappy about this bill and say that it gives them nothing, even though there are those who love the Constitution and our form of government who think that this is a curtailment of property rights that could lead us into statism.

Mr. BYRD of West Virginia. Of course, some of the Negro leaders are boldfaced enough to frankly state that their objective is preferential treatment for Negro citizens. They make no bones about their objective being such. There are others, of course, who are not quite so candid, but I do not think it can be gainsaid that this is the objective of many of the Negroes in the country.

I am sure it is not the objective of the great majority of them. But certainly, it is the objective of some of their leaders. I think it must be their objective because they cannot be content with equality of treatment. They will have to show their followers that they are constantly on the move, that they are alert, that they are working in their behalf, that they are successful in their efforts. They will have to continue to push and push for more and more.

Many of the supporters of the bill will find out when it is too late that these Negro leaders will have achieved the objective of preferential treatment by means of the passage of this bill. Certainly when it comes to title VII, many of our people will find this out. Title VII does not say in so many words that nonwhites must be given preferential treatment. But for practical purposes, that will be the result. An employer who has 25 employees, after the fourth year following the enactment of the bill, may attempt to employ an additional individual. Thereupon he may receive applications from two persons—one white and one nonwhite. The white person may perchance be a widow who has three children and lives in the community. He may know this widow and want to hire the white widow. But, let us say that each of the applicants has made a grade of 80 on an examination. Under this law, when it is enacted—and the Senator knows it will be enacted if cloture is invoked——

Mr. RUSSELL. I hope and pray that it will not be. I still have faith that the Senate of the United States will not strike such a mortal blow at our free enterprise system as this bill will level.

Mr. BYRD of West Virginia. I share the Senator's hope. But I know that if cloture is invoked, we do not have the votes to strike title VII. We saw that today. We do not have the votes to increase the figure of 25 in reference to the number of employees which will be affected after the passage of 4 years following the enactment of the bill. But the practical result will be that the employer in the hypothetical case which I have cited will, in many instances, tend to employ the nonwhite applicant in preference to the white widow. Why? Because otherwise the employer will be confronted with a possible legal suit. The nonwhite applicant can charge discrimination. The white widow cannot charge discrimination—unless the employer happens to be Negro, in which case perhaps she could charge discrimination.

In most of the cases, the employer will be white—at least, at the present time they are mostly white. The practical result will be that the employer, rather than be confronted with litigation, will

take the easy way out and will employ the nonwhite applicant.

Mr. RUSSELL. Mr. President, I should like to ask the distinguished Senator if that is not all the more likely since the poor employer, who may be a man struggling to start a small business, will be confronted with the full power, majesty, and resources of the Federal Government and the Attorney General of the United States armed with tax-paid lawyers to the hilt to pursue the case by pleading amicus curiae in any proceedings that might be filed.

I further ask the Senator as to just what would be the situation of an employer, say, of 50 people, in a small plant, whose orders have been curtailed and who is compelled to lay off six employees. Would he proceed to lay off a colored employee, even though he be inefficient? Of course, he would not. He knows that he would be dragged before the Commission. He knows that he would be haled before the court. He knows that he would be compelled to employ lawyers and lose day after day attending the court while confronted with tax-paid lawyers from the U.S. Government on the other side.

The result of this bill would be, as the Senator states, to give priority definitely and almost completely, in most instances, to the members of the minority group. The average garden variety type of American has no chance at all when it comes to employment, when it comes to promotion, when it comes to being laid off in times of economic distress at the place of employment. The average garden variety type of American has no chance whatever. He will be the man who will not be employed. He will be the man who will not be promoted. He will be the man who will be laid off. The employer will not be willing to undergo all of the great expense and loss of time in confronting the might of the U.S. Government that will be arrayed against him. Poor John Smith, with a plant employing 40 people, trying to combat the Attorney General of the United States, hauling him before this Commission, the Commission having been appointed to perform a certain mission; and if he leaves the Commission and goes before a judge, the judge will have been appointed perhaps by the same Attorney General.

The Senator may be surprised to know that I have seen with my own eyes an order issued by a Cabinet member—he is not now in the Cabinet—telling the head of every division throughout his vast domain of tens of thousands of employees, that if he did not promote, or if he reprimanded or laid off a Negro employee, it was necessary for him to report that fact, and the circumstances surrounding it, to the Secretary himself.

What would the average little bureau chief do, if it came down to a case of determining which of three or four employees would be released? Would he release one that would require him to file a report with the mighty Secretary high above him? Why of course the Senator knows—and all those who are familiar with human nature knows—that he would lay off the one who had no rights. The average garden variety type of American citizens would be penalized, if this bill should be enacted.

Today, those who are supporting the bill are having their innings. They are basking in the plaudits and in the limelight of the leaders of these minority groups. They are receiving the acclaim of the poor, misled, and misguided cardinals, bishops, and men of the cloth. But within 2 or 3 years, when the bill has been in operation, and when these men feel the impact of the average garden variety type of American who has suffered injustices as a result of the bill, it will be another story. Many of those who voted for the bill will be clamoring for its repeal.

Mr. BYRD of West Virginia. I thank the Senator from Georgia for his contribution. Today, an employer who has 27 or 30 employees will be using good judgment, and will be following the course of wisdom if by the year 1969, he releases enough employees to bring the number down to 24.

I know that if I were an employer and had 26, 27, or 28 employees, and if cloture is invoked and the bill should be enacted, I would begin to take action to reduce the number of employees in my operation to 24 by the year 1969, rather than have this army of Federal agents and Federal attorneys breathing down my neck and telling me how I should employ and how I should not employ, running barefoot through the files of my business, copying whatever evidence the Commission might believe relevant and deem to be necessary. I would take a stitch in time, hoping it would save nine.

Mr. RUSSELL. Mr. President, will the Senator from West Virginia yield?

Mr. BYRD of West Virgnia. I yield.

Mr. RUSSELL. I should like to ask the Senator if it is not altogether likely, in the case of the so-called Civil Rights Commission, that its special advocates, those with particular interests, fanatics, and special pleaders, will finally wind up manning these jobs as investigators and agents, or emissaries, and will move out from the Commission to harass and annoy the businesses of this country, to examine their books and haul them up before the Commission?

Mr. BYRD of West Virginia. I fear that I cannot allay the apprehensions which have been expressed by the senior Senator from Georgia. We can assume that this will happen. Certainly, in some instances, under the language of the bill, the Commission may employ such agents, attorneys, employees and investigators as are deemed to be necessary to carry out the functions of the Commission.

There is no limitation on the number of employees who may find their way into the employment of the Commission. Scores of personnel will be needed to police this effort. Certainly, the language of the bill makes provision for that, because there is no limitation on the number of investigators and Federal agents which can be utilized by the Commission to carry out its functions.

Mr. RUSSELL. Mr. President, will the Senator from West Virginia yield further?

Mr. BYRD of West Virginia. I am glad to yield.

Mr. RUSSELL. I should like to ask the distinguished Senator if he is familiar with the history of the so-called Civil Rights Commission. When it was first appointed, the then President of the United States, Dwight D. Eisenhower, undertook to appoint members of that Commission of every philosophy of government and every segment of thought—those who believed in States rights, those who believed in centralizing the power of government in Washington, those who believed that minority groups were entitled to special consideration, and those who believed that all Americans should be dealt with on equal terms. He appointed that Commission originally, but it has now wound up—and as a member of the Democratic Party who has never scratched the Democratic ticket, I say with profound regret—that two Democratic Presidents have gone out of their way to appoint special pleaders, those of a definite school of thought, and those of a definite race on the Commission, where today those recommendations and those findings mean nothing from a factual standpoint.

I listen to Senators on the floor of the Senate quoting the Civil Rights Commission as having decided so and so. Well, of course, they decided a certain way. They can make any findings necessary to a particular position, or to carry their point, because there is not a single member of the Commission today who has the slightest appreciation of our dual form of government, of the States within a Federal system, with the States having their rights and the United States having their limited powers spelled out in the Constitution.

Today, all the members of that Commission believe that Federal power can be used in any possible way to achieve their ends, and to level all Americans to the same common denominator, whether it be from the standpoint of society, of social equality, of economic equality, or of any other issue which has been raised.

Having seen this illustration of what has happened with the Civil Rights Commission, I apprehend that the Commission, which is proposed to be created by the bill, will in a relatively short period of time wind up just as biased, just as unbalanced, and just as prejudiced as we find the Civil Rights Commission to be today.

Mr. BYRD of West Virginia. Mr. President, I voted for the legislation which established the Commission in the first instance. It was originally conceived to be only temporary. It was not conceived to be a permanent body. But that is precisely what it has become.

I agree that the Commission has not functioned in an objective manner, but that often it has proposed radical, impractical, and improvident solutions to human relations problems.

A prime example was the proposal made to the late President to cut off all agency funds to the State of Mississippi. Of course the late President did not look with favor upon such a proposal. But virtually the same proposal is incorpo-

rated in the pending bill. It does not repose this responsibility in the President, but places it on the shoulders of hundreds of anonymous agency heads. This may be even worse.

I have come to doubt that from the makeup of the Commission a balanced viewpoint is presented. It is for this reason that I should like to see title V of the bill amended to provide for only a 1-year extension, instead of a 4-year extension of the Commission's life. As a matter of fact, I believe the Commission has about run its course insofar as its rendering service is concerned.

I say further to the Senator from Georgia, in response to his reference to the laws which have been passed by New York and other States in the field of public accommodations and fair employment, that these laws have apparently not worked where they have been passed. If they have worked, why do the Senators from these same States join today in such an allout effort to see the Federal Government enact such an all-embracive law? I believe the very fact that the laws have not been as efficacious as had been originally anticipated is significant proof that a Federal law would not be efficacious and would be unwise, and should not be enacted.

Mr. RUSSELL. I should like to ask the Senator if it is not rather ironic that these States which claim they have every law to create a utopia, and have a perfect balance in relationship between the various races, creeds, and groups of various national origins, are having more difficulty today and having more troubles in some respects than the States which have no such laws; and further, that the statistics produced by the Department of Labor show that there is a higher percentage of unemployed among the minority groups in such States as New York, Michigan, and Illinois, which have perfect laws; and that those States have a higher percentage of disadvantaged among the minority groups with relation to unemployment than in the States of South Carolina, Georgia, Alabama, which are looked on with disdain and scorn as being in the Deep South; and that the statistics indicate that the percentage of unemployed among the Negro population of the States that have these wonderful, fair employment practice laws, is just about twice what it is in the Southern States, which do not have these so-called fair practice laws?

Many of these Senators, of course, are trying to cover up failures in their own States, and are appealing to the Federal Government to get into the picture, so that in running for reelection they can blame someone other than members of their own party for the failure in their own States of these so-called fair employment laws.

Mr. BYRD of West Virginia. The junior Senator from Mississippi [Mr. STENNIS] recently placed in the RECORD certain information which would substantiate the statement of the Senator from Georgia with regard to the percentage of unemployment that exists among Negroes in the Northern States having so-called fair employment practice acts.

I should like to say further, in response to something the Senator from Georgia has said, that the leaders of the civil rights movement have indeed stated that the passage of the bill will be but the beginning, and that they will now have demonstrations in various communities throughout the country, once the bill is passed, to test the law. Of course, they will not be satisfied with the bill as it is passed, even if it is passed without a comma or other punctuation mark deleted. They will certainly turn on the pressure for new and more encompassing legislation. We can expect to see a continuation of these demonstrations.

It should be stated, to the credit of the Negro, that in many of the demonstrations most of the people who participated were out-of-town white agitators, and that most of the people who were arrested were out-of-town beatniks, comedians, and publicity seekers.

Believing that its overall, far-reaching and profound effect will be harmful, rather than helpful, I cannot support the bill as it is now written. I feel it incumbent upon me to state in more precise detail why I cannot support the bill as it is written.

Title I, which concerns voting rights, will provide that no person acting under color of law shall in determining whether any individual is qualified under State law to vote in any Federal election apply any standard, practice, or procedure different from standards, practices, or procedures applied to other individuals within the same county or similar political subdivision in determining whether those individuals have been found by State officials to be qualified to vote.

I ask unanimous consent to have printed in the RECORD at this point title I of H.R. 7152.

There being no objection, title I was ordered to be printed in the RECORD, as follows:

TITLE I—VOTING RIGHTS

SEC. 101. Section 2004 of the Revised Statutes (42 U.S.C. 1971), as amended by section 131 of the Civil Rights Act of 1957 (71 Stat. 637), and as further amended by section 601 of the Civil Rights Act of 1960 (74 Stat. 90), is further amended as follows:

(a) Insert "1" after "(a)" in subsection (a) and add at the end of subsection (a) the following new paragraphs:

"(2) No person acting under color of law shall—

"(A) in determining whether any individual is qualified under State law or laws to vote in any Federal election, apply any standard, practice, or procedure different from the standards, practices, or procedures applied under such law or laws to other individuals within the same county, parish, or similar political subdivision who have been found by State officials to be qualified to vote;

"(B) deny the right of any individual to vote in any Federal election because of an error or omission of such individual on any record or paper relating to any application, registration, payment of poll tax, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election; or

"(C) employ any literacy test as a qualification for voting in any Federal election unless (i) such test is administered to each individual wholly in writing except where an individual requests and State law authorizes a test other than in writing, and (ii) a certified copy of the test whether written or oral and of the answers given by the individual is furnished to him within twenty-five days of the submission of his request made within the period of time during which records and papers are required to be retained and preserved pursuant to title III of the Civil Rights Act of 1960 (42 U.S.C. 1974–74e; 74 Stat. 88).

"(3) For purposes of this subsection—

"(A) the term 'vote' shall have the same meaning as in subsection (e) of this section;

"(B) the phrase 'literacy test' includes any test of the ability to read, write, understand, or interpret any matter."

(b) Insert immediately following the period at the end of the first sentence of subsection (c) the following new sentence: "If in any such proceeding literacy is a relevant fact there shall be a rebuttable presumption that any person who has not been adjudged an incompetent and who has completed the sixth grade in a public school in, or a private school accredited by, any State or territory, the District of Columbia or the Commonwealth of Puerto Rico where instruction is carried on predominantly in the English language, possesses sufficient literacy, comprehension, and intelligence to vote in any Federal election."

(c) Add the following subsection "(f)" and designate the present subsection "(f)" as subsection "(g)":

"(f) When used in subsections (a) or (c) of this section, the words 'Federal election' shall mean any general, special, or primary election held solely or in part for the purpose of electing or selecting any candidate for the office of President, Vice President, presidential elector, Member of the Senate, or Member of the House of Representatives."

(d) Add the following subsection "(h)":

"(h) In any proceeding instituted in any district court of the United States under this section the Attorney General or any defendant in the proceeding may file with the clerk of such court a request that a court of three judges be convened to hear and determine the case. A copy of the request shall be immediately furnished by such clerk to the chief judge of the circuit (or in his absence, the presiding circuit judge) of the circuit in which the case is pending. Upon receipt of the copy of such request it shall be the duty of the chief judge of the circuit or the presiding circuit judge, as the case may be, to designate immediately three judges in such circuit, of whom at least one shall be a circuit judge and another of whom shall be a district judge of the court in which the proceeding was instituted, to hear and determine such case, and it shall be the duty of the judges so designated to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited. An appeal from the final judgment of such court will lie to the Supreme Court.

"In the event the Attorney General fails to file such a request in any such proceeding, it shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

"It shall be the duty of the judge designated pursuant to this section to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited."

Mr. BYRD of West Virginia. Mr. President, I believe that fairness and justice require that the same standards, practices, and procedures that are applied to white persons in determining their qualifications to vote should be applied to persons of other colors in determining their qualifications to vote. Any discrimination on the basis of race or color in determining the qualifications of voters is indefensible.

This title will also provide that no person acting under color of law shall deny the right of any individual to vote in any Federal election because of any error or omission of such individual on any record or paper relating to any act requisite to voting, if such error or omission is "not material" in determining whether the individual is qualified under State law to vote in such election. At this point, I think I should state that I do not believe there is any such thing as a "Federal election," and this objection goes to paragraph (2)(A), to which I have just alluded. There are, of course, Federal officials to be elected, but they are chosen in State elections conducted by States. I think we are making a mistake when we allow ourselves to fall into the habit of making careless reference to the elections of Federal officials as being "Federal elections." Such careless imprecision can lead to misunderstandings which, after the passage of time will, like the bent twig, become so secure in error as to be incapable of rectification and will become the instruments of further incursions upon States rights in the conduct of State elections of any officials, Federal or otherwise.

In the second place, I thoroughly concur in the apparent objective which is being sought here; to wit, that there shall be no discrimination in applying the standards, practices and procedures governing qualifications of voters. Evidence can probably be had of the fact that the slightest and most immaterial error or omission has been seized upon to disqualify a voter at some time and at some place in determining voters' qualifications. Whether such an approach has been a common pattern may or may not be the case. Nonetheless, one would have no difficulty in envisioning situations in which the disqualification of a qualified voter on the mere pretext of his having inadvertently made some omission or trivial error may have occurred, and this would be patently unjust and unfair. Such arbitrary action on the part of an election official is unconscionable, and the verbiage of this paragraph seeks to eliminate the possibility of unjustified intrusions on voting rights of individuals of any color in the future. I support the objective sought, but I must point out that in the effort to eliminate inequities and injustices which may evolve from the arbitrary determination on the part of some State officials as to what may constitute a "material" error or omission, the language creates opportunities for arbitrary determination of what may constitute an error or omission which is "not material" in determining the qualifications of a voter. The language of the title obviously could not be specific as to errors and omissions "not material," but it certainly is not to be commended for any light which it sheds upon the subject. There are absolutely no guidelines whatsoever provided as to what errors or omissions may be considered "not material."

The title also provides that literacy tests employed as qualifications for voting in Federal elections can only be employed if such tests are administered to each individual wholly in writing except where an individual may request and State law may authorize a test other than in writing. It is also provided that a certified copy of the test, whether written or oral, and the answers given by the individuals, must be furnished to an individual within 25 days of the submission of his request therefor and his request must be made within the period of time during which records and papers are required to be retained and preserved pursuant to title III of the Civil Rights Act of 1960.

Mr. President, the language in title I does not, on its face, indicate the length of time during which such records and papers are required to be retained, so one must go to the Civil Rights Act of 1960 to determine this fact. Section 301 of title III of the Civil Rights Act of 1960 reads as follows:

TITLE III

FEDERAL ELECTION RECORDS

SEC. 301. Every officer of election shall retain and preserve, for a period of twenty-two months from the date of any general, special, or primary election of which candidates for the office of President, Vice President, presidential elector, Member of the Senate, Member of the House of Representatives, or Resident Commissioner from the Commonwealth of Puerto Rico are voted for, all records and papers which come into his possession relating to any application, registration, payment of poll tax, or other act requisite to voting in such election, except that, when required by law, such records, and papers may be delivered to another officer of election and except that, if a State or the Commonwealth of Puerto Rico designates a custodian to retain and preserve these records and papers at a specified place, then such records and papers may be deposited with such custodian, and the duty to retain and preserve any record or paper so deposited shall devolve upon such custodian. Any officer of election or custodian who willfully fails to comply with this section shall be fined not more than $1,000 or imprisoned not more than one year, or both.

Mr. President, I have now placed in the RECORD section 301 of title III of the Civil Rights Act of 1960, in order that Senators may know just what they are doing when they approve the language in title I, which provides for an individual who is applying to be registered to require a transcript of the test and the questions and answers given in such test in the course of registration.

Here again I support the object which is sought, to wit, the guarantee that literacy tests will be applied uniformly as between white and colored persons. I recognize the difficulty of adducing evidence or proof of discrimination in the registration of voters if oral tests are given. If a white registrar is so included, he may, by the use of oral tests, disqualify colored voters and qualify white voters simply by administering more difficult tests to the former and/or by requiring less in connection with the answers submitted by the latter. In the same way, a Negro registrar, if he were so inclined, could discriminate against white persons. So, the objective is a worthy one. By requiring that literacy tests be administered in writing, problems of securing a judicial determination as to whether or not discrimination has been practiced, are greatly diminished. However, I do believe that if it is the desire of an individual to request a certified copy of an oral test and of the answers given, he should be required to make such request at the time the test is administered. Otherwise, a procedure which is going to be costly and burdensome at best, will be compounded to be so inordinately and excessively costly and so burdensome as to render it unreasonable. By the present language, if an individual requests an oral test—and he must trigger an oral test by requesting it—even in that instance there will be a necessity for the taking of a transcript of questions and answers in every case to meet the possibility that at a future date an individual may ask for a production of that transcript. The present language permits him to make the request at any time within the period, as I have already stated, during which records and papers are required to be retained and preserved pursuant to title III of the Civil Rights Act of 1960. He is not required to submit his request at the time the test is administered.

It seems patently unreasonable for the registrar to have to transcribe every question and every answer on every oral test. The cost of this procedure is obviously going to be tremendous. If it is going to be the purpose of a person to ask for an oral test, and if it is to be his further purpose later to challenge the administration of the test, he should put the registrar on notice at the time when the test is given, thus requiring the questions and the answers to be transcribed. Otherwise, the registrar should not be required to transcribe the questions and the answers in every instance when a person asks for an oral test. We should keep in mind that, under the provisions of the bill, oral literacy tests cannot be be given unless the person seeking to register so requests and the State law so authorizes. Otherwise, the test must be administered in writing. Even when tests are administered in writing, there will have to be transcripts of any questions and answers which might be resorted to in the attempt to clarify the previously written questions and answers. It seems to me to be wholly unreasonable to require in every instance that the registrar transcribe the tests; but this the registrar will have to do, in order to be prepared for subsequent requests for the written record. And I wish to point out that there are States other than Southern States which give oral literacy tests; and wherever that is done, the burdensome and costly provisions of this title would apply. There would be not only the cost of transcribing every word of each question and answer in every oral test—even though in many or most instances the certified

copy of the test would perhaps not subsequently be requested by the potential voter—but there would also be the additional costs of supplies and storage of records.

This title would also provide that in any proceeding in which literacy is a relevant fact "there shall be a rebuttable presumption that any person who has not been adjudged an incompetent and who has completed the sixth grade in an accredited public school or private school" possesses sufficient literary comprehension, and intelligence to vote in any Federal election. This provision is inclusive of the Commonwealth of Puerto Rico.

The title also provides that the words "Federal election" shall mean any general, special, or primary election held solely "or in part" for the purpose of selecting or electing any candidate for President, Vice President, presidential elector, the U.S. Senate, or the U.S. House of Representatives. In other words, any State elections conducted for the purpose of selecting or electing candidates for local, county, municipal, or State officials would ipso facto become "Federal elections" if, on the same ballot, there were to be elected or selected a candidate for any one of the foregoing enumerated Federal offices. Virtually all State elections would come within the meaning of a Federal election, by virtue of the words "in part." Elections of Federal and State officials are conducted at one and the same time in 46 States of the United States; so, in 46 States, State elections become what are incorrectly referred to as "Federal elections."

By the same token, the force of the sixth-grade presumption would be applied in the selection and election of State officials, as well as in the selection and election of Federal officials.

Remembering that it is the Constitution that we are "expounding," let us refer to the Constitution, to determine whether this provision in title I carries us beyond where that venerable document would permit us to go.

Section 2 of article I provides:

> The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

Obviously, what section 2 of article I is saying, with reference to voters' qualifications, is that those persons who are qualified under State law to select or elect members of the lower house of bicameral State legislatures, or members of a unicameral legislature, shall ipso facto be qualified to vote for Members of the U.S. House of Representatives. The State is to determine the qualifications for electors of the former legislative body, and the same qualifications shall govern in the case of electors of the latter. This section does not give Congress any authority to determine the qualifications of electors, in any State, of the Members of the House of Representatives; and any attempt upon the part of Congress to do so would be a patent violation of the constitutional mandate that the electors of Members of the House of Representatives "shall have" the qualifications determined by each State for electors of the most numerous branch of the State legislature.

Paragraph 2 of section 1 of article II of the U.S. Constitution provides, that in the election of a President of the United States, each State shall appoint, in such manner as the legislature thereof may direct, a number of electors. I presume that the Constitution intends to have each State determine the qualifications of such electors. In any event, there is no indication that Congress has any power to determine the qualifications of the electors to be appointed by a State in the process of electing a President of the United States.

U.S. Senators were formerly chosen by State legislatures, as provided by section 3 of article I of the U.S. Constitution. Such provision ipso facto permitted the States to determine the qualifications for electors of U.S. Senators, even though the election of U.S. Senators by the people was not a direct election, but was an indirect one, Senators being chosen by members of the State legislatures, the qualifications of electors of which were determined by the respective States, not by Congress.

Inasmuch as this provision of clause 1, section 3, of article I of the U.S. Constitution was changed by clause 1 of amendment 17, let us look at clause 1 of amendment 17. The portion thereof pertinent to our present discussion states:

> The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

Here again, the U.S. Constitution, as amended, provides that the qualifications for electors of the most numerous branch of the State legislatures, those qualifications being determined by the respective States themselves, are automatically to be the qualifications of electors of U.S. Senators. The Congress is given no power whatsoever to determine or provide guidelines governing voter qualifications.

Thus, Mr. Justice Miller, in *Ex parte Yarborough*, 110 U.S. 651, said:

> The States in prescribing the qualifications of voters for the most numerous branch of their legislatures, do not do this with reference to the election for Members of Congress. Nor can they prescribe the qualification for voters for those eo nomine. They define who are to vote for the popular branch of their own legislature, and the Constitution of the United States says the same persons shall vote for Members of Congress in that State. It adopts the qualification thus furnished as the qualification of its own electors for Members of Congress.

Nowhere does the Constitution state that, in determining the qualifications of electors of members of the most numerous branch of a State legislature, and the concomitant qualifications of electors of U.S. Senators and U.S. Representatives, a State may not require literacy as a qualification for voting. The Constitution does not prohibit the use of literacy tests by States to determine literacy as a prerequisite for voting. The Constitution does not prohibit States from denying suffrage to illiterates. As far as the U.S. Constitution is concerned, a State is perfectly within its constitutional prerogatives in requiring that an individual have an 8th-grade education or a 10th-grade education or a 12th-grade education to be qualified to vote. Title I of this bill, however, would make it a rebuttable presumption of literacy if any person, not incompetent, has completed the sixth grade. It does not require that a person have a sixth-grade education, and there is a vast difference in one's having completed the sixth grade and in one's having a sixth-grade education. This language in the bill would be discriminatory in itself in that there is no absolute standard sixth-grade education throughout this country. Additionally, one who has completed a sixth-grade education in the Commonwealth of Puerto Rico may be far more literate or less literate than one who has completed a sixth-grade education in the United States, and one who has completed a sixth-grade education in a given private school may be more literate, or less literate, than a person who has completed the sixth grade in a public school. Moreover, there are many illiterates who have been passed from grade to grade until they finally completed the sixth grade, but they failed to acquire a sixth-grade education.

I think that point is substantiated by Edgar May in his recent book entitled "The Wasted Americans." I quote from that book:

> Personnel managers in major industries are learning that the school grade a man said he completed does not mean that he can do work at that level.

Keep in mind that the verbiage of the provision to which I refer reads thusly: "Completed the sixth grade."

So the provision in title I speaks of an individual who has completed the sixth grade, not one who has a sixth-grade education.

I quote further from the book, "The Wasted Americans," by Edgar May:

> More and more companies are giving prospective employees basic reading and writing tests, many of which do not go beyond the elementary or early high school level. The scores often startle personnel experts. In Massachusetts the personnel director of a large corporation told me:
>
> "We have been testing for about 10 years. We give simple spelling and arithmetic tests to all high school graduates who come in here, and frankly we are surprised at the number who can't pass. I'd like to give you the exact figure, but some time ago one of our men mentioned the high rate of failures and it raised such hob in the community that we decided it would be better if we kept them confidential."

Reading further from "The Wasted Americans" by Edgar May:

> A key case is the experience of Armour & Co. and the packing house and meat cutters unions.
>
> In the 1959 labor contract between the company and the unions was a section which set up a joint automation committee whose task included organizing a program of training qualified employees in the knowledge and skill required to perform new and changed jobs. In July 1960, when the company shut down its Oklahoma City plant, invitations were sent to 431 production

workers to take aptitude tests and counseling interviews for future training. The program, conducted with the help of the Oklahoma State Employment Service, got a response from 170 workers. Tests showed that only 60 might be helped by some vocational training. "The balance," the automation committee's report said, "65 percent of the total, were simply told that the best chance of employment would be in casual manual labor." The most significant report of how this problem affects public welfare was produced by Chicago's Cook County Department of Public Aid. The findings permit more than idle speculation that many of the unemployed youths of today will be members of the relief population of tomorrow. The study, prepared under Dr. Deton J. Brooks, Jr., the department's director of research and statistics, included 680 able-bodied persons from families containing almost 2,000 children. All of them lived in a south Chicago area known as the Woodlawn community. It is an almost all-Negro neighborhood of 60,000 persons, of whom almost 25 percent are on relief. The area has poor housing, a high crime rate, and low average income.

The welfare department conducted detailed interviews with the recipients in the study and gave each the new Stanford reading test for grades 2 to 9. From the interviews the researchers learned what grade each had completed in school; from the tests they found out what level work they actually could do. The difference between the two was acute.

While the interviews showed that 6.6 percent were functionally illiterate because they had completed less than 5 years of school, the tests showed that more than half (50.7 percent) were functionally illiterate because they could not read well enough to do fifth grade work. Women did better than men as this breakdown indicates:

There is a table designated table 8. It is captioned "Cook County, Ill., Department of Public Aid Study To Determine Literacy Level of Able-Bodied Public Assistance Recipients, by Sex: 1962."

The table showed that among those tested, while the average school level grade of males was 8.1—in other words, the average grade was the eighth grade among the males—the test level among the males was that of a fifth grade education. For the entire group of females the average was the eighth grade plus 0.8 of the next grade, or, one might say, completion of the ninth grade.

The test level of these individuals showed that they had only a sixth-grade education. I ask unanimous consent to have printed at this point the table to which I have referred.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

TABLE 8.—*Cook County, Ill., Department of Public Aid study to determine literacy level of able-bodied pub'ic assistance recipients, by sex, 1962*

	Average grade		Percent functionally illiterate on basis of—	
	School level	Test level	School level	Test level
Male	8.1	5.1	13.3	59.8
Female	8.8	6.0	5.4	49.0

Mr. BYRD of West Virginia. The gap between education and ability to perform is underscored further by the fact that four out of five—in other words, 80 percent—who completed the fifth, sixth, and seventh grades were functional illiterates, and three out of eight who finished grammar school or higher—"a point above which," the report said, "it would be expected that at least basic literacy education had been completed"—also tested out as reading failures.

Mr. President, I ask unanimous consent to have printed at this point in the RECORD the table from Edgar May's book "The Wasted Americans" designated "Table 9."

There being no objection, the table was ordered to be printed in the RECORD, as follows:

TABLE 9.—*Cook County, Ill., Department of Public Aid study to determine literacy level of able-bodied public assistance recipients, in urban (Illinois) and rural (Mississippi) areas, 1962*

	Average grade		Percent functionally illiterate on basis of—	
	School level	Test level	School level	Test level
Illinois	9.4	6.8	1.2	33.4
Mississippi	7.6	4.4	14.2	76.9

Mr. BYRD of West Virginia. The table shows that in Cook County, Ill., tests were given to persons who were Illinois citizens and to other persons who were from Mississippi.

The test shows that for those persons having completed the ninth grade, their actual education levels were shown to be just under the seventh grade. Those were citizens of Illinois. Citizens who came to Illinois from Mississippi, and who had an average school level of seventh grade, showed a test level of a fourth grade education. The figures show that three out of four Negroes who came from Mississippi schools lacked the reading skills required by the employment market. At the same time, the statistics indicate the failure of the Illinois and particularly the Chicago schools to do the job. While almost 99 percent of the Illinois-educated recipients completed the fifth grade or better, fully one-third could not do the work.

What are the implications of these findings? They show clearly that half of the relief population surveyed is unfit for almost any kind of available work because of serious educational infirmities.

Mr. President, I have made reference to this material to show that the provision in title I which would establish the completion of the sixth grade by an applicant as a rebuttable presumption is unwise. I have attempted to show that the mere completion of the sixth grade is no definite and dependable standard, and that while many persons complete the sixth grade, they are illiterate. They have something less than a sixth-grade education.

Mr. MILLER. Mr. President, will the Senator yield?

Mr. BYRD of West Virginia. I yield.

Mr. MILLER. Mr. President, I was wondering where the Senator would draw the line under the sixth grade.

Mr. BYRD of West Virginia. The Senator from West Virginia would not draw the line. The Senator from West Virginia does not believe that Congress has any power to establish a rebuttable presumption of literacy. The Senator from West Virginia believes that the establishment of a rebuttable presumption of literacy by Congress is in reality the establishment of a voter qualification.

I am sure that the distinguished Senator from Iowa would agree with me that any congressional power to enact a law must be traceable to a grant of such power in the Constitution of the United States. And I have just cited for the attention of the Senator article I, section 2, clause 1, of the Federal Constitution which says that electors of Members of the House of Representatives "shall have the qualifications requisite for electors of the most numerous branch of the State legislatures."

I have cited the 17th amendment, which provides that the electors of U.S. Senators "shall have the qualifications requisite for electors of the most numerous branch of the State legislatures."

I have also cited article II, section 1, clause 2, of the Constitution which deals with the appointment of presidential electors. That article says that they shall be appointed in such manner as each State legislature may direct.

In these three places in the Federal Constitution there is clearly stated the prerogative of the States to establish the qualifications of electors of the most numerous branch of the State legislatures and, ipso facto, electors of Members of the U.S. House of Representatives and the U.S. Senate.

The Senator from West Virginia would not draw a line anywhere. I say that this is the prerogative of the State, and that when Congress attempts to establish a rebuttable presumption of literacy, it attempts to establish a voter qualification. In so doing, it contravenes article I, section 2, clause 1, of the Constitution, the 17th amendment to the Constitution, and article II, section 1, clause 2 of the U.S. Constitution.

Mr. MILLER. The Senator from West Virginia well knows that the Constitution is interpreted differently by different individuals. The Senator is making the classic argument which is made by those who are opposed to the Federal standards for voter qualifications. He knows that there are arguments on the other side. I did not intend by my question to raise a constitutional argument. Frankly, I think that no one need worry too much about that. We have a saving clause in the bill that provides that if any provision of the bill is declared to be unconstitutional, everything else will stand but that clause.

What I was getting at was that I recognize that there is much merit in what my friend from West Virginia is saying about the drawing of a line on the sixth grade education and the statistics that he points out relating to the failure of many individuals who have completed the sixth grade or a higher grade to measure up to a literacy standard. Assuming now that we do not have the argument on constitutional grounds, and

we are just talking now about the practical application of a standard, I was wondering if the Senator would draw the line at the seventh grade or at the eighth grade, or if he feels that the line being drawn at the sixth grade as merely a rebuttable presumption, is not a practical way to handle this?

Mr. BYRD of West Virginia. I cannot assume that we do not have the argument on constitutional grounds. I do not think that the Senators can eschew their responsibility to consider the constitutionality of laws which they help to enact. I think this is a responsibility of each Senator, just as it is the responsibility of members of the Supreme Court. So I cannot assume aside from the Constitution, as the Senator has suggested. I am talking about the constitutionality of this title.

Mr. MILLER. Perhaps I can word the question a little differently if I were to suggest that the overwhelming majority of the Members of the House of Representatives who voted for the bill were correct in their interpretation of the constitutionality of their acts. What about the line being drawn at the sixth grade with a rebuttable presumption?

Mr. BYRD of West Virginia. I am sorry the Senator was not present when I took the time to point out that in almost two out of every three instances in which a vote count was taken in the other body, a majority of the Members of that body were not present.

Mr. MILLER. I recognize that. But I am not talking about that.

Mr. BYRD of West Virginia. But the Senator referred to the majority of the Members of the other body having passed upon the constitutionality of this bill.

Mr. MILLER. On final passage of the bill.

Mr. BYRD of West Virginia. I invite the attention of the Senator to the statement made by a distinguished former attorney general of the State of Vermont, a very distinguished Member of the other body, who happens to be a member of the Senator's own great party.

The Senator will find this statement on page 2756 of the CONGRESSIONAL RECORD:

> It is common knowledge that if a secret ballot could be taken on this bill in its present form, it would not get 50 votes.

Mr. MILLER. Of course, the Senator from West Virginia knows that that is a purely gratuitous statement. One can find gratuitous statements by members of both parties which are contradictory. I would still like to ask the Senator from West Virginia to discuss the practical application of this provision, assuming that his interpretation of the Constitution is wrong, and mine is right. I am perfectly willing for the sake of discussing the practical application of something to assume that I am wrong and somebody else is right.

Neither of us on the floor of the Senate knows which one is right, and we will not know until the Supreme Court of the United States eventually rules on some of the applications in the bill. As long as we have a rebuttable presumption, that if the State of West Virginia feels aggrieved by such a line as the sixth-grade education, it certainly should be in a position to rebut the presumption that a person is literate by having a written examination which will leave it up to the provisions of title I. I venture to say that that is one answer to the question.

Another answer is that if the State feels aggrieved by the fact that Congress has provided for a rebuttable presumption of literacy because someone has completed the sixth grade, the State has not been doing a good job of teaching literacy in the first six grades. Perhaps the State officials will "get on the ball" and start doing a job on education during the first six grades. That might be a rather salutary influence in that direction. But I believe the rebuttable presumption is a good "out." A good way of getting around the provision is that if a State is genuinely aggrieved——

Mr. BYRD of West Virginia. The State of West Virginia has no problem along this line.

Mr. MILLER. I use the State of West Virginia only as an example. I have also used the States of California and New York just as examples.

Mr. BYRD of West Virginia. The State of West Virginia has no problem along this line. However, it is not for that reason that I raise objection to the provision. I am attacking it because I believe it is unconstitutional. I have taken an oath to support and defend the Constitution. In my view, this provision being unconstitutional, I cannot support it. The Senator has referred to a practical application——

Mr. MILLER. Will the Senator yield at that point?

Mr. BYRD of West Virginia. I am glad to yield.

Mr. MILLER. The Senator has stated that the reason he is opposed to the provision is that in his conscience he does not feel he could vote for something he believes to be unconstitutional. No one in the world—least of all myself—would criticize that position. The point is that if that is the position of the Senator, then I am not so sure that it is relevant to start talking about all the statistics relating to whether people are literate or not, because they have completed the seventh grade in Illinois, or the eighth grade in Mississippi. That has nothing particularly to do with the constitutional argument.

Mr. BYRD of West Virginia. The Senator asked me to make a practical application, and that is precisely what I was doing. I was showing that that standard was not really a standard, that when one sets up a rebuttable presumption of literacy, based upon completion of the sixth grade, he is dealing with a standard that really is not a definite one.

Mr. MILLER. I ask now, what is wrong with that standard which cannot be remedied by a rebutting of the presumption, or by the elevation of the educational standards of a particular State?

I have one more question I should like to go into in a moment, but I should like to develop this thought a little further. Anyone whose State feels aggrieved by that provision, assuming its constitutionality, has a good way of getting around it by setting up written tests in line with title I of the bill. If they do not wish to go to that trouble, perhaps the State would elevate its educational system a little. Perhaps that State should start firing certain teachers who let students go from one grade to another who are not qualified to do so. It is a tragedy that there are statistics which the Senator from West Virginia has cited. There are other statistics which might be cited along those lines in the area, including the District of Columbia, as the Senator well knows; but if that is so, there are two ways to find out how to rebut a presumption; one, by written tests, and two—and preferably in the long pull—to elevate the standards of education.

Mr. BYRD of West Virginia. I agree that the standards of education should be raised, but I believe that is a subject quite aside from the one we have before us at this point. I simply say that this provision of the bill is vulnerable. I believe it is violative of the Constitution. I support that provision in the bill to which I have already referred, which would require uniformity of application of literacy tests. I believe that any literacy test which is resorted to by any State should be applied uniformly as between white and Negro; and if this is done, certainly the Negro is receiving equal protection of the laws.

It seems to me that that is a provision which gets to the milk in the coconut; but the rebuttable presumption provision is neither wise from the standpoint of its practicality of application, nor is it valid from the standpoint of its constitutionality.

Mr. MILLER. One further question. Another possible solution to this problem by those Senators who might feel aggrieved by this provision, again assuming its constitutionality, would be that if they feel they are graduating students who have completed the sixth grade who are not literate, or that there are a great many of them not literate because their States have done such a poor job of maintaining educational standards, there is nothing that I can say to prevent them from establishing a requirement that all voters must have completed 12 grades. Does the Senator agree with that?

Mr. BYRD of West Virginia. I agree that it is the prerogative of a State under article I, section 2, clause 1, of the Constitution, and under the 1st clause of the 17th amendment, to establish as a requirement for voting that one must have a 12th grade education, or that one must have—if we want to say it in the words of the bill—completed the 12th grade. This is the prerogative of the State. I am not so sure that this might not be a good thing, if States would not only raise their standards of education but also raise their standards by which registrants would qualify for voting.

Mr. MILLER. I do not believe that the Senator from West Virginia——

Mr. BYRD of West Virginia. But I will not agree that the Congress can constitutionally do this.

Mr. MILLER. But the Senator from West Virginia, I am sure, would agree

that if the Supreme Court should hold constitutional a provision for a rebuttable presumption of literacy on a 6th-grade education, it would also hold valid a requirement that a 12th grade education shall be deemed to be a qualification for literacy, subject to being rebutted.

Mr. BYRD of West Virginia. I believe the Senator is confused, or perhaps he does not understand the point I am trying to make, that a State can establish as a qualification for voting that an individual must have completed the 12th grade, or the 11th grade, or the 10th grade, or the 9th grade.

Mr. MILLER. I agree——

Mr. BYRD of West Virginia. But I am saying, on the other hand, that the Federal Government through the Congress has no constitutional power to do that.

Mr. MILLER. The Senator from West Virginia differs with a good many of us, but that is not the point I was getting down to. The point I was getting down to is that in the bill, we are talking about literacy tests. If any States wish to have literacy tests, that is perfectly all right with the Congress, subject to the proviso that if a person has completed six grades, it will be presumed that he is literate, which is a rebuttable presumption, subject to examination.

There is nothing in the bill to prevent a State from establishing some other qualification for voting besides literacy. If a State does not wish to deal with literacy, that is all right. If it wishes to say, "We are not worried about literacy, but we are worried about our voters having completed 12 grades of education," provided it applies to everyone, that is all right. The bill does not have any application to that situation. I take it that the Senator from West Virginia agrees. Is that correct?

Mr. BYRD of West Virginia. In my judgment a State would be prohibited or, if not prohibited would be circumvented, from establishing as a qualification for voting that an individual must have completed the 12th grade.

Mr. MILLER. By this bill?

Mr. BYRD of West Virginia. By this bill, if that were to be the criterion by which literacy were to be determined.

Mr. MILLER. That is just the point. I tried to preface my argument by saying that if a State is not interested at all in literacy, and is interested only in having its voters having completed 12 grades of education, or on the basis of anything except literacy, and wishes its people to have gone through 12 grades of schooling, feeling that in that way it will have better informed voters than if it had merely literate voters, I cannot see anything in the bill to prevent a State from doing that.

Mr. BYRD of West Virginia. I have no objection to a State doing that. I object to——

Mr. MILLER. Does the Senator think that if the bill is passed a State will not be permitted to establish a requirement, for example, that voters shall have completed 12 grades or 9 grades, so long as it is of uniform application?

Mr. BYRD of West Virginia. It would be difficult, practically speaking, for a State to deny the franchise to a voter who had "completed the 6th grade," under the law, if the bill were passed, even though a State might require a 12th-grade education.

Mr. MILLER. I must confess that I differ completely with the Senator from West Virginia in his interpretation. The entire thrust of title I of the bill—and that is the section we are talking about—is the literacy test.

However, there are many other tests besides literacy tests as qualifications for voting. One of these can be a written examination. There is nothing to prevent a State from giving written examinations, as long as they fulfill the standard set forth in title I, and so long as they are made uniformly applicable. If that can be done, why can it not provide that all voters shall have completed 12 grades or 11 grades?

Mr. BYRD of West Virginia. I believe the Senator seeks to lead me afield. I maintain that we are not members of a State legislature, voting on a bill setting up a State qualification for voters. We are members of the Federal Legislature, and we are about to violate the Constitution by setting up a rebuttable presumption of literacy which, in effect, is to establish a voter qualification.

Mr. MILLER. The Senator says "we" advisedly, I trust. I am not suggesting that we in Congress are trying to establish that the qualification of voters be the completion of 12 grades. I am merely saying that there are many other tests for voting that States can establish besides literacy tests.

If the State of West Virginia is not interested in the literacy of its voters, because they have been doing a good job in voting, but wishes to make sure that no one votes unless he has completed 12 grades, there is nothing in the bill to prevent it from doing that.

Mr. BYRD of West Virginia. Let us assume that the Senator is right. He may be. That still does not relieve the Senator and me from our obligation to determine, on the basis of our own knowledge and experience, the constitutionality of this provision, which establishes the completion of the sixth grade as a rebuttable presumption of literacy.

Mr. MILLER. I thoroughly agree with the Senator from West Virginia that this has nothing to do with the constitutional argument. As I said earlier, I do not wish to get into a constitutional argument with my friend from West Virginia, because he is just as sure of his interpretation of the Constitution as is the Senator from Wyoming. He knows as well as I do that there are two points of view on this question. We shall probably not know who is right and who is wrong until the Supreme Court interprets the point.

What prompted me to bring this out was the citing of statistics by the Senator from West Virginia which I believe related very much to the practical application of this title. It is the practical application of the title that I believe we also must be concerned about. Even assuming that something is constitutional, it does not mean that it is a good thing for us to enact. If it is constitutional, we ought to enact something that can be reasonably worked out by the States in compliance with it.

I suggest that the line of a sixth-grade education, with a rebuttable presumption of literacy, is a practical line. I am not saying that it is the best line that could be drawn. I venture to say that someone could prefer an eighth-grade education, with a rebuttable presumption of literacy. If a majority of the House Members had agreed to that, probably that is what we would have before us.

Mr. BYRD of West Virginia. That puts the burden on the State to prove that a person is not literate.

Mr. MILLER. What it does, in effect, is that it puts upon the State the burden of proving that its educational system has not done a good job. It is rather an embarrassing situation to be in.

Mr. BYRD of West Virginia. Not necessarily. Perhaps the citizen who is applying to vote did not receive his education in the State. It might be the case of a Mississippi Negro who was applying to vote in the State of Illinois, as was the case in the book, "The Wasted Americans."

Mr. MILLER. That being the case, perhaps the State might provide that an applicant shall have completed 12 grades, and that they are aggrieved by that provision. The real answer to this will be a written examination on literacy to rebut the presumption. In any event, I thought it well to bring out this feature because the Senator from Iowa and many other Senators have been troubled with the question of drawing a line for literacy tests. Others are troubled by the constitutional argument. I am not troubled by that argument. I am satisfied that what we are doing is constitutional.

In any event, if it is held to be unconstitutional, the remainder of the bill will stand.

I am concerned about the practical application of this provision. While I am not saying that it is the best one that could be drawn, I believe it is one that can be complied with.

Mr. BYRD of West Virginia. I thank the Senator from Iowa. As I have indicated, I am concerned not only with the practical application of the provision, but also with the constitutionality of the provision.

It is well settled law that each State has the exclusive authority to determine the qualifications of its voters so long as there is no denial or abridgement on account of race, color, sex, or previous condition of servitude. A State may have the most rigid qualifications for voting as long as its qualifying criteria do not deny or abridge suffrage on the basis of race or color, previous condition of servitude or sex.

Speaking in Minor against Happersett, the Supreme Court said:

> Certainly, if the courts can consider any questions settled, this is one. For nearly 90 years the people have acted upon the idea that the Constitution, when it confers citizenship, did not necessarily confer the right of suffrage. If uniform practices, long con-

tingent, can settle the construction of so important an instrument as the Constitution of the United States, confessedly, most certainly it has done so here. Our province is to decide what the law is, not to declare what it should be.

The right of suffrage was not conferred upon anyone by the adoption of the 15th amendment. Moreover, that amendment did not limit a State's acknowledged absolute power except to the extent that it could not discriminate, for voting purposes, against any citizens solely because of race, color, or previous condition of servitude. As I say, the 15th amendment does not confer the right to vote on anyone. It confers no power upon Congress to regulate in elections save in the narrow field of discrimination based on race, color, or previous condition of servitude. Literacy is not limited to any of these. The 15th amendment provides as follows:

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

SEC. 2. The Congress shall have power to enforce this article by appropriate legislation.

The language of this amendment is negative in character, and I reiterate that it prohibits States from denying the right to vote to anyone because of race, color, or previous condition of servitude.

In *Reese* v. *U.S.*, 92 U.S. 214, the Supreme Court clearly indicates the limitations of the 15th amendment:

The 15th amendment does not confer the right of suffrage upon anyone. It prevents the States, or the United States, however, from giving preference, in this particular, to one citizen of the United States over another on account of race, color, or previous condition of servitude. Before its adoption, this could be done. It was as much within the power of a State to exclude citizens of the United States from voting on account of race, etc., as it was on account of age, property, or education. Now it is not. If citizens of one race having certain qualifications are permitted by law to vote, those of another having the same qualifications must be. Previous to this amendment, there was no constitutional guarantee against this discrimination: now there is. It follows that the amendment has invested the citizens of the United States with a new constitutional right which is within the protecting power of Congress. That right is exemption from discrimination in the exercise of the elective franchise on account of race, color, or previous condition of servitude.

The power of Congress to legislate at all upon the subject of voting at State elections rests upon this amendment. It has not been contended, nor can it be, that the amendment confers authority to impose penalties for every wrongful refusal to receive the vote of a qualified elector at State elections. It is only when the wrongful refusal at such an election is because of race, color, or previous condition of servitude, that Congress can interfere, and provide for its punishment.

I also cite the statement of the court in United States against Miller:

The 15th amendment does not in direct terms confer the right of suffrage upon any one. It secures to the colored man the same right to vote as that possessed by the white man, by prohibiting any discrimination against him on account of race, color, or previous condition of servitude. Subject to that limitation, the States still possess uncontrollable authority to regulate the right of suffrage according to their own views of expediency. The amendment declares that the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State. While the amendment is primarily aimed at hostile legislation denying or abridging the right of colored men to vote, I am of the opinion that Congress possesses the power to secure the colored man against the deprivation of his right to vote by individuals, where such deprivation occurs on account of race, color, or previous condition of servitude.

The Supreme Court apparently adopted this same interpretation in *Pope* v. *Williams*, 193 U.S. 621. There the Court said:

The privilege to vote in any State is not given by the Federal Constitution, or by any of its amendments. It is not a privilege springing from citizenship of the United States. (*Minor* v. *Happersett*, 21 Wall. 162.) It may not be refused on account of race, color, or previous condition of servitude, but it does not follow from mere citizenship of the United States.

The Court went on to state unequivocally that the matter of determining the qualifications of voters is a matter which is left entirely to the States:

In other words, the privilege to vote in a State is within the jurisdiction of the State itself, to be exercised as the State may direct, and upon such terms as to it may seem proper, provided, of course, no discrimination is made between individuals in violation of the Federal Constitution. The State might provide that persons of foreign birth could vote without being naturalized, and, as stated by Mr. Chief Justice Waite in *Minor* v. *Happersett, supra*, such persons were allowed to vote in several of the States upon having declared their intentions to become citizens of the United States. Some States permit women to vote; others refuse them that privilege. A State, so far as the Federal Constitution is concerned, might provide by its own constitution and laws that none but native-born citizens should be permitted to vote, as the Federal Constitution does not confer the right of suffrage upon anyone, and the conditions under which that right is to be exercised are matters for the States alone to prescribe, subject to the conditions of the Federal Constitution, already stated; although it may be observed that the right to vote for a Member of Congress is not derived exclusively from the State law. (See Federal Constitution, art. I, sec. 2; *Wiley* v. *Sinkler*, 179 U.S. 58.) But the elector must be one entitled to vote under the State statute. (Id.) (See also *Swafford* v. *Templeton*, 185 U.S. 487, 491.) In this case no question arises as to the right to vote for electors of President and Vice President, and no decision is made thereon. The question whether the conditions prescribed by the State might be regarded by others as reasonable or unreasonable is not a Federal one.

Specifically, with reference to the question of literacy tests and their possible contravention of the 15th amendment, the Supreme Court carefully examined this question in *Guinn* v. *U.S.*, 238 U.S. 347:

Beyond doubt the amendment does not take away from the State governments in a general sense the power over suffrage which has belonged to those governments from the beginning and without the possession of which power the whole fabric upon which the division of State and National authority under the Constitution and the organization of both governments rest would be without support and both the authority of the Nation and the State would fall to the ground. In fact, the very command of the amendment recognizes the possession of the general power by the State, since the amendment seeks to regulate its exercise as to the particular subject with which it deals."

But while this is true, it is true also that the amendment does not change, modify or deprive the States of their full power as to suffrage except of course as to the subject with which the amendment deals and to the extent that obedience to its command is necessary. Thus the authority over suffrage which the States possess and the limitation which the amendment imposes are coordinate and one may not destroy the other without bringing about the destruction of both.

While in the true sense, therefore, the amendment gives no right to suffrage, it was long ago recognized that in operation its prohibition might measurably have that effect; that is to say, that as the command of the amendment was self-executing and reached without legislative action the conditions of discrimination against which it was aimed, the result might arise that as a consequence of the striking down of a discriminating clause a right of suffrage would be enjoyed by reason of the generic character of the provision which would remain after the discrimination was stricken out.

No time need be spent on the question of the validity of the literacy test considered alone since we have seen its establishment was but the exercise by the State of a lawful power vested in it not subject to our supervision, and, indeed, its validity is admitted.

There is no question, therefore, that the States may not only determine the qualifications of voters, but the States may also establish literacy tests as a method of determining the qualifications of voters.

In 1959, the Supreme Court reaffirmed, in a unanimous opinion, the principle of the Guinn case—*Lassiter* v. *Northampton County Board of Elections*, 360 U.S. 98:

We come to the question whether a State may consistently with the 14th and 17th amendments apply a literacy test to all voters irrespective of race or color. The Court in *Guinn* v. *United States, supra*, at 366, disposed of the question in a few words, "No time need be spent on the question of the validity of the literacy test considered alone since as we have seen its establishment was but the exercise by the State of a lawful power vested in it not subject to our supervision, and indeed, its validity is admitted."

The States have long been held to have broad powers to determine the conditions under which the right of suffrage may be exercised (*Pope* v. *Williams*, 193 U.S. 621, 633; *Mason* v. *Missouri*, 179 U.S. 328, 355), absent of course the discrimination which the Constitution condemns. Article I, section 2, of the Constitution in its provision for the election of Members of the House of Representatives and the 17th amendment in its provision for the election of Senators provide that officials will be chosen "by the people." Each provision goes on to state that "the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature." So while the right of suffrage is established and guaranteed by the Constitution (*Ex parte Yarbrough*, 110 U.S. 651, 663–665; *Smith* v. *Allwright*, 321 U.S. 649, 661–662) it is subject to the imposition of State standards which are not discriminatory and which do not contravene any restriction that Congress, acting pursuant to its constitutional powers, has imposed. (See *United States* v. *Classic*, 313 U.S. 299, 315.) While

section 2 of the 14th amendment, which provides for apportionment of Representatives among the States according to their respective numbers counting the whole number of persons in each State (except Indians not taxed), speaks of "the right to vote," the right protected "refers to the right to vote as established by the laws and Constitution of the State." (*McPherson* v. *Blacker*, 146 U.S. 1, 39.)

Yet in our society where newspapers, periodicals, books, and other printed matter canvass and debate campaign issues, a State might conclude that only those who are literate should exercise the franchise. (Cf. *Franklin* v. *Harper*, 205 Ga. 779, 55 S. E. 2d 221, appeal dismissed 339 U.S. 946.)

The present requirement, applicable to members of all races, is that the prospective voter "be able to read and write any section of the Constitution of North Carolina in the English language." That seems to us to be one fair way of determining whether a person is literate, not a calculated scheme to lay traps for the citizen. Certainly we cannot condemn it on its face as a device unrelated to the desire of North Carolina to raise the standards for people of all races who cast the ballot.

Mr. President, any contention that the 15th amendment confers the right to vote upon anyone flies in the face of the decisions which I have referred to. That amendment presupposes that the prospective voter is able to pass voter qualification tests required by the State in which he seeks to register. Its sole purpose is to prevent a State from preferring one citizen over another on account of race, color, or previous condition of servitude. Since literacy is in no way limited to race or color or previous condition of servitude, the imposition of a Federal standard, such as would be provided by title I, is not appropriate legislation under the 15th amendment.

Supporters of the establishment of a rebuttable presumption, as contained in title I, can find no basis or comfort therefor in the 14th amendment. Chief Justice Waite treated the relationship of suffrage to the 14th amendment in *Minor* v. *Happersett*, 88 U.S. 162:

The amendment did not add to the privileges and immunities of a citizen. It simply furnished an additional guarantee for the protection of such as he already had. No new voters were necessarily made by it. Indirectly it may have had that effect, because it may have increased the number of citizens entitled to suffrage under the Constitution and laws of the States, but it operates for this purpose, if at all, through the States and the State laws, and not directly upon the citizen.

The case of Williams against Mississippi dealt with a provision of the Mississippi constitution making the ability to read any section of the constitution or to understand such section when read, a necessary qualification of a legal voter. In that case the Supreme Court held that such a provision did not admit to a denial of the equal protection of the laws secured by the 14th amendment and that such a provision did not on its face discriminate between the white race and the Negro race.

Some of those who support Federal establishment of a presumption of literacy base their support on article I, section 4, clause 1, of the original Constitution. That clause provides as follows:

The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

The clause I have just read authorizes Congress to make or alter regulations dealing with the times, places, and manner of holding elections for Representatives and to make or alter regulations dealing with the times and manner of holding elections for Senators. It does not vest Congress with the power to determine voter qualifications.

The words "times, places, and manner," with reference to holding elections, could not, by any proper construction, be taken to include the determination of voter qualifications.

The constitutionality of Federal legislation prescribing voter qualifications in the election of Members of Congress has not been before the Supreme Court. However, we are not without judicial guidance as to congressional power under article 1, section 4, clause 1. Giving the words of this clause their ordinary and plain meaning, it is indubitably apparent that congressional authority to make or alter regulations concerning times, places, and manner of electing Senators and Representatives does not involve the power to determine the qualifications of voters.

Justice Field's dissent in *Ex parte Clarke*, 100 U.S. 399, 494 (1870) is pertinent on this point:

The power vested in Congress is to alter the regulations prescribed by the legislatures of the States, or to make new ones, as to the times, places, and manner of holding the elections. Those which relate to the times and places will seldom require any affirmative action beyond their designation. And regulations as to the manner of holding them cannot extend beyond the designation of the mode in which the will of the voters shall be expressed and ascertained. The power does not authorize Congress to determine who shall participate in the election, or what shall be the qualification of voters. These are matters not pertaining to or involved in the manner of holding the election, and their regulation rests exclusively with the States. The only restriction upon them with respect to these matters is found in the provision that the electors of representatives in Congress shall have the qualifications required for electors of the most numerous branch of the State legislature, and the provision relating to the suffrage of the colored race.

Justice Field left no doubt that the qualification of voters can have no reasonable relationship to the "times, places, and manner of holding elections."

I realize that Justice Field's statement is dictum, Mr. President; but inasmuch as no case involving a congressional statute setting up qualifications for voters has yet been before the Supreme Court, this dictum is the only guidance we have.

It is equally clear that any attempt to establish a Federal standard for voter qualifications would constitute an abridgment of powers guaranteed to the States; and the fact that title I merely establishes a presumption does not change this result.

Present civil rights acts, as I have stated earlier, afford ample protection of the rights of persons who wish to vote for Federal officers. The authority of the Civil Rights Commission in this field has been upheld by the courts, *Hannah* v. *Larch*, 363 U.S. 420. The Attorney General has been given a great deal of power in this area, including the power to inspect election records and to bring suits in connection therewith. These powers are argued in such cases as *Kennedy* v. *Bruce*, 298 F. 2d 860, *Dinkens* v. *Attorney General*, 285 F. 2d 430, *Kennedy* v. *Lind*, 306 F. 2d 222, *In re Coleman*, 208 F. Supp. 199.

So, Mr. President, as I have stated, suffrage is not an absolute right. The standards, limitations, and conditions thereof may be prescribed by a State, not by the Federal Government. Yet, in this provision of title I, the Congress would be, in effect, deciding what the law governing qualifications of electors "should be." We know that there are supporters of this bill who contend that Congress would not be determining qualifications of electors by this provision, but that it would only be providing a rule of evidence of literacy. I maintain that it would be more than a rule of evidence. Its effect and practical result would be that any individual who has completed the sixth grade would be eligible to vote if literacy is a relevant qualifying factor. So, insofar as one possible qualifying factor is concerned, the Federal Government, through the Congress, would be determining that qualification, and I maintain that this is in violation of the Federal Constitution. I further submit that, if it is desirable and if it is the consensus in this country that persons who have completed the sixth grade should be qualified to vote, all other things being equal, the proper way to reach this objective is not by a Federal statute, such as we are considering here, but it should be done by constitutional amendment as provided in article V of the U.S. Constitution. I would support any proposal for such an amendment so as to allow the people of this country to make this determination, but I question the procedure that is being resorted to here, a procedure wherein by Federal statute the Congress would make inroads in the area of determination of voter qualifications—a sphere of activity clearly left, by the Constitution, to the States themselves.

I agree with the end to be achieved but not with the means proposed. We cannot, by statute, make constitutional that which is unconstitutional. Any inroads upon the Constitution, however minor, are subversive of that Constitution. Eloquent expression of this truism has been given by the Supreme Court:

Every journey to a forbidden end begins with the first step, and the danger of such a step by the Federal Government in the direction of taking over the powers of the States certainly at the end of the journey may find the States so despoiled of their powers, or, what may amount to the same thing, so relieved of the responsibilities which possession of the powers necessarily enjoins, as to reduce them to little more

than geographical subdivisions of the national domain.

I repeat, therefore, that if it would prove to be beneficial to our people for the Federal Government to have the power to prescribe and determine voter qualifications, the Federal Constitution should be amended to attain that end, and it should be changed according to the procedure set forth by the Constitution. The Supreme Court has determined and acknowledged that the use of literacy tests is but the exercise by a State of a lawful power vested in the State, a power not subject to the supervision of the Supreme Court.

The 15th amendment, upon which some of those who support this provision of title I base their position, provides that the right of citizens to vote shall not be denied or abridged "on account of race, color, or previous condition of servitude." The provisions of title I regarding literacy tests are not related to the denial or abridgment of the right to vote "on account of race, color, or previous condition of servitude."

The provision relating to a standard literacy test has nothing to do with State deprivals based on race, deprivals based on color, or deprivals based on previous conditions of servitude. The provision applies to all citizens, not to the deprival or abridgment of the voting rights of any particular group. This provision of title I lays down rules for the use of literacy tests, not as such tests may affect persons of "race, color, or previous condition of servitude," but as such tests may affect every person. The provision, therefore, leaves the 15th amendment, and trespasses upon the constitutional provisions of article I, section 2; article II, section 1; and amendment XVII. In actuality, title I prohibits the use by any State of a literacy test unless such test meets Federal requirements—unless the test is "wholly in writing," and unless a certified copy of such test is furnished the individual registrant upon his request. In actuality, it provides that State literacy tests are virtually of no consequence in view of the fact that any person who has completed the sixth grade will arbitrarily be deemed to possess the degree of literacy required of a voter in any Federal election. These provisions plainly encroach upon the power of each State to fix voter qualifications and are simply beyond Congress' authority.

There is abundant law, constitutional and statutory, to prohibit and to punish willful acts by local registrars to discriminate against Negroes in their voting rights. All that is required is that the existing law be enforced. Nevertheless, as I have already indicated, I do not raise strong constitutional objections to other provisions of title I, but I do object on constitutional grounds, to the provision relating to a standard literacy test. If the principle—that Congress has some power to fix general qualifications for voters—is accepted as to literacy tests, it naturally follows that the Congress has the power to fix a uniform age for voters, and a uniform period of residency in precinct, city, and State. If the Congress can create a rebuttable presumption regarding literacy, it can do the same regarding competency, character, and other qualifying criteria.

Finally, title I provides that, in any proceeding instituted in any district court of the United States under "this section," the Attorney General or any defendant may file with the clerk of such district court a request that a court of three judges be convened to hear and determine the case. It is mandatory upon the clerk to immediately furnish to the chief judge of the circuit, or in his absence, the presiding circuit judge of the circuit in which the case is pending, whereupon it is mandatory that that judge immediately designate three judges in such circuit, at least one of whom shall be a circuit judge and another of whom shall be a district judge of the court in which the proceeding was instituted. It will then be mandatory for the three-judge court to assign the case for hearing at the earliest practicable date and to participate in the hearing and render a determination. An appeal from the final judgment of such court will go directly to the Supreme Court of the United States. Furthermore, if the Attorney General fails to file such a request in any such proceeding, it shall be the duty of the chief judge of the district—or in his absence the acting chief judge—in which the case is pending, immediately to designate a judge in such district to hear and determine the case. If no district judge is available, the chief district judge, or the acting chief judge, shall so certify to the chief judge of the circuit who shall then designate a district or circuit judge of the circuit to hear and determine the case, who shall assign the case for hearing at the earliest practicable date and cause it to be expedited.

In the other body it was explained that this provision in title I was for the purpose of avoiding the delays, extant under present procedures, in handling cases instituted. However, in the present language of the bill there is no reference whatsoever to delay. There is only a wide-open authorization that the Attorney General "may file with the clerk of such court" a request that a court of three judges be convened. No legislative standard is enunciated with regard to what shall be the factual grounds for such a request, and there is no requirement for a finding relating to those grounds. This amounts to a peremptory demand or challenge on the part of the Attorney General, to the district judge before whom the case would normally be tried. He would not make that request to the sitting district judge, which I believe is the standard procedure under the statutes providing for a three-judge panel court, but he would file a request with the clerk of the court without consulting the judge. The clerk would then be required to immediately send a request to the chief circuit judge who would have no alternative but to respect the request. There is to be no choice. The Attorney General is not only to be authorized to file suit on behalf of aggrieved voters, but he is also, at his unreviewed discretion, authorized immediately, and without giving the district judge an opportuntity to determine the voting suit, to demand a three-judge court in which the particular district judge would constitute a minority of the three-judge panel, if indeed he is appointed to the panel thereof.

The Attorney General—and I am not referring to any specific Attorney General—would be permitted to choose one judge over another if he felt that the decision which could be forthcoming from a different judge would be favorable to the Government's case. He could use any excuse, without even indicating what it was, to get the case before a three-judge court. This gives entirely too much power to any Attorney General—power to file for the litigant, power to determine the forum, and power to control the court docket. The Attorney General is allowed discretion, under the provision, as to whether or not he shall file such a request with the clerk, so it may be presumed that with regard to a case instituted in a court the presiding district judge of which is "friendly" or considered liberal, the Attorney General would let matters take their course, whereas in a similar situation in another district court, the judge of which may not be considered quite so liberal, the Attorney General can summarily remove the case from that court. He does not have to wait 30 minutes. He does not even have to wait 30 seconds if the proceeding has been instituted. He may request immediately that a three-judge court be convened. In other words, the judicial procedures will be subjected to the whims—and prejudices—of the Attorney General, who is not an elected public servant but an appointed one, appointed not for life but for a term. It is not necessary that he make any allegation of delay, crookedness, or anything. He merely has to ask for the three-judge court. The circuit judge is allowed to exercise no discretion and no judgment, and he can require no proof whatsoever. He must immediately submit to the request of the Attorney General. The Attorney General virtually can issue his own order, select his own court as well as select his own case, and thus stack the cards against the defendant.

As everyone knows, human beings being what they are, district judges differ in their attitudes and temperaments. Some judges are noted for granting substantial awards to lands taken for public use. Others may be inclined to be not quite so liberal and in bootlegging cases some Federal judges may be tough while others may be lenient. In cases involving crimes against the person, some Federal judges may be tougher than others. In income tax matters, there may be apparent disparity of disposition between judges. There is every possibility, therefore, that a similar disparity may be evidenced among judges in cases involving civil rights. The language in this title would permit the Attorney General to peremptorily circumvent a particular district judge to whom the case would normally be assigned.

That judge's power would thus be diluted, and in districts served by more than one district judge, the particular judge to whom the case would otherwise be assigned, might not be appointed at all by the presiding circuit court judge. In fine, we can fix it so that the Federal Government can never lose a case.

It must be remembered that this section of the bill would accelerate the processing of civil rights cases at the expense of the remainder of the docket. A three-judge court would require the services of a circuit judge and two district judges or vice versa. These men would be pulled away from their normal duties. At the present time, three-judge courts exercise a very limited jurisdiction. They are convened to try cases which present serious constitutional questions, for example. It is the exceptional case, so to speak, which necessitates the transfer of these men from attendance to their normal duties.

Under this bill, however, the Attorney General would be authorized to make the exception the rule in voting cases. If we look at existing conditions in most or all of the district courts throughout the country, we find that the dockets are such that a litigant may have to wait 2 or 3 or 4 years to have his claim adjudicated. The effect of this bill would be to accelerate the processing of voting suits at the expense of the other cases on the docket. Present congestion will only be increased to the point of chaos, as civil rights cases will be processed at the expense of other cases already on the docket.

It must also be emphasized that in the event the Attorney General fails to file a request in any such proceeding, this bill makes it the duty of the chief district judge to immediately designate a judge in such district to hear and determine the case. In the event no judge in the district is available, this fact is to be certified by the chief district judge to the chief circuit judge who shall then designate a district or circuit judge of the circuit who must, at the earliest practicable date hear and determine the case. Here again the district judge who would normally determine the case may be circumvented inasmuch as the language permits the chief circuit judge to designate a circuit judge of the circuit. Indeed, a district judge outside the district involved or even outside the particular State as long as he is within the circuit, may be designated to hear and determine the case. Again, the other cases on the docket will be delayed and made to suffer.

Title II of the bill reads as follows:

TITLE II—INJUNCTIVE RELIEF AGAINST DISCRIMINATION IN PLACES OF PUBLIC ACCOMMODATION

SEC. 201. (a) All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin.

(b) Each of the following establishments which serves the public is a place of public accommodation within the meaning of this title if its operations affect commerce, or if discrimination or segregation by it is supported by State action:

(1) any inn, hotel, motel, or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his residence;

(2) any restaurant, cafeteria, lunch room, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any such facility located on the premises of any retail establishment; or any gasoline station;

(3) any motion picture house, theater, concert hall, sports arena, stadium or other place of exhibition or entertainment; and

(4) any establishment (A) which is physically located within the premises of any establishment otherwise covered by this subsection, or within the premises of which is physically located any such covered establishment, and (B) which holds itself out as serving patrons of such covered establishment.

(c) The operations of an establishment affect commerce within the meaning of this title if (1) it is one of the establishments described in paragraph (1) of subsection (b); (2) in the case of an establishment described in paragraph (2) of subsection (b), it serves or offers to serve interstate travelers or a substantial portion of the food which it serves, or gasoline or other products which it sells, has moved in commerce; (3) in the case of an establishment described in paragraph (3) of subsection (b), it customarily presents films, performances, athletic teams, exhibitions, or other sources of entertainment which move in commerce; and (4) in the case of an establishment described in paragraph (4) of subsection (b), it is physically located within the premises of, or there is physically located within its premises, an establishment the operations of which affect commerce within the meaning of this subsection. For purposes of this section, "commerce" means travel, trade, traffic, commerce, transportation or communication among the several States, or between the District of Columbia and any State, or between any foreign country or any territory or possession and any State or the District of Columbia, or between points in the same State but through any other State or the District of Columbia or a foreign country.

(d) Discrimination or segregation by an establishment is supported by State action within the meaning of this title if such discrimination or segregation (1) is carried on under color of any law, statute, ordinance or regulation; or (2) is carried on under color of any custom or usage required or enforced by officials of the State or political subdivision thereof; or (3) is required by action of a State or political subdivision thereof.

(e) The provisions of this title shall not apply to a bona fide private club or other establishment not open to the public, except to the extent that the facilities of such establishment are made available to the customers or patrons of an establishment within the scope of subsection (b).

SEC. 202. All persons shall be entitled to be free, at any establishment or place, from discrimination or segregation of any kind on the ground of race, color, religion, or national origin, if such discrimination or segregation is or purports to be required by any law, statute, ordinance, regulation, rule or order, of a State or any agency or political subdivision thereof.

SEC. 203. No person shall (a) withhold, deny, or attempt to withhold or deny, or deprive or attempt to deprive, any person of any right or privilege secured by section 201 or 202, or (b) intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person with the purpose of interfering with any right or privilege secured by section 201 or 202, or (c) punish or attempt to punish any person for exercising or attempting to exercise any right or privilege secured by section 201 or 202.

SEC. 204. (a) Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice prohibited by section 203, a civil action for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order, may be instituted (1) by the person aggrieved, or (2) by the Attorney General for or in the name of the United States if he satisfies himself that the purposes of this title will be materially furthered by the filing of an action.

(b) In any action commenced pursuant to this title, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs, and the United States shall be liable for costs the same as a private person.

(c) In case of any complaint received by the Attorney General alleging a violation or threatened violation of section 203 in a place where State or local laws or regulations forbid the act or practice involved, the Attorney General shall notify the appropriate State or local officials and, upon request, afford them a reasonable time to act under such State or local laws or regulations before he institutes an action.

(d) In the case of any complaint received by the Attorney General alleging a violation or threatened violation of section 203, the Attorney General, before instituting an action, may utilize the services of any Federal, State, or local agency or instrumentality which may be available to attempt to secure compliance with the provisions of this title by voluntary procedures.

(e) Compliance with the foregoing provisions of subsection (c) shall not be required if the Attorney General shall file with the court a certificate that the delay consequent upon compliance with such provisions in the particular case would adversely affect the interests of the United States, or that in the particular case compliance with such provisions would prove ineffective.

SEC. 205. (a) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this title and shall exercise the same without regard to whether the aggrieved party shall have exhausted any administrative or other remedies that may be provided by law.

(b) The remedies provided in this title shall be the exclusive means of enforcing the rights hereby created, but nothing in this title shall preclude any individual or any State or local agency from asserting any right created by any other Federal or State law not inconsistent with this title, including any statute or ordinance requiring nondiscrimination in public establishments or accommodations, or from pursuing any remedy, civil or criminal, which may be available for the vindication or enforcement of such right.

(c) Proceedings for contempt arising under the provisions of this title shall be subject to the provisions of section 151 of the Civil Rights Act of 1957 (71 Stat. 638).

Mr. President, for the moment, I shall eschew any discussion of title II, and proceed to discuss title III.

Title III of the bill reads as follows:

TITLE III—DESEGREGATION OF PUBLIC FACILITIES

SEC. 301. (a) Whenever the Attorney General receives a complaint signed by an individual to the effect that he is being deprived of or threatened with the loss of his right to the equal protection of the laws, on account of his race, color, religion, or national origin, by being denied access to or full and complete utilization of any public facility which is owned, operated, or managed by or on behalf of any State or sub-

division thereof, other than a public school or public college as defined in section 401 of title IV hereof, and the Attorney General certifies that the signer or signers of such complaint are unable, in his judgment, to initiate and maintain appropriate legal proceedings for relief and that the institution of an action will materially further the public policy of the United States favoring the orderly progress of desegregation in public facilities, the Attorney General is authorized to institute for or in the name of the United States a civil action in any appropriate district court of the United States against such parties and for such relief as may be appropriate, and such court shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section. The Attorney General may implead as defendants such additional parties as are or become necessary to the grant of effective relief hereunder.

(b) The Attorney General may deem a person or persons unable to initiate and maintain appropriate legal proceedings within the meaning of subsection (a) of this section when such person or persons are unable, either directly or through other interested persons or organizations, to bear the expense of the litigation or to obtain effective legal representation; or whenever he is satisfied that the institution of such litigation would jeopardize the employment or economic standing of, or might result in injury or economic damage to, such person or persons, their families, or their property.

SEC. 302. Whenever an action has been commenced in any court of the United States seeking relief from the denial of equal protection of the laws on account of race, color, religion, or national origin, the Attorney General for or in the name of the United States may intervene in such action. In such an action the United States shall be entitled to the same relief as if it had instituted the action.

SEC. 303. In any action or proceeding under this title the United Staes shall be liable for costs, including a reasonable attorney's fee, the same as a private person.

SEC. 304. Nothing in this title shall affect adversely the right of any person to sue for or obtain relief in any court against discrimination in any facility covered by this title.

Title III of the bill is divided into two parts. The first concerns suits involving public facilities instituted by the Attorney General, and the second—section 302—concerns suits instituted by private citizens involving any denial of equal protection, in which suits the Attorney General is authorized to intervene.

Section 301(a) provides that whenever the Attorney General receives a complaint signed by an individual to the effect that he is being deprived of or threatened with the loss of his right to equal protection of the laws, on account of his race, color, religion, or national origin, by being denied access to or full and complete utilization of any public facility which is owned, operated, or managed by or on behalf of any State or subdivision thereof, other than a public school or public college, and the Attorney General certifies that the complainant is unable, in his judgment, to initiate and maintain appropriate legal proceedings for relief and that the institution of an action will "materially" further the public policy of the United States favoring the orderly progress of desegregation in public facilities, that officer is authorized to institute for or in the name of the United States a civil action in any appropriate U.S. district court for such relief as may be appropriate. The Attorney General may implead as defenders such additional parties as are necessary to the granting of effective relief. Section 301(b) provides that the Attorney General may deem a person unable to initiate and maintain legal proceedings when such person is unable, either directly or through other interested persons or organizations, to bear the expense or to obtain "effective" legal representation; or whenever the Attorney General is satisfied that the institution of such litigation would jeopardize the employment or economic standing of, or might result in injury or economic damage to, such person, his family, or property.

Since the Federal courts have held such facilities subject to the strictures of the 14th amendment, this provision alters existing law only in one significant respect, the real thrust of the section being that it authorizes the Attorney General to institute suits to desegregate public facilities and he may do so merely on the signed complaint of an aggrieved individual.

The words "full and complete utilization of any public facility" may place an onerous burden upon any State or subdivision thereof which owns, operates, or manages a public facility. It may be impossible, under certain circumstances and at certain times, or even at any time, for an individual or particular group of individuals to be allowed "full and complete utilization" of a public facility. Yet, under this subsection, the way for harassment of a State or political subdivision thereof might be opened. The inability of a political entity to make available to a particular racial group, for very practicable reasons the "full and complete" utilization of a public facility might lead to charges that the denial was discriminatory and on the basis of the racial characteristics of the group.

The complaint, moreover, is not required to be a sworn complaint. It merely has to be a signed complaint. Additionally, discretion as to whether or not the Attorney General should institute an action in the matter is left entirely to "his judgment"—his judgment as to whether or not the complainant is financially able to bear litigatory expenses; whether or not the complainant is able or unable through "other interested persons or organizations" to bear such expenses; whether or not the complainant is able to obtain "effective" legal representation, and whether or not such legal representation as to the complainant might be able to obtain would be considered "effective"; whether or not the institution of litigation would jeopardize or injure the complainant as to his employment, economic standing, or otherwise.

We all know that various well-financed organizations have recently been very active in encouraging and financing court cases involving racial discrimination. When, therefore, may a prospective complainant be considered "unable" to bear the expense of litigation through "other interested persons or organizations"? What guidelines are provided whereby the Attorney General may determine whether or not the legal representation available to a complainant is or is not "effective"? What is meant by "effective" legal representation as the term is used here? This section is merely another one of those sections in the bill which grant to the Attorney General omniscience and omnipotence. He will be all knowing so far as any challenge to his judgment is concerned, and he will be all powerful in that he may act indiscriminately and promiscuously in instituting suits. The Attorney General need not look for a pretext, if he so desires, upon which to "satify" himself that the institution of litigation by a complainant would jeopardize the economic standing of the complainant or the employment of the complainant or result in economic damage to the complainant, his family, or his property. The Attorney General merely needs to satisfy himself. Who is there to question him in the matter? Who is there to question his judgment as to the unavailability of "effective" legal representation? What is there to prevent a spate of complaints from deluging the Attorney General signed by outside agitators and troublemakers? Is it not probable that organizations which heretofore assisted in bearing the costs of suits involving discrimination will now have the opportunity to unload the expense upon the taxpayers through the offices of the Attorney General simply by stating, in cases arising under section 301, that they cannot bear legal expenses of complainants? The only requirement being that the Attorney General certify that he has received a complaint and he is satisfied that the individual would be unable, because of any one of the various reasons mentioned, to bring litigation, this requirement is meaningless and ineffective. There is no requirement that an action should be filed by any individual. There is no requirement that any proof in connection with the certification be made in any court. In an election year, there is nothing to prevent a rash of suits in areas where such action would appear to be to the political advantage of whatever administration may be in power at the time.

It should be pointed out that the Attorney General may not only initiate actions under section 301. He may also intervene in actions involving desegregation of public facilities, such authority being granted in section 302.

The second part of this title, section 302, empowers the Attorney General to intervene whenever "an action has been commenced in any court of the United States seeking relief from the denial of equal protection of the laws on account of race, color, religion, or national origin." The United States shall be entitled to the same relief in such an action as if it had instituted the action. This part of the title is broader in its application than the so-called public facilities part, in that it encompasses a whole range of actions which are not limited to suits charging discrimination in the use of public facilities. What is meant by "an action" commenced in "any court" seeking relief from the denial of equal protection of the "laws" on account of race, color, religion, or national origin? This means any action commencing within the scope of the equal protection

clause of the 14th amendment. This title should be opposed on policy grounds. In other words, should any politically appointed officer possess such enormous powers. The magnitude of the power vested in the person of one man would be virtually limitless when it is remembered that the Attorney General has similar powers in the areas of voting, and titles II and IV would vest additional power in this officer to desegregate privately owned public accommodations and educational facilities.

What is meant by the word "managed" in the phrase "public facility which is owned, operated or managed" by or on behalf of any State or subdivision thereof? The words "owned" and "operated" are fairly clear. If a facility is operated by a State, is it not managed by the State? Or does the word managed mean something more than the word operated? Does it mean regulated? Is it to mean that where cities receive private property in trust and a private individual is employed to control or operate the property, such property is being "managed" by the political entity and thus comes within the purview of the provision? Would not such property be operated "on behalf of" the State or subdivision thereof? Why would it be necessary to include the word "managed"? This could be open to various interpretations. If such a facility is licensed by the State, could the word "managed" be utilized to give it coverage? Is it not possible that some court in the future, when struggling with this provision, might interprete or construe the word "managed" to have the same connotation as the word "regulated"? It seems to me that there might be some danger that a privately owned but publicly used facility might be brought within the purview of this section by this word "managed," so that there can be further regulation and strangulation of private businesses by the Federal Government.

Incidentally, while the Mansfield-Dirksen-Humphrey substitute deletes section 302 from title III, it restores the section in title IX. When I first read title III of the substitute, I was pleased to see section 302 deleted but, when I read title IX, I discovered that the authors of the substitute had merely lifted section 302 out of title III and replaced it in title IX of the substitute.

We are told that the substitute is a much better bill than H.R. 7152. I think it will constitute a slight improvement in the overall, perhaps. But this is one example as to how a bad section was removed from one title in the bill only to be restored at another point in the substitute.

I support title III, except for section 302.

Title IV of the bill reads as follows:

TITLE IV—DESEGREGATION OF PUBLIC EDUCATION

Definitions

SEC. 401. As used in this title—

(a) "Commissioner" means the Commissioner of Education.

(b) "Desegregation" means the assignment of students to public schools and within such schools without regard to their race, color, religion, or national origin, but "desegregation" shall not mean the assignment of students to public schools in order to overcome racial imbalance.

(c) "Public school" means any elementary or secondary educational institution, and "public college" means any institution of higher education or any technical or vocational school above the secondary school level, operated by a State, subdivision of a State, or governmental agency within a State, or operated wholly or predominantly from or through the use of governmental funds or property, or funds or property derived from a governmental source.

(d) "School board" means any agency or agencies which administer a system of one or more public schools and any other agency which is responsible for the assignment of students to or within such system.

Survey and report of educational opportunities

SEC. 402. The Commissioner shall conduct a survey and make a report to the President and the Congress, within two years of the enactment of this title, concerning the lack of availability of equal educational opportunities for individuals by reason of race, color, religion, or national origin in public educational institutions at all levels in the United States, its territories and possessions, and the District of Columbia.

Technical assistance

SEC. 403. The Commissioner is authorized, upon the application of any school board, State, municipality, school district, or other governmental unit legally responsible for operating a public school or schools, to render technical assistance to such applicant in the preparation, adoption, and implementation of plans for the desegregation of public schools. Such technical assistance may, among other activities, include making available to such agencies information regarding effective methods of coping with special educational problems occasioned by desegregation, and making available to such agencies personnel of the Office of Education or other persons specially equipped to advise and assist them in coping with such problems.

Training institutes

SEC. 404. The Commissioner is authorized to arrange, through grants or contracts, with institutions of higher education for the operation of short-term or regular session institutes for special training designed to improve the ability of teachers, supervisors, counselors, and other elementary or secondary school personnel to deal effectively with special educational problems occasioned by desegregation. Individuals who attend such an institute may be paid stipends for the period of their attendance at such institute in amounts specified by the Commissioner in regulations, including allowances for dependents and including allowances for travel to attend such institute.

Grants

SEC. 405. (a) The Commissioner is authorized, upon application of a school board, to make grants to such board to pay, in whole or in part, the cost of—

(1) giving to teachers and other school personnel inservice training in dealing with problems incident to desegregation, and

(2) employing specialists to advise in problems incident to desegregation.

(b) In determining whether to make a grant, and in fixing the amount thereof and the terms and conditions on which it will be made, the Commissioner shall take into consideration the amount available for grants under this section and the other applications which are pending before him; the financial condition of the applicant and the other resources available to it; the nature, extent, and gravity of its problems incident to desegregation; and such other factors as he finds relevant.

Payments

SEC. 406. Payments pursuant to a grant or contract under this title may be made (after necessary adjustments on account of previously made overpayments or underpayments) in advance or by way of reimbursement, and in such installments, as the Commissioner may determine.

Suits by the Attorney General

SEC. 407. (a) Whenever the Attorney General receives a complaint—

(1) signed by a parent or group of parents to the effect that his or their minor children, as members of a class of persons similarly situated, are being deprived of the equal protection of the laws by reason of the failure of a school board to achieve desegregation, or

(2) signed by an individual, or his parent, to the effect that he has been denied admission to or not permitted to continue in attendance at a public college by reason of race, color, religion, or national origin,

and the Attorney General certifies that the signer or signers of such complaint are unable, in his judgment, to initiate and maintain appropriate legal proceedings for relief and that the institution of an action will materially further the public policy of the United States favoring the orderly achievement of desegregation in public education, the Attorney General is authorized to institute for or in the name of the United States a civil action in any appropriate district court of the United States against such parties and for such relief as may be appropriate, and such court shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section. The Attorney General may implead as defendants such additional parties as are or become necessary to the grant of effective relief hereunder.

(b) The Attorney General may deem a person or persons unable to initiate and maintain appropriate legal proceedings within the meaning of subsection (a) of this section when such person or persons are unable, either directly or through other interested persons or organizations, to bear the expense of the litigation or to obtain effective legal representation; or whenever he is satisfied that the institution of such litigation would jeopardize the employment or economic standing of, or might result in injury or economic damage to, such person or persons, their families, or their property.

(c) The term "parent" as used in this section includes any person standing in loco parentis.

SEC. 408. In any action or proceeding under this title the United States shall be liable for costs the same as a private person.

SEC. 409. Nothing in this title shall affect adversely the right of any person to sue for or obtain relief in any court against discrimination in public education or in any facility covered by this title.

TITLE IV

Title IV of the bill is concerned with the desegregation of schools and has two provisions, in the main.

First. It would authorize the Commissioner of Education to provide technical and financial aid to assist in dealing with problems incident to desegregation.

Second. It would authorize the Attorney General to institute suits seeking desegregation of public schools where the students or parents involved are unable to bring suit and where he considers that a suit would materially assist public policy and favor the orderly achievement of desegregation in public education. Section 402 of title IV commands the Commissioner to conduct a survey and

make a report to the President and the Congress within 2 years of the title's enactment concerning the lack of available or "equal additional opportunities" for individuals by reasons of race, color, religion, or national origin in public educational institutions at all levels in the United States. What is meant by the term "equal educational opportunities" is not explained. Whether or not such a term would include "racial imbalance" is to be left to one's own imagination. There are certain groups in this country which advance the argument that to have equal educational opportunities for individuals of the white and colored races there must be no racial imbalance. We have heard about the school boycotts in various northern cities which have had as their objective the elimination of so-called racial imbalance in public schools. It is not too far fetched to envision the inclusion of such a factor in the survey and report which the Commissioner of Education would be required to make. The section states that the word "desegregation" as used in titles subsequent to section 402, shall not mean the assignment of students to public schools in order to overcome racial imbalance. But as far as section 402 is concerned we have no assurance that this aspect will not be involved in the conduct of the survey and the compiling of the report dealing with "equal educational opportunities." It could depend upon the attitude of the Commissioner, one might suppose, and the weight given to such matters vary from individual to individual among those who are active in conducting the survey and formulating the report.

Section 403 authorizes the Commissioner, upon application of the appropriate governmental unit legally responsible for operating a public school, to render technical assistance to such applicants in the "preparation, adoption, and implementation" of plans for the desegregation of public schools. Such technical assistance may, "among other activities," include making available to such agencies information regarding effective methods of coping with special problems occasioned by desegregation, as well as making available to such agencies personnel of the Office of Education "or other persons specially equipped" to advise and assist in handling such problems.

Fortunately, the Commissioner is authorized to render such technical assistance only upon the application of the legally responsible governmental unit. Yet, one can be sure that here is an opportunity for school boards to secure technical assistance by way of information and personnel and, of course, it would be impossible to estimate the cost of administering the section. One can be sure that there will be a need for additional personnel in the Office of Education and, with no cutoff date included, one can be sure that such positions will be retained ad infinitum. No explanation is given as to what is meant by "persons specially equipped" to advise and assist in coping with problems of desegregation. One may wonder whether those individuals who have been trained in the conduct of the boycotts and other demonstrations may be considered to be specially equipped to advise in coping with such problems. Whether these persons are to be social workers, psychologists, or otherwise, there is no indication. It will be left up to the Commissioner to decide.

Section 404 authorizes the Commissioner to arrange through grants or contracts with institutions of higher education for the operation of short-term or regular session institutes for special training of teachers and other elementary school personnel to deal with special educational problems occasioned by desegregation. Provision is made for the payment of stipends to individuals who attend such institutes for the period of their attendance "in amounts specified" by the Commissioner, including "allowances" for dependents and for travel to attend such institutes. Here indeed is an opportunity for institutions of higher education to get Federal aid, not through loans, but through grants, for the operation of special institutes, with no cutoff date and with no limitation regarding the overall appropriation authorized for administration of this section and no limitation on the stipend amount, no limitation on the allowances for dependents, and no limitation on the allowances for travel. Teachers in the East may have the opportunity to take vacations in the West with allowances for dependents and travel expenses. School supervisors in Georgia may spend a cool summer vacation in Maine or upper New York. Elementary and secondary school counselors from the seashores of Louisiana may take their families and hie away to the Rocky Mountains for a summer vacation and attendance at such an institute with expenses paid.

Section 405 authorizes the Commissioner of Education to make grants to applicant school boards to pay, "in whole or in part," the cost of inservice training to school personnel in dealing with desegregation problems and the cost of employing specialists to act as advisers in such problems. In determining whether to make a grant, and in determining the amount thereof and the terms and conditions on which it would be made, the Commissioner shall "take into consideration the amount available for grants" under this section and the other applications pending. He shall also consider the applicant's financial condition and the other resources available to the applicant. He shall consider the nature, extent, and gravity of the desegregation problems confronting the applicant. He shall also consider "such other factors as he finds relevant." Here again is an open-end authorization of Federal aid. There is no cutoff date. There is no limitation as to the overall cost. There is no definition as to what is meant by "inservice training" and no limitation placed upon the cost per person who receives inservice training under the title. There is no limitation upon the number of specialists who may be employed by a school board to advise in desegregation problems, no limitation upon the amount of reimbursement grant to such board for each specialist employed, and no definition of such a specialist. What is meant by the "terms and conditions" on which such grants are to be made? No explanation is shown. Presumably the Commissioner could exact, in return for a grant to a school board in one instance, conditions which would be more rigid than in an exactly similar case elsewhere. One of the conditions might be that the school board strive to bring about racial balance in the schools under its jurisdiction.

I see nothing in the phraseology to prohibit the Commissioner from laying down such terms and conditions. As to the amount of such grants to boards, this is left to the discretion of the Commissioner, and he may favor some boards over other boards, depending upon the jurisdictions involved. He is to take into consideration, in fixing the amount of a grant "the amount available for grants under this section," but no specific amount is authorized in the bill. I assume that there are no moneys requested in the fiscal year 1965 budget for this purpose, and I have not seen any information which would indicate precisely how much money will be requested. In any event, we are to assume the higher the amount appropriated for grants under this section, the greater will be the size of the grants to each school board. One might further assume that the greater the size of the grants, the greater will be the assurance that the "terms and conditions" laid down by the Commissioner can be more exacting and will be more likely to be met. The Commissioner is given the broadest of discretion as to the amount of grants and the terms and conditions on which they will be made, because, aside from the specific factors which shall enter into his consideration, he will be permitted to consider "such other factors as he finds relevant." One of the "other factors" may very well be the "need" for bringing about racial balance in a certain school or schools, and the need may vary from one Commissioner to another, and from one administration to another. Some Commissioners may drive harder bargains than others, and the same Commissioners may drive harder bargains in some areas than in others. Fortunately, of course, a school board does not have to apply for such grants nor does it have to accept the terms and conditions which the Commissioner wishes to allow the grant.

AMENDMENT NO. 1046

Mr. MILLER. Mr. President, will the Senator from West Virginia yield?

Mr. BYRD of West Virginia. I yield.

Mr. MILLER. I thank the Senator from West Virginia. Does the Senator wish to ask unanimous consent that his yielding to the Senator from Iowa will not jeopardize his right to the floor?

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that my yielding to the Senator from Iowa will not jeopardize my right to the floor and that my so yielding will not cause my remarks previously made to be counted as a first speech.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MILLER. Mr. President, I send to the desk an amendment. I ask unanimous consent that it be printed in the RECORD, and further that it be considered as having been read for the purpose of compliance with the cloture rule, and that it be printed and lie on the table.

The PRESIDING OFFICER. Without objection, the amendment will be received and printed and will lie on the table; and without objection, the amendment will be printed in the RECORD.

The amendment (No. 1046) is as follows:

Beginning on page 73, strike all of section 1101 and insert in lieu thereof the following:

"SEC. 1101. (a) In all cases of criminal contempt arising under the provisions of this Act, the accused, upon conviction, shall be punished by fine or imprisonment or both: *Provided, however,* That in case the accused is a natural person the fine to be paid shall not exceed the sum of $1,000, nor shall imprisonment exceed the term of six months: *Provided further,* That in any such proceeding for criminal contempt, at the discretion of the judge, the accused may be tried with or without a jury: *Provided further, however,* That in the event such proceeding for criminal contempt be tried before a judge without a jury the aggregate fine shall not exceed the sum of $500 nor shall imprisonment for any term be imposed. If the trial is by a jury, the procedure shall conform as near as may be to that in other criminal cases.

"This subsection shall not apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice nor to the misbehavior, misconduct, or disobedience of any officers of the court in respect to the writs, orders, or process of the court.

"Nor shall anything herein or in any other provision of law be construed to deprive courts of their power, by civil contempt proceedings, without a jury, to secure compliance with or to prevent obstruction of, as distinguished from punishment for violations of, any lawful writ, process, order, rule, decree, or command of the court in accordance with the prevailing usages of law and equity, including the power of detention.

"(b) Section 151 of the Civil Rights Act of 1957 (41 Stat. 638) is amended by striking out the third proviso to the first paragraph thereof, and inserting in lieu thereof the following: '*Provided further, however,* That in the event such proceeding for criminal contempt be tried before a judge without a jury the aggregate fine shall not exceed the sum of $500 nor shall imprisonment for any term be imposed. If the trial is by a jury, the procedure shall conform as near as may be to that in other criminal cases.' "

Mr. BYRD of West Virginia. Title IV, section 407(a) provides that whenever the Attorney General receives a complaint signed by a parent or group of parents to the effect that his or their minor children are being deprived of the equal protection of the laws by reason of a school board's failure to achieve desegregation, or a complaint signed by an individual, or his parent, to the effect that admission to or continued attendance at a public college has been denied, by reason of race, color, religion or national origin, the Attorney General is authorized to institute, for or in the name of the United States, a civil action in any appropriate U.S. district court for such relief as may be appropriate. The Attorney General is required only to certify that the signer or signers of such complaint are unable, in his judgment, to initiate and maintain appropriate legal proceedings for relief and that the institution of an action will materially further the "public policy of the United States" favoring the orderly achievement of desegregation in public education. The Attorney General may implead as defenders such additional parties as are or become necessary to the granting of effective relief.

Section 407(b) contains precisely the same language as that which appeared in section 301(b), dealing with the desegregation of public facilities under title III, to wit, that the Attorney General may deem a person or persons "unable" to initiate and maintain appropriate legal proceedings when such person or persons are unable, "either directly or through other interested persons or organizations, to bear the expense of the litigation or to obtain 'effective' legal representation." Such person or persons may meet the criterion of inability whenever the Attorney General is "satisfied" that litigation carried on by the person or persons would jeopardize their employment or economic standing or might result in injury or economic damage to themselves, to their families, or to their property.

The United States is made liable for costs, the same as a private person, by section 408, in any legal action or proceeding under title IV.

Section 409 states that nothing in the title shall adversely affect the right of any person to seek relief in any court against discrimination "in public education or in any facility covered by this title." What is meant by the words "or in any facility covered by this title" is clearly unclear. Apparently this is just another ambiguity among the many ambiguities with which the bill is laden.

It is readily obvious that section 407 of title IV provides for the further augmentation of the Attorney General's powers. This is manifestly unwise.

Although section 401(b) of title IV attempts to define discrimination as meaning the assignment of students to and within public schools without regard to their race, color, religion, or national origin and states specifically that desegregation "shall not mean the assignment of students to public schools in order to overcome racial imbalance," I am not convinced that title IV, if enacted, will not be used as the vehicle whereby attempts will be made to overcome and eliminate racial imbalance wherever possible, even though impracticable. Precisely what is meant by "racial imbalance" is not indicated, so the interpretation may vary from section to section and State to State. In any event, the Attorney General can be expected to receive innumerable complaints signed by parents who feel that their children are being deprived of equal protection of the laws by reason of the failure of a school board to achieve some sort of a balance of the racial makeup of public school classes, whereas the school board is only required to achieve desegregation. Moreover, just what is meant by the reference to the "public policy of the United States favoring the orderly achievement of desegregation in public education" is not set forth. As a matter of fact, there are many who would challenge the contention that the achievement of desegregation in public education is a "public policy in the United States." The ruling in the Brown against Board of Education case overturns a previous Supreme Court decision in the case of Plessy against Ferguson. Some of the evidence upon which the Brown decision was founded might be considered highly questionable from the standpoint of its validity. No statute has been passed by the Congress to implement the decision, and I would be loath to support a bill putting the congressional stamp of approval upon the decision as reflecting the "public policy of the United States."

I ask unanimous consent to have printed at the conclusion of my remarks an article by R. Carter Pitman entitled "The Blessings of Liberty Versus the Blight of Equality," which appeared in the December 1963 issue of the North Carolina Law Review.

The PRESIDING OFFICER (Mr. BAYH in the chair). Without objection, it is so ordered.

(See exhibit 1.)

Mr. BYRD of West Virginia. The same broad discretionary powers are given to the Attorney General, under this title, as have been referred to in my discussion of previous titles of the bill. He need only satisfy himself as to certain circumstances involving the complaints, and he is permitted to run roughshod over school boards throughout the country and the taxpayers will foot the bill. He can deal more harshly, "if he wishes," with some sections of the country than with others, and the way is provided whereby an Attorney General, who lacks understanding of the practical problems attendant to desegregation in some sections of the country, will be at liberty to harass school boards in those areas and he will be able to secure complaints in abundance through the agitation of outsiders and well-financed organizations, the purpose of which is to promote race mixing and race leveling in every aspect, segment, and walk of American life.

All in all, the enactment of title IV would represent an intrusion into another area reserved to the States—that of public education.

Title V of the bill reads as follows:

TITLE V—COMMISSION ON CIVIL RIGHTS

SEC. 501. Section 102 of the Civil Rights Act of 1957 (42 U.S.C. 1975a; 71 Stat. 634) is amended to read as follows:

"RULES OF PROCEDURE OF THE COMMISSION HEARINGS

"SEC. 102. (a) The Chairman, or one designated by him to act as Chairman at a hearing of the Commission, shall announce in an open statement the subject of the hearing.

"(b) A copy of the Commission's rules shall be made available to the witness before the Commission.

"(c) Witnesses at the hearings may be accompanied by their own counsel for the purpose of advising them concerning their constitutional rights.

"(d) The Chairman or Acting Chairman may punish breaches of order and decorum and unprofessional ethics on the part of

counsel, by censure and exclusion from the hearings.

"(e) If the Commission determines that evidence or testimony at any hearing may tend to defame, degrade, or incriminate any person, it shall receive such evidence or testimony or summary of such evidence or testimony in executive session. In the event the Commission determines that such evidence or testimony shall be given at a public session, it shall afford such person an opportunity voluntarily to appear as a witness and receive and dispose of requests from such person to subpena additional witnesses.

"(f) Except as provided in sections 102 and 105(f) of this Act, the Chairman shall receive and the Commission shall dispose of requests to subpena additional witnesses.

"(g) No evidence or testimony or summary of evidence or testimony taken in executive session may be released or used in public sessions without the consent of the Commission. Whoever releases or uses in public without the consent of the Commission such evidence or testimony taken in executive session shall be fined not more than $1,000, or imprisoned for not more than one year.

"(h) In the discretion of the Commission, witnesses may submit brief and pertinent sworn statements in writing for inclusion in the record. The Commission is the sole judge of the pertinency of testimony and evidence adduced at its hearings.

"(i) Upon payment of the cost thereof, a witness may obtain a transcript copy of his testimony given at a public session or, if given at an executive session, when authorized by the Commission.

"(j) A witness attending any session of the Commission shall receive $6 for each day's attendance and for the time necessarily occupied in going to and returning from the same, and 10 cents per mile for going from and returning to his place of residence. Witnesses who attend at points so far removed from their respective residences as to prohibit return thereto from day to day shall be entitled to an additional allowance of $10 per day for expenses of subsistence, including the time necessarily occupied in going to and returning from the place of attendance. Mileage payments shall be tendered to the witness upon service of a subpena issued on behalf of the Commission or any subcommittee thereof.

"(k) The Commission shall not issue any subpena for the attendance and testimony of witnesses or for the production of written or other matter which would require the presence of the party subpenaed at a hearing to be held outside of the State wherein the witness is found or resides or is domiciled or transacts business, or has appointed an agent for receipt of service of process except that, in any event, the Commission may issue subpenas for the attendance and testimony of witnesses and the production of written or other matter at a hearing held within fifty miles of the place where the witness is found or resides or is domiciled or transacts business or has appointed an agent for receipt of service of process."

SEC. 502. Section 103(a) of the Civil Rights Act of 1957 (42 U.S.C. 1975b(a); 71 Stat. 634) is amended to read as follows:

"SEC. 103. (a) Each member of the Commission who is not otherwise in the service of the Government of the United States shall receive the sum of $75 per day for each day spent in the work of the Commission, shall be paid actual travel expenses, and per diem in lieu of subsistence expenses when away from his usual place of residence, in accordance with section 5 of the Administrative Expenses Act of 1946, as amended (5 U.S.C. 73b–2; 60 Stat. 808)."

SEC. 503. Section 103(b) of the Civil Rights Act of 1957 (42 U.S.C. 1975(b); 71 Stat. 634) is amended to read as follows:

"(b) Each member of the Commission who is otherwise in the service of the Government of the United States shall serve without compensation in addition to that received for such other service, but while engaged in the work of the Commission shall be paid actual travel expenses, and per diem in lieu of subsistence expenses when away from his usual place of residence, in accordance with the provisions of the Travel Expenses Act of 1949, as amended (5 U.S.C. 835–42; 63 Stat. 166)."

SEC. 504. (a) Section 104 of the Civil Rights Act of 1957 (42 U.S.C. 1975c; 71 Stat. 635), as amended, is further amended to read as follows:

"Duties of the Commission

"SEC. 104. (a) The Commission shall—

"(1) investigate allegations in writing under oath or affirmation that certain citizens of the United States are being deprived of their right to vote and have that vote counted by reason of their color, race, religion, or national origin; which writing, under oath or affirmation, shall set forth the facts upon which such belief or beliefs are based;

"(2) study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution;

"(3) appraise the laws and policies of the Federal Government with respect to equal protection of the laws under the Constitution;

"(4) serve as a national clearinghouse for information in respect to equal protection of the laws, including but not limited to the fields of voting, education, housing, employment, the use of public facilities, transportation, and the administration of justice;

"(5) investigate allegations, made in writing and under oath or affirmation, that citizens of the United States are unlawfully being accorded or denied the right to vote, or to have their votes properly counted, in any election of presidential electors, Members of the United States Senate, or of the House of Representatives, as a result of any patterns or practice of fraud or discrimination in the conduct of such election; and

"(6) Nothing in this or any other Act shall be construed as authorizing the Commission, its Advisory Committees, or any person under its supervision or control to inquire into or investigate any membership practices or internal operations of any fraternal organization, any college or university fraternity or sorority, any private club or any religious organization."

"(b) The Commission shall submit interim reports to the President and to the Congress at such times as the Commission, the Congress or the President shall deem desirable, and shall submit to the President and to the Congress a final report of its activities, findings, and recommendations not later than January 31, 1968."

SEC. 505. Section 105(a) of the Civil Rights Act of 1957 (42 U.S.C. 1975d(a); 71 Stat. 636) is amended by striking out in the last sentence thereof "$50 per diem" and inserting in lieu thereof of "$75 per diem."

SEC. 506. Section 105(g) of the Civil Rights Act of 1957 (42 U.S.C. 1975d(g); 71 Stat. 636) is amended to read as follows:

"(g) In case of contumacy or refusal to obey a subpena, any district court of the United States or the United States court of any territory or possession, or the District Court of the United States for the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or is domiciled or transacts business, or has appointed an agent for receipt of service of process, upon application by the Attorney General of the United States shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission or a subcommittee thereof, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation; and any failure to obey such order of the court may be punished by said court as a contempt thereof."

SEC. 507. Section 105 of the Civil Rights Act of 1957 (42 U.S.C. 1975d; 71 Stat. 636), as amended by section 401 of the Civil Rights Act of 1960 (42 U.S.C. 1975d(h); 74 Stat. 89), is further amended by adding a new subsection at the end to read as follows:

"(i) The Commission shall have the power to make such rules and regulations as it deems necessary to carry out the purposes of this Act."

TITLE V

Title V of the bill would extend the life of the Commission on Civil Rights for an additional 4 years. I voted for legislation, as I stated earlier this evening, originally establishing the Commission on Civil Rights, but the agency was originally conceived to be of a temporary nature. I hesitate to give a temporary agency an additional 4 years of existence during which time every effort will be made to show the need for its continued existence at the end of that period. I am constrained to believe that the Commission has not functioned in an objective manner and that it has all too often proposed radical, impractical, and improvident solutions to problems of human relations. For example, the cutting off of Federal funds in connection with programs receiving Federal assistance. More recently, I have come to doubt that the overall makeup of the Commission is such that a balanced viewpoint is presented. The Commission's stance, like that of the U.S. Supreme Court in recent years, impresses one as being more and more oriented in the direction of radical departures from previously held concepts of what is constitutional and what is unconstitutional.

Title VI of the bill reads as follows:

TITLE VI—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

SEC. 601. Notwithstanding any inconsistent provision of any other law, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

SEC. 602. Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, shall take action to effectuate the provisions of section 601 with respect to such program or activity. Such action may be taken by or pursuant to rule, regulation, or order of general applicability and shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation or order shall become effective unless and until approved by the President. After a hearing, compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding of a failure to comply with such requirement, or (2) by any other means authorized by law: *Provided, however,* That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that

compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the Committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

SEC. 603. Any department or agency action taken pursuant to section 602 shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such department or agency on other grounds. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section 602, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with section 10 of the Administrative Procedure Act, and such action shall not be deemed committed to unreviewable agency discretion within the meaning of that section.

TITLE VI

Title VI of the bill declares it to be the policy of the United States that discrimination on the ground of race, color, or national origin shall not occur in connection with programs and activities receiving Federal financial assistance, and authorizes and directs the appropriate Federal departments and agencies to take action to carry out this policy.

Under title VI of the bill, each Federal agency administering a program of Federal financial assistance would take action to see to it that no person is excluded from participating in such program because of his race, color, or national origin. Section 601 provides that, "notwithstanding any inconsistent provision of any other law" no person shall, because of race, color, or national origin be subjected to "discrimination" under any program or activity receiving Federal financial assistance. The section, therefore, serves to repeal inconsistent provisions of any Federal statutes. The word "discrimination" is not defined. Moreover, there is no prohibition against discrimination on the basis of religion.

Section 602 directs Federal departments and agencies empowered to extend Federal financial assistance to any program or activity by way of grants, loans, or contracts—other than contracts of insurance or guarantee—to take action to effectuate the provisions of section 601. In other words, the Federal agencies are not merely authorized but are directed to act to deny or to cut off any assistance under any program or activity receiving Federal assistance when it is found that the recipient of such assistance discriminates on account of race, color, or national origin in the administration of the assisted program.

Section 602 provides that such action "may" be taken by or pursuant to "rule, regulation, or order of general applicability." Just why the word "may" is preferable to the word "shall" is not understood. The section goes on to provide that "no such rule, regulation, or order shall become effective" unless and until approved by the President. The section provides further that after a hearing, compliance with "any requirement adopted pursuant to this section" may be effected by the terms of or refusal to continue assistance under such program or activity to any recipient as to whom there has been an expressed finding or a failure to comply with such requirement, or "by any other means authorized by law." If this is not a blackjack operation, I cannot envision one. The enactment of title VI will envelope every federally assisted program and activity with a perpetual cloud of uncertainty and will enable Federal department and agency heads to harass, cajole, threaten, and blackmail recipients into abject submission in overturning long established customs and procedures in dealing with racial problems. Thousands of bureaucratic autocrats will flower into existence, each of whom may be the final judge, except for the President, as to the rigidity, strictness, fairness, justifiability, and practicability of the rules, regulations and orders formulated.

Section 602 provides that before action may be taken to deny or terminate assistance, the department or agency must advise the appropriate person or persons of the failure to comply with the requirements to be met and must file with the Senate and House committees having legislative jurisdiction over such program a full written report of the action planned and the grounds therefor, such action to become effective no earlier than 30 days after the filing of such report. Such agency action shall be subject to judicial review.

The late President Kennedy, when asked about this power, said:

> I don't have the power to cut off aid in a general way as was proposed by the Civil Rights Commission, and I would think it would probably be unwise to give the President of the United States that kind of power because it could start in one State and for one reason or another might be moved to another State which has not measured up as the President would like to see it.

As the late President's statement suggests, the chances of exercising this enormous power for other reasons under the pretext of racial discrimination are so apparent and potentially dangerous that it should not be considered. No Federal bureaucrat should wield such authority in the very controversial, fluid, and explosive field of race relations. Title VI seeks to improve human relations via the penalty route, and I consider this to be a very inappropriate remedial course.

Moreover, it would hurt those people most in need of assistance, many of whom—and, under certain programs, most of whom—are members of the race sought to be benefited by civil rights legislation.

Additionally, the title delegates unlimited discretion to the executive branch in violation of the Constitution.

If ever there was Government by force, title VI fits into the mold.

It goes without saying that this title would subject all federally assisted programs to possible political manipulation. Applications of rules, regulations, and orders, defined by Federal department and agency heads, could vary in harshness from one State to another, at the discretion of Federal bureaucrats, and the Federal appropriations for such programs could prove to be effective weapons in the winning of elections. If the Federal bureaucracy has not been made supreme up to this point, its omnipotence will be an accomplished fact upon the enactment of this title. State and local rights in the field of race relations will be surrendered, and this will be true in the case of some individual rights as well.

Title VII of the bill reads as follows:

TITLE VII—EQUAL EMPLOYMENT OPPORTUNITY

Findings and declaration of policy

SEC. 701. (a) The Congress hereby declares that the opportunity for employment without discrimination of the types described in sections 704 and 705 is a right of all persons within the jurisdiction of the United States, and that it is the national policy to protect the right of the individual to be free from such discrimination.

(b) The Congress further declares that the succeeding provisions of this title are necessary for the following purposes:

(1) To remove obstructions to the free flow of commerce among the States and with foreign nations.

(2) To insure the complete and full enjoyment by all persons of the rights, privileges, and immunities secured and protected by the Constitution of the United States.

Definitions

SEC. 702. For the purposes of this title—

(a) the term "person" includes one or more individuals, labor union, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated corporations, trustees, trustees in bankruptcy, or receivers.

(b) The term "employer" means a person engaged in an industry affecting commerce who has twenty-five or more employees, and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, or a State or political subdivision thereof, (2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of the Internal Revenue Code of 1954: *Provided*, That during the first year after the effective date prescribed in subsection (a) of section 718, persons having fewer than one hundred employees (and their agents) shall not be considered employers, and, during the second year after such date, persons having fewer than seventy-five employees (and their agents) shall not be considered employers, and, during the third year after such date, persons having fewer than fifty employees (and their agents) shall not be considered employers.

(c) The term "employment agency" means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person; but shall not include an agency of the United States, or an agency of a State or political subdivision of a State, except that such term shall include the United States Employment Service and the system of State and local employment services receiving Federal assistance.

(d) The term "labor organization" means a labor organization engaged in an industry affecting commerce, and any agent of such an organization, and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers

concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization.

(e) A labor organization shall be deemed to be engaged in an industry affecting commerce if the number of its members (or, where it is a labor organization composed of other labor organizations or their representatives, if the aggregate number of the members of such other labor organization) is (A) one hundred or more during the first year after the effective date prescribed in subsection (a) of section 718, (B) seventy-five or more during the second year after such date or fifty or more during the third year, or (C) twenty-five or more thereafter, and such labor organization—

(1) is the certified representative of employees under the provisions of the National Labor Relations Act, as amended, or the Railway Labor Act, as amended;

(2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or

(3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or

(4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

(5) is a conference, general committee, joint or system board, or joint council, subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection.

(f) The term "employee" means an individual employed by an employer.

(g) The term "commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States; or between a State and any place outside thereof; or within the District of Columbia, or a possession of the United States; or between points in the same State but through a point outside thereof.

(h) The term "industry affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor-Management Reporting and Disclosure Act of 1959.

(i) The term "State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act.

Exemption

SEC. 703. This title shall not apply to an employer with respect to the employment of aliens outside any State, or to a religious corporation, association, or society.

Discrimination because of race, color, religion, or national origin

SEC. 704. (a) It shall be unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

(b) It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, sex, or national origin.

(c) It shall be an unlawful employment practice for a labor organization—

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin;

(2) to limit, segregate, or classify its membership in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, or national origin; or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(d) It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.

(e) Notwithstanding any other provision of this title, (1) it shall not be an unlawful employment practice for an employer to hire and employ employees of a particular religion, sex, or national origin in those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise, and (2) it shall not be an unlawful employment practice for a school, college, university, or other educational institution or institution of learning to hire and employ employees of a particular religion if such school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of such school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion.

(f) Notwithstanding any other provision of this title, it shall not be an unlawful employment practice for an employer to refuse to hire and employ any person because of said person's atheistic practices and beliefs.

(g) As used in this title, the phrase "unlawful employment practice" shall not be deemed to include any action or measure taken by an employer, labor organization, joint labor-management committee, or employment agency with respect to an individual who is a member of the Communist Party of the United States or of any other organization required to register as a Communist-action or Communist-front organization by final order of the Subversive Activities Control Board pursuant to the Subversive Activities Control Act of 1950.

Other unlawful employment practices

SEC. 705. (a) It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this title, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this title.

(b) It shall be an unlawful employment practice for an employer, labor organization, or employment agency to print or publish or cause to be printed or published any notice or advertisement relating to employment by such an employer or membership in such a labor organization, or relating to any classification or referral for employment by such an employment agency, indicating any preference, limitation, specification, or discrimination, based on race, color, religion, sex, or national origin, except that such a notice or advertisement may indicate a preference, limitation, specification, or discrimination based on religion, sex, or national origin when religion, sex, or national origin is a bona fide occupational qualification for employment.

Equal Employment Opportunity Commission

SEC. 706. (a) There is hereby created a Commission to be known as the Equal Employment Opportunity Commission, which shall be composed of five members, not more than three of whom shall be members of the same political party, who shall be appointed by the President by and with the advice and consent of the Senate. One of the original members shall be appointed for a term of one year, one for a term of two years, one for a term of three years, one for a term of four years, and one for a term of five years, beginning from the date of enactment of this title, but their successors shall be appointed for terms of five years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as Chairman of the Commission, and one member to serve as Vice Chairman. The Chairman shall be responsible on behalf of the Commission for the administrative operations of the Commission, and shall appoint, in accordance with the civil service laws, such officers, agents, attorneys, and employees as it deems necessary to assist it in the performance of its functions and to fix their compensation in accordance with the Classification Act of 1949, as amended. The Vice Chairman shall act as Chairman in the absence or disability of the Chairman or in the event of a vacancy in that office.

(b) A vacancy in the Commission shall not impair the right of the remaining members to exercise all the powers of the Commission and three members thereof shall constitute a quorum.

(c) The Commission shall have an official seal which shall be judicially noticed.

(d) The Commission shall at the close of each fiscal year report to the Congress and to the President concerning the action it has taken; the names, salaries, and duties of all individuals in its employ and the moneys it has disbursed; and shall make such further reports on the cause of and means of eliminating discrimination and such recommendations for further legislation as may appear desirable.

(e) Each member of the Commission shall receive a salary of $20,000 a year, except that the Chairman shall receive a salary of $20,500.

(f) The principal office of the Commission shall be in the District of Columbia, but it may meet or exercise any or all of its powers at any other place. The Commission may establish such regional offices as it deems necessary, and shall establish at least one such office in each of the major geographical

areas of the United States, including its territories and possessions.

(g) The Commission shall have power—

(1) to cooperate with and utilize regional, State, local, and other agencies, both public and private, and individuals;

(2) to pay to witnesses whose depositions are taken or who are summoned before the Commission or any of its agents the same witness and mileage fees as are paid to witnesses in the courts of the United States;

(3) to furnish to persons subject to this title such technical assistance as they may request to further their compliance with this title or an order issued thereunder;

(4) upon the request of any employer, whose employees or some of them refuse or threaten to refuse to cooperate in effectuating the provisions of this title, to assist in such effectuation by conciliation or other remedial action;

(5) to make such technical studies as are appropriate to effectuate the purpose and policies of this title and to make the results of such studies available to interested governmental and nongovernmental agencies.

(h) Attorneys appointed under this section may, at the direction of the Commission, appear for and represent the Commission in any case in court.

(i) The Commission shall, in any of its educational or promotional activities, cooperate with other departments and agencies in the performance of such educational and promotional activities.

PREVENTION OF UNLAWFUL EMPLOYMENT PRACTICES

SEC. 707. (a) Whenever it is charged in writing under oath by or on behalf of a person claiming to be aggrieved, or a written charge has been filed by a member of the Commission where he has reasonable cause to believe a violation of this Act has occurred (and such charge sets forth the facts upon which it is based) that an employer, employment agency, or labor organization has engaged in an unlawful employment practice, the Commission shall furnish such employer, employment agency, or labor organization (hereinafter referred to as the "respondent") with a copy of such charge and shall make an investigation of such charge. If two or more members of the Commission shall determine, after such investigation, that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such unlawful employment practice by informal methods of conference, conciliation, and persuasion and, if appropriate, to obtain from the respondent a written agreement describing particular practices which the respondent agrees to refrain from committing. Nothing said or done during and as a part of such endeavors may be used as evidence in a subsequent proceeding.

(b) If the Commission has failed to effect the elimination of an unlawful employment practice and to obtain voluntary compliance with this title, the Commission, if it determines there is reasonable cause to believe the respondent has engaged in, or is engaging in, an unlawful employment practice, shall, within ninety days, bring a civil action to prevent the respondent from engaging in such unlawful employment practice, except that the Commission shall be relieved of any obligation to bring a civil action in any case in which the Commission has, by affirmative vote, determined that the bringing of a civil action would not serve the public interest.

(c) If the Commission has failed or declined to bring a civil action within the time required under subsection (b), the person claiming to be aggrieved may, if one member of the Commission gives permission in writing, bring a civil action to obtain relief as provided in subsection (e).

(d) Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under this title. Such actions may be brought either in the judicial district in which the unlawful employment practice is alleged to have been committed or in the judicial district in which the respondent has his principal office. No such civil action shall be based on an unlawful employment practice occurring more than six months prior to the filing of the charge with the Commission and the giving of notice thereof to the respondent, unless the person aggrieved thereby was prevented from filing such charge by reason of service in the Armed Forces, in which event a period of military service shall not be included in computing the six month period.

(e) If the court finds that the respondent has engaged in or is engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and shall order the respondent to take such affirmative action, including reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice), as may be appropriate. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable. No order of the court shall require the admission or reinstatement of an individual as a member of a union or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual was refused admission, suspended, or expelled or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, or national origin.

(f) In any case in which the pleadings present issues of fact, the court may appoint a master and the order of reference may require the master to submit with his report a recommended order. The master shall be compensated by the United States at a rate to be fixed by the court, and shall be reimbused by the United States for necessary expenses incurred in performing his duties under this section. Any court before which a proceeding is brought under this section shall advance such proceeding on the docket and expedite its disposition.

(g) The provisions of the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes," approved March 23, 1932 (29 U.S.C. 101–115), shall not apply with respect to civil actions brought under this section.

(h) In any action or proceeding under this title the Commission shall be liable for costs the same as a private person.

Effect on State laws

SEC. 708. (a) Nothing in this title shall be deemed to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of any State or political subdivision of a State, other than any such law which purports to require or permit the doing of any act which would be an unlawful employment practice under this title.

(b) Where there is a State or local agency which has effective power to eliminate and prohibit discrimination in employment in cases covered by this title, and the Commission determines the agency is effectively exercising such power, the Commission shall seek written agreements with the State or local agency under which the Commission shall refrain from bringing a civil action in any cases or class of cases referred to in such agreement. No person may bring a civil action under section 707(c) in any cases or class of cases referred to in such agreement. The Commission shall rescind any such agreement when it determines such agency no longer has such power, or is no longer effectively exercising such power.

Investigations, inspections, records

SEC. 709. (a) In connection with any investigation of a charge filed under section 707, the Commission or its designated representative shall at all reasonable times have access to, for the purposes of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question.

(b) With the consent and cooperation of State and local agencies charged with the administration of State fair employment practices laws, the Commission may, for the purpose of carrying out its functions and duties under this title and within the limitation of funds appropriated specifically for such purpose, utilize the services of State and local agencies and their employees and, notwithstanding any other provision of law, may reimburse such State and local agencies and their employees for services rendered to assist the Commission in carrying out this title.

(c) Every employer, employment agency, and labor organization subject to this title shall (1) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed, (2) preserve such records for such periods, and (3) make such reports therefrom, as the Commission shall prescribe by regulation or order, after public hearing, as reasonable, necessary, or appropriate for the enforcement of this title or the regulations or orders thereunder. The Commission shall, by regulation, require each employer, labor organization, and joint labor-management committee subject to this title which controls an apprenticeship or other training program to maintain such records as are reasonably necessary to carry out the purpose of this title, including, but not limited to, a list of applicants who wish to participate in such program, including the chronological order in which such applications were received, and shall furnish to the Commission, upon request, a detailed description of the manner in which persons are selected to participate in the apprenticeship or other training program. Any employer, employment agency, labor organization, or joint labor-management committee which believes that the application to it of any regulation or order issued under this section would result in undue hardship it may (1) apply to the Commission for an exemption from the application of such regulation or order, or (2) bring a civil action in the United States district court for the district where such records are kept. If the Commission or the court, as the case may be, finds that the application of the regulation or order to the employer, employment service, or labor organization in question would impose an undue hardship, the Commission or the court, as the case may be, may grant appropriate relief.

Investigatory powers

SEC. 710. (a) For the purposes of any investigation provided for in this title, the provisions of sections 9 and 10 of the Federal Trade Commission Act of September 16, 1914, as amended (15 U.S.C. 49, 50), are hereby made applicable to the jurisdiction, powers, and duties of the Commission, except that the provisions of section 307 of the Federal Power Commission Act shall apply with respect to grants of immunity, and except that the attendance of a witness may not be required outside the State where he is found, resides, or transacts business, and

the production of evidence may not be required outside the State where such evidence is kept.

(b) The several departments and agencies of the Government, when directed by the President, shall furnish the Commission, upon its request, all records, papers, and other information in their possession relating to any matter before the Commission whenever disclosure of such information is not prohibited by law.

Notices to be posted

SEC. 711. (a) Every employer, employment agency, and labor organization, as the case may be, shall post and keep posted in conspicuous places upon its premises where notices to employees, applicants for employment, and members are customarily posted a notice to be prepared or approved by the Commission setting forth excerpts of this title and such other relevant information which the Commission deems appropriate to effectuate the purposes of this title.

(b) A willful violation of this section shall be punishable by a fine of not less than $100 or more than $500 for each separate offense.

Veterans' preference

SEC. 712. Nothing contained in this title shall be construed to repeal or modify any Federal, State, territorial, or local law creating special rights or preference for veterans.

Rules and regulations

SEC. 713. (a) The Commission shall have authority from time to time to issue, amend or rescind suitable procedural regulations to carry out the provisions of this title. Regulations issued under this section shall be in conformity with the standards and limitations of the Administrative Procedure Act.

(b) In any action or proceeding based on any alleged unlawful employment practice, no person shall be subject to any liability or punishment for or on account of (1) the commission by such person of an unlawful employment practice if he pleads and proves that the act or omission complained of was in good faith, in conformity with, and in reliance on any written interpretation or opinion of the Commission, or (2) the failure of such person to publish and file any information required by any provision of this title if he pleads and proves that he failed to publish and file such information in good faith, in conformity with the instructions of the Commission issued under this title regarding the filing of such information. Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that (A) after such act or omission, such interpretation or opinion is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect, or (B) after publishing or filing the description and annual reports, such publication or filing is determined by judicial authority not to be in conformity with the requirements of this title.

Forcibly resisting the Commission or its representatives

SEC. 714. The provisions of section 111, title 18, United States Code, shall apply to officers, agents, and employees of the Commission in the performance of their official duties.

Appropriations authorized

SEC. 715. There is hereby authorized to be appropriated not to exceed $2,500,000 for the administration of this title by the Commission during the first year after its enactment, and not to exceed $10,000,000 for such purpose during the second year after such date.

Separability clause

SEC. 716. If any provision of this title or the application of such provision to any person or circumstance shall be held invalid, the remainder of this title or the application of such provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby.

Special study by Secretary of Labor

SEC. 717. The Secretary of Labor shall make a full and complete study of the factors which might tend to result in discrimination in employment because of age and of the consequences of such discrimination on the economy and individuals affected. The Secretary of Labor shall make a report to the Congress not later than June 30, 1964, containing the results of such study and shall include in such report such recommendations for legislation to prevent arbitrary discrimination in employment because of age as he determines advisable.

Effective date

SEC. 718. (a) This title shall become effective one year after the date of its enactment.

(b) Notwithstanding subsection (a), sections of this title other than sections 704, 705, and 707 shall become effective immediately.

(c) The President shall, as soon as feasible after the enactment of this title, convene one or more conferences for the purpose of enabling the leaders of groups whose members will be affected by this title to become familiar with the rights afforded and obligations imposed by its provisions, and for the purpose of making plans which will result in the fair and effective administration of this title when all of its provisions become effective. The President shall invite the participation in such conference or conferences of (1) the members of the President's Committee on Equal Employment Opportunity, (2) the members of the Commission on Civil Rights, (3) representatives of State and local agencies engaged in furthering equal employment opportunity, (4) representatives of private agencies engaged in furthering equal employment opportunity, and (5) representatives of employers, labor organizations, and employment agencies who will be subject to this title.

TITLE VII

The avowed purpose of title VII of the bill is to eliminate, by formal and informal remedial procedures, discrimination in employment on account of race, color, religion, sex, or national origin. The title would provide for a congressionally declared national policy of nondiscrimination, based on race, color, religion, sex, or national origin in matters of promotion and employment. In order to effectuate its purposes, title VII establishes an Equal Employment Opportunity Commission which is charged with investigating complaints concerning the existence of discrimination in business establishments, labor unions, and employment agencies.

Discrimination by those who control employment and promotional opportunities is forbidden, and, therefore, the practices of employers, labor unions, and employment agencies would be regulated. The Commission would have jurisdiction over all employers in industries affecting commerce—whatever that means—which have, during the first year after the effective date, 100 or more employees, which have, during the second year after such date, 75 or more employees, which have, during the third year after such date, 50 or more employees, and which have, during and after the fourth year following such date, 25 or more employees. Excluded from this definition are (1) the United States, or a State or political subdivision thereof, and (2) a bona fide tax-exempt private membership club other than a labor organization. The exclusion of the Federal and State governments does not mean that they are free to discriminate with regard to public employment opportunities. The former is covered by the President's Committee on Equal Employment Opportunities; the latter is covered by the equal protection clause of the 14th amendment.

The Commission would have jurisdiction over all labor organizations in industries affecting commerce, if the aggregate number of employees of such organization is 100 or more during the first year after the effective date, 75 or more during the second year after such date, 50 or more during the third year after such date, and 25 or more thereafter.

An employment agency is defined to mean any person who regularly undertakes, with or without compensation, to procure employees for an employer or to procure, for employees, opportunities to work and includes an agent of such person. The U.S. Employment Service and the system of State and local employment services receiving Federal assistance are specifically included. Other governmental agencies are not included. Religious corporations, associations, and societies are exempted from any discrimination in promotions and employment. The act would forbid employers to discriminate because of race, color, religion, sex or national origin when hiring, discharging, firing, compensating or setting terms, conditions, or privileges of employment. It would also be an unlawful employment practice for an employer to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any person of employment, opportunities, or otherwise adversely affect his status as an employee, because of his race, color, religion, sex or national origin.

Employment agencies would be forbidden to fail or refuse to refer for employment any individual because of his race, color, religion, sex or national origin; or to classify any individual on the basis of his race, color, religion, sex or national origin; refer for employment any individual because of his race, color, religion, sex or national origin; or otherwise to discriminate against any individual because of his race, color, religion, sex, or national origin.

Labor unions would be forbidden to exclude or expel from membership, or otherwise to discriminate against any individual because of his race, color, religion, sex, or national origin; a labor organization would be forbidden to limit, segregate, or classify its membership in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities for any individual or otherwise adversely affect his status as an employee or as an applicant for employment because of his race, color, religion, sex, or national origin. Labor unions would be forbidden to cause or attempt to cause an employer to discriminate against an individual on the basis of his race, color, religion, sex, or national origin.

Additionally, the act would forbid discrimination by any employer, labor organization, or any joint labor-management committee controlling apprenticeship or other training or retraining programs, including on-the-job training programs.

In contrast, it would not constitute an unlawful employment practice to hire a person of a particular religion, sex, or national origin in those limited circumstances where religion, sex, or national origin is a bona fide occupational qualification. For example, an Italian chef could be employed for an Italian restaurant. However, such an occupational qualification must be reasonably necessary to the normal operation of that particular business or enterprise. Furthermore, it would not be an unlawful employment practice for religious affiliated educational institutions to hire and employ employees of a particular religion.

The act would also exclude from coverage discrimination with respect to hiring and firing of persons who possess atheistic practices and beliefs. Members of the Communist Party, or of any other organization required to register as a Communist-front organization, could be discriminated against under the act.

It shall be an unlawful employment practice for an employer, an employment agency or for a labor organization to discriminate against any employee, individual, or member thereof, respectively, or any applicant for employment or membership, respectively, because such individual has opposed any practice made an unlawful employment practice by this title, or because the individual has made a charge or has participated in any manner in any investigation or proceeding or hearing under this title.

It shall be an unlawful employment practice for an employer, labor organization, or employment agency to print or publish, or cause to be printed or published, any notice or advertisement relating to employment by such an employer or membership in such a labor organization, or relating to any classification or referral for employment by such an employment agency, indicating any preference, limitation, specification, or discrimination based on race, color, religion, sex, or national origin, except that such a notice or advertisement may indicate a preference, limitation, specification, or discrimination based on religion, sex, or national origin, when religion, sex, or national origin is a bona fide occupational qualification for employment. Note that employers, labor organizations, and employment agencies are not allowed to advertise or publish notices which indicate a preference, limitation, specification, or discrimination based on race or color even if race or color might constitute a bona fide occupational qualification for employment.

Section 705(b) clearly is unfair, unwise, and unjust, in that discrimination on the basis of religion, sex, or national origin does not constitute an unlawful employment practice, whereas discrimination on the basis of race or color, and, where such may constitute a bona fide occupational qualification for employment is not permitted. In other words, it is all right to discriminate against Italians where Mexican chefs are desired for Mexican restaurants and vice versa, but it will be unlawful to discriminate against white chefs where Negro chefs may be desired in restaurants specializing in southern dishes and vice versa.

The Equal Employment Opportunity Commission, created by section 706(a), is to be composed of five members, each of whom shall receive a salary of $20,000 a year, with the exception that the Chairman shall receive a salary of $20,500. Members shall be appointed by the President for staggered terms up to a maximum of an ultimate normal term of 5 years. The Chairman shall appoint such officers, agents, attorneys, and employees, on behalf of the Commission, as "it deems necessary" to assist in the performance of its duties. In other words, the Commission is to be given carte blanche authority as to the number of such officers, agents, attorneys, and employees appointed. It goes without saying that the Commission will need an army of such persons to police and administer the act, and the language authorizing the appointment of such personnel is broad enough to permit the securing of that army, be it small or large. There is absolutely no limitation on the number, so long as personnel are deemed "necessary" to assist the Commission in performing its functions. Here we shall see the sprouting and flowering, the mushrooming, ballooning of an entirely new bureaucratic activity which, like Tennyson's brook, will go on and on forever.

The act is not without vision in its provision for regional offices for such personnel, inasmuch as the Commission may establish such regional offices "as it deems necessary" and shall establish at least one such office in each of the major geographical areas of the United States, including its territories and possessions.

The Commission is authorized to furnish to all persons subject to the title such technical assistance as they may request to further their compliance with the title or with any order issued thereunder. No limitation on the amount of such technical assistance and no guidelines are provided by the language of the act.

The Commission is given power to make whatever technical studies as may be appropriate to effectuate the purposes and policies of the title, and to make the result of such studies available to interested governmental and nongovernmental agencies. It may carry on educational and promotional activities and may cooperate with other departments and agencies in the performance of such activities. Just what is meant by such "educational or promotional activities" is not indicated, but by this time one need not be surprised because these are only a few of the plethora of ambiguous, vague, broad, and undefined terms with which this carelessly drawn, but highly controversial bill has been loaded.

Attorneys of the Commission may, at the direction of the Commission, appear for and represent the Commission "in any case" in court.

Section 707(a) provides that whenever it is charged in writing under oath, by or on behalf of a person claiming to be aggrieved, or when a written charge has been filed by a member of the Equal Employment Opportunity Commission where he has "reasonable cause" to believe a violation of "this act" has occurred, such charge setting forth the facts upon which it is based, that an employer, employment agency, or labor organization has engaged in an unlawful employment practice, the Commission is required to furnish such employer, employment agency, or labor organization with a copy of such charge and the Commission is required to make an investigation of the charge. If as many as two members of the Commission shall determine, after such investigation, that there is "reasonable cause" to believe that the charge is true, the Commission shall take steps to eliminate the unlawful employment practice. These steps shall take the form, first, of informal methods of conference, conciliation, and persuasion. The Commission will attempt to obtain from the employer, employment agency, or labor organization, an agreement in writing setting forth the particular practices which will be refrained from in the future.

Section 707(b) provides that, upon failure to effect the elimination of an unlawful employment practice and to obtain voluntary compliance with title VII, the Commission is required to bring a civil action, "within 90 days," to prevent further engagement in such practice. The Commission shall not be required to bring a civil action in any case in which the Commission by affirmative vote, determines that the bringing of such action "would not serve the public interest."

Section 707(c) authorizes the person claiming to be aggrieved to bring a civil action to obtain relief, if the Commission has failed or declined to bring a civil action within the 90-day period set forth in subsection (b) and if one member of the Commission gives permission in writing to the aggrieved.

Section 707(d) gives jurisdiction of action to the U.S. district courts and provides that such actions may be brought either in the judicial district in which the unlawful employment practice is alleged to have been committed, or in the judicial district in which the principal office of the employer, employment agency or labor organization is situated. Civil actions may be based on unlawful employment practices occurring at any time within 6 months prior to the filing of the charge with the Commission and the giving of notice thereof to the respondent, unless the aggrieved person was prevented from filing such charge by reason of service in the Armed Forces, in which event a period of military service shall not be included in computing the 6 months period.

Section 707(e) provides that the court may enjoin the employer-employment agency or labor organization from engaging in an unlawful employment practice under this act, and the court is required to order the respondent to take such affirmative action, including reinstatement or hiring of employees with or without back pay, as may be appropri-

ate. The back pay is payable by the employer, employment agency or labor organization, as the case may be, but it shall be reduced by interim earnings or amounts earnable with reasonable diligence by the aggrieved person. In other words, it is mandatory upon the court to order an employer to hire or reinstate or to promote the aggrieved, as the case may be, and to order to payment to the aggrieved of any back pay, if such individual was fired or refused employment or refused promotion because or discrimination on account of race, color, religion, or national origin.

Section 707(f) provides that in any case in which issues of fact are presented, the court may appoint a master and require him to submit with his report a recommended order. The master shall be compensated by the United States for his services and shall be reimbursed for necessary expenses incurred in performing his duties under this section. The subsection makes it mandatory upon any court before which such a proceeding is brought to advance the proceeding on the docket and expedite its disposition.

Section 707(h) makes the Commission liable for costs the same as a private person in any action or proceeding under this title.

Section 708 provides that no person shall be relieved or exempted, by virtue of this act, for any liabilities or duties imposed by present or future State laws or laws of political subdivisions of States. The section also provides that, in cases where there are State or local agencies effectively empowered to eliminate and prohibit racial discrimination in employment, the Commission, if it determines that such agency is effectively exercising such power, is required to seek written agreements with that agency under which the Commission must refrain from bringing civil action in any cases referred to in such agreement. No person would be permitted to bring a civil action under section 707(c) in any class of cases referred to in such agreement. The Commission is required to rescind any such agreement when it determines that a State or local agency is no longer effectively exercising such power.

Section 709(a) provides that in connection with any investigation of a charge filed under this title the Commission or its designated representatives shall "at all reasonable times" have access to any evidence of any person being investigated or proceeded against relating to any matter in question or under investigation. The Commission is authorized to examine and copy any such evidence. Presumably the Commission's determination as to what constitutes "all reasonable times" is final.

Section 709(b) authorizes the Commission to utilize the services of State and local agencies and their employees, charged with the administration of State FEP laws, in carrying out the Commission's functions and duties under this title. The Commission is authorized to reimburse such State and local agencies and their employees, within the limitation of funds appropriated for such purpose.

Under section 709(c), it will be mandatory upon every employer, employment agency, and labor organization subject to title VII to make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed, as the Commission shall prescribe by regulation or order, after public hearing, as reasonable, necessary, or appropriate for the enforcement of title VII. It will be mandatory upon every employer, employment agency, and labor organization subject to this title to preserve records for such periods as the Commission shall prescribe by regulation or order after public hearing as reasonable, necessary, or appropriate for the enforcement of title VII, and it will be mandatory upon every employer, employment agency, or labor organization subject to title VII to make such reports from such records as the Commission shall prescribe by regulation or order after public hearings, as reasonable, necessary, or appropriate for the enforcement of title VII.

It will be mandatory upon the Commission to formulate regulations requiring each employer, labor organization, and joint labor-management committee subject to title VII which controls an apprenticeship or other training program to maintain such records as are reasonable and necessary to carry out the purposes of the title, and such records must include, but will not be limited to, a list of applicants who wish to participate in such program, together with the chronological order in which such applications were received, and shall furnish to the Commission, upon request, a detailed description of the manner in which persons are selected to participate in such apprenticeship or other training programs.

Of course, any employer, employment agency, labor organization, or joint labor-management committee may apply to the Commission for an exemption from the application of such regulation or order issued under this section if it is believed that the application of the regulation or order to that particular employer, employment agency, labor organization, or joint labor-management committee would result in undue hardship. Also, any employer, employment agency, labor organization, or joint labor-management committee may bring a civil action in the U.S. district court for the district where such records are kept, for relief. If the Commission or the court finds that the application of the regulation or order would indeed impose an undue hardship, the Commission or the court, as the case may be, may grant appropriate relief.

Under section 711, it would be mandatory upon every employer, employment agency, and labor organization to post and keep posted in conspicuous places upon its premises notices to be prepared or approved by the Commission setting forth the provisions of title VII and such other relevant information which the Commission deems appropriate to effectuate the purposes of this title. Any employer, employment agency, or labor organization which willfully fails to post and keep posted in conspicuous places such a notice as is required by this section shall be punishable by a fine of not less than $100 or more than $500 for each separate offense.

Section 714 provides that whoever forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any officers, agents or employees of the Commission in the performance of their official duties shall be fined not more than $5,000 or imprisoned not more than 3 years or both. Under section 714, whoever, in the commission of any such acts uses a deadly or dangerous weapon, shall be fined not more than $10,000 or imprisoned not more than 10 years or both.

Section 715 authorizes an appropriation not to exceed $2,500,000 for the administration of title VII during the first year after its enactment and not to exceed $10 million for the administration of title VII during the second year after the date of its enactment. It should be noted here that title VII, with the exception of sections 704, 705, and 707, shall not become effective until 1 year after the date of its enactment. Consequently, the act would authorize an appropriation of up to $2,500,000 for the administration of this title during the first year after its enactment, in which first year the thrust of the provisions against unlawful employment practices would not be effective. The Equal Employment Opportunity Commission would be created during the first year and it could proceed to appoint officers, agents, attorneys, and employees and establish regional offices. It could begin to conduct technical studies and provide technical assistance to persons subject to the title. It can proceed to seek written agreement with State or local FEP agencies. It may formulate the regulations or orders under which records will be required to be kept, and the making and keeping of such records will be required effective upon enactment of the act. The posting and keeping posted of notices, as required in section 711, by every employer, employment agency, and labor organization, under penalty of fines, for willful violation, shall become effective during the first year after enactment of the act.

Section 717 requires the Secretary of Labor to make a full and complete study of factors which might tend to result in discrimination in employment because of age. The Secretary of Labor shall also make a report to the Congress "not later than July 30, 1964," containing the results of such study and such recommendations for legislation to prevent arbitrary discrimination because of age as he deems advisable. In my judgment, this is the most laudable in this act. The date for submittal of the Secretary of Labor's report to Congress would have to be extended of course. I do think, however, that there is ample information available to the Secretary of Labor concerning discrimination in employment because of age to have permitted the submission of recommendations for legislation to prevent arbitrary discrimination in employment because of age now rather than merely to recommend the

submission of a report concerning factors which tend to result in discrimination. As a matter of fact, I consider legislation along that line to be far more important, far less controversial, far less difficult to administer, once enacted, than the legislation which is being debated. However, I suppose it is understandable that such legislation must not take precedence over this bill in view of the fact that people, although subjected to discrimination because of age, have not yet taken to the streets in protest, have not yet resorted to acts of civil disobedience and violations of local laws, and have not enlisted the support of church groups and the press in behalf of their cause. Their cause is much less emotional, even though Negroes as well as whites are discriminated against because of age. This is just another indication that the legislation before us today is here because of the desire for the support of a politically potent voting bloc.

Title VIII of the bill reads as follows:

TITLE VIII

Registration and voting statistics

SEC. 801. The Secretary of Commerce shall promptly conduct a survey to compile registration and voting statistics in such geographic areas as may be recommended by the Commission on Civil Rights. Such a survey and compilation shall, to the extent recommended by the Commission on Civil Rights, include a count of persons of voting age by race, color, and national origin, and a determination of the extent to which such persons are registered to vote, and have voted in any statewide primary or general election in which the Members of the United States House of Representatives are nominated or elected, since January 1, 1960. Such information shall also be collected and compiled in connection with the Nineteenth Decennial Census, and at such other times as the Congress may prescribe.

Title VIII would require the Secretary of Commerce to promptly conduct a survey to compile registration and voting statistics, such survey and compilation to include a census of persons of voting age by race, color, and national origin, and a determination of the extent to which persons eligible to vote have voted in any statewide primary or general election in which Members of the U.S. House of Representatives have been nominated or elected since January 1, 1960. The Secretary of Commerce's survey will be only in such geographical areas as may be recommended by the Commission on Civil Rights. The title should be amended to include all areas of the United States.

The apparent objective of this title is to effectuate section 2 of the 14th amendment requiring a reduction of Members in the House of Representatives of those States where there is a denial of the right to vote.

Title IX of the bill reads as follows:

TITLE IX—PROCEDURE AFTER REMOVAL IN CIVIL RIGHTS CASES

SEC. 901. Title 28 of the United States Code, section 1447(d), is amended to read as follows:

"An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was removed pursuant to section 1443 of this title shall be reviewable by appeal or otherwise."

Title IX would amend 28 U.S.C. 1447 (d) to permit appeal from a Federal court of the remanding to the State court from which it was removed any civil rights case removed pursuant to 28 U.S.C. 1443.

Title IX which I have just read will give to the civil rights litigant, and that type of litigant alone, the right to appeal from an order of the U.S. district court remanding his case back to the State court.

The legal problems involved in this are quite simple and not complicated at all.

This is an attempt to bypass the U.S. district judges and to bypass the State courts.

This vicious package of legislation involves court procedure and thus has attracted less attention than any other part of the bill, but it is nevertheless as outrageous as many of these other parts of the bill.

The obvious purpose of this is simply to bypass and impede the processes of justice in our State courts.

There are now, as all lawyers know, three types of cases which may be removed from the State court to the Federal court:

First, is cases which involves the interpretation of laws and treaties of the United States and the Constitution of the United States.

The second type of cases are those which involve a diversity of citizenship.

The third type of case is under section 1442 of title 28 which permits certain Federal officers who are being prosecuted in State courts to remove their cases. It is this section which they seek to amend by discriminating against all other types of litigants in favor of this particular type of litigant.

The history of what is now 28 USCA 1447(d) was explained by Mr. Justice Van Devanter in *Employers Reinsurance Corp.* v. *Bryant*, 81 L. ed. 289, 292–293 (1937):

For a long period an order of a Federal court remanding a cause to the State court whence it had been removed could not be reexamined on writ of error or appeal, because not a final judgment or decree in the sense of the controlling statute. But in occasional instances such an order was reexamined in effect on petition for mandamus, and this on the theory that the order, if erroneous, amounted to a wrongful refusal to proceed with the cause and that in the absence of other adequate remedy mandamus was appropriate to compel the inferior court to exercise its authority.

By the act of March 3, 1875, chapter 137, 18 Statutes at Large 472, dealing with the jurisdiction of the circuit (now district) courts, Congress provided, in section 5, that if a circuit court should be satisfied at any time during the pendency of a suit brought therein, or removed thereto from a State court, that "such suit does not really or substantially involve a dispute or controversy properly within" its "jurisdiction," the court should proceed no further therein, but should "dismiss the suit or remand it to the court from which it was removed, as justice may require." Thus far this section did little more than to make mandatory a practice theretofore largely followed, but sometimes neglected, in the circuit courts. But the section also contained a concluding paragraph, wholly new, providing that the order "dismissing or remanding the said cause to the State court" should be reviewable on writ of error or appeal. This provision for an appellate review continued in force until it was expressly repealed by the act of March 3, 1887, chapter 373, section 6, 24 Statutes at Large 552, which also provided that an order remanding a cause to a State court should be "immediately carried into execution" and "no appeal or writ of error" from the order should be allowed.

The question soon arose whether the provisions just noticed in the act of March 3, 1887, should be taken broadly as excluding remanding orders from all appellate review, regardless of how invoked, or only as forbidding their review on writ of error or appeal. The question was considered and answered by this Court in several cases, the uniform ruling being that the provisions should be construed and applied broadly as prohibiting appellate reexamination of such an order, where made by a circuit (now district) court, regardless of the mode in which the reexamination is sought. A leading case on the subject is *Re Pennsylvania Co.* 137 U.S. 451, 34 L. Ed. 738, 11 S. Ct. 141, which dealt with a petition for mandamus requiring the judges of a circuit court to reinstate, try, and adjudicate a suit which they, in the circuit court, had remanded to the State court whence it had been removed. After referring to the earlier statutes and practice and coming to the act of March 3, 1887, this Court said (p. 454):

"In terms, it only abolishes appeals and writs of error, it is true, and does not mention writs of mandamus; and it is unquestionably a general rule, that the abrogation of one remedy does not affect another. But in this case we think it was the intention of Congress to make the judgment of the circuit court remanding a cause to the State court final and conclusive. The general object of the act is to contract the jurisdiction of the Federal courts. The abrogation of the writ of error and appeal would have had little effect in putting an end to the question of removal, if the writ of mandamus could still have been sued out in this court. It is true that the general supervisory power of this court over inferior jurisdictions is of great moment in a public point of view, and should not, upon light grounds, be deemed to be taken away in any case. Still, although the writ of mandamus is not mentioned in the section, yet the use of the words 'such remand shall be immediately carried into execution,' in addition to the prohibition of appeal and writ of error, is strongly indicative of an intent to suppress further prolongation of the controversy by whatever process. We are, therefore, of opinion that the act has the effect of taking away the remedy by mandamus as well as that of appeal and writ of error."

U.S. v. *Rice*, 90 L. Ed. 982, 988 (1949), Mr. Justice Stone:

Congress, by the adoption of these provisions, as thus construed, established the policy of not permitting interruption of the litigation of the merits of a removed cause by prolonged litigation of questions of jurisdiction of the district court to which the cause is removed. This was accomplished by denying any form of review or an order for remand, and before final judgment of an order denying remand. In the former case, Congress has directed that upon the remand the litigation should proceed in the State court from which the cause was removed. * * * But the congressional policy of avoiding interruption of the litigation of the merits of removed causes, properly begun in State courts, is as pertinent to those removed by the United States as by any other suitor.

It is readily apparent that title IX would allow civil chaos without giving State authorities any remedy. After the prosecution is prepared, a criminal defendant could wait until minutes before trial and have the case removed. Then, when several days or a week later the Federal court has decided it has no jurisdiction and an order of remand is entered, such defendant could appeal that order. Trial could be put off almost indefinitely, especially considering the congested dockets of the Federal courts of appeal.

Such delay may invite agitators to organize mass demonstrations which could provoke other violations of State laws, including perhaps the same laws involved in the case which has been removed, remanded, and appealed. Title VIII would change, with respect to civil rights cases only, a time-honored and time-proven policy of judicial procedure. It thus would place civil rights cases in a special and preferred category, thus opening the door for dilatory tactics which may frustrate the execution of State laws. This title would not be good adjective law and should be stricken from the bill.

TITLE X

Title X of the bill reads as follows:

TITLE X—ESTABLISHMENT OF COMMUNITY RELATIONS SERVICE

SEC. 1001. (a) There is hereby established in the Department of Commerce a Community Relations Service (hereinafter referred to as the "Service"), which shall be headed by a Director who shall be appointed by the President with the advice and consent of the Senate for a term of four years. The Director shall receive compensation at a rate of $20,000 per year. The Director is authorized to appoint, subject to the Civil Service laws and regulations, such other personnel, not to exceed six in number, as may be necessary to enable the Service to carry out its functions and duties, and to fix their compensation in accordance with the Classification Act of 1949, as amended. The Director is further authorized to procure services as authorized by section 15 of the Act of August 2, 1946 (60 Stat. 810; 5 U.S.C. 55(a)), but at rates for individuals not in excess of $75 per diem.

(b) Section 106 of the Federal Executive Pay Act of 1956, as amended (5 U.S.C. 2205), is further amended by adding the following clause thereto:

"(52) Director, Community Relations Service."

SEC. 1002. It shall be the function of the Service to provide assistance to communities and persons therein in resolving disputes, disagreements, or difficulties relating to discriminatory practices based on race, color, or national origin which impair the rights of persons in such communities under the Constitution or laws of the United States or which affect or may affect interstate commerce. The Service may offer its services in cases of such disputes, disagreements or difficulties whenever, in its judgment, peaceful relations among the citizens of the community involved are threatened thereby, and it may offer its services either upon its own motion or upon the request of an appropriate State or local official or other interested person.

SEC. 1003. (a) The Service shall, whenever possible, in performing its functions under this title, seek and utilize the cooperation of the appropriate State or local agencies.

(b) The Service shall hold confidential any information acquired in the regular performance of its duties upon the understanding that it would be so held. No officer or employee of the Service shall engage in the performance of investigative or prosecuting functions of any Department or agency in any litigation arising out of a dispute in which he acted on behalf of the Service.

SEC. 1004. Subject to the provisions of section 1003(b), the Director shall, on or before January 31 of each year, submit to the Congress a report of the activities of the Service during the preceding fiscal year.

Title X provides for the establishment of a Community Relations Service which would seek, through conciliation and mediation, to assist communities and individuals in the resolution of problems growing out of discriminatory practices. It seems to me that the creation of such a service, the Director of which would be compensated with an annual salary of $20,000, and who would be authorized to appoint up to six additional personnel, is unnecessary inasmuch as it would duplicate many similar committees established at the local level, which local committees are much more knowledgeable of local conditions and more capable of rendering effective service. The Service created by title X is really devoid of any particular duty or function other than to meddle in local affairs. Nonetheless, I do not oppose this title.

TITLE XI

Title XI of the bill reads as follows:

TITLE XI—MISCELLANEOUS

SEC. 1101. Nothing in this Act shall be construed to deny, impair, or otherwise affect any right or authority of the Attorney General or of the United States or any agency or officer thereof under existing law to institute or intervene in any action or proceeding.

SEC. 1102. Nothing contained in any title of this Act shall be construed as indicating an intent on the part of Congress to occupy the field in which any such title operates to the exclusion of State laws on the same subject matter, nor shall any provision of this Act be construed as invalidating any provision of State law unless such provision is inconsistent with any of the purposes of this Act, or any provision thereof.

SEC. 1103. There are hereby authorized to be appropriated such sums as are necessary to carry out the provisions of this Act.

SEC. 1104. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of the Act and the application of the provision to other persons or circumstances shall not be affected thereby.

Title XI provides: first, that nothing in the act shall be construed to affect in any way any present authority of the Attorney General or any Federal agency or officer thereof to institute or intervene in any action or procedure; second, that nothing contained in the act shall be construed as indicating an intent on the part of Congress to preempt fields affected by any title of the act in which State laws are operative; third, that any provision of the act held to be invalid will not thereby affect the remainder of the act; and fourth, appropriations of authorized funds in such sums as are necessary as to carry out the provisions of the act.

I firmly believe that the passage of title II would constitute an unconstitutional violation of the property rights of owners of business establishments affected. Some people argue that "human rights" are superior to "property rights," but the history of mankind would appear to support the belief that the individual's right to own, manage, and control the use of property is a "human right" in every sense of the term.

(At this point Mr. MCGOVERN took the chair as Presiding Officer.)

Mr. BYRD of West Virginia. Gottfried Dietze, professor of political science at the Johns Hopkins University, in his book "In Defense of Property," says that:

The freedom of men consists of particular, specific rights or liberties. These rights can be classified into two major categories, namely, the liberal rights to be free from coercion and the democratic rights to participate in government. Property rights, constituting a prominent part of the first group, are superior to the rights of the latter group.

As demonstrated elsewhere, the freedom of the individual comprises a great variety of liberties. Freedom can be compared to a tree, and its parts, to the branches. And just as stem and branches are interdependent, so are freedom and its liberties. If too many branches are cut off a tree, it will wither and die. Similarly, if too many of the individual's rights are restricted, freedom will suffer. Where there is no freedom, there can be no liberties.

* * * * *

Freedom cannot exist if only some rights are acknowledged. A government which guarantees freedom of religion is not free if it permits arbitrary arrests or interference with learning and discussion. Even if all these liberties enjoyed protection, still society would not be free if property rights were restricted.

As to the relative importance of property rights in a working democracy, Professor Dietze states:

The truth of the proposition that civil rights are more important for the functioning of democracy than are property rights is dubious from still another point of view. Those who prefer those rights because they are supposed to be conducive to the working of democracy, want, by their own admission, a working democracy. Their neglect of property rights is, however, apt to produce the very opposite. Overemphasis on such rights as freedom of speech, association, and assembly will make men intoxicated with power and create those hallucinations about their political ability that often have resulted in anarchy and despotism. A working democracy is an orderly democracy. And order in a democracy is achieved in no small extent by permitting those who own property to have an ample share in government. Having something at stake, and in general being the more intelligent, industrious and progressive part of the population, their actions will not be motivated by passion, and they will not be apt to make experiments which might endanger the foundations of government and order. Therefore, only if private property enjoys the same degree of protection as civil rights, does there exist the guarantee for a working democracy.

The argument that such rights as freedom of speech, assembly, and association are more important for democracy than are property rights is thus not convincing and not valid as a basis for assigning priority to the former rights. Even if one could not prove that property rights are as much a prerequisite for democracy as are civil rights; even if civil rights might be a more essential prerequisite, then a discrimination against property still would not be justified. For no discrimination against any liberal right can be justified on the grounds that that right is not a prerequisite for democracy. The decisive factor is compatibility with freedom, not with democracy. Otherwise, a means

would be elevated over the end, and liberty might be lost.

* * * * *

The protection of private property does not imply merely something static. It also guarantees the free use of property to one's advantage as well as that of the public, and opens the way for the owner's participation in government. Since the protection of property frequently is believed to result mainly from egoistic motives, the blessings of property for the welfare of society are overlooked as often as the blessings of civil rights are overemphasized.

* * * * *

Thus the position of property in the scale of human rights is clear. Like other liberal rights, those of property are superior to democratic rights. Property rights do not occupy an inferior position among liberal rights and definitely are equal to so-called civil rights. As a matter of fact, one is tempted to ask whether or not property rights, being very important for civilization and as civil as any rights can be, being as relevant for a working democracy as civil rights, are superior to those rights. For they do not seem to be as prone, as are civil rights, to degenerate into mere democratic rights. They are thus, unlike civil rights, immune from being reduced to mere prerequisites for a means for the achievement of freedom, and are likely to remain an essential part of freedom.

The essentiality of property rights to freedom is commented upon in an interesting way by Professor Dietze:

Scholars have demonstrated that property is an institution of nature and prior to all human organization, and that its naturalness is evident in an examination of plant and animal life. Even the most primitive forms of life have been found to possess property. A plant has a particular piece of earth for its property, which is occupied by its roots. If deprived of its soil, the plant will die. A plant defends its property. Its roots protect the piece of ground which they occupy from invasions. Some plants protect themselves more vigorously. Possessing thorns and bristles, or the capacity to secrete fluids which kill approaching animals, they protect the very space above the ground in which they grow. Thus, on the most rudimentary level of life, property is essential to life itself, and protected accordingly.

The situation is analogous in animal life. An animal has its cover, refuge, or cave as a prerequisite for its existence. It defends this property. Whether vegetarian or carnivorous, animals have their own territory, and they keep out those that attempt to encroach upon it. Food is not only collected for immediate consumption, but often is stored and defended as property. The apiarist who takes honey from hives shields his skin to avoid being stung for a deprivation of property. Most of us have learned a lesson when trying to take away a dog's bone.

Finally, property is one of the first values of which men are aware. By instinct or reasoning, a child wants to have things. Primitive men have their dwelling and a territory on which they feed, be it through hunting or agricultural pursuits. They are prerequisites of their existence. A primitive man collects his livelihood in excess of what he can consume for the sake of "saving it for a rainy day" or for that of exchanging it for other goods. Aware of the value of his property and the necessity for its protection, he will put it in a safe place.

Property is essential also for freedom. The plant which is uprooted has not only its life endangered, but also, its freedom to grow is threatened. An animal deprived of food not only starves to death, but also lacks freedom of action. If a man is deprived of his property, then the development of his personality is retarded. It does not matter whether only his immediate necessities, or what he has stored for later consumption or exchange are taken away. Although depriving him of his immediate necessities threatens his life, the removal of any property would be just as detrimental, because it threatens his free development and thus his freedom of existence.

Property is intimately related to life and freedom. It is a prerequisite of the freedom to be and to act. It is as old as life and freedom, and also as important. Property rights are thus distinguishable from such rights as freedom of religion, of speech, of the press, of assembly and association, freedom from arbitrary arrest, and so forth. For these rights were not present at the beginning of life. Furthermore, originally they did not enjoy a status equal to that of life and of freedom. It is not necessary to prove this assertion in the cases of plant and animal life. And it scarcely seems required with respect to man. While men may have been aware of the value of these rights at a primitive stage of their development, they did not consider them as immediate necessities for their existence.

The authors of amendment V of the U.S. Constitution did not confine the due process clause, in its application, to the deprivation of life and liberty; they included property as coequal with life and liberty. Similarly, the due process clause of the 14th amendment is not limited to the protection of life and liberty, but its purview includes property as well.

Property rights are so very important, in my judgment, as to warrant the taking of some considerable time in reference to the historical debate regarding this important human right.

Jean Bodin, in the 16th century, referred to the opponents of private property as foolhardy dreamers:

In taking away these words of Mine and Thine, they ruine the foundation of all Commonweales, the which were chiefly established to yield unto every man that which is his own.

Before and since Bodin wrote, many eminent men have believed that the protection of private property is, in reality, the primary task of governments and that any wholesale abolition of rights of ownership constitutes an essential characteristic of social revolution. The notion that a man owns what his labor has created is an ancient one. As a matter of fact, the philosophers of Greece are said to have built the framework on which all subsequent property theories have been based. In Plato's opinion, communism was the best scheme for managing property, while Aristotle was the defender of private property. Aristotle's statement, "That which is common to the greatest number has the least care bestowed upon it. Everyone thinks chiefly of his own, hardly at all of the common interest; and only when he is himself concerned as an individual. For besides other considerations, everybody is more inclined to neglect the duty which he expects another to fulfill" has been one of the principal justifications for private ownership through the ages.

Property—

Aristotle said—

should be in a certain sense common, but as a general rule private; for when everyone has a distinct interest, men will not complain of one another, and they will make more progress, because everyone will be attending to his own business.

Some of the advantges of private property were stated as follows by Aristotle:

First, how immeasurably greater is the pleasure, when a man feels a thing to be his own; for surely the love of self is a feeling implanted by nature and not given in vain, although selfishness is rightly censured; this, however, is not the mere love of self, but the love of self in excess. Secondly, there is the greatest pleasure in doing a kindness or service to friends or guests or companions, which can only be rendered when a man has private property. Finally, no one, when men have all things in common, will any longer set an example of liberality or do any liberal action; for liberality consists in the use which is made of property.

The theory of natural law and property, which was developed by the Hellenistic philosophers, was later incorporated into the Roman law. Under Cicero's natural law all men were equal. Nevertheless, the actual inequality of men was more striking in Rome than it had been in Athens. Slavery and an unequal division of property were as essential to the society of Cicero as they had been to the society of Aristotle. In book I of "De Officiis," Cicero said that there is "no such thing as private ownership established by nature, but property becomes private either through long occupancy, or through conquest, or by law, bargain, purchase, or allotment," but in book II he bitterly condemned agrarian laws, property taxes, confiscations, and legislation intended to equalize property. Cicero therein stated that the state should not interfere with private property because it was for the purpose of protecting privately owned property that the state was primarily founded.

Mr. HUMPHREY. Mr. President, will the Senator yield?

Mr. BYRD of West Virginia. I am glad to yield with the understanding that I shall not lose my right to the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HUMPHREY. Is the Senator from West Virginia able to give us any idea as to the hour that he might conclude his address?

Mr. BYRD of West Virginia. I have enough material to carry me, if I proceed to read it carefully and painstakingly, as I am now doing, another 12 or 15 hours; but I shall hardly be able to carry on for that length of time. I assure the amiable and able Senator from Minnesota that I shall indeed complete my recitation no later than 9:59 o'clock a.m., in time to recess in accordance with the previous order.

Mr. HUMPHREY. Will the Senator from West Virginia yield further without losing his right to the floor?

Mr. BYRD of West Virginia. I am glad to yield, with that stipulation.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HUMPHREY. I thank the Senator. I appreciate the guidance he has given us. The reason I asked the question was in reference to arranging for

appropriate staff in the Senate, and for Senators to occupy the Chair as Presiding Officer.

I appreciate the courtesy of the Senator, and his frankness in giving us this information.

I wish the Senator well. He has, indeed, a considerable amount of material. The Senator from West Virginia is a man of genuine ability and of great ability. He is hard working and diligent, he is determined and persevering, but he is always courteous and considerate.

Mr. BYRD of West Virginia. The Senator moves me to quote a few lines which I should like to dedicate to him:

The roses red upon my neighbor's vine
Are owned by him, but they are also mine.
His was the cost, and his the labor, too,
But mine as well as his the joy, their loveliness to view.

They bloom for me and are for me as fair
As for the man who gives them all his care.
Thus I am rich, because a good man grew
A rose-clad vine for all his neighbor's view.

I know from this that others plant for me,
And what they own, my joy may also be.
So why be selfish, when so much that's fine
Is grown for me, upon my Minnesota neighbor's vine.

Mr. HUMPHREY. I thank the Senator from West Virginia. He has just reminded me that at my abode and domicile out in Northwest Chevy Chase, there is a fence banked with beautiful red roses. I shall go to them, and in the morning, at approximately 9:59 o'clock a.m., I shall bring my good friend, the Senator from West Virginia some of those beautiful red roses that were so patiently planted and nourished by Mrs. Humphrey, and which are viewed by the neighbors and loved by all. I am sure that the Senator will again find an inspiration for the beautiful poem from these beautiful red roses that can be equaled only in the great State of West Virginia.

Mr. BYRD of West Virginia. I thank my friend.

Wouldn't this old world be better
If the folks we meet would say—
"I know something good about you."
And treat us just that way?

Wouldn't it be fine and dandy
If each handclasp, fond and true,
Carried with it this assurance—
"I know something good about you."

Wouldn't life be lots more happy
If the good that's in us all
Were the only thing about us
That folks bothered to recall?

Wouldn't life be lots more happy
If we praised the good we see?
For there's such a lot of goodness
In the worst of you and me.

Wouldn't it be nice to practice
That fine way of thinking, too?
You know something good about me.
I know something good about you?

I say to the genial Senator that I shall be pleased to receive those roses in the morning. I shall also always be proud to say something good about you.

Mr. HUMPHREY. The Senator has a always been very considerate and friendly. The emphasis he has placed upon the positive is the emphasis I trust that we shall manage to maintain in the Senate in all of these deliberations that are about to come upon us in the form of amendments, votes, cloture votes, votes on titles, and amendments pertaining thereto.

I believe now that I shall let the Senator, if he wishes, continue with his dissertation and leave the Chamber of the Senate for a few minutes in the trustworthy and faithful care of the able Senator from West Virginia, the distinguished and able Presiding Officer, the junior Senator from South Dakota [Mr. McGOVERN], and the able and distinguished senior Senator from New Jersey [Mr. CASE].

I can think of no triumvirate that can do a better job of protecting the public, and honoring and defending the institutions of the Senate—and of permitting me to enjoy some slumber. So, a pleasant good evening.

Mr. BYRD of West Virginia. For some "sleep that knits up the ravel'd sleave of care."

Mr. HUMPHREY. I believe that would help.

Mr. BYRD of West Virginia.

It is not within the province of every man,
To build for himself a great shaft of granite,
Or engrave his name upon a plate of bronze.
But it is within the reach of every man
To plant an ever-blooming flower within the bosom of one he meets.

This I believe the Senator from Minnesota does daily. I should like, if the Senator will permit me, to dedicate one further poem to him before he departs to get some sleep—"the poor man's wealth."

Mr. HUMPHREY. Oh, yes.

Mr. BYRD of West Virginia. Because his life clearly exemplifies the spirit of these lines, which I did not write but which I only committed to memory.

"How far away is the temple of fame?"
Said a youth at the dawn of the day.
He toiled and strove for a deathless name;
The hours went by and the evening came,
Leaving him old and feeble and lame,
To plod on his cheerless way.

"How far away is the temple of good?"
Said another youth at the dawn of the day,
He toiled in the spirit of brotherhood,
To help and succor as best he could
The poor and unfortunate multitude,
In its hard and cheerless way.

He was careless alike of praise or blame,
But after his work was done,
An angel of glory from heaven came
To write on high his immortal name,
And to proclaim the truth that the temple of fame
And the temple of good are one.

For this is the lesson that history
Has taught since the world began;
That those whose memories never die,
But shine like stars in the human sky,
And brighter glow as the years go by,
Are the men who live for man.

I believe that the Senator from Minnesota—and I say this in all sincerity—is a man who, throughout his life, has sought to work and live for the betterment of his fellow man. I do not always agree with him, but I certainly respect his views. I recognize that he always attempts to do what is right. He certainly has the consideration of his fellow man always at heart.

Mr. HUMPHREY. I wish to express my thanks to the Senator from West Virginia. As we say in that fine land of the Scandinavians, "Buenos noches."

Mr. BYRD of West Virginia. Mr. President, Virgil, in the first book of "Georgics," described a time when "no fences parted fields, nor marks nor bounds distinguish'd acres of litigious grounds; but all was common."

Apparently Virgil was describing the Golden Age, in which a state of nature existed and wherein property was common and used for the satisfaction of the needs of all and equally by all. One theory held that private property was not natural, and that the conventions by which it was established were only justified because human nature was corrupted after the fall of man. Roman jurists, like the philosophers, believed in the existence of the law of nature, but many of them felt that private property was ordained by the law of nature—ius naturale. Others believed that ownership of property was acquired by the law of nations—ius gentium, or by the civil law—ius civile. It must be stated at this point that there was no unanimity of thinking as to the distinctions between ius naturale, the law of nature, and ius gentium, the law of nations. Some jurists did not differentiate the one from the other; and they thought that some kinds of property were natural and that some kinds were held by the ius civile. Under title I of book II of the Institutes, Justinian stated that some properties admit of private ownership, while others cannot belong to individuals: for some things are by natural law common to all, some are public, some belong to a society or corporation—universitas—and some belong to no one. But most things belong to individuals, being acquired by various titles. Thus the following things are by natural law common to all—the air, running water, the sea, and consequently the seashore.

Things become the private property of individuals in many ways; for the titles by which we acquire ownership in them are some of them titles of natural law, which, as we said, is called the law of nations, while some of them are titles of civil law. It will thus be most convenient to take the older law first: and natural law is clearly the older, having been instituted by nature at the first origin of mankind, whereas civil laws first came into existence when states began to be founded, magistrates to be created, and laws to be written.

The ministers of the Roman Empire were often ambiguous in their theories concerning property, but it is an important fact that they linked property to the law of nature, a law which existed before the law of nations and before the civil law.

The early fathers of the Christian Church—

Said Richard Schlatter, in his book "Private Property"—

did not find in the New Testament a ready-made theory of property, but they did find there an attitude toward wealth and its use with which any Christian theory of property would have to square. Throughout the New Testament there is a distrust of riches and an emphasis on the advantages of poverty which are dramatically presented by the counsel of perfection which Jesus gave to the

rich young man: "If thou wilt be perfect, go and sell that thou hast, and give to the poor," and His observation that "it is easier for a camel to go through the eye of a needle, than for a rich man to enter into the kingdom of God." Moreover, the gospel of love, of the brotherhood of man, of the equal worth of all the children of God, like the Stoic theory of the equality of men, pointed toward some equalitarian or communistic theory of property. Consequently, when the fathers of the church began to work out a rational doctrine, they turned to the pagan philosophers and the lawyers. There they found a theory of property providentially adapted to their purpose: it could be reconciled with the views of the New Testament, and at the time it justified inequality and private ownership.

It has been conjectured that some of the earliest church groups, influenced by the example of the church at Jerusalem, may have regarded private property as unlawful for a Christian. But the great organized church of which the great fathers were members did not, any more than Cicero and the lawyers, or any major Christian group from that day to this, want to demolish the existing property arrangements. On the other hand, it was their function to preach the Biblical precepts and examples of perfection. The Roman theory of property not only solved this dilemma: it dovetailed neatly with other Christian myths and doctrines.

The golden age of the philosophers, where men were equal according to the precepts of natural law, corresponded to the Garden of Eden and the doctrine of the equality of believers. The conventional institutions which destroy that primitive equality and freedom were, according to the philosophers, introduced, and are now necessary and justifiable, because of the corruption of human nature. The church explained the origin of that corruption by the myth of the fall of man and the doctrine of human depravity.

St. Augustine had this to say about property:

Whence does each possess what he does possess? Is it not human right? For by divine right "the earth is the Lord's and the fullness thereof": poor and rich are supported by one and the same earth. But it is by human right he saith, "This estate is mine, this house is mine, this slave is mine." By human right, that is, by right of emperors. How so? Because it is through the emperors and princes of this world that God hath distributed human rights to mankind * * *. Take away the right derived from the emperor, and then who dares say, that estate is mine, or that slave mine, or this house mine?

Apparently St. Augustine regarded property as one of the conventional creations of the state and as one of the fruits of man's fall from innocence.

This same view is expressed by A. J. Carlyle in "Property, Its Duties and Rights":

The institution of property represents both the fall of man from his primitive innocence, the greed and avarice which refused to recognize the common ownership of things, and also the method by which the blind greed of human nature may be controlled and regulated * * *. This view is the opposite of that of Locke, that private property is an institution of natural law, and arises out of labour. To the fathers the only natural condition is that of common ownership and individual use. The world was made for the common benefit of mankind, that all should receive from it what they require. They admit, however, that human nature being what it is, greedy, avaricious, and vicious, it is impossible for men to live normally under the condition of common ownership. This represents the more perfect way of life, and this principle was represented in the organization of the monastic life, as it gradually took shape. For mankind in general, some organization of ownership became necessary, and this was provided by the state and its laws, which have decided the conditions and limitations of ownership. Private property is therefore practically the creation of the state, and is defined, limited, and changed by the state.

It is evident that the canon lawyers and scholastic philosophers who systematized the social ideas of the medieval era subscribed to the theory of the church fathers that private property was conventional and the result of sin. They did not take the trouble to explain how a man could acquire what food he needed, even in a state of innocence, as in the Garden of Eden, without making it his private property in so doing.

The recovery of the works of Aristotle in the 1200's assisted in completing the revolution in the theory of property. St. Thomas Aquinas, with the help of Aristotle's works, maintained that property and the political authority by which property is protected were not necessary evils, but that they were natural and good.

If I may quote again from Professor Schlatter's book:

St. Thomas likewise followed Aristotle in giving the lawmaker the responsibility for distributing and regulating private property for the common good. Later theorists, agreeing with St. Thomas that private ownership was natural, and wanting to defend the property of the individual against the attacks of powerful princes, took over the theory of natural modes of acquisition and asserted that property so acquired was held by a natural right superior to the claims of the state. But St. Thomas does not refer to the legal theory of acquisition and in his concept of the state there was no place for a theory of individual rights. The ruler was bound by natural law to maintain the general system of private ownership and direct it for the common good, but he was not bound to respect as a natural right the property of any one man. In the "Treatise on Law" St. Thomas defends the elaborate property laws of the Old Testament by pointing out that they conformed to Aristotle's theory of property. They provided that some property should be public and some private.

Ptolemy of Lucca, pupil of St. Thomas Aquinas, completed one of the earliest and most important works on political theory, the "De Regimine Principum," which was begun by St. Thomas himself. In it, Ptolemy said that men require a private division of property in order to live in peace, and he cites the example of Abraham and Lot who divided their pastures when their herdsmen quarreled.

Another student of St. Thomas Aquinas, Aegidius Romanus, wrote one of the ablest and most interesting political treatises of the whole Middle Ages. To this work and to Aegidius, Professor Schlatter refers as follows:

But on several important points Aegidius went beyond St. Thomas and even Aristotle. St. Thomas made no sharp distinction between the ius gentium—the body of reasonable additions to the natural law, including the laws of property—and the enacted law of the state. It was possible for him to say that private property was natural and at the same time to say that in any specific case it had been instituted by human lawgivers. Likewise, Aristotle thought that property was natural but that it was the business of the founder of the city to institute it. But Aegidius introduces the important idea that the ius gentium is unwritten and is universally recognized by men before they have established political societies. After the fall men lived, poor and dispersed, in a state of nature. To secure for themselves the necessities of life they came together and made agreements and pacts establishing property rights. These pacts were a part of the ius gentium which is a kind of natural law based on contracts between men—quasi ius naturale contractum. Only later did men agree to set up political authorities with power to enact positive laws. Thus, in the final form of Aegidius' theory, not only is private property in general natural, as Aristotle and St. Thomas had said, but the particular rights of individual owners are rooted in a natural law which is prior in time, and more binding in authority, than any of the laws of the state.

To achieve this result Aegidius made use of the popular medieval theory of the social contract. Property was natural, as Aristotle had said, but historically it had been instituted by contracts. And in that historical process, through which men escaped from the savage state, contracts establishing property preceded those which instituted political authorities. The rulers, according to Aristotle and St. Thomas, are bound to institute some equitable system of private ownership; but the prince of Aegidius is limited to protecting the particular system of private rights already in existence. In this respect the theory of Aegidius was similar to those which in later centuries the middle class used to defend its property from the exactions of absolute monarchs. But for Aegidius himself the theory was useful primarily in defending the property of the church—a matter of the greatest practical concern during his lifetime. Much of the practical politics and most of the political theory of the later Middle Ages was concerned with the problem of the relation of the secular and the spiritual powers. At the end of the 13th century the struggle between the two had crystallized around the question of property.

The point of the argument, of course, was to prove that Philip the Fair, King of France, had no right to take the property of the clergy without their consent. The rights of ownership are grounded in natural law and in contracts made before there were kings of France. What the King had not given he obviously had no right to take away. With a judicious mixture of Aristotle, St. Thomas, the theory of the social contract, and the legal theory of acquisition, Aegidius defended Boniface against Philip and, incidentally, he developed a modern theory of ownership which contradicted at every point the traditional Augustinian idea that property was the conventional creation of the state and "not according to nature."

Professor Schlatter says:

With the development of feudal institutions the Germanic theory of property replaced the Roman in medieval legal and political theory. In feudal law all property, and the political privileges tied to it, was thought of as having belonged originally to the king. He had granted the use of it, on certain conditions, to his vassals * * *. The feudal theory of dominion coincided completely with St. Augustine's theological theory of the origin of human rights. God is the lord and owner of the world. He grants the right to use His property to the righteous on condition that they render homage and fealty to Him. And just as in the feudal theory property and political au-

thority were both denoted by dominion—the land law was identical with the law of the land—so in Augustine's theory property and political authority were aspects of the same thing—that domination of man by man necessitated by Adam's sin.

Aegidius combined the Augustinian and the feudal theory and claimed that God had granted dominion not to the king but to the Pope, who was the supreme feudal overlord in this world. So long as the feudal system lasted the argument between the Papacy and the secular authorities revolved around this question, whether kings derived their temporal authority directly from God or mediately by way of the Pope. But whichever side men took they were not attacking the fundamental principle of private property.

A prominent 15th century writer on law and politics was Sir John Fortescue. He defended the English middle class and the property on which its power was based.

I again quote Schlatter:

Fortescue accepts without question the venerable Christian doctrine that property is the result of sin. He refers to the famous words of Gratian's Decretum and states that before the fall of man all was common by natural law. But his acceptance of that doctrine is entirely formal and he proceeds at once to prove that property is now rooted in natural law. The same law, he explains, which forbade private ownership before sin prescribes it after the fall. His analogical proof resembles that of Alexander of Hales. The same breath cools the porridge and kindles the flame; the same sun hardens mud into brick and dissolves ice into snow; and similarly the same law of nature prescribes communism in the state of innocence and private property in the state of corruption. The historical proof is that Cain and Abel had property before there was any jura gentium or lex humana. Wherefore it must be of necessity conceded that property in things, especially in things acquired by the sweat of the brow, first accrued to man by the law of nature alone, seeing there was then no human law; and consequently buyings, sellings, lettings, hirings, and the like took their origin from the law of nature which is perpetual law.

Fortescue, therefore, maintained that property existed prior to human law—a popular theory convenient for limiting the claims of government.

Fortescue defended the rights of inheritance by reference to the divine edict:

In the sweat of thy face shalt thou eat bread, till thou return unto the ground.

He maintained that man was thus granted a property in the things he should acquire by his labor, for since the bread which a man gained by labor was his own, and no man could eat bread without the sweat of his own brow, every man who toiled not was prohibited from eating the bread which another man had acquired by his own sweat; property in the bread so gained accrued only to the man who labored for it, and in this way property capable of descent first originated.

Schlatter says:

Men continued after Fortescue, as they had done before him, to argue about the precise limits of papal, and royal control over the property of individual Christians and subjects, but in doing so they were not questioning the basic institution of private ownership. The issue was primarily one of taxation, and even the theorists who attributed the most absolute powers to pope or king, never imagined that those powers would be used to abolish private property and the class structure connected with it. They all agreed that private property was fixed in the nature of things. The idea that it was the only possible system was so firmly rooted that Thomas Hobbes in the 17th century could categorically deny that his sovereign ruler was in any way limited by a law of nature, and yet take it for granted that he would protect the property of his subjects.

Fortescue still used the concept of dominion, but he connected it with the idea of contract which in the course of time replaced it altogether. The idea that society was an organized hierarchy and that the ruler had the power to deprive men of their possessions and privileges when they failed to fulfill their duties died along with the feudal system. The feudal theory of ownership as a conditional right to use property was replaced with the Roman and modern concept of absolute ownership. "It was the Roman pagan conception of absolute property that triumphed at the close of the Middle Ages. This idea, which is the foundation of modern capitalism, led at the same time to further attempts to depress the peasants into slavery. It has been fraught with a thousand evils, from which even now the world is slowly and with many struggles trying to recover. The 'reception' as it is called, of the Roman Law in 1495 in Germany may be taken as the date when the Middle Ages came to an end and the Roman ideas of property had conquered the West." Authorities in church and state, as Professor Tawney has shown, tried for some time to claim that they had a moral right as heads of the body politic to see that men used their property for the general welfare. In England, Tudor officials attempted to arrest the enclosure movement and Puritan saints would have liked to supervise the whole of economic life. But the attempts failed and the idea that a man should be able to do what he would with his own triumphed: the state had no general moral right but only those limited powers granted in the original contract; churchmen might advise men to use their property as stewards of God, but they might not force them to do so. The feudal theory of dominion lingered on as a formal legal doctrine, but with the collapse of the society which it had sought to explain and justify, it ceased to influence the theory of private property.

In the "Augsburg Confession," the official statement of Lutheran principles, the right of Christians to own property is expressly confirmed; the 38th article of religion of the Elizabethan Church asserted:

The goods of Christians are not common * * * as certain Anabaptists do falsely boast.

Nearly a hundred years later English Puritans explained in the "Westminster Confession of Faith," under the heading "The Communion of Saints," "nor doth their communion one with another, as Saints, take away, or infringe the title or propriety which each man hath in his goods and possessions."

As to Martin Luther, Schlatter has this to say:

Luther's remarks about private ownership illustrate the dilemma of Protestant theory. He began by attacking the property of the church, particularly that of the monasteries, and ended by defending the rights of ownership against radical Anabaptists. Against the church he argued that it is the duty of a Christian man to acquire property with which to relieve the poor and that it is his duty to acquire that property by work. Both arguments were directed against the monastic ideals of community ownership and voluntary poverty, and against the title of the clergy to those large properties which had been acquired, not by labor, but by the sale of imaginary spiritual goods and by the donations of the superstitious. Both arguments were proved by quotations from St. Paul and in general, as we should expect, Luther's theory of property depended much more heavily upon the authority of Scriptures than had that of his medieval predecessors. The example of Abraham proves that a godly man may acquire great wealth and engage in trade. Ananias was condemned for lying, not for holding back his property. The pooling of property was possible during the first fervor of conversion, but many modern church members are not true Christians and would not work if communism were introduced; the later churches founded by the Apostles did not follow the example of Jerusalem; in normal times Christians have families and this is not possible without private property.

Finally, Luther sums up the argument against poverty and community property by quoting the Bible: riches are good provided that a man does not put his trust in them; Christ had a purse—Judas managed it for him—and so was a property owner.

Against the ancient theory that property was common by natural law, Luther gave the classic Reformation argument. Natural law, he wrote, is identical with the Ten Commandments. The other parts of the law of Moses are merely civil and do not bind us, but the Ten Commandments can never be abrogated. "Thou shalt not steal" is the foundation of private ownership.

Luther had none of that faith in the rational nature of man which led medieval thinkers to assert that men could control and limit their governments and see to it that these did not abuse the power which had been given them for the good of everyone. In the 16th century many thinkers rejected the medieval theory of limited government. Nevertheless, very few of these theorists went so far as to say that the state might arbitrarily violate the rights of private owners.

Philip Melanchthon said that the Commandment "Thou shalt not steal" is the solid base on which reasonable theories of property must ultimately rest.

The scholastic philosophers—

He wrote—

distinguish between precepts and counsels of the law. They assert that, since the fall, men are permitted to own property, but that the more perfect way is to have all in common.

The distinction is wrong, Melanchthon said:

God wants all men to work, to acquire property, and to respect the property rights of others. There is no more perfect way. Men had better strive to follow the new laws which God has decreed for the world corrupted. The saints will have all things in common in heaven, but on earth God wills men to have individual properties.

John Calvin condemned the Anabaptists' proposal to abolish property, government, and inequality, as presupposing a perfection which neither they nor any men could ever attain. Thus he apparently implied that natural law is either unknowable, except as it is revealed in the Bible, or was abrogated at the fall. Either theory is consistent with the Augustinian view of man's depravity. And either theory made it unnecessary and irrelevant to refer to natural law in

defending an institution based on God's law. "Thou shalt not steal" gives men a divine right to the property God bestows upon them. According to Calvin, they need no other title. Calvin listed as one of the primary aims of political authority "that every person may enjoy his property without molestation."

John Ponat, English bishop during the reign of Queen Mary, attacked royal power by arguing that the consent of the people is the source of the authority of kings and princes and that it could, therefore, be presumed that the exercise of that authority was to be kept within reasonable limits, which the people had had in mind in their original grant of the authority. Ponat took the position that the law of nature forbids a sovereign from taking man's property from him.

Among the antimonarchial treatises was the "Vindiciae contra Tyrannos," which referred to the contract theory of government whereby men, having acquired property through labor, established governments through contract according to which property, privately held, was protected. Protection of private property was the basis upon which and the purpose for which the contract was established.

Private property was upheld by the French theorists of absolutism mainly because of their interest in establishing a strong national monarchy. Jean Bodin, while a supporter of the monarchy, did not subscribe to the theory that the king was the sole owner of property and that he had an unlimited right to tax. He was opposed to any suggestions concerning community of property, stating that that which belongs to no one in particular is neglected by everyone in general, that communism breeds anarchy, and that common ownership destroys not only private property but the family unit as well.

In the 17th century, Hugo Gratius, a citizen of the Netherlands, expounded a theory of property which contained elements of antecedent theories. According to Gratius, the world was given to men as a common inheritance by the creator. The only private property was that which was consumed by each individual for the sustenance of life. However, with the passage of time, cupidity and avarice, as well as ambition, drove men to acquire property beyond their own physical needs. As a result, it became necessary, in the interest of preserving peace, to institute private property. He asserted that the institution of private property preceded the establishment of government, and that the right to use and control one's possessions was antecedent to the establishment of governmental laws.

Thomas Hobbes subscribed to a thorough absolutism in which the arbitrary claims of government held absolute priority over the claims of the individual owner of property. The sovereign was not restricted by human law from invading their property rights, but his sovereignty would be forfeited if in failing to follow the law of nature, the safety and protection of his subjects goods were not appropriately secured.

Samuel Pufendorf, a German, took the position that there was community of property in the original state of nature, but that it was negative rather than positive—negative because no man had any right to anything. Consequently, man in the state of nature could possess what he wanted without violating the rights of other men. The right to own that which was seized emanated from the act of seizure, it being tacitly agreed thusly among men. Pufendorf maintained that such agreements establishing property preceded, therefore, the establishment of governments and that governments were created to secure the antecedent agreements.

Governments, therefore, having been established to protect property rights based upon prior agreements, it followed logically that governments were bound to respect the property of individuals.

It remained for John Locke to express the standard bourgeois theory of property. Rebellion against feudal privilege and royal absolutism had as its slogan "life, liberty, and property." Locke, who lived in the latter part of the 18th century, believed that property was one of the sacred trinity of natural rights. Locke maintained that private property is an institution of nature rather than an institution of men. He maintained that Adam and his posterity were born with property rights but that political rights evolved from agreements among men. Locke's conception of the origin of private property is capsuled in the following words:

> Though the earth and all inferior creatures be common to all men, yet every man has a "property" in his own "person." This nobody has any right to but himself. The "labor" of his body and "work" of his hands, we may say, are properly his. Whatsoever, then, he removes out of the state that nature hath provided and left it in, he hath mixed his labor with it, and joined to it something that is his own, and thereby makes it his property. It being by him removed from the common state nature placed it in, it hath by this labor something annexed to it that excludes the common right of other men. For this "labor" being the unquestionable property of the laborer, no man but he can have a right to what that is once joined to, at least where there is enough, and as good left in common for others.
>
> As much land as a man tills, plants, improves, cultivates, and can use the product of, so much is his property. He by his labor does, as it were, enclose it from the common. Nor will it invalidate his right to say everybody else has an equal title to it, and therefore he cannot appropriate, he cannot enclose, without the consent of all his fellow-commoners, all mankind. God, when He gave the world in common to all mankind, commanded man also to labor, and the penury of his condition required it of him * * *. He that, in obedience to this command of God, subdued, tilled, and sowed any part of it thereby annexed to it something that was his property, which another had no title to, nor could without injury take from him.
>
> And thus * * * supposing the world, given as it was to children of men in common, we see how labor could make men distinct titles to several parcels of it for their private uses, wherein there could be no doubt of right, no room for quarrel.
>
> Nor is it so strange as, perhaps, before consideration, it may appear, that the property of labor should be able to overbalance the community of land, for it is labor indeed that puts the difference of value on everything; and let anyone consider what the difference is between an acre of land planted with tobacco or sugar, sown with wheat or barley, and an acre of the same land lying in common without any husbandry upon it, and he will find that the improvement of labor makes the far greater part of the value * * *. If we will rightly estimate things as they come to our use, and cast up the several expenses about them—what in them is purely owing to nature and what to labor—we shall find that in most of them ninety-nine hundredths are wholly to be put on the account of labor.
>
> From all which it is evident, that though the things of Nature are given in common, man (by being master of himself, and proprietor of his own person, and the actions or labor of it) had still in himself the great foundation of property; and that which made up the great part of what he applied to the support or comfort of his being, when invention and arts had improved the conveniences of life, was perfectly his own, and did not belong in common to others. Thus labor, in the beginning, gave a right to property.

Writing of Locke, Professor Schlatter makes this statement:

> In the chapter on property as a natural right he was careful to add that most modern property is conventional. But in the following chapters he certainly implied that, in comparison with the conventional rights which rulers derive from the contract of government, the rights of ownership are always natural. His purpose in writing was to protect the solid citizen from the depredations of arbitrary government. His method was to show that all just governments derive their power from the consent of the governed and that the governed are possessed of certain inalienable, natural rights which governments are in duty bound to protect and respect. The reader of Locke's essay gets the impression that property is one of these inalienable rights. The discussion of property comes before the sketch of the origin of governments. In book I, section 22, life and liberty are proved to be inalienable natural rights; in book II these are fused with the concept of property. Property is defined as "life, liberty and estate." Thus the conventional rights of ownership are joined with the natural rights of life and liberty; property rights and natural rights have been inextricably intertwined in the reader's mind.
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> The logical obscurities of the Lockean theory and the futility of attempting to use it as a justification of modern property relations have been clearly exposed in the last hundred years. But in its heyday it seemed clear, distinct, and true. Wherever property was widely distributed among groups of independent artisans and farmers, the idea that labor was the basis of ownership was readily accepted. Wherever property was monopolized by the inheritors of feudal privilege, the idea that labor ought to be the basis of ownership served as an argument for abolishing monopoly and privilege. Wherever arbitrary governments were to be replaced with representative institutions responsive to the interests of property owners, "life, liberty, and property," and its corollary, "no taxation without consent" were the revolutionary battle cries. So long as middleclass thinkers were the undisputed expositors of truth, the natural right of property was a standard and accepted theory. Locke proclaimed it for the English; the Declaration of the Rights of Man made it the official theory of the French; Jefferson omitted property from the partial list of natural rights in the Declaration of Independence, but it was included in a number of State bills of rights, notably those of Virginia and Massachusetts. Finally, it was

the accepted theory of classical, or middle-class, economic theory: "The property which every man has in his own labor," Adam Smith wrote, "as it is the original foundation of all other property, so it is the most sacred and inviolable."

Sir William Blackstone, in the 18th century, wrote thusly:

There is nothing which so generally strikes the imagination, and engages the affections of mankind, as the right of property; or that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe.

* * * * *

All property is derived from society, being one of those civil rights which are conferred upon individuals, in exchange for that degree of natural freedom which every man must sacrifice when he enters into social communities. If therefore a member of any national community violates the fundamental contract of his association, by transgressing the municipal law, * * * the state may very justly resume that portion of property, or any portion of it, which the laws have before assigned him.

The right of inheritance, or descent to the children and relations of the deceased * * * is certainly a wise and effectual, but clearly a political, establishment; since the permanent right of property, vested in the ancestor himself, was no natural, but merely a civil, right.

The Encyclopaedia Britannica of 1778–83 specified that every Briton was endowed from birth with the "three great and primary rights of personal security, personal liberty, and private property."

It is interesting to note that the Stamp Act had been opposed in Parliament because it violated a natural right of property, and its corollary, no taxation without consent—Lecky, "History of England in the 18th Century," second edition, London, 1883, volume III, page 338.

Tom Paine maintained that personal property resulted from man's living in society. As he expressed it:

Personal property is the effect of society; and it is as impossible for an individual to acquire personal property without the aid of society, as it is for him to make land originally. Separate an individual from society, and give him an island or a continent to possess, and he cannot acquire personal property. He cannot be rich. So inseparable are the means connected with the end, in all cases, that where the former do not exist the latter cannot be obtained. All accumulation, therefore, of personal property, beyond what a man's own hands produce, is derived to him by living in society; and he owes, on every principle of justice, of gratitude, and of civilization, a part of that accumulation back again to society from whence the whole came * * *. If we examine the case minutely, it will be found that the accumulation of personal property is, in many instances, the effect of paying too little for the labor that produced it.

The great adversary of Tom Paine was Edmund Burke, who substituted the traditional rights of Englishmen for the abstract rights of man. In a letter to a French acquaintance, Burke wrote as follows:

When, therefore, I shall learn that, in France, the citizen, by what ever description he is qualified, is in a perfect state of legal security with regard to his life, to his property, * * * to the free use of his industry and his faculties; when I hear that he is protected in the beneficial enjoyment of the estates to which, by the course of settled law, he was born, or, provided with a fair compensation for them * * * when I know all this of France, I shall be as well pleased as everyone must be who has not forgot the general communion of mankind, nor lost his natural sympathy in local and accidental connections.

Burke, in his "Reflections on the Revolution in France," published in 1790, wrote:

I should therefore suspend my congratulations on the new liberty of France until I was informed how it had been combined with government * * * with solidity and property, with peace and order * * *. All these (in their way) are good things, too; and without them liberty is not a benefit whilst it lasts, and is not likely to continue long.

Burke then extolled the virtues of inequity of possession of property:

Nothing is a due and adequate representation of a state that does not represent its ability as well as its property. But as ability is a vigorous and active principle, and as property is sluggish, inert, and timid, it never can be safe from the invasions of ability, unless it be, out of all proportion, predominant in the representation. It must be represented, too, in great masses of accumulation or it is not rightly protected. The characteristic essence of property, formed out of the combined principles of its acquisition and conservation, is to be unequal. The great masses, therefore, which excite envy, and tempt rapacity, must be put out of the possibility of danger. Then they form a natural rampart about the lesser properties in all their gradations. The same quantity of property which is by the natural course of things divided among many has not the same operation. Its defensive power is weakened as it is diffused. In this diffusion each man's portion is less than what, in the eagerness of his desires, he may flatter himself to obtain by dissipating the accumulations of others.

* * * * *

The power of perpetuating our property in our families is one of the most valuable and interesting circumstances belonging to it, and that which tends the most to the perpetuation of society itself. It makes our weakness subservient to our virtue; it grafts benevolence even upon avarice. The possessors of family wealth, and of the distinction which attends heredity (as most concerned in it), are the natural securities for this transmission.

Of the French Revolution's assault on property rights, Burke was critical:

I am not afraid that I shall be disavowed when I assure you that there is not one public man in this kingdom whom you wish to quote—no, not one, of any party or description—who does not reprobate the dishonest, perfidious, and cruel confiscation which the National Assembly has been compelled to make of that property which it was their first duty to protect. * * * Who but a tyrant (a name expressive of everything which can vitiate and degrade human nature) could think of seizing on the property of men, unaccused, unheard, untried, by whole descriptions, by hundreds and thousands together? Who that had not lost every trace of humanity could think of casting down men of exalted rank and sacred function, some of them of an age to call at once for reverence and compassion—of casting them down from the highest situation in the commonwealth, wherein they were maintained by their own landed property, to a state of indigence, depression, and contempt?

* * * * *

The enemies to property at first pretended a most tender, delicate, and scrupulous anxiety for keeping the king's engagements with the public creditor. These professors of the rights of men are so busy in teaching others that they have not leisure to learn anything themselves; otherwise, they would have known that it is to the property of the citizen, and not to the demands of the creditor of the state, that the first and original faith of civil society is pledged.

With reference to property rights in the English, American, and French Revolutions, Deitz states that these rights are at least equal to other liberal rights:

Property is valued in the documents which resulted from the struggle against absolute monarchy in England; namely, the Petition of Right, the Instrument of Government, and the Bill of Rights.

Significantly the Petition of Right, drafted in 1628 under the guidance of Sir Edward Coke, quotes only that clause of Magna Carta that, more than any other provision of the famous charter, demonstrates the parity of property with life and liberty: "No freeman may be taken or imprisoned or be deseised of his freehold or liberties, or his free customs, or be outlawed or exiled, or in any manner destroyed, but by the lawful judgment of his peers, or by the law of the land." Illegal taxation is denounced at the beginning, and at the end of the enumeration of complaints the fact that people have been unjustly condemned and subsequently executed is mentioned. Thus the impairment of property and deprivation of life form the framework for the denunciation of the king's abuses. In the middle portions of this document, arbitrary imprisonment and the billeting of soldiers are criticized. The same order of enumeration is employed in the actual petition to the king: "That no man hereafter be compelled to make or yield any gift, loan, benevolence, tax, or such like charge, without common consent by act of Parliament; and that none be called to make answer, or take such oath, or to give attendance, or be confined, or otherwise molested or disquieted concerning the same, or for refusal thereof; and that no freeman, in any such manner as is before mentioned, be imprisoned or detained; and that Your Majesty will be pleased to remove the said soldiers and mariners, and that your people may not be so burdened in time to come; and that the aforesaid commissions for proceeding by martial law, may be annulled; and that thereafter no commissions of like nature may issue forth to any person whatsoever, to be executed as aforesaid, lest by colour of them any of Your Majesty's subjects be destroyed or put to death, contrary to the laws and franchise of the land."

Although in the 1640's the Puritan revolution resorted to bloodshed and abolished the monarchy, it did not oppose the institution of private property. Cromwell's Instrument of Government, issued in 1653, demonstrates that fact. The document assigns a superior position to property rights. Aside from property, only one right is mentioned; namely, freedom of religion. Although the latter is expanded for Protestants, it is considerably restricted for members of other confessions. On the other hand, even though article 18 of the Instrument of Government established property qualifications for the right to vote, yet it does not restrict property rights. Article 6 prescribes that no tax, charge, or imposition shall be laid upon the people without the consent of Parliament. Article 30 provides that money for the armed forces must be raised by Parliament. Article 39 appears as a bulwark for vested rights. Since the Instrument of Government mentions only the right of property and that of religion, and since the latter right is restricted whereas the former is not, property rights seem to rank the highest among liberal rights.

In the Bill of Rights of 1689, property rights are considered equal to other rights. First, James II is accused of having endeavored to subvert and to extirpate the liberties of the English. Among such accusations as raising and keeping a standing army in time of peace without the consent of Parliament, quartering soldiers, contrary to law, having prosecuted people in the Court of King's bench, for matters and causes cognizable only in Parliament, disarming Protestants, demanding excessive bail from persons committed in criminal cases and eluding the benefit of the laws for the liberty of the subjects, permitting excessive fines and illegal and cruel punishments, there can be found the accusation that the King arbitrarily infringed upon the property of his subjects "by levying money for and to the use of the Crown, by pretense of prerogative, for other time, and in other manner than the same was granted by Parliament." Property rights appear similarly in the latter part of the bill, where the "ancient rights and liberties" of Englishmen are reaffirmed. Among clauses providing for more religious freedom and for the right of Protestants to bear arms, and prohibiting the raising and keeping of standing armies in time of peace, and the requisition of excessive bail or the imposition of excessive fines or the infliction of cruel and unusual punishments, there can be found the provisions "that levying money for or to the use of the Crown, by pretense or prerogative, without grant of Parliament, for longer time or in other manner than the same is or shall be granted, is illegal." At the end, the Commons pledge themselves to maintain their Majesties "to the utmost of their powers, with their lives and estates."

The American Revolution, largely influenced by the Whig revolution, recognized the importance of property among liberal rights. This is evident in the Declaration of Independence. The "pursuit of happiness," meaning mainly the free acquisition, possession and use of property is proclaimed as one of the unalienable rights of man at the very beginning of the declaration, besides those of life and liberty. Even if one does not accept the idea that the pursuit of happiness means the protection of property, property rights still appear to be valued as equal to other rights. First, it could be claimed that they are included in that other unalienable right proclaimed at the outset—liberty. Obviously liberty, meaning the individual's general liberty, in the absence of specific exclusions, would embrace all the particular liberties of men, including the rights of property. Second, property rights are ranked on a par with other liberal rights in later passages. Thus the accusation that British officers harass the colonists is mentioned in the same breath as the complaint that these officers eat out the colonists' substance. The statement that British troops are not being punished for murdering Americans is followed by a note that the King extinguished the colonists' trade with other parts of the world. The complaint about the imposition of taxes without consent is followed by one about the deprivation of the benefits of trial by jury. The King "has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people" is written in another passage which indicates that property is considered as valuable as life itself. Finally, the very last sentence of the document states that the colonists pledge their lives, fortunes, and honor to support the declaration.

Occasionally, the Declaration of Independence is considered to favor the poor over the rich and a fair distribution of property rather than its protection. It is said that the statement, "all men are created equal," elevates equality over freedom. However, this is hardly the case. "Life, liberty, and the pursuit of happiness" are considered unalienable rights of man, while equality is not. The most significant principle of the declaration is not equality, but freedom. And nowhere in this document can there be found any indication that the value of property is not equal to any of the particular liberties which the declaration asserts.

The parity of property with other liberal rights is also evident in the bills of rights which were adopted by the new States. The classic example of Virginia is a case in point. In its first section, "the enjoyment of life and liberty, with the means of acquiring and possessing property," are proclaimed as inherent rights of men. Apart from this general statement, property rights are valued equally with other rights in the more specific clauses which follow. Section 6 provides that men "cannot be taxed or deprived of their property for public uses, without their own consent * * * nor bound by any law to which they have not, in like manner, assembled, for the public good." Laws which infringe upon property are considered as detrimental as laws which interfere with other rights. Under section 11, trial by jury is prescribed not only in criminal cases, but also "in controversies respecting property, and in suits between man and man."

Similar provisions can be found in the bills of rights which were adopted by other States. Also here, property ranks with liberty and life as an inherent right of man. Controversies over property enjoy the privilege of trial by jury. No less can a person be deprived of his property than can his life or liberty be taken away from him. Property is as secure from search and seizure as the person is. Every member of society is entitled to enjoy his property as much as his life and liberty.

* * * * *

Finally, property appears as an important right in the Constitution of the United States, a right that is definitely on a par with, if not superior to, other liberal rights. Although the word "property" is not expressly mentioned in the preamble, nevertheless the protection of property is included in the statement regarding the aims of the people. The assertion that the Constitution is ordained and established to secure the blessings of liberty implies that property should be protected, for "liberty" is a general concept and includes all particular liberties which are not specifically exempted. It includes property rights. The intent of the framers to protect property in the preamble can be concluded also from the declaration that a more perfect Union is formed in order to establish justice and insure domestic tranquility, since these values, at the time at which the Constitution was framed, were threatened mainly by actions which were endangering property rights.

The protection of property can be seen also in the articles of the Constitution. Section 9 of article 1, besides providing for the writ of habeas corpus and prohibiting bills of attainder and ex post facto laws, prohibits arbitrary tax laws. The following section is even more outspoken. Keeping the States from passing bills of attainder and ex post facto laws, it prohibits also, due to infringements upon property through State legislation, the passage of laws impairing the obligation of contracts.

* * * * *

While there can be no doubt that throughout the Constitution property rights are valued as highly as other liberal rights, it could be argued that they were even dearer to the framers than were such rights as freedom of religion, speech and assembly and other liberties mentioned in amendments, because their protection was already provided for in the original text of the Constitution.

The great document of freedom produced by the French Revolution is the Declaration of the Rights of Man and Citizen of 1789. It protects property as much as other liberal rights.

As Americans had drawn upon the ideas of the Whigs, the French were influenced by American political thought. The colonists' struggle with the mother country was followed with interest. Frenchmen not only rallied to the American cause by enlisting in the new Nation's Armed Forces, but, upon their return home, also helped to acquaint their compatriots with ideologies which had developed on the other side of the Atlantic. Books on the United States were printed. These influences came to bear upon the formulation of the Declaration of the Rights of Man and Citizen.

Earlier drafts show that property was considered equal to other liberal rights. Condorcet mentioned the safety and liberty of property along with personal safety and liberty. Mirabeau's declaration of rights of 1788, besides guaranteeing freedom of speech, the press, of public meeting, the right of speedy, free and impartial justice, provides for protection from attacks upon person, house, papers and property, from banishment or deprivation of life, liberty and property.

Property rights were not neglected in the deliberations of the Constituent Assembly. Lafayette, back from America, suggested a bill of rights which was modeled after that of Virginia. He included property among the unalienable rights of man, next to freedom of opinion, the care of honor and life, the entire disposition of his person, business and faculties, the free communication of thought, the pursuit of happiness, and the right to resist oppression. Mounier's proposal differed only slightly from that of Lafayette. It added provisions concerning the prohibition of ex post facto laws, arbitrary arrests and fines, and guaranteeing freedom of religion and of the press, but the proposal did not minimize the protection of property.

* * * * *

In the Declaration of Rights of Man and Citizen itself, property rights appear to be as natural, unalienable, and sacred as other liberal rights. After the first article has affirmed that men are born and continue free and equal in their rights, article II states that the end of all political associations is the preservation of the natural and imprescriptible rights—liberty, property, security, and resistance to oppression. In the following articles, various rights of the individual are specified. Arbitrary accusations, arrests, and confinements, cruel punishments, and punishments under ex post facto laws are prohibited. Freedom of religion, speech, writing, and publication are guaranteed. In the last article of the declaration, property is considered inviolable, sacred, and protected from arbitrary interference. Of all the rights mentioned in the document, only property is declared "inviolable and sacred." It is mentioned, with liberty, security, and resistance to oppression, among the "natural and imprescriptible" rights of men. Furthermore, unlike other rights, property is referred to twice, and is mentioned in the most conspicuous passages of the declaration, at the beginning and at the end. No further proof is needed to demonstrate the importance of property among the rights which are enumerated in the declaration.

* * * * *

The great documents of the democratic revolutions, be they written in the 17th or 18th century, in England, America, or France, consider property rights as being definitely equal to such other liberal rights as freedom of speech, the press, and assembly. This fact is not surprising. By assigning property rights a position which is not inferior to that held by other rights, the democratic revolutions merely recognized what was obvious and had been hallowed throughout the

ages, namely, that property was a natural right, a prerequisite of life and freedom.

* * * * *

Accordingly, the very events which led to modern democracy support our assertion that property rights are as important a part of freedom as are other liberal rights, not to mention their superiority over democratic rights. Therefore, the distinction between property rights and so-called civil rights and the assertion that the latter are entitled to greater protection because they are more necessary for the working of democracy are unwarranted not only because they misconceive the nature of freedom, disregard the nature of man, and do not take into account the experience of ages, but also because they were rejected by the very people that are usually quoted in their support, namely, by the founders of modern democracy.

Adam Smith, in "Wealth of Nations," referred to "the property which every man has in his own labor." He went on to say that "it is the original foundation of all other property, so it is the most sacred and inviolable." Smith used the doctrine that a man's labor belonged to himself, but Smith did this to establish his thesis that a man should be free to sell it to any employer he chose.

Quoting Professor Dietze further:

By the end of the 18th century, the appreciation of property reached a climax. The Reformation had freed the individual to pursue his own religious beliefs and, through its unfaltering protection of private property, its stress upon the ethics of work and its elevation of wealth to a God-willed institution, provided men with extra incentive toward working for greater and greater progress. Still, men had not yet become fully liberated. Authoritarianism in the temporal sphere continued to exist. Consequently, the following generations fought for a further emancipation of the individual. As far as property rights are concerned, people felt that their protection should be comprehensive and not imply merely the right to acquire and possess, but also the right to use property freely. However, there existed considerable restrictions on the latter right until the second part of the 18th century. The idea of an unrestricted use of property became generally accepted only after the publication of Adam Smith's "Wealth of Nations." The appearance of that work in the very year in which the American Revolution—the first major revolt against colonialism and probably the most property conscious of the modern democratic revolutions—began is no mere coincidence. It is symbolic of the fact that the free acquisition and use of property are as much essential ingredients of free property as is the safety of static property. At that time, property can be said to have come of age. It was defended as a natural right. It was considered necessary on utilitarian grounds. It was conceived to be an essential part of freedom. Last, but not least, its free use had received a classic defense.

It would be wrong to believe that property was entirely protected during that period. As in previous centuries, it was often challenged. After all, there were many people who saw in the French Revolution with its emphasis upon the superiority of the general will, primarily a signal for a thorough egalitarianism. Nevertheless, the forces favoring a protection of property maintained the upper hand. From among these forces, some are of a mainly theoretical, others of a mainly practical kind. Among the former, new schools of thought played a major role. The more practical acknowledgment of property can be seen particularly in legislation, adjudication and jurisprudence.

Private property was not only defended by utilitarians, idealists, and by the adherents of laissez-faire, but was also defended by the historical school. Toward the end of the 18th century, Edmund Burke had defended private property with historicist arguments. He felt that an equality of mankind is a "monstrous fiction," that inequality of possessions is inherent in human society and could never be removed. Property is a prerequisite of civilization, and conducive to the common welfare. Consequently, Burke defended property on a broad scale, irrespective of how it is acquired or abused. Property, he argued, is sanctioned by prescription, "the most solid of all titles, not only to property, but, which is to secure that property, to government." Its confiscation "cannot be justified under any form it may assume," even if it occurs under the pretext of serving the public good.

Madison's reference in the 10th Federalist paper to "the diversity in the faculties of men, from which the rights of property originate," and to the "different and unequal faculties of acquiring property" from which "the possession of different degrees and kinds of property immediately results," are clearly Lockean. To remember that John Adams was the author of the Massachusetts Bill of Rights is to be convinced that he was using the word "right" in a Lockean sense when he spoke of property in his "Defence of the Constitutions—1787–8."

The different connotations which that right had for Federalist and anti-Federalist is revealed with clarity in the debate over a Federal Bill of Rights. The Convention had dispensed with a Federal Bill of Rights because they saw no need to bid a government of property owners respect property, the basis, as John Adams thought, of all liberty. A bill of rights was a proper, if ineffective element of constitutions when property did not control the Government; where property ruled, the legislators' "soundness of sense and honesty of heart" were better protections of its rights than a "bill of rights, or any character drawn upon paper or parchment, those frail remembrances." Alexander Hamilton put the Federalist case with characteristic vigor:

It has been several times truly remarked that bills of rights are, in their origin, stipulations between kings and their subjects, abridgments of prerogative in favor of privilege, reservations of right not surrendered to the prince. Such was Magna Carta obtained by the barons, sword in hand, from King John. Such were the subsequent confirmations of that charter by succeeding princes. Such was the Petition of Right assented to by Charles I, in the beginning of his reign. Such, also, was the Declaration of Right presented by the Lords and Commons to the Prince of Orange in 1688, and afterwards thrown into the form of an act of Parliament. It is evident, therefore, that, according to their primitive signification, they have no application to constitutions, professedly founded upon the power of the people, and executed by their immediate representatives and servants.

But everyone knew that when Hamilton wrote "people" he meant "men of property." The moderate opponents made the inclusion of a bill of rights a condition of their support. In Massachusetts, Elbridge Gerry, who was no friend of excessive democratic and leveling principles, nevertheless thought that the natural rights of life, liberty, and property should be safeguarded by a special bill in the Constitution. George Mason, who had drafted the Virginia bill of rights, defended the rule as well as the right of property; he had argued in the Convention for property qualifications for Congressmen. On the other hand he opposed the Constitution because it forbade the States to violate the right of property; he himself was the owner of lands which the State of Virginia had confiscated from Lord Fairfax, and he candidly admitted that he feared the new Federal courts might invalidate the confiscation.

Other opponents of the Constitution insisted on having an explicit guarantee of the rights of nature and when Jefferson lent his authority to their complaints, the Federalists agreed to support amendments for that purpose. Such amendments, from the Federalist point of view, might be superfluous or illogical, but they could hardly be harmful. The result was the fifth amendment stating that no person should be "deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." The fifth amendment enacted into law the civil government of Mr. John Locke.

Before he wrote the Declaration, Jefferson had more than once referred to "life and property," "liberty and property," and the right of the individual to appropriate unoccupied land, in such fashion as to leave no doubt that he accepted the theory of Locke, whose "little book on government," he wrote, "is perfect as far as it goes." But he omitted "property" in the Declaration and, as someone has pointed out, he bracketed the word "propriete" in the copy of a Declaration of the Rights of Man drafted by Lafayette. In 1785 he wrote that the unequal distribution of landed property in France was the cause of the wretchedness of the French people, and his comments were agrarian in tone.

I am conscious that an equal division of property is impracticable. But * * * legislators cannot invent too many devices for subdividing property, only taking care to let their subdivisions go hand in hand with the natural affections of the human mind. The descent of property of every kind therefore to all the children, or to all the brothers and sisters, or other relations in equal degree is a politic measure, and a practicable one. Another means of silently lessening the inequality of property is to exempt all from taxation below a certain point, and to tax the higher portions of property in geometrical progression as they rise. Whenever there is in any country uncultivated lands and unemployed poor, it is clear that the laws of property have been so far extended as to violate natural right. The earth is given as a common stock for man to labor and live on. If for the encouragement of industry we allow it to be appropriated, we must take care that other employment be provided to those excluded from the appropriation. If we do not the fundamental right to labor the earth returns to the unemployed. It is too soon yet in our country to say that every man who cannot find employment but who can find uncultivated

land shall be at liberty to cultivate it, paying a moderate rent. But it is not too soon to provide by every possible means that as few as possible shall be without a little portion of land.

To take from one because it is thought that his own industry and that of his fathers had acquired too much, in order to spare others, who, or whose fathers have not exercised equal industry and skill, is to violate arbitrarily the first principle of association "the guarantee to everyone of a free exercise of his industry, and the fruits acquired by it." If the overgrown wealth of an individual be deemed dangerous to the State, the best corrective is the law of equal inheritance to all in equal degree; and the better, as this enforces a law of nature, while extra-taxation violates it.

Here Jefferson had returned to the usual theory of natural property, and he affirmed his belief in it again the same year in a letter to Du Pont de Nemours:

I believe with you that a right to property is founded in our natural wants, in the means with which we were endowed to satisfy those wants, and the right to what we acquire by those means without violating the similar rights of other sensible beings.

These are Jefferson's last words on the theory of property. But they do not settle the problem of what Jefferson thought about it.

Jefferson's political disciple, John Taylor of Caroline, was a more consistent upholder of a theory of natural right of property, but like his master he gave it an equalitarian hue:

The rights of man—

He wrote—

include life, liberty, and property. The last right is the chief hinge upon which social happiness depends. Our policy is founded upon the idea, that it is both wise and just, to leave the distribution of property to industry and talents; that what they acquire is all their own, except what they owe to society; that they owe nothing to society except a contribution equivalent to the necessities of government.

Quoting Dietze again:

The 19th century assimilated the heritage of its predecessor and made the most of it. The fruits of experience, produced by past generations and sometimes involved sacrifices, were not consolidated. The ideas of prior defenders of property, having influenced the formation of 18th century thought, persisted in the 19th century. A century that was made aware of Greek values by Winckelmann was not likely to overlook the Aristotelian concept of property. Roman law with its protection of property was appreciated in centuries that were on the whole inimical to the freedom of the individual, and thus was not likely to be rejected after freedom had been established in the democratic revolutions. Christian thought on property, having survived the challenge of the enlightenment, was apt to be welcome in the century of the bourgeoisie. Needless to say, the ideas of the enlightenment and of the democratic revolutions had their own impact. Accordingly, the century is like a receptacle of ideas on the defense of property which were ripened throughout the preceding centuries. As the century of liberalism in which the freedom of the individual attained great dimensions, the 19th century abounds in statements of the value of private property.

No group in the United States has been more faithful to the philosophy of the Founding Fathers than the interpreters of their handiwork, the constitutional lawyers and the judges. In 1795 Justice Patterson set a precedent for Supreme Court decisions by declaring that "it is evident that the rights of acquiring and possessing property, and having it protected, is one of the natural, inherent, and inalienable rights of man." Three of the best known treaties on American law, the "Commentaries" of Chancellor Kent, 1826–30, those of Justice Story, 1833, and T. M. Cooley's "Constitutional Limitations," 1868, all expound the same doctrine. In the Massachusetts Constitutional Convention of 1820–21, the conservatives, wanting to retain a property qualification for the suffrage, argued that property was a natural right and voting was not; hence it was sensible to restrict the suffrage in order to protect property. The same argument was used in the Virginia Convention of 1829–30, but by this time some conservative thinkers had begun to doubt the usefulness of the natural rights philosophy and put their arguments on utilitarian grounds. After the Civil War and the passage of the 14th amendment, Justices of the Supreme Court tended to use the words "due process of law" in place of the now unfashionable "natural rights," but the substance was unchanged. Even so the older form lingered on; in 1891 Justice Brewer told the graduates of the Yale Law School that property was an institution of the law of nature, that it began when Eve appropriated the forbidden fruit, and that the duty of the courts was to protect property from democratic majority, just as they had formerly protected it from autocratic monarchs. Except for a short relapse under Chief Justice Taney, the Supreme Court has been, until our own day, a consistent upholder of the theory that property is a right of nature.

In the first half of the 19th century, property rights usually received protection under the contract clause. As early as 1787, John Marshall wrote to Joseph Story, his future colleague on the Bench, that he considered the clause that no State shall pass any law impairing the obligation of contracts to be of "high value." As Chief Justice, by employing a far broader conception of contract than had been prevalent in 1787, and by combining this conception with the principles of 18th century natural law, he was able to make of the contract clause a mighty instrument for the protection of the rights of private property. It has been suggested that he did so in order to promote national power. It is probably more correct that the great disciple of Hamilton believed that the protection of property was of primary concern. Like Hamilton, Marshall considered a more perfect Union as a means for securing the rights of the individual, among which those of property figured prominently. He never altered his opinion. Toward the end of his career, Marshall was a "supreme conservative" rather than a nationalist, a man who wanted protection of property more than anything else.

Several opinions reveal Marshall's desire to protect property. In Fletcher against Peck, he proclaimed the doctrine that a State may not rescind its grants. This case involved problems as to whether a law could be a contract; whether such a contract, in view of the fact that a State was a party to it, would fall under the contract clause; and whether that clause would apply to executed contracts as well as to executory ones. Desiring to protect property rights, Marshall answered all these questions in the affirmative. In particular, his answers to the last two questions show his broad interpretation. The framers of the Constitution had not suggested that the clause would cover contracts to which a State was a party. Marshall knew that their apprehensions that State legislation would be inimical to property were concerned only with legislative interference in private contracts. Moreover, the Federalist Papers did not state that the contract clause would cover public contracts. Nevertheless, Marshall, asserting that the words of the Constitution "are general and are applicable to contracts of every description," maintained that public contracts are ruled by the contract clause. He even supported his idea by asserting that the framers were concerned about legislative infringements upon private property prior to the meeting of the Federal Convention. Marshall's dictum that an executed contract is subsumed under the contract clause amounts to a similar coup de force. The usual interpretation of the obligation of contract had been that it implied an obligation to fulfill the terms of an executory contract only. As if he wanted to make sure that property would be protected, Marshall was not content with relying merely on the contract clause. He had recourse also to more general principles of justice, saying that "it may well be doubted whether the nature of society and of government does not prescribe some limits to the legislative power; and, if any be prescribed, where are they to be found, if the property of an individual, fairly and honestly acquired, may be seized without compensation?"

In New Jersey against Wilson, Marshall, once again motivated by the desire to protect property, extended the application of the contract clause further, going beyond the scope which Hamilton, whose opinion had served as a guide to the decision of Fletcher against Peck, had allowed it. The question raised in New Jersey against Wilson was as to whether a legislative act, providing for perpetual exemption from taxation of a tract of land granted to the Indians in colonial times, could be revoked after the Indians had sold the tract. In spite of the power of taxation is indispensible and vital for every State, Marshall was so desirous of placing limitations upon State legislatures to the end of protecting the vested rights of property that he held that the land was immune from taxation.

In Terrett against Taylor, decided in 1815, the Marshall court protected property rights by denying that the State of Virginia could appropriate lands of the Episcopal Church. Although the Court did not expressly base its decision on the contract clause, it did so by implication. Once again the protection of

property was bolstered by the principles of natural justice. The Court stated:

> But that the legislature can repeal statutes creating private corporations, or confirming to them property already acquired under the faith of previous laws, and by such repeal can vest the property of such corporations exclusively in the State, or dispose of the same to such purposes as they may please, without the consent or default of the corporations, we are not prepared to admit; and we think ourselves standing upon the principles of natural justice, upon the fundamental laws of every free government, upon the spirit and letter of the Constitution of the United States, and upon the decisions of the most respectable tribunals, in resisting such a doctrine.

The contract clause was expanded further in the Dartmouth College case. In Fletcher against Peck there had been a contract, although an executed one. Also, in New Jersey against Wilson, a contract could be discerned to exist between the Indians and the colonial government. Although in these cases the application of the contract clause was not possible without an extensive interpretation of that clause, nevertheless it could be done without great difficulty. However, a different situation arose in the Dartmouth case, where the question was as to whether a charter granted by the crown was a contract. Certainly, the framers of the Constitution had not considered that possibility. However, in order to give property and vested rights protection, Marshall stated that the charter is a contract:

> It can require no argument to prove that the circumstances of this case constitute a contract. An application is made to the crown for a charter to incorporate a religious and literary institution. In the application it is stated that large contributions have been made for the object, which will be conferred on the corporation as soon as it shall be created. The charter is granted, and on its faith the property is conveyed. Surely, in this transaction, every ingredient of a complete and legitimate contract is made.

The work of Marshall was continued by his successor, Roger B. Taney. It has been argued that the transition from the Marshall to the Taney court can be compared to that from the Federalists to the Republicans a generation earlier. But just as it is dubious whether Jefferson was less interested in the protection of private property than was John Adams, it can be said that Taney was scarcely a weaker defender of property than his predecessor had been. One can criticize the statement that "Jacksonian judges from agrarian States broke the historic safeguards thrown around property rights by the letter of the Constitution and the jurisprudence of John Marshall." Due to Taney's continued application of the contract clause in favor of property, "the contract clause was a more secure and a broader base for the defense of property rights in 1864 than it had been in 1835." Taney usually followed Marshall's interpretation of the clause. Inasmuch as he was not the originator of its sweeping interpretations, he was not likely to become as appreciated as a defender of property as his predecessor had been. The Taney period is "one of consolidation and application" of the principles developed by Marshall.

However, as such, it is no less important for the protection of property than the Marshall period had been. The Charles River case is usually assumed to mark a radical departure from Marshall's property-friendly interpretation of the contract clause. But, besides the fact that this is the only decision that "represents anything approaching a major break with the Marshall tradition" it is doubtful whether a major break was really achieved here. One should not forget that the often cited dictum, "while the rights of private property are sacredly guarded, we must not forget that the community also have rights, and that the happiness and well-being of every citizen depends on their faithful preservation," is mere truism. In society, no right, including that of property, is absolutely protected. Still, Taney believed that property rights are "sacredly guarded." Infringements upon those rights were considered to be exceptional. This attitude remained unchanged throughout his tenure. Taney cherished property as much as Marshall had before him. Under the Taney court, the contract clause was applied more frequently and to a wider variety of subject matter than had been the case in the Marshall period. The number of cases in which the unconstitutionality of statutes was based upon the contract clause is almost exactly the same in the two periods.

Under the contract clause, private property received a greater protection than the Founding Fathers had conceived. However, the protection of property by the judges did not cease here. Extended as the application of the contract clause was, it was not unlimited. As is inevitable in the judicial process, Marshall and Taney had established definite rules regarding the applicability of the clause. State legislatures had passed reservation clauses reserving the right to repeal charters of incorporation, and to levy taxes. Although originally these restrictions to no small extent were due to a belief in the sacrosanctity of vested rights, they later were used to restrain the court's doctrines within desirable limits and thus became restrictions on property.

In the American Democrat, 1838, James Fenimore Cooper spoke of property as "the base of all civilization," and of the rights of ownership as created by labor, human or animal, "the food obtained by his toil cannot be taken from the mouth of man, or beast, without doing violence to one of the first of our natural rights."

Therefore, since the urge for the protection of property continued to exist, the judges felt a need to base that protection on a foundation that was broader than that provided by the contract clause. Consequently, the Supreme Court turned to the clause according to which no person could be deprived of his life, liberty, and property without due process of law. And just as Marshall, desiring to protect private property, had given the contract clause a more comprehensive interpretation than that conceived by its framers, now the Court, motivated by the same desire, interpreted the due process clause in a truly novel manner. It shifted from procedural to substantive due process. This shift went beyond the orthodox common law concept of due process. It went beyond the Founders' idea of due process of law. It marked a departure from the Court's own traditional conception of due process.

In 1856, the newly established New York Court of Appeals declared invalid a prohibition law because it entailed, in regard to liquors in existence at the time of its enactment, an act of destruction of property that was not within the power of the government to perform "even by the form of due process of law." A few months later, Taney rendered his famous Dred Scott decision in which he used the due process clause of the Constitution to protect property in slaves. Thus the man who had rendered the decision in the Charles River case, through his substantive interpretation of due process, built a bridge from the protection of property under the contract clause to that under the due process clause. And just as one may say that Marshall laid the foundation for Taney's protection of property under the contract clause, so Taney's Dred Scott decision now provided the basis for the future protection of property under the due process clause.

Abraham Lincoln once spoke of the Republicans as following Jefferson in their "superior devotion to the personal rights of men, holding the rights of property to be secondary only and greatly inferior." But he usually denied that slaves were rightful property. Slavery is based upon the principle of "you toil and work and earn bread, and I'll eat it." The Negro may not be our equal in all respects, Lincoln is reported to have said, but according to the principles of the Declaration of Independence, "in the right to put into his mouth the bread that his own hands have earned, he is the equal of every other man, white or black."

The Supreme Court continued to provide property with broad protection and used substantive due process to a great extent. Confronted with governmental regulations of private business, it stated that the power of the Government to regulate is not without limits and that it is not a power to destroy. It declared that:

> There are, of necessity, limits beyond which legislation cannot rightfully go. If, therefore, a statute purporting to have been enacted to protect the public health, the public morals, or the public safety, has no real or substantial relation to those objects, or is a palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the Constitution.

In 1894, the Court declared that rates fixed by a commission are invalid, and claimed the power "to inquire whether a body of rates prescribed by a legislature or a commission is unjust and unreasonable, and such as to work a practical destruction to rights of property, and if found so to be, to restrain its operation." In all these cases, and in many more which concerned the regulation of business, the Court based its control of the

public power upon substantive due process.

However, the Supreme Court did not apply the due process clause only for the protection of existing property. Originally, the term "property" implied an ownership that was "exercised in its primary and fullest sense over physical objects only." In due time, however, it was applied to other elements of ownership. It tended to merge more and more with the indefinite rights of "liberty." Following the urging of influential members of the American bar and the lead given by some of the State courts, the Court adopted the view that the word "liberty" as used in the 5th and 14th amendments was intended to protect freedom of contract. Toward the end of the century, Justice Peckham stated that "liberty" in the due process clause "means not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary, and essential to his carrying out to a successful conclusion the purposes above mentioned." By means of this extended concept of liberty, a greater defense of property was allowed under the doctrine of substantive due process. From the application of the contract clause in the first half of the century to the adoption, toward the end of the century, of the idea that freedom of contract is an essential part of liberty, the basis for the protection of property had been strengthened to an extraordinary degree.

Throughout the 19th century, the Court's devices were many. Its desire to protect property, on the other hand, was constant. By the turn of the century, American judges had rendered justice to the hopes of the Founding Fathers that private property, an unalienable right and an important part of freedom, would be protected.

In the United States the Supreme Court was not the only advocate of free property. Although it was probably the most decisive factor for promoting the protection of property, other forces also worked toward the same goal. Outstanding among them were the great writers in the field of jurisprudence.

James Kent is a case in point. The man who in 1799 had exhorted his younger brother to "be an enlightened and intrepid guardian of true old English and common law liberty and constitutional security," was rather partial to the Roman law because of its strong protection of private rights. Above all, he was interested in the protection of property. "To this intricate subject he devoted the greater part of his treatise," the "Commentaries on American Law," 1826–30.

Kent's defense of private property was matched by the other great commentator of his time, Joseph Story. In the Supreme Court, Story had been a stanch supporter of John Marshall, and made statements that were as good as any that were made in defense of property. In 1821, he wrote Marshall on the situation in his home State of Massachusetts:

> Considering the popular cant and popular prejudices, I have some fears that we shall not have wisdom enough to maintain ourselves upon the present decided basis that protects property.

He voiced concern about Taney's decision in the Charles River case, feeling that it did not protect property as much as it should have. His disposition in favor of property also found expression in his Commentaries. In his remarks on the contract clause, Story quotes with approval the 44th essay of the Federalist Papers with its strong denunciation of legislative activities that are inimical to property rights, and gives a broad interpretation of the clause. Having praised the provision that no person shall be deprived of his property without due process of law, he writes on the concluding clause of the fifth amendment which provides that private property shall not be taken for public use without due process of law:

> This is an affirmance of a great doctrine established by the common law for the protection of private property. It is founded in natural equity, and is laid down by jurists as a principle of universal law. Indeed, in a free government, almost all other rights would become utterly worthless, if the government possessed an uncontrollable power over the private fortune of every citizen. One of the fundamental objects of every good government must be the due administration of justice; and how vain it would be to speak of such an administration, when all property is subject to the will or caprice of the legislature, and the rulers.

Mr. President (Mr. JAVITS in the chair), for the sake of securing the protection of private property, German jurists, in spite of all the nationalism and patriotism that existed during and after unification, did not hesitate to give a Romanistic interpretation to those institutions of Germanic law that had survived the reception of the Roman law, institutions which favored a restriction of private property for the public good. One author, writing during the Third Reich, believed that this individualistic attitude was disliked by the people, and complained that life and social conditions were adjusted to theoretical concepts of law rather than vice versa. Be this as it may, it shows that the German jurists of the 19th century endeavored to protect the property of the individual.

A similar situation existed in France. In 1910, it was stated that "the Napoleonic Code was the code of property." Indeed, such was the case throughout the 19th century. No matter what commentator we consider, no matter what was his approach and school of thought, we will find that he was an advocate of private property. "Liberty is inextricably linked with property; the latter shares the fate of the former," said Troplong, one of the most influential jurists of the century. Demolombe, an admirer, complimented him by saying, "individual property means work; it means liberty itself."

As far as the evaluation of property is concerned, it can be said that French jurists were in general agreement with their German colleagues. This fact is not surprising. In the 19th century, there was a mutual give-and-take between the jurists of the two nations. French legislation and, in particular, its "code of property," exercised a strong influence in Germany. In turn, the German historical school and the pandectists, with their emphasis upon the absoluteness and exclusiveness of property, had an impact upon France. In the 19th century, one could easily speak of a European Rechtswissenschaft. And the assertion that its supra-national character was facilitated by the general atmosphere of liberalism, as well as by the desire for freedom and free property, is probably not an exaggeration.

Mr. President (Mr. BREWSTER in the chair), in the 19th century, freedom was the rule and infringements upon liberty, the exception. In the 20th, although lip service is still paid to the inviolability of freedom, regulations of the individual's rights are so numerous that they seem to have become the rule, and freedom, the exception.

This is especially true of private property. The protection it enjoyed has waned.

The curtailment of property did not occur suddenly. While private property was on its victorious march, there were forces at work that questioned its institution.

Private property was attacked by various schools of thought, ranging from communism to more lenient types of social thinking.

The 19th century, witnessing the climax in human striving for freedom and free property, also gave birth to what became the major challenge to these values—socialism. The year 1848, symbolic of the rising tide of liberalism, the year in which people all over Europe shed their blood in attempts to throw off the last vestiges of the ancient regime, also saw the distribution of the Communist Manifesto. In that work, Marx not only attacked the righteousness of existing possessions, but also denounced the bourgeois use of property and the freedom to acquire property. He exhorted the "have-nots" to rise against the "haves," to expropriate and eliminate them. It has been asserted that Marx stood Hegel on his head. It can also be maintained that his denunciation of property stood civilization on its head. Never had a greater challenge to private property been advanced. While there had been plans of communism, they were considered utopian and did not have much opportunity to be realized. Marx's seemingly scientific approach became the opium of the intellectuals. Mainly by virtue of their acceptance of the new doctrine, his dogma became the credo of idealists, have-nots, and the lazy. It became a ferment of societies.

Although the failure of the Paris Commune convinced Socialists that revolutionary uprisings were likely to be doomed and that it would be better to gain power through the ballot, such re-

visionist thought did not decrease the threat to free property. In Europe and America alike, socialism, no matter how it might be acclimatized in the different nations, continued to challenge the existing liberal order and free property. There appeared to be two alternatives for those who were interested in saving property. One was to fight socialism through an unequivocal reassertion of free property; the other, to take the wind out of the Socialists' sails by making concessions to social demands that were, so one believed, compatible with a free society. And while the former method prevailed for a while, the concessionist policy gradually became the leading doctrine. More and more the individualistic concept of property was deserted in favor of a social one. More and more the free use of property and free competition came under such attack. It is difficult to determine which was attacked first, the static or the more dynamic aspect of property. Since these variations of property rights are interdependent, this issue is not too important. Furthermore, it is hard to tell in what country, and from what side, free property was first challenged. It happened everywhere. Three groups of concessionists, however, seem to stand out: theologians and moralists, economists, and jurists.

The general atmosphere in the decades prior to World War I, characterized by popular demands for social legislation, did not fail to have its impact upon jurists. Although Dean Pound's influence in the creation of sociological jurisprudence was probably as great as any, the following discussion will be restricted to Oliver Wendell Holmes, Jr., and Louis D. Brandeis. As members of the Supreme Court, they had not only a theoretical, but also a practical impact upon the formulation of a new policy toward property rights.

In his famous dissent in Lochner against New York, a case in which a New York statute restricting the working hours of bakers was held unconstitutional, Holmes attacked the Court's position on freedom of contract, that is the freedom of acquiring property.

He stated:

> This case is decided upon an economic theory which a large part of the country does not entertain—

He remarked, attacking laissez-faire liberalism. Then he made a case for State regulation of freedom. Taking advantage of the fact that there existed some regulation of the acquisition of property, he used the time-honored method of saying that such regulation has been common practice. He stated:

> It is settled by various decisions of this Court that State laws may regulate life in many ways which we as legislators might think as injudicious or if you like as tyrannical as this, and which equally with this interfere with the liberty of contract. Sunday laws and usury laws are ancient examples.
>
> A more modern one is the prohibition of lotteries. The liberty of the citizen to do as he likes so long as he does not interfere with the liberty of others to do the same, which has been a shibboleth for some well-known writers, is interfered with by school laws, by the Post Office, by every State or municipal institution, which takes his money for purposes thought desirable, whether he likes it or not.
>
> The 14th amendment does not enact Mr. Herbert Spencer's social statics. Some of these laws embody convictions or prejudices which judges are likely to share. Some may not. But a constitution is not intended to embody a particular economic theory, whether of paternalism and the organic relation of the citizen to the State or of laissez-faire. It is made for people of fundamentally differing views, and the accident of our finding certain opinions natural and familiar or novel and even shocking ought not to conclude our judgment upon the question whether statutes embodying them conflict with the Constitution of the United States.

Mr. President, here was, although in dissent, a fundamental shift in constitutional interpretation. When John Marshall had asserted, "we must never forget, that it is a constitution we are expounding, a constitution, intended to endure for ages to come, and, consequently, to be adopted to the various crises of human affairs," he merely implied some flexibility with respect to the machinery of government. He did not consider challenging the rigidity of the Constitution as an instrument for the protection of the rights of the individual, among which those of property figured prominently. By contrast, Holmes, doubting the individual's freedom to work under whatever conditions he desired, challenged that principle. He advocated a relativistic appreciation of property rights which was equivalent to a depreciation of these rights.

Brandeis aided him in this task. "I don't want money or property most. I want to be free," Brandeis stated prior to World War I, strangely discriminating between property and freedom, with property coming out at the shorter end of the scale. Later, he not only gave freedom preference over property, but even part of freedom:

> The fact that speech is likely to result in some violence or in destruction of property is not enough to justify its suppression. There must be the probability of serious injury to the state.

At first, attacks on private property were based on seemingly ethical grounds. More and more, the individual's property became restricted, although he was hardly aware of it in most cases.

In the United States, the common law tradition of permitting malicious use was more and more abandoned. A decision of 1889, dealing with spite fences, still maintained that "at common law, a man has a right to build a fence on his own land as high as he pleases, however much it may obstruct his neighbor's light and air."

Ten years later, when a proprietor built a 40-foot-high wall about 3 feet from his neighbor's building, "thereby cutting off the latter's light, air, and view," and without doubt doing this "wrongfully and maliciously and unnecessarily and for the purpose of injuring the plaintiff and the plaintiff's property," the Court held that the considerations of the defendant were irrelevant, as long as she built her own property. However, soon American statutes and court decisions took a less lenient attitude. They declared "structures put up in a spirit of malice for the sole purpose of injuring the adjoining neighbor" to be a "legal wrong." Justice Holmes stated in 1889:

> It is plain that the right to use one's property for the sole purpose of injuring others is not one of the immediate rights of ownership. It is not a right for the sake of which property is recognized by the law. * * * We are of the opinion that the statute, thus concerned, is within the limits of the police power, and is constitutional. * * * It simply restrains a noxious use of owner's premises, and although the use is not directly injurious to the public at large, there is a public interest to restrain this kind of aggressive annoyance of one neighbor by another, and to make a definite limit beyond which it is not lawful to go.

More and more American States passed laws against spite fences and spite walls. Where there were no such laws, the courts have tended to consider the construction of buildings "with no other purpose than the vindictive one of shutting off the plaintiff's view, or his life, and air," as a nuisance and as inadmissible.

Although the prohibition of malicious conduct amounted to a restriction of property, it was not likely to provoke much protest. The element of chicanery was too obvious. Also, in most cases prohibitions of malicious use of property were beneficial to another person's property. Individual property stood against individual property. All that happened was that some form of the active exercise of property rights, the right to use property harmfully, was restricted in favor of the passive side of property rights, or of the right to have one's property unmolested. Even the most ardent advocates of free property could scarcely object to this. For what today they might consider an infringement upon their right to use their property, tomorrow might be a protection for that very property.

In view of the restrictions of private property in normal times, it is not surprising that property became even more curbed in times of emergency. It is not necessary to go into detail here. All of us have seen the many controls that were exercised over property in such times. Even the land of plenty, the United States, adopted drastic measures in World War I, more drastic ones during the depression, and still more drastic ones during World War II. In the great majority of emergency measures, it was not only the right to abuse one's property that was curbed. Restrictions were more comprehensive. Quite normal—and not at all abusive—uses of property came under control.

But even though in all these cases property was restricted not for the sake of a specific individual, but for that of an anonymous society or an impersonal state; despite the fact that the restriction of one's property was not matched by the preservation of another person's property, restrictions of property for the sake of the community were not greatly resented. Also, restrictions of property in times of emergency were not overly resented. It was recognized that emergencies require abnormal emergency measures. People believed that once the

emergency ceased to exist, the restrictions would be removed and free property would reemerge. Because of their temporary character, such restrictions did not seem to challenge the sanctity of property.

It cannot be seriously doubted that legislation attacking property constitutes a greater danger to property than interpretation. The social or socialist interpreter of a liberal law, while he might dangerously approach an elimination of the law's values, is still prevented from complete success in this undertaking. He is, after all, bound by the law. By contrast, the legislator is not. Under the principle that later law supercedes previous law—lex posterior derogat priori—he may undo the values of previous law. He may abolish law that grants a rather comprehensive protection of individualistic concepts of private property by passing laws that favor more social concepts.

The decline of property stands in contrast to the protection of other liberal rights.

The decline of property rights during the 20th century does not imply a general decline of the rights of man. It is sui generis. To whatever country one looks, and whatever right one may consider, one will, on the whole, notice an ever-increasing protection of rights that had been recognized since the 18th century.

As early as 1788, Madison had warned of the danger of too many laws. In the 62d essay of the Federalist Papers, he wrote:

> The internal effects of a mutable policy are * * * calamitous. It poisons the blessings of liberty itself. It will be of little avail to the people, that the laws are made by men of their own choice, if the laws be so voluminous that they cannot be read, or so incoherent that they cannot be understood; if they be repealed or revised before they are promulgated, or undergo such incessant changes that no man, who knows what the law is today, can guess what it will be tomorrow.

Savigny, confronted with the problem of legislation in Germany, had similar misgivings. A generation later, Jacob Burckhardt saw one of the most disastrous consequences of the French Revolution in the fact that it granted an "authorization for perpetual revision." He felt that "the decisively new thing that was introduced by the French Revolution is the possibility of and the desire for changes." Maurice Hauriou complained in the beginning of this century that the French Revolution "resulted in a perpetual state of revolution, because the mobility of the written law was no longer neutralized by certain customary institutions, and because the forces of change were stronger than those of stability." All these men realized that of which Madison had been so aware during the critical period of American history; namely, the danger of the democratic legislators running amok and showering the world with laws and thus creating a state of legal insecurity.

Mr. McGOVERN. Mr. President, will the Senator yield?

Mr. BYRD of West Virginia. I yield.

Mr. McGOVERN. It occurred to me, as I was listening to his remarks over the past 3 hours while presiding in the Chair, that while I do not agree with the conclusions which the Senator has reached, I do have to admire his tenacity.

The thought came to me that it was just a year ago today—I believe on the 10th of June 1963—that the Senator from West Virginia received his law degree at American University. The reason I remember that day is that that was also the date that marked President Kennedy's great speech at American University. I shall always think—or at least I think at this point—that that was the greatest speech which the late President Kennedy ever delivered. I think it is quite significant that in the opening line of that speech he addressed the Senator from West Virginia [Mr. BYRD] by name and made some humorous reference, as I remember, to the fact that it took the Senator a good many years of night classes to get his degree in law and that the President was getting his in about 30 minutes.

It is significant that this rather lengthy speech tonight comes on the anniversary of the Senator's being awarded the law degree at American University. I wish to draw attention to that. I thank the Senator for yielding to me.

Mr. BYRD of West Virginia. I thank the Senator for his reference to that very important occasion in my life. I have not forgotten the occasion. However, I did not happen to recall that it was precisely a year ago that I received my LL.B. degree, at which time I, along with other students graduating from American University, was honored to have the late President John F. Kennedy address our commencement exercise, and as the Senator has quite properly stated, deliver one of the really fine and perhaps most important addresses of his tenure of office and perhaps of any period in our history. I appreciate very much the reference to that occasion by the Senator.

Mr. McGOVERN. It also happens to be the 15th birthday of my daughter, and I am now going home to help her celebrate that occasion.

Mr. BYRD of West Virginia. I thank the Senator. I trust that the Senator will convey to his daughter my good wishes that she will have work for her hands, a straight path for her feet, a coin for her purse, sunshine on her windowpane at morning, a song in her treetop at evening, the hand of a friend on her latchstring, soft rains for her garden, love at her fireside as she grows older, happiness in her heart, and God's wonderful blessings always.

Mr. McGOVERN. I thank the Senator very much.

Mr. BYRD of West Virginia. Dietze says:

> Democratic lawmaking has had a disastrous impact upon property rights. The march of democracy was also a march toward egalitarianism. Equality before the law was complemented by the equal right of all to make the law. But this was not enough. The equal right of all to make the law resulted in the tendency to make all equal by the law. Since other privileges had been abolished in the democratic revolutions, the surviving privilege of wealth was likely to receive increased attention as an anomaly in a democracy. A thorn in the eyes of a few at the beginning of the democratic era, it became a beam in the eyes of many once egalitarian democracy had advanced. Having become absolute, democratic government, the mouthpiece for the underprivileged masses, endeavored to gain a more equal distribution of property. Of course, this could be done only by impairing the property rights of the individual. Justice degenerated into "social justice." The love of equality, which appeared to Montesquieu as the characteristic feature of democracy, had reached its final conclusion. The "holy dogma of equality," of which Volney had spoken, had become a hard fact.
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> Of first concern is the extent of the disregard for property. Clearly, the development described here was not confined to the United States, France, and Germany. The very fact that property lost its protection in all of these nations indicates a universal trend, for these nations are not only representative of different legal systems, they are also representative of different forms of democracy. If we consider the development of other democracies, we can make the same observation: Everywhere, the protection of private property has declined. It could scarcely be otherwise, because the decline of property rights is not a national, but a democratic phenomenon. The Communists' denial of these rights is perhaps nothing but a derivation from that phenomenon.
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> The disregard for property in modern international law is not surprising. For that law is no longer made chiefly by nations that have regard for property rights. It is also made by Communist nations and other states in which the appreciation of private property is rather negligible.
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> On the whole, the process of restricting property rights has taken hold of international law as it has of national law. The process is likely to be as complete and comprehensive. Also, the growing disregard for property in international law was largely due to the march of democracy in the society of nations. Until recently, international law was made chiefly by nations of some wealth and power. There existed, in a sense, property qualifications for the participation in international lawmaking. These qualifications have now become largely abolished. Poor and insignificant nations have been increasingly accepted as equal partners in the making of international law. The result was an equalization of international law. Property rights became less protected. As it did within nations, the march of egalitarian democracy has contributed to their decline among nations.
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> The consequences of the decline of property can be seen in national societies as well as in the society of nations. In both cases, they have been so serious that they might well have been responsible for the dilemma in which the West finds itself today.
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> Whereas the rights of man steadily advanced throughout the 19th century, the situation changed thereafter. No longer were these rights protected. Freedom, previously constituting a unity which defied attack, has become so disintegrated that it invites assaults. Its component parts, formerly considered to be of about equal importance, have been reevaluated. And this new evaluation—undertaken by the uncontrolled numerical majority—decided that property rights did not deserve as much protection as other rights. The rights which reflect individualism to the greatest extent were relegated to a secondary order. Rights we are merely born with—important as they may be—were considered more essential than rights that have the further distinction of having labor mixed with them. Rights we happen to possess by mere chance were preferred over rights with which effort has been mingled.
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> The new evaluation was not only harmful to property rights, and did not only entail many disadvantages resulting from the insecurity of those rights, but was also detri-

mental to freedom as a whole. Freedom was harmed not only because free property is essential to it, but because the discrimination against property was bound to destroy the notion of the unalienability of the rights of man: If property rights could be curtailed, there was no reason why other rights could not be restricted. This relativism showed that democratic government had lost its rationale. For it was no longer the protector, but the arbiter, of the rights of man. A democracy that permitted curtailments of property while, at the same time, assuring its love for freedom, was likely to appear hypocritical.

Also, infringements upon property are detrimental to the survival of democracy. They quell individual effort, the very prerequisite for progress. This deprives man of his dignity. In the welfare state, the individual is not only induced to be lazy, but he is also considered to be unable to take care of himself. The healthy are treated as if they were sick, the mature as if they were children. The physically fit are made psychologically ill, and the naturally independent are made artificially dependent. Individuals become spoiled and lose self-confidence. This must be suicidal if it occurs at a time when Western society is engaged in a struggle for survival.

The consequences of the decline of property rights are as disastrous in the international field. Again, we are faced by a dilemma. Today's struggle between East and West, no matter what the many other values involved may be, is fundamentally a struggle turning around the appreciation of private property. The West professes to believe in a protection of that institution, the East does not.

The Western nations maintain that their attitude is conducive to freedom and justice, and the Communists assert the same of their position. It is obvious that the Communists' sanction of the trend toward a lesser appreciation of property in international law is quite natural and not in contradiction with professed Communist aims. The same cannot be said of the sanction by Western nations of that trend. The Western attitude is inconsistent with the values the West professes to stand for. It is both paradoxical and suicidal.

The Western nations, when not insisting on a protection of property in international law, cut their own throats. While their professed aim in view of the Communist challenge requires them to maintain that the protection of private property is a prerequisite of internal justice, they have, through their participation in the making of recent international law, admitted that infringements upon property are justified. Specific infringements upon private property are bad enough. Although they might appear as being of an exceptional nature, they can, if not objected to, easily become general practice.

So often today we read that the West has no direction, no aim. But we cannot very well have direction and aim if the individual citizen is not encouraged to aim at something that he can be sure will be his permanently. And this cannot be realized as long as private property is not safe. As was stated, John Adams once said that "the moment the idea is admitted into society that property is not as sacred as the laws of God, and that there is not a force of law and public justice to protect it, anarchy and tyranny commence." Today, many of us are experiencing the tyranny and anarchy he dreaded. It is the tyranny of the great regulator and distributor, of the New Leviathan of majoritarian democracy, over its gluttonous yet timid citizens. It is the anarchy of a society whose members are at a loss where to go because they feel there is no property to strive for, a society that has come to acknowledge the dogma of the impropriety of property, with all its bad consequences.

Many of us are even afraid of owning and of possessing. Even those who still have some appreciation of property have become panicky. Seeing the swelling tide of curtailments upon property, they live just for the day, spending, while they still have something to spend, as much as they can. The man who saves is considered a fool.

This lack of confidence is more than justified. If our present attitude of carelessness continues—and there is no reason to believe that it will not—the future will be dark indeed. There is not much hope if this be the case, for the survival of the West. Mr. Khrushchev's prophesy that the world will be red in another 20 years is probably a modest estimate. An estimate of half the time might be closer to the mark.

Improvement of our plight can come only from a reaction to the excesses of democracy. This reaction can take two major forms: A rather passive one that tries to stop the further decline of property rights, and an active one that attempts to restore those rights to their original eminence.

Therefore, we should be more wary of a gradualist socialism that is often disguised as "liberalism." We must be on our guard against wolves in sheeps' clothing. Unfortunately, human beings are not immune from the influence of others. The decline of property proves this sufficiently. Therefore, if guarding against gradualist doctrines is to prevent a further deterioration of property, it must stop the evil at its source. It must limit the advocacy of ideas endangering property.

Here lies a major problem of Western democracy. We lost the sense for the propriety of property. Ever since free property, having been achieved in a long struggle which was propelled by the conviction that property is something proper, has become restricted, our appreciation of property has declined. Since this curtailment of property has been effected by modern democratic government, the question arises as to whether that type of government has not lost its legitimacy. For it has destroyed one of the main factors in the growth and progress of our civilization, namely, the belief in the propriety of property.

The Magna Carta placed great emphasis on property rights. With reference to the land of heirs under age, the Great Charter stated the following requirements of guardians thereof:

> The guardian of the land of any such heir being under age, shall take therefrom only reasonable issues, customs, and services, and this without destruction or waste of men or goods; and if we commit the custody of any issues thereof, and he shall make destruction and waste of his wardship, we will take amends of him, and the land shall be committed to two lawful and discreet men of that fee, who shall be answerable for the issues to us or to whomsoever we shall assign them; and if we sell or give to anyone the wardship of any such lands, and he commit destruction or waste therein, he shall lose the wardship and it shall be committed to two lawful and discreet men of that fee who shall answer to us as aforesaid.

Security for keeping in repair the land and other property of underage heirs was provided in paragraph 5 of the Magna Carta:

> But the guardian, so long as he shall have the wardship of the land, shall keep up the houses, parks, fishponds, pools, mills, and other appurtenances, from the issues of the land; and he shall restore to the heir, when he comes of age, his whole estate stocked with ploughs and tillage, as the season may require and the issues of the land can reasonably bear.

The widow's share in the properties held by her deceased husband was secured by paragraph 7:

> A widow after the death of her husband shall immediately and without obstacle have her marriage portion and her inheritance, nor shall she give anything for her dower, marriage portion, or inheritance which she and her husband held on the day of his death; and she may remain in her husband's house for 40 days after his death, within which time her dower shall be assigned to her.

Protection against the seizure of land for debts was provided in paragraph 9:

> Neither we nor our bailiffs shall seize any land or rent for any debt so long as the chattels of the debtor are sufficient to repay the debt; nor shall the debtor's sureties be distrained so long as the chief debtor is able to pay the debt; and if the chief debtor shall fail to pay the debt, having nothing wherewith to pay it then the sureties shall answer for it; and, if they will, they shall have the lands and rents of the debtor, until they shall be satisfied for the debt which they paid for him, unless the chief debtor can show himself to be quit thereof against them.

The high regard for private property was evidenced in paragraph 20 which provided for fines and other pecuniary penalties to be visited upon a merchant, "likewise saving his trade and a villein saving his tillage."

The security of chattels of deceased owners against improper seizure was provided in paragraph 26:

> And if nothing is due to us from him, all his chattels shall remain to the deceased, saving to his wife and children their reasonable shares.

As to properties of "any freeman" dying intestate, the Magna Carta provided that "his chattels shall be distributed by the hands of his near kinsfolk and friends, by view of the church, saving to everyone the debts—personal property—which the deceased owed to him."

Improper seizure of chattels by public officials was prohibited by paragraph 28:

> No constable or our bailiff shall take the corn or other chattels of anyone, without immediate payment for it, unless the seller allows him a respite.

Further protection against seizure of chattels by sheriffs and bailiffs was provided by paragraphs 30 and 31:

> 30. No sheriff or bailiff of ours, or anyone else, shall take the horses or carts of any freeman for carrying service against the will of the said freeman.
>
> 31. Neither we nor our bailiffs shall take another man's timber, for our castles, or other business of ours, except with the consent of the owner thereof.

The protection of lands of persons guilty of a felony was provided for in paragraph 32:

> We will only keep the lands of persons found guilty of felony for a year and a day,

when they shall be restored to the lords of the fees.

The Magna Carta provided in paragraph 39, that no freeman should be taken, imprisoned, dispossessed, or in any way destroyed "except by the lawful judgment of his peers or by the law of the land."

Restoration of real and personal properties to the rightful private owner from whom they had been wrongfully taken, was provided by paragraph 52:

If anyone has been dispossessed or removed by us without the lawful judgment of his peers, from his lands, chattels, liberties, or rights, we will immediately restore him to them; and if a dispute arises over this, then it shall be settled by the verdict of the 25 barons, of whom mention is made below in the clause for securing the peace; but with regard to all those things whereof anyone has been dispossessed or deprived without the lawful judgment of his peers, by King Henry our father or King Richard our brother, and which we have in our hand, or which others hold to whom we are bound to warrant them, we shall have respite until the usual term of crusaders; except those concerning which a plea has been begun or an inquisition taken by our command, before our assumption of the cross: and when we have returned from our pilgrimage, or if by chance we have remained behind from it, we will at once do full justice therein.

Restoration of lands illegally taken from Welshmen was provided in paragraph 56:

If we have dispossessed or removed Welshmen from lands or liberties or other things, without the lawful judgment of their peers, in England or in Wales, they shall at once be restored to them; and if a dispute arises over this, then it shall be settled in the March by the judgment of their peers, according to the law of England with regard to English tenements, the law of Wales as to Welsh tenements, and the law of the March as to Marcher tenements. Welshmen shall do the same to us and ours.

Mr. President, I ask unanimous consent to have printed in the RECORD a copy of the Great Charter.

Mr. KUCHEL. Mr. President, I am sorry but I did not hear the unanimous-consent request. Will the Senator from West Virginia please repeat it?

Mr. BYRD of West Virginia. I ask unanimous consent that I may include at this point in the RECORD a copy of the Magna Carta which was signed at the point of the sword by King John of England in the meadow at Runnymede on June 15, 1215, 749 years ago next Monday.

There being no objection, the document was ordered to be printed in the RECORD, as follows:

GREAT CHARTER

By the grace of God, King of England, Lord of Ireland, duke of Normandy and Aquitaine, and count of Anjou, to his archbishops, bishops, abbots, earls, barons, justiciars, foresters, sheriffs, reeves, servants, and to all his bailiffs and faithful subjects, greeting. Know that we, having regard to God and the safety of our soul, and those of all our ancestors and heirs, to the honour of God, and the exaltation of holy church, and the betterment of our realm, by the advice of our reverend fathers, Stephen, archbishop of Canterbury, primate of all England, and cardinal of the holy Roman church, Henry, archbishop of Dublin, William of London, Peter of Winchester, Jocelin of Bath and Glastonbury, Hugh of Lincoln, Walter of Worcester, William of Coventry, and Benedict of Rochester, bishops; Master Pandulph, the Pope's subdeacon and household official; brother Aymeric, master of the Knights of the Temple in England; and of the noble persons, William Marshal, earl of Pembroke, William, earl of Salisbury, William, earl of Warenne, William, earl of Arundel; Alan de Galloway, constable of Scotland, Warin Fitz-Gerald, Peter Fitz-Herbert, Hubert de Burgh, seneschal of Poitou, Hugh de Neville, Matthew Fitz-Herbert, Thomas Basset, Alan Basset, Philip d'Aubigny, Robert de Roppelay, John Marshal, John Fitz-Hugh, and others of our faithful men,

1. Have, in the first place granted to God, and by this our present charter confirmed for us and our heirs for ever, that the English church shall be free, and enjoy her rights in their integrity and her liberties inviolate; and we will that it be so observed; and this is manifest from this, that we, of our mere and unconstrained will, before the contest between us and our barons had arisen, granted, and by our charter confirmed and procured to be confirmed by Pope Innocent III, the freedom of elections which is most important and essential to the English Church; and this we will observe and wish to be observed in good faith by our heirs for ever. We have also granted to all the freemen of our kingdom, for us and for our heirs for ever, all the underwritten liberties, to have and to hold to them and to their heirs, of us and of our heirs.

2. If any of our earls or barons, or others who hold of us in chief by knight's service, shall die, and at the time of his death his heir shall be of full age and owe a relief, he shall have his inheritance by the old relief, namely, the heir or heirs of an earl by paying one hundred pounds for the whole barony of an earl; the heir or heirs of a baron by paying one hundred pounds for a whole barony; the heir or heirs of a knight by paying one hundred shillings at most for a whole knight's fee; and he that oweth less shall give less according to the ancient custom of fees.

3. But if the heir of any such shall be under age and in ward, he shall have his inheritance without relief or fine when he comes of age.

4. The guardian of the land of any such heir being under age, shall take therefrom only reasonable issues, customs, and services, and this without destruction or waste of men or goods; and if we commit the custody of any such lands to the sheriff, or to any other who is answerable to us for the issues thereof, and he shall make destruction and waste of his wardship, we will take amends of him, and the land shall be committed to two lawful and discreet men of that fee, who shall be answerable for the issues to us or to whomsoever we shall assign them; and if we sell or give to any one the wardship of any such lands, and he commit destruction or waste therein, he shall lose the wardship and it shall be committed to two lawful and discreet men of that fee who shall answer to us as aforesaid.

5. But the guardian, so long as he shall have the wardship of the land, shall keep up the houses, parks, fish-ponds, pools, mills and other appurtenances, from the issues of the land; and he shall restore to the heir, when he comes of age, his whole estate stocked with ploughs and tillage, as the season may require and the issues of the land can reasonably bear.

6. Heirs shall be married without disparagement, yet so that before the marriage takes place, those who are near in blood to the heir shall have notice.

7. A widow after the death of her husband shall immediately and without obstacle have her marriage-portion and her inheritance, nor shall she give anything for her dower, marriage-portion, or inheritance which she and her husband held on the day of his death; and she may remain in her husband's house for forty days after his death, within which time her dower shall be assigned to her.

8. No widow shall be distrained to marry so long as she wishes to live without a husband; provided that she gives security that she will not marry without our consent, if she holds of us, or that of the lord of whom she holds, if she holds of another.

9. Neither we nor our bailiffs shall seize any land or rent for any debt so long as the chattels of the debtor are sufficient to repay the debt; nor shall the debtor's sureties be distrained so long as the chief debtor is able to pay the debt; and if the chief debtor shall fail to pay the debt, having nothing wherewith to pay it then the sureties shall answer for it; and, if they will, they shall have the lands and rents of the debtor, until they shall be satisfied for the debt which they paid for him, unless the chief debtor can show himself to be quit thereof against them.

10. If anyone has borrowed from the Jews any sum, great or small, and shall die before the debt is paid, the debt shall not bear interest while the heir is under age, of whomsoever he may hold; and if the debt falls into our hands, we will only take the principal sum mentioned in the deed.

11. And if anyone shall die indebted to the Jews, his wife shall have her dower, and pay nothing of that debt; and if the children of the deceased be left under age, necessaries shall be provided for them according to the estate of the deceased, and out of the residue the debt shall be paid, saving the service due to the lords; in like manner it shall be done concerning debts due to others than Jews.

12. No scutage or aid shall be imposed in our kingdom, except by the common counsel of our kingdom, except for ransoming our person, knighting our eldest son, and once for marrying our eldest daughter, and for these only a reasonable aid shall be paid: likewise shall it be done concerning aids from the city of London.

13. And the city of London shall have all its ancient liberties and free customs, as well by land as by water. Further, we will and grant that all other cities, and boroughs, and towns, and ports, shall have all their liberties and free customs.

14. And for obtaining the common counsel of the realm, concerning the assessment of aids other than in the three cases aforesaid, or for assessing a scutage, we will cause to be summoned the archbishops, bishops, abbots, earls, and greater barons, singly by our letters; and further we will cause to be summoned in general, by our sheriffs and bailiffs, all those who hold of us in chief; for a fixed day, namely, forty days after their summons at least, and at a fixed place; and in all letters of such summons we will explain the cause thereof; and the summons being thus made, the business shall proceed on the appointed day according to the advice of those who are present, even if all who are summoned do not come.

15. We will not in future give leave to any one to take an aid from his free men, except for redeeming his person, or knighting his eldest son, or once marrying his eldest daughter, for which only a reasonable aid shall be levied.

16. No man shall be distrained to perform more service for a knight's fee, or other free tenement, than is due therefrom.

17. Common pleas shall not follow our court, but shall be held in some appointed place.

18. Inquests of Novel Disseisin, Mort d'Ancestor, and of Darrein Presentment, shall only be taken in their proper counties, and in this fashion: we, or if we should be out of the realm, our chief justiciar, will send two justices through each shire four times a year, who, with four knights of each shire, elected

by the shire, shall hold the said assizes in the shire, on the day and in the place of meeting of the shire court.

19. And if the said assizes cannot be held on the days of the shire court, as many knights and free tenants shall remain of those who were present at that court, as may be required for the administration of justice, according as the business be more or less.

20. A free man shall be amerced for a small crime only according to its measure; and for a great crime he shall be amerced according to its greatness, saving his position; and a merchant likewise saving his trade, and a villein saving his tillage, if they have fallen into our mercy; and none of the said amercements shall be imposed except by the oath of honest men of the neighbourhood.

21. Earls and barons shall only be amerced by their peers, and according to the measure of their offence.

22. A clerk shall be amerced for his lay tenement only after the manner of the other persons aforesaid, and not according to the value of his ecclesiastical benefice.

23. Nor shall any vill or man be distrained to make bridges over rivers, except those that were of old legally bound to do so.

24. No sheriff, constable, coroners, or other our bailiffs shall hold the pleas of the crown.

25. All shires, hundreds, wapentakes, and tithings shall be at the old farms, without any increase, except our demesne manors.

26. If any one holding a lay fief of us shall die, and our sheriff or bailiff shall show our letters patent of summons for a debt which the deceased owed to us, our sheriff or bailiff may seize and register the chattels of the deceased found on his lay fee, to the value of that debt, by the view of lawful men, so that nothing be removed therefrom until the clear debt be paid; and the residue shall be left to the executors to carry out the will of the deceased; and if nothing is due to us from him, all his chattels shall remain to the deceased, saving to his wife and children their reasonable shares.

27. If any free man shall die intestate, his chattels shall be distributed by the hands of his near kinsfolk and friends, by view of the church, saving to everyone the debts which the deceased owed to him.

28. No constable or other our bailiff shall take the corn or other chattels of any one, without immediate payment for it, unless the seller allows him a respite.

29. No constable shall distrain any knight to give money for castle-guard, if he wishes to do the service in his own person, or by another suitable man, if for any reasonable cause he cannot do it himself; and if we lead or send him to war, he shall be free of castle-guard for the time during which he has been in the Army because of us.

30. No sheriff or bailiff of ours, or any one else, shall take the horses or carts of any free man for carrying-service against the will of the said free man.

31. Neither we nor our bailiffs shall take another man's timber, for our castles, or other business of ours, except with the consent of the owner thereof.

32. We will only keep the lands of persons found guilty of felony for a year and a day, when they shall be restored to the lords of the fees.

33. All fish-weirs shall henceforth be entirely removed from the Thames and the Medway, and throughout all England, except on the sea coast.

34. The writ called Praecipe shall not in future be issued to anyone concerning any tenement whereby a freeman may lose his court.

35. There shall be one measure of wine throughout our kingdom, and one of ale, and one of corn, namely the London quarter, and one breadth of dyed cloth, russetts, and haberjects, namely, two ells between the selvedges; and with weights it shall be as with measures.

36. Nothing shall in future be given or taken for a writ of inquisition of life or limbs, but it shall be freely granted and not denied.

37. If any one holds of us by fee-farm, or by socage, or by burgage, and holds lands of another by knight's service, we shall not have the wardship of his heir nor of the land which is of another's fee, by reason of that fee-farm, or socage, or burgage; nor shall we have the wardship of that fee-farm, socage, or burgage unless the fee-farm owes knight's service. Nor shall we have the wardship of anyone's heir or land which he holds of another by knight's service, by reason of any petty serjeanty which he holds of us by rendering us knives, arrows or the like.

38. No bailiff shall in future put any one to trial, upon his bare word, without credible witnesses to support it.

39. No free man shall be taken, or imprisoned, or disseised, or outlawed, or exiled, or in any way destroyed, nor will we go upon him, nor will we send against him, except by the lawful judgment of his peers or by the law of the land.

40. To none will we sell, to none will we deny or delay right or justice.

41. All merchants shall be safe and secure to leave, enter, dwell in, and travel through England, as well by land as by water, to buy and to sell, free of all evil tolls, by the ancient and right customs, except in time of war, if they are of the land which is warring against us; and if any such are found in our land at the onset of war, they shall be attached without harm to their bodies or goods, until it shall be known to us or to our chief justiciar, how the merchants of our land are treated, if they are found in the land warring against us; and if ours are safe there, the others shall be safe in our land.

42. It shall be lawful in future for anyone to leave our kingdom, and to return, safe and sound, by land and by water, saving the allegiance due to us, except for a short space in time of war, for the common good of the kingdom, except those imprisoned and outlawed according to the law of the land, and persons from a land hostile to us, and merchants who shall be dealt with as is aforesaid.

43. If anyone holding of some escheat, as of the honour of Wallingford, Nottingham, Boulogne, Lancaster, or of other escheats, which are in our hand and are baronies, shall die, his heir shall not give any relief, nor shall he do service to us other than that which he did to the baron, if that barony was in the hand of a baron; and we shall hold it in the same way as the baron held it.

44. Men dwelling without the forest shall in future not come before our justices of the forest by common summonses, unless they have been impleaded, or are sureties for any person or persons impleaded for forest offences.

45. We will not appoint justices, constables, sheriffs, or bailiffs, except of such as know the law of the kingdom and are of a mind to keep it well.

46. All barons who have founded abbeys, concerning which they have charters of the kings of England, or of which they have ancient tenure, shall have the wardship of them when vacant, as they ought to have.

47. All forests made in our time shall immediately be disafforested; and so shall it be done concerning river-banks which have in our time been made by us into preserves.

48. All evil customs concerning forests and warrens, and foresters, warreners, sheriffs and their servants, river-banks and their wardens, shall be immediately inquired into in each shire by twelve sworn knights of the same shire, who are to be elected by honest men thereof, and within forty days after the making of the inquisition such customs shall be utterly and irrevocably destroyed by them, provided that we, or our justiciar if we are not in England, previously have knowledge of it.

49. We will immediately restore all hostages and charters delivered to us by Englishmen as sureties of peace or loyal service.

50. We will entirely remove from their bailiwicks the relatives of Gerard of Athée, Engelard of Cigogné, Peter, Guy, and Andrew of Chanceaux, Guy of Cigogné, Geoffrey of Martigny and his brothers, Philip Mark and his brothers, and Geoffrey his nephew, and all their followers.

51. And immediately after the restoration of peace we will expel from the kingdom all foreign knights, cross-bowmen, serjeants, and mercenary soldiers, who have come with horses and arms to the damage of the kingdom.

52. If any one has been dispossessed or removed by us without the lawful judgment of his peers, from his lands, chattels, liberties, or rights, we will immediately restore him to them; and if a dispute arises over this, then it shall be settled by the verdict of the twenty-five barons, of whom mention is made below in the clause for securing the peace: but with regard to all those things whereof anyone has been dispossessed or deprived without the lawful judgment of his peers, by King Henry our father or King Richard our brother, and which we have in our hand, or which others hold to whom we are bound to warrant them, we shall have respite until the usual term of crusaders; except those concerning which a plea has been begun or an inquisition taken by our command, before our assumption of the cross: and when we have returned from our pilgrimage, or if by chance we have remained behind from it, we will at once do full justice therein.

53. We shall have, moreover, the same respite, and in the same way, in doing justice in disafforesting or remeasuring the forests, which Henry our father or Richard our brother afforested, and concerning the wardship of lands which are of another's fee, and which we have hitherto held by reason of a fee which someone held of us by knight's service, and concerning abbeys founded on a fee other than our own, in which the lord of the fee claims the right; and when we have returned, or if we remain behind from our pilgrimage, we will do full justice to all who complain of such things.

54. No one shall be taken or imprisoned upon the appeal of a woman for the death of any other than her husband.

55. All fines made with us unjustly and against the law of the land, and all amercements levied unjustly and against the law of the land, shall be entirely pardoned, or else a verdict shall be given by the twenty-five barons, of whom mention is made below in the clause for securing the peace, or by the verdict of the greater part of them, together with the said Stephen, archbishop of Canterbury, if he can be present, and others whom he may wish to summon for this purpose: and if he cannot be present, the business shall nevertheless proceed without him, provided that if any one or more of the said twenty-five barons be concerned in a plaint of this kind, he or they shall be removed for this occasion, and another or others, elected and sworn by the rest of the twenty-five for this time only, shall complete the number.

56. If we have dispossessed or removed Welshmen from lands or liberties or other things, without the lawful judgment of their peers, in England or in Wales, they shall at once be restored to them; and if a dispute arises over this, then it shall be settled in the March by the judgment of their peers, according to the law of England with regard to English tenements, the law of Wales as to Welsh tenements, and the law of the March as to Marcher tenements. Welshmen shall do the same to us and ours.

57. Further, with regard to all those things of which any Welshman has been dispossessed or deprived without the lawful judgment of his peers, by king Henry our father

or king Richard our brother, and which we hold in our hand, or which are held by others to whom we are bound to warrant them, we shall have a respite until the usual term of crusaders, those things excepted concerning which a plea has been begun or an inquisition made by our order before our assumption of the cross: but when we have returned, or if by chance we have remained behind from our pilgrimage, we shall at once do full justice to them therein, according to the laws of the Welsh and the said regions.

58. We will at once restore the son of Llewelyn, and all the hostages from Wales, and the charters which were delivered to us as security for the peace.

59. We will act towards Alexander king of the Scots, with regard to his sisters, and the return of hostages, and his liberties, and his right, in the manner as we shall act to our other barons of England, unless it ought to be otherwise according to the charters which we have from William his father, formerly king of the Scots; and this shall be done by the judgment of his peers in our court.

60. Moreover, all these said customs and liberties which we have granted to be observed in our realm in so far as pertains to us towards our men, as well clerk as lay, they shall themselves observe towards their own men.

61. And whereas we, for the honour of God and the betterment of our realm, and for the better allaying of the quarrel arisen between us and our barons, have granted all these things aforesaid, we, wishing that they be for ever enjoyed wholly and inviolate, establish and grant to them the following security; namely that the barons shall elect any twenty-five barons of the kingdom as they will, and these with all their power shall keep, hold, and cause to be kept, the peace and liberties which we have granted to them, and by this our present charter confirmed to them, provided that if we, or our justiciar, or our bailiffs, or any of our servants, in any way fall away from them, or transgress any of the articels of peace or security, and the offence be shown to four barons of the said twenty-five, those four barons shall come before us or our justiciar if we are out of the kingdom, laying the offence before us, and asking that we cause it to be amended without delay. And if we do not amend it, or, if we are out of the kingdom and our justiciar does not amend it within forty days from the time when it was brought before us or before our justiciar if we should be out of the kingdom, the said four barons shall refer the matter to the rest of the twenty-five barons, who with the commonalty of the whole land shall distrain and grieve us in whatsoever way they can, namely by the seizure of castles, lands, possessions, and in any other way they can, until the reform is made according to their judgment, saving our person and that of our queen and children; and when it is done they shall obey us as before. And whosoever in the land wishes may take oath that he is ready, for the execution of the aforesaid matters, to obey the orders of the said twenty-five barons, and that he and his men will grieve us as best he may, and we publicly and freely allow any one to take oath who so wishes, and to none shall it ever be denied. All those, moreover, in the land who of themselves and of their own accord are unwilling to swear to the twenty-five barons, with regard to distraining and grieving us with them, we shall cause to take oath by our command, as is aforesaid. And if any of the twenty-five barons shall die, or leave the country, or in any other way be prevented from executing the aforesaid, those who remain of the said twenty-five barons shall elect another in his room, at their discretion, and he shall be sworn in like manner as the others. Further, in all things which are referred to the said twenty-five barons to execute, if by chance all the twenty-five are present, and a dispute arises among them about anything, or some of those who are summoned are unwilling or unable to attend, the verdict of the majority of those present shall be regarded as firm and binding, as if all the twenty-five had agreed to it; and the said twenty-five shall swear that they will loyally keep the aforesaid, and cause it to be kept in so far as they can. And we will procure nothing from anyone, by ourselves or through another, by which any of these concessions and liberties might be revoked or diminished; and if any such thing has been procured let it be null and void, and we will never use it personally or by another.

62. And all ill will, wrath, and bitterness, that has arisen between us and our men, clerk and lay, from the time of the dispute, we have fully remitted and pardoned to all. Furthermore, all trespasses made by reason of the said dispute, from Easter in the sixteenth year of our reign until the reestablishment of peace, we have fully remitted to all, clerk and lay, and completely forgiven, as far as in us lies. And further we have caused to be made for them letters patent of witness of the Lord Stephen, archbishop of Canterbury, of the Lord Henry, archibishop of Dublin, and of the said bishops, and of Master Pandulf, concerning this security and the grants aforesaid.

63. Wherefore we wish and firmly enjoin that the English church be free and that the men in our kingdom have and hold all the aforesaid liberties, rights, and grants, well and in peace, freely and quietly, fully and wholly, to them and their heirs, of us and our heirs, in all things and places, forever as is aforesaid. This has been sworn to as well on our part as on the part of the barons, that all the aforesaid shall be kept in good faith and without malice.

Given under our hand, the above named and many others being witnesses, in the meadow which is called Runnymede, between Windsor and Staines, on the fifteenth day of June, in the seventeenth year of our reign.

Mr. BYRD of West Virginia. Mr. President, in 1354, Parliament, by the Statutes of Westminster of the Liberties of London, declared that no man should be put out of land or tenement, nor taken, nor imprisoned, nor disinherited, nor put to death except by due process of law.

These were the concepts of Englishmen regarding property rights—property rights and those of person were placed on a parity.

Mr. President, I ask unanimous consent to have printed in the RECORD the Petition of Right.

There being no objection, the document was ordered to be printed in the RECORD, as follows:

[Anno 3° Caroli, I. A.D. 1627]

PETITION OF RIGHT

Statutes made in the Session of Parliament begun to be holden at Westminster, on the seventeenth day of March, in the third year of the reign of K. Charles the First

Ex Rotulo Parliamenti de Anno Regni Regis Caroli, Tertio:

Rotulus parliamenti teni apud Westm Die Lune Decimo septimo Die Marcij Anno Regni Serenissimi Dni nri Caroli Dei Gia Angl Scocie Francie & Hibn Regis Fidei Defensoris &c. tcio

Memorandum qd Dni Spuales & Temporales et ipsi de Domo Coi in hoc [psenti[1]] Parliamento congregati sepius int se consuluerunt de quadam Peticoe de Rco Dno Regi exhibenda, Quequidem Peticio Die Mercurij Vicesimo octavo Die Maij p ipsos Dnos & Comunes dco Dno Regi exhibita fuit, Eedemq Peticoi Dns nr Rex regale suu Responsum in pleno Parliamento dedit Die Sabbi Septimo Die Junij px sequen, Cujus quidem Peticois & Respons Tenor sequit in hec vba: videlt.

CHAPTER I

The Peticion Exhibited to His Majestie by the Lords Spirituall and Temporall and Comons in this psent Parliament assembled concning divers Rights and Liberties of the Subjects: with the King's Majesties Royall Aunswere thereunto in full Parliament.

To the King's most Excellent Majestie:

Humbly shew unto our Soveraigne Lord the King the Lords Spirituall and Temporall and Comons in Parliament assembled, That whereas it is declared and enacted by a Statute made in the tyme of the Raigne of King Edward the first comonly called Statutum de Tallagio non concedendo, That no Tallage or Ayde should be layd or levyed by the King or his Heires in this Realme without the good will and assent of the Archbishopps Bishopps Earles Barons Knights Burgesses and other the Freemen of the Comonaltie of this Realme, And by Authoritie of Parliament holden in the five and twentith yeare of the raigne of King Edward the third, it is declared and enacted, That from thenceforth no pson should be compelled to make any Loanes to the King against his will because such Loanes were against reason and the franchise of the Land, And by other Lawes of this Realme it is pvided, that none should be charged by any charge or Imposicion called a Benevolence nor by such like Charge by which the Statutes before mencioned and other the good Lawes and Statutes of this Realme your Subjects have inherited this Freedome That they should [not[1]] be compelled to contribute to any Taxe Tallage Ayde or other like Charge not sett by comon consent in Parliament.

Yet neverthelesse of late divers Comissions directed to sundry Comissioners in severall Counties with Instruccions have issued, by meanes whereof your people have been in divers places assembled and required to lend certaine somes of mony unto your Majestie, and many of them uppon their refusall soe to doe have had an Oath administered unto them not warrantable by the Lawes or Statutes of this Realme and have been constrayned to become bound to make appearance and give attendance before your Privie Councell and in other places; and others of them have been therefore imprisoned confined and sondry other waies molested and disquieted And divers other charges have been laid and levied upon your people in severall Counties by Lord Lieutenants Deputie Lieutenant Comissioners for Musters Justices of Peace and others by Comaund or Direccion from your Majestie or your Privie Councell against the Lawes and free Customes of the Realme.

And where alsoe by the Statute called The great Charter of the Liberties of England, It is declared and enacted, That no Freeman may be taken or imprisoned or be disseised of his Freehold or Liberties or his free Customes or be outlawed or exiled or in any manner destroyed, but by the lawfull Judgment of his Peeres or by the Law of the Land.

And in the eight and twentith yeere of the raigne of King Edward the third it was declared and enacted by authoritie of Parliament, that no man of what estate or condicion that he be, should be put out of his Land or Tenements nor taken nor imprisoned nor disherited nor put to death without being brought to aunswere by due pcesse of Lawe.

Neverthelesse against the tenor of the said Statutes and other the good Lawes and Statutes of your Realme to that end pvided, divers of your Subjects have of late been imprisoned without any cause shewed: And

[1] Interlined on the Roll.

when for their deliverance they were brought before your Justices by your Majesties Writts of Habeas corpus there to undergoe and receive as the Court should order, and their Keepers comaunded to certifie the causes of their detayner, no cause was certified, but that they were deteined by your Majesties special comaund signified by the Lords of your Privie Councell, and yet were returned backe to severall prisons without being charged with any thing to which they might make aunswere according to the Lawe.

And whereas of late great Companies of Souldiers and Marriners have been dispersed into divers Counties of the Realme, and the inhabitants against their wills have been compelled to receive them into their houses, and there to suffer them to sojourne against the Lawes and Customes of this Realme and to the great greivance and vexacion of the people.

And whereas alsoe by authoritie of Parliament in the five and twentith yeare of the Raigne of King Edward the third it is declared and enacted that no man should be forejudged of life or limbe against the forme of the Great Charter and the Lawe of the Land, And by the said Great Charter, and other the Lawes and Statutes of this your Realme no man ought to be adjudged to death but by the Lawes established in this your Realme, either by the customes of the same Realme or by Acts of Parliament. And whereas no offendor of what kinde soever is exempted from the pceedings to be used and punishments to be inflicted by the Lawes and Statutes of this your Realme, Nevertheless of late [tyme [1]] divers Comissions under your Majesties great Seale have issued forth, by which certaine psons have been assigned and appointed Commissioners with power and authoritie to pceed within the land according to the Justice of Martiall Lawe against such Souldiers or Marriners or other dissolute psons joyning with them as should comitt any murther robbery felony mutiny or other outrage or misdemeanor whatsoever, and by such sumary course and order as is agreeable to Martiall Lawe and as is used in Armies in tyme of warr to pceed to the tryall and condemnacion of such offenders, and them to cause to be executed and putt to death according to the Lawe Martiall.

By ptext whereof some of your Majesties Subjects have been by some of the said Comissioners put to death, when and where, if by the Lawes and Statuts of the land they had deserved death, by the same Lawes and Statuts alsoe they might and by no other ought to have byn judged and executed.

And alsoe sundrie greivous offendors by colour thereof clayming an exempcion have escaped the punishment due to them by the Lawes and Statutes of this your Realme, by reason that divers of your Officers and ministers of Justic have unjustlie refused or forborne to pceed against such Offenders according to the same Lawes and Statutes upon ptence that the said offenders were punishable onelie by Martiall law and by authoritie of such Commissions as aforesaid. Which Commissions and all other of like nature are wholly and directlie contrary to the said Lawes and Statutes of this your Realme.

They doe therefore humblie pray your most Excellent Majestie, that no man hereafter be compelled to make or yeild any Guift Loane Benevolence Taxe or such like Charge without comon consent by Acte of Parliament, And that none be called to make aunswere or take such Oath or to give attendance or be confined or otherwise molested or disquieted concerning the same or for refusall thereof. And that no freeman in any such manner as is before mencioned be imprisoned or deteined. And that your Majestie would be pleased to remove the said Souldiers and Mariners and that your people may not be soe burthened in tyme to come. And that the aforesaid Comissions for pceeding by Martiall Lawe may be revoked and annulled. And that hereafter no Comisions of like nature may issue forth to any pson or psons whatsoever to be executed as aforesaid, lest by colour of them any of your Majesties Subject be destroyed or put to death contrary to the Lawes and Franchise of the Land.

All which they most humblie pray of your most Excellent Majestie as their Right and Liberties according to the Lawes and Statutes of this Realme, And that your Majestie would alsoe vouchsafe to declare that the Award doing and pceeding to the pjudice of your people in any of the pmisses shall not be drawen hereafter into consequence or example. And that your Majestie would be alsoe graciouslie pleased for the further comfort and safetie of your people to declare your Royall will and pleasure, That in the thing aforesaid all your Officers and Ministers shall serve you according to the Lawes and Statutes of this Realme as they tender the Honor of your Majestie and the prosperitie of this Kingdome.

Qua quidem Peticoe lca & plenius intellca p dcm Dnm Regem talit est responsum in pleno Parliamento videlt.

R. Soit droit fait come est desire.

[1] Interlined on the Roll.

Mr. BYRD of West Virginia. Mr. President, the early history of American constitutional development was greatly influenced by English precedent. The Magna Carta was looked upon by the colonists, the majority of whom came from England, as a generic term for constitutional documents.

The Virginia Charter of 1606 provided that the rights of Englishmen were to be those of the American colonists.

The Charter of Masachusetts Bay and that of Maryland provided likewise.

Protection of life, liberty, and estate was provided in the first section of the Massachusetts Body of Liberties. Expressed in the words of the year 1641:

No mans goods or estate shall be taken away from him, nor any way indamaged under coulor of law or Countenance of Authoritie, unless it be by vertue or equitie of some expresse law of the Country waranting the same, established by a generall Court and sufficiently published.

Reliance upon the English history was apparent in the verbiage used by the First Continental Congress in article I, declarations and resolves:

That the inhabitants of the English colonies in North America, by the immutable laws of nature, the principles of the English constitution, and the several charters or compacts, have the following rights: Resolved, NC. D. 1. That they are entitled to life, liberty and poverty: and they have never ceded to any foreign power whatever, a right to dispose of either without their consent.

The first constitution of Pennsylvania, following in the wake of the Declaration of Independence, provided:

That every member of society hath a right to be protected in the enjoyment of life, liberty and property * * *. But no part of a man's property can be justly taken from him, or applied to public uses, without his own consent.

Similar provisions are to be found in the early constitutions of Delaware, Maryland, Massachusetts, North Carolina, Vermont, and New Hampshire.

Thus, by the time the U.S. Constitution had been adopted in 1789, a fundamental principle of law, as recognized for over 5½ centuries by the English speaking people who colonized this country, freed it from the rule of the British king and established governments for their own security and protection, had been firmly established. Life, liberty and property had been equally entitled to the protection of the English sovereign since King John attached his signature to the great charter "in the meadow which is called Runnymede, between Windsor and Staines, on the 15th day of June, in the 17th year of our reign," and life, liberty, and property were, by the constitutions of the recently established governments equally entitled to the protection of those governments. Man's life and his liberty could only be taken, if the public good demanded it, after trial by jury. Likewise, a man could be shorn of his property or his property rights only after proper trial and just compensation. These three cardinal rights were coequal and not one was subordinate to another.

Our constitutional forebears had great respect for property and the rights of property owners, and the Constitution is replete with provisions securing the rights which attach to property. The same can be said with regard to the Bill of Rights, and in these first 10 amendments we find again that our forebears sought to protect not only personal rights, but property rights as well. The Constitution protected the personal property of authors and inventors, in section 8, article I, "by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries." The right to acquire additional property in slaves was protected for a limited period by section 9:

The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year 1808, but a tax or duty may be imposed on such importation, not exceeding $10 for each person.

And in article IV, it was provided that no amendment could be offered to the Constitution prior to the year 1808, which would in any manner affect the first and fourth clauses in article I, section 9, dealing with slave properties. The second amendment to the Constitution secures the right of the people "to keep and bear arms"—a type of private property.

Amendment III protected an owner's house against use by soldiers in time of peace without the owner's consent and in time of war unless prescribed by law:

No soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

Amendment IV secured the personal and real properties of people against unreasonable searches and seizures:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized

The fifth amendment protected persons against deprivation of life, liberty, or property without "due process of law," and it went on to prohibit the taking of "private property" for public use without just compensation.

The seventh amendment protected the right of trial by jury in cases involving property of which "the value in controversy shall exceed $20," just as the sixth amendment protects the right of trial by jury in cases involving life or liberty.

In the 14th amendment, insofar as the supreme law of the land, as written, was concerned, property rights were on a parity with personal rights. Property rights as well as personal rights were protected by due process. Unlawful seizure of either property or person was prohibited. Litigants over property were entitled to trial by jury as when the life or liberty of the litigants was involved.

What is "property"?

In its strictest legal sense, "property" signifies that dominion or indefinite right of user, control and disposition which one may lawfully exercise over particular things or objects. As so used, the word signifies the sum of all the rights and powers incident to ownership.

So defined, property is composed of certain constituent elements, to wit, the unrestricted right of use, enjoyment, and disposal of the particular subject of property. Owners of real estate have the right under the Constitution to use, lease and dispose of it for lawful purposes. The right of free and untrammeled use for legitimate purposes is fundamental and within the protection of the Federal Constitution. Whatever physical interference annuls this right takes "property." The right or element of user necessarily includes the right and power of excluding others from using the subject of property. (See Bloch, *"Property Rights—Are There Any?"* 42 N.C. L. Rev. 137, 140 (1963).)

The Founding Fathers knew that if personal rights were long to be enjoyed it was necessary that property rights be protected by law. This principle is well established by the court in *Vanhorne* v. *Dorrance*, 2 Dall. 304, 310 (1795). American Juris., section 335, quotes from the holding in that case:

The right of property is a fundamental, natural, inherent, and inalienable right. It is not ex gratia from the legislature, but ex debito from the Constitution. In fact, it does not owe its origin to the Constitutions which protect it, for it existed before them. It is sometimes characterized judicially as a sacred right, the protection of which is one of the most important objects of government. The right of property is very broad and embraces practically all incidents which property may manifest. Within this right are included the right to acquire, hold, enjoy, possess, use, manage, insure, and improve property.

The Supreme Court also in that case declared:

From these passages it is evident; that the right of acquiring and possessing property, and having it protected, is one of the natural, inherent, and inalienable rights of man. Men have a sense of property: Property is necessary to their subsistence, and correspondent to their natural wants and desires; its security was one of the objects that induced them to unite in society. No man would become a member of a community, in which he could not enjoy the fruits of his honest labor and industry. The preservation of property then is a primary object of the social compact.

That the right of the individual to own and use private property is a cardinal tenet of the American Constitution and jurisprudential heritage, was evidenced again in the formative stage of our Nation when, 3 years after Vanhorne against Dorrance, Justice Chase declared, in the case of *Calder* v. *Bull*, 3 Dall., 386, 388 (1798):

There are certain vital principles in our free Republican governments, which will determine and overrule an apparent and flagrant abuse of legislative power; as to authorize manifest injustice by positive law; or to take away that security for personal liberty, or private property, for the protection whereof the Government was established * * *. The Legislature * * * cannot violate * * * the right of private property.

These citations, which I have given, are of importance as we view title II, the so-called public accommodations title of the civil rights bill, and as we approach a decision on cloture and, if cloture should be invoked, as we approach a decision on that title.

I submit that title II violates the constitutional right of the owner to use, manage, and control his property as he sees fit. I feel that the decisions which I have enumerated support my contention. They certainly highlight the importance of private property and the revered place which it has held in the opinions of our great jurists throughout the years of this Republic.

Many authorities maintain that the framers of the Constitution were striving primarily in the formation and adoption of the Constitution to safeguard property interests. Such a thesis is well documented by Charles A. Beard in "An Economic Interpretation of the Constitution of the United States." See Philbrick, "Changing Conceptions of Property in Law," 86 University of Pennsylvania Law Review, 691, 723 (1938).

As I have already indicated, property rights are proclaimed, by some, to be among the natural rights of man. Blackstone wrote:

The third absolute right, inherent in every Englishman, is that of property; which consists in the free use, enjoyment, and disposal of all his acquisitions, without any control or diminution, save only by the laws of the land.

The recognition of the right of private property is said to distinguish the civilized from the primitive man:

To suppose a state of man prior to the existence of any notions of separate property, when all things were common, and when men, through the world, lived without law or government, in innocence and simplicity, is a mere dream of the imagination. The sense of property is inherent in the human breast, and the general enlargement and cultivation of that sense, from its feeble force in the savage state to its full vigor and maturity among civilized nations, forms a very instructive portion of the history of civil society and government, and the acquisition and enjoyment of property. It is, to speak correctly, the law of his nature; and by obedience to the law, he brings all his faculties into exercise, and is enabled to display the various and exalted powers of the human mind. (Kent, 2 Commentaries, Lect. XXXIV.)

Indeed, Blackstone, in book II, chapter 1, ascribes a Biblical sanction to the concept of individual property (2 Blackstone 6).

Of course, the law balances the right of the individual to the free and untrammeled use of his property against the interests of society. This is why the doctrine of nuisances evolved. A man is free to use his property as he desires only to the extent that he does not injure others in doing so.

The power of the Government to tax property or the profits thereof is itself a recognition of the right of the Government to limit the profits of property for public purposes.

The concept of eminent domain should also be mentioned here. This doctrine of the right of the sovereign to take the property of an individual was recognized by the courts subject to two stringent restrictions. The taking must be for a public use, and the owner must be paid just compensation.

Blackstone expresses well this inherent limitation on private property:

So great moreover is the regard of the law for private property, that it will not authorize the least violation of it; no, not even for the general good of the whole community. If a new road, for instance, were to be made through the grounds of a private person, it might perhaps be extensively beneficial to the public; but the law permits no man, or set of men to do this without consent of the owner of the land. In vain may it be urged, that the good of the individual ought to yield to that of the community; for it would be dangerous to allow any private man, or even any public tribunal, to be the judge of this common good, and to decide whether it be expedient or not. Besides the public good is in nothing more essentially interested, than in the protection of every individual's private rights, as modeled by the municipal law. In this and similar cases the legislature alone can, and indeed frequently does interpose, and compel the individual to acquiesce. But how does it interpose and compel? Not by absolutely stripping the subject of his property in an arbitrary manner; but by giving him a full indemnification and equivalent for the injury thereby sustained. The public is now considered as an individual, treating with an individual for an exchange. All that the legislature does is to oblige the owner to alienate his possessions for a reasonable price; and even this is an exertion of power, which the legislature indulges with caution, and which nothing but the legislature can perform. (1 Blackstone 139.)

It can be seen, therefore, that the right of property is not an absolute right, just as the freedoms of speech and assembly are not absolute freedoms. The right of property is indeed one of the most sacred of our rights, but it is and always has been subject to certain restrictions.

The words of the court in *Loan Association* v. *Topeka* (20 Wall. 665, 662–663(1875)) are relevant here:

It must be conceded that there are such rights in every free government beyond the control of the State. A government which recognized no such rights, which held the lives, the liberty, and the property of its citizens subject at all times to the absolute disposition and unlimited control of even the most democratic depository of power, is after all but a despotism. It is true it is a despotism of the many, of the majority, if

you choose to call it so, but it is none the less a despotism.

* * * * *

There are limitations on such power which grow out of the essential nature of all free governments. Implied reservations of individual rights, without which the social compact could not exist.

A great part of our legal and political history is the story of the shifting of the balance between the broader demands and interests of the community on the one hand, and the individual rights and privileges of private property on the other. The development of American jurisprudence may be said to reflect and indeed to represent, the struggle between these two aspects of private property, "the individual side and the social side."

The early ascendency of the individual side has, in many respects, yielded to the claims of the social side. Two eminent authorities on property law, Profs. James Casner and W. Barton Leach, suggest that the Founding Fathers would be astounded at the restrictions that have been made upon the right of property and in the use and enjoyment by the owner as he sees fit. Their comments are worthy of note:

We, in the United States, have always prided ourselves on our system of private property. Frequently we boast that in our country a man is free to do what he pleases with what he owns. Anyone who stops to think for a minute, however, realizes that our system of private property is not what it used to be and that a man's freedom to do what he wants with what he owns has changed from time to time.

Inroads which have been made on the freedom of owners of private property and which are now accepted as commonplace would have been unthinkable to our grandfathers, and it is within the realm of possibility that inroads which are unthinkable to us now may be commonplace to our grandchildren. Time will tell. (Cassner & Leach, "Cases and Text on Property," 985 (1959).)

This expansion of the power of the government with respect to property has taken place under the police powers of the State government and, for the most part, the commerce power of the Federal Government.

It has been said that property is a bundle of rights. Under this definition, the owner of property is conceived of as drawing unto himself the whole bundle of interests, the aggregate of rights, privileges, powers, and immunities, in regard to the "thing" which he calls his property. But this property, this bundle of rights, is meaningless except insofar as the owner, the possessor thereof, is protected by the law in the exercise of these rights.

Further, the fundamental characteristic of property is the right to exclude others. Of this Blackstone wrote:

There is nothing which so generally strikes the imagination, and engages the affections of mankind, as the right of property; or that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe. (Blackstone, 2 Commentaries, sec. 2.)

Mr. President, I believe that Blackstone's statement is pertinent with reference to title II, the public accommodations title, of the civil rights bill. In my judgment, it is the right of the individual property owner, whether he be white or nonwhite, to exclude other persons who may wish to come upon that property or who may wish to have him serve them. I believe he has this constitutional right. In my opinion, the passage of title II would violate that constitutional right of the owner of the property which is being used by the owner as an inn, motel, hotel, restaurant, or other so-called place of public accommodation.

A contemporary writer has denoted the right to exclude others as the essence of property. Morris R. Cohen, "Property and Sovereignty," 13 Corn. L. Rev. 8, 12 (1927).

In *Munn* v. *Illinois*, 94 U.S. 113, 141 (1877), Justice Field, dissenting, eloquently stated another basic attribute of property:

All that is beneficial in property arises from its use, and the fruits of that use; and whatever deprives a person of them deprives him of all that is desirable or valuable in the title and possession.

Again, the actual value of these attributes of property, and therefore of property itself, is determinable only in proportion to their judicial recognition and their legal enforcibility. Property then is the bundle of rights which the law accords to the owner.

As Justice Holmes states in *White-Smith Music Publishing Company* v. *Apollo Company*, 209 U.S. 1, at 19:

The motion of property starts, I suppose, from confirmed possession of a tangible object, and consists in the right to exclude others from interference with the more or less free doing with it as one wills.

As was stated by McLean in *West River Bridge* v. *Dix*, 6 Howard (47 U.S.) 507, at 538:

All property not public is private.

As Cardoza said in *Henneford* v. *Silas Mason Company*, 300 U.S. 577, at 582:

The privilege of use is only one attribute, among many, of the bundle of privileges that make up property or ownership.

As was stated by McKenna in *United States* v. *Ohio Oil Company*, 234 U.S. 548, at 571:

The conception of property is exclusiveness, the rights of exclusive possession, enjoyment, and disposition. Take away these rights and you take all that there is of property. Take away any of them, force a participation in any of them, and you take property to that extent.

As was stated by Moody in *Mayor of Knoxville* v. *Knoxville Water Company*, 212 U.S. 1, at 18:

Our social system rests largely upon the sanctity of private property; and that State or community which seeks to invade it will soon discover the error in the disaster which follows.

Whenever the law in the course of its development changes so that the owner of property is limited anew in respect to the dominion and control of his property, he has lost one of the rights from his bundle. He has lost some of his property. Thus when the Government rules that businesses affected with a public interest are subject to certain regulations, the property of the owners of such businesses has been correspondingly diminished (*Munn* v. *Illinois*, 94 U.S. 113, (1877)).

In *Nebbia* v. *New York*, 291 U.S. 502, 523 (1934), the case where this monumental step was taken, the Court declared:

Under our form of government the use of property and the making of contracts are normally matters of private and not of public concern. The general rule is that both shall be free of governmental interference. But neither property rights nor contract rights are absolute; for government cannot exist if the citizen may at will use his property to the detriment of his fellows, or exercise his freedom of contract to work them harm. Equally fundamental with the private right is that of the public to regulate it in the common interest.

Similarly, when the law, though recognizing the power of the owner of property to make certain stipulations respecting the use of his property, refuses to give legal redress for the violation of contracts or covenants made in regard to the property, the owner's property is pro tanto decreased—see *Shelley* v. *Kraemer*, 334 U.S. 1 (1948).

The Constitution as originally framed recognized a virtually unlimited right of private property subject only to the traditional restrictions of the common law.

Even property in human beings was protected therein. The absolutists concept of property prevailing in the 19th century held private property inviolable against almost all restrictions by the legislature, even many which might have been justified on the ground of public interest and social welfare. This resulted in the turn of the century emphasis upon the substantive aspects of due process as a limitation upon the remedial social legislation enacted by the States to alleviate problems arising in the wake of industrial expansion.

Today zoning laws, licensing laws, and numerous trade and business regulations give evidence of the modern understanding of property as requiring a balancing in favor of the social side. (Ely, cited supra at 12.) Of this development, Morris R. Cohen, in his essay on "Property and Sovereignty," supra at 22, writes:

Our students of property law need, therefore, to be reminded that not only has the whole law since the industrial revolution shown a steady growth in ever new restrictions upon the use of private property, but that the ideal of absolute laissez faire has never in fact been completely operative.

It is commonly accepted doctrine today that "There must be restrictions on the use of property not only in the interests of other property owners—referring to the law of nuisance—but also in the interests of the health, safety, religion, morals, and general welfare of the whole community," Cohen, cited supra.

The extension of, not the existence of, restrictions on private property is the crucial matter. As Professor Philbrick declared "ownership today is vastly different from the cominium of the Roman law—Philbrick, cited supra. In a manner of speaking, the test of the validity of legislation has become the greatest good for the group. The comments of

Professors Casner and Leach, who while endorsing this as a valid test to apply as "our society develops and changes," strike a warning note:

One thing to keep uppermost in your mind when traveling down this road of curtailing a man's freedom of action is the basic belief that the greatest good for the greatest number comes from making men free and while some regulation is justified because it enables men to enjoy their freedom, too much regulation may destroy the freedom entirely. Keeping the proper balance in this regard should guide the development of law. (Casner and Leach, supra at 985.)

Today "the position of property in constitutional law is somewhat anomalous. The coming of industrialism has made of liberty and of property convenient names for changeable bundles of specific equities"—Hamilton, "Property—According to Locke," 41 Yale Law Journal 864 (1932). Yet with all these analyses as to the present fluidity of the rights of the individual in his private property, it is still true that the right to own, use, and enjoy private property is one of the most cherished tenets of American constitutional law. The recent decision of the Supreme Court in *Griggs* v. *Allegheny County*, 369 U.S. 84 (1962) attests the continued vitality of this. It is only on a showing first of overriding public interest and second of full compliance with due process that the Court will recognize the power of the legislature to make inroads upon one of the basic principles of Anglo-American jurisprudence, the right of the individual to own, use, and enjoy his property as he sees fit. The words of Justice Story in *Wilkinson* v. *Leland*, 2 Pet. 627, 657 (1829) are apropos:

The fundamental maxims of a free government seem to require that the rights of personal liberty and private property should be held sacred. At least, no court of justice in this country would be warranted in assuming, that the power to violate and disregard them—a power so repugnant to the common principles of justice and civil liberty—lurked under any general grant of legislative authority, * * * a different doctrine is utterly inconsistent with the great and fundamental principles of a republican government, and with the right of the citizens to free enjoyment of their property lawfully acquired.

The right of a property owner voluntarily to operate his legitimate business in accordance with his own good judgment, wishes, and desires and in accordance with the traditions and habits of the community, is a right of property. There is nothing in the 14th amendment which deprives the owner of that right. The Court has not yet struck down the long established rule that the 14th amendment reaches only State action. Mr. Justice Harlan alluded to this fact in his concurring and dissenting opinions in *Peterson* v. *City of Greenville*, 373 U.S. 244, 249 (1963). Said he:

And it (the Court) does not suggest that such action, denying equal protection, may be found in the mere enforcement of trespass laws in relation to private business establishments from which the management, of its own free will, has chosen to exclude persons of Negro race. Judicial enforcement is of course State action, but this is not the end of the inquiry. The ultimate substantive question is whether there has been State action of a particular character * * * whether the character of the State's involvement in an arbitrary discrimination is such that it should be held responsible for the discrimination.

This limitation on the scope of the prohibitions of the 14th amendment serves several vital functions in our system. Underlying the cases involving an alleged denial of equal protection by ostensibly private action is a clash of competing constitutional claims of a higher order: liberty and equality. Freedom of the individual to choose his associates or his neighbors, to use and dispose of his property as he sees fit, to be irrational, arbitrary, capricious, even unjust in his personal relations are things all entitled to a large measure of protection from governmental interference. This liberty would be overridden, in the name of equality, if the strictures of the amendment were applied to governmental and private action without distinction. Also inherent in the concept of State action are values of federalism, a recognition that there are areas of private rights upon which Federal power should not lay a heavy hand and which should properly be left to the more precise instruments of local authority.

In the area of sit-ins, wade-ins, prayins, chain-ins, and other like trespasses, there is hope for property rights if the caveat of Mr. Justice Harlan is heeded.

The events of the past 30 years in the area of property rights are worth noting with concern when one considers the legal definition of communism stated in *U.S.* v. *Hautau*, 43 F. Supp. 507, 509 (D.C.N.J. 1942):

Communism (is defined as) * * * a system of social organization in which goods are held in common; the opposite of the system of private property * * * communalism * * *. Any theory or system of social organization involving common ownership of the agents of production, and some approach to equal distribution of the product of industry * * *. A theory of government and social order according to which property and the instruments of production are held as a common trust and the profits arising from all labor devoted to the general good: "The theory which teaches that the labor and the income of society should be distributed equally among all its members by some constituted authority." * * * A doctrine or practice calling for the complete abolition of all private property of every xx description, and the absolute control by the community in all matters pertaining to labor, religion, social relations, etc.

Those who look upon property rights with cynicism might bear in mind the words of Abraham Lincoln:

Property is the fruit of labor; property is desirable; it is a positive good in the world. That some should be rich shows that others may become rich, and hence is just encouragement to industry and enterprise. Let not him who is houseless pull down the house of another, but let him work diligently, and build one for himself, thus by example assuring that his own shall be safe from violence when built.

TITLE II—PUBLIC ACCOMMODATIONS

Now let us study the provisions of title II, the so-called public accommodations title.

Section 201(a) of title II of the Federal proposal makes an affirmative statement that:

All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the grounds of race, color, religion or national origin.

Section 201(b) then proceeds to identify those establishments which are included in the term "public accommodations." Subsection (b) of section 201 states that:

Each of the following establishments which serves the public is a place of public accommodation within the meaning of this title if its operations affect commerce, or if discrimination or segregation by it is supported by State action:

(1) Any inn, hotel, motel, or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his residence;

(2) Any restaurant, cafeteria, lunch room, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any such facility located on the premises of any retail establishment; or any gasoline station;

(3) Any motion picture house, theater, concert hall, sport arena, stadium or other place of exhibition or entertainment; and

(4) Any establishment (A) which is physically located within the premises of any establishment otherwise covered by this subsection, or within the premises of which is physically located any such covered establishment, and (B) which holds itself out as serving patrons of such covered establishment.

Subsection (c) then attempts to define operations which affect commerce with the meaning of title II. Subsection (c) of section 201 is as follows:

The operations of an establishment affect commerce within the meaning of this title if (1) it is one of the establishments described in paragraph (1) of subsection (b); (2) in the case of an establishment described in paragraph (2) of subsection (b), it serves or offers to serve interstate travelers or a substantial portion of the food which it serves, or gasoline or other products which it sells, has moved in commerce; (3) in the case of an establishment described in paragraph (3) of subsection (b), it customarily presents films, performances, athletic teams, exhibitions, or other sources of entertainment which move in commerce; and (4) in the case of an establishment described in paragraph (4) of subsection (b), it is physically located within the premises of, or there is physically located within its premises, an establishment the operations of which affect commerce within the meaning of this subsection. For purposes of this section, "commerce" means travel, trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia and any State, or between any foreign country or any territory or possession and any State or the District of Columbia, or between points in the same State but through any other State or the District of Columbia or a foreign country.

It is interesting to note that subsection (b) stated that "each of the following establishments which serve the public is a place of accommodation within the meaning of this title if its operations affect commerce" and then goes on to enumerate certain establishments in paragraph (1):

(1) Any inn, hotel, motel, or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than five rooms for rent or hire and which

is actually occupied by the proprietor of such establishment as his residence;

Subsection (c) then arbitrarily defines the operations of an establishment as operations which "affect commerce" if the establishment "is one of the establishments described in paragraph (1) of subsection (b)." In other words, the bill in one paragraph states that certain establishments are places of public accommodation if they "affect commerce" and enumerates those establishments. The bill then proceeds in another paragraph to state that establishments "affect commerce" if they are named in the first paragraph.

Subsection (c) then proceeds to identify the establishments enumerated in paragraph (2) of subsection (b) as establishments which "affect commerce" if such establishment "serves or offers to serve interstate travelers" or "if a substantial portion of the food which it serves, or gasoline or other products which it sells has moved in commerce. In other words, a hydra-headed approach is utilized here. The restaurant, cafeteria, lunch room, soda fountain, or other facility principally engaged in selling food for consumption on the premises will "affect commerce" if it serves interstate travelers or if a substantial portion of the food which it serves has moved in commerce or if "other products" which it sells have moved in "commerce." What is the definition of "offers to serve" interstate travelers? What is the definition of the word "substantial"? What portion of the food "or other products" served or sold would constitute a "substantial" portion of the overall food or products served or sold? Who would determine what is a "substantial" portion of the food served? Who would determine what is a "substantial" portion of the "other products" sold? No standard is set forth in the bill's language. How would the proprietor of a restaurant, cafeteria, lunch room, soda fountain or other facility enumerated in paragraph (2) of subsection (b) of section 201, the public accommodations section, know whether or not he came within the purview of the bill when there is no standard, no guidelines, provided which would aid him in determining whether or not a "substantial" portion of the food served or other products sold have moved in commerce? How is he to determine whether or not the food and/or other products have moved in interstate or in intrastate commerce? Is a "substantial portion" to be 51 percent of the whole, is it to be 49 percent, is it to be 75 percent, or is it to be 25 percent? What is a "substantial portion"?

What is meant by "transient guests" in paragraph (1), subsection (b), section 201, of title II? When do transient guests "affect commerce"? Is the word "commerce" all inclusive of both interstate and intrastate commerce? A reference is made to "interstate travelers" in subsection (c), but the words "interstate travelers" are used there for application only to paragraph (2) of subsection (b). The omission of any reference to the word "interstate" in paragraph (1) of subsection (b) may be taken to imply that the transient guests need not be traveling to and from points in different States, but that they may very well be traveling to and from localities within the same State. When is the motelkeeper to know whether or not his guest, who is naturally a transient guest, is one who comes within the purview of the title? Is a guest who has traveled from point A to the motel at point B, a distance of 25 miles, both points being within the same State, a "transient guest"? Obviously, there is no interstate travel involved here. Obviously, paragraph (1) of subsection (b) when combined with the first clause of subsection (c), will have the effect of forcing inns, motels, and other establishments which provide lodging to open their doors to all guests, whether or not they travel in interstate commerce. There is indubitably a serious constitutional question involved here, as the basis for Federal action with respect to the aforementioned establishments rests on the power of Congress to regulate commerce among the several States.

Subsection (c) proceeds to state that any motion picture house, theater, concert hall, sports arena, stadium, or any other place of exhibition or entertainment will be understood to "affect commerce" if "it customarily presents films, performances, athletic teams, exhibitions, or other sources of entertainment which move in commerce." What is meant by the word "customarily"? There is no definition of the word set forth in the language of the title. There is no standard or guideline.

Subsection (c) becomes even more ambiguous in its vague definition of what operations will "affect commerce" when those operations are conducted by establishments set forth in paragraph (4) of subsection (b).

Subsection (c) provides, with reference to establishments in paragraph (4) of subsection (b), that their operations "affect commerce" if (1) they are physically located within the premises of an establishment, the operations of which affect commerce "within the meaning of this subsection," or (2) there are physically located within their premises establishments the operations of which affect commerce "within the meaning of this subsection." This is a masterpiece of gobbledygook. To what subsection is reference being made? To subsection (b) or to subsection (c)? Subsection (c) of section 201(a) then proceeds to define commerce by stating that "for purposes of this section, 'commerce' means travel, trade, traffic, commerce, transportation or communication among the several States." What is meant by the word "section"? If it is meant to refer to section 201, why was it buried in subsection (c)? The preceding section in section (c) referred to establishments the operations of which affect "commerce within the meaning of this subsection." At the beginning of subsection (c) reference is made to the operations of establishments which "affect commerce within the meaning of this title." How is any owner of a business establishment to know whether the operations of his establishment come within the purview of the word "commerce" when its definition is applied to the "title" in one sentence, "this subsection" in another sentence, and "this section" in a third sentence, all three of which sentences are in the same subsection (c)? How is a court to construe the term as it is used here?

Madam President, these are but a few of the many questions which will occur in the attempted administration and enforcement of this bill if it every becomes law as now written.

Madam President (Mrs. NEUBERGER in the chair), it will become law, if cloture is invoked today. Those of us who oppose this title simply do not have the votes with which to strike it out, or to ameliorate its strictures, so our only hope is that cloture will not be invoked until the people at the grassroots can become more aware of the shortcomings of the bill.

No lawyer would have any difficulty in asking hundreds of questions as to the extent, portent, and meaning of words, terms, and phrases in this 55-page bill. Obviously, the bill needs to be amended in many ways, if only for the purpose of clarification and to prevent certain provisions from being determined void for vagueness. But the Senate floor is not a proper forum in which to do the kind of meticulous, painstaking, careful, and thorough work which is needed in order to remove from this measure the booby-traps and the pitfalls therein. It should have been sent to the Judiciary Committee—a committee composed wholly of lawyers—for their careful scrutiny. It could have been sent to a specially chosen committee for careful study, but the wrong fork was chosen at the crossroads several days ago when the Senate refused to follow normal procedures and send this bill to a committee.

Section 201(d) precludes racial discrimination or segregation among the same type of establishments as have already been mentioned if such discrimination or segregation is carried on "under color of any law, statute, ordinance or regulation" or if such discrimination or segregation is carried on "under color of any custom or usage required or enforced" by officials of the State or political subdivision thereof. Again, I feel that the language is vulnerable because of vagueness and ambiguousness. What is meant by discrimination? It is mentioned at least six times in this one title, and the word is used 31 times in the entire bill, and not once is there any attempt to define the word. Moreover, with reference to section 201(d), what is meant by the words "under color or any custom or usage?" Does this mean that if an individual proprietor, for reasons of business, prejudice, or anything else, should wish to discriminate between or segregate the races in his business establishment, and if the officials of the State or any political subdivision thereof should be called upon to enforce the proprietor's requirements of segregation or to make arrests of trespassers on the proprietor's property, this enforcement by officials would constitute "State action" within the meaning of this title?

Section 201(e) provides that the title shall not apply to a bona fide club or other establishment not open to the public, except to the extent that the facilities of such establishment are made available

to the customers or patrons of an establishment within the scope of subsection (b).

Every form of public accommodation, whether covered under section 201 or not, is prohibited under section 202 from discrimination or segregation if the denial of services is required by State or local law. The basis for Federal action with respect to the last mentioned establishments rests on the power of Congress to enforce the prohibitions of the 14th amendment—denials of equal protection of the laws—by appropriate legislation. The section states that all persons shall be entitled to be free "at any establishment or place, from discrimination or segregation of any kind on the ground of race, color, religion, or national origin, if such discrimination or segregation is or purports to be required by any law, statute, ordinance, regulation, rule or order, of a State or any agency or political subdivision thereof.

What is meant by "any establishment or place" is far from clear. Would cemeteries come within the purview of this language? Would funeral homes be included? Would churches be embraced therein? These questions remain unanswered in any reading of the bill.

Section 203 provides that:

No person shall (a) withhold, deny, or attempt to withhold or deny, or deprive or attempt to deprive, any person of any right (b) intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person with the purpose of interfering with any right or privilege secured by section 201 or 202, or (c) punish or attempt to punish any person for exercising or attempting to exercise any right or privilege secured by section 201 or 202.

This section lays the foundation for civil actions for preventive relief.

Section 204(a) is as follows:

Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice prohibited by section 203, a civil action for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order, may be instituted (1) by the person aggrieved, or (2) by the Attorney General for or in the name of the United States if he satisfies himself that the purposes of this title will be materially furthered by the filing of an action.

This section provides that a civil action may be instituted by the aggrieved person or by the Attorney General of the United States whenever any person has engaged in, or there are reasonable grounds that a person is about to engage in, any act or practice which would withhold, deny, attempt to withhold or deny, or deprive or attempt to deprive, any person of any right or privilege secured by section 201 or 202, or who would intimidate, threaten or coerce, or attempt to intimidate, threaten or coerce with the purpose of interfering with any person's rights or privileges secured by section 201 or 202, or who would punish or attempt to punish any individual for exercising or attempting to exercise any right or privilege secured by section 201 or 202. Note that the civil action may be instituted by the Attorney General if he satisfies himself that the purposes of the title will be materially furthered by the filing of an action. Note that the Attorney General only needs to "satisfy himself" that the purposes of the title will be "materially furthered" by the filing of an action. What are the "purposes" of this title? I find no statement of purposes as such. Shall the purposes be whatever the Attorney General may determine or interpret them to be? And would these purposes vary from one Attorney General to another Attorney General, depending upon the individual and the political faith to which he ascribes? Is there to be no standard by which an Attorney General shall be guided in instituting an action under this section other than that he "satisfies himself" that the "purposes" will be materially furthered? What would satisfy one Attorney General might not satisfy another Attorney General. Is the administration of this very controversial title to be left to the whims, caprices, and vagaries of a public official who is not elected to office by the people of the United States?

I make no personal reference to the present Attorney General when I ask these questions. But regardless of who the Attorney General may be, I feel that this is entirely too much discretionary power to be placed in the hands of an appointive official. I believe that the Congress would be recreant in its duty and lax in its responsibilities were it to provide the opportunity for such an arbitrary use of power to the chief law enforcement officer of this country.

Section 204(b) provides that the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the cost in any action commenced pursuant to title II. The United States shall be liable for costs the same as a private person. There is no estimate of the costs to the Federal Government of administering this title, but it can be readily assumed that the civil courts of the country will be deluged with suits instituted by persons claiming to be aggrieved and by the Attorney General for or in the name of the United States. Just what this will do to already heavily crowded court dockets throughout the Nation apparently remains to be fully understood. Moreover, the defendants in these cases will be fighting the might and power of the Attorney General backed up by the Federal Treasury. The tax dollars of the defendants will be used against them. A special category of persons, perhaps such as welfare recipients, would be unable to finance court suits upon being "aggrieved," the result being that the Attorney General would likely "satisfy himself" that the purposes of the title would be materially furthered by filing the action. Additionally, I can see the attorneys having a field day if, indeed, there are enough attorneys to handle the multitudinous suits which will mushroom like the prophet's gourd overnight. This is a lawyers' bill if there ever was such. As I have reportedly said, the only catch to it is that the bill has never been referred to a committee of lawyers in the Senate for careful scrutiny and exploration.

Section 204(c) provides that, in case of any complaint received by the Attorney General alleging a violation or threatened violation of any provision of this title, that officer shall notify the appropriate State or local officials "and, upon request," afford them a reasonable time to act under such State or local laws or regulations before he institutes an action. Note that State or local officials are to be afforded a reasonable time to act before the institution of an action by the Attorney General only "upon request." Again, there is no standard given as to what may constitute a "reasonable" time under which State or local officials may act to proceed under State or local laws or regulations governing public accommodations. Presumably, it would be left to the whims and caprices of the Attorney General, an officer not elected by the people, to determine what might be a "reasonable" period of time. A reasonable time would, therefore, vary from one instance to another, and, in some instances, could vary according to the temperament, whims, fancies, and prejudices of the Attorney General. This is just another instance, Madam President, whereby the Attorney General of the United States will have placed into his hands virtually unlimited power and discretion, with no standards or guidelines or limitations set forth in the congressional act.

Section 204(d) provides that in the case of any complaint received by the Attorney General alleging a violation or threatened violation of the provisions of title II, he may, before instituting an action, utilize the services of any Federal, State or local agency or instrumentality which may be available to attempt to secure compliance with the title's provisions by voluntary procedures. Note that the Attorney General "may" utilize the services of such State or local agencies. The language does not say that he "shall" utilize such services before proceeding to institute an action in the courts. Again, the matter is left to his own discretion. In some States or localities, a capricious Attorney General might utilize the services of local agencies whereas under the same circumstances, in another State, the Attorney General's prejudices, and as I have already indicated, all human beings have prejudices of one kind or another, may elect to institute an action without resorting to the use of the services of State or local agencies.

In other words, the rights of the States and local communities to act without Federal intervention may or may not be observed, depending not alone upon the circumstances, but also upon the prejudices and attitudes of an Attorney General and his staff, and also upon political considerations which may be involved from case to case, from locality to locality, from State to State, from town to town, and from time to time.

Section 204(e) provides that compliance with the provisions of subsection (c) shall not be required if the Attorney General files with the court a certificate that the delay consequent upon the compliance with such provisions in the particular case would adversely affect the interests of the United States or that in the particular case compliance with such provisions would prove ineffective. Here

again, the Attorney General has the last word. It is not required that he give any reasons for his feeling that the delay would adversely affect the interest of the United States. He is not required to give any reasons as to why compliance with the provisions of subsection (c) would prove ineffective. It is simply provided that compliance with the provisions of subsection (c) shall not be required of the Attorney General if he files with the court a certificate stating that the delay would adversely affect the interests of the United States or that compliance would prove ineffective.

Section 205(a) provides that the United States district courts shall have jurisdiction of proceedings instituted pursuant to the public accommodations title and "shall" exercise the same without regard to whether the aggrieved party shall have exhausted any administrative or other remedies that may be provided by law. In other words, the usual procedure of exhausting any administrative or other remedies prior to the institution of court action is to be put aside. Proceedings in this type of case will be under the immediate jurisdiction of the United States district courts. This will further disadvantage other types of civil cases awaiting action by the district courts.

Section 205(b) preserves rights and remedies by other Federal or State laws, including statutes and ordinances, inconsistent with the public accommodations title.

Title II would constitute an invasion of the property rights of owners of privately owned business establishments. There are those who argue that "human rights" are superior to "property rights." However, I have taken several hours to trace the history of the various theories of private property. I have taken several hours to present for the RECORD a historical analysis of property rights. I have tried to show that great men throughout the centuries have viewed property rights as constituting a very basic human right. I have endeavored to show that this feeling has existed not only in our own country but also in the mother country, and in France and in other European nations. I have shown that life, liberty, and property have been entitled to the protection of the sovereign since King John, at the point of the sword, attached his signature to the Magna Carta, which was the foundation of the rights enjoyed by Englishmen and in a considerable measure, the foundation of our organic law, the Constitution. I have shown that the authors of the fifth amendment to the Constitution did not confine the due-process clause of that amendment to the deprivation of life and liberty. I have shown that they included property. I have paid passing reference to the various State constitutions which follow the example of the Federal Constitution in their reference to property rights and the protection of those property rights.

In my judgment, Madam President, title II, the so-called public accommodations section of the civil rights bill, constitutes a radical departure from these theories of private property which have been long in existence and a radical departure from constitutional principles.

Much has been said and written with reference to objections to this proposal, and these objections appear to me to be insurmountable. The mere fact that such feverish efforts have been put forth to give constitutional justification to this title is testimony to the extreme emotionalism that has been engendered by events over the past 12 months.

I say again that, but for this emotionalism, it would be difficult to conceive that anyone would seriously suggest the existence of congressional power to enact title II, to say nothing of title VII and various other titles of the bill.

If this title is enacted, and if it should be sustained by the Supreme Court—and one should not be surprised at anything the present Supreme Court would do, when it comes to deciding cases and overturning decisions which have been rendered by previous Supreme Courts—it is difficult to conceive of any human activity which may not be regimented to Federal authority.

The power of Congress to enact any piece of legislation must be traceable to a grant of such power in the Constitution. The supporters of this bill have been hard put to find a constitutional bottom on which they might anchor the unlimited power implicit in this title. They have not been in complete agreement by any means. Some have grasped at the 14th amendment; others have seized upon the commerce power; and some have, in desperation, attempted to hang those provisions upon the pegs of both.

Let us examine both of these constitutional foundations upon which the proponents would seek to establish constitutional legitimacy for this highly controversial title.

It seems to be unmistakably clear that the 14th amendment will not give comfort to the proponents, because that amendment does not authorize Congress to prohibit acts of private discrimination.

Section 1 of the 14th amendment states:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 5 of the amendment provides:

> The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

The crucial words in the 14th amendment are these: "no State shall." These are the all important and magic words out of which any exercise of powers granted by section 5 must evolve. Action on the part of a State or a political subdivision thereof is the vital touchstone for the exercise of Federal power authorized by the 14th amendment. The prohibitions in section 1 of the 14th amendment are restrictions on State action and do not operate against individuals acting alone. The power of Congress to enforce the equal protection of the laws by "appropriate legislation" under the 14th amendment requires for its valid exercise the existence of some official State action resulting in invidious discrimination. Yet this title seeks to regulate and prohibit purely private individual acts of discrimination when such acts are performed by motel owners, innkeepers, restaurateurs, and other owners of private property who engage in accommodating the public. There is not even the shadow of State involvement in these activities. A further limitation in respect of the 14th amendment lies in the fact that section 5 thereof does not authorize Congress to adopt general legislation, but only corrective legislation is authorized. In other words, only such legislation as may be necessary and appropriate for counteracting such laws as States may adopt or enforce is authorized. Only those laws which, by the amendment, States are prohibited from making or enforcing or such action and proceedings as the States may commit or take and which they are by the amendment, prohibited from committing or taking, come within the scope of the amendment. Congress is powerless to prohibit any action not prohibited by the 14th amendment. Congress may properly correct, counteract, and nullify any State action prohibited by the amendment and shown to exist, but Congress cannot, on the basis of that amendment, operate against individuals by creating any new Federal right.

Court decisions give little comfort to the sponsors and supporters of this title. I call attention to the decision in the *Slaughterhouse* cases, 16 Wall. 36, 21 L. Ed. 394, wherein the Supreme Court, in its initial construction of the 14th amendment held that it operated against State laws. It is important to remember that this decision was handed down in 1873, fully 5 years after the adoption of the 14th amendment. It is important to understand that the members of the Supreme Court at that time were the contemporaries of the authors and framers of the 14th amendment. The members were in a position to fully understand the intent and purpose of the amendment. They declared that there was the existence of State laws which fell within the purview of that amendment's prohibitions and restrictions.

A decade later, in 1883, the Supreme Court, in its classic decision in the *Civil Rights* cases, 109 U.S. 3, held unconstitutional a public accommodations statute which had been enacted in 1875—18 Stat. 335. That public accommodation statute, if not the twin of the measure which we are importuned to enact now, was certainly its blood brother. The decision involved five separate cases, all of which are collectively cited as the Civil Rights cases, and that decision has never been overruled. Section 1 of the 1875 Civil Rights Act provided:

> That all persons within the jurisdiction of the United States shall be entitled to the full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns, public conveyances on land or water,

theaters, and other places of public amusement; subject only to the conditions and limitations established by law, and applicable alike to citizens of every race and color, regardless of any previous condition of servitude.

So that section was quite similar to the language of title II in the bill we are considering.

Two of the cases, those against Stanley and Nichols, were indictments for denying to persons of color the accommodations and privileges of an inn or hotel; two of them, those against Ryan and Singleton, were on information, the other an indictment for denying to individuals the privileges and accommodations of a theater, the information against Ryan being for refusing a colored person a seat in the dress circle of Maguire's Theater in San Francisco; and the indictment against Singleton was for denying to another the full enjoyment of the accommodations of the theater known as the Grand Opera House in New York, "said denial not being made for any reasons by law applicable to citizens of every race and color and regardless of any previous condition of servitude." The case of Robinson and Wife against the Memphis and Charleston Railroad Co., was an action brought in the Circuit Court of the United States for the Western District of Tennessee, to recover the penalty of $500 given by the second section of the act; and the gravamen was the refusal by the conductor of the railroad company to allow the wife to ride in the ladies' car, for the reason as stated in one of the counts that she was a person of African descent.

Mr. Justice Bradley delivered the opinion of the court. He stated that the purpose of the law was "to declare that, in the enjoyment of the accommodations and privileges of inns, public conveyances, theaters, and other places of public amusement, no distinction shall be made between citizens of a different race or color," and that its effect "is to declare, that in all instances, public conveyances and places of amusement, colored citizens shall have the same accommodations and privileges as are enjoyed by white citizens, and vice versa."

Mr. Justice Bradley went immediately to the crux of the matter: "Has Congress constitutional power to make such a law? Of course no one will contend that the power to pass it was contained in the Constitution before the adoption of the last three amendments." He was referring to the 13th, 14th, and 15th amendments. He continued:

> The power is sought, first in the 14th amendment, and the views and arguments of distinguished Senators, advanced whilst the law was under consideration, claiming authority to pass it by virtue of that amendment, are the principal arguments adduced in favor of the power. We have carefully considered those arguments, as was due to the eminent ability of those who put them forward, and have felt, in all its force, the weight of authority which always invests a law that Congress deems itself competent to pass. But the responsibility of an independent judgment is now thrown upon this Court; and we are bound to exercise it according to the best lights we have.

We are often importuned by Senators who support this bill to vote for the titles on the chance that they will be later held constitutional. Some persons may say that we as Senators should not concern ourselves much about the constitutionality of this bill, or any other bill for that matter, and that the Supreme Court will fulfill that function at the appropriate time. But in this case, Mr. Justice Bradley sounded a note which I think is pertinent when he referred to "the weight of authority which always invests a law that Congress deems itself competent to pass."

So the courts presume that a law is constitutional when it is enacted by the Congress, and that presumption of constitutionality is based upon the fact that Senators have some responsibility of considering, ascertaining, and determining the constitutionality of a statute which is enacted by the Federal Legislature.

After stating that the first section of the 14th amendment "is prohibitory in its character, and prohibitory upon the States," Mr. Justice Bradley went on to say:

> It is State action of a particular character that is prohibited. Individual invasion of individual rights is not the subject matter of the amendment. It has a deeper and broader scope. It nullifies and makes void all State legislation, and State action of every kind, which impairs the privileges and immunities of citizens of the United States, or which injures them in life, liberty or property without due process of law, or which denies to any of them the equal protection of the laws. It not only does this, but, in order that the national will, thus declared, may not be a mere brutum fulmen, the last section of the amendment invests Congress with power to enforce it by appropriate legislation.

With reference to the corrective force to which the amendment is limited, the Court used these words, and I repeat:

> The last section of the amendment invests Congress with power to enforce it by appropriate legislation.

To enforce what? To enforce the prohibition. To adopt appropriate legislation for correcting the effects of such prohibited State laws and State acts, and thus to render them effectually null, void, and innocuous. This is the legislative power conferred upon Congress, and this is the whole of it. It does not invest Congress with power to legislate upon subjects which are within the domain of State legislation; but to provide modes of relief against State legislation, or State action, of the kind referred to.

The Court went on to say:

> It does not authorize Congress to create a code of municipal law for the regulation of private rights; but to provide modes of redress against the operation of State laws, and the action of State officers, executive or judicial, when these are subversive of the fundamental rights specified in the amendment. Positive rights and privileges are undoubtedly secured by the 14th amendment; but they are secured by way of prohibition against State laws and State proceedings affecting those rights and privileges, and by power given to Congress to legislate for the purpose of carrying such prohibition into effect: and such legislation must necessarily be predicated upon such supposed State laws or State proceedings, and be directed to the correction of their operation and effect.

Again and again the Court hammered on the point that State action is the object of the 14th amendment prohibition:

> Until some State law has been passed, or some State action through its officers or agents has been taken, adverse to the rights of citizens sought to be protected by the 14th amendment, no legislation of the United States under said amendment, nor any proceeding under such legislation, can be called into activity: for the prohibitions of the amendment are against State laws and acts done under State authority.

The Court said that any legislation bottomed on the 14th amendment would have to be directed to the mischiefs and wrongs which the amendment was intended to provide against, "and that is, State laws, or State action of some kind, adverse to the rights of the citizen secured by the amendment."

It is interesting to note that the Court referred to property rights as being included among men's civil rights, a point that is overlooked by some of the ardent civil rights partisans of today, and the Court did this in emphasizing the fact that the 14th amendment was intended to provide corrective action, in general legislation:

> It is absurd to affirm that, because the rights of life, liberty, and property (which include all civil rights that men have), are by the amendment sought to be protected against invasion on the part of the State without due process of law, Congress may therefore provide due process of law for their vindication in every case; and that, because the denial by a State to any persons, of the equal protection of the laws, is prohibited by the amendment, therefore Congress may establish laws for their equal protection. In fine, the legislation which Congress is authorized to adopt in this behalf is not general legislation upon the rights of the citizen, but corrective legislation, that is, such as may be necessary and proper for counteracting such laws as the States may adopt or enforce, and which, by the amendment, they are prohibited from making or enforcing, or such acts and proceedings as the States may commit or take, and which, by the amendment, they are prohibited from committing or taking.

The Court discussed the rights secured by the equal protection and due process clauses:

> In this connection it is proper to state that civil rights, such as guaranteed by the Constitution against State aggression, cannot be impaired by the wrongful acts of individual, unsupported by State authority in the shape of laws, customs, or judicial or executive proceedings. The wrongful act of an individual, unsupported by any such authority, is simply a private wrong, or a crime of that individual; an invasion of the rights of the injured party, it is true, whether they affect his person, his property, or his reputation; but if not sanctioned in some way by the State, or not done under State authority, his rights remain in full force, and may presumably be vindicated by resort to the laws of the State for redress. An individual cannot deprive a man of his right to vote, to hold property, to buy and sell, to sue in the courts, or to be a witness or a juror; he may commit an assault against the person, or commit murder, or use ruffian violence at the polls, or slander the good name of a fellow citizen; but, unless protected in these wrongful acts by some shield of State law or State authority, he cannot destroy or injure the right; he will only render himself amenable to satisfaction or

punishment; and amendable therefor to the laws of the State where the wrongful acts are committed.

The Supreme Court decision in the Civil Rights cases established as solidly as the Rock of Gibraltar the following points: First, that the 14th amendment prohibitions are not applicable to individual invasions of individual rights but only to the denials of rights which result from State action; and second, that the enactment of general legislation cannot spring from the congressional power conferred by section 5 of the amendment; rather, authority only is granted to enact corrective legislation to counteract or regulate State action designed to deny the rights of individuals.

The decision in the civil rights cases runs precisely counter to the position taken by those persons who espouse the enactment of the public accommodations section in this bill. The supporters of title II—at least most of them—recognize that there is no comfort to be derived for their cause from the 1883 decision in the civil rights cases. They attempt to take refuge in the belief that the present Supreme Court would overrule the Supreme Court decisions in the Civil Rights cases of 1883.

While as I have already conceded that the present Supreme Court at times is apparently more greatly impressed by sociological arguments than by the precedents established by previous Supreme Courts, the overturning of the very great decision in this instance would be difficult, even for the most wild-eyed liberals, inasmuch as it has been even more firmly established in very recent years. In the case of *Shelley* v. *Kraemer*, 334 U.S. 1, the court, in 1948, held that a restrictive covenant entered into by private property owners could not be enforced in the court, but take note of what the court said:

> Since the decision of this Court in the Civil Rights cases, 109 U.S. 3 (1883), the principle has become firmly embedded in our constitutional law that the action inhibited by the first section of the 14th amendment is only such action as may fairly be said to be that of the States. That amendment creates no shield against merely private conduct, however discriminatory or wrongful.

Reaffirmation of this point occurred in the case of *Petersen* v. *City of Greenville*, 373 U.S. 244. This case was decided on May 20, 1963. In its decision the court said:

> It cannot be disputed that under our decision private conduct abridging individual rights does no violence to the equal protection clause unless to some significant extent the State in any of its manifestations has been found to have become involved in it.

There are those who advance the notion that where the action of an individual, such as the operation of a business, is regulated by the State by virtue of the simple act of licensing or, under the jurisdiction of the State with reference to sanitary and fire requirements, and so forth, the action of the individual becomes State action and is thus within the scope of the 14th amendment's prohibition. It is argued that the operation of private enterprise then becomes State action subject to the limitations and conditions embodied by the 14th amendment.

The act of licensing is unquestionably a State action, but, as Justice Harlan stated in Peterson against the City of Greenville, supra:

> This is not the end of the inquiry. The ultimate substantive question is whether there has been State action of a particular character—whether the character of the State's involvement in an arbitrary discrimination is such that it should be held responsible for the discrimination.

Anyone who is willing to view the matter objectively can see that there is no nexus between the fact of licensing and the act of private discrimination. Were it otherwise the case, a legal picture would be created that would open a Pandora's box. If the State is to be held responsible for the discrimination resulting from the conduct of a privately owned but licensed business, say a barbershop, may not it likewise be responsible for the loss of my hair if the barber mistakenly sprinkles my scalp with an acid rather than a tonic?

Even though the analogy would appear to be absurd, the reasoning in both cases is the same.

The Achilles heel of this argument rests in the confusion between a license and a franchise. In the New York case of *Madden* v. *Queens County Jockey Club*, 72 N.E. 2d 697, the court was asked to determine whether the operator of a racetrack could, without reason or sufficient excuse, exclude a person from admission to the races. In upholding the right of the operator to be arbitrary in the conduct of his business, the court discussed the plaintiff's contention that the license "constituted the licensee an administrative agency of the State and a permit to perform a public purpose." The court said:

> Plaintiff's argument results from confusion between a "license" imposed for the purpose of regulation of revenue, and a franchise. A franchise is a special privilege, conferred by the State on an individual, which does not belong to the individual as a matter of right. It creates a privilege where none existed before, its primary object being to promote the public welfare. A familiar illustration is the right to use the public streets for the purpose of maintaining and operating railroads, waterworks and electric light, gas and power lines.
>
> A license, on the other hand, is no more than a permission to exercise a preexisting right or privilege which has been subjected to regulation in the interest of the public welfare. The grant of a license to promote the public good, in and of itself, however, makes neither the purpose a public one nor the license a franchise, neither renders the place public nor places the licensee under obligation to the public.

This distinction has also been clearly noted by the Federal courts. In *Bowman* v. *Birmingham Transit Company*, 280 F. 2d 531 (1960), the Fifth Circuit Court of Appeals held that a city transit company could not segregate bus passengers on racial grounds.

> Because of the peculiar function performed by this transit company as a public utility, and its relation to the city and State of Alabama through its holding of a special franchise to operate on the public streets of Birmingham, we conclude that so long as such an ordinance was in force, the acts of the bus company in requiring racially segregated seating were State acts and thus violative of appellants' constitutional rights.

The ordinance involved provided that carriers could formulate such rules and regulations for the seating of passengers on public conveyances as were reasonably necessary to assure the speedy, safe, orderly, convenient, and peaceful handling of its passengers.

In distinguishing between a license and a franchise, the court said:

> It is, of course, fundamental that justification for the grant by a State to a private corporation of a right or franchise to perform such a public utility service as furnishing transportation, gas, electricity, or the like, on the public streets of the city, is that the grantee is about the public's business. It is doing something the State deems useful for the public necessity or convenience. This is what differentiates the public utility which holds what may be called a special franchise from an ordinary business corporation which in common with all others is granted the privilege of operating in corporate form but does not have that special franchise of using State property for private gain to perform a public function.

We are not obliged to argue by analogy the inappropriateness of the licensing theory as a touchstone for the exercise of congressional power under the 14th amendment. This novel theory was repudiated by the Court of Appeals for the Fourth Circuit in *Williams* v. *Howard Johnson Restaurants*, 268 F. 2d 845. The plaintiff argued in that case, in the words of the court, "that the State licenses restaurants to serve the public and thereby is burdened with the positive duty to prohibit unjust discrimination in the use and enjoyment of the facilities."

The court's response to this argument was as follows:

> This argument fails to observe the important distinction between activities that are required by the State and those which are carried out by voluntary choice and without compulsion by the people of the State in accordance with their own desires and social practices. Unless these actions are performed in obedience to some positive provisions of State law they do not furnish a basis for the pending complaint. The license laws of Virginia do not fill the void.

So, Mr. President, these case holdings appear to reveal the state of the law in connection with the 14th amendment. The courts have consistently held that section 1 of the 14th amendment is a prohibition against "State action." This has been the status of the law over the years and it is the status of the law today. Obviously, the Congress has no authority conferred upon it by the 14th amendment to enact title II of the civil rights bill. Nothing could be more apparent than that the power of Congress to enforce the prohibitions of the 14th amendment is a corrective power only.

So, what have the supporters of this so-called civil rights bill done? Realizing the difficulty involved in predicating the constitutional basis for title II solely upon the 14th amendment, they have sought to find shelter in the commerce clause of the Constitution.

In the civil rights cases which, as we have noted, invalidated a congressional

statute prohibiting discrimination in places of public accommodations, the Supreme Court declared:

No one will contend that the power to pass this law was contained in the Constitution before the adoption of the last three amendments.

The power of Congress to regulate commerce among the several States remains today as it existed in the original Constitution. Consequently, if the commerce power, which "was contained in the Constitution before the adoption of the last three amendments," did not support this kind of legislation in 1883, it will not do so today.

I admit that the congressional power to regulate interstate commerce is very broad. But it does have reasonable limits. In the Landmark case of *Gibbons* v. *Ogden*, 9 Wheat. 1, Chief Justice Marshall said that "This power is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the Constitution." Consequently, the authority of Congress over interstate commerce cannot be made a means of exercising powers not entrusted to the Congress by the Constitution. See Pipelines Cases, 243 U.S. 548.

Additionally, the court, in *Santa Cruz Fruit Packing Co.* v. *N.L.R.B.* 203 U.S. 453, stated that the exercise of the commerce powers must rest upon "a close and substantial relation to interstate commerce in order to justify the Federal intervention for its protection." In *N.L.R.B.* v. *Jones & Laughlin Steel Corporation*, 301 U.S. 1, the court said that the commerce powers may not "be pushed to such an extreme as to destroy the distinction which the commerce clause itself establishes between commerce 'among the several States' and the internal concerns of a State. That distinction between what is national and what is local in the activities of commerce is vital to the maintenance of our Federal system."

It is a difficult matter to establish the line which separates congressional and State power over commerce, but the course of decisions leaves no doubt that the commerce clause was not intended to regulate the use of private property or to govern personal relations within the borders of a State. Yet, this bill would attempt precisely to do this. The bill attempts to make interstate commerce that which is essentially intrastate commerce. This cannot be done without violating the spirit and the letter of the commerce clause. The power of Congress to regulate commerce depends upon the existence of activities which obstruct or burden commerce "among the several States" or foreign commerce. The exercise of this power must have a real or substantial relation or bearing upon commerce among the several States. See *Atlantic Coastline R. Company* v. *Riverside Mills*, 219 U.S. 186. Once such a real or substantial relationship is found to exist, the acts which are productive of this result, are then subject to Federal control under the commerce clause. The test, in fine, is the "effect" upon commerce.

There has been no showing that private discriminatory practices in connection with so-called public accommodations have any demonstrable effects upon commerce. No one has demonstrated that the exercise of a proprietor's private property rights impedes the commerce in a particular commodity. It has yet to be shown that enactment of this measure will facilitate or stimulate a substantial increase in the sale of horseradish, for example, or tomato catsup or black-eyed peas or collard greens, hominy grits, or Chesapeake Bay oysters or Maine lobsters. One may think these examples are absurd, but these—not so-called civil rights—constitute the substance of interstate commerce. In the absence of such a showing, the Congress is powerless to legislate.

Once more we are not without guidance in respect of the constitutionality of the Congress power as a foundation upon which to bottom this legislation. The court met this argument squarely and head on in the case of *Williams* v. *Howard Johnson Restaurants*, 268 F. 2d 845.

The court there said in no uncertain terms:

We think, however, that the cases cited are not applicable because we do not find that a restaurant is engaged in interstate commerce merely because in the course of its business of furnishing accommodations to the general public it serves persons who are traveling from State to State. As an instrument of local commerce, the restaurant is not subject to the constitutional and statutory provisions discussed above and, thus, is at liberty to deal with such persons as it may select.

Mr. President, if this proposed legislation should be enacted, and if it should be sustained, there is no activity of our citizens which may not be controlled by Federal legislation based upon the commerce clause. There is no individual who may not be directly affected and dealt with in relation to any and all of his private affairs. If such power, in reality, exists in the commerce clause, then much of the remainder of the Federal Constitution is nullified. Such a power would be the ultimate power, and the commerce clause could henceforth be relied upon to justify just about anything Congress might choose to do.

The court in *Carter* v. *Carter Coal Company*, 298 U.S. 238, said:

It is safe to say that if, when the Constitution was under consideration, it had been thought that any such danger lurked behind its plain words, it would never have been ratified.

Madam President, I feel that ample history has been presented in these last hours in support of the property rights of our citizens. I believe that ample evidence in the form of previous case holdings has been presented to demonstrate that title II cannot be based upon either the 14th amendment or the commerce clause of the Federal Constitution, as the supporters of the title contend. Ample evidence has been presented to show that the right to use, manage, and control property constitutes one of the basic human rights of our society and has constituted one of the basic human rights of Americans and our English forebears for at least 749 years come next Monday.

I trust that the Senate will not enact this bill with title II a part thereof. I have no doubt, as I have already stated, that the title will be enacted if cloture is invoked when the Senate meets at the appointed hour today to consider a vote on cloture because, I repeat, those of us who conscientiously object to title II and title VII, to the rebuttable presumption provisions in title I, and to the other provisions and titles on the basis of their possible unconstitutionality and their unforceability, do not have the votes to strike these titles. Our only hope is to defeat the effort to invoke cloture.

If we can defeat the effort to invoke cloture, and if we can continue to debate the bill, or if the leadership wishes to put it aside for awhile and get on with other legislation, then perhaps sufficient time will elapse for the people at the grassroots to fully grasp the portent of the proposed legislation and make known their expressions of concern, apprehension, and fear to their elected representatives in Congress. If this should happen, I repeat, the bill would never again, in its present form, come before the Senate.

Our only hope is to defeat the effort, to effect cloture.

Madam President, with regard to——

Mr. KUCHEL. Madam President, I cannot hear the Senator.

Mr. THURMOND. Madam President, will the able and distinguished Senator yield?

Mr. KUCHEL. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. THURMOND. Madam President, will the able and distinguished Senator yield for a question?

Mr. KUCHEL. I object.

The PRESIDING OFFICER. The Senator has a right to yield for a question.

Mr. THURMOND. Madam President, on what ground does the Senator from California object to the Senator from South Carolina propounding a question to the able Senator from West Virginia?

The PRESIDING OFFICER. The Senator from South Carolina may ask the Senator from West Virginia a question.

Mr. BYRD of West Virginia. I ask unanimous consent that I may yield to the distinguished Senator from South Carolina, without losing my right to the floor.

Mr. KUCHEL. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. BYRD of West Virginia. Madam President, in connection with title II——

The PRESIDING OFFICER. The Senator from South Carolina may ask a question of the Senator from West Virginia. The Senator from West Virginia may answer the question of the Senator from South Carolina. He may not yield to the Senator from South Carolina for a statement.

Mr. BYRD of West Virginia. I yield to the distinguished Senator from South Carolina for a question only.

Mr. THURMOND. Madam President, I thank the able and distinguished Senator from West Virginia for yielding to

the Senator from South Carolina for a question.

I ask the able and distinguished Senator from West Virginia if it is not true that in 1875, Congress enacted a civil rights law containing a provision which is very similar, if not identical, to the so-called accommodations provision contained in the pending so-called civil rights bill?

Mr. BYRD of West Virginia. The Senator is correct.

Mr. THURMOND. I ask the able and distinguished Senator from West Virginia if it is not true that in 1883 the Supreme Court of the United States held such a law unconstitutional, and that the law was never enforced?

Mr. BYRD of West Virginia. It is true that the Supreme Court in the civil rights cases in the year 1883 held unconstitutional the statute to which the Senator from South Carolina has referred, which had been enacted by Congress in 1875.

Mr. THURMOND. Is it not true that at that time the question of the constitutionality was raised in that case, and that the Supreme Court held that a man, on his own private property, would not be required to sell to or serve anyone unless he wished to do so?

Mr. BYRD of West Virginia. The Supreme Court held, in essence, that the thrust of the 14th amendment is against State action, and that that amendment does not prohibit individual invasion of individual rights. That is precisely what the statute was designed to reach. It is precisely what title II of the bill before us is designed to reach; namely, individual invasion of individual rights, or individual discrimination, based on race, color, and so forth, against another individual.

Mr. THURMOND. Is it not true that section 1 of the 14th amendment reads:

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Mr. BYRD of West Virginia. Yes.

Mr. THURMOND. Is it not true that the courts down through the years have uniformly held that this provision of the Constitution refers to State action, and State action only, and does not refer to individual action?

Mr. BYRD of West Virginia. The Senator is correct. The crucial words are "no State shall."

Mr. THURMOND. "No State shall." Under this interpretation, can the Senator imagine how such a bill could be passed and be held constitutional, especially when an almost identical bill was held to be unconstitutional in 1883, when the Supreme Court made its finding on this very point?

Mr. BYRD of West Virginia. The Senator from West Virginia cannot imagine such a situation. The 14th amendment is worded today precisely as it was in 1883 at the time the Supreme Court of the United States rendered its decision in the civil rights cases, holding that a similar congressional statute was invalid.

Mr. THURMOND. I believe that in 1875 the 43d Congress enacted a statute entitled "An act to protect"——

Mr. BYRD of West Virginia. The Senator from West Virginia does not yield for a statement.

Mr. THURMOND. Madam President, is it not true that the act passed by Congress in 1875 was entitled "An act to protect citizens in their civil and legal rights," and that that act had as its constitutional basis the 14th amendment?

Mr. BYRD of West Virginia. The Senator is correct.

Mr. THURMOND. Is it not true that in 1883, the Supreme Court, in the celebrated civil rights cases, in 109 U.S. 3, held that statute unconstitutional, and that the holding of the Court is a definitive statement of the lack of power in Congress to enact a measure of the nature of the so-called civil rights bill now before the Senate?

Mr. BYRD of West Virginia. The Senator is correct.

Mr. THURMOND. Is it not true that the 13th amendment to the Constitution of the United States gives no basis for the enactment of the pending bill, because that amendment prohibits slavery and involuntary servitude?

Mr. BYRD of West Virginia. The Senator is eminently correct.

Mr. THURMOND. Is it not true that if title II were enacted, it would amount, in effect, to involuntary servitude, to force one man to serve another man against his wishes?

Mr. BYRD of West Virginia. The Senator from West Virginia believes it would constitute involuntary servitude.

Mr. THURMOND. Does the Senator from West Virginia feel that having a man required to serve another man, whether of his own race or of some other race, against his wishes, is involuntary servitude?

Mr. BYRD of West Virginia. The Senator from West Virginia so feels.

Mr. THURMOND. Does the Senator from West Virginia feel that when a woman of one race is required to give a massage to a woman of another race against her wishes, it is involuntary servitude?

Mr. BYRD of West Virginia. The Senator from West Virginia feels that unless the action is entered into voluntarily, even though the individual is being compensated for the personal services in the form of labor, it still constitutes involuntary servitude.

Mr. THURMOND. Is it not true that the decision of the Supreme Court in 1883 held that there was no basis on which to sustain the Civil Rights Act either under the 13th or 14th amendment?

Mr. BYRD of West Virginia. The Senator from West Virginia feels that any statute which requires a person to render involuntary personal labor to another immediately raises the question of the constitutionality of that statute under the 13th amendment.

Mr. THURMOND. Is it not true that under the commerce clause a statute of this kind could not be sustained; and does the Senator know of any reason or basis in law on which title II in the so-called civil rights bill now before the Senate could be sustained?

Mr. BYRD of West Virginia. I know that any congressional power must be traceable to a grant of such power in the Constitution. I have not been able to find any such grant of power in the Constitution which would sustain the enactment of title II in the pending bill.

Mr. THURMOND. Is it not true that the commerce clause merely states that Congress shall have power to regulate commerce with foreign nations, among the several States, and with the Indian tribes, and that this is the only reference in the Constitution pertaining to the commerce clause?

Mr. BYRD of West Virginia. The Senator is correct. I believe it should be pointed out that, of course, a person would be free to cease from any form of servitude at any time he wished to do so. That was the case of the Ohio barber who closed his shop in a recent racial dispute.

Madam President, I ask unanimous consent to insert in the RECORD at this point a news story which appeared in the Washington Post of March 16; which appeared in the New York Times of March 16; and which appeared in a newspaper which I cannot identify, but which also pertains to this same subject.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the Washington Post, Mar. 16, 1964]

BARBER TO CLOSE SHOP IN OHIO RACIAL DISPUTE

XENIA, OHIO, March 15.—About 500 sympathizers today massed outside the Greene County jail to show support for 109 whites and Negroes arrested yesterday in a civil rights demonstration at a barbershop.

Today's demonstrators, most of them students, were orderly. They gathered outside the jail at noon, stayed for about an hour, and then dispersed. The prisoners were arrested in a protest at the barbershop in nearby Yellow Springs of Lewis Gegner, who had refused haircuts to Negroes.

[Gegner, meanwhile, announced today that he was closing his shop indefinitely, the Associated Press reported.]

More than 800 persons participated in the Yellow Springs demonstration. Most of those arrested were jailed here, but some were taken to the Montgomery County jail in Dayton because of lack of space in the jail here.

Practically all the sympathizers today were reported from predominantly Negro Central State College and Wilberforce University. There were few students from Antioch College, which earlier reportedly had warned that disciplinary action would be taken against any students found to be participating in further demonstrations.

[From the New York Times, Mar. 16, 1964]

OHIO BARBERSHOP SHUT IN PROTESTS—STUDENTS OBJECT TO OWNER'S REFUSAL TO SERVE NEGROES

XENIA, OHIO, March 15.—Lewis Gegner, embattled in a civil rights controversy in nearby Yellow Springs for nearly 4 years, decided today to close his barbershop indefinitely.

The decision to close his shop, site of almost weekly demonstrations, came not long

after 1,500 silent marchers demonstrated in this southwestern Ohio county seat, 8 miles south of Yellow Springs, where 109 students were jailed yesterday on charges of contempt of court.

Mr. Gegner has steadfastly refused to cut Negroes' hair, insisting he is incapable of doing so because it requires a special skill. His case, which is before the Ohio Supreme Court, seeks to test the constitutionality of the State's public accommodation law as it applies to barbershops.

The barber said he was closing in deference to his wife and family and for the safety of the village of Yellow Springs. He said he would reopen when officials at nearby Wilberforce University, Central State and Antioch Colleges can "control their respective students."

POLICE BRUALITY ALLEGED

Today's march contrasted with yesterday's by an absence of violence. The march ended within 30 minutes and the students, mostly from predominantly Negro Central State College, returned to their campus.

Archie Hunter, a leader of the march, said the demonstration was to protest alleged police brutality in the arrest of the 109; to protest the arrests on the ground that they were unconstitutional because they prevented freedom of assembly; and to help lift the morale of those imprisoned.

Mr. Gegner remains the only barber or beauty shop operator in Yellow Springs who has not integrated his shop. The village itself is generally recognized in Ohio as a liberal island in relatively conservative surroundings.

While the legal battles and demonstrations are commonplace in the community, yesterday's strife was the most serious to date and was the result of a court order issued on Friday.

In it, Judge Herman Weber of the Greene County Common Pleas Court in Xenia restricted picketing to three persons at any one time. The order further restricted the gathering of crowds on the street near the barbershop and stipulated that "other picketing, demonstrations or crowds of any kind whatsoever within an area of 500 feet east and west of the barbershop" would be prohibited.

Arraignment on the contempt of court charges before Judge Weber is scheduled tomorrow morning.

TWO-WEEK RESPITE ON COAST

SAN FRANCISCO, March 15.—Negro leaders have promised San Francisco a 2-week respite to solve the city's civil rights problems or face the prospect of more demonstrations like those of the last 10 days.

Mayor John F. Shelley and officers of 15 civil rights groups announced yesterday a 2-week civil disobedience moratorium soon after 110 pickets inside an auto agency were arrested.

The police estimated that 90 percent of the demonstrators were white. Most were college students.

[From the New York Times, Jan. 4, 1964]

OHIO BARBER LOSES RACE CASE APPEAL

XENIA, OHIO, January 3.—District court of appeals overturned a lower court decision today and ruled that the State law forbidding racial discrimination in barbershops was valid.

The court ruled in a case involving Lewis Gegner, a Yellow Springs barber who had refused to serve Negro customers. He argued he did not know how to cut Negro hair, which he contended required special skills in which he was not trained.

Mr. Gegner was upheld by the Greene County Common Pleas Court, but the decision was overturned today by the appellate court.

The appellate court said that although courts generally did not attempt to regulate people in their "strictly private business" there were "certain class of business in the management and conduct of which the general public also has an interest."

If barbers could turn away Negroes because of their race, the court said "then this group would be denied the safeguards to health provided by law and be denied on their part the equal protection of the laws."

The court sent the case back to common pleas court with instruction to order Mr. Gegner to end his "unlawful and discriminatory practices."

[From the New York Times, May 4, 1964]

BARBER IS EXEMPTED IN INTEGRATION CASE

XENIA, OHIO, May 3.—Common Pleas Judge Warren C. Young ruled today that the public accommodations law requiring a barber to serve anybody who enters his shop was unconstitutional.

The judge ruled in dismissing an order by the Ohio Civil Rights Commission that directed Lewis Gegner to accommodate Negroes in his shop in Yellow Springs.

Judge Young said that although he was in sympathy with the aims of the law, legislatures and courts in their enthusiasm to erase racial segregation should not abridge the freedom of others to operate their businesses.

The law, which became effective in October 1961, requires any business to serve all customers regardless of race, creed, or color.

In agreeing with Mr. Gegner's contention he did not know how to cut the hair of Negroes, the court held that a barber must have special training, pass a State examination, and be licensed.

The judge, after dismissing the commission's order, declined to issue an order to prevent further demonstrations led by Antioch College students at Mr. Gegner's shop.

STUDENTS PICKET IN OHIO, 100 HELD—GAS AND FIREHOSE USED IN RACIAL DEMONSTRATION

YELLOW SPRINGS, OHIO, March 14.—The police used a firehose and tear gas on college students here today and arrested more than 100. The students were demonstrating against a barber who has refused to cut Negroes' hair.

Authorities from seven counties helped round up the students in the largest mass arrest of demonstrators in Ohio since the current civil rights movement began.

The police took 15 carloads of demonstrators to jails in Xenia, 8 miles away.

Yellow Springs is the home of Antioch College, whose students have been in a running dispute with the barber, Lewis Gegner, since 1961 over his white-only policy.

The demonstration began peacefully when the students from Antioch and from Central State College at Wilberforce, 10 miles away, assembled at the barbershop in defiance of an injunction issued yesterday limiting pickets to three.

ORDERED TO DISPERSE

The police chief, James McKee, a Negro and Greene County Sheriff Russell A. Bradley told the students to disperse, saying they did not want to arrest them.

The sheriff read the injunction. When the students refused to disperse the police chief announced all were under arrest.

The students, about half of them white and the others Negroes, locked arms and sat down. They formed a line stretching about 200 feet from the barbershop.

Fifty to sixty students were arrested. They were put into police vehicles and taken to the city jail in Xenia.

The students continued their defiance of the injunction, sitting down five deep in the middle of the village of 4,200 population's Main Street.

The police chief again ordered the students to leave. When they refused, the fire department aimed hoses high into the air, the water falling down on the demonstrators who were already wet from an intermittent rain that fell throughout the day.

TEAR GAS USED

The students refused again to move and police began using tear gas. At this point about 40 more students were arrested.

About 600 to 700 persons stood in the rain, shouting at the police.

This was the first time that tear gas had been used in connection with demonstrators here. A firehose was used in May 1963, but the only person hit by the water was a newspaper photographer.

In 1963, Mr. Gegner was cited into a court for violation of the State's new public accommodations law, which requires all business places to serve any customers.

The local common pleas court ruled the part of the law pertaining to barbers unconstitutional, but this was overturned by the district court of appeals. Mr. Gegner filed an appeal in the State supreme court Wednesday.

Authorities did not immediately file charges against those jailed but they probably will be held in contempt of court for violating the injunction limiting picketing.

Mr. THURMOND. Madam President, will the Senator from West Virginia yield for a question?

Mr. BYRD of West Virginia. I yield for a question.

Mr. THURMOND. I should like to ask the Senator from West Virginia if it is not true that the power of Congress to enact this type of legislation under the commerce clause was considered in the 1883 decision, and that in that decision the brief of the United States before the Supreme Court made an argument which included a statement that—

Inns are provided for the accommodation of travelers; for those passing from place to place. They are essential instrumentalities of commerce (especially as now carried on by "drummers"), which it was the province of the United States to regulate even prior to the recent amendments to the Constitution.

Even though this statement was included in the brief of the Government, did not the Supreme Court reject this argument summarily, and in answer to its own rhetorical question as to whether or not Congress possessed power to enact such a law the Court said—and I ask the Senator if he does not agree with this statement—

Of course, no one will contend that the power to pass it was contained in the Constitution before the adoption of the last three amendments—

Of course, speaking of the 13th, 14th, and 15th amendments.

Mr. BYRD of West Virginia. The Senator from West Virginia, in his discussion on title II, has referred to this statement by the Court.

Mr. THURMOND. Is it not true that the commerce clause has been a part of the Constitution from the date of its ratification, and therefore the Court was saying the commerce clause did not empower Congress to enact a so-called public accommodations law in 1875, and, if the doctrine of stare decisis is fol-

lowed, will not the same line of reasoning apply today?

Mr. BYRD of West Virginia. I think the Senator is correct.

Mr. THURMOND. I should like to propound another question to the Senator from West Virginia, if he will yield, on another title of the bill, or does the Senator wish to discuss any other title of the bill?

Mr. BYRD of West Virginia. I would prefer not to discuss any other title inasmuch as I have already discussed at some length every title in the bill.

Mr. THURMOND. Madam President, I wish to take this opportunity to compliment the able and distinguished Senator from West Virginia for the magnificent address he is making and for the fine contribution he is making on the floor of the Senate on this occasion. I would like to call it to the attention of the Senate and the people of the country.

Mr. KUCHEL. Madam President, a point of order. That is not a question I ask that the rule be enforced.

The PRESIDING OFFICER. The Senator will confine himself to asking a question of the Senator from West Virginia.

Mr. THURMOND. I have no more questions, and will just compliment the Senator from West Virginia.

Mr. BYRD of West Virginia. Madam President, I thank the Senator from South Carolina for asking the pertinent questions which he has propounded. I trust I have answered them in a proper and satisfactory manner.

In connection with my consideration of title II, I recently asked the Metropolitan Police Department of the District of Columbia for information concerning attacks on women which have occurred in and around elevators in apartment houses during the past 6 months.

I felt this information would be of interest particularly in view of the fact that, under the provisions of title II, an individual, who owns a tourist home with as many as 6 rooms, or more, for rent or hire, and who occupies that home as his or her residence, would not be permitted to discriminate against transient guests on the basis of race or color, and so forth.

One can envision situations in which a widow or an unmarried woman might be attempting to make a living, renting rooms in her home to transient guests.

Under this bill, as I have indicated, if that widow has 6 rooms or more for rent or hire to transient guests, she will be confronted with possible litigation if she refuses, on the basis of race or color, to rent or hire those rooms to any transient guest.

I was supplied information on May 27, 1964, which I shall read into the RECORD. It reads as follows:

Subject: Request of Senator BYRD for report of offenses against women which were committed in or near elevators of apartment houses during the past 6 months.

The following are cases which occurred in or near elevators in apartment houses, which resulted in either rape, robbery or assaults of women.

The first case is that of a white female, 67 years, housewife, who reported about 6:15 p.m., December 14, 1963, while in elevator, two Negro males stopped at the door and asked her if she was going up. The elevator started up and one of the subjects reached in and grabbed her pocketbook containing $14 in bills and personal papers.

Next is a Negro, female, 69 years, housewife, who reported about 10:25 p.m., January 31, 1964, while entering the elevator, on the first floor, she was followed by a Negro male and while in the elevator, he demanded her money. She replied she had none. He struck the complainant with his fist, while he held a long-barreled pistol in his other hand. Complainant's purse was then emptied on the floor of the elevator. Nothing was gained and both left the elevator on the 8th floor.

The next was the case of a white female, 56 years, who reported about 8:40 p.m., February 1, 1964, as she was about to get on the elevator, she was grabbed by two Negro males who pulled her to the lobby floor and took her purse containing $7 and personal papers.

The next is the case of a Negro female, 24, who reported about 11:15 p.m., February 8, 1964, she entered her apartment building and when she got on the elevator, an unknown Negro male got on behind her. She pushed the button for the third floor and as the car began to move, this male subject yoked her and asked for her money. He removed $2.18 from her wallet, stopped the elevator and then pressed the button for the basement. Once in the basement, he tried several doors before he found one unlocked and then he took her into the meter room where he forced her to remove her clothing and then had sexual intercourse with her. He then attempted to force her to commit oral sodomy upon him. About this time, the complainant heard her husband, knocking on the janitor's door. She called out to him and the subject jumped up and ran out the meter room where he was caught by the complainant's husband.

The next case is that of a white female, 22 years, employed at the State Department, 22d and Constitution Avenue, NW., who reported about 8:30 p.m., February 15, 1964, while waiting for the elevator in the lobby of her apartment building, a Negro male approached her and snatched from her right hand her red plastic wallet containing about $9 in bills and personal papers, State Department ID card.

The next is the case of a Negro, female, 24, who reported that about 8:45 p.m., February 17, 1964, she got on the elevator in the apartment building where she lives. An unknown Negro male had been waiting on the first floor for the elevator also and he also got on the elevator. She pushed the button for the fourth floor, but this unknown male reached over and pushed the button for another floor. Then this man struck her a staggering blow to the left eye, knocking her to the floor. Then he took off her underpants and attempted to have sexual relations with her. The complainant screamed and at this time, the subject removed $4 in cash from the complainant's purse. He left the scene and when the complainant got up, she discovered that the elevator had been stopped on the fifth floor.

The next is the case of a white female, who reported about 8:00 p.m., February 22, 1964, in Warrant 688–64, that while in her apartment building, she could not find the key to her apartment. She asked the part-time elevator operator to help her. This subject took the elevator to the basement of the building with complainant on it. There, he beat and choked the complainant and took $180 from her and her driver's license. He then knocked her unconscious and had sexual intercourse with her.

The next is the case of a Negro, female, 41 years, employed at the Naval Research Lab, reported about 9:15 p.m., February 28, 1964, while on the elevator of her apartment building and when reaching the second floor a Negro male snatched her purse containing $1 and personal papers.

The next is the case of a white female, 73 years, who reported about 4:15 p.m., March 6, 1964, while descending from the fourth floor in the elevator in the building and when in the lobby of same, she was grabbed from behind by two Negro males. No. 1 subject struck complainant in the face and held his hand over her mouth while No. 2 subject snatched her black leather pocketbook from her left arm, containing a red leather wallet with $5 or $6 in same, keys to her apartment and a Government check payable to complainant in amount of $76.

The next is the case of a white female, 31 years, secretary to a Senator, U.S. Capitol, who reported about 6:55 p.m., March 6, 1964, as she entered the elevator, she was followed by two Negro males who, after the elevator doors closed, struck complainant in the face six times with their fists and snatched from her hand her black leather pocketbook and removed a black leather change purse containing $15 in bills and personal papers.

The next is the case of a white female, 64 years, who reported that about 6:15 p.m., March 20, 1964, she entered the apartment building where she lives and observed two Negro males behind her. When inside the lobby, she went to the mailbox and then got on the elevator. The two subjects followed. She pushed the button for the third floor and asked the subjects which floor they wanted. They answered, "the fifth floor." The complainant then stated to them that there was no fifth floor in the building. About this time, the door to the elevator closed. The complainant was struck on the right side of her face and she fell to the floor. She was yanked up by her hair and one of the subjects took her leather purse containing $3 and a Central Charge-Plate. When the elevator reached the third floor, the complainant was pulled from the elevator and was told not to scream. She was pulled to the stairway and up to the fourth floor landing. She was threatened by one of the subjects with a knife. He tore off her girdle and then proceeded to have sexual intercourse with her.

Meanwhile, the complainant's husband, had seen his wife enter the building, and when she was so long coming up on the

elevator, he went to the elevator looking for her. When she was not on the elevator, he looked up the stairwell. He heard a noise on the upper landing and when he started up, he encountered one of his wife's assailants. There was a brief encounter, during which Mr. Gianiny was struck in the face with the fists of this subject. Mr. Gianiny tried to follow the fleeing assailant, but the man escaped him.

The next is the case of a white female, 45 years who reported about 4 p.m., April 3, 1964, while in the elevator of her apartment building with two Negro males No. 1 subject punched her in the mouth and pulled her coat over her head, when the elevator reached the fifth floor, she was dragged to the stairwell and made to lie on the floor. At this time, No. 1 subject removed from her purse her red leather wallet containing $85 in bills and personal papers.

The next is the case of a Negro female, 11 years, a student at Amidon School who reported about 3:10 p.m., April 10, 1964, while at her apartment building, she was approached by two Negro males who forced her to go with them to 800 Fourth Street SW., and take the elevator at the north end of the building to the eighth floor. Complainant was then taken to the stairway where she was slapped by No. 1 subject who asked for all her money. No. 1 subject then removed 25 cents from her left coat pocket. Both subjects had pen knives and threatened the complainant. When complainant screamed a resident in apartment 822 came out and the two subjects ran down the stairway.

The case of a white female, 61 years old employed at CIA, 17th and H Streets, NW., who reported about 6:15 p.m., November 8, 1963, while on stairway in her apartment building she was beaten about the face and body with an unknown object and had stolen from her handbag $139 in bills by an unknown person. Complainant to the Washington Hospital Center in ambulance 82–A, where she was treated by Dr. Gantz of staff for possible fracture to nose and jaw. Condition satisfactory and admitted.

The next is the case of a white female, 47 years, employed at the Smithsonian Institution on 24th Street NW., who reported about 7:05 p.m., November 15, 1963, as she was entering her apartment building, she stopped to allow a Negro male to pass. As subject was abreast of her, he struck her under the eye, knocking her to the ground and then took her purse containing $20 and shopping plates. Complainant fainted and was taken to Washington Hospital Center in private auto and treated by Dr. Gandey of staff for fractured jaw; condition satisfactory and admitted.

The next is the case of a Negro female, 22 years, who reported about 7:30 p.m., November 21, 1963, in response to a knock on her apartment door, a Negro male pointed a gun at her and shortly after, a second Negro male entered. Complainant was ordered into the bathroom and about 10 minutes later when she heard the door slam, she discovered $50 missing from her purse and also a blue billfold with personal papers.

The next is the case of a white female, 38 years, employed as a saleslady at the Hecht Co., Seventh and F Streets NW., who reported about 9:50 p.m., December 13, 1963, while walking up the stairs and when at the second floor landing, she was approached by a Negro male who attempted to snatch her purse from her arm, knocking her to the floor. Complainant screamed and subject fled. Complainant treated at Providence Hospital by Dr. Solack of staff for laceration to face. Condition not serious and released.

The next is the case of a white female, 48 years, employed as a saleslady at Lerner's, 3110 14th Street NW., who reported about midnight December 22, 1963, as she was opening the door to her above apartment, she was grabbed by two Negro males who snatched her purse containing $3 in bills and personal papers.

The next is the case of a white female, 52 years, reported while in the hallway, she was approached from behind by a Negro male, who snatched from her arm her black leather pocketbook containing a red leather wallet and about $15 in bills and $4 in change, total $19.

The next case is of a white female, 54 years, reported while in the hallway, she was approached from behind by a Negro male, who snatched from her left arm her black leather pocketbook, containing $40 in bills and personal papers.

The next case is of a white female, 40 years, reported she was grabbed by three Negro males in the basement and thrown to the floor where one of the Negro males ripped her clothing and removed 75 cents in change from her sweater pocket. Complainant screamed and subjects ran from the basement. No hospital treatment needed.

The next case is of a white female, 48 years, reported while standing in hallway, about to open mailbox, she was approached from the rear by a Negro male, who snatched her brown cloth handbag, containing $7 in bills and personal papers and eyeglasses.

The next case is of a white female, 76 years, retired, reported while climbing steps inside and when on first floor landing a white male snatched from her hand a black handbag containing a light blue wallet with $16 in same, also keys and personal papers. Subject made escape running out front door.

The next case is of a white female, 64 years, reported while in the hallway, fourth floor of 1401 Fairmont Street NW., she was approached from the front by a Negro male who grabbed her from the front and threw her against the wall, causing her to drop her black patent leather purse containing $119 in bills, one $25 series E U.S. savings bond and personal papers. Subject then picked up her purse and ran down the rear stairway. No hospital treatment.

The next case is of a white female, 70 years. While sitting in front room of her apartment, she heard a knock at the door. She opened the door and a Negro male stated he was a salesman from the Stanley Products and started to show her the order book. At this time, the subject pulled the locked screen door and forced his way inside, grabbed her over the mouth and took her into the middle room and forced her to lie on the sofa. While holding her mouth, he removed her undergarments and placed a pillow over her head and threatened her. Subject then attempted to have sexual relations with her, at which time her dog bit subject on the hand. Subject asked complainant for her money and she stated she did not have any. Subject opened the top dresser drawer and removed $16 in bills and change and left running out front door.

The next case is of a white female, 64 years. Resident manager reported she heard a knock at the door and responded to find a Negro male pointing a long-barreled revolver at her. Subject ordered her into the apartment and told her he wanted all the money. Subject ransacked the apartment and removed $187 in bills and from her finger a yellow metal ring with a lion's head and a diamond set in the mount. Subject placed complainant in a chair and tied her with a sheet.

The next case is of a Negro female, 72 years, retired. Reported upon entering her apartment with a female companion were met by a Negro male holding a silver-colored gun. The companion was directed to go into the living room closet and shut the door, which she did. Subject then ordered complainant into bedroom closet and shoved her, causing her to fall and then snatched her black leather handbag containing five $20 bills and one $10 bill. Subject also stole $15 from the kitchen table drawer; total $125.

The next case is of a Negro female, 41 years, reported while in the lobby of her apartment building, she was struck in the face by a Negro male, who took her purse containing $2 in bills, and personal papers.

The next case is of a Negro female, 63 years, reported as she was about to enter her apartment building, she had her purse containing $2 in change and personal papers snatched by a Negro male, accompanied by another Negro male.

The next case is of a white female, 42 years, reported while at her apartment building, she had her purse containing $17 and other personal papers snatched by three Negro males.

The next case is of a white female, 74 years, reported while in the hallway of had apartment building, she had snatched from her arm her handbag, blue in color, containing $50 in bills and personal papers by a Negro male who was hiding in the stairway.

The next case is of a white female, 88 years, reported while in hallway of her apartment building, she was approached from the rear by two Negro males, one of whom snatched her black calfskin clutch purse containing a brown change purse with $4.67; a tan change purse with $2; a white change purse with $3.20 and personal papers, total $9.87.

The next case is of a Negro female, 72 years, reported while on the third floor of her apartment building, she was followed by two Negro males. No. 1 subject grabbed her black plastic handbag containing 25 cents and personal papers.

The next case is of a Negro female, 44 years, reported while on the stairway, second floor, she was grabbed from behind by one of two Negro males who held her arms while No. 2 subject beat her about the face with his fist and snatched her black leather handbag, removing a red leather wallet from same containing $23 in bills and change.

The next case is of a Negro female, 10 years, reported while entering lobby she was approached by a Negro male who asked where Eddie lived. Subject then grabbed her and shoved her against the wall and removed from her pocket a brown envelope containing $5 in bills.

The next case is of a white female, 84 years, reported in response to a knock on the door that she was greeted by two Negro males who stated they were with the Star paper. They forced entry and knocked subject down, held her there and asked for the money. No. 2 subject beat the complainant's husband about the face and body. They took one yellow metal wedding band with large stone and five rubies in same and one Lady Hamilton wrist watch with stretch band. Subjects to Casualty Hospital; not serious and released.

The next case is of a white female, 80 years, reported she was followed into her apartment by a Negro male who pushed her to the floor, cutting her head and grabbed her black leather purse containing $20 and personal papers. To Georgetown Hospital in ambulance 2; not serious and admitted for observation.

The next case is of a white female, 53 years, reported she was approached from behind by two Negro males who snatched from her left wrist her black leather handbag containing $11 in bills, District of Columbia permit, and several credit cards.

The next case is of a white female, 65 years, reported while in the basement, she was approached from the rear by a white male who snatched her black pocketbook containing about $1,000 in cash and personal papers.

The next case is of a white female, 44 years, reported a Negro male broke the glass in the rear door, came in the kitchen holding a short-barreled black pistol and robbed her of $75 or $80.

All in all, Madam President, there was a total of 40 victims, 28 of them being white, and 12 being Negro. As to the assailants in the 40 cases, 55 were Negro males, and 2 were white males. In one case, the color of the assailant was unknown.

I offer this for the RECORD at this point, to underscore the concern which some of us feel about title II. We cannot help viewing with apprehension the passage of this title which would force a person who occupies a home as his or her residence with as many as six rooms for rent or hire, to rent those rooms to any transient guest without the privilege of turning an individual of a different race away; in other words, a Negro woman living in such circumstances would be forced to rent rooms to a white transient guest, or be confronted with possible litigation in the courts. By the same token, a white woman would be forced to rent rooms to nonwhite persons, or be confronted with litigation in the courts.

She could remove one room from the rental market and rent out only five rooms and she would not be covered by the title. She could discriminate then without fear of litigation.

But these are practical reasons why some of us hesitate, entirely aside from the possible unconstitutional aspects, because we see this title as a dangerous title. This is not meant to be any indictment of persons of any race. I have merely presented the facts as they were represented to me, concerning attacks which have occurred in the District of Columbia in hallways or in elevators of apartment buildings. I place these in the RECORD because I believe that such situations are pertinent to the matter before us.

Madam President, we have been urged to support the bill by some who maintain that it involves a great moral issue. There are those who say that to oppose the bill is un-Christian. Churchmen have been exhorted to get into the act. Church laymen have been asked to urge their Representatives and Senators to vote for the bill on the basis that it is their Christian duty to do so.

A REFUTATION TO THE ARGUMENT THAT WE SHOULD PASS THE CIVIL RIGHTS BILL FOR INTERNATIONAL REASONS

Over the course of the last year especially, I have from time to time heard addresses and read so-called popular articles on the subject of civil rights which have never ceased to amaze me. Again and again, I hear and read comments to the effect that all sorts of things are going to happen to us as a nation if we do not pass the civil rights bill. Among some of the arguments devised as reasons in support of this legislation is one which leaves me completely baffled. It runs along the general line that "we are doomed to fail in the world community unless we pass the civil rights bill," or "our prestige in international affairs will sink to an all-time low if we don't pass legislation for the Negro," or "we will never be able to lead the free world again if we fail to enact civil rights legislation."

My first impression of these arguments was that they were simply drawn up for their sheer, shock propaganda appeal. But, as I saw more and more of this same approach in the writings of those who are highly thought of by the reading public, I came to the conclusion that these commentaries were sadly lacking in political sophistication. The fact is that those who have been writing in this vein appear, unfortunately, to believe what they say. But, their arguments are shallow, their logic is questionable, and their values are in dispute. In short, their claims are false.

I therefore feel compelled, out of civic duty, to register my sharp disagreement with those who proselytize such propaganda in the political marketplace. It is a sad—no, a shocking—commentary on our times when we are told that this Nation's fate as world leader will be determined by a piece of legislation such as the civil rights bill.

I should now like to spend just a few moments to set the record straight by pointing out the naivete of the charge that we should pass this legislation for international reasons.

I am particularly disturbed by those who claim that our prestige in the world is determined by the future of this civil rights bill. To those would-be Cassandras who cry out with such emotional fervor, I remind them that the Congress of the United States is not charged with the duty of reflecting world opinion. This is not to say that I discount the importance of our prestige throughout the world. Far from it. But, I do think it a dangerous tendency when some would have us formulate national policies primarily or even secondarily on the basis of what our international neighbors might choose to think of us. Certainly, such a course of action would not be political maturity, but rather a sign of national vanity. Let us not be so coy as to think that we stand to gain if we shape domestic legislation after the fashion of the young lady who chooses to primp before the judges of an international beauty contest.

Such is the answer I would give to those who are unreasonably concerned with our prestige and reputation in the world. But, other false claims have been made and should be answered. I should therefore like now to pass on to consider another warning that we hear from time to time—a warning to the effect that, unless we pass this civil rights bill, our position of leadership in the world will diminish. This charge is clearly triggered by the alarmist element in our population. And, I suspect that it is based at least in part on the previously considered argument that this Nation should adhere only to those policies which yield the greatest degree of prestige; I say this is a suspicion because, unfortunately, those who make this charge generally avoid offering arguments to support their position. For this reason, I find it hard to second-guess the reasons for their contentions. Certainly they cannot ally themselves with the force of logic if they claim that our economic leadership with a gross national product exceeding $600 billion a year will diminish. I know of no nation that will refuse American investment should this bill be defeated. I know of no underdeveloped country that will refuse our foreign assistance if we kill this bill. I certainly know of no nation that is about to impose economic sanctions on us if we do not pass this measure. I know of no country that will turn down the help rendered by our Peace Corps if this bill does not pass. Furthermore, those who level these charges cannot be men of sound reason and vision if, by a diminishing of our position of leadership in the world, they mean to imply that our allies will break diplomatic relations with us and tear up all our treaties of mutual defense. I know of no United Nations declarations that will be filed against us in the event that this bill does not pass. I know of no nation that is planning to cut off educational exchange programs if this bill is stopped.

In short, I think that we can dismiss the arguments of those who appear in false patriotic garments to tell us that we are doomed unless this civil rights bill is enacted. In the end, men of sound reason will hold us in high regard and respect our leadership position only if we as legislators determine to do what we are committed to do—fulfill our national purpose in our own way.

Many well-meaning church leaders have come to Washington to press upon Federal legislators the urgency of the bill's enactment. Some of them have come to see me. These are respectable men and women. They are religious men and women. They are sincere men and women. But I would venture to say that 99 out of 100 of them have not read the bill; I would venture to say that 999 out of 1,000 have not read the minority views in the House Judiciary Committee report and the record of the House debate on the bill at the time it was considered there. These people, like many others in public life, have been swept up in the vortex of emotion which prevails in much of this country and which manifests itself in legislative halls as well as in the streets. Appeals have been made to conscience, but not to reason; to the emotions but not to the intellect; to the heart but not to the mind. Law-abiding, conscientious people are being sold a "pig in a poke." They are being told that this bill is something which it is not.

Madam President, I have attempted to reach some understanding as to the Scriptural basis upon which we are implored to enact the proposed legislation. I am certainly not an authority on the Scriptures. I have read the Scriptures to some little extent. I am sorry that I have not read them as much as I should have read them. But I have spent several hours in attempting to find in the Scriptures words which require that a person vote for, support, or urge the support of the bill. I find none.

Yet our church people are constantly being importuned to get behind Senators and apply pressure to give their support to the bill and get it passed. It is being done in the name of religion, morality, and conscience.

Where has the Nation's conscience been in hiding? How has it managed to elude its keepers so successfully in times past? Has it slept like Rip Van Winkle, in the mountains of yesterday? Or has it been marooned like Robinson Crusoe on some distant isle of fantasy? Where was the Nation's conscience in the days of Dwight L. Moody, a man who was converted while working as a clerk in a Boston shoestore in 1855; who soon devoted all of his time to Christian service; a man who established a Sunday school on North Market Street in Chicago, which grew to be the largest Sunday school in the West; a man who went on to become an internationally known evangelist; a man who organized an interdenominational school for free Bible training, which, after his death, was named the Moody Bible Institute. Here was an expositor of the Bible who lived in no ivory tower "far from the maddening crowd"; here was a man who rubbed elbows with the most common of common people. In his lifetime Dwight L. Moody addressed more than 100 million people and that was before the age of television. He held meetings in all parts of the United States. Are we to understand that Dwight L. Moody and the great clergymen of his day were spiritual cowards? A contemporary of Dwight L. Moody, a man who lived to see the first Roosevelt administration, was William Ashley "Billy" Sunday. Billy Sunday was a baseball player. From 1883 until his conversion in 1890, he played in turn on the Chicago, Pittsburgh, and Philadelphia baseball teams of the National League. Three years later he became a Presbyterian minister and began his evangelistic work. He became a famous evangelist. His ability to reach the spiritual conscience of his listeners led to his winning about 300,000 converts. The tabernacles in which he preached usually had sawdust on the floor, and so, when his converts came up to the altar they were said to be "hitting the sawdust trail."

Billy Sunday was born 1 month before his father was killed in the War Between the States. Billy Sunday spent much of his childhood in an orphans' home and then supported himself by working at odd jobs. Here was a colorful American preacher. Are we to believe that this spiritual giant was afraid to tamper with the Nation's conscience? Privately owned business establishments were not required to serve all who would enter in his day. The Federal Government was not called upon, in his day, to constantly look over the shoulder and run barefoot through the records of employers for the purpose of snooping and hauling those employers before courts to answer charges of discrimination in their practices of hiring, promoting, and firing. Where was the Nation's conscience in his day? It really would be amusing, if it were not quite so serious, to see those, as we look about us, who exhort the fine, honest, hard-working, religious citizens of this country, in the name of conscience, in the name of Christianity, in the name of morality, to exert pressure upon the U.S. Senate to pass a bill which, in reality, would endanger some of the liberties and freedoms of those very same citizens. What is really being appealed to is not the Nation's conscience, but its emotions.

The King James version of the Holy Bible, which was first published in 1619, the year when Negroes were first brought to the colonies in America, was as much read, as well understood, and held as much sway, if not more, over the daily lives of men and women as is the case today. Shall responsible men and women be persuaded that throughout the religious history of this country, they have failed to preach the truth? Shall we be persuaded to believe that the scriptures cannot be fulfilled unless Congress passes a certain bill. If this is true, then I might say to Christians that Christ died in vain.

The admonition that we should do unto others as we would have them do unto us is a spiritual admonition. The man-made law will never force men to be Christian or to be spiritual, or even to be charitable in their dealings with others. In urging men to act toward others in a certain way, Christ meant for the Christian act to be supported by Christian motives flowing from a Christian heart. For "as a man thinketh in his heart, so is he." He may be forced to act, by law, in a certain way, but his actions may not spring from his heart. Men will never be made Christians by law. There are already thousands of laws the purpose of which, basically, is to guide men in doing unto others as they would have others do unto them. We have laws which state that we shall not kill—in other words we should not do unto others that which we would not want others to do unto ourselves—but there is a murder every 40 minutes; we have laws which tell us that we should not steal, that we should not bear false witness, that we should not embezzle, that we should not commit assault, that we should not covet our neighbor's wife—these are manmade laws, some or all of them having their basis in the God-given Ten Commandments, and one might truthfully say that their purpose is to make man do unto others as he would make others do unto him—yet men go on stealing, bearing false witness, embezzling, committing adultery, and assaulting their fellow men. Even with all of these laws, a major crime is committed every few seconds. So, the passage of H.R. 7152 is not going to bring us any nearer to the millennium. Men will only do unto others, as Christ admonished, when their hearts undergo a spiritual change, not when the signature of the Chief Executive is affixed to a law which was enacted to get votes in the coming elections.

The majority whip, when he opened the debate on the bill several weeks ago, referred to the Scriptural passage: "As ye would that men should do to you, do ye also to them likewise." So in view of the fact that the distinguished majority whip sought support in the Scriptures, I, too, have looked into the Scriptures to see if I could find such support. In verse 1 of the 28th chapter of Genesis, we are told that Isaac called Jacob and blessed him and charged him and said unto him, "Thou shalt not take a wife of the daughters of Canaan." And who was Canaan? He was fourth son of Ham. And who was Ham? Ham was one of the three sons of Noah, the other two sons having been Shem and Japheth, and of these three sons, we are told in Genesis 9: 19 "was the whole earth overspread." Continuing in chapter 9 of Genesis, we find that Noah, following the flood:

> Began to be an husbandman, and he planted a vineyard;
>
> And he drank of the wine, and was drunken; and he was uncovered within his tent.
>
> And Ham, the father of Canaan, saw the nakedness of his father, and told his two brethren without.
>
> And Shem and Japheth took a garment, and laid it upon both their shoulders, and went backward, and covered the nakedness of their father; and their faces were backward, and they saw not their father's nakedness.
>
> And Noah awoke from his wine, and knew what his younger son had done unto him.

And he said, Cursed be Canaan; a servant of servants shall he be unto his brethren.

And he said, Blessed be the Lord God of Shem; and Canaan shall be his servant.

God shall enlarge Japheth, and he shall dwell in the tents of Shem; and Canaan shall be his servant.

So, Noah apparently saw fit to discriminate against Ham's descendents in that he placed a curse upon Canaan.

Isaac apparently did not want his son, Jacob, to take a wife of the daughters of Canaan, and I suppose that one might be able to charge Isaac with discrimination.

One of the greatest scientific laws ever promulgated its to be found in the first chapter of the Book of Genesis. In that immaculate account of creation, we find that "God created great whales and every living creature that moveth, which the waters brought forth abundantly, after their kind, and every winged fowl after his kind."

And God said, Let the earth bring forth the living creature after his kind, cattle, and creeping thing, and beasts of the earth after his kind, and it was so.

And God made the beasts of the earth after his kind, and cattle after their kind, and every thing that creepeth upon the earth after his kind: and God saw that it was good.

In Leviticus, chapter 19, verse 19, we find the words:

Ye shall keep my statutes. Thou shalt not let thy cattle gender with a diverse kind: thou shalt not sow thy field with mingled seed.

God's statutes, therefore, recognize the natural order of the separateness of things.

Mr. HUMPHREY. Mr. President, will the Senator yield?

Mr. BYRD of West Virginia. I yield only for a question.

Mr. HUMPHREY. Would the Senator from West Virginia be interested in having the Senator from Minnesota fulfill a promise that he made last evening? The Senator will recall that on the fence around my home are growing some very beautiful, lovely, charming, attractive, colorful, thorn-ridden roses.

Mr. BYRD of West Virginia. The Senator from West Virginia knows that the Senator from Minnesota always keeps his promises, and the Senator from West Virginia is very grateful and very happy to be the recipient of the Senator's good will in this instance.

Mr. HUMPHREY. Mr. President, will the Senator yield for a further question?

Mr. BYRD of West Virginia. I yield.

Mr. HUMPHREY. The Senator will be pleased to know that the Senator from Minnesota has had delivered to the office of the Senator from West Virginia a beautiful bouquet of roses that come from the garden of Mrs. Humphrey.

Mr. BYRD of West Virginia. The Senator is glad to be apprised of that fact. The Senator from West Virginia will attempt in return to have roses placed on the desk of the distinguished majority whip very soon.

The PRESIDING OFFICER. The Chair reminds the Senator that Senate rules forbid flowers to be placed on the desks of Senators.

Mr. HUMPHREY. Madam President, I ask unanimous consent that that rule be set aside for a moment.

Mr. MORSE. Madam President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. HUMPHREY. Madam President, will the Senator yield?

Mr. BYRD of West Virginia. I yield for a question.

Mr. HUMPHREY. Does the Senator from West Virginia realize that the objection came from the No. 1 rose wearer of the Senate?

Mr. BYRD of West Virginia. The Senator from West Virginia realizes that.

Mr. MORSE. Madam President, will the Senator yield for a question?

Mr. BYRD of West Virginia. I yield for a question.

Mr. MORSE. Does the Senator know that if he leaves the flowers in the office of the Senator from West Virginia, there would be no violation of the rule?

Mr. HUMPHREY. Madam President, will the Senator yield?

Mr. BYRD of West Virginia. I yield for a question.

Mr. HUMPHREY. Does the Senator know that if we can procure a pin, I shall be able to pin a rose to the lapel of the Senator from West Virginia?

Mr. BYRD of West Virginia. The Senator from Minnesota has handed me a bundle of roses. I would be happy to place one on my own lapel. The desk to which the Senator from West Virginia referred was the desk in the office of the Senator from Minnesota.

Mr. HUMPHREY. The Senator is correct.

We shall select a good one.

(At this point, Mr. HUMPHREY pinned a rose on Mr. BYRD of West Virginia.)

Mr. BYRD of West Virginia. The Senator from West Virginia would express the hope that the distinguished majority whip will now place a similar rose upon the lapel of the distinguished Senator from Oregon.

Mr. MORSE. Madam President, will the Senator yield?

Mr. BYRD of West Virginia. I yield for a question.

Mr. MORSE. The Senator from Minnesota must realize that it would be impossible to put that rose on my lapel because I am in no mood to do any filibustering.

Mr. HUMPHREY. Madam President, will the Senator yield?

Mr. BYRD of West Virginia. I yield for a question.

Mr. HUMPHREY. Does the Senator realize that the Senator from Minnesota is fully cognizant of the obvious, well-known and established fact that the Senator from Oregon has just related?

Mr. BYRD of West Virginia. Will the Senator repeat his question?

Mr. HUMPHREY. Does the Senator from West Virginia recognize and realize that the Senator from Minnesota is fully cognizant of the obvious fact—at times the sad and sorrowful fact—which the Senator from Oregon has just stated?

Mr. BYRD of West Virginia. The Senator from West Virginia would not desire to agree that such a situation exists.

Mr. MORSE. Madam President, I rise to a point of order.

The PRESIDING OFFICER. The Senator will state it.

Mr. MORSE. The Senator from Minnesota is not in his seat.

The PRESIDING OFFICER. The Senator will take his seat. The Senator from West Virginia has the floor.

Mr. BYRD of West Virginia. Madam President, the Old Testament is replete with references to property.

Title II of the bill before us would jeopardize property rights. Deuteronomy, chapter 19, verse 14 says:

Thou shalt not remove thy neighbor's landmark, which they of old time have set in thine inheritance, which thou shalt inherit in the land that the Lord thy God giveth thee to possess it.

Speaking of inequality among men, even in heaven one might expect to find inequalities among heavenly beings. In I Peter, chapter 3, verse 22, we find these words:

Who is gone into heaven, and is on the right hand of God; angels and authorities and powers being made subject unto Him (meaning Christ).

So, there are angels, there are authorities, and there are powers, even in heaven.

Proponents of title VII say that it will outlaw discrimination in employment and they have exhorted their church brethren to urge that the bill be passed. What would they have to say about Christ's parable of the laborers in the vineyard?—Matthew 20: 1–15.

For the kingdom of heaven is like unto a man that is an householder, which went out early in the morning to hire labourers into his vineyard.

And when he had agreed with the labourers for a penny a day, he sent them into his vineyard.

And he went out about the third hour, and saw others standing idle in the marketplace.

And said unto them; Go ye also into the vineyard, and whatsoever is right I will give you. And they went their way.

Again he went out about the sixth and ninth hour, and did likewise.

And about the eleventh hour he went out, and found others standing idle, and saith unto them, Why stand ye here all the day idle?

They say unto him, Because no man hath hired us. He saith unto them, Go ye also into the vineyard; and whatsoever is right, that shall ye receive.

So when even was come, the lord of the vineyard saith unto his steward, Call the labourers, and give them their hire, beginning from the last unto the first.

And when they came that were hired about the eleventh hour, they received every man a penny.

But when the first came, they supposed that they should have received more; and they likewise received every man a penny.

And when they had received it, they murmured against the goodman of the house.

Saying, These last have wrought but one hour, and thou hast made them equal unto us, which have bourne the burden and heat of the day.

But he answered one of them, and said, Friend, I do thee no wrong: didst not thou agree with me for a penny?

Take that thine is, and go thy way: I will give unto this last, even as unto thee.

Is it not lawful for me to do what I will with mine own? Is thine eye evil, because I am good?

So the householder practiced discrimination. He paid those who worked but a little while the same amount of money received by those who had borne the burden in the heat of the day. Did Christ condemn this discrimination? There is no account of it, if he did.

The proponents of H.R. 7152 would deprive many private property owners of the right to withhold the use of that property from some people, while making it available for use to others. I refer here to title II of the bill. They exhort our churchmen to urge the passage of the bill including this title on the basis that a moral issue is involved, but what did the householder in the parable, to which I have just referred, say to the laborers in the vineyard who complained because he did not treat them all alike?

Listen to his question: "Is it not lawful for me to do what I will with mine own?" Christ was referring to the private property of the householder, and the householder was saying what private property owners in this country, who oppose title II, are today saying: "Is it not lawful for me to do what I will with mine own?"

The place and importance of property rights in the scheme of Biblical history may be understood from a reading of I Kings, chapter 21.

Those who would have us pass this bill on the basis that it is our moral duty to do so, cite the following words from the Declaration of Independence: "We hold these truths to be self-evident that all men are created equal." This is obiter dictum. In the first place, the statutes of this Nation are not to be void or made to stand on the verbiage of the Declaration of Independence. The Constitution is the real touchstone, and not a word was said in the original Constitution or the Bill of Rights about equality among men. Yet, there are loud voices proclaiming today that we must pass this bill to insure equality among men and that it is un-Christian to suggest that men are not created equal.

Of course, everyone knows that men are not created equal, they never have been, and they never will be. Some are born lame, some are blind, some are geniuses when born and others are simple minded. Christ recognized this verity when he related the parable of the 10 virgins—Matthews 25: 1–13:

Then shall the kingdom of heaven be likened unto 10 virgins, which took their lamps, and went forth to meet the bridegroom.

And five of them were wise, and five were foolish.

They that were foolish took their lamps, and took no oil with them:

But the wise took oil in their vessels with their lamps.

If all men are created equal, how could five of the virgins have been wise and five foolish?

Christ also recognized the inequality among men as to their abilities in relating the parable of the talents—Matthew 25: 14–30.

There are many persons to whom hopes are held out by this legislation that they will be automatically given additional status and position by its enactment. Luke, the physician, is one to whom we may repair in seeking advice pertinent to this point:

When thou are bidden of any man to a wedding, sit not down in the highest room; lest a more honourable man than thou be bidden of him;

And he that bade thee and him come and say to thee, Give this man place; and thou begin with shame to take the lowest room.

But when thou art bidden, go and sit down in the lowest room; that when he that bade thee cometh, he may say unto thee, Friend, go up higher: then shalt thou have worship in the presence of them that sit at meat with thee.

For whosoever exalteth himself shall be abased; and he that humbleth himself shall be exalted.

Those who would exhort us to pass this bill on the basis that it would be un-Christian not to do so point to the demonstrations that have taken place in the streets. Men of the cloth say that this bill must be passed if we are to avoid violence and bloodshed. But Paul, the great Apostle, said, in his epistle to the Romans, chapter 13, verses 1 to 7:

Let every soul be subject unto the higher powers. For there is no power but of God: the powers that be are ordained of God.

Whosoever therefore resisteth the power, resisteth the ordinance of God: and they that resist shall receive to themselves damnation.

For rulers are not a terror to good works, but to the evil. Wilt thou then not be afraid of the power? do that which is good, and thou shalt have praise of the same:

For he is the minister of God to thee for good. But if thou do that which is evil, be afraid; for he beareth not the sword in vain: for he is the minister of God, a revenger to execute wrath upon him that doeth evil.

Wherefore ye must needs be subject, not only for wrath, but also for conscience sake.

For this cause pay ye tribute also: for they are God's ministers, attending continually upon this very thing.

Render therefore to all their dues: tribute to whom tribute is due; custom to whom custom; fear to whom fear; honour to whom honour.

So, Paul would say to those who commend acts of civil disobedience, that they should obey the law, whether those laws take the form of local ordinances, State statutes, or otherwise.

Supporters of this measure would proclaim that it would implement the Scriptural admonition "thou shalt love thy neighbor as thyself." But the Scriptural admonition does not say that we may not choose our neighbor. It does not say that we shall have no voice in determining the identity of our neighbor. It does not admonish that we shall not build a wall betwixt us and our neighbor.

Supporters of this bill may point to the Scriptures which say that God "hath made of one blood all nations of men," but the Scriptures also say that God "hath determined the times before appointed, and the bounds of their habitation." How can it be un-Christian, then, for men to lay out for themselves, through the sweat of their face, the bounds of certain property upon which certain others may not trespass?

It seems quite contrary to our American political tradition for the leaders of the executive branch to marshal the forces of Christian congregations in such a way that they have no convenient alternative to bringing their weight to bear on this significant issue. I think that most anybody will agree that we are generally a churchgoing and religiously oriented nation. And, it is probably because we are a religious nation that we are perhaps too prone to perceive issues and problems in a highly moralistic light. For example, I sometimes think that there are many who look upon such programs as foreign aid and the Peace Corps almost wholly in the context of great moral missions, when in fact they are primarily intended to strengthen our position abroad. Then, there are such programs as aid to depressed areas and urban renewal which are also viewed as just causes of a moral nature, when in fact they are meant to serve as a means of arresting urban blight and stimulating economic growth.

Let us be aware of the extent to which we as Americans tend to view great issues and problems such as these in a moral light. Most important, with an awareness of this tendency, let us not be inclined to accept the exhortations of those who are determined to make a moral issue out of the debate on civil rights.

We do not have a system of governance that combines matters of religion and morals with matters of government and legislation. We have long respected the importance of each, but also the place of each. We should not tolerate the incursions made by Government leaders into the sphere of religious affairs, just as we should not tolerate the incursions made by religious leaders into the sphere of political affairs. Those who are attempting to get this bill passed are making an appeal to the churches by deliberately and wrongfully calling it a moral issue when in fact it is patently a social and political one. Perhaps an editorial in a recent issue of the Alabama Baptist best articulates the feelings of a great number of clerics in the land:

We have no instances of Jesus' resorting to law to advance His kingdom. He was obedient to the state, but there is no instance where he shared in political activities. The worst thing we could do is to turn over pulpits into political rostrums to advance the ideas of one man, or group of men.

Thus far I have tried to point out the extent to which religious, or moral, arguments have been employed by those in and out of government to push for the passage of this bill. I have also attempted to emphasize that arguments which run along this line are wholly and completely irrelevant and irresponsible when forced to be made applicable to the civil rights bill. Now I should like to question seriously whether the arguments that have been advanced are truly moral in scope, or whether "moral cause" is but a term of convenience for those eager to see this bill passed.

We are told that moral reasons demand passage of this bill. But, how does this square with the fact that there are many men of the cloth, and vast numbers in the congregations they represent, who are opposed to this bill? When I addressed myself to the subject of civil rights some days ago in this chamber, I referred to an item in the New York Times which probably went unnoticed by many who read newspapers in a cursory fashion. Tucked away quite unobstrusively on page 21 of the Times on April 30 were a few lines which read:

The American Council of Christian Churches, representing 15 denominational groups with a total of more than 20 million members wired President Johnson today protesting the civil rights bill.

I think that I stand unchallenged when I assert that the American Council of Christian Churches is a highly reputable religious organization, one which is composed of good citizens genuinely interested in the welfare of humanity and deeply determined to live up to the terms of the Christian code.

I think that I can also stand unchallenged when I contend that the 4,000 clerical and lay representatives at the interfaith rally that was held recently in the Nation's Capital are just as firmly committed to the ideals of religion and its teachings as are those who have membership in the American Council of Christian Churches.

In short, I feel that we shall unanimously agree that each of these religious bodies is sincerely committed to high moral purposes. However, when we pursue a further line of thought, we lift the lid of Pandora's box and find each body apparently operating at cross-purposes. For, how is it that the interfaith rally can declare itself unequivocally in support of this measure and the American Council of Christian Churches declares itself unequivocally in opposition to the bill? Certainly, in the 24-hour period that intervened between each body's statement on this issue no changes were wrought in the bill to cause a complete turn-about in its so-called "moral" overtones. How do we reconcile these two widely divergent positions? Both declarations were formulated by churches. And, of course, the churches representing each side can justly claim to be the ultimate repositories of the public morals. But yet there is a definite fundamental difference that divides each representative body.

In my mind, this obvious dichotomy in moral outlook patently indicates that even if this bill were to be argued and judged solely by religious bodies and only on moral grounds, there would be unquestionable disagreement—just as there is deep-seated disagreement presently between two blocs having different political and social outlooks.

I suspect that religious and other groups have earnestly highlighted a set of "moral" reasons, which supposedly command passage of the bill, for the explicit purpose of attempting to bring great psychological strength to their positions; for, as I indicated earlier, to oppose a bill that is allegedly consonant with high moral principles is to be in league with the Devil himself.

In truth, whose who call for unqualified support of this bill are standing on shifting sands if they urge its passage on the basis of the strength of moral argumentation.

Just in closing on this point, I should like to draw to the attention of my esteemed colleagues the results of some research conducted by Mr. Gerhard Lenski. In his book, "The Religious Factor; A Sociological Study of Religion's Impact on Politics, Economics, and Family Life," the author reveals on pages 148–149, some very pertinent findings:

A great deal of public controversy in the area of civil liberties springs from the divergent conceptions of morality prevailing in various groups within the population. Each group has a tendency to seek the sanction of law for its own distinctive standards.

I feel that this is quite instructive in the light of my present point of argument.

In conclusion, I reiterate my insistence that there is a proper sphere for religion and morals just as there is a proper sphere for government and legislation; and, each of these areas should not meddle irresponsibly in the other. Undoubtedly Christ himself gave the best counsel in this matter of proper jurisdictions when He taught "render therefore unto Caesar the things which are Caesar's; and unto God the things that are God's."

I have completed my discussion of the 11 titles of the so-called civil rights bill. I trust the Members of this body, when they vote on today, Wednesday, at the appointed hour of 11 o'clock a.m., will not invoke cloture. I know when I see the handwriting on the wall. I am sure if cloture is invoked, the objectionable titles and the objectionable provisions to which I have alluded during the course of my long discussion on the bill will be enacted, except for whatever amendments the combined leadership chooses to have adopted.

The leadership has the votes to pass the bill if cloture is invoked. The leadership has the votes to have adopted whatever amendments it wishes to propose. And I believe the leadership has the votes to beat down any amendments which will be offered by those of us who feel that title II, title VII, and certain other provisions are unconstitutional, unwise, and unenforcible. I do not oppose all of the titles in this bill. There are some which I can support.

I have no doubt that, if cloture is not invoked, and if we can put this bill aside and get on with other business, and rub elbows with the home folks in the fall, the bill in its present form will never again be brought before the Senate because the people of the country will make their message fully heard, "loud and clear," if they have an opportunity to do so.

Let us act, then, in the spirit of the words that were spoken by Daniel Webster in his eulogy to George Washington in 1832. He said:

Other misfortunes may be borne or their effects overcome. If disastrous war should sweep our commerce from the ocean, a new generation would replace it. If it exhaust our Treasury, future industry would replenish it. If it desolate and lay waste our fields, still, under new cultivation, they will grow green again and ripen into future harvests. Yea, it were but a trifle even if the walls of yonder Capitol were to crumble, if its lofty pillars should fall, and its gorgeous decorations be all covered by the dust of the valley. All these may be rebuilt. But who will rebuild the fabric of demolished government? Who will rear again the well proportioned columns of constitutional liberty? Who will frame together the skillful architecture which unites national sovereignty with States rights, individual security, and public prosperity? No; if these columns ever fall, they will be raised not again. Like the Colosseum and the Parthenon, they will be destined to a mournful and melancholy immortality. Bitterer tears, however, will flow over them than were ever shed over the monuments of Roman and Grecian art for they will be the monuments to a more glorious edifice than Rome or Greece ever saw—the edifice of constitutional American liberty.

EXHIBIT 1

THE "BLESSINGS OF LIBERTY" VERSUS THE "BLIGHT OF EQUALITY"

(By R. Carter Pittman, Member of the Georgia Bar)

Before considering digressive aspects of the subject "civil rights" it is proper that the subject itself be examined.

Recurring to fundamentals, what is meant by the phrase "civil rights"? Is it not a phrase more to be dreamed of than reasoned with? Russell Lowell said:

"Let us speak plain: there is more force in names
Than most men dream of; and a lie may keep
Its throne a whole age longer, if it skulk
Behind the shield of some fair-seeming name."[1]

An endeavor to enlarge one's "civil rights" in personal associations sounds better than an endeavor to restrict the right of another to select or cull his associates. An endeavor to increase human equality sounds better than an endeavor to diminish human liberties. The idea of "improving the environment" of the children of one ethnic group sounds better than the idea of impairing the environment of another by integration.

When submitting a proposed "civil rights bill" to Congress on June 19, 1963,[2] designed in part to force school integration, President Kennedy described racial agitation in America as a "growing moral crisis" and recommended that revolutionary measures be enacted in order to bring about "racial equality." He exclaimed that the Negroes' "cries for equality" had so increased "that no * * * legislative body can prudently choose to ignore them."[3] Then followed the recommendation of perhaps the most violent leveling measures even proposed to an assembly composed in part of Anglo-Saxons. The first sentence of the first proposed act in the bundle delivered to Congress by the President was:

"Discrimination by reason of race, color, religion, or national origin is incompatible with the concepts of liberty and equality to which the Government of the United States is dedicated."[4]

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[1] Lowell, "A Glance Behind the Curtain," I Poems 131, 138 (1848).

[2] H.R. Doc. No. 124, 88th Cong., 1st sess. (1963).

[3] Id. at 1.

[4] Id. at 14.

To "discriminate" is "to make a distinction, to note or observe a difference; distinguish accurately," to "differentiate."[5] A "discriminating person" is "one who makes fine distinctions."[6] The competence and right to distinguish between and to prefer the Catholic faith over the Methodist, blonds over brunettes, or caucasoids over australoids is "incompatible with the concepts of * * * equality" held by socialists and Marxists, but it is completely and absolutely compatible "with the concepts of liberty * * * to which the Government of the United States is dedicated."

What are "the concepts of liberty and equality to which the Government of the United States is dedicated"? All of the sponsors of civil rights legislation and the Civil Rights Commission itself have grounded their proposals, their actions and their deeds upon the specious doctrine that this Nation was founded upon the proposition that "all men are created equal." The idea that this country was founded upon that doctrine or that "all men are equal," that "all races are equal" or that "this Government is dedicated to the concept of equality" is perhaps the most misleading and effective propaganda since the devotees of liberty were branded as "Levelers" in 1648.[7]

[5] Barnhart, The American College Dictionary 346 (1947).

[6] Ibid.

[7] History is studded with examples of the substitution of a beautiful name for ugly things and repulsive names for venerable things. A striking example is one of long ago which affected the quality, the measure and duration of liberty in England and in America. The story of the origin of the name "Levelers" is one of history's bitter fruits of hypocrisy.

Lilburne, Overton, Walwyn, and others were the Libertarian leaders of the Puritan Revolution. The name "Levelers" was given to them not because they believed in leveling, but because they opposed leveling.

In 1659 Thomas Brewster explained how those exponents of human liberty came to be known as "Levelers." He records that at the time when the 1648 petition was presented to the House of Commons the tyrant Stuart King, Charles I, was at Hampton Court and the members of his private cabinet council were gravely concerned for his safety. They wanted to disgrace and to suppress those who maintained those principles of freedom so many of which later went into the English Bill of Rights, the Virginia Declaration of Rights, the Federal Bill of Rights, and into substantially all of the libertarian documents of the American States and the free world.

"It was resolved that some ill name was fit to be given to the assertors of them, as persons of some dangerous design, and their reputations being blasted, they would come to nothing, especially if that general council were dissolved. Then was that council dissolved, and an occasion taken from that maxim, that every man ought to be equally subject to the laws, to invent the name of 'Levelers,' and the king, who was frightened into the Isle of Wight from Hampton Court with pretense that the men of these principles in the army would suddenly seize upon his person if he stayed there; he was acquainted with those men by the name of 'Levelers,' and was the first that ever so called them in print, * * * and thence it was suddenly blown abroad, with as much confidence, as if they had believed it that first reported it, that a party of levelers designed to level all men's estates." Dunham & Pargellis, "Complaint and Reform in England," 689–90 (1938).

Thus virtue was made to appear as vice, and vice was made to appear as virtue. A perverted name for the right became a justification for wrong and for subverted liberties in the 16th as well as in the 20th century. The odious name, which denoted the exact opposite of the principles which the "Levelers" proposed, was worth more in pulpits than the king's armies in the field. The settlement of the American colonies resulted in large part from the persecutions which owed much of their violence to the perversion, the abuse and misuse of a name.

The specious doctrine that all races are equal, that the children of all races are genetically equal and are equally endowed with capacity to absorb an education was the basis for the decision in *Brown* v. *Board of Education*.[8] The authorities cited by the Supreme Court in support of that decision describe the doctrine of human equality as "the highest law of the land"[9] and proclaim that "the philosophy that all men are created equal" is "the American creed."[10]

This country was founded upon the doctrine that all men are born equally free and independent. That doctrine—not the doctrine that "all men are born equal"—went into the constitutions and bills of rights of all American States, into the Federal Constitution and Bill of Rights and most of the constitutions and bills of rights of the free republics of the world.[11] The Declaration of Independence which declared the "separate and equal" doctrine in its first paragraph and equality at creation in the second never became living law in America. The "concept of equality" is wholly incompatible with the "concept of liberty" for which the Revolution was fought and the Constitution written.[12] But falsehood is more powerful than truth when sponsored by those in power.

On the floor of the Constitutional Convention on June 26, 1787, Alexander Hamilton said: "[I]nequality would exist as long as liberty existed and that it would unavoidably result from that very liberty itself."[13]

No one there disputed the obvious. The unshackled and the unfettered become unequal through unequal talents and efforts.

The Preamble of the Constitution was carefully written in order to affirm that the principal reason for adopting a constitution was "to * * * secure the Blessings of Liberty to ourselves and our posterity" and to guard against the blight of equality which shackles and fetters. The Constitution confers and defines powers, but both it and the Bill of Rights interpose law and the due process of law between the freedom of the citizen and that power. The essence of liberty is the liberty to excel, to succeed and to be unequal. Had the framers of the Constitution and the Bill of Rights wanted to replace the "blessings of liberty" with the "blight of equality" they would have said so somewhere and not left the decision to the usurpations, whims or caprices of future officials.

[8] 347 U.S. 483 (1954).

[9] Myrdal, "An American Dilemma," 9 (1944).

[10] Id. at 14. See generally 347 U.S. at 494, note 11.

[11] See generally Pittman, "Equality Versus Liberty: The Eternal Conflict," 46 A.B.A.J. 873 (1960). It should be noted that the Virginia Declaration of Rights, as originally drafted by George Mason in 1776, affirmed the doctrine that "all men are born equally free and independent," and was printed in newspapers throughout America before Jefferson began to write the Declaration of Independence. It was "the basis and foundation" of government in Virginia and thereafter became "the basis and foundation" of the Declaration of Independence and the governments of the American States, the Federal Government, and all other free republics in the world after June 1776.

[12] See generally Pittman, supra note 11.

[13] Tansill, "Documents Illustrative of the Formation of the Union of the American States," H.R. Doc. No. 398, 69th Cong., 1st sess. 282 (1927).

The equalitarian idea that all races are alike and equal in all material respects; that white and Negro school children are equal in educatability; that if differences do exist such differences are not genetic and inherent, but result merely from the accidents of environment and may be changed by simply changing environment, are the basic premises for the Brown decision and the acts proposed under the name of "civil rights."

It is therefore appropriate that we examine and reexamine those factual premises and the decisions of courts and proposed acts of Congress based upon them.

In *Plessy* v. *Ferguson*,[14] *Gong Lum* v. *Rice*,[15] and scores of other decisions prior to 1954[16] the U.S. Supreme Court, the supreme courts of most of the American States, as did the Congress and the general assemblies of the States, took judicial notice of the fact that all races and all men are not equal and that consequent upon the gross differences between whites and Negroes, a rational basis existed for judicial and legislative differentiation between them. No proof was necessary to establish such a fact of common knowledge, because it is never necessary to prove a fact judicially known.[17] But the matter may always be disputed by evidence.[18]

Plessy involved segregated transportation and Gong Lum involved segregated education. In the latter case the Supreme Court held that to justify the forced segregation of races in transportation is "a more difficult question"[19] than to justify segregation in schools. In other words, the Court took judicial notice of the fact that it is easier to justify the separation of races in schools for 12 years than it is to justify the separation of races on trains for 12 hours. The point is that in all cases prior to 1954 judicial notice of racial inequality and of the existence of a rational basis for segregation of races, within the meaning of the 14th amendment, existed and no evidence of such fact was necessary.[20]

[14] 163 U.S. 537 (1896).

[15] 275 U.S. 78 (1927).

[16] Id. at 86.

[17] *Ohio Bell Tel. Co.* v. *Public Util. Co.*, 301 U.S. 292, 301 (1937).

[18] Ibid.

[19] 275 U.S. at 86.

[20] In a well-reasoned case on this point, Judge Richard B. Russell, then judge of the Court of Appeals of Georgia, subsequently Chief Justice of the Supreme Court of Georgia and father of U.S. Senator RICHARD B. RUSSELL, JR., said: "We cannot shut our eyes to the facts of which courts are bound to take judicial notice. Certainly every court is presumed to know the habits of the people among which it is held, and their characteristics, as well as to know leading historical events and the law of the land. * * * It is a matter of common knowledge that, viewed from a social standpoint, the Negro race is in mind and morals inferior to the Caucasian. The record of each from the dawn of historic time denies equality. This fact was recognized by two of the leaders on opposite sides of the question of slavery, Abraham Lincoln and A. H. Stephens. The former on numerous occasions declared that it was no part of the proposition even of the Abolitionists to attempt to establish a condition of social equality between an inferior and superior race; and Alexander H. Stephens declared that the Southern Confederacy was based upon the acknowledged superiority of the Caucasian race over the Negro. The distinction and inequality are recognized in Holy Writ.

"We are not compelled to plant our decision on the ground of inequality or inferiority. We take judicial notice of an intrinsic difference between the two races. Certainly, if a court can take judicial notice of near a thousand things, some even of slight importance, which have been judicial-

In 1938 the Supreme Court restated the familiar rule that it is necessary to resort to proof only when the existence of a rational basis for State action, under constitutional attack, depends on facts beyond the sphere of judicial notice.[21] There the Court said:

"Where the existence of a rational basis for legislation whose constitutionality is attacked depends upon facts beyond the sphere of judicial notice, such facts may properly be made the subject of judicial inquiry, * * * and the constitutionality of a statute predicated upon the existence of a particular state of facts may be challenged by showing to the court that those facts have ceased to exist." [22]

In Brown the NAACP attorneys attacked State legislation by attempting to show that significant differences of which judicial notice was taken either never existed or had ceased to exist.

The records of the four underlying cases [23] decided in Brown actually contained evidence possibly authorizing the Court to find as a matter of fact:

(1) That all people are equal and that there are not such differences between white school children and Negro school children as to constitute a reasonable or rational basis for segregating them in schools; (2) that since there was no rational basis for a statutory classification between the two ethnic groups, such a classification was arbitrary and in violation of the provisions of the equal protection clause and other fundamental laws; and (3) that segregation of white and Negro children in public schools causes psychological injury to and has a detrimental effect upon Negro children.

Thurgood Marshall explained that it was his contention that segregation statutes were unconstitutional for want of a rational basis. After stating that he believed that he had the basic right to show their unconstitutionality, he had the following to say concerning his basis of proof:

"There are several ways of going about proving the unconstitutionality of statutes. They haven't shown any line of reasoning for the statutes. * * * [W]e have a right to put in evidence to show that segregation statutes * * * have no line of reasonableness. There is no understandable factual basis for classification by race, and under a long line of decisions by the Supreme Court, not on the question of Negroes, but on the 14th amendment, all courts agree that if there is no rational basis for the classification, it is flat in the teeth of the 14th amendment." [24]

As an example of the evidence which influenced the Supreme Court in deciding that there are not such differences between white and Negro school children as to constitute a reasonable and rational basis for segregating them in schools—attention should be focused on the testimony of Dr. Robert Redfield,[25] one of the NAACP's so-called experts whose evidence was used in *Briggs* v. *Elliott*,[26] the South Carolina case which became part of the *Brown* record. When asked whether there were "any recognizable differences as between Negro and white students" regarding their "intellectual capacity" [27] he replied:

"The conclusion * * * to which I come, is differences in intellectual capacity or inability to learn have not been shown to exist as between Negroes and whites, and further, that the results make it very probable that if such differences are later shown to exist, they will not prove to be significant for any educational policy or practice." [28]

Without such testimony, or the adoption of an unwarranted judicial assumption contrary to an unbroken line of decisions based on judicial knowledge, the Supreme Court could not have brought itself to hold that segregation of white and Negro children in schools has no rational basis and is, therefore, a denial of equal protection of the laws. The records in the Brown cases reveal no testimony rebutting that of Redfield and others which went to show that Negro and white schoolchildren are equal in educability and that hence there was no "rational basis" for educating them separately in schools.

Both before and since Brown the Supreme Court has consistently adhered to the constitutional principles invoked by Thurgood Marshall. *Lindsley* v. *Natural Carbonic Gas Co.*[29] sets forth the basic rule:

"(1) The equal protection clause of the 14th amendment does not take from the State the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis and therefore is purely arbitrary.

(2) A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety or because in practice it results in some inequality.

(3) When the classification in such law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enactd must be assumed.

(4) One who assails the classification in such law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary." [30]

In *Hernandez* v. *Texas*,[31] decided 2 weeks before the decision in Brown, Chief Justice Warren, for a unanimous bench, pointed out that race and color serve to define distinct groups. Continuing he said:

"Whether such a group exists within a community is a question of fact. When the existence of a distinct class is demonstrated, and it is further shown that the laws, as written or as applied, single out that class for different treatment not based on some reasonable classification, the guarantees of the Constitution have been violated." [32]

Having determined as a matter of fact that there were no differences between colored schoolchildren and white schoolchildren, such as to constitute a reasonable basis for separate education, it was logical for the Supreme Court to hold that the laws in question from Kansas, South Carolina, Delaware, and Virginia, requiring segregation, were purely arbitrary and unconstitutional and should be set aside at the suit of anyone injured thereby.

Brown did not hold that it is a violation of the equal protection clause to separate Negro children from white children, per se. What it did hold was that under the facts in the records before the Court showing equal educability and injury to Negroes resulting from segregation it was a violation of the equal protection clause to separate whites and Negroes of the same "educational qualifications" [33] and "of similar age and qualifications." [34]

In order for one to invoke constitutional protection, injury threatened or existing must be shown as a consequence of a constitutional violation.[35] In order for an injunction to issue it is necessary that irreparable injury be threatened or shown.[36]

The NAACP counsel in the underlying cases recognized that it was necessary to show by evidence that in spite of the material equality of Negro and white schools, Negro children were deprived of equal educational opportunities by separation from white children. In order to show that, it was necessary for them to prove that the mere separation of students in schools "solely because of their race generates a feeling of inferiority" affecting the motivation of the Negro children to learn, thus retarding the educational and mental development of Negro children and depriving them of benefits they would receive in a racially integrated school system. That explains why the NAACP counsel produced so-called "experts" to testify that in their opinion segregation injures the personality of Negro schoolchildren and retards their educational and mental development.

The only witness used by the NAACP who testified from tests conducted by himself was Dr. K. B. Clark. He was used in all of the cases. He testified that he had conducted certain doll tests by which he determined objectively that segregation had a detrimental effect upon colored children. His testimony was not disputed in the records of any of the four cases. Apparently, counsel for the various school boards proceeded under the assumption that the "separate but equal" doctrine, which arose out of judicial notice of such racial differences between Negroes and whites to form a rational basis for separation, was unassailable and that it was not necessary for them to produce witnesses to rebut testimony such as was given by Dr. Redfield as to equality and Dr. Clark as to injury.

The testimony of Clark was not regarded of sufficient weight on which to rest the case and counsel for the NAACP decided it expedient to bolster his testimony with an "Appendix to Appellants' Briefs" entitled "The Effects of Segregation and the Consequences of Desegregation: A Social Science Statement," which purported to be the consensus of the opinion of certain social scientists on the issue as to which K. B. Clark testified. That "Appendix" seemed to have influenced the Court greatly because in the opinion the Court made a special point of including a footnote [37] that discusses what the Court declared to be "modern authority" on the issue that was called to its attention by that "Appendix."

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ly recognized without proof, this court may be presumed to observe that there is a marked difference between a Caucasian and an African. Notice of this difference does not imply legal discrimination against either, and for that reason cannot * * * impugn or oppose the 14th and 15th amendments." *Wolfe* v. *Georgia Ry. & Elec. Co.*, 2 Ga. App. 499, 504–505, 58 S.E. 899, 901 (1907).

[21] *United States* v. *Carolene Prod. Co.*, 304 U.S. 144 (1938).

[22] Id. at 153.

[23] *Briggs* v. *Elliott*, 98 F. Supp. 529, modified and aff'd, 103 F. Supp. 920 (E.D.S.C. 1952); *Davis* v. *County School Bd.*, 103 F. Supp. 337 (E.D. Va. 1952); *Brown* v. *Board of Educ.*, 98 F. Supp. 797 (D. Kan. 1951) *Gebhart* v. *Belton*, 32 Del. Ch. 343, 91 A. 2d 137 (1952).

[24] Record, p. 159, *Briggs* v. *Elliott*, reversed sub. nom. *Brown* v. *Board of Educ.*, 347 U.S. 483 (1954) [hereinafter cited as Briggs, Record].

[25] Chairman of Anthropology Department and Professor of Anthropology, University of Chicago.

[26] 98 F. Supp. 529, modified and aff'd, 103 F. Supp. 920 (E.D.S.C. 1952), reversed sub. nom. *Brown* v. *Board of Educ.*, 347 U.S. 483 (1954).

[27] Briggs, Record, p. 160.

[28] Id. at 161.

[29] 220 U.S. 61 (1911).

[30] Id. at 78–79, more recently quoted and followed in *Morey* v. *Doud*, 354 U.S. 457, 463–64 (1957).

[31] 347 U.S. 475 (1954).

[32] Id. at 478.

[33] 347 U.S. at 492.

[34] 347 U.S. at 494.

[35] *Alabama State Fed'n of Labor* v. *McAdory*, 325 U.S. 450, 453 (1945); *Anderson Nat'l Bank* v. *Luckett*, 321 U.S. 233, 242 (1944).

[36] *State Corp. Comm'n* v. *Wichita Gas Co.*, 290 U.S. 561, 568 (1934); *Terrace* v. *Thompson*, 263 U.S. 197, 214 (1923).

[37] U.S. at 404, note 11.

The two most cited authorities in the "Appendix" were K. B. Clark and Otto Klineberg. One of the Clark references was to a book which he contributed entitled "Readings in Social Psychology." [38] In that book he revealed that in the doll tests used by him on several hundred white and Negro children both in integrated schools of the North and in segregated schools of the South, he found that integration—not segregation—injures the personality of Negro children.[39] That was pointed out quite clearly by Dr. Ernest van den Haag, in an article which appeared in the Villanova Law Review.[40] There Professor van den Haag said: "I am forced to the conclusion that Professor Clark misled the courts." [41]

Discussing Dr. Clark's tests, reported in the book, he went on to state:

"Whether it be granted that his tests show psychological damage to Negro children, the comparison between the responses of Negro children in segregated and in nonsegregated schools show that 'they do not differ' except that Negro children in segregated schools 'are less pronounced in their preference for the white doll' and more often think of the colored dolls as 'nice' or identify with them. In short, if Professor Clark's tests do demonstrate damage to Negro children, then they demonstrate that the damage is less with segregation and greater with congregation. Yet, Professor Clark told the court that he was proving that 'segregation inflicts injuries upon the Negro' by the very tests which, if they prove anything—which is doubtful—prove the opposite." [42]

In an earlier volume of the "Villanova Law Review" [43] Dr. Clark effectively impeached his own testimony in the underlying Brown cases, saying:

"[I]t was pointed out to them [the NAACP lawyers] that the available studies had so far not isolated this single variable [meaning the effect of school segregation upon the personality of Negro children] from the total social complexity of racial prejudice, discrimination, and segregation. It was therefore not possible to testify on the psychologically damaging effects of segregated schools alone." [44]

However, Clark testified under oath in Briggs that he had tested only 16 Negro children in a segregated school in Clarendon County, S.C., with white and colored dolls under the "projection method." From his tests of those 16 children he swore that in his opinion "a fundamental effect of segregation is basic confusion in the individuals and their concepts about themselves conflicting in their self-image." [45]

He testified further, in the same connection, that his tests revealed the kind of injury to Negro children by segregation "which would be as enduring or lasting as the situation endured, changing only in its form and in the way it manifests itself." [46]

Nowhere in the four trial records was it revealed by Clark or anyone else that the only evidence of personality damage found to have been suffered by Negro children by Clark in his "objective tests" was where colored and white schoolchildren were integrated and were attending the same schools in the North.

Dr. Clark's article in "Readings in Social Psychology" [47] detailed the heart rending suffering of Negro children in the integrated schools of the North and contrasted their unhappiness there with their happiness in the segregated schools in the South. The obvious results from such a situation are substantiated by Clark in a recent issue of U.S. News & World Report where he stated:

"The bulk of the Negro youngsters who are being turned out by these segregated [sic] northern schools are functional illiterates. They have not been taught to read or speak well. They are deficient in arithmetic. They are not equipped to compete, with any hope of success, for other than menial jobs." [48]

Further, Jack Greenberg, counsel for the NAACP in Brown, now general counsel, recently wrote that from 25 to 45 Negro high school graduates per 1,000 from southern segregated schools attained national college admissions standards in 1954 as against less than 2 per 1,000 from northern integrated schools.[49]

The facts reported by Mr. Greenberg are confirmed by a current news item revealing that the dismal results of New York State's basic examinations for State jobs given to Negro college graduates of integrated northern schools caused Governor Rockefeller to institute a program in 1962 of recruiting Negro graduates of southern segregated colleges. In abandoning that program on September 17, 1963, the State civil service department announced, "that of 385 applicants last year only 9 (3.2 percent) passed the State's professional career test. None placed high in the ranking." [50] Unfortunately the percentage of Negro failures for northern schools was not revealed.

In the underlying Brown cases and in all later cases filed in behalf of Negro schoolchildren by attorneys for the NAACP, it was, and is, invariably alleged that the plaintiffs and the members of the class which they represent are injured by the refusal of the school authorities to cease the operation of the compulsory biracial school system; that the operation of such a biracial school system violates the rights of the plaintiffs and members of the class secured to them by the due process and equal protection clause of the 14th amendment; that they are also injured by the policy of assigning teachers and administrative personnel on the basis of race; and that the injury complained of is irreparable and will remain so until enjoined by the court.

Such a petition was filed in the U.S. District Court for the Southern District of Georgia, Savannah Division, on January 18, 1962. This act culminated in the decision of *Stell* v. *Savannah-Chatham County Bd. of Educ.*[51] To realize the full impact of this decision it is necessary, to a small extent, to digress into the historical facts of the case.

A testing program was instituted in the Savannah-Chatham County schools in the early spring of 1954, before the Brown decision, at the request of the school superintendent. Dr. R. T. Osborne [52] was appointed to administer the California Achievement Battery and the California Mental Maturity Tests to all students of the 6th, 8th, 10th, and 12th grades. The battery was described as a set of nationally accepted standard achievement tests in reading comprehension and vocabulary, mathematical reasoning and fundamentals and the application of mathematical concepts. The mental maturity tests are a nationally accepted standard indicator of the ratio between mental and chronological age, sometimes referred to as intelligence quotient or IQ.[53]

Dr. Osborne assisted in training the white and Negro teachers to administer these tests on a uniform basis. The tests were intended to evaluate achievement levels and provide specific information to counselors, teachers, and school administrators in the city and county school system.

The test results were analyzed by Dr. Osborne's staff at the University of Georgia and summarized in a 1962 monograph published by him.[54] These results show that major differences exist in the learning ability patterns of white and Negro pupils. In reading, Negro students are 2 school years behind white children at the sixth-grade level. This increases to a reading difference between the 2 of more than 3 school years in the 12th grade.

The test results on arithmetic show a comparable difference in the 6th grade but show an even greater variation than in reading at the 12th-grade level. The average Negro pupil in the 12th grade of the Savannah-Chatham County schools is below the 8th grade national arithmetic norm. White children who have been given the same courses tested above the 11th grade national norm.

Growth patterns were considered separately from specific subject achievement. Learning rates were measured in terms of mental ability intelligence quotients. Learning rates were determined in Savannah-Chatham County by the California Mental Maturity Test. In the sixth grade the mental age of Negro students was 2 years behind their chronological age on the average. By the 10th grade this separation increased to a 3-year equivalent and remained at this point thereafter. Of the 10 percent of the Negro students who scored at or above the white median in the 6th grade, only 1 percent exceeded this median in the 10th grade where the white median IQ was 103, the Negro, 81.

As an experimental control, Dr. Osborne matched the cards of all white and Negro pupils of the same chronological age who has equal mental ability at the sixth-grade level in 1954. Noticeable differences appeared at the eighth-grade level and increased thereafter. In the 10th and 12th grades the differences in test performance between white and Negro members of the control group ranged from 1 to 2 grade placement years even though Dr. Osborne had found it necessary to select his subjects originally from the lowest quartile of the white pupils and the highest quartile of the Negro pupils in order to match a sufficient number of children to give a reliable result. Confirming the pattern of the unmatched Negro group, reading achievement differences were less for the Negro in this group than his much greater variation in arithmetic.

Dr. Osborne found that the differences in student capacity shown by these test results were of major importance in educational planning as they indicated the necessity for changing course content, subject selection, and rate of progress planning separately for each of the two groups if the schools were to endeavor to adapt to the different learning potentials of each.

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[38] Clark & Clark, "Racial Identification and Preference in Negro Children," in Readings in Social Psychology 169 (Newcomb & Hartley ed. 1947).

[39] Id., at 177.

[40] Van den Haag, "Social Science Testimony in the Desegregation Cases—A Reply to Professor Kenneth Clark," 6 Vill. L. Rev. 69 (1961).

[41] Id. at 77.

[42] Ibid.

[43] Clark, "The Desegregation Cases: Criticism of the Social Scientist's Role," 5 Vill. L. Rev. 224 (1960).

[44] Id. at 231.

[45] Briggs, Record, p. 89.

[46] Id. at 89–90.

[47] Clark & Clark, supra, note 38.

[48] U.S. News & World Report, June 10, 1963, p. 39.

[49] Greenberg, "Race Relations and American Law," 211 (1959).

[50] Atlanta Journal, Sept. 17, 1963, p. 5.

[51] 220 F. Supp. 667 (S.D. Ga.), injunction granted pending appeal, 318 F. 2d 425 (5th Cir. 1963).

[52] Professor of psychology and director of the Student Guidance Center, University of Georgia.

[53] The author wishes to express his apology to Judge Frank M. Scarlett if this and the next five paragraphs appear to be a paraphrase from his succinct opinion in the instant case. See 220 F. Supp. at 668–71. The writer is one of counsel for the intervenors.

[54] Osborne, "Racial Difference in School Achievement," (Mankind Monographs No III, 1962).

On the basis of the study a motion to intervene on behalf of themselves and their class was made by minor white schoolchildren in Chatham County alleging that the separation of Negro and white children in public schools was not determined solely by race or color but rather upon racial traits of educational significance as to which racial identity was only a convenient index.[55] The differences were alleged to be of such magnitude as to make it impossible for Negro and white children of the same chronological age to be effectively educated in the same classrooms. Further, it was alleged that to congregate children of such diverse traits in schools in the proportion and under the conditions existing in Savannah would seriously impair the educational opportunities of both white and Negro and cause them grave psychological harm.

The case went to trial and the first witness used by the intervening white children was Dr. Osborne who testified in detail to the facts stated above.[56] The next witness called in behalf of white schoolchildren was Dr. Henry E. Garrett.[57] While he was on the witness stand being questioned as to his qualifications as an expert, Mrs. Constance Baker Motley, leading counsel for the NAACP in the Savannah-Chatham case, admitted by way of stipulation that Negroes do not perform as well as whites on achievement tests.[58]

In spite of the stipulation by Mrs. Motley, intervenors showed by Dr. Garrett, Dr. van den Haag and others that such mental differences do exist and that white children and Negro children with such mental differences cannot be educated successfully in the same schools and that any attempt to so educate them, where the numbers are such as existed in Savannah (60 percent white and 40 percent Negro), would deprive both Negro and white schoolchildren of their educational opportunities and would cause irreparable injury to children of both races.

Evidence was adduced also to show physical and morphological differences between whites and Negroes justifying if not demanding segregation of races. It was shown by Dr. W. C. George,[59] that the size of the brain of the average Negro is approximately 8 to 10 percent smaller than the brain of the average white person of similar age and weight and that in general the larger the brain with relation to body weight the greater the intelligence—a relationship that holds true throughout the animal kingdom.[59a] That evidence, which accords with numerous scientific studies on that subject, forcefully established that the gross differences in the educability of Negroes and whites is inherent or genetic—not environmental—and cannot be materially affected by improved environment.[59b] That fact was established without dispute in a case vigorously defended.

Counsel for the NAACP knew by the pleadings and supporting papers filed by the intervenors in Stell that they would be faced with the scientific evidence offered in the case, but apparently they were unable to induce witnesses to appear in Savannah who would subject themselves to cross-examination. Due note should be made here of Prof. Isidor Chein's [60] statement concerning the failure of proof in Brown of significant race differences. He said: "In the segregation cases, apparently, no such opposing experts could be found with respect to our testimony." [61]

At this point it is interesting to note that two authors whose works were used extensively by the NAACP in their "Brandeis Brief" in Brown had previously written materials that are in accord with the views previously expressed. Otto Klineberg, in his book entitled "Race Differences," [62] definitely concluded that the white race is intellectually superior to the colored race. Franz Boas reached the same conclusion in his book entitled "The Mind of Primitive Man." [63] Klineberg reached his conclusions on the basis of brain testing [64] while Boas came to his by brain weighing.[65] Their conclusions accord almost exactly with the undisputed evidence adduced in the trial of the Stell case.

It must be emphasized that these qualitative and quantitative brain differences are all genetic and not subject to change save through the gradual process of evolution over many thousands of years. The importance of the morphological evidence was emphasized by the psychological testimony of Dr. Garrett to the effect that the equating of socio-economic factors does not materially alter the white-Negro intelligence ratio.[66]

District Judge Scarlett rendered his final opinion and judgment in favor of the intervenors on June 28, 1963. He found that forced integration in schools impairs the educational opportunities of children of both races; that the causes of the gross differences justifying segregation are genetic—not environmental—and may not be changed by integration, and that forced integration injures the children of both races.[67]

It was pointed out by Judge Scarlett that a decision of a judge or a jury on a question of fact is not binding on any other judge or jury in any other case between other parties; and that in order for any decision, including the Brown decision by the Supreme Court, to be binding on anyone, it must be either under the principles of res judicata or stare decisis; that while res judicata applies only to decisions of both law and fact between the same parties, stare decisis is applicable only on questions of law and relates generally to all causes subsequently arising between any parties; that it applies to strangers as well as parties and privies. These principles are fully documented in the decision of Judge Frank M. Scarlett and will not be repeated here. Brown turned on questions of fact—not questions of law—and, of course, cannot be binding on strangers to that decision such as the intervenors in Stell.

The evidence offered in Stell was not disputed or rebutted and the decision by Judge Frank M. Scarlett was the only decision that could have been rendered on the record. The intervenors made the facts as to material racial differences "the subject of judicial inquiry" "beyond the sphere of judicial notice" as did the NAACP in the underlying Brown cases and the facts were all one way—a way that demanded a judgment on the facts different from that in Brown. No question as to "reversal of Brown" was involved or considered.

The decision by Judge Scarlett in Stell accords with all the sworn evidence in the record before him; it accords with the stipulations of counsel for the NAACP; it accords with statistics recorded by the general counsel for the NAACP; it accords with the early writings of the leading expert witness used

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[55] Among the significant factors for consideration in devising a rational program best suited to the peculiar educational needs of Negro and white schoolchildren in separate schools were: (a) Differences in specific capabilities, learning progress rates, mental maturity, and capacity for education in general; and (b) differences in physical, psychical, and behavioral traits.

[56] 220 F. Supp. at 668–671.

[57] Visiting Professor of Psychology, University of Virginia; Professor Emeritus for Psychology, Columbia University, where he was department head for over 30 years.

[58] "Mrs. Motley: I would like to say this, in addition, your Honor: If this man is going to testify that Negroes, generally, on achievement tests, do not perform as well as whites, the same as the previous witness, we will stipulate that. He does not have to testify to it. We will agree to that."

"The Court: Agree to what?"

"Mrs. Motley: That these tests, which have been administered, show that Negroes, generally, do not perform on the achievement tests as well as whites. Now, if that is all that he is going to show, we will stipulate that, because the other * * * witness has already said that." Record, p. 134.

[59] Professor Emeritus of Histology and Embryology, School of Medicine, University of North Carolina; formerly head of the Department of Anatomy, University of North Carolina. In addition to the testimony related in the text the doctor testified that certain of the supra-granular layers of the cerebral cortex, where learning capacity and intelligence are concentrated, are about 14 percent thinner in Negroes than in whites and that the sulcification, or the formation of convolution of grooves and ridges, differs markedly between the two races, with the whites having distinctly more surface of cerebral cortex. Record, p. 201.

[59a] Ibid.

[59b] Ibid.

[60] Professor Chein is one of the "modern authorities" noted in Brown. See 347 U.S. at 494, note 11.

[61] Fischman, Symposium, "The Role of the Social Sciences in Desegregation" 9 (1958).

[62] Klineberg, "Race Differences" (1935).

[63] Boas, "The Mind of Primitive Man" (1911).

[64] "In the field of racial psychology no other problem has attracted so much attention as the question of the inherent intellectual superiority of certain races over others. * * * The number of studies in this field has multiplied rapidly, especially under the impetus of the testing undertaken during the World War, and the relevant bibliography is extensive. The largest proportion of these investigations has been in America, and the results have shown that racial and national groups differ markedly from one another. Negroes in general appear to do poorly. Pintner estimates that in the various studies of Negro children by means of the Binet, the I.Q. ranges from 83 to 99, with an average around 90. With group tests Negroes rank still lower, with a range in I.Q. from 58 to 92, and an average of only 76. Negro recruits during the war were definitely inferior; their average mental age was calculated to be 10.4 years, as compared with 13.1 years for the white draft." Klineberg, op. cit. supra note 62, at 152–153.

[65] "We will now turn to the important subject of the size of the brain, which seems to be the one anatomical feature which bears directly upon the question at issue. It seems plausible that the greater the central nervous system, the higher the faculty of the race, and the greater its aptitude to mental achievements. Let us review the known facts. * * * There are * * * sufficient data available to establish beyond a doubt the fact that the brain weight of the whites is larger than that of most other races, particularly larger than that of the Negroes. * * * In interpreting the facts, we must ask, Does the increase in the size of the brain prove an increase in faculty? This would seem highly probable, and facts may be adduced which speak in favor of this assumption. First among these is the relatively large size of the brain among the higher animals, and the still larger size in man. Furthermore, Manouvrier has measured the capacity of the skulls of 35 eminent men. He found that they averaged 1655 cc. as compared to 1560 cc. general average, which was derived from 110 individuals. * * * The same result has been obtained through weighings of brains of eminent men. The brains of 34 of these showed an average increase of 93 grams over the average brain weight of 1357 grams." Boas, op. cit supra note 63, at 103–104.

[66] 220 F. Supp. at 672–673.

[67] Id. at 526–528.

and of the leading scientists called to the attention of the Supreme Court in Brown. It accords with objective factual revelations in current articles appearing in equalitarian publications, differing only with the unsupported suppositions and conclusions of the authors.[68] It stands as factual truth unassailed and, we believe, unassailable. It explodes the doctrine of racial equality and leaves equalitarians the naked and pathetic victims of their own cupidity. It gives America reason to hope that in race relations truth may yet be reaffirmed in lieu of rationalization and propaganda wearing academic cap and gown, clerical vestments and judicial robes, and that the subject of race may be submitted to acid tests and fairly examined by evidence in a scholarly and a judicial atmosphere.

Those who investigate race as a basis to sustain preconceived social and political ideologies must be subjected to searching cross-examination under judicial safeguards and courtroom procedures. Those who seek civil rights and obliteration of racial integrity on the basis of equalitarian dogma must be made to prove their case.

The so-called revolution which is taking place in America today on racial matters is not new. Aristotle knew and wrote about such revolutions and their consequences 300 years before Christ. Writing on the causes of revolutions that destroy free government he said this about race differences:

"Another cause of revolution is difference of races which do not at once acquire a common spirit; for a state is not the growth of a day, any more than it grows out of a multitude brought together by accident. Hence the reception of strangers in colonies, either at the time of their foundation or afterwards, has generally produced revolution." [69]

Aristotle moved a little closer to the equalitarian philosophy behind Brown, the Civil Rights Acts of 1963 and other repressive measures of our day, and shows what demagogs must do to bring about the fall of republics:

"[B]rotherhoods should be established; the private rites of families should be restricted and converted into public ones; in short, every contrivance should be adopted which will mingle the citizens with one another and get rid of old connections. Again, the measures which are taken by tyrants appear all of them to be democratic; such a government * * * will have many supporters, for most persons would rather live in a disorderly than in a sober manner." [70]

Aristotle comments on the fact that despotism learns nothing new. He says:

"It is true indeed that these and many other things have been invented several times over in the course of ages, or rather times without number. * * * We should therefore make the best use of what has been already discovered, and try to supply defects." [71]

And so should we 23 centuries later. Experience in all ages teaches that the same causes produce the same effects. The practices of demagoguery, like the practices of sin, are ever old and ever new. The sweep of centuries affects but little the principles involved.

SENATOR GOLDWATER'S PROSPECTS FOR ELECTION AS PRESIDENT

During the delivery of the speech of Mr. BYRD of West Virginia,

Mr. MILLER. Mr. President, in the last few days all of us have noted some concern expressed by some columnists and writers over what, as of this moment, appears to be a very good chance that Senator GOLDWATER will be the Republican nominee for President of the United States at the San Francisco Convention. I have noted particularly that some writers have been highly critical of some moderate Republican leaders for what these writers term a lack of leadership in firm opposition to Senator GOLDWATER or in a successful stop-Goldwater movement.

Some of these writers would do well to look to themselves rather than to some of our Republican leaders. I well recall that about 4 years ago there was a strong stop-Kennedy movement. Some writers were saying that the then Senator Kennedy had no possibility of being elected President of the United States. There were all kinds of mutterings about the dire things that would happen if he should be nominated and elected President of the United States.

I cannot help being reminded of this by some of the writings I have seen in the newspapers of the last couple of days. These writings are in strong contrast to the objective writing by Mr. Richard Wilson, head of the Des Moines Register Tribune staff in Washington, such as his article which was published in the Washington Evening Star of Monday, June 8, entitled "Appraisal of GOLDWATER."

Mr. President, I ask unanimous consent that the article by Mr. Wilson, Washington correspondent of the Des Moines Register and head of its Washington bureau, be printed at this point in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

APPRAISAL OF GOLDWATER—VOTERS URGED TO RESERVE JUDGMENT, REMEMBER THAT POLLS CAN BE WRONG

(By Richard Wilson)

Winning the presidential nomination of the Republican Party, or any political party, and winning the election thereafter are two distinctly different operations.

In the one case it is necessary to coalesce widely differing factions within the framework of sharp partisanship. In the other case, so evenly is the country divided, it is necessary to make a much broader appeal which will attract voters who do not feel that they are irrevocably committed to either party.

There are ample signs that Senator GOLDWATER not only realizes this but has carefully planned his drive for the Presidency with this context.

His problem, therefore, assuming that he gets the nomination, is to convice those who have been uneasy about him that he is in fact rational and nonimpulsive while not disaffecting those of more extreme views.

Traveling with Senator GOLDWATER in the closing days of the primary in California was instructive in this regard. The GOLDWATER who rode on a bus between Los Angeles and Santa Barbara was not the same GOLDWATER who seemed a year or two before to advocate withdrawal from the United Nations, breaking off relations with Russia, and abolishing the income tax—if, indeed, such a GOLDWATER ever existed. Nor was it the same GOLDWATER who delivered a carefully prepared foreign policy address to the Channel City Club in Santa Barbara.

This speech was a masterful exposition of firm policies in foreign affairs and how these policies might be adopted and exploited without war. The phrase "without war" was repeated and emphasized by Senator GOLDWATER several times. Taking this speech entirely as the authoritative exposition of the GOLDWATER view, it would have been hard to fault him on the grounds of impulsiveness or superficiality. He insists that his convictions in foreign policy are identical with those of Dwight D. Eisenhower and the late John Foster Dulles.

This speech, as well as some of his other appearances late in the California primary campaign, may be an advance indication of what his campaign for the Presidency will be like if he is nonminated.

There will be those who will say that Senator GOLDWATER is trimming, or that he is trying to delude the voters, or that the fact he is so misunderstood is in itself sufficient reason for not sending him to the White House. But it is not at all certain that such arguments will be effective. The John F. Kennedy who ran for the Presidency was not quite the same John F. Kennedy who ran in the West Virginia primary, and the GOLDWATER who runs for the Presidency will not be the same GOLDWATER who ran in New Hampshire.

Nor was the John F. Kennedy who sat in his rocking chair in the White House in 1962 the same John F. Kennedy who campaigned for the Presidency upon the shaky premises that there was a missile gap and the country was lagging behind Russia in other respects. It is not unreasonable, therefore, to expect that Senator GOLDWATER will change just as Franklin D. Roosevelt changed a generation ago from a budget balancer and penny pincher to a big spender within the course of 6 months.

So it cannot logically be said that change in a presidential candidate, or a President, is anything unusual. In fact, it is to be expected.

What should be borne in mind by those of us who follow the political polls is that when the showdown comes, the country is evenly divided, except when a popular hero like General Eisenhower comes along. We were divided about evenly over Mr. Truman and over Mr. Kennedy.

Now the polls show that President Johnson is far in the lead. Well, Governor Rockefeller appeared at one stage to be far in the lead in California. The pollers were also wrong in New Hampshire and Oregon. Mr. Truman managed to trail in the polls all through a presidential campaign.

So it may be well to reserve judgment on Senator GOLDWATER as a presidential candidate until it is seen just how he carries on his campaign, and we find out how many can be reassured that he will not be hasty and impulsive in foreign affairs or wreck the social security system.

Mr. MILLER. Mr. President, I must say, in any event, that as of now and for a long time I have been an uncommitted delegate to the Republican National Convention in San Francisco. I trust that my remarks at this point will be interpreted in light of that fact. Nevertheless, sometimes it is well to say something when something should be said.

I believe that some of the dire predictions that were heard during the last 2 or 3 days should be placed in proper perspective. I can think of no better way to place them in perspective than to refer these prophets of doom and gloom to an article published in the This Week magazine section of the Des Moines Sunday Register, an article which appeared also in many other leading Sunday newspapers. The article is entitled "Six Campaigns To Remember," and was written by Richard Harrity.

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[68] Newsweek, Sept. 16, 1963, p. 55; Saturday Evening Post, Sept. 21, 1963, p. 12.

[69] II Encyclopaedia Britannica, "The Works of Aristotle," 504 (1952).

[70] Id. at 523.

[71] Id. at 534.

One of the campaigns Mr. Harrity described was the campaign between Truman and Dewey in 1948. I believe that the article about that particular campaign contains the best answer I know of to those people who predict that if Senator Goldwater or Ambassador Lodge or Governor Scranton or Governor Rockefeller, or practically anybody else, is nominated by the Republicans for the fall campaign, the campaign will merely be an exercise in futility. In short, I believe we might say that President Johnson's assurance of reelection in November as of now is in about the same position that Governor Dewey's election to the Presidency was assured as of this time in the 1948 campaign.

Mr. President, I ask unanimous consent that this particular portion of the article to which I have referred be inserted at this point in the RECORD.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

TRUMAN VERSUS DEWEY

Few candidates have had so many cards stacked against them as did Harry S. Truman in 1948. He was President by act of God, not by election. His party had been in power for 16 years and many people thought it was time for a change. Worse, the party was badly split. Henry Wallace, who had lost the Vice Presidential nomination to Truman in 1944, announced that he was running for President at the head of his own newly created Progressive Party. This was a left-wing group; on the right there was trouble too. Truman's strong stand on civil rights provoked several Southern States to bolt the Democratic Party and form their own "Dixiecrat" Party, with Gov. STROM THURMOND of South Carolina as their candidate. Labor was cool to Truman because of his threat to draft the strikers to break a railroad strike.

At the Democratic convention, one delegate displayed a sign reading, "I'm just mild about Harry." Republican Chairman Reece gleefully greeted Truman's candidacy with the quip that it struck the Nation "with the terrific impact of a poached egg on a featherbed." And the Democratic New York Post announced, "The party might as well immediately concede the election to Dewey and save the wear and tear of campaigning."

The Republican candidate was Thomas E. Dewey, who had made a strong race against Roosevelt in 1944, and had every reason to feel confident of victory this time. Fortune magazine predicted: "The prospects of Republican victory are now so overwhelming that an era of what will amount to one party may well impend."

In contrast to the well-filled Republican campaign coffers, the only thing in the Democratic treasury was emptiness. Prominent party members ducked out in droves when asked to assume the post of financial chairman. Truman, as had been predicted by the Alsop brothers, would be "forced to wage the loneliest campaign in recent history." When he appeared in Omaha for a speaking engagement in early June, the huge auditorium was so sparsely filled that a photo was gleefully published all over the country by the Republicans.

Truman doggedly set out on his campaign on September 17. As he climbed aboard his campaign car at Union Station, Washington, his running mate, Alben W. Barkley, of Kentucky, encouraged him: "Mow 'em down."

"I'm going to give 'em hell," Truman snapped back, and steamed off on the most extensive whistlestop wingding in our political history. Wherever the Truman train stopped, by a lonely water tower on the plains, or a little depot in the Far West, the people listened, laughed, and applauded as the Democratic candidate ridiculed the Republicans and ripped into them as "gluttons of privilege," "Do-Nothings" and "bloodsuckers with offices in Wall Street."

Aboard the Dewey campaign train, "Victory Special," the Republican candidate repeatedly emphasized the party theme: A Republican President backed by a Republican Congress alone could bring the country unity.

Truman responded: "We don't believe in the unity of slaves, or the unity of sheep being led to the slaughter. We don't believe in unity under the rule of big business * * * and we shall fight it to the end."

In a poll of fifty political pundits everyone prophesied that Truman would lose. Railroads even threatened to sidetrack Truman's campaign train unless the Democratic Party paid its transportation bills, and he was sometimes cut off the air in midsentence due to insufficient funds to buy additional radio time. He was decidedly low man on the Gallup poll, and hardly anybody conceded him a chance—except Harry S. Truman.

Meanwhile, the supremely self-assured Republican candidate was saying, "On January 20 we will enter upon a new era. We propose to install in Washington an administration which has faith in the American people, a warm understanding of their needs, and the confidence to meet them."

Shortly afterwards at Beaucoup, Ill., Dewey's campaign train suddenly backed up, dangerously missing a crowd waiting to hear him speak. Discovering there was no one injured, Dewey sought to calm the crowd, which was close to panic. "That's the first lunatic I've had for an engineer," he said jokingly. "He probably should be shot at sunrise, but we'll let him off this time since no one was hurt."

Dewey's remarks, widely quoted, hurt him with the railroad workers and labor generally.

Truman covered over 31,700 miles, and delivered 356 speeches to 15 million people, but everybody agreed he was a loser. The New York Times prophesied the Republican candidate would receive 345 electoral votes; Elmo Roper announced that he stood by a poll taken months before when Dewey was leading Truman by 52 to 37 percent of the voters polled. Drew Pearson wrote about "the closely knit group around Tom Dewey who will take over the White House 86 days from now"; and Life featured a full-page picture of Dewey captioned, "The next President travels by ferryboat over the broad waters of San Francisco Bay."

On election day night the returns didn't seem to jibe with the forecasts. But radio commentator H. V. Kaltenborn explained at midnight: "Mr. Truman is still ahead but these are returns from a few cities. When the returns come in from the country the result will show Dewey winning overwhelmingly."

A Truman aid called the President with bad news: Dewey had carried New York State. Truman merely said, "Don't call me any more. I'm going to bed * * *." When he woke up he had won.

Dewey said later he felt like the man who awakened in a coffin with a lily in his hand and asked, "If I'm alive, what am I doing here? And if I'm dead, why do I have to go to the bathroom?"

When his train stopped at St. Louis en route back to Washington, the beaming Truman held up a copy of the Chicago Tribune which carried the premature headline, "Dewey Defeats Truman."

At the White House, his old buddy George Allen quipped, "I was supremely confident of your defeat." Truman grinned. "So was everybody else. But you're the first one who's admitted it."

THE JOHNSON MONEY

During the delivery of the speech of Mr. BYRD of West Virginia,

Mr. MILLER. Mr. President, yesterday's Washington Evening Star contains a special report entitled "The Johnson Money," written by Star Staff Writer John Barron. The article indicates that a considerable amount of research has been done by this newspaperman. I ask unanimous consent that the article be printed at this point in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

THE JOHNSON MONEY—PRESIDENTIAL FAMILY'S HOLDINGS ESTIMATED AT $9 MILLION

(By John Barron)

Sixteen years ago, according to a biographer, Lyndon B. Johnson considered leaving public life, partly because he "wanted to make money, which he knew he never would be able to do in politics."

Mr. Johnson did not give up his political career. Yet today, his family is one of the wealthiest ever to occupy the White House.

The Johnson holdings in television and radio stations, land, banks and stocks—now are worth more than $9 million. And a ruling issued by the Federal Communications Commission last April could greatly increase their value.

The story of this fortune would be interesting even if the central figure were a run-of-the-mill Texas tycoon. It is, in effect the story of the American dream.

But the financial history of this particular Texan has a special public interest because it involves the President of the United States and because the present fortune was amassed almost entirely while Mr. Johnson was in public office; mainly since he entered the Senate and began his rise to national power in 1948.

It is commonly said that the Johnson family's financial success has resulted almost entirely from Mrs. Johnson's acumen and energy in parlaying a modest inheritance into a lucrative broadcasting empire.

A JOINT EFFORT

Mrs. Johnson doubtless has made impressive contributions. But there is strong evidence that Mr. Johnson himself has participated vigorously in the family business ventures. Several Texans who dealt with the Johnsons prior to past November say that they always dealt with Mr. Johnson, never with his wife.

Mr. Johnson, it should be noted, owns no stock in the company which has title to most of the Johnson property and has provided the family with such amenities as limousines, an airplane, a cabin cruiser and the LBJ ranch itself. A majority of the family company stock, 84.45 percent, is owned by Mrs. Johnson and her daughters.

Last November 29, a week after Mr. Johnson entered the White House, the family relinquished control of the company by putting the stock into a trust.

The trust agreement stipulates that neither the President nor his wife shall receive any information on how the family property is administered.

Since then, according to Washington attorney Abe Fortas, an old friend and personal legal adviser to the President, Mr. Johnson has not engaged in or discussed any family business. But in gathering material for this article, the Star has received allegations to the contrary.

Mr. Fortas, who often sees the President, was the only source close to the White House from whom the Star was able to elicit comment on the information presented here. A Presidential assistant was shown a draft of this story, but declined to discuss it.

TV-RADIO INTERESTS

The bulk of the Johnson fortune has been derived from investments in Texas television and radio stations.

During his first term in the Senate, Mr. Johnson was a member of the Commerce Committee which has jurisdiction over the FCC. The FCC, in turn, completely regulates all television and radio stations.

The public records of the FCC show no evidence that Mr. Johnson ever sought preferential consideration from the regulatory agency. They contain one letter from him forwarding an appeal from a constituent together with a request that the issue raised be decided "on its merits." Every efficient Congressman almost daily writes such letters.

There is evidence, though, that Mr. Johnson often was personally involved in gaining interests in radio and television stations.

The standard story of how the Johnsons embarked in broadcasting back in 1943 is that Mrs. Johnson noticed that a little Austin station was for sale, bought it with part of her inheritance and by diligent supervision made it profitable.

The full story is more complex.

Station KTBC in 1939 was owned by A. W. Walker, R. A. Stuart, and Robert B. Anderson, who was to become Secretary of the Treasury under President Eisenhower.

Personal reasons prevented each of the owners from moving to Austin to oversee the station. When the station ran into financial difficulties, the three men decided to sell it rather than attempt to manage it in absentia.

They found a willing buyer in J. M. West, who was a wealthy Austin businessman and newspaper publisher. He also was a bitter enemy of the Roosevelt administration.

Not long after Mr. West contracted to buy KTBC for $50,000, the FCC revoked the station's license. Although the reasons are not entirely clear from current records, it seems that the Commission objected to an individual who had been associated with the station.

An appeal kept KTBC on the air until the spring of 1940 when it regained its license by dissolving whatever relationship existed with the man to whom the FCC objected.

Mr. West then negotiated another agreement giving him an option to purchase the station by paying $20,000 and assuming up to $12,000 of its debts. The option was to remain in effect until 30 days after the FCC ruled on Mr. West's application as a buyer.

But the Commission refused to approve or disapprove the sale, saying it was putting application from newspaper interests in a "pending" file. During the next 2 years, it rebuffed pleas for a decision one way or the other.

NEGOTIATIONS DESCRIBED

In the fall of 1942, a prominent Austin businessman, E. G. Kingsbery, talked with Mr. West about buying his option.

Mr. Kingsbery has provided this account of what happened next:

Two days before Christmas, 1942, Austin Postmaster Ray Lee called to inform him that Mr. Johnson wished to see him in his local office that afternoon.

The meeting was cordial and Mr. Johnson mixed some eggnog from cream someone had given him.

Explaining that he had heard of Mr. Kingsbery's interest in KTBC, Mr. Johnson said that he wished to buy it for his wife and asked for assistance in making the purchase.

Mr. Kingsbery agreed to defer to the Congressman who the year before unexpectedly had given his son an appointment to the Naval Academy.

In Mr. Johnson's presence, he called Houston attorney Philip Stevenson, the executor of the estate of Mr. West who had just died. By phone, he arranged for Mr. Johnson to drive to the West ranch near Llamo to confer with Mr. Stevenson and the West heirs. Mr. Kingsbery believes Mr. Johnson spent Christmas at the West ranch negotiating for the station.

Mr. Fortas states that his information is that the Johnson purchase of the station was handled entirely by a lawyer and family friend, the late Alvin J. Witz.

At any rate, FCC records show that shortly after Christmas, Mr. Stevenson wrote a letter certifying that the West estate would waive its right to buy KTBC if the owners would sell it to Mrs. Johnson.

They quickly consented to sell to her for $17,500, about $9,000 less than they had spent equipping it. However, Mrs. Johnson also had to assume the stations indebtedness, reportedly between $40,000 and $50,000.

COMMISSION ACTS QUICKLY

Mrs. Johnson on January 2 drafted a $17,500 check for deposit in escrow pending FCC sanction, which she formally requested on January 23. The Commission, which had kept the West applications shelved since 1939, approved Mrs. Johnson's application 23 days after receiving it.

In stating her qualifications to become an owner, Mrs. Johnson had listed her net financial worth as $64,332.50 and predicted that within a month she could eliminate the KTBC deficit by "close supervision * * * coupled with full-time and energetic efforts to engage new accounts."

Her prediction came true. Advertising accounts flowed to the station and by the end of the decade it was earning a profit of more than $50,000 a year after taxes.

However, in 1948, Mr. Johnson apparently was concerned about money.

His friend and biographer, Booth Mooney, recalls that he almost quit politics completely rather than seek reelection or run for the Senate against the popular conservative Governor, Coke Stevenson.

The biographer reports that Mr. Johnson even went so far as to prepare a statement announcing his retirement. Mr. Mooney explains that the Congressman wanted to share more time with his family and that "Also, he wanted to make money, which he knew he would never be able to do in politics."

Mr. Mooney writes in "The Lyndon Johnson Story":

"A few years before, Lady Bird had bought a radio station in Austin and turned it into a paying proposition. Johnson felt that, with the inhibitions of his official position removed to give him a free hand in promoting the station, he could help in its continued development. He was thinking about a television station, too. He wanted to get in on the material possibilities of the new world he had predicted was going to open up once the war was finished."

Mr. Fortas now insists that Mr. Mooney's report on Mr. Johnson's thoughts on quitting politics are untrue.

(Before writing the first edition of "The Lyndon Johnson Story," Mr. Mooney was a member of Mr. Johnson's staff, a job to which he returned after finishing the biography. Mr. Johnson wrote the foreword in which he said of the biography, "I have read it and I like it.")

Ultimately, Mr. Johnson put aside his doubts about the political life and decided to run for the Senate. He won by 87 votes.

From 1948 to 1952 the yearning to own a television station reported by Mr. Mooney was frustrated by an FCC freeze on issuance of new licenses.

The Commission during those 4 years tried to devise an equitable plan for distribution of channels throughout the country. The plan finally evolved allocated Austin two ultrahigh frequency channels, but just one very high frequency channel—the only kind most sets are equipped to receive.

MANY APPLICATIONS PILE UP IN CAPITAL

A mass of license applications, including two from Austin had piled up in Washington by the spring of 1952. One Austin applicant asked for a UHF channel, the other did not specify whether he wanted UHF or VHF.

Mrs. Johnson on March 14, 1952, expressly applied for the one VHF channel available to Austin. On April 14, 1952, the FCC lifted the freeze.

Mrs. Johnson on June 16 amended her application with more data the FCC required. The Austin applicant for a UHF channel also filed the necessary amendment. The third applicant neglected to do so and his application was dismissed.

The FCC now rushed to hand out licenses with all possible speed.

"During the period 1948–52, it became perfectly obvious that anyone who had a TV station probably was going to make a lot of money and a lot of money in a hurry. A tremendous amount of pressure, both political and business, to grant licenses in a hurry built up," a senior FCC staff member says.

The pressure was most intense of channels for which only one application had been submitted, since each day of delay increased the possibility that someone might present a competing application.

Without written recommendations or any prior hearings, the FCC Commissioners convened July 11, 1952, to issue the first licenses granted in 4 years. At the end of the day, the Commission announced approval of 14 new stations. The UHF station in Austin was among them; the Johnson station was not.

On July 14, however, the FCC released a statement which disclosed that Mrs. Johnson's application, along with three other additional ones, actually had been among those approved 3 days before.

An explanation of the delayed announcement offered by a knowledgeable communications lawyer in Washington is that the Johnson application was not fully processed until the night of July 11, well after the normal workday ended.

Asked if this is what happened, a longtime FCC staff member said:

"I don't know. It's possible. I do know that at that time the staff was working day and night to rush things through."

Regardless of how it was born, KTBC–TV rapidly matured into a robust television station enjoying affiliations with all three national networks.

Neither the UHF station authorized in 1952 nor a second one later licensed ever has been built. Thus, all national and local advertisers seeking to reach the Austin market of 45,000 to 50,000 homes through television had to come to KTBC.

VALUE OF STATION PUT AT $5 MILLION

The current value of the station, together with that of the Johnson AM and FM radio stations, is calculated at $5 million by an experienced television broker who has analyzed the properties. Other industry sources think they would command an even higher price.

The $5 million figure applies only to what the broker calls the "stripped down" value of the stations. This includes their physical assets, network affiliations, licenses, relationship to the market, and any options or contracts they may have. It ignores their "net quick" value which in trade parlance refers to operating capital, surpluses, reserves, and other liquid assets beyond liabilities.

The last LBJ Co. financial statement appearing in public FCC records shows that on February 28, 1962, the company had "surplus and reserves" of $2,666,533 in excess of liabilities. Presumably, the KTBC stations accounted for most of this sum.

After so successfully introducing television to Austin, the Johnson interests searched elsewhere in Texas for other opportunities.

They found one in Waco, 92 miles north of Austin.

Waco had a UHF station which in 1954 was losing money at a disastrous rate. The station, KANG, had been unable to secure network affiliations from either CBS or ABC, which scorned UHF stations. And it suffered further because a new VHF station in Temple, 30 miles away, was beaming NBC programs into Waco.

Even more ruinous competition was imminent from a VHF station which soon was to receive FCC clearance to begin telecasting in Waco. The embryonic station, KWTX–TV, had been negotiating with CBS and fully expected an affiliation from it, an expectation reflected in program schedules submitted to the FCC.

The KANG owner for months in 1954 urgently tried to sell his debt-ridden station. But, according to correspondence in FCC records, no one wanted it.

On December 1, 1954, the FCC gave KWTX–TV a license. The same day, it authorized the Johnson company to buy KANG for $25,000 and the assumption of $109,000 in debts.

The KWTX promoters were surprised that the Johnson company would want KANG which had been unable to compete with one VHF station, much less two.

SURPRISE TURNS TO CONSTERNATION

A few days later, though, their purpose turned to consternation when they discovered that CBS no longer was interested in doing business with them. It suddenly preferred instead to affiliate with KANG.

This CBS decision to associate itself with a dying UHF station rather than with a potentially profitable VHF station was unique in television history. But it did not long remain unique.

Dismayed, the KWTX owners turned to ABC, the only other network available.

The weakest of the three national networks at the time, ABC had eagerly welcomed VHF outlets wherever it could find them, and KWTX presented it with an opportunity to send all of its programs into Waco.

But when KWTX asked for an affiliation, ABC said no. It chose to affiliate with the Johnson station, whose program time it would have to share with CBS.

Deprived of network programs, KWTX faced a foreboding future. It's prospects darkened further when the Johnson station in Austin increased its power to project its programs into the southern sections of the Waco market.

The KWTX owners retaliated by reporting all that had happened to the Justice Department and demanding that the Antitrust Division intervene. They also filed a complaint with the FCC accusing the Johnson company of "monopolistic activities" and ordered their lawyers to prepare a civil suit.

These actions were followed quickly by private negotiations between KWTX and the Johnson interests. It is unclear who initiated the bargaining, but KWTX owners say that Mr. Johnson personally was involved in it.

A KWTX stockholder and attorney, Wilfred Naman, remembers that Mr. Johnson participated in the business discussions at least three times.

"I visited with him both in his office at the Capitol and then out at his home in Washington. I also recall once during these negotiations, I had a conference with him down on his ranch. I believe that his lawyer first suggested that I talk with Mr. Johnson," Mr. Naman says.

For what he had to offer—network affiliations—Mr. Johnson wanted more than half of the new television station and also part of an already established and flourishing radio station owned by the KWTX promoters. The Johnson interests also were eager to get rid of the complaints pending before the Federal agencies.

But the KWTX owners were unwilling to surrender as much as was being asked of them.

"One of us was offering less, the other asking more. Each of us was sparring for position," Mr. Naman says of his conversations with Mr. Johnson, who then was Senate majority leader.

SPARRING PRODUCES FIRST AGREEMENT

The first agreement produced by this "sparring" became apparent May 15, 1955, when KWTX withdrew its complaints, explaining to the FCC that "certain facts" had come to its attention. The same day, ABC revealed that in September it would shift its Waco affiliation from the Johnson station to KWTX.

This initial agreement removed the Waco conflict from the public arena, but did not entirely settle it. Although KWTX now had a promise of a network affiliation in the fall, it had gone on the air without one and was losing money. And it was not certain that ABC programs alone would enable it to compete with the NBC fare being offered by the station in nearby Temple. So negotiations between KWTX and the Johnson company continued through the summer, when Mr. Johnson suffered a heart attack, and into the fall.

The deal that finally emerged required KWTX stockholders to give up 29.05 percent of their stations to the Johnson company. One KWTX stockholder says that he opposed the arrangement, but a majority ratified it.

As a consequence, KANG on December 31, 1955, ceased operations, announcing that it no longer could bear the heavy losses it had been sustaining. The Johnson company then "merged" KANG with KWTX in return for 29 percent of the VHF station and the radio station.

For this 29 percent, the Johnson company paid no money. It did turn over the CBS affiliation and the physical assets of KANG, which had cost it $134,000.

Today, the "stripped down" value of KWTX–TV and of its subsequently acquired interest in other Texas stations is estimated to be $3 million. The Johnson company share of this basic value would be $870,000.

The present KWTX board of directors is composed of seven Waco owners and three Johnson representatives: A. W. Moursand; J. C. Kellam, manager of the Johnson station in Austin; and Donald S. Thomas, one of Mr. Johnson's Austin lawyers.

Relations between the two factions have been strained. Nevertheless, KWTX, which remains the only television station in Waco and which programs the best from CBS and ABC, has prospered and expanded.

It has acquired 75 percent of a television station in Sherman, 78.9 percent of a radio station in Victoria and half of a Bryan television station which it established.

The channel allocated Bryan, the home of Texas A. & M., originally was reserved for educational purposes. It is one of the few such channels which the FCC has allowed to be converted for commercial use.

"I know this looks bad in the circumstances," says one of the KWTX owners.

"But I'm sure that Mr. Johnson had nothing to do with it, at least I'm sure as I can be. We were just lucky. Actually, the Johnson people were against the Bryan station. They thought it might threaten their station in Austin."

The Johnson interests in 1956 decided to go after another faltering station, this one in the Rio Grande Valley town of Weslaco.

A temporary obstacle arose when a Texas businessman, H. L. Cockburn, claimed that he had an option to buy 25 percent of the station, KRVG–TV, for $100,000.

The FCC rejected his claim and let the L.B.J. Co. buy half of the station for $5,000 plus a promise to lend it $140,000 at 7 percent interest. The L.B.J. Co. also pledged to lend a separate radio company maintained by the KRVG owner, O. L. Taylor, $103,000.

Under Mr. Tayor's management, KRVG advertising accounts were sparse, and it reportedly owed between $300,000 and $400,000. But after the Johnson company became his partner, advertisers became increasingly interested in the scattered Weslaco market. With FCC sanction, the station also strengthened itself by trebling its transmission power.

After Mr. Taylor merged his local radio station with the television station in 1957, the Johnson company acquired complete control of both by buying him out for $100,000.

The television station flourished so that by 1961 the L.B.J. Co. was able to sell it, together with the radio station, for $1.4 million.

The purchasing company, Kenco Enterprises, successfully had run television stations elsewhere in the country. But in Weslaco, it did not have the same good fortune as the Johnson company had.

Last year, it got rid of the station for $25,000 less than it had paid.

Shrewdness, enterprise and expert management all have been ingredients of the Johnson company success in television. The benign attitude of the FCC toward the Johnson interests also has helped.

When the Commission was assigning channels in the early 1950's, it gave every major Texas city except Austin access to two or more VHF stations. Corpus Christi, a coastal city with a population 30 percent less than that of Austin, received two and later was awarded a third.

However, it should be noted that some other market areas as attractive as Austin also got only one VHF station. And in 1952, the FCC probably could not foresee that UHF stations, of which Austin was allocated two, would fail as completely as they did.

The Commission now can advance persuasive reasons why broadcast patterns of surrounding Texas stations make establishment of a second station in Austin technically impractical.

A 1959 OPPORTUNITY REJECTED BY FCC

But in 1959 when a technically feasible opportunity to let Austin see programs from another station did arise, the FCC rejected it.

The Commission that year decided to grant southern Texas a new VHF channel which it proposed to put in Corpus Christi.

The two stations already in Corpus Christi contended that the city simply could not support a third. They also stressed that the proposed third channel would interfere with a station Mexico was planning to build 135 miles away in Nuevo Laredo.

The FCC might have given the new channel to Austin which still had only one.

It also could have allowed the television station in Bryan to move its transmitter closer to Austin so its programs would reach both Austin and Bryan.

The Corpus Christi station urged that one of these alternatives be adopted.

But the FCC rejected them both. It talked the Mexicans into moving their station. Then, it assigned the third channel to Corpus Christi. The station which received it did not begin telecasting until last month.

Three years later, when the Johnson radio station asked permission to relocate its transmitter in Austin, the FCC was more obliging.

At the time, the Commission was prohibiting any changes in radio transmissions pending a study of the chaos caused by a proliferation of stations about the country.

The Johnson station requested a waiver which would enable it to pick up 63,000 potential listeners by moving and increasing

the power of its transmitter. It justified the request for an exception by saying that it was in danger of losing the site on which its transmitter then stood.

The FCC staff discovered that the KTBC lease on its existing site would not expire for several more years. The Commissioners, however, granted the waiver.

COMPETING FIRM IS HIT BY RULING

The latest FCC ruling affecting the Johnson interests came last month when the Commission voted to continue probably fatal restrictions upon an Austin television cable firm which is competing against one allied with the Johnson company.

The rival firms, Capital Cable and TV Cable of Austin, last year began relaying out-of-town television programs to paying subscribers through community antenna systems.

Capital Cable in which the Johnson company has an option to acquire half interest, escaped FCC jurisdiction by relying exclusively on land lines to transmit programs from its antenna to individual homes.

TV Cable subjected itself to FCC restrictions by choosing to use cheaper and more efficient microwaves in its system. The restrictions force it to black out for up to 15 days any network program which the Johnson station wishes to delay for later telecast.

Unfettered by Federal regulation, Capital Cable enjoys the decisive advantage of being able to present programs the moment they emanate from stations in San Antonio or Waco.

Contending that Austin is unique in that it is the only city with competing community antenna systems and just one television station, TV Cable argued that the blackout rule should be waived to allow it to compete on equal terms.

The FCC disagreed. It emphasized that TV Cable voluntarily had accepted the restrictions in return for permission to use microwaves and that the limitations had not been waived for anyone else.

As a consequence, Capital Cable probably will drive its competitor out of Austin.

If it does, its eventual worth could be between $5 and $10 million, according to broadcasting industry sources.

The option agreement entitles the Johnson company to buy half of Capital Cable at a price which will be well under $1 million.

If the Johnson company exercises the option, it then will appoint three directors of Capital Cable. The parent company of Capital Cable, Midwest Video of Little Rock, also will appoint three. The seventh director will be designated by the mayor of Austin.

As any mayor of Austin would be expected to be more sympathetic to the Johnson interests than to those of an out-of-State corporation, this provision probably will enable the Johnson company to control Austin's only community antenna system as well as its only television station.

The Johnson company obtained its option from Midwest Video, which maintains Capital Cable as a wholly owned subsidiary.

JOHNSON AID PLACES PHONE CALL

According to a Midwest Video officer, a presidential aid telephoned shortly after the assassination last November to stress that although Mr. Johnson had become President, he still was interested in the option.

Presumably, this call was made before the November 29 trust agreement decreeing that Mr. and Mrs. Johnson shall have nothing to do with the family business.

However, shortly after the agreement was signed, special telephone lines were installed to link the White House and LBJ Ranch with the ranch of the trustee, Mr. Moursand. The Secret Service ordered the direct lines for its own use because Mr. Johnson so frequently visits the Moursand Ranch.

The issue of whether Mr. Johnson conferred with Midwest Video representatives after November 29 is clouded by controversy and contradictions.

Both C. Hamilton Moses and George Morrell the two Midwest Video executives identified by some sources as participants in a conference with the President, deny that it ever occurred.

Mr. Fortas likewise asserts that the second-hand reports of such a conference are utterly false.

Yet, three different Midwest Video officials insist that Mr. Johnson since becoming President has talked business with members of the cable company.

Two of the company directors say that the private business meeting was held late last December at the LBJ Ranch while West German Chancellor Ludwig Erhard was an official visitor there.

They state that Mr. Johnson spoke with extreme candor about the option, but said that his family company would wait virtually until the eve of its expiration some 2 years hence before deciding whether to exercise it.

According to one of the sources, Mrs. Johnson once interrupted the President to ask: "Lyndon, don't you think you're being rather rough with these gentlemen?"

The President reportedly commented that he was speaking so frankly because he wanted all matters clearly understood.

One of the Midwest Video officers reports that he received his account of the alleged meeting from Mr. Morrell who, he says, was proud of having been a guest at the President's ranch during the Christmas holidays.

REPORT OF VISIT IS CALLED UNTRUE

In a telegram secured by Mr. Fortas after he had been shown a draft of this article, Mr. Morrell stated: "The report that I was present at the Johnson ranch during the Erhard visit is absolutely untrue. I have had no contact with the President this year. I hope these false statements will be corrected."

Mr. Moursand, for years a personal and business friend of the Johnsons and now the trustee, thinks that their relationship with the FCC often has been unfairly distorted.

"It has been an ordinary chain of events that are strictly proper and legal and ethical. Everybody knows that your TV and radio licenses are renewed automatically, but they write it like you got some favor. Most of them (FCC rulings) are general decisions, nationwide. They forget to say that the rules are nationwide," Mr. Moursand comments.

A highly placed FCC official reports that he knows of no instance in which Mr. Johnson ever attempted to influence the Commission in his own self interest.

"I've never once had anybody pressure me on Lyndon Johnson. The pressure there is an obvious one, though. It simply stems from the position occupied, particularly when you have a company named the 'L.B.J. Co.'" he says.

Although Johnson company investments in radio and television can be traced from public records, identification of its other holdings is much more difficult.

The White House declines to discuss them. The White House attitude is that since Mrs. Johnson has put all of her holdings in trust, all inquiries about the Johnson fortune should be addressed to the two trustees, Mr. Moursand and Dallas lawyer, J. W. Bullion.

Repeated attempts to arrange an interview with Mr. Moursand in Texas proved unsuccessful. Efforts to talk with Mr. Bullion likewise failed. Mr. Moursand did talk politely and helpfully, though, after being reached on the 26th telephone call from Washington.

He stressed that terms of the trust he oversees stipulate that neither the President nor Mrs. Johnson shall receive any information about administration of the family holdings so long as the holdings are in his custody. He said he could not discuss many details because their publication might violate this provision of the trust.

Reliable businessmen, knowledgeable about the Johnson wealth and how it was acquired, generally are most reluctant to talk about it. Those who will talk usually extract an oath that their names never will be mentioned.

After some 30 minutes of conversation with a reporter, an Austin oilman abruptly halted the interview. He refused to continue it until he had verified the reporter's identity by calling Washington and receiving a physical description of him from an editor.

Two other Austin businessmen from whom information was solicited both furnished it in unsigned letters written on plain paper.

Senator JOHN J. WILLIAMS, of Delaware, who still is poking around the debris of the Bobby Baker case, has had similar experiences.

In response to a request for information, he recently received an insulting reply from a Texas businessman who wrote on his official company stationery that he would tell the Senator nothing.

ENVELOPE INCLUDES SURPRISE PACKAGE

Attached to this letter was a plain, unsigned sheet of paper on which appeared all the information Senator WILLIAMS requested.

Despite the difficulty of completely cataloguing the Johnson company holdings, it is evident that some of its radio and television profits have been reinvested in land.

Mr. and Mrs. Johnson jointly own the 1,800-acre Granite Knob ranch in Blanco County and an 800-acre ranch nearby called the "Lewis place."

They also jointly own half of the Haywood ranch, which spreads over 4,500 acres not far from Llanno. Mr. Moursand owns the other half.

The L.B.J. Co., whose name in December was changed to the Texas Broadcasting Corp., last year bought 1,700 acres of ranchland on the Peernales River, 40 miles west of Austin.

Asked about reports that the company has purchased several other ranches, Mr. Moursand declined to comment.

He also declined to estimate the value of the ranchlands in which the Johnsons and the family company are known to have an interest, but said that anyone who paid more than $50 an acre for it would be taking a risk.

If this were a correct valuation, the Johnson lands enumerated would be worth $327,-500. But Austin bankers familiar with current land prices say that a more accurate valuation, excluding any improvements and equipment, would be between $500,000 and $600,000.

The LBJ Ranch itself, although it consists of only about 400 acres, contains the Johnson home, a heated swimming pool, barns, and employees' quarters which could not be duplicated for less than $150,000.

The ranch also has a 6,300-foot landing strip capable of supporting commercial aircraft as large as the Martin 404 or twin-engine Convairs. Engineers estimate that a strip of such capacity, together with its landing aids, probably would cost between $75,000 and $100,000.

JOHNSON OWNED TRACT ON LAKE

Before he switched the title to the L.B.J. Co., Mr. Johnson personally owned 24.82 acres of choice residential land in an exclusive Austin suburb adjoining a lake.

The present city tax assessment of the property is $31,400 which supposedly represents 75 percent of its true market value. Tax assessments often fail to reflect the real value of property, and an Austin banker says that comparable land near the Johnson tract

has been selling for as much as $25,000 an acre. At such a price, the Johnson property would be worth more than $600,000.

Mrs. Johnson still has under her own name some 3,700 acres of Alabama farmland, a few sections of which are rented to tenant farmers.

The Johnson City Foundation, formerly the Lyndon B. Johnson Foundation, owned 1,942 shares in four Austin banks as of last December 31. According to the lowest prices for which such stock was sold last March, it would be worth $136,704. Mr. Moursand describes the foundation as a "charitable" one, and it is so recognized by the Internal Revenue Service.

There is a widespread impression in Austin that the Brazos-Tenth Street Corp., which owns some $300,000 worth of stock in local banks, is a Johnson enterprise.

The Johnson television station is located at the intersection of Brazos and 10th Streets. The aircraft which Mr. Johnson used for personal purposes before it crashed on his ranch in 1962 was owned by the Brazos-Tenth Street Corp. And Austin businessmen say that its emissaries have represented it as a Johnson company.

Mr. Moursand vigorously insists that the Johnsons have no interest whatsoever in the Brazos-Tenth Street Corp. One of its directors, Mr. Thomas, who also is a Johnson member of the KWTX–TV board of directors, says the same thing.

PRIVATE PLANE AMONG ASSETS

Beyond investments in television and land, the Johnson family possesses, either through its company or in its own name, other assets such as cattle, corporate stocks and a $200,000 private airplane.

The trust which has been established for the L.B.J. Co. or Texas Broadcasting Corp. stock is irrevocable so long as Mr. Johnson remains President or occupies any other Federal office.

However, once he leaves office, control of the stock reverts to Mrs. Johnson and her daughters. In the meantime, they continue to derive income from it.

USDA DISASTER RELIEF PROGRAM

During the delivery of the speech of Mr. BYRD of West Virginia,

Mr. McGOVERN. Mr. President, will the Senator yield?

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that I may yield to the distinguished Senator from South Dakota [Mr. McGOVERN] without losing my rights to the floor. I ask unanimous consent that his statement which he will insert in the RECORD may appear after the speech which I am making, and, furthermore, that my statement, which will be interrupted at this point, will not be counted as a first speech.

Mr. JAVITS. Mr. President, reserving the right to object, may I ask the Senator if he can give us any indication of how long he expects to continue?

Mr. BYRD of West Virginia. I expect to continue until 9 o'clock or later.

Mr. JAVITS. Today?

Mr. BYRD of West Virginia. Yes.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from South Dakota is recognized.

Mr. McGOVERN. Mr. President, I thank the Senator from West Virginia for yielding to me.

Mr. President, there has been some question recently about the administration of the disaster relief program of the Department of Agriculture. Because of that I have asked the Department for a statement on the administration of the program, which has been supplied to me in a letter dated June 8, written by Mr. Ray Fitzgerald, the Deputy Administrator of State and County Operations of the U.S. Department of Agriculture. I ask unanimous consent that the letter may be printed at this point in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. DEPARTMENT OF AGRICULTURE,
AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE, OFFICE OF THE ADMINISTRATOR,
Washington, D.C., June 8, 1964.

Hon. GEORGE McGOVERN,
U.S. Senate.

DEAR SENATOR McGOVERN: The article about which you inquired was inserted in the CONGRESSIONAL RECORD for June 5, 1964, by Senator JAVITS on behalf of Senator SCOTT, of Pennsylvania.

The insertion charged that extension of the disaster livestock feed program beyond June 15, 1964, was being denied Pennsylvania farmers because these farmers voted overwhelmingly against passage of the wheat referendum held May 21, 1963.

This line of reasoning, carried to its logical conclusion, would indicate that farmers in only six States in the Union would ever have received assistance under the disaster livestock feed program of the Department of Agriculture or, at least, that if programs were initiated in drought affected States, these six would have received preferential treatment in regard to the termination dates established for the program. (In only six States did farmers vote "Yes" in the wheat referendum by 66⅔ percent or more.)

The fact is that this program to relieve the effects of 1963 drought were operative in 23 States, and these included only two of the six States which voted "yes" in the wheat referendum. It should also be noted that all 39 Pennsylvania counties designated as 1963 disaster areas were approved after the referendum—the first ones on August 27; other counties were added on several occasions. Furthermore in May 1964 five counties of Pennsylvania were designated for an emergency agricultural conservation program, which provides cost-sharing with farmers for restoration of flood-damaged farms.

Following is a list of the States which were in whole or in part declared disaster areas by the Secretary of Agriculture as a result of the 1963 drought. This program makes feed available to eligible farmers in a drought-stricken area at cut rates from Commodity Credit Corporation stocks for maintenance of herds and flocks. The actual or proposed dates of program termination for each designated State:

Texas: April 30, 1964.
Louisiana: May 31, 1964.
Mississippi: May 31, 1964.
Arizona: September 13, 1963.
Virginia: June 15.
Nevada, May 31.
Arkansas, May 31.
Missouri: June 15.
North Carolina: May 31.
West Virginia: June 15.
Pennsylvania: June 15.
New Hampshire: June 30.
Maryland: June 15.
New Jersey: June 15.
Oklahoma: May 31.
Vermont: June 30.
Ohio: June 15.
Massachusetts: June 30.
Michigan: June 30.
Wisconsin: June 30.
South Carolina: April 30.
Utah: May 31.
New Mexico: May 31.

It will be evident from an examination of this listing that Pennsylvania farmers have been treated no better and no worse than any other State in which the program was administered as a result of 1963 disaster. A cursory examination of the listing will also indicate that the two States casting a "yes" vote in the wheat marketing quota referendum and in which a disaster livestock feed program was effective this past year, North Carolina and South Carolina, had program cutoff dates earlier than Pennsylvania.

So far as I can ascertain, this important program, which has in the past been the object of congressional inquiry and criticism has been administered fairly and equitably by the Department.

Sincerely yours,

RAY FITZGERALD,
Deputy Administrator,
State and County Operations.

RECESS TO 10 A.M. TODAY, WEDNESDAY, JUNE 10

Mr. BYRD of West Virginia. Madam President, in conformity with the order that was previously entered, I move that the Senate now recess until 10 o'clock Wednesday morning, June 10.

The motion was agreed to; and (at 9 o'clock and 51 minutes a.m.), Wednesday, June 10, 1964, under the order of Monday, June 8, 1964, the Senate recessed until 10 a.m. today, Wednesday, June 10, 1964.

NOMINATIONS

Executive nominations received by the Senate June 9, 1964 (legislative day of March 30), 1964:

IN THE AIR FORCE

The following named officers to be placed on the retired list in the grade indicated, under the provisions of section 8962, title 10, of the United States Code:

In the grade of general

Gen. Joe W. Kelly, 612A (major general, Regular Air Force) U.S. Air Force.

In the grade of lieutenant general

Lt. Gen. Francis H. Griswold, 94A (major general, Regular Air Force) U.S. Air Force.

Lt. Gen. Edward H. Underhill, 421A (major general, Regular Air Force) U.S. Air Force.

Lt. Gen. Robert H. Terrill, 628A (major general, Regular Air Force) U.S. Air Force.

The following named officers to be assigned to positions of importance and responsibility designated by the President in the grade indicated, under the provisions of section 8066, title 10, of the United States Code:

In the grade of general

Lt. Gen. Howell M. Estes, Jr., 1211A (major general, Regular Air Force) U.S. Air Force.

In the grade of lieutenant general

Maj. Gen. Waymond A. Davis, 1470A, Regular Air Force.

Maj. Gen. Keith K. Compton, 1849A, Regular Air Force.

Maj. Gen. Henry Viccellio, 1728A, Regular Air Force.

Lt. Gen. William H. Blanchard, 1445A (major general, Regular Air Force), U.S. Air Force, to be senior Air Force member, Military Staff Committee, United Nations, under the

provisions of section 711, title 10, of the United States Code.

DIPLOMATIC AND FOREIGN SERVICE

Clinton E. Knox, of New York, a Foreign Service Officer of class 2, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Dahomey.

IN THE NAVY

The following named officers of the Navy for temporary promotion to the grade of rear admiral in the staff corps indicated subject to qualification therefor as provided by law:

MEDICAL CORPS

Herbert H. Eighmy
Joseph L. Yon
Robert O. Canada, Jr.
Horace D. Warden

SUPPLY CORPS

Harry J. P. Foley, Jr.
Jack J. Appleby
Winston H. Schleef

CIVIL ENGINEER CORPS

William M. Heaman

DENTAL CORPS

Maurice E. Simpson

EXTENSIONS OF REMARKS

Goldwater Outlook: Good Chance for Success

EXTENSION OF REMARKS
OF
HON. JACK WESTLAND
OF WASHINGTON
IN THE HOUSE OF REPRESENTATIVES
Tuesday, June 9, 1964

Mr. WESTLAND. Mr. Speaker, this last weekend certain congressional Members from Pennsylvania issued statements declaring that in their opinions the nomination of Senator BARRY GOLDWATER as the Republican presidential candidate this year would cost a number of Republican Congressmen their seats in Congress.

I strongly disagree. Having led a group of Republican House Members in support of Senator GOLDWATER's candidacy, I continue to believe that the Senator is a people's candidate who will win the White House and majority control in the U.S. House of Representatives next November. I was happy to issue a public statement saying so and I would like to have this statement inserted in the RECORD:

NEWS RELEASE FROM THE OFFICE OF HON. JACK WESTLAND, CONGRESSMAN FROM THE STATE OF WASHINGTON

Congressman JACK WESTLAND, Republican, of Washington, took sharp issue today with the weekend opinion voiced by Senator HUGH SCOTT and Congressman ROBERT J. CORBETT, of Pennsylvania that Senator BARRY GOLDWATER as the GOP nominee for President would lose seats for the Republicans in Congress.

WESTLAND, who has led a group of Republican House Members in support of Senator GOLDWATER's candidacy, stated there is sound basis for confidence that the Arizonian would carry new Members into Congress with a Republican victory in November.

"I don't know where the gentlemen from Pennsylvania get their figures for gloom-and-doom predictions, or how they justify the implication that GOP unity would be threatened if GOLDWATER wins the nomination," WESTLAND said. He cited Congressional Quarterly ratings of Republican Members on votes with and against the party position in 1963. Senator GOLDWATER voted with the party 81 percent of the time, as opposed to a 56-percent score for Senator SCOTT. Congressman CORBETT had a 62-percent party unity rating during the same time period.

WESTLAND underscored the fact that better than 90 Republican House Members have attended 1 meeting or another promoting Senator GOLDWATER's candidacy and said many others had expressed a favorable interest.

"On the basis of the party unity record of BARRY GOLDWATER's detractors and from what I've seen and heard among fellow GOP House Members favorable to BARRY, there's tremendous weight in favor of the opinion that Senator GOLDWATER would enjoy an enthusiastic welcome on the ticket in Congressional districts all over the country," the Washington State Congressman said.

"Let's not forget that BARRY GOLDWATER beat a coalition of candidates for the nomination in California and won over the vigorous opposition of major newspapers there, as well as open hostility expressed by liberal TV commentators," WESTLAND declared.

The imminent death of the GOP being predicted by ultraliberal news personalities if GOLDWATER is the nominee is "grossly exaggerated," WESTLAND said in paraphrasing Mark Twain. He believes the 1 million plus votes in California, the continuing pledging of delegate votes in State conventions and primaries, and the evolving situation in the South are evidences that GOLDWATER is a people's candidate who will win the White House and majority control in the U.S. House next November.

The 1964 College Chemistry Teacher Awards

EXTENSION OF REMARKS
OF
HON. FRANK THOMPSON, JR.
OF NEW JERSEY
IN THE HOUSE OF REPRESENTATIVES
Tuesday, June 9, 1964

Mr. THOMPSON of New Jersey. Mr. Speaker, it gives me great pleasure to bring to the attention of the House three outstanding professors selected by the chemical industry to receive 1964 College Chemistry Teacher Awards. The awards, to be presented by the Manufacturing Chemists' Association, Inc., at its annual meeting in White Sulphur Spring, W. Va., on June 11, consist of a medal and a citation, accompanied by a check for $1,000.

The association has conducted the College Chemistry Teacher Awards program for the past 8 years. To date, 42 chemistry professors have been honored. Objective of the program is to focus public attention on the importance of good science teaching at the undergraduate level; to honor the men and women so engaged; and to inspire qualified students to choose careers in science. Those selected to receive the awards this year are:

Dr. Hubert N. Alyea, Chemistry Department, Princeton University.

Dr. John H. Wolfenden, Chemistry Department, Dartmouth College.

Dr. Sara Jane Rhoads, Chemistry Department, University of Wyoming.

Dr. Alyea, a professor of chemistry at Princeton University for 34 years, is widely known for his novel lecture table and overhead projection demonstrations. He has developed a new technique called tested overhead projection series—TOPS—a kit of 15 devices with which an entire year of chemistry can be taught. Dr. Alyea has also done extensive research in the fields of chain reactions and the mechanisms of inhibition.

Dr. Wolfenden has been professor of physical and general chemistry at Dartmouth College since 1947, having previously taught at Oxford University and Oberlin College. He is author of "Numerical Problems in Physical Chemistry," and while at Dartmouth, spearheaded the establishment of a course on case histories in science.

Dr. Rhoads taught at Hollings College in Virginia prior to joining the staff at the University of Wyoming as professor of chemistry in 1948. Her varied research work has brought $50,000 in research grants for the university, including a grant for the Petroleum Research Fund in support of undergraduate research.

These three science teachers honored by the chemical industry have dedicated their lives to the instruction of our youth. They deserve our recognition and profound gratitude.

William V. McKenney Medal Given to Congressman Thomas P. O'Neill

EXTENSION OF REMARKS
OF
HON. F. BRADFORD MORSE
OF MASSACHUSETTS
IN THE HOUSE OF REPRESENTATIVES
Tuesday, June 9, 1964

Mr. MORSE. Mr. Speaker, last week Boston College conferred its William V. McKenney Medal on one of its most distinguished alumni, Congressman THOMAS P. O'NEILL, of Cambridge, Mass., a Member of this body since 1952 and a respected member of the Rules Committee, who was honored "for exemplary and outstanding work in behalf of Boston College and for laudatory service in the interests of mankind which reflect on the honor of Boston College."

That citation says in a few words a great deal about "TIP" O'NEILL's service to his college, his constituents, the Com-