

the final goal takes much longer than the first step is the opposite of practical.

This is true of Atlantic union, too; the basic decisions take relatively little time, there is no sense in deferring them further, and every reason to take them now. What does this mean, concretely? It means a decision by the President to invite the NATO allies to send delegates to meet with U.S. delegates in another federal constitutional convention, patterned broadly on the one in 1787, to take—subject to ratification by their peoples—the following positive, creative actions:

1. Declare that the goal is the transformation of the NATO alliance into, eventually, a full-fledged federal union, that is, one with a common citizenship, foreign policy, defense force, and free movement of money, goods and men through its territory—which would guarantee the continued independence of each Member Nation as regards its purely national affairs, and could admit other nations that so desired, when it agreed that this would advance its purpose.

2. Draft a federal constitution to speed attainment of this goal by:

(A) Listing the bill of rights, or individual liberties, and the other peaceful purposes which this union of the free would be made to advance.

(B) Establishing a democratic government with a federal senate and house, and an executive and judiciary to pursue these aims;

(C) Assigning to this Government the task of working out, as a whole, the transition to complete union in the various inter-related fields to be given it, and fixing a definite time-table for the attainment of each—a common currency to be achieved in ----- years, a common market in -----

years, a common defense force in ----- years, and free movement of citizens throughout the Union in ----- years.

Certainly there would be conflicting views in such a convention, and many compromises would have to be made. But the convention would be spared the difficulty of working out the details of transition which the drafters of the Rome Treaty incorporated in that voluminous document which set up the Common Market. All such questions would be left to the new union government to answer. This Convention, like the one in Philadelphia, could concentrate on the basic political problem—and turn out as short a document as the U.S. Constitution.

If the French Government refused to participate, or, participating, refused to sign or ratify the resulting constitution, the other nations could still federate. How long could even General de Gaulle keep France out of a union that included the United States, Canada, Britain, Belgium, the Netherlands, the German Federal Republic, Italy—to mention no more? There is so much support for Atlantic union already among the French, including the Gaullist leaders, that one could confidently expect France to enter such a federation soon, if it were not among the founders, as I am confident it would be.

The fourth and concluding lesson we can draw from the forgotten federal revolution is the most important: It is to meet the challenge of our day with the revolutionary vision and courage. This means abandoning three delusions we now cherish. One delusion is that we can succeed in meeting our oceanic challenge with halfway measures that even such statesmen as Washington, Franklin, Hamilton could not succeed with among 13 English-speaking States in "easier" conditions.

Our second delusion is that we do not need even to attempt to federate Atlantica with the revolutionary scope and speed with which they achieved their great breakthrough. We talk of the explosion of population, of new nations, of technological and scientific advance that is shrinking the world at revolutionary speed—and we nurse the delusion that we don't need to advance with revolutionary speed and on a revolutionary scale in the political field, in constituting effective free international government in such a world.

Our third delusion is that we can meet our challenge without demanding of our leaders the revolutionary character, heroic courage, the Founding Fathers farsighted vision and sublime faith in the sovereign citizen which Washington, Franklin, Hamilton and a galaxy of Founding Fathers provided 175 years ago.

Let us be done with these delusions. Let us be done with them now. We are not so feeble that we cannot do what our fathers did and what we expect our children to do. We, too—each of us here, and all our friends and fellow citizens—we, too, can do far better than we have yet begun to do. We, too, can raise a standard to which the wise and the honest can repair. We, too, can have Washington's faith that if we will but raise that standard, the hand of God will turn the event our way.

We of Federal Union, Inc., and of the International Movement for Atlantic Union have that faith. We have already raised anew Washington's standard of Federal Union of the free. We invite you cordially to help us carry it forward to another "astonishing" triumph of human reason, and of the human spirit.

## SENATE

FRIDAY, APRIL 17, 1964

(Legislative day of Monday, March 30, 1964)

The Senate met at 10 o'clock a.m., 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:

O God, our Father, in this pavilion of prayer in which we bow day by day, as spirit with spirit may meet, we would fling open the shuttered windows of our darkened lives to the effulgence of Thy presence, that some broken beams of Thy glory may shine upon our daily work.

Teach us that to live worthily, we must have a faith fit to live by, a self fit to live with, and a cause fit to live for.

In this tragic and tangled world we are conscious of our woeful inadequacy to sit in the seats of judgment, to balance the scales of justice, and to respond with equity to the myriad calls of human need. Grant that those by the people's choice, here lifted to high pedestals in the life of the state, conscious of the great tradition in which they stand, may rise to greatness of vision and of soul as the anxious eyes of all the nations are upon this Chamber in so fear-haunted a day.

Despite the brutalities of man to his fellow man, keep love's banners floating o'er us as we march breast forward, with faith undimmed, in the ranks of those

who do justly, love mercy, and walk humbly with their God.

In the dear Redeemer's name we pray. Amen.

### THE JOURNAL

On request of Mr. MANSFIELD, and by unanimous consent, the reading of the Journal of the proceedings of Thursday, April 16, 1964, was dispensed with.

### CALL OF THE ROLL

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

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

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

[No. 146 Leg.]

Alken	Hart	Moss
Allott	Hayden	Mundt
Anderson	Humphrey	Muskie
Bayh	Inouye	Nelson
Bennett	Javits	Pastore
Bible	Johnston	Pearson
Boggs	Jordan, N.C.	Pell
Brewster	Jordan, Idaho	Prouty
Burdick	Keating	Ribicoff
Cannon	Kuchel	Robertson
Carlson	Lausche	Saltstall
Case	Long, Mo.	Scott
Church	Magnuson	Simpson
Clark	Mansfield	Smith
Cooper	McClellan	Sparkman
Curtis	McGee	Stennis
Dirksen	McGover	Symington
Dodd	McNamara	Walters
Dominick	Metcalf	Williams, N.J.
Douglas	Miller	Williams, Del.
Fong	Monroney	Young, N. Dak.
Goldwater	Morse	
Gruening	Morton	

Mr. HUMPHREY. I announce that the Senator from Alaska [Mr. BARTLETT], the Senator from Virginia [Mr. BYRD], the Senator from North Carolina [Mr. ERVIN], the Senator from Arkansas [Mr. FULBRIGHT], the Senator from Indiana [Mr. HARTKE], the Senator from Florida [Mr. HOLLAND], the Senator from Washington [Mr. JACKSON], the Senator from Massachusetts [Mr. KENNEDY], the Senator from Minnesota [Mr. MCCARTHY], the Senator from New Hampshire [Mr. McINTYRE], the Senator from Oregon [Mrs. NEUBERGER], the Senator from Wisconsin [Mr. PROXMIER], the Senator from Georgia [Mr. RUSSELL], and the Senator from Ohio [Mr. YOUNG] are absent on official business.

I also announce that the Senator from West Virginia [Mr. BYRD], the Senator from Oklahoma [Mr. EDMONDSON], the Senator from Louisiana [Mr. ELLENDER], the Senator from California [Mr. ENGLE], the Senator from Tennessee [Mr. GORE], the Senator from Alabama [Mr. HILL], the Senator from Louisiana [Mr. LONG], the Senator from Florida [Mr. SMATHERS], the Senator from Georgia [Mr. TALMADGE], the Senator from South Carolina [Mr. THURMOND], and the Senator from Texas [Mr. YARBOROUGH] are necessarily absent.

I further announce that the Senator from Mississippi [Mr. EASTLAND] is absent because of illness.

I further announce that the Senator from West Virginia [Mr. RANDOLPH] is absent during convalescence from an illness.

Mr. KUCHEL. I announce that the Senator from Maryland [Mr. BEALL], the

Senator from Iowa [Mr. HICKENLOOPER], the Senator from Nebraska [Mr. HRUSKA], the Senator from New Mexico [Mr. MECHEM], and the Senator from Texas [Mr. TOWER] are necessarily absent.

The Senator from New Hampshire [Mr. COTTON] is necessarily absent to attend a funeral in the State.

The ACTING PRESIDENT pro tempore. A quorum is present.

#### CIVIL RIGHTS ACT OF 1963

The ACTING PRESIDENT pro tempore. The Chair lays before the Senate the unfinished business.

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. The Senator from Mississippi [Mr. STENNIS] is recognized.

Mr. STENNIS. Mr. President, has the unfinished business been stated?

The ACTING PRESIDENT pro tempore. The unfinished business is now before the Senate.

#### ORDER OF BUSINESS

Mr. STENNIS. Mr. President, the senior Senator from New York [Mr. JAVITS] had mentioned to me the matter of his addressing the Senate for some time. Other Senators have made the same request. I am glad to yield to them.

Mr. President, I ask unanimous consent that I may now yield to the senior Senator from New York for the purpose of his addressing the Senate, that I not lose the floor, and that when I resume my speech it will not be counted as another speech in the Senate.

The PRESIDING OFFICER (Mr. BAYH in the chair). Without objection, it is so ordered.

#### DEMONSTRATIONS AND CIVIL RIGHTS

Mr. JAVITS. Mr. President, the focus of attention, both in the news and in the debate on this bill, continually returns to the subject of racial demonstrations.

The President of the United States, the mayor of the city of New York, the majority and minority leaders in respect of this bill, my colleague from New York [Mr. KEATING] and I, and others have addressed ourselves to this subject.

It is a subject which deserves careful understanding, in my judgment, particularly on the following points:

First. There is a constitutional right, provided for by the first amendment to the Constitution of the United States, "peaceably to assemble, and to petition the Government for a redress of

grievances." This right applies not only to the Federal Government, but to the States and to every subordinate level of government. Most demonstrations by Negroes, since the beginning of the movement in the sit-in cases of 1960, have been peaceful and therefore within the first amendment. The march on Washington last August 28 is the proudest example. But demonstrations which involve the unlawful use of force, or which violate other laws which are otherwise constitutional, are not protected. The projected "stall-in" on the highways leading to the New York World's Fair is a sad example of this latter type and, together with others of my colleagues, I have and continue to oppose it. I have referred to others who have also opposed it.

Second. In the North, generally, valid, constitutionally protected demonstrations, both racial and otherwise, have been protected by the governmental authorities just as have other types of demonstrations.

Third. In the South—no matter how much opponents of the civil rights bill would like to confuse the issue—many racial demonstrations, constitutionally perfectly valid, have been cruelly repressed by the local and State authorities. Indeed, in Georgia not long ago, a number of demonstrators were indicted for sedition, punishable by death, in order, so the prosecutor said, to teach them a lesson about demonstrating. We know of the near disaster that has come to the Nation, in the eyes of the world, as the result of some instances in which the police have resorted to fire hoses, police dogs, and cattle prods, as in Albany, Ga.; Birmingham, Ala.; and Greenville, Miss. In most instances demonstrators have been arrested and convicted for such claimed offenses as trespass, disobeying the orders of a police officer, or parading without a license—usually a license which under no circumstances would the local authorities issue to Negroes for a peaceful march. A classic case is Edwards against South Carolina, in which 187 Negroes were arrested, tried, and convicted for standing peacefully on the State capitol grounds and singing in protest against racial discrimination. After some years of litigation, the Supreme Court reversed the conviction, holding that the demonstration was a valid exercise of the first amendment right.

Mr. President, as we survey the field, I wonder how many people could put themselves in the place of the 187 who were convicted and endure what they went through until the decision was reversed by the Supreme Court.

Fourth. Demonstrations are large and significant because a large and significant number of people hold deep-seated grievances, and it is because there is no other legally sanctioned redress for those grievances that they must demonstrate to call attention to the need for law.

Following my promise on a previous occasion that I would get some facts and figures on this question from the Department of Justice, I have done so.

The Department of Justice has provided statistics at my request which indicate that the frequency of racial demonstrations of all types is markedly

lower in States which have antidiscrimination laws than in States which do not. From May 1963 to April 1964 a total of 2,422 racial demonstrations have occurred in the United States, 990 of which occurred in Northern States, and 1,432 in the 17 Southern and border States. The disparity is heightened not only by the disproportionate number of States involved but also by the repressive effect of policy in many places in the South against all racial demonstrations, whether constitutionally protected or not, which has held down their number. Also indicative of the role which law plays is the fact that 145, or less than 15 percent of the northern demonstrations specifically involved places of public accommodation, which were covered by antidiscrimination laws in 31 States and the District of Columbia during that period; while 705, or 49 percent, of those in the Southern and border States involved discrimination in access to public accommodations.

Mr. President, I ask unanimous consent that a letter addressed to me under date of April 14, from the Department of Justice, 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:

APRIL 14, 1964.

HON. JACOB K. JAVITS,  
U.S. Senate,  
Washington, D.C.

DEAR SENATOR JAVITS: You have requested information concerning recent racial demonstrations.

A Justice Department tabulation shows that from May 1963 to April 1964, a total of 2,422 racial demonstrations have occurred in the United States. Of these, 990 occurred in Northern States. Two hundred and twenty-one of the northern demonstrations were of a general nature while 145 specifically involved places of public accommodation. The others were concerned with schools, employment, housing, and miscellaneous matters.

The Southern and border State figures for the same period are as follows: Total, 1,432; general, 320; public accommodations, 705.

In the Northern States having public accommodations laws no demonstrations occurred in Alaska, Idaho, Maine, Montana, New Hampshire, New Mexico, North Dakota, Oregon, South Dakota, Vermont, and Wyoming. For Maryland, which had a county option public accommodations law during the reporting period, 38 demonstrations involving public accommodations were tabulated, primarily in the counties not covered by the State law. The law has been amended to cover the entire State, effective June 1, 1964.

Sincerely,

BURKE MARSHALL,  
Assistant Attorney General,  
Civil Rights Division.

Mr. JAVITS. Mr. President, in other words, the ratio as between the North and the South is 3 to 1 in the case of demonstrations with respect to access to places of public accommodation. No one contends that the existence of laws is the answer to every racial problem which exists in varying degrees throughout the Nation—hence the demonstrations in the North—but there can be no question that the existence of laws is the first step, and an indispensable one, to achieving a just solution of such problems.

Fifth. To say that continued Negro demonstrations of any type, legal or illegal, are counterproductive, because they cause resentment among whites—the so-called white backlash—at a time when the civil rights bill is in the balance in the Senate Chamber, is to beg the crucial point. So long as the demonstrations are peaceful and within lawful limits, they are constitutionally protected for this very purpose: To dramatize to the Government the need to redress grievances. Indeed, who can say that it was not in this way that the country became impressed enough with the Negroes' deep feeling of injustice to have brought the bill to this point.

Sixth. The responsible Negro leadership has fully recognized the role which such demonstrations can play, and they have also recognized the great danger to public order and to the civil rights cause that is presented by violence or by demonstrations which constitute civil disobedience. The disavowal by the major civil rights groups of the projected World's Fair "stall in" is a prime example of this wise policy.

Mr. President, I ask unanimous consent to have printed at this point in the RECORD an editorial entitled "Negro Statesmanship," from today's New York Times.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

#### NEGRO STATESMANSHIP

By issuing a statement repudiating the threatened stall-in on the roadways around the World's Fair, leaders of the six major Negro organizations have once again demonstrated their statesmanship.

The tone of their statement was reasonable and thoughtful. The stall-in, they pointed out, "is an essentially revolutionary proposal that might serve the peculiar needs and motives of some of its proponents, but not the broad interests and needs of the Negro people nor their normally broad program of effective social protest."

The statement disarms those Senators who have wavered on civil rights. It supports those Senators who have carried the standard for an effective Federal bill. And it meshes perfectly with the President's own statement yesterday that violence would not serve the cause of equal rights. Americans of good will in and out of Congress can surely find strength in the Negro leadership's statement and in the President's remark that "we are going to pass the civil rights bill because it is morally right."

Mr. JAVITS. Mr. President, I come to my seventh point. Many such Negro leaders, including those representing every one of the major organizations in this field, who attended yesterday's luncheon in Washington, recognize a further self-limitation upon the utility of the demonstration technique. I believe this is also a wise policy. Many of these leaders would restrict demonstrations to a specific grievance, rather than extend them to generalized discontent, which seeks no specific remedy.

In that respect, I point out that the most real case to the Negroes involved their demonstrations at the lunch counters in stores in the South. They were very specialized demonstrations for a very specialized purpose. The march on Washington had a specialized purpose,

that of drawing the attention of the Nation to the urgent need for a civil rights bill.

The law can hope to reach only specific grievances. The utility of demonstrations will have been lost if there is no focus on the problems which the law can attempt to solve.

#### CRIMINAL STATUTES ON CIVIL RIGHTS

I have discussed with the distinguished Senator from North Carolina [Mr. ERVIN] the applicability of the criminal statutes now on the books in respect to civil rights. I have obtained some facts and figures from the Department of Justice on this subject.

It seems clear that the oft-repeated slogan of the opponents of the bill, that the existing criminal statute is sufficient to protect the constitutional rights of Negroes, is a hollow sham. The report which I received from the Department of Justice illustrates just how meaningless, and inappropriate, criminal remedies have proved to be in this field.

First. The Federal responsibility should be to bring about the enjoyment of civil rights rather than to punish for the denial of such rights. It is of far greater importance to the individual not to be denied the right to vote, the right to equal access to public accommodations and public facilities, the right to equal opportunity for education, and the right to employment without racial discrimination, than is the punishment of those who have denied those rights. For the very reason that criminal penalties are inappropriate to securing civil rights, the civil injunctive remedies which are provided for in the bill are uniquely appropriate, because the wrong is ascertainable and can be prevented in advance. If the wrong is not prevented in advance, the damage is often irreparable, as in the case of the denial of the right to vote. Once the election is over, the damage can never be repaired.

Second. In addition, the serious penalties involved in criminal statutes carry with them a very heavy burden of proof, requiring a showing of more than a denial of a right, but also a showing of the state of mind of the accused. It must be proved under section 242 of title 18 of the United States Code—the existing criminal statute on civil rights—that the denial of the constitutional right was "willful." The Supreme Court in the Screws case reversed a conviction for police brutality on the ground that this meant that there must be proved an intent not only to do the acts charged, but also to deprive the individual of a constitutional right by means of the act charged. This was a case in which a prisoner was killed—no light matter. On the retrial of this case, with this much more difficult standard of proof imposed, there was an acquittal, instead of the conviction which was obtained on the first trial. The result has been that the criminal remedy in civil rights cases has been almost wholly ineffective.

Relatively few prosecutions have been successful. And while no lawyer would argue that acquittal would imply any impropriety, there is no question about the fact that the criminal statute has not been the effective means in giving

the kind of relief to which the aggrieved citizen is entitled in such situations.

Mr. President, I ask unanimous consent that a letter addressed to me under date of April 14, from the Department of Justice, giving the figures on the total number of prosecutions 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:

DEPARTMENT OF JUSTICE,  
Washington, D.C., April 14, 1964.

HON. JACOB K. JAVITS,  
U.S. Senate,  
Washington, D.C.

DEAR SENATOR JAVITS: You have requested my views on the adequacy of existing criminal statutes (18 U.S.C. 241, 242, and the use of 242 together with 18 U.S.C. 371) to combat racial discrimination in voting, education, and public accommodations and facilities. This issue was, of course, thoroughly considered and debated at the time of the enactment of the Civil Rights Act of 1957. (See hearings on S. 83 before Subcommittee on Constitutional Rights, Senate Judiciary Committee, 1957, p. 3 ff.). The objections to relying solely on criminal sanctions remain the same.

The purpose of Federal civil rights legislation is affirmative rather than negative; ameliorative rather than punitive.

When a person's right to vote is illegally denied he suffers irreparable injury unless this right is promptly restored—as it can be by the injunctive process of the 1957 act. The voting section of the pending bill simply amends that act by defining specific malpractices of registrars which are covered by the legislation. Thus, there is no reason to argue that a criminal statute should or would take the place of this simple amendment of a civil sanction.

Just as criminal penalties in voting right deprivations are inadequate, so would they be in cases involving other rights—the right to desegregated education and free access to public accommodations and facilities. Moreover, it is fairer to the public officials and private defendants who are charged with civil rights violations to use the less harsh yet more meaningful civil procedures.

It would be particularly incongruous to consider the criminal statutes effective remedies against refusals to effect school desegregation in the Southern States. Nearly 1,900 school districts have taken no action toward desegregation. Those who urge that existing criminal rather than civil remedies be employed would hardly wish to be heard to argue that criminal prosecutions be brought against the school officials responsible for this failure to accord constitutional rights. Yet this is what the logic of their position would seem to dictate. Moreover, fines and imprisonment for thousands of school officials would scarcely open the doors of equal educational opportunity to the 3 million Negro children who still attend segregated schools.

The Department's experience with the use of 18 U.S.C. 241 and 242 points up the difficulty of obtaining indictments and convictions in civil rights cases. This is due in considerable part to the reluctance of grand juries to indict and petit juries to convict. It may be due also in part to the very heavy burden imposed by 18 U.S.C. 242 to show willfulness. See *Screws v. United States*, 325 U.S. 91; *United States v. Classic*, 313 U.S. 299.

Since 1958, when the Civil Rights Division was established, approximately 116 criminal prosecutions have been filed, most of them involving police brutality under 18 U.S.C. 242. In a few cases the conspiracy statute, 18 U.S.C. 241, was invoked, or the general conspiracy statute, 18 U.S.C. 371, was used in conjunction with 18 U.S.C. 242. Grand juries

refused to indict in 61 of these cases. In addition, three cases under section 242 were brought to trial by way of information. As of April 1964, 16 convictions had been obtained.

It is clear that the effectiveness of 18 U.S.C. 241 and 242 even in police brutality cases is seriously limited. These statutes would certainly be even less useful in the areas covered by the pending civil rights bill.

Sincerely,

BURKE MARSHALL,  
Assistant Attorney General  
Civil Rights Division.

Mr. JAVITS. This issue was thoroughly debated in connection with the Civil Rights Acts of 1957 and 1960. Congress agreed—in the voting section which was then enacted—that a civil injunctive remedy, rather than criminal penalty, is the only effective remedy. I believe that determined the matter, so far as we in Congress are concerned, in the right way.

So the question of demonstrations, instead of being a confused one, is a very clear cut one. There is a difference between demonstrations which are repressed, but which are perfectly legal demonstrations, and demonstrations which involve civil disobedience, as in the case of the projected stall in at the World's Fair. Demonstrations of this kind are ineffective and are not of any help to us in reaching a solution to civil rights problems.

In all this debate, and all the discussion with our colleagues from the South, one thing which has constantly impressed me is their absolute unwillingness to admit for a moment that anything is really wrong, or that anything needs to be corrected. This is a sharp difference from our attitude in the North, where there is strong public opinion on the side of correcting these situations, and where much has been done to correct them. We are more than willing to admit our errors, and seek to correct them by the passage of laws which would apply across the board.

I deeply feel that until such time as the scales are removed from the eyes of those who will not see what is going on in the country, we shall have this very deep schism which is reflected in Congress by the fact that there is an effort, which is almost traditional, to keep the Senate from voting upon this very urgently needed legislation.

I feel that the only way in which we can get that issue before the country, and obtain the reaction of the country to what is really at stake, is in this painstaking, careful, case-by-case, day-by-day, issue-by-issue analysis of the points made by the other side.

#### BIGOTRY AND BIAS IN THE SOVIET UNION

Mr. JAVITS. Mr. President, the denial of religious, cultural, and other rights of Jews in the Soviet Union by the Kremlin and the publication of the libelous book by T. Kichko by the Ukrainian Academy of Sciences, continues to bring forth protests from American organizations. Earlier protests from many parts of the world led to a Soviet disavowal of the Kichko book and its anti-Semitic

stereotypes, but the repressive acts against Jews have not been halted, and continued protests are essential.

I ask unanimous consent to print in the RECORD the resolution adopted by the Women's League for Israel on April 14, and the statement denouncing the Kichko book issued by the Supreme Ukrainian Liberation Council in New York City, April 8.

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

Whereas there is religious and cultural discrimination against Jews in the Soviet Union; and

Whereas this discrimination denies to Soviet Jews the right to hold religious school classes, celebrate holidays according to their ancient tradition, or to communicate with their counterparts in other countries; and

Whereas the United Nations charter reaffirms faith in "fundamental human rights, in the dignity and worth of the human person": Now, therefore, be it

*Resolved*, That we of the Women's League for Israel, assembled at our 36th anniversary luncheon, April 14, 1964, Hilton Hotel, New York City, protest the denial of these basic religious rights to the Jews of the Soviet Union;

*Resolved*, That we urge the President of the United States and the Secretary General of the United Nations to protest to the Soviet Union the violation of these fundamental human rights embodied in the United Nations charter;

*Resolved*, That we urge Senator J. WILLIAM FULBRIGHT, chairman of the Senate Foreign Relations Committee, to hold hearings on the Senate resolution sponsored by 63 Senators to condemn religious persecution behind the Iron Curtain.

#### DECLARATION OF THE FOREIGN REPRESENTATION OF THE SUPREME UKRAINIAN LIBERATION COUNCIL IN THE MATTER OF THE PUBLICATION OF THE BOOK BY TROFIM KICHKO "JUDAISM WITHOUT EMBELLISHMENT"

In connection with the appearance of the anti-Semitic book by Trofim Kichko "Judaism Without Embellishment" published by the Academy of Sciences Ukrainian SSR in Kiev, the Foreign Representation of the Supreme Ukrainian Liberation Council declares:

1. The book by T. Kichko could come out in Ukraine only by directive of the Central Committee of the Communist Party of the Soviet Union or its subordinate units, since the Party is fully in control of all publications in the Soviet Union. All other anti-religious literature in the U.S.S.R. is also published on orders of the central committee.

2. "Judaism Without Embellishment" is a provocative libel directed against Jews in general, against the Jewish population of the Soviet Union, and the 840,000 Jews living in Ukraine. It tramples their religious and national feelings and is replete with slanderous statements against them. The Ukrainian people, who are also fighting for their independence, political and religious freedom and respect for human dignity, are opposed to all and any preaching of hatred of other people. Therefore, T. Kichko's book should be vehemently condemned by every Ukrainian living in Ukraine and elsewhere.

3. The publication of the book "Judaism Without Embellishment" whose author is a person with a Ukrainian-sounding name, and sponsored by the Academy of Sciences of the Ukrainian S.S.R., is considered by us to be a deliberate anti-Ukrainian provocation conducted on orders of Moscow and by the irresponsible individuals in Kiev. The purpose of this provocation is to spread dis-

cord between the Ukrainian people and the Jewish minority in Ukraine by preaching and strengthening anti-Semitism, and creating obstacles in the way of building of friendly relations between the Ukrainian and Jews. The aim of this provocation is to brand once again the Ukrainian people with anti-Semitism before the whole world, and simultaneously conceal the actual organizers of anti-Semitic attacks who are hiding in the Kremlin. Finally, making the Academy of Sciences in Kiev a party to this anti-Jewish activity, compromises it as an institution of learning, both in the eyes of the Ukrainian people, as well as foreigners.

4. The modern Ukrainian liberation movement has always been founded on principles of friendship, cooperation, and a common effort of the nations enslaved by totalitarian communism. Proclaiming the national independence of Ukraine on January 22, 1918, the Ukrainian National Republic simultaneously passed a law on the national autonomy of the Russian, Polish, and Jewish minority and established appropriate ministries for minority affairs. When, in the subsequent chaos of revolution, hostile and irresponsible elements began to inflame hostility among the nationalities in Ukraine and brought about pogroms of Jews, the Government of the Ukrainian National Republic censured them and undertook measures against their repetition. During World War II the Ukrainian liberation movement and in particular the Ukrainian Insurgent Army, which conducted warfare against the German and Soviet invaders, consistently preached the idea of friendship and cooperation between the Ukrainian people and the minorities in Ukraine.

The Supreme Ukrainian Liberation Council declared and defended the need of friendship of the Ukrainian people with the minorities in Ukraine, and equality of all citizens regardless of race, nationality, or religion. This was done in its declarations of principles, and particularly in the Platform and Universal Declaration of July 1944. The Foreign Representation of the Supreme Ukrainian Liberation Council conducts its activities in accordance with these principles.

5. Condemning T. Kichko's book "Judaism Without Embellishment," and all similar books, the Foreign Representation of the Supreme Ukrainian Liberation Council calls upon Ukrainians in their homeland and in the free world to oppose all such provocations which not only inflict great harm upon the Ukrainian people and the minorities in Ukraine, but also impede the work of Ukrainians abroad on behalf of the cause of liberation.

The Foreign Representation of the Supreme Ukrainian Liberation Council calls upon Ukrainians in Ukraine and abroad to reject as a crime all anti-Semitism and all propaganda of hatred toward Ukraine's minorities, to work for the establishment of good relations among all the minorities of Ukraine, by asking them to cooperate in the struggle for Ukrainian independence, and against the Moscow Communist oppressors and their hirelings in Ukraine.

Mr. STENNIS. Mr. President, I ask unanimous consent that I may now yield to the Senator from Illinois [Mr. DIRKSEN] without losing the floor, and without my subsequent remarks counting as a second speech on the pending matter.

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

#### GOLD AND THE U.S. DOLLAR

Mr. DIRKSEN. Mr. President, on March 10, 1964, I inserted an address in the body of the RECORD on the gold

problem by Mr. Harry R. Scharlach of Watseka, Ill.

Since that time Mr. Scharlach has had this speech reviewed by a number of experts in the monetary field and on the basis of their suggestions it has been revised in the interest of complete accuracy. I ask unanimous consent, therefore, to insert the revised copy as a part of my remarks in the body of the RECORD.

There being no objection, the address was ordered to be printed in the RECORD, as follows:

#### GOLD AND THE U.S. DOLLAR

(By Harry R. Scharlach, CLU, Watseka, Ill.)

Gold was one of the first metals to attract the attention of man. And, of course, it also attracted the attention of women. Gold has always been highly valued for its brilliance and beauty. It won't ever rust or tarnish. Nature has sprinkled it sparingly among the gravels of streams and tightly locked it inside of solid rock.

The earliest gold mining known to us was done in Egypt. In the days of King Solomon and King Tut ornaments of great variety and beauty were made from gold. Many of these golden objects are still in existence, just as perfect as when made several thousand years ago. In the Revelations of St. John, chapter 3 (18), appear these words: "I counsel thee to buy of me gold, tried in the fire, that thou mayest be rich."

Gold is heavy. It is 19 times heavier than an equal volume of water. A 14-inch cube weighs a ton and is worth \$1 million at \$35 per fine troy ounce. A small gold brick weighing 35 pounds is worth around \$18,000.

Gold has been the symbol of wealth in all of the great civilizations of the world. Most of the gold taken from the earth in the past 10,000 years can still be accounted for in government and bank vaults, in jewelry, in gold coins, by holdings of private hoarders, and in our teeth. The reason such accurate gold records can be kept is because most gold goes through countinghouses and mints. No other possession has been so effectively guarded. Today research in gold suggests other uses such as in our space venture industries.

World production of gold since Columbus discovered the Americas would amount to a gold cube of about 55 feet. The value of this much gold is around \$70 billion. By way of comparison, all the gold mined since 1492 is less than one-fourth of the amount of our present U.S. Federal Government debt.

Where do people find gold? Geologists say that about one half of the earth contains ore bodies. Gold ore is limited to certain widely scattered areas of the world. In the year 1963—

Seventy percent of free world gold production came from South Africa;

Ten percent came from Canada;

Four percent came from the United States.

The remainder came from Australia, the Philippines, Ghana in Africa, and other areas. The average gold recovery per ton of ore in Canada is \$8. It is taken from solid rock from mine depths ranging to more than 5,000 feet. This Canadian ore averages only 1 part of gold to 120,000 parts of rock.

Today more gold is being mined than ever before because of better finding methods, better ore mining and better gold recovery methods. Total free world output of gold in 1963 was 39 million ounces valued at \$1.4 billion.

Russia and the Communist bloc countries blanket their gold reserves and their gold output in secrecy. But latest estimates now indicate that Russia does not have as much gold as they have been pretending, either in reserves or in production. Communist bloc gold stocks are now believed to be as low as \$4 billion, or only about 10

percent of free world gold on hand. And, Communist bloc gold production is now figured to be perhaps no more than \$200 to \$300 million annually.

Now that we have had a bit of history about gold, let us turn to the subject of gold and our U.S. dollars. A thousand and more different commodities and different schemes have been tried from time immemorial for money uses. But gold alone is the only commodity that has been able to stand the test of time; to retain people's confidence from generation to generation and from century to century. Gold is the only universal international money today. The U.S. dollar is legal tender only to a U.S. citizen. Gold may be demanded by the foreign owner of U.S. dollars. So the importance of gold should never be underestimated. Any nation that possesses gold can get in and can stay in the game of international trade. Any country that has ample gold reserves has the buying power to acquire needed items from other nations. Thus, in peacetime or in wartime, gold is essential. Gold is a vital defense fuel in time of war. Recent events have clearly indicated how important gold is to Russia. She has failed in her agricultural program as she has in so many of her other plans. So Russia has been selling gold in the hundreds of millions in recent months in order to buy food to refill her bare cupboards.

In the United States today, our Federal Government still possesses a large amount of gold. About \$15½ billion worth. But, we have been losing our gold reserves rapidly since 1957. It has been a consistent one way flow of gold—out.

Before explaining the causes of our flow of gold out of this country, I'd like to mention a few other items about gold.

London, England, has for many centuries been the gold marketing center of the world. Back in the year 1250 gold was selling on the London market at \$4 an ounce, adjusted to U.S. dollars. For 450 years the price of gold was free to fluctuate and to bring whatever people thought gold was worth.

It went up continually. In the days of Columbus gold brought \$10 an ounce. By the year 1700 gold was up to \$25 an ounce. Then the prices were pegged at \$22 an ounce through the adoption of a gold standard. That price was kept firm until World War I set in and the price of gold began to rise. After World War I England had too much money and credit issued against its gold reserves and the English pound failed. The price of gold was raised, the English pound was devalued.

At that time the United States was going into the 1930's and the days of the great depression. Franklin D. Roosevelt was elected President. Someone sold him on the idea that if the price of gold was raised, the prices of goods would raise, salaries would raise, sales would increase, unemployment would be substantially reduced and prosperity would come back to the United States.

In January 1934, the price of gold was raised from \$20.67 an ounce to \$35 an ounce. The U.S. dollar was devalued in terms of gold. But the depression didn't go away. Unemployment remained high. Prices did not rise. We were still in a depression when World War II came along and produced enough jobs and industrial activity to propel us forward in a war economy—a momentum that continued after War II ended.

The price of gold has continued on that \$35 peg since 1934 with the exception of a flurry on the London gold market during the Cuban crisis in 1960, when for a short time gold went up to \$41 an ounce.

In 1933 and 1934, concurrent with the increase in the price of gold, legislation was enacted making it illegal for a U.S. citizen to own gold. Citizens were required by law to turn in their gold coins and their gold certificate currency for new paper money.

Since that date the U.S. dollar could not be redeemed for gold by a U.S. citizen. Coin collectors may now hold gold coins if they are dated prior to 1933.

Today a U.S. double eagle (\$20 gold piece) sells for about \$50. In terms of a \$20 gold coin of U.S. mintage, a present \$20 U.S. currency bill is worth about 40 percent of its former value in terms of gold, or about \$8.

The new gold standard set up in 1934 allows foreign dollar holders to exchange their U.S. dollars for U.S. Treasury gold at \$35 an ounce. This is because our international monetary system is different from our domestic monetary system, in accordance with U.S. monetary laws. Today, some foreign nations buy gold from the U.S. Treasury at \$35 an ounce, some of it with dollars our Government may have given them in foreign aid, they then mint the gold into their own national gold coins, not for circulation as money but for sale as a commodity. They receive anywhere from \$50 to \$70 an ounce for such gold transactions. A good bargain for them. I know of one foreign gold mine that sells most of its gold production to gold hoarders in the Orient at \$70 an ounce.

Now let us turn our attention to the real issue about our gold and our U.S. dollars. The issue is: Why are we losing so much of our gold? When Franklin D. Roosevelt became President, the United States had: \$4 billion of gold reserves; \$2 billion in gold was required as reserves for our Federal Reserve currency notes and deposits; \$500 million in gold was owed foreigners because of their U.S. dollar holdings.

We were in a deep depression but we were in no trouble over gold. We had \$1½ billions in gold above all of our gold requirements. But, when the price of gold was raised to \$35 an ounce in 1934, several things happened to increase our gold supply. First, our gold reserves went up by the 70-percent gold price raise, the amount of increase from \$20.67 to \$35 an ounce. Second, because gold mining became more profitable, gold production also increased substantially.

Third, a large flow of gold came in from other nations when the price was raised. This was because the price was good and also because Europe began, during that period, to buy goods from us in preparation for World War II and during World War II. A great deal of U.S. exports were paid for in gold. Our U.S. gold reserves increased every year for 15 years and finally peaked out in 1949 at almost \$25 billion. From 1949 on we began to lose our gold. Not because we lost any of our trade or any of our strength, but because we commenced giving away too many of our U.S. dollars to foreigners. Billions of dollars were given away on ill-conceived and ill-planned methods of trying to buy the defeat of communism. We simply began trying to buy with our U.S. dollars the support of any nation our Government thought would be our ally against Russia. Some of the nations we supported with our U.S. dollar gifts were themselves Communist countries. At first we did a great deal of good in helping Europe back on its feet in a war reconstruction job. Then, after they did get back on their feet, we continued to give them our dollars when they no longer needed them. And we are still giving away our dollars to them, far too many. When we began this dollar giveaway program we were the greatest industrial power on earth. We still are the strongest nation on earth. We had to have great strength to be able to give away \$108 billion in foreign aid and to spend another \$684 billion on defense items in the past 18 years, and still be able to keep going.

GEORGE WASHINGTON WARNED OUR INFANT REPUBLIC AGAINST MAKING FOREIGN ALLIANCES

But with all this spending, our foreign aid friends are not impressed with us, and our foreign enemies do not seem to be afraid of

us. We are attacked in the Panama Canal Zone by Communists who then charged us with the aggression. Even little Cuba is able to "shut off our water" with impunity. We have more chaos, more anarchy, more aggression, and more confusion in the world today than ever before. And this, after all the billions we have spent to bring peace to the world. Our massive and our reckless spending in this area has been a costly flop.

We even gave Russia 11 billion U.S. dollars' worth of lend-lease aid and only a token was ever paid back. Now Russia is working on a scheme to get the U.S. Government to guarantee her the credit to buy food from us on a time payment plan. No private lending institution in the United States would be likely to loan money to such an unworthy customer. Some of the dollars we gave foreigners were used to buy things from us and this has helped to contribute to our immediate prosperity. But, billions of these free dollars have been turned in to take away our gold reserves and \$26 billions more of these dollars are still stacked up against us, and our gold resources.

The drain on our official gold stocks since 1957 has been very heavy. Our gold reserves still amounted to \$23 billion in 1957. Then, all the free-world countries, other than the United States, had about \$15 billion in gold. Today, we are down to \$15½ billion in gold while our "free" world foreign-aid friends have increased their own gold reserves to \$26 billion. Of their gains in gold, \$8 billion of it came from the U.S. Federal Government vaults. We lost our gold to foreign nations simply because we gave them too many of our U.S. dollars free. In no year since we have been losing our gold have we exported less goods and produce than we have imported. Our actual balance of trade has always been in our favor. The entire deficit in what is commonly called our balance of payments has been very simply because of all the free dollars we have sent abroad. These free dollars have given rise to the huge dollar claims by foreigners against our U.S. gold. There are items in the balance of payments, other than trade or foreign aid. There are foreign investments abroad, vacation travel abroad, etc., but in the final analysis the gold we are losing is because of the proportion of the total \$108 billion we have given in foreign aid, that has not been spent back in the United States. This has left a huge balance of dollars stacked up in the hands of the foreign central banks and governments and which are now claims against our remaining gold. France, Germany, Spain, England, and Italy are among the beneficiaries of our dollar handout programs.

Because of this situation we are continuing to lose our gold and even so, we are continuing to give away more dollars. This also has a great influence on our domestic interest rate structure. At this time we are required to keep interest rates high so that the foreign-owned dollars will be left with institutions paying interest rather than turned into gold which draws no interest.

Today we have left in our U.S. gold reserves, about \$15½ billion in gold; \$12 billion are needed as a 25-percent gold reserve for our Federal Reserve currency and deposit system; \$3½ billion of gold are left.

Obviously, \$3½ billion of gold is far short of the \$26 billion of potential claims against our remaining gold. We are now in the position of a houseman in a high-stake poker game, who is so far behind that he doesn't dare let the game end. He couldn't pay off. So why are we losing our gold?

Why does a man's bank balance decline? A bank balance goes down and into overdrafts because more checks are written than deposits made. The truth is that our Federal Government has overdrawn our gold resources by a wide margin. And that is where our gold losses begin and end. The problems are created by the excessive spending

habits of our Federal Government. The matter of overdrafts against our gold has gotten out of hand. Meantime our Federal Government goes merrily on its way spending still more and inflating our currency system. Whenever we have a deficit in Federal Government spending at home, and that has been happening every year, we inflate our currency and bank deposit system. These have gone up by \$86 billion since 1957. The gold back of each U.S. dollar of currency and bank deposits is now down to less than 5 cents. If we subtract foreign dollar claims now against our remaining gold then no gold would remain to back our own monetary system. Whenever we have a deficit in our foreign financial transactions, the balance of payments, then the claims against our gold go still higher. Last year, in 1963, this deficit was \$3 billion. Taking both of these deficits together, the foreign and our domestic deficits, our Federal Government is putting too great a squeeze on our gold and that is why we are losing our gold.

#### WHO IN GOVERNMENT IS RESPONSIBLE FOR THIS STATE OF AFFAIRS?

It isn't simply the Democrats or the Republicans. It is the entire system of bureaucracy that may have properly started back in 1932 but has never stopped growing. We do have in Government today, many sound-thinking Democrats and Republicans who are trying hard to correct excessive spending in Government. These people do not wear high buttoned shoes. And you do not need to put on high buttoned shoes to support them. In general, however, our administrations and our Congress since World War II have been guilty of failure to stop excessive spending.

#### OLD REALITIES AND NEW MYTHS

Mr. DIRKSEN. Mr. President, much has been said recently in Washington about the cold war and its so-called "old myths" and "new realities," thus adding to the existing confusion of the American people and the Western world. The implications are so sweeping, so global in character that nothing less than incandescent light is needed to enable us to see the truth of the new myths and the old realities which really confront our world.

This light has finally come; not from a legislator, not from a diplomat, nor from the military, but from a successful businessman who is the founder of a company that operates on a world wide scale.

It came in the form of a printed pamphlet authored by him and entitled "Faith in Freedom's Cause." In it, Mr. A. N. Spanel, founder and chairman of International Latex Corp., answers those in our midst who see the world through rose-colored glasses.

He also makes an eloquent appeal to the hearts and consciences of free men everywhere and especially to all organized religions and their leaders, in this hour of confusion and forgotten moral values.

Mr. Spanel and the International Latex Corp. have demonstrated a rare dedication in the last 25 years both to freedom's cause and the successful pursuit of a far flung business enterprise. Mr. Spanel's present contribution merits study by leaders everywhere.

I therefore ask unanimous consent that this article be printed in the body of the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

#### FAITH IN FREEDOM'S CAUSE

(By A. N. Spanel, founder-chairman, International Latex Corp.)

We live in a world under relentless assault by the modern barbarism called communism—a soulless, dehumanized, all-materialist doctrine. It threatens our whole heritage of moral values. Yet we have failed, tragically, to muster the unity, the dedication to freedom, the spiritual vitality without which Western civilization assuredly is doomed.

Political leadership alone, on the sorry record of these last 20 years, can hardly be relied upon to meet the deepening crisis. Its direction is confused and its self-confidence eroded. Not the expansion of freedom and human dignity but the planted bait of "peaceful coexistence" has become the obsessive goal of Western policy.

The professional skills of Foreign Offices, and diplomacy itself, are ever more openly used to disguise piecemeal surrenders of principle as "realism" and "victories for peace." Even lipservice to the cause of freedom, so far as it applies to the billion people in the Red slave-world, is heavily frowned upon for fear of annoying their tyrants.

It all amounts to a tragic retreat from basic truths and ideals. The need today, therefore, the one hope for mankind, is for a rebirth of religious and moral leadership, free from political entanglements. The spiritual energies of the human race have been running down. They must now be recharged before it is too late. Only a revitalized faith in the age-old ethical imperative—truth, justice, compassion, the sanctity of life, the brotherhood of man—can generate a zeal for freedom capable of confronting and overcoming the Communist zeal for world conquest.

This poses a great challenge to our religious leaders, our philosophers and poets, to those of our opinion-makers who have not themselves succumbed to the deadening amorality of the enemy.

#### INVENTORY SAMPLE

Optimistic rhetoric, of which there is plenty nowadays, is nothing more than whistling in the dark. The front pages offer daily evidence that the world is in turmoil. Nearly everywhere Western civilization is in retreat, its statesmen and spokesmen not only willing but eager to barter principles for the mirage of trade and the hope (without the certainty) of physical survival.

Already a third of the human race is in the grip of the virulent Communist tyranny, and millions in the rest of the world are infected by it. A Communist fortress, Cuba, stands at the very doorstep of our own country and serves as the staging area for the spread of the new barbarism to the entire American hemisphere.

The African continent, having largely become "independent," is racked by horrifying tribal warfare and many of the new countries are subjected to despotisms far worse than the worst exploitations of the colonial past. From Zanzibar to Ghana the agents of communism prowling for prey amidst the chaos. A Communist-armed and Communist-oriented Indonesia reaches out for empire in the South Pacific. India, as a reward for its naive neutralism, is menaced by Red China; and Pakistan, once a staunch ally against communism, finds comfort fishing in Communist waters. Nasser brazenly works both sides of the street yet our dollars continue to feed his sinister war machine and power-mad ambitions.

#### REPEATING THE TRAGEDIES

The inventory of dissolution and defeat could be extended without end. The frontiers of freedom are shrinking and violence has the right of way. Yet the nations of

the West are more disunited than ever, openly putting commercial profit above common purpose. Not only have our alliances been weakened but the objectives for which they were formed are fading from memory.

Indeed, the Free World could be competing for its own destruction under banners of nationalism which in essence reiterate the sick pronouncement made a century ago by a European statesman: "We have no perpetual allies and we have no perpetual enemies, our interests are perpetual."

The very nations which thought they could do business as usual with Hitler are rushing to do business as usual with the Khrushchevs and Maos and Castros. The lessons of such recent history have been lost upon them. Those who thought they could buy peace by appeasing the nazis—thereby making war inevitable—now unashamedly beg for the privilege of appeasing the Communists.

Political leadership is falling mainly because we have lost the compass of principle and are eager to compromise with evil. Slogans such as "coexistence" imply a world half-slave, half-free. This objective is not only ignoble but a delusion, since the enemy is inflexibly devoted to transform this planet into a world of slaves. At bottom such formulas are a camouflaged version of the more candid slogan, "Better Red than dead."

#### PREVENTING WORLD WAR III

The times call for a conscious, courageous spiritual campaign by those institutions and men who are most aware of eternal moral values. They can and must arrest the decay of religion, the erosion of ideals, the growing indifference to the sufferings of the victims of communism. They can and must give the world again an exalted vision of the things worth living for that would produce free-world attitudes, self-respecting and purposeful, which, far from provoking a world war, would inspiringly operate to prevent it.

Our spiritual leaders, themselves citizens of their lands and subject to their countries' laws, should actively exercise their leadership as never before. The dangers are too real for inaction or even delay. They must now exert their saving influence on governments and statesmen, in terms of immemorial ethical precepts. The propagation of a renewed faith in man's right to freedom and human dignity—not only for ourselves but for all humanity—is indispensable in order to help strengthen the positions of worldly leaders. Only then will they be psychologically equipped to head off the looming catastrophe of One Communist World. It is also the highest form of morality to strengthen the courses of political life with idealism.

Organized religions everywhere, Christian and non-Christian alike, cooperating with each other, could play far more effective roles in calling forth the zeal in defense of freedom's cause, with moral ideals. To cite the outstanding example in the historic struggle against the Communist tyranny, the Roman Catholic Church, with its established far-flung organization could now begin to collect for the Vatican, information from all parts of the world which it could promptly disseminate to secular and religious leaders of all faiths—information on the crimes, the despairs, the yearnings for freedom, justice and spiritual fulfillment. This could then become the basis for effective policy arrived at in concert with all organized religions.

This zeal applies also to individuals who sense and cherish the concept of man as the possessor of an immortal soul and therefore reject the Communist doctrine that man is another animal for vivisectionists' imposed "Marxist experiments."

#### CONSTRUCTIVE ACTIVITY

All free men, all religious faiths, have an inescapable duty to work together for con-

structive action in freedom's cause; every man and his faith will be enriched and fortified by this common goal and united effort.

The masters of the Communist prisonlands may be beyond the reach of moral suasion—but not their prisoners. There are ample signs that the Communist-captive people hunger for truth and justice and human dignity. The Kremlin and its puppet rulers in Eastern Europe are repeatedly obliged to crack down on writers and artists whose works reveal that communism provides no sustenance for man's spirit. The very fact that the Soviet regime, in its 47th year of absolute power, has just decreed another massive campaign against religion tells an amazing and encouraging story.

These larger realities are often blindly ignored by Western political leaders who pride themselves on their "realism." An organized, interdenominational religious-moral campaign—on a continuous basis—could make them aware of greater potentials. It would cut through the paralyzing apathy of our time and repeatedly persuade us to the truth that freedom is indivisible, never for sale yet always paid for by ceaseless vigilance. The vast energies now poured into the job of saving our skins will be better applied if they are extended to saving our souls as well.

If a significant part of the human race and its governing bodies were to witness a spiritual and moral regeneration in unity of purpose, the miracle of true survival—with our priceless heritage intact—would be achieved.

Mr. STENNIS. Mr. President, I now yield to the Senator from Alaska [Mr. GRUENING] under the condition previously stated.

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

#### THE VOICE IS THE VOICE OF KING HUSSEIN—BUT THE HAND IS THE HAND OF PRESIDENT NASSER

Mr. GRUENING. Mr. President, it is indeed sad to see King Hussein of Jordan permitting himself to be used by President Nasser of Egypt. It is even sadder, Mr. President, to see King Hussein permitting himself to be diverted to saber-rattling from the peaceful economic development of his own nation—which badly needs such development, and which has been receiving massive financial assistance from the United States under our foreign aid program.

The Kingdom of Jordan is not yet a viable country. Its economic solvency at present is due entirely to U.S. foreign aid. To date we have given Jordan over \$313 million for its economic development and over \$28 million in military assistance. I do not begrudge Jordan that aid, for, until recently, that country and its able and dedicated young ruler, King Hussein, were assiduously minding their own business; namely, the economic development of the resources of Jordan so that it could become a viable nation. Many have predicted that there was a good possibility of that goal being accomplished in the years ahead if that nation continued on its peaceful course as it has in the past. In my report on our aid program made for the Committee on Government Operations last year, I warmly endorsed this program, under its continuation in the hope and expectation that by it, this little country might in time be made whole and self-sustain-

ing. It was my hope that King Hussein would continue to concentrate on the well-being of the Jordanian people and their economic rehabilitation and not involve himself in the sinister machinations of the great troublemaker of the Arab world, Abdel Nasser, and to continue a policy of live and let live insofar as his Israel neighbors were concerned.

King Hussein's bellicose utterances toward Israel—the only true democracy in the troubled Middle East—are all the sadder because they are parrotlike repetitions of the "line" which President Nasser has been selling.

Thus the New York Times yesterday reported on a speech made by King Hussein April 15 before the Citizens Committee on American Policy in the Middle East in part as follows:

He, King Hussein, called Israel a "real and ever-present danger" to the survival of the Arab nations and accused the Israelis of planning "further aggressions with an idea of expansion."

This is identical to the Nasser line.

Last year I reported to the Senate on a study I had made for a subcommittee of the Senate Committee on Government Operations on our foreign aid program in 10 Middle Eastern and African countries including Jordan and Egypt.

In that report I quoted from a speech made by President Nasser on August 11, 1963, in which he said:

We work for peace and we have signed the treaty to ban nuclear tests, but we cannot reduce our army as long as we are threatened by Israeli attack.

In my report I pointed out that this statement was nonsense. Israel's land area is only 7,992 square miles compared to the 1,616,932 square miles occupied by the Arab League countries. Israel's population is 2,292,000 compared to the 54,100,000 people in the Arab League countries.

President Nasser—and King Hussein—will have great difficulty in convincing thinking American people that the more than 26 million people in Egypt under President Nasser's rule have initiated a costly arms race in the Middle East because they are afraid of attack by the 2¼ million people in Israel.

Both the statement by President Nasser and by President Hussein that they are afraid of attack by Israel become even more unbelievable when one studies the constant radio attacks by President Nasser against Israel threatening the ultimate destruction by force of that country by Egypt and when one realizes also that no such threats are made by Israel against any of the Arab countries.

King Hussein would be well advised to think twice before becoming an ardent and vociferous espouser of the Nasser line, preaching hatred and violence toward Israel. King Hussein would also be well advised to continue to focus his attention and efforts and his country's resources on the development of the economy of Jordan.

I would remind King Hussein that the Congress of the United States has expressed itself forcefully against the use of U.S. foreign aid to prepare for aggression.

Last year, in connection with the foreign aid authorization bill, the Congress included the so-called antiaggressor amendment aimed at halting the continuance of foreign aid to nations engaging in or preparing to wage aggression against nations receiving U.S. aid. The threats by the Arab nations to divert the Jordan's waters so that they cannot be put to productive use in irrigating its lands are threats of aggression, for aggression of one nation against another nation can take many forms.

For the fact is, Mr. President, as I have repeatedly stated on this floor, U.S. foreign aid is supporting President Nasser in arming his country, in forcing other countries to spend badly needed funds to arm in self-defense, and in waging an aggressive war against Yemen.

It is sad to see King Hussein misread the temper of the American people so as to believe that, because our State Department in the Middle East has followed a muddled policy of playing Nasser's game of continuing our foreign aid to Egypt despite Nasser's misuse of our dollars to pay for arms and aggression, Jordan, too, can get away with it.

I should hope not.

I should also hope that we shall promptly show by effective and forceful action in the Middle East that we will no longer continue to pay the piper for Nasser's aggressions.

I am sorrowed at being forced to call the attention of the Senate to this threatened shift in King Hussein's policies. I am saddened because I have met King Hussein, I like and admire him, and I think he has been doing an admirable job on behalf of his country. This new course of action, which the King seems to be contemplating following, can but lead to disaster for him and his country. I hope he will draw back while there is still time.

He should examine carefully Nasser's example before attempting to emulate him. He should fully realize that Egypt's dallying with the Soviet Union has now led to Egypt's dependence on the Soviets for arms and military equipment and—especially important—for replacement parts for that equipment. Egypt's belligerence has led to its entanglement in a fruitless war in Yemen which it cannot win at a cost of \$200 million to date, and which it could not even wage if it were not for U.S. foreign aid.

King Hussein should place his faith and trust not in the frail reed of an unstable and self-distrusting Arab League, but rather in the development of his own country so that it can sooner become viable, self-sufficient and strong.

The New York Times story stated that:

One purpose of the King's visit here is to impress President Johnson and high ranking officials with Arab opposition to Israel's plan to divert Jordan River waters for irrigation.

If that is one purpose of King Hussein's visit the Arab countries have chosen the wrong spokesman. King Hussein himself has seen the urgent need for irrigation projects as a basic need for economic development. He has sponsored an excellent irrigation project in

his own country—the East Ghor project—financed by U.S. foreign aid.

It ill behooves King Hussein to come to the United States to urge us to thwart Israel following the Johnson plan with its own money in using the waters of the Jordan to irrigate its lands. Such an attitude on the part of King Hussein is not becoming—it resembles too great a "dog in the manger" attitude.

In his speech King Hussein also shed crocodile tears for the plight of the refugees, most of whom live in Jordan, and who, according to King Hussein, were "forcibly uprooted from their homes, their property despoiled, and their means of livelihood cut off."

Now King Hussein knows better than this. He knows that the refugees have been deliberately kept in poverty so as to be a constant source of agitation against Israel. Let me remind King Hussein that during this same period that the Arab nations kept some 1 million refugees in poverty and idleness to serve the bellicose aims of those countries, Israel admitted, absorbed, and made self-supporting the same number of refugees.

If Israel could do it, the Arab nations could have done it—if they had had the will to do it. It is not too late. If King Hussein would take the leadership it can yet be done.

Now that King Hussein has come to this country carrying the message of Nasser, it is my earnest hope that he will return to his country and devote all his time and energies to building its economy rather than in emulating Nasser's bellicose gestures. We are willing to give him our aid for Jordan's development, but not for Jordan's aggressions or threatened aggressions.

I ask unanimous consent that the report of King Hussein's speech as it appeared in the New York Times be printed in the RECORD at the conclusion of my remarks.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the New York Times, Apr. 16, 1964]  
HUSSEIN APPEALS TO UNITED STATES ON ARABS—ALSO BIDS JEWS REAPPRAISE ATTITUDE ON ZIONISM

WASHINGTON, April 15.—King Hussein of Jordan, in an emotional appeal, urged today that the United States take a new look at its Middle East policy.

At the same time the monarch advised "adherents of the Jewish faith" to make what he called a "deep soul-searching and perhaps an agonizing reappraisal of their attitude toward the whole problem of Zionism."

By doing so, King Hussein said, Jews could make "a far-reaching contribution toward solving a tragedy which threatens to engulf them and others in a senseless and ruthless calamity."

Addressing a luncheon arranged by the Citizens Committee on American Policy in the Middle East, the King expressed concern and distress over what he called diminishing American good will toward and friendship with the Arab world.

He mentioned the problem of the million Palestine refugees and he complained that the American people were not adequately informed of the fate of these people "forcibly uprooted from their homes, their proper-

ties despoiled, and their means of livelihood cut off."

King Hussein called this a tragedy and said that if Americans were properly informed it would "weigh heavily upon the consciences of all peoples who believe in goodness, fairness, and justice."

He called Israel a "real and ever-present danger" to the survival of Arab nations and accused the Israelis of planning further aggressions with an idea of expansion.

Israel, he continued, maintains an army half as large as the Army of West Germany. Moreover, King Hussein asserted, the Israelis are actively developing their atomic capability, an activity that "runs counter to the established U.S. policy of preventing a proliferation of the deadly weapons of destruction."

#### JORDAN RIVER AN ISSUE

One purpose of the King's visit here is to impress President Johnson and high-ranking officials with Arab opposition to Israel's plan to divert Jordan River waters for irrigation.

[From the New York Times, Apr. 16, 1964]

#### HUSSEIN SEES JOHNSON

WASHINGTON, April 15.—King Hussein this afternoon had his second meeting with President Johnson.

A joint communique issued by the White House after the 50-minute meeting stressed the desire of the United States for "friendly relations with all Arab States."

The 29-year-old King, who arrived in the United States on Monday and saw the President yesterday, plans to spend a few days traveling in the United States before returning to Jordan. He met with top officials of the State Department before his session with Mr. Johnson today.

The White House communique said King Hussein "put forward the views of Jordan and the Arab States on various Middle East problems and their impact on relations between the two nations."

"Cordiality, good will, and candor marked the discussions," the communique said. "A common concern for preserving and strengthening a just peace in the area was evident throughout the talks."

"The two leaders declared their firm determination to make every effort to increase the broad area of understanding which already exists between Jordan and the United States and agreed that His Majesty's visit advanced this objective."

The communique also said that President Johnson had "expressed the intention of the Government of the United States to continue to support Jordanian efforts to attain a viable and self-sustaining economy."

#### THE ALASKA DISASTER GROWS IN MAGNITUDE

Mr. GRUENING. Mr. President, the Alaska disaster continues to grow in magnitude, as the latent consequences of the earthquake and tidal wave come into view and new damage is uncovered. One of the pressing immediate problems, in order to bring in materials to reconstruct office buildings, homes, docks, wharves and everything else that has been destroyed, is the lack of docking facilities.

With the exception of one dock at Anchorage, which has been damaged but not destroyed, all the other dock facilities to western Alaska are out of commission. At Seward, all the docks have been totally destroyed. The same is true of all the dock facilities at Valdez. At Cordova where the land has risen several

feet the docks are useless at low tide and the fishing boats are on dry land.

The dock at Whittier was seriously damaged and is out of commission. It was hoped to restore it to working condition by the 15th of this month, but because of the lowering of the land surface off that area as one of the consequences of the earthquake in this area, and the high tides of April, which overflowed the port facilities, its rehabilitation is put off for another 2 weeks.

Thus Alaska faces a tragic bottleneck in unloading facilities for the maritime traffic which carries most of the freight and will be more burdened than ever because of the large amount of heavy construction material needed.

One of the unique aspects of the earthquake's damage is that a substantial number of Alaskans have lost not only their homes, but even the lots on which their houses were located. The land itself in those cases has been washed away and is under water or is converted from a level surface to a jumble of ravine and ridges of clay, which is unstable and now worthless for any practical use.

Recently, the Hearst newspaper, the Seattle Post-Intelligencer, in its edition of April 3, 1964, published an excellent editorial entitled "The Long View," which discusses the need for financial aid to the people of Alaska. It raises the question, How can a man who has lost his home, his business, and his livelihood receive financial assistance to restore himself?

Mr. President, I ask unanimous consent that the editorial be printed at this point in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

[From the Seattle Post-Intelligencer, Apr. 3, 1964]

#### THE LONG VIEW

What about the long view on the Alaskan disaster?

Without question, it's the largest single natural catastrophe ever to befall a State in the Union.

Yet everyone's talking about stopgap measures to get the State back on its feet. This, in the opinion of several of Seattle's most respected bankers and others, isn't good enough.

The disaster approaches the scale of war. Therefore, only wartime-type measures can be applied.

A low-rate loan to a man who is broke will do no good.

Here are some views, and remember, these are very conservative bankers talking:

In a day of all-out foreign aid grants, it would seem logical that our Government should step in with grants to Alaska.

Give the money to the State and the local communities.

Write it off. And let's have less talk about "loans."

Rebuild the State from the ground up, if needs be.

Call in the Nation's top planners and senior governmental officials. Call Congress into session for the specific purposes of all-out aid to Alaskan individuals and businesses. There is grave question among Seattle bankers as to whether the State can ever recover unless these herculean measures are applied.

Meantime, let's get on with the job.

#### VIOLATION OF RULE OF GERMANENESS

Mr. CLARK. Mr. President, will the Senator from Mississippi yield to me?

Mr. STENNIS. I am glad to yield to the Senator from Pennsylvania under the request I made heretofore.

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

Mr. CLARK. Mr. President, I ask unanimous consent that the rule of germaneness may be waived with respect to my remarks.

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

Mr. CLARK. Mr. President, it is now 5 minutes of 11. The Senate convened at 10 o'clock. The rule of germaneness took effect as soon as the pending business was laid before the Senate. As has been the case for many days, the rule has been completely ignored. I shall take up with the leadership, next week, the desirability of strictly enforcing the rule of germaneness for the 3 hours immediately following the laying of the unfinished business before the Senate. The Senate is making a farce of what it did when it adopted that rule. The rule should be given a good trial, particularly since, in my judgment, it may, to a minor extent, expedite the consideration of the pending business.

By unanimous consent, I myself am now violating the rule of germaneness, so I hold no particular brief for my own activity in this regard, except to point out that this is what is happening. It should not happen. The sooner the rule is enforced, the better it will be for the Senate.

#### POPULATION EXPLOSION

Mr. CLARK. Mr. President, from time to time, the Senator from Alaska [Mr. GRUENING] and I have invited the attention of the Senate to the desirability of a wide public discussion of the population explosion or the population problem, and the need to take some intelligent steps to curtail population growth abroad. The rapid growth of population abroad is really, to some extent, making it quite impossible for underdeveloped countries to increase their standard of living or their per capita gross national product. The end result is that as we pour aid into those countries, and as they continue to increase their population to an alarming extent, the aid is to a large extent poured down a rat hole, because it does not increase the standard of living of the people, for there are so many more people among whom the gross national product must be divided.

Recently, the Senator from Alaska [Mr. GRUENING] and I had occasion to state that quite constructive steps have been taken at the United Nations to look carefully into this problem and to provide long-range plans for dealing with the population explosion.

I am happy to note from a copy of a Department of State bulletin an excerpt from a speech made by Mr. Harlan

Cleveland, Assistant Secretary of State for International Affairs, in which he deals with this problem. He made the speech on March 9, 1964.

Mr. President, I ask unanimous consent that an excerpt from the speech, entitled "Population Problem," be printed at this point in the RECORD.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

#### THE POPULATION PROBLEM

If you dare to work for world food abundance, you have to face a double dare as well: the growing abundance of mouths to be fed.

I do not intend here to rehearse those frightening boxcar figures and repeat those statistical extrapolations with which the demographers regularly try to raise the hair on our heads. I do want to mention, however, one piece of good news: In the very recent past the "population explosion" has become a respectable subject of discussion—precisely because the demographers made their hair-raising forecasts and insisted that other people begin to pay some attention to them.

So now at long last the taboo has been lifted from the subject of population growth. We are past the point when the mention of the population problem brought a smirk to the face of the listener, as though the subject were dirty or funny or both. The way is clear now for serious discussion of a trend which, if uncontrolled, would commit the search for freedom from hunger to a perpetual treadmill or a chronic failure.

A few years ago it was considered politically impossible to inscribe the subject of population control on a U.N. agenda for rational debate. But a little more than a year ago the General Assembly passed an eminently sensible resolution on the subject which offended nobody yet opened the way for much-needed research and for further U.N. work on the subject.

In that process everyone discovered, to the surprise of most, that the only disagreement is on the outside fringes of a very large subject, and in between there is a wide area of common ground on which intelligent men from every culture and every religious tradition can converge for dispassionate discourse and cooperative action.

No one can hazard even an educated guess as to when or how the population growth rate may be brought within manageable limits. Birth rates in industrialized countries have eventually, but slowly, declined without much encouragement from governments. Now several countries, notably India, Pakistan, Korea, and the United Arab Republic, are launched on active government programs to reduce explosive population growth rates. But by and large, when it comes to population control, there are no developed and underdeveloped countries.

Unlike agriculture or industry or public health or almost any other subject, there is no place to go to learn how somebody else did it first. So in the population field international technical assistance starts from scratch, with little national experience to go on. And that is all the more reason for serious professional attention to the matter.

Mr. CLARK. Mr. President, I invite the attention of Senators to the following statement by Mr. Cleveland:

In the very recent past the population explosion has become a respectable subject of discussion.

I pay my tribute to Mr. Cleveland and to his assistant, Mr. Richard Gardner,

who did so much to make that discussion possible in the United Nations last year. The fact that I am now speaking on the subject and that the Senator from Alaska is sitting beside me is some indication that it is now respectable to discuss the subject on the floor of the Senate.

Also, through the efforts of the chairman of the Committee on Foreign Relations, the distinguished Senator from Arkansas [Mr. FULBRIGHT], a provision was included in the foreign aid bill of last year to authorize the use of foreign aid funds for technical studies into research and development in the whole problem of population control. I regret that when the bill was considered by the House, the House struck out the provision which had been included at the request of the Senator from Arkansas, which also allowed the use of foreign aid funds for providing technical assistance to countries which desired to study and adopt methods to limit and control their population.

Mr. GRUENING. Mr. President, will the Senator from Pennsylvania yield?

Mr. CLARK. I yield to the Senator from Alaska, with the permission of the Senator from Mississippi, under the same conditions.

Mr. GRUENING. I commend highly the senior Senator from Pennsylvania for opening up this issue of population explosion and control. He has been a pioneer in making it a subject of discussion in the Senate. I have been very happy to join him.

I have been interested in this problem for many years; I supported Margaret Sanger in her pioneer efforts over 40 years ago. I was instrumental, as Administrator of the Puerto Rico Reconstruction Administration, in starting maternal welfare clinics in Puerto Rico, an island suffering from overpopulation, to assist in solving this perplexing problem and to help mothers who had already borne many children and wanted thereafter to plan their parenthood better to receive the appropriate medical advice and attention, as well as to other married couples who wanted to relate their ability to support their children to the number they wanted to bring into the world.

Mr. CLARK. Is it not true that as a result of the efforts which the Senator from Alaska made when he was Governor of Puerto Rico, that country is one of the outstanding examples of a successful effort to deal with the population explosion problem?

Mr. GRUENING. First, I should say that I was never Governor of Puerto Rico; I was Director of the Division of Territories and Island Possessions of the Department of the Interior and I was also at the same time administrator of the Puerto Rico Reconstruction Administration.

When I went to Puerto Rico, as administrator of the Puerto Rico Reconstruction Administration, the island was in economic chaos. Some 350,000 persons were unemployed. We went to work with great vim and vigor, and in 9 months we had put 60,000 people to work and in

useful projects—projects that have stood the test of time. But at the end of that 9 months, I found that 60,000 was approximately the number of Puerto Ricans who had been born in that period, in addition to the then existing population, and that the net effect was that we were over the long range doing little more than marking time, although the immediate results were beneficial. That realization led to the conclusion that we should do something about the population increase if our economic program was to succeed. This birth control program was interrupted temporarily thereafter, but it has been resumed and continued by the people of Puerto Rico, and I believe is a success.

Apart from Puerto Rico we find that today there is, everywhere, great interest in such programs. At Georgetown University, a study of the problem has been instituted headed by Dr. Duffy. A study is being made of the rhythm method as a means of contraception. As the Senator from Pennsylvania has said, the subject is now regarded everywhere as a respectable one; and that is a gain of great importance.

Our foreign aid program, which meets with many handicaps and difficulties, cannot possibly be a success if the population increase goes on unchecked. That fact can be demonstrated over and over again. When we pour money into economic relief and other measures, we find that in many, many cases, indeed in most cases, those programs are impaired and even nullified by the population growth.

In many countries there is great desire for such information on family limitation and planned parenthood. Contraceptive information need not be imposed on any who do not wish to have it; but I believe it essential that the subject be fully discussed and the necessary information available to those who desire it.

So I hope the resolution of the Senator from Pennsylvania—and I am a cosponsor of the resolution—will be acted upon. I wish he would speak on it.

Mr. CLARK. I thank the Senator from Alaska for his valuable comments.

I advise him and other Senators that I am pressing to obtain from the Department of State a report on this matter, so that we may proceed with hearings. Other Government departments are also being asked for reports on it. I urge the Senator from Alaska to press for the submission of such reports, so we can proceed with the hearings.

Mr. GRUENING. I shall be happy to do so.

#### CIVIL RIGHTS—RESOLUTION BY ALLENTOWN AREA COUNCIL OF CHURCHES

Mr. CLARK. Mr. President, I ask unanimous consent that a resolution dealing with the subject of civil rights, and endorsing the present civil rights bill, adopted by the Allentown, Pa., area Council of Churches, be printed at this point in the RECORD.

There being no objection, the resolution was ordered to be printed in the RECORD, as follows:

#### A RESOLUTION ON CIVIL RIGHTS

The following resolution was adopted by the board of directors of the Council of Churches at its meeting on April 2. Please feel free to quote it in whole or part, as you may have use for it:

"We, the Board of Directors of the Allentown Area Council of Churches, hereby express our support of the civil rights bill as passed by the House of Representatives and now being considered by the U.S. Senate.

"We believe firmly in the democratic principles on which our Nation has been founded and affirm that the freedoms and privileges granted to all citizens by our Constitution do not allow for discrimination in any area of daily life. We consider it unfortunate for ourselves and our Nation that a civil rights bill is necessary to carry out that which is already provided in the Constitution of the United States. However, we believe it imperative that this bill be passed because parts of our Constitution are so flagrantly ignored and disobeyed by many States and communities.

"We believe that the pending civil rights bill is in harmony with all religious faiths which emphasize the sacredness of human personality and the dignity of man.

"Furthermore, we are convinced that the proposed legislation specifies in law the spirit of brotherhood as revealed in Christ and expressed in the Christian faith.

"We therefore call upon citizens, whose convictions are similar to those set forth herein, to express these convictions to the U.S. Senators who have responsibility for the enactment of this proposed legislation.

"We also appeal to Christian people and congregations to practice brotherly love at all times and in all situations, to speak out boldly on the basis of their convictions in matters of human relations, and, at every opportunity, to try to influence legislation which upholds the principle of the sacredness of life and the dignity of man."

#### CIVIL RIGHTS—LETTER FROM PITTSBURGH COMMISSION ON HUMAN RELATIONS

Mr. CLARK. Mr. President, I also ask unanimous consent to have printed in the RECORD a letter under date of April 8, 1964, which I have received from T. Z. Korsak, chairman of the Pittsburgh Commission on Human Relations. In the letter he endorses the civil rights bill, and points out the very valuable and favorable experience the commission has had in supporting the Pittsburgh ordinance on the subject of civil rights and human relations. I ask that the letter be printed at this point in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

#### COMMISSION ON HUMAN RELATIONS, Pittsburgh, Pa., April 8, 1964.

Senator JOSEPH CLARK,  
Senate Office Building,  
Washington, D.C.

DEAR SENATOR CLARK: The commission on human relations at its official meeting on Monday, April 6, resolved to request that you continue your strong support for the enactment of civil rights legislation now before the Senate.

As an official city agency charged with the responsibility of administering a fair housing law, a fair employment practices law,

and cooperation with the Pennsylvania Human Relations Commission in the administration of the Commonwealth's public accommodations law, we know from first-hand experience that many of the fears expressed by opponents to this legislation are unrealistic. We know this to be a fact after 9 years of experience in administering these laws. Not unlike any other legislation, the administration of such laws by necessity involves conflict. Not all conflict is bad since skillful conciliation and mediation can resolve many of the problems which arise as a result of confrontation. Based on our experiences, we know that the average American citizen wants to be law abiding.

Secondly, the legislation gives support to those who are covered by the law in high places of policymaking.

Thirdly, the law and those who abide by the service have an excellent tool for good public relations. Of course, there are many more supportive reasons which could be cited.

The need for the immediate passage of this legislation is obvious. The current racial crises in the United States are serious and their implications in our relations with other nations are important.

We urge you to continue your strong support for this law and its immediate enactment. If cloture is necessary, we urge that you vote in favor of it.

Very truly yours,

T. Z. KORSACK,  
Chairman.

#### ORDER OF BUSINESS

Mr. STENNIS. Mr. President, I ask unanimous consent that, in the interest of more orderly procedure, I be allowed to yield now to the Senator from Vermont [Mr. PROUTY], to enable him to address the Senate; that in yielding to him, I shall not lose my right to the floor; and that my subsequent remarks will not be considered an additional speech by me on this matter.

If such consent is given, I hope the Senator from Vermont will immediately yield to the Senator from New York, so as to accommodate him.

The PRESIDING OFFICER (Mr. BAYH in the chair). Is there objection? Without objection, it is so ordered.

Mr. PROUTY. Mr. President, I am very grateful to the Senator from Mississippi.

I yield now to the Senator from New York.

Mr. KEATING. I thank both the Senator from Mississippi and the Senator from Vermont.

Mr. President, I ask unanimous consent that the rule of germaneness be dispensed with, insofar as the remarks I am about to make are concerned.

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

#### RESOLUTION OF UNITED STEEL WORKERS OF AMERICA

Mr. KEATING. Mr. President, employment in the steel industry has been seriously reduced as a result of automation and of foreign steel imports. It is extremely important both for the jobs of American workmen and for the long-term security of our Nation that the steel producing and processing facilities of the United States remain in full operation.

Mr. President, I ask unanimous consent to include following my remarks in the RECORD the text of resolution adopted by New York Local 1630 of the United Steel Workers of America, in Depew, N.Y., and also by Local 2017 of Buffalo, Local 2478 of Watervliet, and the Steelworkers Legislative Committee on Political Education.

There being no objection, the resolution was ordered to be printed in the RECORD, as follows:

#### RESOLUTION CALLING ON CONGRESS TO ENACT A LAW TO CONTROL AND REGULATE LARGE CORPORATIONS BUILDING RUNAWAY PLANTS IN FOREIGN COUNTRIES

Whereas the strength of our economy has long depended on the initiative, competence and skill of its work force. Since ours is an interdependent society, our country can be only as strong as those Americans working in the lowest paid jobs;

Whereas unemployment is steadily becoming worse, due to many factors. Since 1956, there are 200,000 fewer men in the steel industry and the auto industry has abolished another 168,000 jobs;

Whereas the Department of Labor sets its own estimate of 4,000 jobs being eliminated every week, yet competent industrialists state that a more correct figure would be 40,000 men per week being disemployed;

Whereas many industries including the steel industry have built and are building modern new plants in many foreign countries, on money and profits accrued in our great country;

Whereas it is possible, and even probable, that companies plan to produce in Europe for export to the United States. In a matter of several years, these foreign plants could be gnawing at our very existence; therefore, in view of the record profits that almost all huge corporations are earning, with less manpower, and worse yet, allowing productive plants to remain idle in America: Be it

*Resolved*, That some form of legislation be enacted to protect our own vital productive capacities, and also to prove to big business that democracy cannot afford to sacrifice even a small group in its population, to serve the avarice and greed of many huge corporations; and be it further

*Resolved*, That huge corporations who are using foreign countries to further their own selfish interests should be made responsive to the general public interest of the United States, and we urge the enactment of a law prohibiting these irresponsible huge corporations from taking advantage of present loopholes in the tax laws, by applying tax reductions to their foreign operations in runaway plants.

#### CORNELL STUDENTS PLAN KENNEDY SCHOLARSHIP

Mr. KEATING. Mr. President, the senior class at Cornell University has initiated a drive to establish an appropriate memorial to President John F. Kennedy. The memorial, particularly in keeping with the spirit of our late President will take the form of a John F. Kennedy Scholarship Fund.

The scholarship is designed to encourage qualified young people to enter political life and to help bridge the gap between the academic and political spheres—two goals toward which President Kennedy strived. Winners of this award will be selected on the basis of scholastic excellence, demonstrated leadership ability and proposed interest in a career of government service.

This program has met with overwhelming public acceptance in the Ithaca community. Under the leadership of Alan Hirschberg, president of the senior class, the fundraising drive which began April 10 has drawn the attention of town and gown alike.

A local radio station has donated 1 week's advertising time to the fund; living units and fraternities have donated the cost of a meal to the scholarship; the faculty has decided to hold a talent show to demonstrate their commitment to the scholarship program, and to help in the fundraising efforts.

Cornell's seniors could have chosen no better way to pay their respects to the memory of President Kennedy: the John F. Kennedy Scholarship Fund is a fine tribute to a great leader.

#### BYELORUSSIAN INDEPENDENCE

Mr. KEATING. Mr. President, the United Byelorussian American Commemorative Committee unanimously adopted a resolution at the mass meeting held on March 22 at the Hotel Astor in New York to commemorate the 46th anniversary of Byelorussian independence.

Mr. President, I commend the people and friends of Byelorussia for their continued resistance to the encroachment of Soviet imperialism and I strongly urge U.S. Information Agency and other agencies of the American Government to remain mindful of the sufferings of this people and to maintain information and other programs calculated to keep alive their hope of ultimate freedom.

Mr. President, I ask unanimous consent to include in the RECORD following my remarks the text of the resolution referred to.

There being no objection, the resolution was ordered to be printed in the RECORD, as follows:

#### RESOLUTION SPONSORED BY THE UNITED BYELORUSSIAN-AMERICAN COMMEMORATIVE COMMITTEE, UNANIMOUSLY ADOPTED AT THE MASS MEETING COMMEMORATING THE 46TH ANNIVERSARY OF BYELORUSSIAN INDEPENDENCE ON MARCH 22, 1964, AT THE ASTOR HOTEL IN NEW YORK CITY

Whereas the people of Byelorussia, one of many victims of Communist Russia aggression, have been forcibly deprived of their national sovereignty, their religious, political, social, cultural, and economic liberty, and are now subjected to an inhuman policy of oppression, terror, mass deportations, russification, economic slavery, and colonial exploitation; and

Whereas the Byelorussian people are strongly opposed to foreign domination and are determined to restore their freedom and sovereignty which they had rightly enjoyed for many centuries in the past; and

Whereas with the attention of the world focused on the new African and Asian nations which were liberated from colonialism with the aid of the United Nations and have joined the community of free and independent states, the plight of Byelorussia and the other non-Russian nations enslaved in the U.S.S.R. have largely been neglected; and

Whereas the present government of the Byelorussian S.S.R. and its United Nations delegation are not democratically constituted representatives of the Byelorussian nation, but executors of the will of Russian colonial administration only, will not and cannot, therefore, protect and defend Byelorussian people; and

Whereas the unjustified discrimination against the Byelorussian language by the Voice of America cannot but lead the Byelorussian-American community to the conclusion that this U.S. agency is opposed to application of the principle of self-determination by Byelorussians: Therefore be it

*Resolved*, That this meeting appeal to the President, Secretary of State, and Members of Congress of the United States with the request to do everything possible that the liberation of Byelorussia and other countries subjugated by Russian communism be included in the program of the American foreign policy; and

*Resolved*, That the Government of the United States take appropriate steps through the United Nations and other channels to stop Soviet Russia's policy of colonialism in Eastern Europe and to force Russians to pull out its armed forces from non-Russian lands and institute free elections in Byelorussia under the United Nations supervision as it was already proposed in resolution introduced in the House of Representatives by Congressman Bob WILSON on November 7, 1963; and be it further

*Resolved*, That we Americans of Byelorussian origin and descent, reaffirm our adherence to American democratic principles of government and pledge our support to our President and our Congress to achieve lasting peace, freedom and justice in the world; and be it finally

*Resolved*, To request the Government of the United States to end the discrimination against the Byelorussian language by the Voice of America and establish broadcasting programs in Byelorussian language, arbitrarily ignored by the "Voice of America" for the last 12 years.

For the assembly:

CONSTANT MIERLAK,  
Chairman.

NEW YORK, March 22, 1964.

Mr. KEATING. Mr. President, I express to the distinguished Senator from Mississippi [Mr. STENNIS] and to the senior Senator from Vermont [Mr. PROUTY] my gratitude for their courtesy and their cooperation.

#### 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.

#### AN URGENT PROBLEM

Mr. PROUTY. Mr. President, the Senate Commerce Committee, beginning in July of 1963, held most extensive hearings on what is now title II of the omnibus civil rights bill.

Dealing with equal access to the privileges and facilities of public accommodations, this title initially caused a great deal of concern among public-spirited American citizens. The mechanics of the proposal were complicated. Grave moral and constitutional questions were at stake.

On the one hand certain of our fellow citizens were being turned away from

the very threshold of establishments which openly solicited white trade. Most of those turned away from food and rest were American citizens like other Senators and myself; others were visitors and dignitaries from distant lands who would return home with sad stories of democracy at work.

On the other hand there were the owners and operators of some public establishments, living by ancient customs and practices known to their forefathers, caught, as it were, in a communal web of history. Segregated facilities were maintained because it was the way of doing business.

All America is not alike. Thank God for that. Our regional histories are as distinct as the miles that separate us. New England, the Midwest, the South, the West—these places are America—but they are themselves. Yet, we are a Nation—"one Nation under God"—and as citizens of a great country there come times when we must let our regional ways yield to the national good when we are properly called upon to do so.

The Senate Commerce Committee was asked, on a fateful day in June, to review a proposal by the administration that public accommodations, as a matter of national policy, be required to open their facilities to all without regard to race, color, religion, or national origin.

The committee held a series of 23 hearings which finally concluded on August 2. We took 1,575 pages of testimony, heard 40 witnesses of all persuasions and concluded with 9 executive sessions at the end of which the measure was favorably reported 14 to 3.

It is my firm belief that in the light of history and the Constitution that was the only choice we could rightfully make.

Equal access to public accommodations involves few new jurisprudential concepts.

#### AN ENGLISH LEGACY

It had been well settled for hundreds of years prior to the Articles of Confederation that the innkeeper was absolutely bound to receive and serve persons applying for food and lodging unless he had some reasonable ground for refusing to furnish them. This common law principle was recognized as early as the reign of Henry VII, folio 21, in the case of Rex against Bishop of Chester.

The principle was also upheld as the law by courts in many of the several States, including Delaware, Virginia, North Carolina, and Alabama.

The most often cited case with respect to the common law duty of innkeepers is *Rex v. Ivens*, 7 Car. & P. 213, which states simply:

The Innkeeper is not to select his guests.

In *Beale v. Posey*, 72 Alabama 323, 1882, the Alabama court likened the innkeeper to the common carrier and noted:

Each is engaged in public employment, bound, in the absence of reasonable grounds for refusal, to serve all having a necessity for their services.

The underlying principles for the holdings of the common law courts have never been clearly delineated.

Courts of 17th and 18th century England saw private ownership of places of

business as carrying with it certain obligations to the public it served. Lord Chief Justice Hale remarked:

Property does become clothed with a public interest when used in a manner to make it of public consequence. When, therefore, one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in the use and must submit to be controlled by the public for the common good to the extent of the interest he has thus created.

Beyond the public's power to regulate businesses for the public good there arose, with the growth and development of communications and transportation, the need for such regulation.

#### THE COLONIES

The early American experience demonstrated a desire to go beyond some of the strictures of the English interpretations of the common law.

The American settlers sought a new land—a free land.

The wide open spaces of the American Colonies had great appeal for English subjects who were the victims of restrictions on freedom of movement in the mother country.

Great unhappiness and frustration was caused by the statute of apprenticeship passed in Queen Elizabeth's reign which kept a man from going to a new town where workmen were badly needed. Indeed, on the eve of our Declaration of Independence it was said of England:

It is often more difficult for a poor man to pass the artificial boundary of a parish, than an arm of the sea or a ridge of high mountains.

Although freedom of movement was universally recognized in the new country, relatively little legislation was enacted by the colonists on this basic freedom. One of the more significant provisions was put into the Massachusetts Body of Liberties in 1641:

Every man of or within this Jurisdiction shall have free libertie, not with standing any Civill power, to remove both himself and his familie at their pleasure out of the same.

This generous attitude about outgoing settlers was accompanied by liberality toward incoming persons:

If any people of other Nations professing the true Christian Religion shall flee to us from the Tyranny or oppression of their persecutors, or from famyne, warres, or the like necessary and compulserie cause, They shall be entertayned and succoured among us, according to that power and prudence God shall give us.

The people of Rhode Island, viewing the right to move about freely as a fundamental right, got a clause inserted in their charter which gave each person the lawful right "to passe and repasse with freedome, into and through the rest of the English Collonies, upon their lawful and civill occasions."

With or without sanction in law, freedom of movement within the Colonies was nurtured and came into full bloom.

#### THE EARLY AMERICAN EXPERIENCE

Free mobility was given formal recognition in and was guaranteed by the Articles of Confederation. The crystal

clear language of the fourth of these articles clothes the right to pass freely from State to State with all those incidents which are necessary to make it a practical, as distinguished from a theoretical, freedom. The language speaks for itself:

The better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this Union, the free inhabitants of each of these States \* \* \* shall be entitled to all privileges and immunities of free citizens in the several States; and the people of each State shall have free ingress and regress to and from any other State, and shall enjoy therein all the privileges of trade and commerce.

In exercising his free ingress and regress to and from other States, the free citizen, under the Articles of Confederation, was entitled to all privileges and immunities of free citizens in the several States and was empowered to enjoy all the privileges of trade and commerce.

The framers of the Articles of Confederation knew that the right to pass freely from State to State would be an empty right if it did not carry with it as an inseparable incident "all the privileges of trade and commerce."

The traveler, however far he journeys, may need food, drink, and repose. The inns and other places of public accommodation of the time were few and far between and one of the necessary privileges of trade and commerce was the privilege of ready access to public accommodations.

Article IV, section 2 of the Constitution, like article IV of the Articles of Confederation, was designed to guard the liberty of each citizen to travel unhampered and unobstructed throughout the several States.

Opinions of the courts vouchsafe this conclusion. For example, *Corfield v. Coryell*, 6 Fed. Cas. 546, 551; *Passenger cases*, 7 How. 283, 492; *Crandall v. Nevada*, 6 Wall. 35, 49; *Paul v. Virginia*, 8 Wall. 168, 180; *Ward v. Maryland*, 12 Wall. 418, 430; *Slaughter-House cases*, 16 Wall. 36, 76; *United States v. Wheeler*, 254 U.S. 281, 290, 297; *Truax v. Raich*, 239 U.S. 33.

The first paragraph of the second section of the fourth article of the Constitution declares:

The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

The essence of this provision is that arbitrary discriminations are not to be levied against people from other States. Its purpose was to facilitate travel and commerce in the young country. The framers saw beyond the Articles of Confederation—they saw the need for unification into a single great nation—they saw that this could only be achieved by removing artificial barriers to cooperation.

But a curious thing happened to distort our historical perspective of liberty.

In the case of *Dred Scott v. Sanford*, 19 Howard 393 et seq., Chief Justice Taney, delivering the opinion of the Court, held that slaves and descendants of slaves were not intended to be included under the word "citizens" in the Constitution and could therefore, claim none of

the rights and privileges which that instrument provides for and secures to citizens of the United States.

Basically, it was the view of Chief Justice Taney that both the Congress and the States were without power to make the Negro a citizen within the meaning of that term in article IV, section 2. He was of the opinion that Negroes were not in the minds of the framers of the Constitution "when they were conferring special rights and privileges upon the citizens of a State in every other part of the Union."

Yet Taney did admit that if colored persons were entitled to the privileges and immunities of citizens, they would be exempt from the operation of the special laws and from the police regulation which affected them.

It would give—

He said—

to persons of the Negro race, who were recognized as citizens in any one State of the Union, the right to enter every other State whenever they pleased, singly or in companies, without pass or passport, and without obstruction, to sojourn there as long as they pleased, to go where they pleased at every hour of the day or night without molestation.

Although I think Taney erred in deciding what persons were entitled to the protection of article IV, section 2, of the Constitution, he was correct in assessing the broad scope of this provision.

This is brought sharply to focus in his dissenting opinion in the *Passenger cases*, 7 Howard 283, 492:

We are all citizens of the United States; and as members of the same community, must have the right to pass and repass through every part of it without interruption, as freely as in our own States.

The right to travel as seen by Taney was the right to move with freedom both between and within the several States.

Justice Curtis in the *Dred Scott* case took sharp issue with the views of Chief Justice Taney. On pages 573 and 574 of the decision, he pointed out that the constitutional law of several of the States made Negroes citizens of such States at the time of the ratification of the Articles of Confederation. He goes on to discuss events that took place when the Articles of Confederation were under consideration by the Congress, and he has this to say:

The fourth of the fundamental articles of the Confederation was as follows: "The free inhabitants of each of these States, paupers, vagabonds, and fugitives from justice, excepted, shall be entitled to all the privileges and immunities of free citizens in the several States."

The fact that free persons of color were citizens of some of the several States, and the consequence, that this fourth article of the Confederation would have the effect to confer on such persons the privileges and immunities of general citizenship, were not only known to those who framed and adopted those articles, but the evidence is decisive, that the fourth article was intended to have that effect, and that more restricted language, which would have excluded such persons, was deliberately and purposely rejected.

On the 25th of June 1778, the Articles of Confederation being under consideration by

the Congress, the delegates from South Carolina moved to amend this fourth article, by inserting after the word "free," and before the word "inhabitants," the word "white," so that the privileges and immunities of general citizenship would be secured only to white persons. Two States voted for the amendment, eight States against it, and the vote of one State was divided. The language of the article stood unchanged; and both by its terms of inclusion, "free inhabitants," and the strong implication from its terms of exclusion, "paupers, vagabonds, and fugitives from justice," who alone were excepted, it is clear that, under the Confederation, and at the time of the adoption of the Constitution, free colored persons of African descent might be, and by reason of their citizenship in certain States, were entitled to the privileges and immunities of general citizenship of the United States."

While Justices Taney and Curtis differed in their interpretation of the words "the citizens of each State," in article IV of the Constitution, they were not at odds on the rights encompassed within the phrase "all privileges and immunities of citizens."

There remains then to ask whether the right of free movement was an incident of State citizenship or of national citizenship prior to the adoption of the 14th amendment in 1868.

Certainly, in the earlier cases there are statements suggesting that the right to move about freely is an incident of State citizenship, guarded against discriminatory State action by article IV, section 2, of the Constitution. See *Corfield v. Coryell*, 4 Wash. C.C. 371, 381; *Paul v. Virginia*, 8 Wall. 168, 180; *Ward v. Maryland*, 12 Wall. 418, 430; *U.S. v. Wheeler*, 254 U.S. 281, 298.

According to the dicta of those cases, a State could not hinder the free movement of persons who were not residents of that State. This is true because the fourth article forbids a State to discriminate against citizens of other States in favor of its own.

What happens, however, if a State imposes restrictions on freedom of movement which apply alike to both residents and nonresidents? This question arose in the case of *Crandall v. Nevada*, 6 Wallace 35, which was decided in 1867, prior to the adoption of the 14th amendment.

The Legislature of Nevada enacted that "there shall be levied and collected a capitation tax of \$1 upon every person leaving the State by any railroad, stagecoach, or other vehicle engaged or employed in the business of transporting passengers for hire," and that the proprietors, owners, and corporations so engaged should pay the said tax of \$1 for each and every person so conveyed or transported from the State.

Crandall, who was employed by a stage company, refused to pay the tax. He was arrested and convicted. From the highest court of Nevada, he appealed on the ground that the State law violated the Constitution of the United States. The U.S. Supreme Court struck down the State tax imposed upon "every person leaving the State."

Mr. Justice Miller, in writing the opinion, did not rely upon article IV, section 2. Indeed, he could not so rely because the State statute applied to both citizens and noncitizens.

The reach of the Crandall case is at once long and significant. Its holding meant that freedom of movement was not a freedom protected solely by article IV, section 2. It meant as well that a State may not restrict the locomotion of its own citizens.

Crandall had, too, an even greater significance, because it held that the right to move anywhere in the land without impediment was a right of national citizenship. The right was seen as essential to the national character of our Government and was no less real because it was implied rather than expressly stated.

#### THE 14TH AMENDMENT

Whatever doubts remained should have been put to rest by the adoption of the 14th amendment.

Before that amendment became the law of the land the Constitution did not declare what persons born within the several States were citizens of the United States and Congress had no express power so to declare.

The only power specifically given Congress to legislate concerning citizenship was confined to the removal of the disabilities of foreign birth.

The Constitution left to the States the determination what persons, born within their respective limits, would acquire by birth citizenship of the United States.

The States rights argument was that, insofar as there was a Federal citizenship, it arose out of State citizenship and was subordinate to it.

In debate on the force bill, Mr. Calhoun said in the Senate:

If by citizen of the United States he (another Senator) means a citizen at large, one whose citizenship extends to the entire geographical limits of the country without having a local citizenship in some State or territory, a sort of citizen of the world, all I have to say is that such a citizen would be a perfect nondescript; that not a single individual of this description can be found in the entire mass of our population. Notwithstanding all the pomp and display of eloquence on the occasion, every citizen is a citizen of some State or territory, and as such, under an express provision of the Constitution, is entitled to all the privileges and immunities of citizens in the several States; and it is in this and no other sense that we are citizens of the United States.

For Mr. Calhoun's argument on the force bill see his works, II, 242.

Afterward came the Dred Scott decision, *Scott v. Sanford*, 19 Howard 393 (1857). Its effect was to deny that national citizenship was a necessary result of State citizenship; and it held that no State could confer citizenship upon one of African blood, at birth or later, so as to bring him within the protection of the constitutional provision for the enjoyment of privileges and immunities in the several States on a par with those enjoyed in the State of his citizenship.

The celebrated 14th amendment brought into the Constitution a definition of national citizenship and it made that citizenship the dominant and paramount allegiance among us.

Justice Jackson, in *Edwards against California*, spoke of the object of the citizenship clause when he declared:

The power of citizenship as a shield against oppression was widely known from the exam-

ple of Paul's Roman citizenship, which sent the centurion scurrying to his higher-ups with the message: "Take heed what thou doest; for this man is a Roman." I suppose none of us doubts that the hope of imparting to American citizenship some of this vitality was the purpose of declaring in the 14th amendment: "All persons born or naturalized in the States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside."

Note carefully how the first clause of that amendment gave national citizenship supremacy. By its very terms one could be a citizen of the United States without being a citizen of any State.

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.

Why this sweeping change in the concept of citizenship unless it carries with it certain fundamental rights, the abridgment of which—by man or State—the Constitution would no longer tolerate?

That it was meant to give more than mere nomenclature of citizenship is brought sharply to focus by Mr. Justice Harlan:

The first clause of the first section—"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"—is of a distinctly affirmative character. In its application to the colored race, previously liberated, it created and granted, citizenship of the United States, as well as citizenship of the State in which they respectively resided.

The citizenship thereby obtained, by the Negroes, as a result of an affirmative grant from the Nation, may be secured, not solely by the judicial branch of the Government, but by congressional legislation of "a primary direct character."

This is so—

Said Harlan—

because the power of Congress is not restricted to the enforcement of prohibitions upon State laws or State action. It is in terms distinct and positive, to enforce "the provisions of this article" of amendment; not simply those of a prohibitive character, but the provisions—all of the provisions—affirmative and prohibitive, of the amendment.

The distinguished legal scholar Horace Edgar Flack, who canvassed newspaper coverage and speeches concerning the popular discussion of the adoption of the 14th amendment, asserts:

The declarations and statements of newspapers, writers, and speakers \* \* \* show very clearly \* \* \* the general opinion held in the North. That opinion, briefly stated, was that the amendment embodied the civil rights bill and gave Congress the power to define and secure the privileges of citizens of the United States.

It is no novel theory then to suggest that the legislative branch has clear authority to define and protect the rights of citizens and to declare that among these rights is the right to full and equal enjoyment of public accommodations.

Representative Jonathan Bingham, who may without exaggeration be called the James Madison of the 14th amendment, since he wrote virtually all of it, pointed out that before the ratification of the 13th and 14th amendments it was

forbidden by law and custom "to help a slave who was ready to perish; to give him shelter, or break with him his crust of bread."

The distinguished and able Bingham would not concede for a minute that the 14th amendment left Congress powerless to act against individuals who deny rights to free citizens. These are his words:

Who dare say, now that the Constitution has been amended, that the Nation cannot by law provide against all such abuses and denials of right as these in States and by States, or combinations of persons?

Since clauses 2, 3, and 4 of the first section of the 14th amendment speak only of what a State may not do, it is patently clear that the Federal Government may move against "combinations of persons" only by virtue of the affirmatively stated citizenship clause and section 5 which gives Congress the power to enforce that clause.

It is small wonder then that Cooley says in his treatise on "Constitutional Limitations"—fifth edition, page 359, star print 294:

The most important clause in the 14th amendment is that part of section 1 which declares 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. This provision very properly puts an end to any question of the title of the rights of citizenship.

Mr. Dawes, a Member of the 39th Congress which adopted the 14th amendment, placed an equally high value on the citizenship clause of that amendment:

After the bloody sacrifices of our 4 years' war, we gave the most grand of all these rights, privileges, and immunities, by one single amendment to the Constitution, to 4 millions of American citizens who sprang into being, as it were, by the wave of a magic wand. Still further, every person born on the soil was made a citizen and clothed with them all.

Dawes goes on to say:

It is all these, Mr. Speaker, which are comprehended in the words "American citizen," and it is to protect and to secure him in these rights, privileges, and immunities this bill—a civil rights measure—is before the House.

Senator Howard was a coauthor of the 14th amendment in that it was a Howard modification that added the citizenship clause to that amendment. He gave an important speech on May 23, 1866, explaining what he had intended to accomplish. In summarizing Senator Howard's words, the *Boston Daily Advertiser* declared:

The first clause of the first section was intended to secure to the citizens of all the States the privileges which are in their nature fundamental, and which belong of right to all persons in a free government. There was now no power in the Constitution to enforce its guarantees of those rights. They stood simply as declarations \* \* \*. The great object of the first section, fortified by the fifth, was to \* \* \* throw the same shield over the black man as over the white, over the humble man as over the powerful.

To this point then we have seen how the early English common law has grown

and developed into a contemporary message about public accommodations.

Equal access to public accommodations in 15th century England was necessary to the promotion of travel and commerce. The freedom of movement it inspired and enabled in Englishmen of means was viewed as a cherished right by New World settlers of all classes and castes. It was recognized and reinforced in the Articles of Confederation and the Constitution. On the adoption of clause 1 of section 1 of the 14th amendment its protection was put in the hands of the Federal Government as a right of national citizenship.

#### SLAVERY AND THE 13TH AMENDMENT

With regard to current problems, there is an additional reinforcing factor. In our history there has been no greater restriction on the freedom of movement in time of peace than slavery. In fact, the success of slavery was dependent upon the ability of the master, the State, and even the Federal Government to keep slaves on the job.

I have made an extensive survey of the State laws in existence prior to December 1865, when ratification of the 13th amendment was proclaimed. In areas where slavery subsisted, all States had on their books statutes restrictive and oppressive of the Negro—both slave and free.

Especially limited was the free mobility of the slave and even the free Negro. He could not ride horseback or leave the plantation of his master without permission duly signed. He was prohibited from assembling to learn, and whites were prohibited from teaching him.

Here in the District of Columbia, the slave had a 10 o'clock curfew and could not frequent the Capitol Square without business to perform. The free Negro could not settle where he pleased due to laws which would return him to slavery or make it financially prohibitive to stay.

In Virginia, a free Negro or a slave was prohibited from going at large, and free Negroes could not immigrate into the State.

In Kentucky, a slave could not work for hire.

Maryland prevented not only slaves, but also free Negroes from using boats for purposes other than that of the master on the Potomac River.

In North Carolina, a slave could not own or attempt to sell cattle.

In Missouri, Negroes meeting to hold instruction—going to school—was an unlawful assemblage.

And these black codes were not confined solely to the States of the South.

The District of Columbia provided for 40 lashes for any meeting of Negroes at night.

The common law made no distinction on account of race or color, and slavery, being contrary to natural right, was developed only by State and local law. Whatever conditions shall attend the status of slavery must depend on the law which creates and upholds it.

Mr. Justice Curtis informs us:

Not only may the status of slavery be created and measured by [State and local] law, but the rights, powers, and obligations,

which grow out of that status, must be defined, protected, and enforced by such laws.

If then the status of slavery may be measured by State and local law, it would serve us well to examine that law in order to determine what rights slaves had in respect of the facilities of public accommodations.

Under the laws of Georgia, white persons were prohibited from selling provisions or any other commodities to any slave unless the slave could produce a ticket from his or her owner, manager, or employer.

In South Carolina, peddlers were forbidden to deal with slaves. Any slave could not be absent from home without a ticket or purchase any commodity without a ticket from his master. Slaves without tickets could be seized and punished by any white person.

Tennessee prohibited trading with slaves, and North Carolina even prevented slaves from trading with free Negroes.

In Arkansas, tavern keepers and other managers of public accommodations were not permitted to sell liquor and other commodities to slaves.

These and numerous other examples of laws restricting the Negro in his use of public accommodations were part and parcel of the institution of slavery; and as Mr. Justice Curtis said, that institution may be measured by the statutes which created and protected it.

Slaves were imperfectly, if at all, protected from the grossest outrages by the whites. Justice was not for them. The charities and rights of the domestic relations had no legal existence among them. The shadow of the evil fell upon the free blacks. They had but few civil and no political rights in the slave States. Many of the badges of the bondman's degradation were fastened upon them. Their condition, like his, though not so bad, was helpless and hopeless (*U.S. v. Rhodes*, 27 Fed. Cases 793).

What then does the 13th amendment do? It abolishes slavery and involuntary servitude. But, by abolishing slavery was it intended to abolish the incidents of slavery just noted?

My study of the unhappy events that led up to the amendment, and the statements of those who sponsored and favored, as well as those who objected to its submission and passage, convinces me that one of the chief objects that the provisions of the amendment were intended to accomplish was to establish freedom and to protect all men, black and white, bond and free, fully and equally, in the enjoyment of all the essential rights which inhere in and constitute that freedom.

It may be that the Civil War was the immediate cause of the courage of the Congressmen who brought about the adoption of the amendment; but it was the amendment itself, and not the war to which the Negro, both slave and free, might look for the assurances he needed that, as a man with dignity, he would now be afforded the dignity of man.

Senator Trumbull, of Illinois, the leader of the proponents of the amendment and chairman of the Senate Judiciary Committee, left no doubt about it. As he saw it, the task of Congress was

"to abolish slavery, not only in name but in fact." Because "it is idle to say that a man is free who cannot go and come at pleasure, who cannot buy and sell, who cannot enforce his rights," Congress must "give effect to the provision making all persons free."

Note with care that Trumbull saw in the emancipating amendment congressional power to protect the right of the Negro to come and go, to buy and sell. He did not conceive the right to be so narrow as to exclude the privilege of access, on an equal basis with whites, in the use of public accommodations.

The indictment of the slavery the 13th amendment was intended to abolish was dramatically set forth by Henry Wilson, an eloquent abolitionist Senator from Massachusetts. Wilson declared:

If this amendment shall be incorporated by the will of the Nation into the Constitution of the United States, it will obliterate the last lingering vestiges of the slave system; chattelizing, degrading and bloody codes; its dark, malignant barbarizing spirit.

The object of the amendment, then, was to do away with all vestiges of the institution of slavery and not simply to abolish but one of its conditions.

That the opponents of the amendment in Congress recognized this intention is clear from the statements of Representative William S. Holman, of Indiana, an ardent foe of the amendment:

[The amendment] confers on Congress the power to invade any State to enforce the freedom of the African in war or peace. What is the meaning of all that? Is freedom the simple exemption from personal servitude? No, sir, mere exemption from servitude is a miserable idea of freedom.

Other opponents knew perfectly well that the 13th amendment had within it the means by which the slave would be free in every sense of that term.

Specifically, one opponent of the 13th amendment, Anson Herrick, of New York, contended that with the 13th amendment, "the slavery issue is legitimately merged in the higher issue of the right of the States to control their domestic affairs."

Perhaps more succinctly, and more clearly, Robert Mallory, of Kentucky, a bitter opponent of the amendment, concluded:

You propose to leave them [the emancipated Negro] where they are freed, and protect them in their right to remain there. You do not intend, however, to leave them to the tender mercies of those States. You propose by a most flagrant violation of their rights to hold the control of this large class in these various States in your own hands.

One by one the opponents of the 13th amendment made eloquent declamations about its sweeping scope. They particularized their fears and apprehensions and viewed the measure as utterly revolutionary.

Fernando Wood, Democrat, of New York, thought the new article would subvert the whole constitutional system.

The remarks of Representative Kelley, of Pennsylvania, did nothing to quiet the fears of those who felt the amendment represented a great extension of the

power of the Central Government. Kelley had this to say:

This proposed amendment is designed \* \* \* to accomplish the very purpose with which they charged us in the beginning, namely, the abolition of slavery in the United States and the political and social elevation of Negroes to all the rights of white man.

From all this, are we to conclude that there is no end to the authority of the Congress under the 13th amendment? The Democrats in Congress also feared that the 13th amendment clothed the Congress with limitless power to interfere with the administration of justice and law within the States. Not so, said Representative Joseph Crinnell, of Iowa. He insisted that the amendment did not include political enfranchisement of the Negro. Natural rights, to which the amendment speaks, is one thing, but political franchises are quite another. The right to vote is not a natural right, not a right of citizenship.

It—

Said Crinnell—

political rights must necessarily follow the possession of personal liberty, then all but male citizens in our country are slaves.

What the 13th amendment actually meant is perhaps best determined from the debates and speeches of Senator Lyman Trumbull. The Senator from Illinois leaves no doubt as to precisely what that amendment actually means: It recognizes in all citizens of the United States the right to freedom, to the exercise of natural rights of man which exist independently from the adoption even of the Constitution itself, and it provides to the Congress the implements necessary to guarantee and to enforce these special rights for any aggrieved individual.

In a word, the paramount purpose of article XIII was to abolish slavery and to secure for men those rights which slavery denied.

Among those rights which slavery denied the Negro was the right to buy a meal, a loaf of bread, or even a hoe in the accommodation of his choice.

Senator William Stewart, moderate, from Nevada, said that after the 13th amendment, Congress could forevermore guarantee the freedman "a chance to live, a chance to hold property, a chance to enjoy his civil rights, a chance to rise in the scale of humanity, a chance to be a man."

We have given him freedom—

He said—

and that implies that he shall have all the civil rights necessary to the enjoyment of that freedom.

Observe the use of the word "all." It is found again in the remarks of Senator Henry S. Lane, from Indiana, who argued:

They [the Negroes] are free by the constitutional amendment \* \* \*, and entitled to all the privileges \* \* \* of other free citizens of the United States.

He declared that it is the especial duty of Congress by the second section of that amendment, by appropriate legislation to carry out that emancipation.

Senator Lane continues in this vein:

If that second section were not embraced in the amendment at all, your duty would be as strong, the duty would be paramount, to protect them in all rights as free and unadmitted people.

Senator John Sherman, of Ohio, maintained that the amendment would protect "the right to go anywhere within the United States" and gave Congress "the power to secure all rights of freedom by appropriate legislation."

The slavery which was within the scope of the 13th amendment moved way beyond the personal burden of the slaves and the characteristics of immediate bondage. Congressional debates reiterated what the history of the abolition drive had already made unmistakably clear. The free colored person, South and North, was only little less oppressed, imposed upon, and restricted than his enslaved brethren. He was bowed by the weight of all the incidents, burdens, and badges of slavery save only one, the condition of compulsory labor. The great crusade had as its object the freedom of the so-called free Negro as well as that of the "hapless bondman" and the liberty of both was intended to be secured by the 13th amendment.

The liberty which the 13th amendment would bring into being was itemized time and time again in the congressional debates. According to the men in Congress at that time the amendment would "convert into a man that which the law had declared to be a chattel." It would "bring the Constitution into avowed harmony with the Declaration of Independence." It would "secure to the oppressed slave his natural and God-given rights, the rights of mankind." The amendment would signify that the "rights of mankind without regard to color or race are respected and protected."

Let us turn again to the actual text of the 13th amendment:

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.

SEC. 2. Congress shall have power to enforce this article by appropriate legislation.

That the first clause of the 13th amendment was self-executing presents no problem to any man who can read. Without any other provision than this section, Congress would have had authority to give complete effect to the abolition of slavery thereby decreed. It would have been authorized to put in requisition the executive and judicial, as well as the legislative power, with all the energy needed for that purpose.

In the words of Judge Swayne:

The second section of the amendment was added out of abundant caution. It authorizes Congress to select, from time to time, the means that might be deemed appropriate to the end.

The second section was intended to give expressly to Congress the power to bestow "practical freedom" upon the Negro and to leave no room for doubt or cavil upon the subject.

Judge Swayne declared that the results have shown the wisdom of this

action; "Almost simultaneously with the adoption of the amendment, (a) course of legislative oppression was begun" and the black codes, customs, and practices of the late 19th century became as harsh and severe as those slave codes of the 18th and early 19th centuries.

At least two of the Justices of the Supreme Court, in opinions delivered at circuit before the post-Civil War reaction had set in, took the view that the 13th amendment was broad in scope and carried with it ample authority to undo the continued oppression of the colored people.

It was a Supreme Court nearly two decades removed from the institution of slavery that shafted the heart of the 13th amendment in the civil rights cases.

It was a court that, save Harlan, paid no heed to the legislative history of that amendment, a practice that had been adhered to by jurists from the first days of the original Constitution.

Even the misguided decision in the civil rights cases concedes that:

Under the 13th amendment, the legislation, so far as necessary or proper to eradicate all forms and incidents of slavery and involuntary servitude, may be direct and primary, operating upon the acts of individuals, whether sanctioned by State legislation or not.

I believe with Senators Trumbull, Stewart, and Lane, and, indeed, the overwhelming majority of the men of the 38th and 39th Congresses, that the 13th amendment gave the Negro freedom and the legislative branch power to protect all the civil rights necessary for the enjoyment of that freedom. And that high on the scale of these rights is the full and free use of public accommodations, devoid of any discrimination or segregation which is a vestige or historical outgrowth of slavery.

When the 13th amendment is read together with the 14th amendment no doubt remains. The American Negro was removed from the shackles of servitude and elevated to full national citizenship. He was to be denied no rights held by his fellow Americans because of his race or previous condition of servitude. Under article IV of the Constitution he was not, in his travels as a black Ohioan, to be denied the privileges and immunities exercised by white Indianians or white Texans.

Following these amendments the Constitution was colorblind. There was to be but one class of citizenship.

#### FASHIONING A REMEDY FOR THE WRONG

So, within our constitutional and political history there is precedent and power for what we now meet to do. But there is a question I must ask—the same question I raised in committee: Are we meeting the problem with an appropriate remedy?

The fundamental constitutional basis for both title II of the House-passed bill and S. 1732, the separate public accommodations bill, is the commerce clause. The bill we reported from the Commerce Committee was founded solely on that proposition. The House-passed bill includes some roots in the 14th amendment, an inclusion I feel is salutary.

My argument is not with the constitutionality of the commerce clause but its appropriateness to the rights we seek to protect. I agree with the statement of the senior Senator from Washington [Mr. MAGNUSON] that Congress has such a power under the commerce clause; I question whether as a matter of policy we should choose to exercise that power to the exclusion of other bases.

The evil we seek to remove is the degradation of a man in his use of the common privileges because his skin is not the proper color. The affront is to his dignity. When we look solely to our power to regulate commerce as a means toward elevating that dignity I think we have gone astray.

If the commerce clause was the only technique by which we could alleviate this urgent national problem perhaps I could be convinced that in this instance the end justifies the means. If title II comes for a vote in its present form I shall support it—not for the wisdom of its legislative technique but because it marks an effort to deal with the evil we must remedy.

Yet, while there is still time I would hope that we might put this title in additional perspectives.

What is troublesome with this use of the commerce clause?

It treats men as chattels with rights only so far as they are in, of, or by commerce.

First. By the nature of the protection afforded there would be no protection for the right unless there was, preexisting, interstate commerce on which to hang the remedy. Clearly as a philosophic premise, a human right has merit in itself and free exercise of that right has no rational relationship to the existence of a special form of commerce.

I cannot bring myself to agree that the reason we can legislate in this area is because we are at a point in history where trains, planes, cars, and buses carry bodies, boxes, and bottles from State to State. The black man's right to be treated like the white man has existed from the creation of time, and this right is not founded on sophistication in industry and transportation.

Second. The bill is limited to accommodations with an effect on commerce, unless there is in the requisite State action to bring them under the 14th amendment prohibitions. As a result we have the anomaly that a barbershop in a hotel is covered by the bill while one across the street in an office building is not. I would suggest that if we are to afford equal protection of the laws to the barber as well as his patrons, we should either include all barbers or exclude all barbers from the coverage of the bill.

Other disparities will result according to the impact or lack of impact any one business has on interstate commerce. Different courts will view such questions different ways. One citizen's access to public accommodations may differ from judicial district to judicial district. His dignity will be dependent on being at the right place at the right time.

Finally, a person seeking the aid and protection of this bill is required to make legal judgments more sophisticated than many courts are able to make with confidence, after years of experience.

Once refused service at any establishment, the patron must decide before he protests whether the establishment is one which substantially affects interstate commerce, and therefore comes under the bill.

Let us look at the judgments he must make: Does the establishment deal in goods, or services, or both? If in goods, did a substantial portion of the goods come across State lines? If they did not, were they manufactured from parts that did, or were they manufactured or sold in such a way as otherwise to have an effect on commerce? If that establishment deals in services, the patron must ask himself, if he constitutes a transient guest by Federal standards of transiency if he has come to rest too long to be a "transient," whether he can still be considered in interstate commerce as an interstate traveler? Otherwise, the patron must determine whether the service he seeks has any other substantial effect on interstate commerce.

Should any one of us say that the free exercise of a human right is dependent upon such incalculables? Can we say that human rights should be subject to such legislative and judicial vagaries? When additional bases of Federal power are available does it serve the ends of justice to treat our fellow citizens like so many chattels? Let me say, that were I to be a direct beneficiary of this bill, I would be deeply offended by such treatment.

I think one item adequately illustrates my point. On page 19 of the Senate Commerce Committee hearings on S. 1732, there is a list of legislative precedents for the bill. Thirty-six laws enacted under the commerce power are set out. Not one of these laws reflects the moral crisis now facing this Nation. Not one of these acts rights a solely moral wrong. Not one of these acts is equipped to meet the challenge to human dignity. Not one of these provisions assures the full flower of citizenship—not by itself.

I ask unanimous consent that the language of these acts, including the language which indicates the extent to which Congress intended in each statute to exercise its power over commerce be included in the RECORD at this point.

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

Anti-Rebate Act (Railroads), section 2 of 24 Stat. 379 (1887), 32 Stat. 847 (1903), 49 U.S.C. sections 2, 41-43 (1958). There is no definition, but sections apply to all within jurisdiction of Interstate Commerce Act; see below.

Atomic Energy Act, 60 Stat. 755 (1946), as amended, 63 Stat. 919 (1954), Public Law 85-256, 71 Stat. 576 (1957), 42 U.S.C. 2011 et seq. (1958). There is no definition, but see: section 2(f), 68 Stat. 919, 42 U.S.C. 2012(f).

The necessity for protection against possible interstate damage occurring from the operation of facilities for the production or utilization of source or special nuclear mate-

rial places the operation of these facilities in interstate commerce for the purposes of this chapter. Also, section 2(c), 68 Stat. 921, 42 U.S.C. section 2012(c). The processing and utilization of source, by-product, and special nuclear material affect interstate and foreign commerce and must be regulated in the national interest.

Section 101, 42 U.S.C. section 2131. It shall be unlawful, except [as otherwise provided] for any person within the United States to transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, possess, use, import, or export any utilization or production facility except under and in accordance with a license issued by the Commission.

Automobile Information Disclosure Act, Public Law 85-506, 72 Stat. 325 (1958), 15 U.S.C. section 1231 et seq. (1958).

Section 2(h), 15 U.S.C. section 1231(h). The term "commerce" shall mean commerce among the several States of the United States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or among the Territories or between any Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation.

Section 3, 15 U.S.C. section 1232. Every manufacturer of new automobiles distributed in commerce shall, prior to the delivery of any new automobile to any dealer, or at or prior to the introduction date of new models delivered to a dealer prior to such introduction date \* \* \* affix a label to the car containing certain information.

Boiler Inspection Act (Railroad), 36 Stat. 913 (1911), as amended, 45 U.S.C. sections 22-34 (1958). There is no definition, but Act applies to those carriers subject to the Interstate Commerce Act [sec. 1, 36 Stat. 913, 45 U.S.C. sec. 22]; see below. Clayton Act, 38 Stat. 730 (1914), as amended, 15 U.S.C. sec. 12 et seq. (1958).

Section 1, 15 U.S.C. sec. 12. "Commerce" as used herein means trade or commerce among the several States and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possessions or place and any State or Territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or any insular possession or other place under the jurisdiction of the United States.

Section 2(a), as amended, 15 U.S.C. sec. 13(a), prohibits discrimination in price, services, or facilities by any person engaged in commerce, in the course of such commerce, either directly or indirectly. Succeeding sections contain prohibitions using therein the quoted words above.

Communications Act of 1934, 48 Stat. 1064 (1934), as amended, 47 U.S.C. sec. 151 et seq. (1958 and Supp. III, 1959-61).

Section 3(e), 47 U.S.C. sec. 153(e). "Interstate communication" or "interstate transmission" means communication or transmission (1) from any State, Territory, or possession of the United States (other than the Canal Zone), or the District of Columbia, to any other State, Territory, or possession of the United States (other than the Canal Zone), or the District of Columbia, (2) from or to the United States to or from the Canal Zone, insofar as such communication or transmission takes place within the United States, or (3) between points within the United States but through a foreign country \* \* \* but shall not [with respect to certain provisions] include wire or radio communication between points in the same State, Territory, or possession of the United

States, or the District of Columbia, through any place outside thereof, if such communication is regulated by a State commission.

Section 2, as amended, 47 U.S.C. section 152:

(a) The provisions of this chapter shall apply to all interstate and foreign communication by wire or radio and all interstate and foreign transmission of energy by radio, which originates and/or is received within the United States, and to all persons engaged within the United States in such communication or such transmission of energy by radio, and to the licensing and regulating of all radio stations or hereinafter provided;

(b) Subject to the provisions of section 301 of this title, nothing in this chapter shall be construed to apply or to give the Commission jurisdiction with respect to (1) charges, classifications, practices, services, facilities, or regulations for and in connection with intrastate communication service by wire or radio of any carrier, or (2) any carrier engaged in interstate or foreign communication solely through physical connection with the facilities of another carrier not directly or indirectly controlling or controlled by, or under direct or indirect common control with such carrier, or (3) any carrier engaged in interstate or foreign communication solely through connection by radio, or by wire and radio, with facilities, located or adjoining State or in Canada or Mexico (where they adjoin the State in which the carrier is doing business), of another carrier not directly or indirectly controlling or controlled by, or under direct or indirect common control with such carrier, or (4) any carrier to which clause (2) or clause (3) of this subsection would be applicable except for furnishing interstate mobile radio communication service or radio communication service to mobile stations on land vehicles in Canada or Mexico; [with certain exceptions].

Fair Labor Standards Act, 52 Stat. 1060 (1938), as amended, 63 Stat. 910 (1949), 69 Stat. 711 (1955), 75 Stat. 65 (1961), 29 U.S.C. § 201 et seq. (1958 and Supp. III 1959-61).

Section 6(a), as amended, 29 U.S.C. section 206(a), provides that every employer shall pay the prescribed minimum wage to each of his employees who in any workweek is engaged in commerce or in the production of goods for commerce.

Section 6(b), as amended, 29 U.S.C. section 206(b), provides that every employer shall pay the prescribed minimum wage to each of his employees who in any workweek (1) is employed in an enterprise engaged in commerce or in the production of goods for commerce, as defined in section 3(s) (1), (2), or (4) by an establishment described in section 3(s) (3) or (s), and who, except for the enactment of the Fair Labor Standards Amendments of 1961, would not be within the purview of this section, or (ii) is brought within the purview of this section by the amendments made to section 13(a) of this Act by the Fair Labor Standards Amendments of 1961.

Section 3(b), as amended, 63 Stat. 910, 29 U.S.C. section 203(b). "Commerce" means trade, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof.

Section 3(1), 29 U.S.C. section 203(1). "Goods" means goods (including ships and marine equipment), wares, products, commodities, merchandise, or articles or subjects of commerce of any character, or any part or ingredient thereof, but does not include goods after their delivery into the actual physical possession of the ultimate consumer thereof other than a producer, manufacturer, or processor thereof.

Section 3(j)—see below as amended. "Produced" means produced, manufactured,

mined, handled, or in any other manner worked on in any State; and for the purposes of this Act an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any process or occupation necessary to the production thereof, in any State.

Section 3(j), as amended, 29 U.S.C. section 203(j). "Produced" means produced, manufactured, mined, handled, or in any manner worked on in any State; and for the purposes of this chapter an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any closely related process or occupation directly essential to the production thereof, in any State.

Section 3(r), as added by section 2(c), 75 Stat. 65, 29 U.S.C. section 203(r). "Enterprise" means the related activities performed (either through unified operation or common control) by any person or persons for a common business purpose, and includes all such activities whether performed in one or more establishments or by one or more corporate or other organizational units including departments of an establishment operated through leasing arrangements, but shall not include the related activities performed for such enterprises by an independent contractor.

Section 3(s), as added by section 2(c), 75 Stat. 65, 29 U.S.C. section 203(s). "Enterprise engaged in commerce or in the production of goods for commerce" means any of the following in the activities of which employees are so engaged, including employees handling, selling, or otherwise working on goods that have been moved in or produced for commerce by any person:

(1) any such enterprise which has one or more retail or service establishments if the annual gross volume of sales of such enterprise is not less than \$1,000,000, exclusive of excise taxes at the retail level which are separately stated and if such enterprise purchases or receives goods for resale that move or have moved across State lines (not in deliveries from the reselling establishment) which amount in total annual volume to \$250,000 or more;

(2) any such enterprise which is engaged in the business of operating a street, suburban or interurban electric railway, or local trolley or motorbus carrier if the annual gross volume of sales of such enterprise is not less than \$1,000,000, exclusive of excise taxes at the retail level which are separately stated;

(3) any establishment of any such enterprise, except establishments and enterprises referred to in other paragraphs of this subsection, which has employees engaged in commerce or in the production of goods for commerce if the annual gross volume of sales of such enterprise is not less than \$1,000,000;

(4) any such enterprise which is engaged in the business of construction or reconstruction, or both, if the annual gross volume from the business of such enterprise is not less than \$350,000; (5) any gasoline service establishment if the annual gross volume of sales of such establishment is not less than \$250,000, exclusive of excise taxes at the retail level which are separately stated: *Provided*, That an establishment shall not be considered to be an enterprise engaged in commerce or in the production of goods for commerce, or a part of an enterprise engaged in commerce or in the production of goods for commerce, and the sales of such establishments shall not be included for the purpose of determining the annual

gross volume of sales of any enterprise for the purpose of this subsection, if the only employees of such establishment are the owner thereof or persons standing in the relationship of parent, spouse, or child of such owner.

Sections 13(a) and (b), as amended, 29 U.S.C., section 213.

SEC. 9. Subsections (a) and (b) of section 13 of such Act are amended to read as follows:

(a) The provisions of sections 6 and 7 shall not apply with respect to:

(1) any employee employed in a bona fide executive, administrative or professional capacity, or in the capacity of outside salesman (as such terms are defined and delimited from time to time by regulations of the Secretary, subject to the provisions of the Administrative Procedure Act, except that an employee of a retail or service establishment shall not be excluded from the definition of employee employed in a bona fide executive or administrative capacity because of the number of hours in his workweek which he devotes to activities not directly or closely related to the performance of executive or administrative activities, if less than 40 per centum of his hours worked in the workweek are devoted to such activities); or

(2) any employee employed by any retail or service establishment, more than 50 per centum of which establishment's annual dollar volume of sales of goods or services is made within the State in which the establishment is located, if such establishment—

(i) is not an enterprise described in section 3(s), or

(ii) is in such an enterprise and is a hotel, motel, restaurant, or motion picture theater; or is an amusement or recreational establishment that operates on a seasonal basis, or

(iii) is in such an enterprise and is a hospital, or an institution which is primarily engaged in the care of the sick, the aged, the mentally ill or defective, residing on the premises of such institution, or a school for physically or mentally handicapped or gifted children, or

(iv) is in such an enterprise and has an annual dollar volume of sales (exclusive of excise taxes at the retail level which are separately stated), which is less than \$250,000.

A "retail or service establishment" shall mean an establishment 75 per centum of whose annual dollar volume of sales of goods or services (or of both) is not for resale and is recognized as retail sales or services in the particular industry; or

(3) any employee employed by an establishment engaged in laundering, cleaning or repairing of clothing, or fabrics, more than 50 per centum of which establishment's annual dollar volume of sales of such services is made within the State in which the establishment is located: *Provided*, That 75 per centum of such establishment's annual dollar volume of sales of such services is made to customers who are not engaged in a mining, manufacturing, transportation, or communications business; or (4) any employee employed by an establishment which qualifies as an exempt retail establishment under clause (2) of this subsection and is recognized as a retail establishment in the particular industry notwithstanding that such establishment makes or processes at the retail establishment the goods that it sells: *Provided*, That more than 85 per centum of such establishment's annual dollar volume of sales of goods so made or processed is made within the State in which the establishment is located; or

(5) any employee employed in the catching, taking, propagating, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life,

or in the first processing, canning or packing such marine products at sea as an incident to, or in conjunction with, such fishing operations, including the going to and returning from work and loading and unloading when performed by any such employee; or

(6) any employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, or operated on a share-crop basis, and which are used exclusively for supply and storing of water for agricultural purposes; or

(7) any employee to the extent that such employee is exempted by regulations or orders of the Secretary issued under section 14; or

(8) any employee employed in connection with the publication of any weekly, semi-weekly, or daily newspaper with a circulation of less than four thousand the major part of which circulation is within the county where printed and published or counties contiguous thereto; or

(9) any employee of a street, suburban or interurban electric railway, or local trolley or motor bus carrier, not in an enterprise described in section 3(s) (2); or

(10) any individual employed within the area of production (as defined by the Secretary), engaged in handling, packing, storing, compressing, pasteurizing, drying preparing in their raw or natural state, or canning of agricultural or horticultural commodities for market, or in making cheese or butter or other dairy products; or

(11) any switchboard operator employed by an independently owned public telephone company which has not more than seven hundred and fifty stations; or

(12) any employee of an employer engaged in the business of operating taxicabs; or

(13) any employee or proprietor in a retail or service establishment which qualified as an exempt retail or service establishment under clause (2) of this subsection with respect to whom the provisions of sections 6 and 7 would not otherwise apply, engaged in handling telegraphic messages for the public under an agency or contract arrangement with a telegraph company where the telegraph message revenue of such agency does not exceed \$500 a month; or

(14) any employee employed as a seaman on a vessel other than an American vessel; or

(15) any employee employed in planting or tending trees, cruising, surveying, or felling timber, or in preparing or transporting logs or other forestry products to the mill, processing plant, railroad or other transportation terminal, if the number of employees employed by his employer in such forestry or lumber operations does not exceed twelve; or

(16) any employee with respect to his employment in agriculture by a farmer, notwithstanding other employment of such employee in connection with livestock auction operations in which such farmer is engaged as an adjunct to the raising of livestock, either on his own account or in conjunction with other farmers, if such employee (A) is primarily employed during his workweek in agriculture by such farmer, and (B) is paid for his employment in connection with such livestock auction operations at a wage rate not less than that prescribed by section 6(a) (1); or

(17) any employee employed within the area of production (as defined by the Secretary) by an establishment commonly recognized as a country elevator, including such an establishment which sells products and services used in the operation of a farm: *Provided*, That no more than five employees are employed in the establishment in such operations; or

(18) any employee engaged in ginning of cotton for market, in any place of employ-

ment located in a county where cotton is grown in commercial quantities; or

(19) any employee of a retail or service establishment which is primarily engaged in the business of selling automobiles, trucks, or farm implements; or

(20) any employee of a retail or service establishment who is employed primarily in connection with the preparation or offering of food or beverages for human consumption, either on the premises, or by such services as catering, banquet, box lunch, or curbside counter service, to the public, to employees, or to members or guests of members of clubs; or

(21) any agricultural employee employed in the growing and harvesting of shade-grown tobacco who is engaged in the processing (including but not limited to, drying, curing, fermenting, bulking, rebulking, sorting, grading, aging, and baling) of such tobacco, prior to the stemming process, for use as Cigar-wrapper tobacco; or

(22) any employee engaged (A) in the transportation and preparation for transportation of fruits or vegetables, whether or not performed by the farmer, from the farm to a place of first processing or first marketing within the same State, or (B) in transportation, whether or not performed by the farmer, between the farm and any point within the same State of persons employed or to be employed in the harvesting of fruits or vegetables.

(b) The provisions of section 7 shall not apply with respect to:

(1) any employee with respect to whom the Interstate Commerce Commission has power to establish qualifications and maximum hours of service pursuant to the provisions of section 204 of the Motor Carrier Act, 1935;

(2) any employee of an employer subject to the provisions of part I of the Interstate Commerce Act; or

(3) any employee of a carrier by air subject to the provisions of title II of the Railway Labor Act; or

(4) any employee employed in the canning, processing, marketing, freezing, curing, storing, packing for shipment, or distributing of any kind of fish, shellfish, or other aquatic forms of animal or vegetable life, or any by-product thereof; or

(5) any individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state; or

(6) any employee employed as a seaman; or

(7) any employee of a street, suburban or interurban electric railway, or local trolley or motorbus carrier; or

(8) any employee of a gasoline service station; or

(9) any employee employed as an announcer, news editor, or chief engineer by a radio or television station the major studio of which is located (A) in a city or town of one hundred thousand population or less, according to the latest available decennial census, figures as compiled by the Bureau of the Census, except where such city or town is part of a standard metropolitan statistical area, as defined and designated by the Bureau of the Budget, which has a total population in excess of one hundred thousand, or (B) in a city or town of twenty-five thousand population or less, which is part of such an area but is at least 40 airline miles from the principal city in such area; or

(10) any employee of an independently owned and controlled local enterprise (including an enterprise with more than one bulk storage establishment) engaged in the wholesale or bulk distribution of petroleum products if (A) the annual gross volume of sales of such enterprise is not more than \$1,000,000 exclusive of excise taxes, and (B)

more than 75 per centum of such enterprise's annual dollar volume of sales is made within the State in which such enterprise is located, and (C) not more than 25 per centum of the annual dollar volume of sales of such enterprise is to customers who are engaged in the bulk distribution of such products for resale; or

(11) any employee employed as a driver or driver's helper making local deliveries, who is compensated for such employment on the basis of trip rates, or other delivery payment plan, if the Secretary shall find that such plan has the general purpose and effect of reducing hours worked by such employees to, or below, the maximum workweek applicable to them under section 7(a).

False Branding and Marketing Act, 32 Stat. 632 (1902), 21 U.S.C. sections 16, 17 (1958). There is no definition, but section 1, 21 U.S.C. section 16 provides:

No person or persons, company or corporation shall introduce into any State or Territory of the United States or the District of Columbia from any other State or Territory of the United States or the District or sell in the District of Columbia or in any Territory any dairy or food product which shall be falsely labeled or branded as to the State or Territory in which they are made, produced, or grown, or cause or procure the same to be done by others.

Federal Coal Mine Safety Act, 55 Stat. 177 (1941), as amended, 661 Stat. 710 (1952), 30 U.S.C. section 451 et seq. (1958).

Section 101, 30 U.S.C. section 451, authorizes the Secretary to do the acts prescribed with regard to coal mines the products of which regularly enter commerce or the operations of which substantially affect commerce. \* \* \*

Section 105, 30 U.S.C. section 455 requires reports of those in control of any coal mine the products of which regularly enter commerce or the operation of which substantially affect commerce. \* \* \*

Section 111, 30 U.S.C. section 460. For the purposes of this subchapter, the term "commerce" means trade, traffic, commerce, transportation, or communications between any State, Territory, possession, or the District of Columbia and any other State, Territory, possession, or the District of Columbia and any foreign country, or wholly within any Territory, possession, or the District of Columbia or between points in the same State if passing through any other State or through any Territory, possession, or the District of Columbia, or through any foreign country.

Federal Explosives Act, 40 Stat. 385 (1917) as amended 50 U.S.C. section 121 et seq. (1958). No reference to interstate commerce; seems to be based upon the war power. See section 20, as amended, 50 U.S.C. section 142.

Federal Food, Drug, and Cosmetic Act, 52 Stat. 1040 (1938), as amended, 21 U.S.C. section 301 et seq. (1958).

Section 201(b), 21 U.S.C. section 321(b). The term "interstate commerce" means (1) commerce between any State or Territory and any place outside thereof, and (2) commerce within the District of Columbia or within any other Territory not organized with a legislative body.

Among the acts prohibited by the act: section 301, 21 U.S.C. section 331:

(a) The introduction or delivery for introduction into interstate commerce of any food, drug, device, or cosmetic that is adulterated or misbranded.

(b) The adulteration or misbranding of any food, drug, device, or cosmetic in interstate commerce.

(c) The receipt in interstate commerce of any food, drug, device, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise.

(i) Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label, or other identification device authorized or required by regulations [issued under this Act].

(k) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to, a food, drug, device or cosmetic, if such act is done while such article is held for sale (whether or not the first sale) after shipment in interstate commerce and results in such article being adulterated.

(n) The using, in labeling, advertising, or other sales promotion of any reference to any report or analysis furnished in compliance with [the inspection section of the Act].

(o) [added by Public Law 87-781, 76 Stat. 784 (1962) section 114(a)]. In the case of a prescription drug distributed or offered for sale in interstate commerce, the failure of the manufacturer, packer, or distributor thereof to maintain for transmittal, or to transmit, to any practitioner licensed by applicable State law to administer such drug who makes written request for information as to such drug, true and correct copies of all printed matter which is required to be included in any package in which that drug is distributed or sold, or such other printed matter as is approved by the Secretary.

Section 304(a), as amended by 62 Stat. 582 (1948), section 2, 21 U.S.C. section 334(a). Provides that any article of food, drug, device, or cosmetic that is adulterated or misbranded when introduced into or while in interstate commerce or while held for sale (whether or not the first sale) after shipment in interstate commerce, or which may not [under certain sections of the Act] be introduced into interstate commerce, shall be liable to be proceeded against while in interstate commerce or at any time thereafter, on libel of information and condemned \* \* \* in the appropriate District Court.

Section 404(a), 21 U.S.C. section 344. Whenever the Secretary finds after investigation that the distribution in interstate commerce of any class of food may, by reason of contamination with micro-organisms during the manufacture, processing, or packing thereof in any locality, be injurious to health, and that such injurious nature cannot be adequately determined after such articles have entered interstate commerce, he then, and in such case only, shall promulgate regulations providing for the issuance, to manufacturers, processors, or packers of such class of food in such locality, of permits to which shall be attached such conditions governing the manufacture, processing, or packing of such class of food, for such temporary period of time, as may be necessary to protect the public health; and after the effective date of such regulations, and during such temporary period, no person shall introduce or deliver for introduction into interstate commerce any such food manufactured, processed, or packed by any such manufacturer, processor, or packer unless such manufacturer, processor, or packer holds a permit issued by the Secretary as provided by such regulations.

By section 404(c), 21 U.S.C. section 344(c), the authority to inspect any factory or establishment, the owner of which holds a permit under this section, is granted for the purpose of ascertaining whether the conditions of the permit are being complied with.

Section 407, added by 64 Stat. 20, section 3(c), 21 U.S.C. section 347:

(a) Colored oleomargarine or colored margarine which is sold in the same State or Territory in which it is produced shall be subject in the same manner and to the same ex-

tent to the provisions of this chapter as if it had been introduced in interstate commerce.

(b) Provides that no person shall sell, or offer for sale, colored oleomargarine or colored margarine except under certain conditions.

(c) Provides that no person "shall possess in a form ready for serving colored oleomargarine or colored margarine at a public eating place" except in compliance with certain conditions.

Section 3(a) of 64 Stat. 20 (1950), 21 U.S.C. section 347a. The Congress finds and declares that the sale, or the serving in public eating places of colored oleomargarine or colored margarine without clear identification as such or which is otherwise adulterated or misbranded within the meaning of this chapter depresses the market in interstate commerce for butter and for oleomargarine or margarine clearly identified and neither adulterated nor misbranded and constitutes a burden on interstate commerce in such articles. Such burden exists, irrespective of whether such oleomargarine or margarine originates from an interstate source or from the State in which it is sold.

Section 703, 21 U.S.C. section 373, provides that carriers engaged in interstate commerce and persons receiving foods, drugs, devices, or cosmetics in interstate commerce or holding such articles so received shall keep and make available for inspection certain records.

Section 704(a), 21 U.S.C. section 374(a), provides that authorized personnel may enter, at reasonable times, any factory, warehouse, or establishment in which food, drugs, devices, or cosmetics are manufactured, processed, packed, or held, for introduction into interstate commerce or one held after such introduction, or \* \* \* enter any vehicle being used to transport or hold such food, drugs, devices, or cosmetics in interstate commerce; \* \* \* for purposes of inspection.

Federal Firearms Act, 52 Stat. 1250 (1938), 15 U.S.C. section 901 et seq. (1958).

Section 1 (2), 15 U.S.C. section 901 (2): The term "interstate or foreign commerce" means commerce between any State, Territory or possession (not including the Canal Zone), or the District of Columbia, and any place outside thereof; or between points within the same State, Territory, or possession (not including the Canal Zone), or the District of Columbia but through any place outside thereof, or within any Territory or possession or the District of Columbia.

Section 2, 15 U.S.C., section 902, prohibits anyone from transporting, shipping, or receiving any firearms or ammunition in interstate or foreign commerce except in compliance with the provisions of the Act.

Federal Hazardous Substances Labeling Act, Public Law 86-613, 74 Stat. 372 (1960), 15 U.S.C. 1261 et seq. (Supp. III 1959-1961.)

Section 2(b), 15 U.S.C., section 1261(b). The term "interstate commerce" means (1) commerce between any State or Territory and any place outside thereof, and (2) commerce within the District of Columbia or within any territory not organized with a legislative body.

By section 4, 15 U.S.C., section 1263, the following acts are prohibited

(a) The introduction or delivery for introduction into interstate commerce of any misbranded package of a hazardous substance.

(b) The alteration, mutilation, destruction, obliteration or removal of the whole or any part of the label of, or the doing of any other act with respect to, a hazardous substance, if such act is done while the substance is in interstate commerce, or while the substance is held for sale (whether or not the first sale) after shipment in interstate commerce, and results in the hazardous substance being in a misbranded package.

(c) The receipt in interstate commerce of any misbranded package of a hazardous substance and the delivery or proffered delivery thereof for pay or otherwise. \* \* \*

Section 6, 15 U.S.C., section 1265, provides for proceedings against and condemnation of [a]ny hazardous substance that is in a misbranded package when introduced into or while in interstate commerce or while held for sale (whether or not the first sale) after shipment in interstate commerce, or which may not [under this Act] be introduced into interstate commerce, or which has been manufactured in violation of [a section dealing with the District of Columbia and the Territories] \* \* \* while in interstate commerce or at any time thereafter. \* \* \*

There are also provisions for record keeping and for inspection in identical language to that of the Federal Food, Drug, and Cosmetic Act, see above.

Federal Insecticide, Fungicide and Rodenticide Act, 61 Stat. 163 (1947), 7 U.S.C., section 135 et seq. (1958).

Section 3, 7 U.S.C., section 135a, makes it unlawful for any person to distribute, sell, or offer for sale in any Territory or in the District of Columbia, or to ship or deliver for shipment from any State, Territory, or the District of Columbia, to any other State, Territory, or the District of Columbia, or to any foreign country, or to receive in any State, Territory, or the District of Columbia from any other State, Territory or the District of Columbia, or foreign country, and having so received, deliver or offer to deliver in the original unbroken package to any other person \* \* \* certain substances except under specified conditions.

Section 9, 7 U.S.C., section 135g, authorizes proceedings for condemnation of any economic poison or device that is being transported from one State, Territory, or District to another, or having been transported, remain unsold or in original unbroken packages, or that is sold or offered for sale in the District of Columbia or any Territory or that is imported from a foreign country \* \* \* under certain circumstances.

Federal Power Act, 49 Stat. 803 (1935) as amended sections 200-213, 16 U.S.C. section 791a and following sections (1958).

Section 201(8), 16 U.S.C. section 796(8) "navigable waters" means those parts of streams or other bodies of water over which Congress has jurisdiction under its authority to regulate commerce with foreign nations and among the several States, and which either in their natural or improved condition notwithstanding interruptions between the navigable parts of such streams or waters by falls, shallows, or rapids compelling land carriage, are used or suitable for use for the transportation of persons or property in interstate or foreign commerce, including therein all such interrupting falls, shallows, or rapids, together with such other parts of streams as shall have been authorized by Congress for improvement by the United States or shall have been recommended to Congress for such improvement after investigation under its authority.

Among the powers of the FPC is, section 202(c), 16 U.S.C. section 797(e), is that to issue licenses for the purposes of constructing, operating, and maintaining dams, water conduits, reservoirs, powerhouses, transmission lines, or other project works necessary or convenient for the development and improvement of navigation and for the development, transmission, and utilization of power across, along, from, or in any of the stream or other bodies of water over which Congress has jurisdiction under its authority to regulate Commerce with foreign nations and among the several States. \* \* \*

Federal Trade Commission Act, 38 Stat. 717 (1914), as amended, 15 U.S.C. section 41 et seq. (1958).

Section 4, 15 U.S.C. section 44. "Commerce" means commerce among the several States or with foreign nations or in any Territory of the United States or in the District of Columbia, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation.

Section 5(a)(1), 15 U.S.C. section 45(a)(1). Unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce, are declared unlawful.

By section 5(b), 15 U.S.C. section 45(b), the FTC is given authority to proceed against any person, partnership, or corporation using any unfair method of competition or unfair or deceptive act or practice in commerce.

By section 6, 15 U.S.C. section 46, the FTC is given investigatory powers to examine the "organization, business, conduct, practices, and management of any corporation engaged in commerce" with certain exceptions, to require reports of such corporations, and to do other things.

Fur Products Labeling Act, 65 Stat. 175 (1951), 15 U.S.C. section 69 et seq. (1958).

Section 2(j), 15 U.S.C. section 69(j). The term "commerce" means commerce between any State, Territory, or possession of the United States, or the District of Columbia, and any place outside thereof; or between points within the same State, Territory, or possession, or the District of Columbia, but through any place outside thereof; or within any Territory or possession or the District of Columbia.

Section 3(a), 15 U.S.C. section 69a(a), brings within the prohibitions of the Act, the introduction, or manufacture for introduction, into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce. \* \* \* of any fur product misbranded or falsely or deceptively advertised or invoiced within the meaning of the Act.

Section 3(b), 15 U.S.C. section 69a(b), brings within the prohibition of the Act the manufacture for sale, sale, advertising, offering for sale, transportation or distribution, of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, and which is misbranded or falsely or deceptively advertised or invoiced \* \* \* within the meaning of the Act.

Section 9(a)(1), 15 U.S.C. section 69g(a)(1), provides that the FTC may proceed to seize any fur product or fur if the Commission has reasonable cause to believe such fur product or fur is being manufactured or held for shipment, or shipped, or held for sale or exchange after shipment, in commerce in violation of the Act.

Gambling Devices Act of 1962, Public Law 87-840. 76 Stat. 1075 (1962) amending 64 Stat. 1134 (1951), 15 U.S.C. section 1171 et seq.

Section 3(d), 15 U.S.C. section 1171(d). The term "interstate or foreign commerce" means commerce (1) between any State or possession of the United States and any place outside of such State or possession, or (2) between points in the same State or possession of the United States but through any place outside thereof.

Section 5 [section 3(a)(1) of 64 Stat. 1134] 15 U.S.C. section 1173(a)(1), provides that it shall be unlawful for an unregistered person engaged in the business of manufacturing gambling devices, if the activities of such business in any way affect interstate or foreign commerce, to manufacture any gambling device \* \* \*, regardless of whether such device ever enters interstate or foreign commerce.

Section 5 [section 3(a)(2) of 64 Stat. 1134], 15 U.S.C. section 1173(a)(2) makes it unlawful for an unregistered person to engage in the business of repairing, reconditioning, buying, selling, leasing, using or making

available for use by others any gambling device, if in such business he sells, ships, or delivers any such device knowing that it will be introduced into interstate or foreign commerce. \* \* \*

Hot Oil Act. 49 Stat. 306 (1935), 15 U.S.C. section 715 et seq. (1958).

Section 2(3), 15 U.S.C. section 715a(3). The term "interstate commerce" means commerce between any point in a State and any point outside thereof, or between points within the same State but through any place outside thereof, or from any place in the United States to a foreign country, but only insofar as such commerce takes place within the United States.

Section 3, 15 U.S.C. section 715b. The shipment or transportation in interstate commerce from any State of contraband oil produced in such State is prohibited. \* \* \*

Interstate Commerce Act of February 4, 1887, 24 Stat. 379 (1887), 49 U.S.C. section 1 et seq. (1958).

Section 1(1), 49 U.S.C. section 1(1). The provisions of this chapter shall apply to common carriers engaged in:

(a) The transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment; or

(b) The transportation of oil or other commodity, except water and except natural or artificial gas, by pipeline, or partly by pipeline and partly by railroad or by water. \* \* \*

From one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from one place in a Territory to another place in the same Territory or from any place in the United States through a foreign country to any other place in the United States or from or to any place in the United States to or from a foreign country, but only insofar as such transportation or transmission takes place within the United States.

Interstate Commerce Act, Part II, 49 Stat. 543 (1935), as amended, 49 U.S.C. section 301 et seq. (1958).

Section 203(a)(10), 49 U.S.C. section 303(a)(10). The term "interstate commerce" means commerce between any place in a State and any place in another State or between places in the same State through another State, whether such commerce moves wholly by motor vehicle or partly by motor vehicle and partly by rail, express, or water.

Section 202(a), 49 U.S.C. section 302(a). The provisions of this chapter apply to the transportation of passengers or property by motor carriers engaged in interstate or foreign commerce and to the procurement of and the provisions of facilities for such transportation. \* \* \*

Section 203(a)(14), as amended, 44 U.S.C. section 303(a)(14). The term "common carrier by motor vehicle" means any person which holds itself out to the general public to engage in the transportation by motor vehicle in interstate or foreign commerce of passengers or property or any class or classes thereof for compensation, whether over regular or irregular routes [within a certain exception].

Section 203(a)(15), as amended, 49 U.S.C. section 303(a)(15). The term "contract carrier by motor vehicle" means any person which engages in transportation by motor vehicle of passengers or property in interstate or foreign commerce, for compensation [other than as defined in section 203(a)(14), under continuing contract with one person or a limited number of persons either (a) for the furnishing of transportation services through the assignment of motor vehicles for a continuing period of time to the exclusive use of each person served or (b) for

the furnishing of transportation services designed to meet the distinct need of each individual carrier.

Section 203(a)(17), 49 U.S.C. section 303(a)(17). The term "private carrier of property by motor vehicle" means any person not included [in section 203(a)(14) and (15)], who or which transports in interstate or foreign commerce by motor vehicle property of which such person is the owner, lessee, or bailee, when such transportation is for the purpose of sale, lease, rent, or bailment or in furtherance of any commercial enterprise.

Section 203(a)(19), 49 U.S.C. section 303(a)(19). The "services" and "transportation" to which this chapter applies include all vehicles operated by, for, or in the interest of any motor carrier irrespective of ownership or of contract, express or implied, together with all facilities and property operated or controlled by any such carrier or carriers, and used in the transportation of passengers or property in interstate or foreign commerce or in the performance of any service in connection therewith.

By section 204(a), as amended, 49 U.S.C. section 304(a), the I.C.C. is authorized to regulate, in various manners, the "carriers" defined in section 203(a)(14), (15), and (17), and certain others. In section 204(a)(4a) the I.C.C. is authorized to determine.

Whether the transportation in interstate or foreign commerce performed by any motor carrier or class of motor carrier lawfully engaged in operation solely within a single State is in fact of such nature, character, or quantity as not substantially to affect or impair uniform regulation by the Commission of transportation by motor carriers engaged in interstate commerce \* \* \* and if it so finds to exempt such carrier or class of carrier from coverage of this chapter, attaching to such exemption such reasonable terms and conditions as the public interest may require. \* \* \*

By section 203(b), as amended, 49 U.S.C. section 303(b), the following vehicles are exempted from coverage of the Act, except for the coverage of the provisions of section 204, relating to qualifications and maximum hours of service of employees and safety of operation or standards of equipment:

(1) motor vehicles employed solely in transporting school children and teachers to or from school;

(2) taxicabs, or other motor vehicles performing a bona fide taxicab service, having a capacity of not more than six passengers and not operating on a regular route or between fixed termini;

(3) motor vehicles owned or operated by or on behalf of hotels and used exclusively for the transportation of hotel patrons between hotels and local railroad or other common carrier stations;

(4) certain motor vehicles of the Secretary of the Interior;

(4a) motor vehicles controlled and operated by any farmer when used in the transportation of his agricultural (including horticultural) commodities and products thereof, or in the transportation of supplies to his farm;

(5) motor vehicles controlled and operated by certain cooperative associations;

(6) motor vehicles used in carrying property consisting of ordinary livestock, fish (including shell fish), or agricultural (including horticultural) commodities (not including manufactured products thereof), if such motor vehicles are not used in carrying any other property, or passengers, for compensation;

(7) motor vehicles used exclusively in the distribution of newspapers;

(7a) the transportation of persons or property by motor vehicles when incidental to transportation by aircraft;

(8) the transportation of passengers or property in interstate commerce wholly with-

in municipalities or between contiguous municipalities or within a zone adjacent to commercially a part of any such municipality or municipalities, except under certain conditions and subject to certain findings by the I.C.C.;

(9) the casual, occasional, or reciprocal transportation of passengers or property by motor vehicle in interstate commerce for compensation by any person not engaged in transportation by motor vehicle as a regular occupation or business, except under certain circumstances and subject to certain findings by the I.C.C.

Interstate Commerce Act, Part III, 54 Stat. 929 (1940), 49 U.S.C. § 901 et seq. (1958).

Section 201(i), 49 U.S.C. section 902(i). The term "interstate or foreign transportation" or "transportation in interstate or foreign commerce" as used in this chapter, means transportation of persons or property—

(1) wholly by water from a place in a State to a place in any other State, whether or not such transportation takes place wholly in the United States;

(2) partly by water and partly by railroad or motor vehicle, from a place in a State to a place in any other State; except that with respect to such transportation taking place partly in the United States and partly outside thereof, such terms shall include transportation by railroad or motor vehicle only insofar as it takes place within the United States, and shall include transportation by water only insofar as it takes place from a place in the United States to another place in the United States;

(3) wholly by water, or partly by water and partly by railroad or motor vehicle, from or to a place in the United States to or from a place outside the United States, but only (A) insofar as such transportation by rail or by motor vehicle takes place within the United States, and (B) in the case of a movement to a place outside the United States, only insofar as such transportation by water takes place from any place in the United States to any other place therein prior to transshipment at a place within the United States for movement to a place outside thereof, and, in the case of a movement from a place outside the United States, only insofar as such transportation by water takes place from any place in the United States to any other place therein after transshipment at a place within the United States is a movement from a place outside thereof.

Section 302(d), 49 U.S.C. section 902(d). The term "common carrier by water" means any person which holds itself out to the general public to engage in the transportation by water in interstate or foreign commerce of passengers or property or any class or classes thereof for compensation [with certain exceptions] [and see section 302(e)].

Section 302(h), 49 U.S.C. section 902(h). The term "transportation" includes the use of any transportation facility (irrespective of ownership or of any contract, express or implied, for such use), and includes any and all services in or in connection with transportation, including the receipt, delivery, elevation, transfer in transit, refrigeration or icing, ventilation, storage, and handling of property transported or the interchange thereof with any other agency of transportation. See exemptions in section 303, 49 U.S.C. section 903.

Interstate Commerce Act, Part IV, 56 Stat. 284 (1942) as amended. 49 U.S.C. section 1001 et seq. (1958).

Section 402(a) (6), 49 U.S.C. section 1002 (a) (6). The term "interstate commerce" means transportation (A) between a point in a State and a point in another State, whether or not such transportation takes place wholly within the United States; (B) between points within the same State but through any place outside thereof; or (C)

from or to any point in the United States or from any point outside thereof, but only insofar as such transportation takes place within the United States.

Section 402(a) (7), 49 U.S.C. section 1002 (a) (7). The term "service" subject to this chapter means any or all of the services in connection with the transportation in interstate commerce which any person undertakes to perform or provide as a freight forwarder, or which such person is authorized or required by or under the authority of this chapter to perform or provide; \* \* \*.

By subsequent sections, the Commission is authorized to regulate in certain manners freight forwarders in interstate commerce under this Act.

Investment Company Act of 1940, 54 Stat. 789 (1940), 15 U.S.C. section 80a-1 et seq. (1958).

Section 2(a) (18), 15 U.S.C. section 80a-2 (a) (18). "Interstate commerce" means trade, commerce, transportation, or communication among the several States, or between any foreign country and any State, or between any State and any place or ship outside thereof.

Section 7(a), 15 U.S.C. section 80a-7, provides that an unregistered investment company shall not:

(1) offer for sale, sell, or deliver after sale, by the use of the mails or any means or instrumentality of interstate commerce, any security or any interest in a security \* \* \*; or offer for sale, sell, or deliver, after sale any such security or interest, having reason to believe that such security or interest will be made the subject of a public offering by use of the mails or any means or instrumentality of the interstate commerce.

(2) purchase, redeem, retire, or otherwise acquire or attempt to acquire, by use of the mails or any means or instrumentality of interstate commerce, any security or any interest in a security, \* \* \*;

(3) control any investment company which does any of the acts enumerated in paragraphs (1) and (2) of the subsection;

(4) engage in any business in interstate commerce; or

(5) control any company which is engaged in any business in interstate commerce.

Labor-Management Relations Act of 1947, 61 Stat. 136 (1947) as amended, 29 U.S.C. section 141 et seq. (1953).

Section 101 [amending National Labor Relations Act section 2(6)], 29 U.S.C. section 152(6).

The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

Section 101 [section 2(7)], 29 U.S.C. section 152(7). The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led to or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

Section 501(1), 29 U.S.C. section 142(1). The term "industry affecting commerce" means any industry or activity in commerce or in which a labor dispute would burden or obstruct commerce or tend to burden or obstruct commerce or the free flow of commerce.

Section 1(b), 29 U.S.C. section 141(b). It is the purpose and policy of this chapter, in order to promote the free flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce \* \* \* to protect

the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and prescribe practices on the part of labor and management which affect commerce and are inimical to the general welfare \* \* \*.

By section 101 [section 9(c)], 29 U.S.C. section 159(c), the NLRB is directed to decide questions of representation "affecting commerce" and by section 101 [section 10 (a)], 29 U.S.C. section 160(a) the Board is empowered to prevent any person from engaging in any unfair labor practices "affecting commerce."

By section 14(c) (1) [added by section 701 (a), 73 Stat. 519 (1959)], 29 U.S.C. 164(c) (1), the Board is given discretionary authority to decline to assert jurisdiction over any labor dispute involving any class or category of employers, where, in the opinion of the Board, the effect of such labor dispute on commerce is not sufficiently substantial to warrant the exercise of its jurisdiction \* \* \* with an exception.

Labor-Management Reporting and Disclosure Act of 1959, Public Law 86-257, 73 Stat. 519 (1959), 29 U.S.C. sections 153, 158-160, 164, 186, 187, 401 et seq. (Supp. III 1959-61).

Section 3(a), 29 U.S.C. section 402(a). "Commerce" means trade, traffic, commerce, transportation, transmissions, or communication among the several States or between any State and any place outside thereof.

Section 3(c), 29 U.S.C. section 402(c). "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 Relations Act, 1947, as amended, or the Railway Labor Act, as amended.

Section 3(e), 29 U.S.C. section 402(e). "Employers" means any employer or any group or association of employers engaged in an industry affecting commerce. \* \* \*

Section 3(i), 29 U.S.C. section 402(i). "Labor organization" means a labor organization engaged in an industry affecting commerce. \* \* \*

Section 3(j), 29 U.S.C. section 402(j). A labor organization shall be deemed to be engaged in an industry affecting commerce if it:

(1) is the certified representative of employees under the provision of the National Labor Relations Act, as amended, or the Railway Labor Act, as amended; or

(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, other than a State or local central body.

Succeeding sections set out standards and regulations for those employers and labor organizations which come within the above definition.

Livestock Contagious Disease Act, 32 Stat. 792 (1903), as amended, 21 U.S.C. section 111 et seq. (1958) [of several acts by this name].

There is no definition, but in section 2, 21 U.S.C. section 111, the Secretary of Agriculture is given authority to prevent the introduction or dissemination of the contagion of any contagious, infectious, or communicable disease of animals and/or live poultry from a foreign country into the United States or from one State or Territory of the United States or the District of Columbia to another. \* \* \*

Meat Inspection Acts, primarily 34 Stat. 1260 (1907), as amended, 21 U.S.C. section 71 et seq. (1958).

There is no definition. Statute merely speaks of authority of Secretary of Agriculture in regard to "all meat food products prepared for interstate or foreign commerce."

By 21 U.S.C. section 71, the Secretary is given discretionary authority to cause to be made an examination and inspection of all cattle, sheep, swine, and goats before they shall be allowed to enter into any slaughtering, packing, meat-canning, rendering or similar establishment in which they are to be slaughtered and the meat and meat-food products there are to be used in interstate or foreign commerce; \* \* \*

Narcotics Manufacturing Act of 1960, Public Law 86-429, 74 Stat. 55 (1960), 21 U.S.C. section 501 et seq. and 26 U.S.C. sections 4702, 4731 (Supp. III 1959-61).

There is no definition: section 2(5)(c) declares it to be one of the purposes of the enactment "to regulate interstate and foreign commerce in narcotic drugs." 21 U.S.C. section 501(5)(c).

Section 21 U.S.C. section 506, requires every person who manufactures a basic class or classes of narcotic drug to obtain a license from the Secretary of the Treasury.

Natural Gas Act, 52 Stat. 821 (1938), as amended, 15 U.S.C. section 717 et seq. (1958).

Section 2(7), 15 U.S.C. section 717a(7), "Interstate commerce" means commerce between any point in a State and any point outside thereof, or between points within the same State but through any place outside thereof, but only insofar as such commerce takes place within the United States.

Section 1(b), 15 U.S.C. section 717(b). The provisions of this chapter shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas.

Section 1(c) [added by 68 Stat. 36 (1954)], 15 U.S.C. section 717(c). The provisions of this chapter shall not apply to any person engaged in or legally authorized to engage in the transportation in interstate commerce or the sale in interstate commerce for resale, of natural gas received by such person from another person within or at the boundary of a State if all the natural gas so received is ultimately consumed within such State, or to any facilities used by such person for such transportation or sale, provided that the rates and service of such person and facilities be subject to regulation by a State Commission. The matters exempted from the provision of this chapter by this subsection are declared to be matters primarily of local concern and subject to regulation by the several States.

Plant Quarantine Act, 37 Stat. 315 (1912), as amended, 7 U.S.C. section 151 et seq. (1958).

By section 8, 7 U.S.C. section 161, the Secretary of Agriculture is given authority to quarantine any State, Territory, or District

of the United States, or any portion thereof, to prevent the spread of a dangerous plant disease or insect infestation. It is further provided:

No person shall ship or offer for shipment to any common carrier nor shall any common carrier receive for transportation or transport, nor shall any person carry or transport from any quarantined States or Territory, or District of Columbia or from any quarantined portion thereof, into or through any other State or Territory or District of Columbia \* \* \* any article capable of carrying the dangerous disease giving rise to the quarantine.

Poultry Products Inspection Act, Public Law 85-172, 71 Stat. 441 (1957), 21 U.S.C. section 451 et seq. (1958).

Section 4(a), 21 U.S.C. section 453(a). The term "commerce" means commerce between any State, Territory, or possession, or the District of Columbia, and any place outside thereof or within the District of Columbia.

Section 2, 21 U.S.C. section 451. All poultry and poultry products which have or are required to have inspection under this chapter are either in the current of interstate or foreign commerce or directly affects commerce. That part that enters directly into the current of interstate or foreign commerce cannot be effectively inspected and regulated without also inspecting and regulating all poultry and poultry products processed or handled in the same establishment.

The great volume of poultry products required as an article of food for the inhabitants of a large center of population may directly affect the movement of poultry and poultry products in interstate commerce. To protect interstate commerce in poultry and poultry products inspected for wholesomeness, from being adversely burdened, obstructed, or affected by uninspected poultry or poultry products, major consuming areas where poultry or poultry products are handled or consumed in such volume as to affect the movement of inspected poultry or poultry products in interstate commerce should be designated by the Secretary pursuant to the provisions of this chapter.

As to the above, section 5, 21 U.S.C., section 454, for manner of designating any major consuming area for coverage within the Act.

Successing sections require establishments "slaughtering poultry or processing poultry products for commerce or in or for marketing in a major consuming area" to maintain premises, facilities and equipment in accord with regulations of the Secretary (sec. 7), to allow inspection (sec. 6), and to keep pertinent records (sec. 11).

Section 16(a), 21 U.S.C. section 464(a), gives Secretary discretionary authority to exempt, subject to conditions, from coverage:

(1) poultry producers with respect to poultry of their own raising on their own farms which they sell directly to household consumers or restaurants, hotels, and boarding houses for use in their own dining rooms or in the preparation of meals for sales direct to consumers only: Provided, That such poultry producers do not engage in buying or selling products other than those produced from poultry raised on their own farms, (2) retail dealers with respect to poultry products sold directly to consumers in individual retail stores, if the only processing operation performed by such retail dealers is the cutting up of poultry products on the premises where such sales to consumers are made; (3) \* \* \* ; and (4) persons slaughtering, processing, or otherwise handling poultry or poultry products which have been or are to be processed as required by recognized religious dietary laws, to the extent that the Secretary determines necessary to avoid conflict with such requirements while still effectuating the purposes of this chapter.

Securities Exchange Act of 1934, 48 Stat. 881 (1934), as amended, 15 U.S.C. section 78(a) et seq. (1958).

Section 3(a)(17), 15 U.S.C. section 78c (a)(17). The term "interstate commerce" means trade, commerce, transportation, or communication among the several States or between any foreign country and any State, or between any State and any place or ship outside thereof.

Section 2, 15 U.S.C. section 78b, declares that transaction in securities are affected with a national public interest and must be regulated and controlled, in part because of the effect upon interstate commerce.

Section 6, 15 U.S.C. section 78f, provides for the registration by the SEC of exchanges but it is provided in section 5, 15 U.S.C. section 78e, that an exchange may be exempted from such registration upon application by the exchange because, in the opinion of the Commission, by reason of the limited volume of transactions effected on such exchange, it is not practicable and not necessary or appropriate in the public interest or for the protection to investors to require such registration.

Sherman Act, 26 Stat. 209 (1890), as amended 15 U.S.C. section 1 et seq. (1958).

There is no definition, but see the following:

Section 1, 15 U.S.C. section 1. Declares illegal every contract, combination or conspiracy in restraint of trade or commerce among the several States, or with foreign nations. \* \* \*

Section 2, 15 U.S.C. section 2. Makes guilty of a misdemeanor anyone who monopolizes, attempts to monopolize, or combines or conspires to monopolize any part of the trade or commerce among the several States, or with foreign nations. \* \* \*

Section 3, 15 U.S.C. section 3. Declares illegal every contract, combination or conspiracy in restraint of trade or commerce in any Territory of the United States or of the District of Columbia or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations. \* \* \*

Tobacco Inspection Act, 49 Stat. 731 (1935), 7 U.S.C. section 511 et seq. (1958).

Section 1(i), 7 U.S.C. section 511(i). "Commerce" means commerce between any State, Territory, or possession, or the District of Columbia, and any place outside thereof; or between points within the same State, Territory, or possession or the District of Columbia, but through any place outside thereof, or within any Territory or possession, or the District of Columbia. For the purposes of this chapter (but not in any wise limiting the foregoing definition) a transaction in respect to tobacco shall be considered to be in commerce if such tobacco is part of that current of commerce usual in the tobacco industry whereby tobacco or products manufactured therefrom are sent from one State with the expectation that they will end their transit, after purchase, in another, including, in addition to cases within the above general description, all cases where purchase or sale is either for shipment to another State or for manufacture within the State and the shipment outside the State of the products resulting from such manufacture. \* \* \*

Section 2, 7 U.S.C. section 511a. Transactions in tobacco involving the sale thereof at auction as commonly conducted at auction markets are affected with a public interest; such transactions are carried on by tobacco producers generally and by persons engaged in the business of buying and selling tobacco in commerce; the classification of tobacco according to type, grade, and other characteristics affect the prices received by

producers; without uniform standards of classification and inspection the evaluation of tobacco is susceptible to speculation, manipulation, and control, and unreasonable fluctuations in price and quality determination occur which are detrimental to producers and persons handling tobacco in commerce; such fluctuation constitutes a burden upon commerce and makes the use of uniform standards of classification and inspection imperative for the protection of producers and others engaged in commerce and the public interest therein.

Subsequent sections authorize the Secretary to undertake the acts found necessary above.

Trust Indentures Act of 1939, 53 Stat. 1149 (1939) as amended, 15 U.S.C. section 77aaa et seq. (1958).

Section 303(1), 15 U.S.C. section 77ccc(1), refers back to the Securities Act of 1933, 48 Stat. 74 (1933), 15 U.S.C. section 77a et seq. (1958) for a definition of "interstate commerce".

Section 2(7), 15 U.S.C. section 77b(7). The term "interstate commerce" means trade or commerce in securities or any transportation or communication relating thereto among the several States or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory or the District of Columbia or within the District or Columbia.

Section 302(b), 15 U.S.C. § 77bbb(b). Practices of the character above enumerated [in section 302(a)] have existed to such an extent that, unless regulated, the public offering of notes, bonds, debentures, evidences of indebtedness, and certificates of interest or participation therein, by the use of means and instruments of transportation and communication in interstate commerce and of the mails, is injurious to the capital markets, to investors, and to the general public; and it is declared to be the policy of this subchapter to meet the problems and eliminate the practices enumerated in this section, connected with such public offerings.

Succeeding sections provide for registration with the SEC of securities, with specified exemptions in section 304, and prohibit making use of any means or instrument of transportation or communication in interstate commerce or of the mails to sell unregistered securities (sec. 306).

U.S. Cotton Standards Act, 42 Stat. 1517 (1923), 7 U.S.C. § 51 et seq. (1958).

Section 11(b), 7 U.S.C. Section 62(b). [T]he word "commerce" means commerce between any State or the District of Columbia and any place outside thereof, or between points within the same State or the District of Columbia but through any place outside thereof, or within the District of Columbia.

Section 6(a), 7 U.S.C. section 56, authorizes the Secretary of Agriculture to establish standards for the reclassification of cotton and § 2, 7 U.S.C. section 52, makes it unlawful for anyone to use a different grade or class than that is established.

(a) in or in connection with any transaction or shipment in commerce or (b) in any publication of a price or quotation determined in or in connection with any transaction or shipment in commerce \* \* \*, or (c) in any classification for the purposes of or in connection with a transaction or shipment in commerce. \* \* \*

Section 7, 7 U.S.C. section 58. In order to carry out the provision of this chapter, the Secretary of Agriculture is authorized to cause the inspection, including the sampling of any cotton involved in any transaction or shipment in commerce, wherever such cotton may be found. \* \* \*

U.S. Grain Standard Act, 39 Stat. 482 (1916), as amended and 7 U.S.C. section 71 et seq. (1958).

Section 1, 7 U.S.C. section 72. [T]he words "in interstate or foreign commerce",

wherever used in this chapter mean "from any State, Territory, or District, to or through any other State, Territory, or District, or to or through any foreign country, or within any Territory or District."

Section 2, 7 U.S.C. section 74, authorizes the Secretary of Agriculture to fix and establish standards of quality and condition for enumerated grains.

Section 4, 7 U.S.C. section 76, provides, in part:

Whenever standards shall have been fixed and established under this chapter for any grain no person thereafter shall ship and deliver for shipment in interstate or foreign commerce any such grain which is sold, offered for sale, or consigned for sale by grade unless the grain shall have been inspected and graded by an inspector licensed under this chapter and the grade by which it is sold, offered for sale, or consigned for sale be one of the grades fixed therefor in the official grain standard of the United States.

Work Hours Act of 1962, Public Law 87-581, 76 Stat. 357 (1962).

No definition. Statutes seem to be based upon power of the United States to specify conditions upon its contracts.

#### NEW HORIZONS

Mr. PROUTY. What lies beyond the commerce clause approach?

I offered an amendment in committee which would have also called into play the 13th and 14th amendment foundations about which I have spoken today. By a vote of 10 to 7 the amendment was tabled. Some Members reserved the right to support it on the floor.

I have discussed that point with my distinguished friend the Senator from Massachusetts [Mr. SALTONSTALL].

I believe in these proposals because they are framed in history and human rights. I would like to take a moment to tell Senators about them.

When Dean Erwin Griswold, dean of the Harvard Law School, appeared before the committee, we discussed the citizenship clause of the 14th amendment and the 13th amendment as bases for a public accommodations bill. At the conclusion of his appearance, Dean Griswold, a profound legal scholar, indicated that he found much merit in these proposals.

My initial proposal in bill form left out the commerce clause. A subsequent proposal drafted as an amendment to the administration bill incorporated all three approaches.

The bill, S. 2037, first sought to abolish certain discrimination in the use of all truly public accommodations. The discrimination to be eliminated was that discrimination which is a vestige or historical outgrowth of the slavery sought to be abolished by the 13th amendment to the U.S. Constitution. This proposition clearly had the 13th amendment as its foundation and therefore was closely related to protection of the Negro in his use of the public accommodations.

Secondly, S. 2037 sought to prevent discrimination against a person seeking to exercise his human right to move freely from place to place, where such discrimination hindered him directly or indirectly in the exercise of this right. Clearly, when a traveler cannot find lodging or food for his family on the same basis as such accommodations are offered to other travelers of a different

color, the human right to move about is severely diminished.

Thirdly, S. 2037 sought to prohibit discrimination in the use of public accommodations which would deny or impair any right or incident of citizenship protected by the 14th amendment.

S. 2037 was direct. It sought to abolish the historical consequences of slavery and enable the son of the slave to attain the full stature of citizenship. The bill did not concern itself with commerce. A person seeking protection of the bill would not need to make a series of educated guesses about the establishment's relationship to interstate commerce. The bill applied to all public establishments.

Next, the bill called into play a heretofore little used provision of the 14th amendment, the 1st clause of the 1st section. In the light of the legislative history of the 14th amendment, I felt that this clause when read together with section 5 of the 14th amendment offered a foundation for a comprehensive public accommodations bill. The first clause 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.

The fifth section gave Congress the power to legislate to enforce the amendment.

Federal citizenship was made dominant over State citizenship, reversing the pre-Civil War status of citizenship. Congress acquired new obligations to persons born or naturalized within the jurisdiction of the United States.

To say that there are rights and duties flowing from the status of citizenship is to state the obvious. The rights to protection abroad and access to public office at home are rights flowing from citizenship. Military service and taxes are typical obligations. Since Federal citizenship is dominant, the Federal Government has the power to define and enumerate the rights inherent in such citizenship and protect those rights with direct and primary legislation. The power of definition and enumeration arises from and is limited by the Constitution.

What better reflects the serious moral problems embodied in our present domestic strife than these two amendments? What more could we ask for than to strike down the last vestiges of an evil we thought we had abolished 100 years ago? What higher goal could we have than to consecrate citizenship for peoples of all races, colors, religions, and national origins at this late date in our young country?

Finally, I ask my colleagues to consider in their deliberations on this measure the proposition that the issue before the Congress and the people is broader than the right of a dollar to pass from State to State; it is the right of a man to pass freely across a great nation regardless of his race, religion, or national origin.

The issue is broader than a diminishment in our gross national product; it is whether we will continue to permit a diminishment in the dignity and humanity of man by a new and sophisticated slavery.

Many weeks ago I wrote my individual views on S. 1732, the public accommodations bill. I prefaced my views with what I called the Declaration of Man:

Man is not an article of commerce. He was created by God in His image, and is like unto no other living thing on the face of the earth.

If man hunger and be given not to eat, if he thirst and be given not to drink, if he be weary and can find no resting place—let there be no sorrow for the losses at the counting house.

Let there be tears that the majesty of every human being is diminished.

Then shall we turn our eyes to the words in the Great Charter that speak, not of money, but of men.

May those who unlock the mystery of the law find again the ancient truth: that the toleration of evil and wrong is the denial of goodness and right.

For great is the dignity of man, and greater still the glory of God.

These few words in the Declaration of Man bring out most clearly why I believe primary reliance on the 13th and 14th amendments would be preferable to the use of the commerce clause in determining and protecting constitutional and moral rights.

Yet, nothing I have said has been meant to suggest that I shall oppose title II of the civil rights bill if it is not amended to conform to my thinking.

My personal predilections must be merged with the paramount issue of safeguarding human rights.

We know not how much time will elapse before final action will be taken on the civil rights bill, and we are all aware that during the course of debate many problems will go unattended. However, these sacrifices must be made in order to meet head on the most pressing domestic matters of this century.

Certainly moral issues are involved. Surely there are great constitutional questions to be considered. All of these are not to be dealt with lightly if we are to preserve our system of government.

I intend to support effective civil rights legislation, but I do not feel that the bill passed by the House of Representatives is ipso facto beyond improvement.

If the time should come when it would be appropriate to add perfecting amendments, whether to insure its passage or enable it to come to a vote, I would not hesitate to offer a substitute measure incorporating these additional constitutional foundations.

During the delivery of Mr. PROUTY'S speech,

Mr. COOPER. Mr. President, will the Senator from Vermont yield?

The PRESIDING OFFICER (Mr. WALTERS in the chair). Does the Senator from Vermont yield to the Senator from Kentucky?

Mr. PROUTY. I yield.

Mr. COOPER. First, I want to commend the Senator from Vermont for his very scholarly and learned presentation on the meaning of the 13th amendment and the 14th amendment, as applied to the present bill.

The commerce clause of the Constitution presented an adequate route by which the right of all citizens to occupy public accommodations can be secured.

I so believe because of the broad application of the commerce clause and the many holdings of the Supreme Court in construing Acts of Congress which, based on the commerce clause, have been found constitutional. However, I agree with the Senator from Vermont that if the right of all citizens to occupy public accommodations exists under the 13th and 14th amendments of the Constitution, as the Senator believes it does, that the commerce clause is a very inappropriate and limited alternative method for securing these rights for all the people.

Mr. PROUTY. I thank the Senator for his observation. I agree that action under the commerce clause would probably be held constitutional. But in the present instance we are dealing with human beings and their rights as citizens of a great nation. For that reason, while I shall support title II in its present form, if I have no alternative, I would certainly hope that we would base more of this legislation on the 13th and 14th amendments.

Mr. COOPER. I remember that the Senator from Vermont when he spoke before the Committee on Commerce, advocated that language should be included in the bill which would cause the bill to have as its constitutional foundation the 13th and 14th amendments. The Senator will remember that in May of last year before the administration made any recommendation, Senator DONN and I introduced a public accommodations bill which was based upon the 14th amendment.

Mr. PROUTY. Yes; I recall that.

Mr. COOPER. The bill was based upon explicit rights granted under the 14th amendment of the Constitution, and was not based upon the commerce clause of the Constitution as a matter of policy. I still hope that the language in the bill will ultimately be given its proper constitutional foundation. That can best be accomplished by basing the bill on the 14th amendment. We are dealing with the equal rights of citizens, and I dislike securing these rights based on the commerce clause.

Mr. PROUTY. I am very grateful to the Senator for his statement.

During the delivery of Mr. PROUTY'S speech,

Mr. SALTONSTALL. Mr. President, since the Senator has been interrupted, will he yield to me?

Mr. PROUTY. I yield.

Mr. SALTONSTALL. I appreciate the remarks of the Senator. I should like to join the Senator from Kentucky [Mr. COOPER] in his statement regarding the very learned and thoughtful speech on the subject of title II delivered by the Senator from Vermont. The Senator from Vermont has said that he will support that title, but he would support it more on the basis of rights granted under the 13th and 14th amendments than under the commerce clause.

Has the Senator available specific proposed language changes which would be necessary to bring the title within those amendments, or is it inherent in the argument which could be made in any court that the 13th and 14th amendments make clear the right?

Mr. PROUTY. I offered such an amendment to the bill which was reported by the Committee on Commerce. My amendment was tabled in the committee by a vote of 10 to 7, but several Senators who voted to table the amendment indicated they reserved the right to support it if offered as an amendment on the floor of the Senate.

Mr. SALTONSTALL. So the Senator believes that to carry out the realistic and thoughtful remarks that he has made on the general subject today, some amendment to the bill would be necessary, wise, or helpful?

Mr. PROUTY. I believe it would be most desirable.

Mr. SALTONSTALL. But not absolutely necessary.

Mr. PROUTY. I do not believe it would be necessary. I think we could rely on the commerce clause but, as I have said, we would be treating 20 million citizens of our country as chattels if we should take that approach and that approach alone.

Mr. SALTONSTALL. I believe that the Senator's speech is a very thoughtful one. I have listened to it with a great deal of interest.

Mr. PROUTY. I am grateful to my friend from Massachusetts.

During the delivery of Mr. PROUTY'S speech,

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

Mr. PROUTY. I am happy to yield.

Mr. JAVITS. I have listened with the deepest interest and the greatest respect to the Senator's most considerate and scholarly presentation on a critically important issue. The Senator speaks with real authority as a member of the committee which gave this particular title of the bill very thorough consideration. The Senator has spoken as a true American and in a very interesting way, and the statement has much Yankee horse-sense as well as scholarship.

I shall say a word about the question of amendments, but first let me refer to the recognition, which comes from deep within the Senator, of the moral nature of this issue, which, to my mind, is the finest expression which he could give to its importance to the country and to our own souls.

Incidentally, since the Senator from Vermont has invoked the names of so many of the greats in our own party, the finest expression of Republican philosophy is the constant theme which animated them, that is, the morality involved in this issue. I believe the Senator has demonstrated that same morality in his declaration that, if he has no other choice, and the title is not improved as he believes it should be, he will nonetheless support it.

On the question of amendment, there has been some doubt and deep concern as to whether we should seek to amend the bill, or, if it is sought to amend it, whether such amendments should not be fought off by those who are in support of the bill, on the ground that the bill would be jeopardized if it went to the other body with amendments.

I have not concluded my own view of that matter. I think it should be the

subject of bipartisan discussion and bipartisan consideration and decision, if at all possible.

Life being what it is, it is probably but a remote hope that there will not be some amendments to the bill. If there were to be some amendment of the bill, the next step would be to hope that those amendments would be of such a character as to be congenial to our colleagues in the other body, so that we would not face opposition from the proponents and friends of the bill in the other body.

Next, if amendments are offered, they should really be improvements.

Therefore, subject to decision of the whole policy question as to amendments, I for one will give the most considerate thought to any amendment relating to the constitutional premise of this title which the Senator from Vermont may present. Such consideration is richly deserved, both because of the lofty position he has taken and because of the broad attitude he has shown in the event that his views are not met. I think it behooves all of us to feel the same way. The Senator from Vermont has given us an object lesson in the kind of breadth of feeling which he has for the bill. It has been a privilege to listen to the Senator. I share his thoughts on this matter.

Mr. PROUTY. I am grateful to the Senator from New York. Both you and your junior colleague have been here day after day and hour after hour fighting for human rights. Your dedication and perseverance are a tribute to the Senate. I commend you both, and those associated with you in this fight.

Mr. JAVITS. I thank the Senator.

Mr. PROUTY. I am very grateful to my friend the Senator from Mississippi for having yielded me this time.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Mississippi [Mr. STENNIS] has the floor.

Mr. STENNIS. Mr. President, I ask unanimous consent that I may suggest the absence of a quorum without losing my rights to the floor, and that when a quorum is obtained, the Senator from Mississippi will be recognized.

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

Mr. STENNIS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk called the roll, and the following Senators answered to their names:

[No. 147 Leg.]		
Aiken	Hart	Monroney
Allott	Hickenlooper	Morse
Bayh	Humphrey	Morton
Bennett	Inouye	Moss
Boggs	Javits	Mundt
Brewster	Johnston	Muskie
Burdick	Jordan, Idaho	Nelson
Cannon	Keating	Pastore
Carlson	Kuchel	Pearson
Case	Lausche	Pell
Church	Long, Mo.	Prouty
Clark	Magnuson	Proxmire
Cooper	Mansfield	Ribicoff
Dirksen	McGee	Saltonstall
Dodd	McGovern	Scott
Dominick	McNamara	Simpson
Douglas	Metcalf	Smith
Fong	Miller	Sparkman

Stennis  
Symington

Walters  
Williams, N.J.

Williams, Del.  
Young, N. Dak.

The PRESIDING OFFICER. A quorum is present. The Senator from Mississippi [Mr. STENNIS] has the floor.

Mr. STENNIS. Mr. President, I ask unanimous consent that I may yield to the Senator from Delaware [Mr. BOGGS] for the presentation of a special matter; that he be permitted to yield to whom-ever he pleases; that this may be done without my losing my right to the floor; and that on the resumption of my remarks it may not count as an additional appearance on the bill.

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

Mr. BOGGS. I thank the Senator.

Mr. HUMPHREY. Mr. President, will the Senator from Delaware yield to me?

Mr. BOGGS. I yield.

ORDER FOR RECESS UNTIL 10 A.M. TOMORROW

Mr. HUMPHREY. Mr. President, I ask unanimous consent that when the Senate concludes its business today, Friday, it stand in recess until 10 a.m. tomorrow, Saturday.

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

#### DECISION OF SENATOR WILLIAMS OF DELAWARE TO SEEK REELECTION TO THE SENATE

Mr. BOGGS. Mr. President, I would like to take this opportunity to let the Senate and others know that my distinguished, and very able, senior colleague, Senator JOHN J. WILLIAMS, has indicated to the people of Delaware that he is willing to run for reelection.

This is very happy news to Delawareans and to the rest of the country as well.

Of course, Senator WILLIAMS very modestly said he would run "if the people want him." There is no doubt in my mind that the people of Delaware, Republicans and independent-minded voters alike, were tremendously pleased to learn that the Senator would be willing to run again. And I am sure he will be nominated by the Republican Party in view of his outstanding record of service to his State and to the Nation.

I have every confidence that, having answered the call to duty Senator WILLIAMS will be reelected and continue to make a great contribution to good government and our national well-being.

I personally am very happy because I consider it a privilege to serve with my senior colleague. We started out together in public life in the fall of 1946 and during these years my esteem for him and his dedicated efforts for good government has continuously grown.

His great value to his State and Nation is recognized far and wide, especially by those who know him best in his own State.

I would like at this time to read a brief editorial entitled "He'll Run," which ap-

pears in today's editions of the Wilmington Morning News:

JOHN WILLIAMS, whom the news magazines inevitably refer to as soft spoken, picked Georgetown for the whisper heard round the world: He'll run for the Senate again this fall if that's what his fellow Republicans want.

There has never been any doubt about what JOHN WILLIAMS' fellow Republicans want. But there has been some very genuine doubt—and deep concern—about JOHN WILLIAMS' intentions. Would he or wouldn't he? Nobody knew for sure, and in Delaware everybody's political plans seemed to hinge on the answer.

This was no hoked-up case of political coyness on JOHN WILLIAMS' part. After 17 years of assiduous attention to public affairs in the Senate, the temptation to return to private life was real and great.

In the end, JOHN WILLIAMS answered the call of public duty. It was the right decision and it signals the opening of what promises to be a whale of a political campaign in Delaware.

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

Mr. BOGGS. I am happy to yield.

Mr. JAVITS. I thank the Senator for yielding to me.

JOHN WILLIAMS will always answer the call of duty. I was eager to speak because, while he and I do not necessarily always agree on votes, as everyone knows, still, in the amalgam which makes our country we consider JOHN WILLIAMS to be an absolutely indispensable element. Knowing that as we do, I believe that would be one thing that would appeal to him the most.

As one colleague, I am delighted that we shall continue to have the benefit of his strong conscience and excellent, perceptive mind. He always amazes me, because although he is not a lawyer, he outdoes us all in that quarter.

I am confident that the people of Delaware will give him to the Nation again for 6 more years.

Mr. BOGGS. I thank the Senator from New York. I now yield to the distinguished Senator from Vermont.

Mr. AIKEN. I am sure we are all delighted to hear that Senator JOHN J. WILLIAMS will stand for reelection this fall. I am also sure that his decision will meet with the unanimous—or almost unanimous—approval of the Senate. He has performed service which has brought great credit to the Senate. This one-man police force has brought to this body credit which perhaps might not otherwise have been achieved in the same degree.

I heard someone say that the senior Senator from Delaware enforces more law than does the Justice Department. That may be a slight exaggeration, but he does something that I believe the Department of Justice does not do. He enforces the law on other Government agencies, also. So we are very happy.

It is my understanding that many a holding-company mother in this country has kept her corporate offspring in line merely by reminding them that if they do not behave, JOHN WILLIAMS will get them. That in itself is of great value to our competitive economy.

I am happy that the senior Senator from Delaware has decided to spend 6 more years in this body.

Mr. BOGGS. I thank the Senator from Vermont.

I am happy to yield to the senior Senator from Colorado.

Mr. ALLOTT. Mr. President, I am extremely happy to hear of this decision by Senator JOHN WILLIAMS. I know that after his long service in the Senate, a life of less pressure would be very appealing to him, and would be one that he would perhaps enjoy. On the other hand, he being the kind of person he is, I know that his service here is as much a part of his life as anything ever could be.

Many of us call him the "watchdog of the Treasury." I do not know of any appellation that could be more deserving to JOHN WILLIAMS than that. Whether we disagree or agree with him on a particular item, one thing is certain: Every Member of the Senate respects the strong, essential integrity which is JOHN WILLIAMS. I believe this is what we most admire.

We are happy to hear that the distinguished senior Senator from Delaware has again made a decision to run for public office.

Mr. BOGGS. I thank the Senator from Colorado.

I yield to the junior Senator from Iowa.

Mr. MILLER. Mr. President, this is good news. Not being from the State of Delaware, I would not attempt to set forth what I think are the views of the people of Delaware. I can only say that the people of the State of Iowa are familiar with the distinguished senior Senator from Delaware and his long and outstanding record of service in the U.S. Senate. They like what they know about him.

It was an inspiration for me to hear about Senator WILLIAMS several years ago, and it has been a privilege, since coming to the Senate, to have the opportunity to serve with him. I have found the expectations which I had built up over the years to be more than fulfilled since my service began.

Not long ago, one writer said that Senator WILLIAMS is possessed of a sharp mind, the floor of the Senate, and the CONGRESSIONAL RECORD, and that with these tools he can literally move mountains. I sincerely hope and trust that the people of the great State of Delaware will see, in their wisdom, the desirability of having Senator WILLIAMS elected for another 6-year term, so that he can continue to use these tools to move mountains and to make this country a better place in which to live.

Mr. BOGGS. I thank the Senator from Iowa. I now yield to the senior Senator from Iowa.

Mr. HICKENLOOPER. Mr. President, the announcement which we all received about the decision of Senator WILLIAMS to seek reelection stimulated us almost beyond description. JOHN WILLIAMS has been an inspiration to his friends and a scourge to his enemies. His enemies are not personal enemies, because no one could ever accuse JOHN WILLIAMS of being discourteous, unfriendly, or inconsiderate. While he has persistently and consistently, in a quiet

way uncovered misfeasance and malfeasance, he has done so with complete consideration for others. He has always given reasonable warning and reasonable opportunity in connection with any matters he has disclosed that are subject to sincere criticism, or even prosecution.

So the enemies of JOHN WILLIAMS are not personal enemies. His enemies are those who fear the flaming sword of political, economic, and monetary righteousness with which he attacks those who do not do exactly as they should in governmental responsibilities and otherwise.

It has been an inspiration and pleasure for me to serve with Senator WILLIAMS for the past three terms. I can truly say that none of my political inspiration has had the persistency, intelligence, determination, and morally fibrous honesty to hold political office and political responsibility as a public trust, not only in himself but in others, to any greater degree than that of JOHN WILLIAMS, if to as great a degree.

It is not a question of whether he is going to run on the Republican ticket or whether he is going to run on any other ticket in Delaware, as much as it is that JOHN WILLIAMS is offering himself as a servant of the American people and the American system of government, in the interest of the integrity that must accompany that system.

In my view, JOHN WILLIAMS should not be classified strictly as a partisan—although of course he is a partisan in some of his views and in his political candidacy. Instead, I stress the point that he is recognized and accepted by the American people, as regards his fulfillment of his duties and responsibilities in public office, as above and beyond all partisanship and as outstanding in his devotion to the fulfillment of the responsibility and the trust reposed in him as he performs his duties. It is that for which he is outstanding.

Therefore, Mr. President, at this time we express our thanks to the State of Delaware, which sends to the Congress this great servant, whose work is of outstanding value to the American people. All of us are thankful that he has announced his candidacy for reelection to the U.S. Senate. Regardless of the political situation in the State of Delaware, I am sure the people of that fine State will return JOHN WILLIAMS to the Senate, and will do so by an overwhelming majority, next November.

I thank the senior Senator from Delaware, JOHN J. WILLIAMS, for his decision to accept reelection.

Mr. KEATING. Mr. President—

Mr. BOGGS. I yield to the Senator from New Jersey.

Mr. KEATING. Mr. President, I wish to add my tribute to those offered to JOHN WILLIAMS. Not only is JOHN WILLIAMS a great Senator; he is also a great individual. He can properly be called—and, I believe, more than any other Member of this body—the conscience of the U.S. Senate.

A man of impeccable honesty and sincerity in both his private life and his public life, he is an enemy only of things which are bad in public life. He has

demonstrated uncanny ability to ferret out such situations, and to bring them to the attention of the country and all of us who serve here in the Senate.

It was not by accident, but as a tribute to this great man, that the American Political Science Association selected him as one of the two outstanding Senators serving in this body to receive that association's high honor.

Regardless of whether we find ourselves in agreement or disagreement with JOHN WILLIAMS with regard to any particular matter, he is always tolerant of the views of others as well as always firm in his own views.

Delaware has sent to the Senate one of its great men. JOHN WILLIAMS is one of the finest Senators in the history of that State.

Personally, I am delighted at his decision to seek reelection, and I am sure it will be brought about by the good people of Delaware.

Mr. BOGGS. I thank the Senator from New York.

Mr. YOUNG of North Dakota. Mr. President—

Mr. BOGGS. I yield to the senior Senator from North Dakota.

Mr. YOUNG of North Dakota. Mr. President, I am most happy that the senior Senator from Delaware has decided to seek reelection. I have no worries as to whether he will be reelected. I am sure he will be—and perhaps by the biggest majority ever.

In my estimation, JOHN WILLIAMS is one of the most valuable Members of the Senate who has served in this Body in my time. Certainly, no one has made a greater contribution to the ferreting out of dishonesty and corruption in Government than has the senior Senator from Delaware. He has always done this in a very fair way; he has never made a charge on the floor of the Senate against anyone until he was very sure of all the facts and that he was absolutely correct in his statement.

The amazing thing about Senator JOHN WILLIAMS of Delaware, is that he has been able to dig out all that information with probably the smallest staff had by any Member of the Senate. One would think he would have a staff of perhaps 40 or 50 persons, in order to be able to dig out all the information he has. But I believe I am quite correct when I say that all that work is done by Senator JOHN WILLIAMS himself and one staff member—an excellent one—Miss Eleanor Lenhart.

One of Senator JOHN WILLIAMS' outstanding characteristics is his refusal to make any distinction between Republicans and Democrats if a question of dishonesty is raised. Regardless of who may be involved, he will produce the facts, and rigorously pursue his exposure of graft and corruption. JOHN WILLIAMS is one of the most honorable and decent Senators I have ever served with.

Mr. BOGGS. I thank the Senator from North Dakota.

Mr. CASE. Mr. President—

Mr. BOGGS. I yield to the Senator from New Jersey.

Mr. CASE. Mr. President, as one of the neighbors of the Senator from Dela-

ware, I rise to express great happiness that Senator JOHN J. WILLIAMS will seek the nomination. I am sure he will receive it, and I am also sure he will be reelected to membership in the U.S. Senate.

Delaware is very much like the southern part of the State I have the honor to represent; and the long line of New Jersey which is just across the river from Delaware is populated by people who understand and know JOHN WILLIAMS almost as well as do the people of his own State, and I know they like him and respect him just as much—as we all do.

I can add, perhaps, only one little statement of fact to what has already been stated by other Senators; namely, that one is always very comfortable in dealing with Senator JOHN WILLIAMS, for one knows he will get straight and honest treatment. I remember very well that when the Du Pont case was in the courts and when it became necessary to consider whether the tax laws should be changed, in order to permit the entry of a decree which would effectively carry out the decision of the Court and at the same time not do harm to many thousands of persons, Senator JOHN WILLIAMS was not happy about the first proposal the company made; and he said so. It was only after changes to satisfy him had been made in the proposed new legislation, that he approved it. When he did, I, for one, was very comfortable in supporting it, because I knew that, despite the importance of the Du Pont Co. in his State—importance which I, perhaps better than most other people, realized, because that company has a large plant in my own State, just across the bridge—JOHN WILLIAMS was determined to do only what he believed right and good for the people of the country, as well as for the Du Pont Co.

It is because of the confidence that all of us have in him that his effectiveness is so great.

The thought that he will be with us for another 6 years—potentially, longer than any of the rest of us on this floor—will make it possible for all of us, when tonight we return to our homes, to sleep more soundly.

Mr. BOGGS. I thank the Senator from New Jersey.

Mr. MUNDT. Mr. President—

Mr. BOGGS. I yield to the senior Senator from South Dakota.

Mr. MUNDT. Mr. President, I am sure Americans generally will applaud the decision of Senator JOHN J. WILLIAMS to run for reelection to the U.S. Senate. I am convinced that they will do so with the same enthusiasm and the same non-partisan approval with which they applauded the earlier decision of his colleague in service on the Senate Finance Committee, and its chairman, Senator HARRY BYRD, of Virginia, again to seek reelection. These two Americans—the senior Senator from Virginia [Mr. BYRD] and the senior Senator from Delaware [Mr. WILLIAMS]—have been towers of strength, not only on the Senate Finance Committee, but also in the Senate generally. So I believe it is good for the country and for the Senate to know that, regardless of what else may happen next

November, the partisan balance between the two sides of the aisle here in the Senate will remain the same, insofar as HARRY BYRD and JOHN WILLIAMS are concerned, because I am confident they should be and will be reelected to the Senate.

JOHN WILLIAMS, more than any other Senator, has proved the validity of the old axiom that the pen is mightier than the sword. With his impatient pen, he penetratingly writes letters to governmental departments, congressional committees, and private institutions seeking information. Once having obtained the information, he puts it to the most diligent possible use.

I have been completely confident during the past 6 or 7 years of his career in the Senate that the savings which Senator WILLIAMS alone has effectuated by his presence, his letterwriting, his scrutiny, his great capacity with figures and in accountancy, and by improving efficiency and decreasing inefficiency and potential corruption, have been more than the combined salaries of all Senators for every year that he has served.

Senator WILLIAMS has been a great bargain for America by virtue of the fact that his special attention to the problems of efficiency, solvency, correctness in public service, and his passion for insisting that public service be a public trust in every area of the Government has improved the stature and status of the entire Government of the United States.

On occasion I have had the privilege of speaking to audiences in the great State of Delaware—some of them partisan, some nonpartisan—when I have found myself stumbling along and losing the attention of the audience. I knew I could always bring the audience to its feet with applause immediately by mentioning my friendship with their great Senator JOHN WILLIAMS. He is very properly admired and respected by the people, regardless of party, in the great State of Delaware. They understandably take pride in the fact that that small State has contributed a giant to the U.S. Senate. His private diligence has inspired a public conscience for America down through the years. It is good to know that we shall have the benefit of this "Delaware Diogenes" in the Senate for another full term.

Mr. BOGGS. I thank the Senator from South Dakota.

I yield to the very able Senator from Pennsylvania, who so ably represents Delaware's neighboring State.

Mr. SCOTT. Mr. President, I am highly pleased to know of the announcement by the distinguished senior Senator from Delaware [JOHN WILLIAMS], that he is available and prepared to serve the people of his State for another 6 years.

He has qualities which all of us admire. All the people of his State, regardless of their location or their situation, express the same sentiments regarding Senator WILLIAMS.

People may say, "I do not agree with my Senator on this issue, that, or the other, but I feel better because he is in the U.S. Senate.

Others, of course, are in entire agreement with Senator WILLIAMS and take their guidance from his views. But whether they agree or disagree, they unite on one thought, and that is that Delaware and the Senate are better off for the presence of a Senator who has won universal respect for himself, for his office, and for the Senate of the United States as well. They know he has spread a very desirable and sort of genteel terror among occupants of governmental agencies who may have felt that they were getting away with some easy evasions of the law, or who may have been guilty of a lack of sufficient respect for their obligations and their duties to preserve the taxpayers' money. There is more awareness when someone says, "JOHN WILLIAMS is coming," than perhaps there was even in Massachusetts when the word went out that Paul Revere was coming.

One of the earliest of Delaware's heroes was also a cavalryman—Caesar Rodney. His timely arrival saved the day for the Union. So the timely arrival of Senator WILLIAMS at times and on occasions when things need to be uncovered fearlessly and exposed without any consideration whatever of the party or status or power of the persons concerned has reminded us of another example of what Caesar Rodney means to Delaware and to the Union.

As Senator WILLIAMS and Senator BOGGS know, we in the Commonwealth of Pennsylvania customarily refer to Delaware as our "three lower counties," but I know that in Pennsylvania the words and the actions of Senator WILLIAMS are so often reported, and with approval, that he casts credit upon those of us who have the privilege of being associated with him. I must admit that in that sense JOHN WILLIAMS is the senior Senator from Delaware and, to a degree, represents the 67 upper counties of Delaware as well.

Mr. BOGGS. I thank the Senator. I yield now to the distinguished junior Senator from Kentucky [Mr. MORTON].

Mr. MORTON. Mr. President, I thank the junior Senator from Delaware. Probably I read the newscast indicating that the senior Senator from Delaware would again seek reelection with more happiness than any other Senator, for I have the extracurricular responsibility to try to produce more seats on the Republican side of the aisle.

Delaware was a State which was giving me some concern until Senator WILLIAMS made his statement. Now I can put that seat safely on the shelf, for, indeed, he will be returned.

Senators who have preceded me have given tribute to his great contributions to his country, to his State, and to the Senate. I shall not repeat them.

I should like to make one closing observation. I came to the Committee on Finance as a junior member and served my apprenticeship on that committee. I would still be junior if it were not for the very distinguished junior Senator from Illinois [Mr. DIRKSEN], my own leader, who happens to be junior to me on that committee. But never once was a decision made on that committee with respect to which the ranking Republican

member of the committee, Senator WILLIAMS, did not take all of us into his confidence, laying all the facts on the table, and never once has he tried to use his position of leadership in any way that any of us could have misunderstood. He has been very gracious. I consider him to be one of the great assets of our Nation.

As I said at the beginning, insofar as Delaware is concerned, I can relax. There are other States about which I can worry.

Mr. BOGGS. I thank the distinguished Senator.

Mr. President, I now yield to the distinguished senior Senator from Utah [Mr. BENNETT], who is also a distinguished member of the Committee on Finance.

Mr. BENNETT. Mr. President, for me, as for the Senator from Kentucky [Mr. MORTON], this is a very happy day. During the past dozen years I have been very fortunate to have served with JOHN WILLIAMS on the Finance Committee. During the past few years he has been the senior member of that committee from the Republican side of the aisle. Our friendship has grown and ripened as I have had the privilege of serving with him and under him. The thought of the Finance Committee without JOHN WILLIAMS was a rather bleak outlook for me and would have removed much of the satisfaction that I would have had in continuing my service on the committee, at least for the remainder of my service in the Senate.

But the news that Senator WILLIAMS and Senator BYRD of Virginia are going to stand for reelection and will be back in their old, accustomed places when the Senate meets again in January is most heartening.

As many of my colleagues have already said, JOHN WILLIAMS is more than a single Senator—he is an institution. He has been described as the Senate's conscience. I would describe him as the chicken farmer who never turns chicken, no matter what situation he faces.

From my observation, Senator WILLIAMS has had an almost unique ability to attract citizens from all parts of the United States who have had trouble with the Government which seems to grow out of personal corruption on the part of one of its employees. The people have learned that if they take their troubles to JOHN WILLIAMS, they had better be sure that the charge is basically true. They had better be able to support whatever charges are made. Once Senator WILLIAMS is convinced that they are right, in his quiet way he will go forward to see to it that the evil situation is remedied.

Many Senators can make more noise when we stand up than he does. It might be accurate to describe Senator WILLIAMS as the "still, small voice of the Senate," because he is effective regardless of the distance from his seat at which he can be heard. Fortunately, I sit next to him in the Senate, and I never miss a word.

Mr. President, in these days of lowered moral standards around the country, in these days when there is an unfortunate

but apparent willingness on the part of many of our fellow citizens to shrug evidences of corruption, we are fortunate to have in the Senate a man who has become the symbol of the Senate's essential integrity.

We are fortunate that for 6 years more, at least, the chickens in Delaware will have to get along as best they can, while the chickens in the Senate will have to come home to roost.

Mr. BOGGS. I thank the Senator from Utah.

Mr. President, I now yield to the Senator from Wyoming [Mr. SIMPSON].

Mr. SIMPSON. I thank the Senator from Delaware for yielding. He is also a friend of mine of long standing.

Mr. BOGGS. I thank the Senator.

Mr. SIMPSON. Mr. President, I would feel remiss if I did not say something with respect to the splendid gentleman who is the senior Senator from Delaware, because, in my short stay in the Senate, he has been helpful, gentle, and considerate of me as a newcomer, the same qualities which he has displayed toward all other Senators.

I was distressed, along with other Members on our side of the aisle, and I am sure many Members on the other side of the aisle, when news came that, in all probability, this distinguished gentleman would not be up for reelection. I sought to change his mind, as did thousands of others. I can now say we were successful in that effort, much to the credit of the Nation and the State of Delaware. Senator WILLIAMS has brought fame to the great State of Delaware.

I know Senator WILLIAMS is somewhat embarrassed while we heap upon him our tributes and accolades. He richly deserves all the tributes paid to him. We know of the contempt he has for sham, hypocrisy, and chicanery. He has evidenced that quality on the Senate floor and in his work on the Senate committees which he graces.

Out in wonderful Wyoming we have a saying:

Give us men to match our mountains;  
Give us men to match our plains;  
Men with new empires in their visions;  
And new eras in their brains.

JOHN WILLIAMS is that type of man. He is a great American who is revered in Wyoming and the West as a man of unimpeachable integrity. He not only is possessed of great intelligence, but of a delightful sense of humor—attributes which have endeared him to the hearts of the people of Delaware and the Nation.

The distinguished Senator from Delaware has served not only the people of his State but of the country as a great Senator of the United States.

Mr. BOGGS. I thank the distinguished Senator from Wyoming.

I yield now to the distinguished minority whip, the Senator from California [Mr. KUCHEL].

Mr. KUCHEL. Mr. President, the news which the Senator from Delaware has given to us has been greeted with great enthusiasm. The people of this country demand a clean, strong, honest American Government; and perhaps

more than most men or women in the public service, our colleague, JOHN WILLIAMS of Delaware, has sought constantly and vigorously to give them just that.

JOHN WILLIAMS believes that American Government is for the many, and not for the selfish few. That he has demonstrated again and again on this floor.

This watchdog, this voice of public conscience, this nemesis of evil, this courageous servant, has graced this Chamber for many years; and all of us, JOHN, look forward to the honor of welcoming you again next January for another 6 years of dedicated devotion to the cause of honest, decent, forward-looking Government in this country.

Mr. BOGGS. I thank the distinguished Senator.

I yield now to the distinguished senior Senator from Kansas [Mr. CARLSON].

Mr. CARLSON. Mr. President, when the news dispatches were carried in the press that the senior Senator from Delaware had agreed to serve his country for another 6 years, the news made headlines not only in the eastern newspapers, but in Kansas and the rest of the Middle West.

It would have been a tragic loss to the citizens of our Nation had Senator WILLIAMS not permitted his name to go before the electorate of Delaware for reelection to the U.S. Senate. Not only do the people hold him in high regard, but they recognize his outstanding service to this body and to the Nation.

It is my privilege to serve with Senator WILLIAMS on three committees, and to sit next to him on those three committees; namely, the Senate Finance Committee, the Senate Foreign Relations Committee, and the Joint Committee on Internal Revenue Taxation. I think I probably know more than most Senators do of the deep interest, profound knowledge, and great ability Senator WILLIAMS has displayed in dealing with the problems that come up for discussion in those committees.

His keen perception of the intricacies of tax legislation is of great value not only to the Finance Committee and the Congress, but to the Nation as a whole.

It is true that Senator WILLIAMS represents Delaware, one of the wealthy, influential States of this Nation; but it is also true that in the committee, where tax legislation is written, his interest is in the small taxpayer. That has been true time and time again. I could mention specific instances, which I shall not take the time of the Senate to do. I had the honor to be associated with him in writing the 1954 and the 1963 revenue legislation. On one matter we disagree, but we understand each other. I refer to the matter of the depletion allowance for gas and oil. I oppose his position in that matter, and he opposes mine, but we understand each other on this particular problem.

It is a great tribute to the Senate that Senator WILLIAMS is willing to consider continuing as the servant not only of the people of Delaware, but of the Nation.

I heartily endorse what several Senators have already said. I believe I am probably as close to Senator WILLIAMS

in committee service as any other Senator. He is truly the conscience of the Senate. He is truly the conscience of the Senate Finance Committee. Under the great leadership of the able Senator from Virginia [Mr. BYRD] and the ranking minority member of the committee from the State of Delaware, JOHN WILLIAMS, I can assure the citizens of this great Nation that their tax affairs are in good hands.

Mr. BOGGS. I thank the Senator. I am happy to yield to the distinguished and able junior Senator from Colorado.

Mr. DOMINICK. Mr. President, I thank the distinguished junior Senator from Delaware. I add my voice to the voices of numerous Senators who have already spoken. I note with interest that this deserved tribute to Senator WILLIAMS has come from Senators from California to Pennsylvania, and from Vermont to Utah, and all the States in between.

This is extremely important. It shows the wide scope of Senator WILLIAMS' service and regard. His ability and integrity have been commented on so completely that I need add nothing further in tribute to his qualities. I heartily second the comments of other Senators.

In addition to everything that has been said, Senator WILLIAMS is a warm, entertaining human being, who is a marvelous addition to the Senate of the United States.

I look forward to being in Delaware and speaking before the Republican State convention some time early in May, at which time perhaps I can make a better exposition to the people of Delaware concerning the great service Senator WILLIAMS has rendered to his country.

In the short 2 years that I have been in the Senate, I remember Senator WILLIAMS reporting on our loss of wheat, and our exports to Australia, creating a situation in which our whole foreign aid program was reinvestigated and changed. I remember that the Senator instigated the Bobby Baker investigation.

These two services were outstanding. There have been many others. I add my voice to the tributes which he has already received.

Mr. BOGGS. I thank the very able and distinguished Senator. We in Delaware are looking forward with great interest to the visit of the Senator.

I now yield to the distinguished, outstanding, and able junior Senator from Vermont.

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

Mr. BOGGS. I am happy to yield to the very able and distinguished Senator from our 50th State.

Mr. FONG. Mr. President, some time ago I discussed the question as to whether he would seek reelection to the Senate with the Senator from Delaware. The Senator informed me that he had not made up his mind. I thought to myself that if he chooses not to run he is deserving of the rest which that choice affords him, for the Senator, during his three terms in office, has already made a great contribution to the Senate and to the country.

I was very happy today to learn that he has now decided to seek reelection to the Senate. The Senator is a great asset to this Senate. He is indeed the conscience of the Senate. As the Senator is a large chicken raiser, I would like to allude to the story of Chicken Little. When someone threw some dirt on Chicken Little, Chicken Little ran around and cried, "The sky is falling down." The Senator from Delaware is certainly not a Chicken Little. He has been a tower of strength and courage in debates in the Senate and its committees.

No matter how difficult or confused the situation may be, or how strong the battle of words may rage against him, the Senator has always remained calm and collected, has stood his ground and given battle. The sky never falls on the Senator from Delaware. I have listened with much respect to many of his statements. He has one great characteristic, and that is his ability to ferret out the kernel, to ferret out the heart of a complicated problem.

I have sat here many times and listened to the Senator tell us what the real problem is in a confused situation. He is one of the most conscientious, one of the most able, and one of the most courageous and distinguished Senators in this assembly.

The people of Delaware should be complimented and congratulated for his fine decision to seek reelection. The people of our Nation should be complimented.

I know that they are very happy that he has decided to seek reelection.

I am a great admirer of his. His counsel has been of great value to me. He has given me advice on many occasions, for which I am very thankful.

I know the Senator from Delaware will be reelected. I extend to him this further wish: "May his blessings be as full, as the eastern ocean, and may his life be as everlasting as the southern hills."

Mr. PROUTY. Mr. President, the Senate stands to gain by the decision of the senior Senator from Delaware to place, as he always has, the public good above his personal desires.

His determination to seek reelection is something we had fervently hoped for yet not fully anticipated.

Across this broad land of ours no American more nearly symbolizes the spirit of integrity which all esteem and few ever wholly attain.

On behalf of millions of his fellow countrymen who look to JOHN WILLIAMS for guidance when public morals become lax and public virtue is lacking, I thank the senior Senator from Delaware for his wise and gracious decision.

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

Mr. BOGGS. I am happy to yield to the distinguished, able, friendly, and gracious minority leader, the senior Senator from Illinois.

Mr. DIRKSEN. Mr. President, on occasion the distinguished senior Senator from Delaware had contemplated retirement from public service. I share the sentiment and joyful feeling that has been expressed here today because, upon further consideration, he has decided to

seek reelection to the U.S. Senate for a fourth term. I am delighted and happy for many reasons. But my principal reason for being happy is that I believe, in terms of age, perhaps I can assume the condescension of the patriarch and say he is still in three-cornered pants, although I am afraid that would be rather extreme. The Congressional Directory indicates that the distinguished Senator from Delaware has achieved three-score years.

He has a talent and a gift. That talent should not be wasted. I do not know what he would do with himself if after three terms in the Senate, at age 60, he sought the blessings of retirement. After such an active life and the articulations of such a great talent, he might become lonely after he had left us.

In one of his letters to his young associate, Timothy, the Apostle Paul said:

Neglect not the gift that is in thee.

The distinguished Senator from Delaware has a gift. I do not want to see it neglected. I want to see it expressed to the fullest, and with all the vigor at his command. There still are so many years of fruitful service ahead that we do not merely congratulate him on seeking public office again. We congratulate ourselves that he does so, and that he can continue to do the task that he has been doing, and in which he has made a great name for himself.

I am glad for the country, and for the contribution that he will make, even as he has made it in the days gone by. I am glad for his State and his community. I am glad for his blessed spouse, Elsie Williams. She has so enshrined herself in the hearts of people in the Nation's Capital that if our distinguished Senator left, there would still be an additional void, because Elsie Williams would have also left.

But there is another reason. I am glad for his daughter and his three grandchildren. I am not sure how old they are. We have talked about grandchildren a good many times, because it is the habit of grandfathers to do so. I am sure, if they are old enough fully to understand, that they would place their seal of approval upon his decision and would say, "Grandpa, we are glad that you have decided to run for office again."

So, for the country, for the State, for his family, and for the people by and large, we shall have the benefit of that probing gift of his, which is a veritable gift of genius which brings truth to the surface. I believe it can be said that in the life of a legislator, when he has learned how to dig out the truth, even as a miner brings the riches of the earth to the surface, he has made a tremendous contribution to the country.

I am honored to serve with him on the committee in which tax legislation and other important matters are determined.

So we salute our friend on his decision to seek reelection. I believe the country will applaud his decision. I believe the citizens of Delaware will applaud it.

I can only hope, JOHN WILLIAMS, that as you are reelected to your fourth full

term in the Senate—not an inconsiderable achievement in itself—you will be back to give us the benefit of your wisdom, your prudence, your kindness, but, over and above anything else, your courage.

If it were given to me to rewrite the book "Profiles in Courage," I am sure that I would select you as one who deserved accolade.

So I shall be happy, God willing, to see you back here, even as you are here now.

Mr. JORDAN of Idaho. Mr. President, I wish to join my colleagues in expressing my genuine pleasure in Senator JOHN WILLIAMS' announcement that he will run for a fourth term in the U.S. Senate.

JOHN WILLIAMS exemplifies the kind of Senator I wish I might be. His 18 years of service have provided background in every phase of the Federal Establishment. His keen intellect probes the recesses of bureaucratic government where wrongdoing may escape the scrutiny of all others.

He is the soul of integrity. People trust him with implicit confidence that "Honest JOHN" will never fail to do the right thing. In him the Senate has a vigilant crusader for what is right in Government and I rejoice in his decision to run again.

Mr. SALTONSTALL. Mr. President, I wish to join with those of my colleagues this morning who congratulated the senior Senator from Delaware upon his decision to become a candidate for a fourth term.

As one who campaigned for the senior Senator from Delaware, I was impressed very early by his ability. I campaigned in Delaware for him before he was elected the first time. As a colleague of his for 18 years, I have watched his work with admiration. His courage and independence are outstanding. His conscientiousness to duty is superb. He is always on the job, and knows what the business of the Senate is at all times.

Delaware is fortunate in having him make this decision to continue for another term.

I sincerely hope that he will be elected next November for his fourth term.

Mr. COOPER. Mr. President, I am very happy that our colleague from Delaware, JOHN WILLIAMS, has decided to become again a candidate for the U.S. Senate. I have no doubt that the people of Delaware, conscious of his great contributions to the Nation and to Delaware, will elect Senator WILLIAMS to his fourth term.

JOHN WILLIAMS needs no tribute from any of us who serve with him. His integrity, fearlessness, attention to duty, and insistence on honor and honesty in public life are known to the people of the United States.

I had the honor of coming to the Senate of the United States in the same year, 1947, with Senator WILLIAMS—although I have not served continuously since that time. Of the 50 Republican Senators serving at that time, only Senators AIKEN, SALTONSTALL, HICKENLOOPER, YOUNG, and WILLIAMS have remained in the Senate, serving continuously. Sen-

ator WILLIAMS was the first Senator I met when I came to Washington, and I am glad that our friendship has remained firm throughout the years.

The Nation, as well as Delaware, should be proud that Senator JOHN WILLIAMS will continue to serve in the U.S. Senate.

Mr. BOGGS. Mr. President, under the circumstances, I feel it my privilege and duty and pleasure to yield to the distinguished senior Senator from Delaware.

Mr. WILLIAMS of Delaware. Mr. President, it has always been the custom in the Senate when one of its Members has passed away to take time to eulogize the memory of our departed friend.

Recognizing that tradition, I have been sitting here for the past hour, pinching myself to see whether I am here or whether I have passed on.

I say to each of my colleagues that I deeply appreciate all the kind remarks which have been made this afternoon. I would be less than honest if I did not recognize the fact that I am not worthy of all that has been said; but, nevertheless, I can assure Senators that everything that each of them has said will long be cherished and remembered.

None of us knows what lies ahead. To me, the question of whether I shall be reelected this year is only of secondary importance. I am not so conceited as to think that if I am not reelected someone else cannot take my place.

We have a great country, and it will move on. If I were to be granted one wish here today, it would not be for my reelection, but rather, that in the years to come, to my friends in the Senate, back home, and throughout the country I shall continue to try to be worthy of what has been said on the floor of the Senate today.

Mr. BOGGS. I thank my colleague. We extend to him our highest regards and best wishes.

I thank the gracious Senator from Mississippi [Mr. STENNIS] for yielding the floor to us for this purpose.

Mr. STENNIS. It was a privilege to do so, especially under the circumstances.

I ask unanimous consent that, without losing the floor, and without the resumption of my remarks counting as an additional appearance, I may yield to the Senator from Utah.

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

Mr. BENNETT. Mr. President, I appreciate the courtesy of the Senator from Mississippi. I ask unanimous consent, under the same circumstances, that I may yield briefly to the Senator from Missouri.

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

#### MAIL SURVEILLANCE

Mr. LONG of Missouri. Mr. President, on March 11 I introduced S. 2627 to prohibit the use of "mail covers." A mail cover is a surveillance technique in which the Post Office systematically records the name and address of the

sender, the place and date of postmarking, the class of mail and any other exterior data on all mail going to a particular addressee or address. The purpose of a mail cover is, of course, to determine who is corresponding with the person or persons covered. It is a clear-cut example of the Government attempting to ascertain information which is none of its business.

Like wiretapping, it is an interference with free and unhampered communication. It thereby infringes on the rights of free speech and free association as guaranteed by the first amendment. But beyond this, it interferes with the addressee's right of privacy—his right as against the Government to be left alone. This right is probably the most basic one in our free society. It was this right that James Otis so eloquently defended in a Boston court in 1761. It has been said the child "Independence" was born there and then in that Boston courtroom.

It is impossible to discuss the right of privacy without turning to the words of the Supreme Court in the Boyd case decided in 1886. The Court after referring to Lord Camden's opinion in Entick against Carrington said:

The principles laid down in this opinion affect the very essence of constitutional liberty and security. They reach farther than the concrete form of the case then before the court, with its adventitious circumstances; they apply to all invasions on the part of the Government and its employees of the sanctity of a man's home and the privacies of life. It is not the breaking of his doors, and the rummaging of his drawers, that constitutes the essence of the offense; but it is the invasion of his indefeasible right of personal security, personal liberty, and private property, where that right has never been forfeited by his conviction of some public offense—it is the invasion of this sacred right which underlies and constitutes the essence of Lord Camden's judgment.

Similarly, one must also turn to the words of Justice Brandeis in his famous Olmstead dissent. This dissenting opinion is a masterful discussion of the right of privacy. Justice Brandeis said in part:

The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings and of his intellect. They knew that only a part of the pain, pleasure, and satisfactions of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions, and their sensations. They conferred, as against the Government, the right to be left alone—the most comprehensive of rights and the right most valued by civilized men. To protect that right, every unjustifiable intrusion by the Government upon the privacy of the individual, whatever the means employed, must be deemed a violation of the fourth amendment.

The Justice sounded a warning with these words:

Experience should teach us to be most on our guard to protect liberty when the Government's purposes are beneficent. Men born to freedom are naturally alert to repel invasion of their liberty by evil-minded rulers. The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning, but without understanding.

Mr. President, this entire opinion is so relevant to the issue of mail covers, I ask unanimous consent it be printed at the end of my statement.

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

(See exhibit 1.)

Mr. LONG of Missouri. Mr. President, mail covers are destructive of the fiber of our free society. It is my hope that the Senate Committee on Post Office and Civil Service will be able to schedule hearings in the near future on the bill I have introduced. I am confident that the Post Office Department, the Justice Department, the Internal Revenue Service, and others can shed a great deal of light on this issue. One point I have learned in the last few years in my study of surreptitious police techniques is that only a minute portion of the instances when such techniques are used come to light. The vast bulk of mail covers go on and come off without the victims learning of their existence. The vast bulk of wiretaps go on and come off without the victims learning of their existence. Therefore, hearings should be most enlightening, for the light of public knowledge would be focused on the practice. There is no doubt in my mind that once the full facts are known the Congress and the people of our Nation will demand this tampering with the mail cease. The Post Office Department's responsibility is to receive and deliver mail. It has no authority to spy on a patron for its own benefit or for the benefit of another Government agency. If postal laws are being violated, there are lawful procedures which can be used to apprehend the violator and bring him to justice.

Mr. President, a number of editorials on the subject published by some of our Nation's leading newspapers have come to my attention since I introduced S. 2627. I ask unanimous consent they be printed at this point in the RECORD.

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

(See exhibit 2.)

#### EXHIBIT 1

##### DISSENTING OPINION OF MR. JUSTICE BRANDEIS ON WIRETAPPING

The defendants were convicted of conspiring to violate the National Prohibition Act. Before any of the persons now charged had been arrested or indicted, the telephones by means of which they habitually communicated with one another and with others had been tapped by Federal officers. To this end, a lineman of long experience in wiretapping was employed, on behalf of the Government and at its expense. He tapped eight telephones, some in the homes of the persons charged, some in their offices. Acting on behalf of the Government and in their official capacity, at least six other prohibition agents listened over the tapped wires and reported the messages taken. Their operations extended over a period of nearly 5 months. The typewritten record of the notes of conversations overheard occupies 775 typewritten pages. By objections seasonably made and persistently renewed, the defendants objected to the admission of the evidence obtained by wiretapping, on the ground that the Government's wiretapping constituted an unreasonable search and seizure, in violation of the fourth amendment; and that the use as evidence of the conversations overheard compelled the

defendants to be witnesses against themselves, in violation of the fifth amendment.

The Government makes no attempt to defend the methods employed by its officers. Indeed, it concedes that if wiretapping can be deemed a search and seizure within the fourth amendment, such wiretapping as was practiced in the case at bar was an unreasonable search and seizure, and that the evidence thus obtained was inadmissible. But it relies on the language of the amendment; and it claims that the protection given thereby cannot properly be held to include a telephone conversation.

"We must never forget," said Mr. Chief Justice Marshall in *McCulloch v. Maryland*, 4 Wheat. 316, 407, "that it is a constitution we are expounding." Since then, this Court has repeatedly sustained the exercises of power by Congress, under various clauses of that instrument, over objects of which the Fathers could not have dreamed. See *Pensacola Telegraph Co. v. Western Union Telegraph Co.*, 96 U.S. 1, 9; *North Pacific Ry. Co. v. North Dakota*, 250 U.S. 135; *Dakota Central Telephone Co. v. South Dakota*, 250 U.S. 163; *Brooks v. United States*, 267 U.S. 432. We have likewise held that general limitations on the powers of Government, like those embodied in the due process clauses of the fifth and fourteenth amendments, do not forbid the United States or the States from meeting modern conditions by regulations which "a century ago, or even half a century ago, probably would have been rejected as arbitrary and oppressive." *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 387; *Buck v. Bell*, 274 U.S. 200. Clauses guaranteeing to the individual protection against specific abuses of power, must have a similar capacity of adaptation to a changing world. It was with reference to such a clause that this Court said in *Weems v. United States*, 217 U.S. 349, 373: "Legislation, both statutory and constitutional, is enacted, it is true, from an experience of evils, but its general language should not therefore, be necessarily confined to the form that evil had theretofore taken. Time works changes, brings into existence new conditions and purposes. Therefore a principle to be vital must be capable of wider application than the mischief which gave it birth. This is peculiarly true of constitution. They are not ephemeral enactments, designed to meet passing occasions. They are, to use the words of Chief Justice Marshall 'designed to approach immortality as nearly as human institutions can approach it.' The future is their care and provision for events of good and bad tendencies of which no prophecy can be made. In the application of a constitution, therefore our contemplation cannot be only of what has been but of what may be. Under any other rule a constitution would indeed be as easy of application as it would be deficient in efficacy and power. Its general principles would have little value and be converted by precedent into important and lifeless formulas. Rights declared in words might be lost in reality."

When the fourth and fifth amendments were adopted, "the form that evil had theretofore taken," had been necessarily simple. Force and violence were then the only means known to man by which a Government could directly effect self-incrimination. It could compel the individual to testify—a compulsion effected, if need be, by torture. It could secure possession of his papers and other articles incident to his private life—a seizure effected, if need be, by breaking and entry. Protection against such invasion of "the sanctities of a man's home and the privacies of life" was provided in the fourth and fifth amendments by specific language. *Boyd v. United States*, 116 U.S. 616, 630. But "time works changes, brings into existence new conditions and purposes." Subtler and more far-reaching means of invading privacy have become available to the Government. Dis-

covery and invention have made it possible for the Government by means far more effective than stretching upon the rack, to obtain disclosure in court of what is whispered in the closet.

Moreover, "in the application of a constitution, our contemplation cannot be only of what has been but of what may be." The progress of science in furnishing the Government with means of espionage is not likely to stop with wiretapping. Ways may some day be developed by which the Government, without removing papers from secret drawers, can reproduce them in court, and by which it will be enabled to expose to a jury the most intimate occurrences of the home. Advances in the psychic and related sciences may bring means of exploring unexpressed beliefs, thoughts and emotions. "That places the liberty of every man in the hands of every petty officer" was said by James Otis of much lesser intrusions than these.<sup>1</sup> To Lord Camden, a far slighter intrusion seemed "subversive of all the comforts of society."<sup>2</sup> Can it be that the Constitution affords no protection against such invasions of individual security?

A sufficient answer is found in *Boyd v. United States*, 116 U.S. 616, 627-630, a case that will be remembered as long as civil liberty lives in the United States. This Court there reviewed the history that lay behind the fourth and fifth amendments. We said with reference to Lord Camden's judgment in *Entick v. Carrington*, 19 Howell's State Trials, 1030: "The principles laid down in this opinion affect the very essence of constitutional liberty and security. They reach farther than the concrete form of the case there before the court, with its adventitious circumstances; they apply to all invasions on the part of the Government and its employes of the sanctities of a man's home and the privacies of life. It is not the breaking of his doors, and the rummaging of his drawers, that constitutes the essence of the offense; but it is the invasion of his indefeasible right of personal security, personal liberty and private property, where that right has never been forfeited by his conviction of some public offence,—it is the invasion of this sacred right which underlies and constitutes the essence of Lord Camden's judgment. Breaking into a house and opening boxes and drawers are circumstances of aggravation; but any forcible and compulsory extortion of a man's own testimony or of his private papers to be used as evidence of a crime or to forfeit his goods, is within the condemnation of that judgment. In this regard the fourth and fifth amendments run almost into each other."<sup>3</sup>

In *Ex parte Jackson*, 96 U.S. 727, it was held that a sealed letter entrusted to the mail is

<sup>1</sup> Otis' Argument against Writs of Assistance. See Tudor, James Otis, p. 66; John Adams Works, Vol. II, p. 524; Minot, Continuation of the History of Massachusetts Bay, Vol. II, p. 95.

<sup>2</sup> *Entick v. Carrington*, 19 Howell's State Trials, 1030, 1066.

<sup>3</sup> In *Interstate Commerce Commission v. Brimson*, 154 U.S. 447, 479, the statement made in the *Boyd* case was repeated; and the Court quoted the statement of Mr. Justice Field in *In re Pacific Railway Commission*, 32 Fed. 241, 250: "Of all the rights of the citizen, few are of greater importance or more essential to his peace and happiness than the right of personal security, and that involves, not merely protection of his person from assault, but exemption of his private affairs, books, and papers, from the inspection and scrutiny of others. Without the enjoyment of this right, all others would lose half their value." The *Boyd* case has been recently reaffirmed in *Silverthorne Lumber Co. v. United States*, 251 U.S. 385, in *Gould v. United States*, 225 U.S. 298, and in *Byars v. United States*, 273 U.S. 28.

protected by the amendments. The mail is a public service furnished by the Government. The telephone is a public service furnished by its authority. There is, in essence, no difference between the sealed letter and the private telephone message. As Judge Rudkin said below: "True the one is visible, the other invisible; the one is tangible, the other intangible; the one is sealed and the other unsealed, but these are distinctions without a difference." The evil incident to invasion of the privacy of the telephone is far greater than that involved in tampering with the mails. Whenever a telephone line is tapped, the privacy of the persons at both ends of the line is invaded and all conversations between them upon any subject, and although proper, confidential and privileged, may be overheard. Moreover, the tapping of one man's telephone line involves the tapping of the telephone of every other person whom he may call or who may call him. As a means of espionage writs of assistance and general warrants are but puny instruments of tyranny and oppression when compared with wiretapping.

Time and again, this Court in giving effect to the principle underlying the fourth amendment, has refused to place an unduly literal construction upon it. This was notably illustrated in the *Boyd* case itself. Taking language in its ordinary meaning, there is no "search" or "seizure" when a defendant is required to produce a document in the orderly process of a court's procedure. "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures," would not be violated, under any ordinary construction of language, by compelling obedience to a subpoena. But this Court holds the evidence inadmissible simply because the information leading to the issue of the subpoena has been unlawfully secured. *Silverthorne Lumber Co. v. United States*, 251 U.S. 385. Literally, there is no "search" or "seizure" when a friendly visitor abstracts papers from an office; yet we held in *Gouled v. United States*, 255 U.S. 298, that evidence so obtained could not be used. No court which looked at the words of the amendment rather than at its underlying purpose would hold, as this Court did in *Ex parte Jackson*, 96 U.S. 727, 733, that its protection extended to letters in the mails. The provision against self-incrimination in the fifth amendment has been given an equally broad construction. The language is: "No person \* \* \* shall be compelled in any criminal case to be a witness against himself." Yet we have held, not only that the protection of the amendment extends to a witness before a grand jury, although he has not been charged with crime, *Counselman v. Hitchcock*, 142 U.S. 547, 562, 586, but that: "It applies alike to civil and criminal proceedings, wherever the answer might tend to subject to criminal responsibility him who gives it. The privilege protects a mere witness as fully as it does one who is also a party defendant." *McCarthy v. Arndstein*, 266 U.S. 34, 40. The narrow language of the amendment has been consistently construed in the light of its object, "to insure that a person should not be compelled, when acting as a witness in any investigation, to give testimony which might tend to show that he himself had committed a crime. The privilege is limited to criminal matters, but it is as broad as the mischief against which it seeks to guard." *Counselman v. Hitchcock*, *supra*, page 562.

Decisions of this Court applying the principle of the *Boyd* case have settled these things. Unjustified search and seizure violates the Fourth Amendment, whatever the character of the paper; whether the paper

when taken by the federal officer was in the home,<sup>5</sup> in an office<sup>6</sup> or elsewhere;<sup>7</sup> whether the taking was effected by force,<sup>8</sup> by fraud,<sup>9</sup> or in the orderly process of a court's procedure.<sup>10</sup> From these decisions, it follows necessarily that the amendment is violated by the officer's reading the paper without a physical seizure, without his even touching it; and that use, in any criminal proceeding, of the contents of the paper so examined—as where they are testified to by a federal officer who thus saw the document or where, through knowledge so obtained, a copy has been procured elsewhere<sup>11</sup>—any such use constitutes a violation of the fifth amendment.

The protection guaranteed by the Amendments is much broader in scope. The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings and of his intellect. They knew that only a part of the pain, pleasure and satisfactions of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the Government, the right to be let alone—the most comprehensive of rights and the right most valued by civilized men. To protect that right, every unjustifiable intrusion by the Government upon the privacy of the individual, whatever the means employed, must be deemed a violation of the fourth amendment. And the use, as evidence in a criminal proceeding, of facts ascertained by such intrusion must be deemed a violation of the fifth.

Applying to the fourth and fifth amendments the established rule of construction, the defendants' objections to the evidence obtained by wire-tapping must, in my opinion, be sustained. It is, of course, immaterial where the physical connection with the telephone wires leading into the defendants' premises was made. And it also immaterial that the intrusion was in aid of law enforcement. Experience should teach us to be most on our guard to protect liberty when the Government's purposes are beneficent. Men born to freedom are naturally alert to repel invasion of their liberty by evil-minded rulers. The greatest dangers to liberty lurk in

insidious encroachment by men of zeal, well-meaning but without understanding.<sup>12</sup>

Independently of the constitutional question, I am of opinion that the judgment should be reversed. By the laws of Washington, wire-tapping is a crime.<sup>13</sup> Pierce's Code,

<sup>12</sup> The point is thus stated by counsel for the telephone companies, who have filed a brief as *amici curiae*: "Criminals will not escape detection and conviction merely because evidence obtained by tapping wires of a public telephone system is inadmissible, if it should be so held; but in any event, it is better that a few criminals escape than that the privacies of life of all the people be exposed to the agents of the government, who will act at their own discretion, the honest and the dishonest, unauthorized and unrestrained by the courts. Legislation making wiretapping a crime will not suffice if the courts nevertheless hold the evidence to be lawful."

<sup>13</sup> In the following states it is a criminal offense to intercept a message sent by telegraph and/or telephone: Alabama, Code, 1923, § 5256; Arizona, Revised Statutes, 1913, Penal Code, § 692; Arkansas, Crawford & Moses Digest, 1921, § 10246; California, Deering's Penal Code, 1927, § 640; Colorado, Compiled Laws, 1921, § 6969; Connecticut, General Statutes, 1918, § 6292; Idaho, Compiled Statutes, 1919, §§ 8574, 8586; Illinois, Revised Statutes, 1927, c. 134, § 21; Iowa, Code, 1927, § 13121; Kansas, Revised Statutes, 1923, c. 17, § 1908; Michigan, Compiled Laws, 1915, § 15403; Montana, Penal Code, 1921, § 11518; Nebraska, Compiled Statutes, 1922, § 7115; Nevada, Revised Laws, 1912, §§ 4608, 6572 (18); New York, Consolidated Laws, c. 40, § 1423 (6); North Dakota, Compiled Laws, 1913, § 10231; Ohio, Page's General Code, 1926, § 13402; Oklahoma, Session Laws, 1923, c. 46; Oregon, Olson's Laws, 1920, § 2265; South Dakota, Revised Code, 1919, § 4312; Tennessee, Shannon's Code, 1919, §§ 1839, 1840; Utah, Compiled Laws, 1917, § 8433; Virginia, Code, 1924, § 4477 (2), (3); Washington, Pierce's Code, 1921, § 8976 (18); Wisconsin, Statutes, 1927, § 348.37; Wyoming, Compiled Statutes, 1920, § 7148. Compare *State v. Behringer*, 19 Ariz. 502; *State v. Nordskog*, 76 Wash. 472.

In the following states it is a criminal offense for a company engaged in the transmission of messages by telegraph and/or telephone, or its employees, or, in many instances, persons conniving with them, to disclose or to assist in the disclosure of any message: Alabama Code, 1923, §§ 5543, 5545; Arizona, Revised Statutes, 1913, Penal Code, §§ 621, 623, 691; Arkansas, Crawford & Moses Digest, 1921, § 10250; California, Deering's Penal Code, 1927, §§ 619, 621, 639, 641; Colorado, Compiled Laws, 1921, §§ 6966, 6968, 6970; Connecticut, General Statutes, 1918, § 6292; Florida, Revised General Statutes, 1920, §§ 5754, 5755; Idaho, Compiled Statutes, 1919, §§ 8568, 8570; Illinois, Revised Statutes, 1927, c. 134, §§ 7, 7a; Indiana, Burns' Revised Statutes, 1926, § 2862; Iowa, Code, 1924, § 8305; Louisiana, Acts, 1918, c. 134 p. 228; Maine, Revised Statutes, 1916, c. 60, § 24; Maryland, Bagby's Code, 1926, § 489; Michigan, Compiled Statutes, 1915, § 15104; Minnesota, General Statutes, 1923, §§ 10423, 10424; Mississippi, Hemingway's Code, 1927, § 1174; Missouri, Revised Statutes, 1919, § 3605; Montana, Penal Code, 1921, § 11494; Nebraska, Compiled Statutes, 1922, § 7088; Nevada, Revised Laws, 1912, §§ 4603, 4605, 4609, 4631; New Jersey, Compiled Statutes, 1910, p. 5319; New York, Consolidated Laws, c. 40, §§ 552, 553; North Carolina, Consolidated Statutes, 1919, §§ 4497, 4498, 4499; North Dakota, Compiled Laws, 1913, § 10078; Ohio, Page's General Code, 1926, §§ 13388, 13419; Oklahoma, Session Laws, 1923, c. 46; Oregon, Olson's Laws, 1920, §§ 2260, 2262, 2266; Pennsylvania, Statutes, 1920, §§ 6306, 6308, 6309; Rhode

<sup>5</sup> *Weeks v. United States*, 232 U.S. 383; *Amos v. United States*, 255 U.S. 313; *Agnello v. United States*, 269 U.S. 20; *Byars v. United States*, 273 U.S. 28.

<sup>6</sup> *Boyd v. United States*, 116 U.S. 616; *Hale v. Henkel*, 201 U.S. 43, 70; *Silverthorne Lumber Co. v. United States*, 251 U.S. 385; *Gouled v. United States*, 255 U.S. 298; *Marron v. United States*, 275 U.S. 192.

<sup>7</sup> *Ex parte Jackson*, 96 U.S. 727, 733; *Carroll v. United States*, 267 U.S. 132, 156; *Gambino v. United States*, 275 U.S. 310.

<sup>8</sup> *Weeks v. United States*, 232 U.S. 383; *Silverthorne Lumber Co. v. United States*, 251 U.S. 385; *Amos v. United States*, 255 U.S. 313; *Carroll v. United States*, 267 U.S. 132, 156; *Agnello v. United States*, 269 U.S. 20; *Gambino v. United States*, 275 U.S. 310.

<sup>9</sup> *Gouled v. United States*, 255 U.S. 298.

<sup>10</sup> *Boyd v. United States*, 116 U.S. 616; *Hale v. Henkel*, 201 U.S. 43, 70. See *Gouled v. United States*, 255 U.S. 298; *Byars v. United States*, 273 U.S. 28; *Marron v. United States*, 275 U.S. 192.

<sup>11</sup> *Silverthorne Lumber Co. v. United States*, 251 U.S. 385. Compare *Gouled v. United States*, 255 U.S. 298, 307. In *Stroud v. United States*, 251 U.S. 15, and *Hester v. United States*, 265 U.S. 57, the letter and articles admitted were not obtained by unlawful search and seizure. They were voluntary disclosures by the defendant. Compare *Smith v. United States*, 2 F. (2d) 715; *United States v. Lee*, 274 U.S. 559.

<sup>12</sup> *Gouled v. United States*, 255 U.S. 298.

1921, § 8976 (18). To prove its case, the Government was obliged to lay bare the crimes committed by its officers on its behalf. A federal court should not permit such a prosecution to continue. Compare *Harkin v. Brundage*, 276 U.S. 36, *id.* 604.

The Alaskan Penal Code, act of March 3, 1899, c. 429, 30 Stat. 1253, 1278, provides that "if any officer, agent, operator, clerk, or employee of any telegraph company, or any other persons, shall willfully divulge to any other person than the party from whom the same was received, or to whom the same was addressed, or his agent or attorney, any message received or sent, or intended to be sent, over any telegraph line, or the contents, substance, purport, effect, or meaning of such message, or any part thereof \* \* \* the person so offending shall be deemed guilty of a misdemeanor, and shall be punished by a fine not to exceed one thousand dollars or imprisonment not to exceed one year, or by both such fine and imprisonment, in the discretion of the court."

The act of October 29, 1918, c. 197, 40 Stat. 1017, provided: "That whoever during the period of governmental operation of the telephone and telegraph systems of the United States \* \* \* shall, without authority and without the knowledge and consent of the other users thereof, except as may be necessary for operation of the service, tap any telegraph or telephone line, or willfully interfere with the operation of such telephone or telegraph systems or with the transmission of any telephone or telegraph message, or with the delivery of any such message, or whoever being employed in any such telephone or telegraph service shall divulge the contents of any such telephone or telegraph message to any person not duly authorized to receive the same, shall be fined not exceeding \$1,000 or imprisoned for not more than one year, or both."

The Radio Act, February 23, 1927, c. 169, § 27, 44 Stat. 1162, 1172, provides that "no person not being authorized by the sender shall intercept any message and divulge or publish the contents, substance, purport, effect, or meaning of such intercepted message to any person."

The situation in the case at bar differs widely from that presented in *Burdeau v. McDowell*, 256 U.S. 465. There, only a single lot of papers was involved. They had been obtained by a private detective while acting on behalf of a private party; without the knowledge of any federal official; long before anyone had thought of instituting a federal prosecution. Here, the evidence obtained by crime was obtained at the Government's expense, by its officers, while acting on its behalf; the officers who committed these crimes are the same officers who were charged with the enforcement of the Prohibition Act; the crimes of these officers were committed for the purpose of securing evidence with which to obtain an indictment and to secure a conviction. The evidence so obtained constitutes the warp and woof of the Government's case. The aggregate of the Government evidence occupies 306 pages of the printed record. More than 210 of them are filled by recitals of the details of the wire-tapping and of facts ascertained thereby.<sup>14</sup> There is literally no other evidence of guilt on the part of some of the defendants except that illegally obtained by these officers. As

Island, General Laws, 1923, § 6104; South Dakota, Revised Code, 1919, §§ 4346, 9801; Tennessee, Shannon's Code, 1919, §§ 1837, 1838; Utah, Compiled Laws, 1917, §§ 8403, 8405, 8434; Washington, Pierce's Code, 1921, §§ 8982, 8983; Wisconsin, Statutes, 1927, § 348.36.

<sup>14</sup> The above figures relate to Case No. 493. In Nos. 532-533, the Government evidence fills 278 pages, of which 140 are recitals of the evidence obtained by wire-tapping.

to nearly all the defendants (except those who admitted guilt), the evidence relied upon to secure a conviction consisted mainly of that which these officers had so obtained by violating the state law.

As Judge Rudkin said below: "Here we are concerned with neither eavesdroppers nor thieves. Nor are we concerned with the acts of private individuals. \* \* \* We are concerned only with the acts of federal agents whose powers are limited and controlled by the Constitution of the United States." The Eighteenth Amendment has not in terms empowered Congress to authorize anyone to violate the criminal laws of a State. And Congress has never purported to do so. Compare *Maryland v. Soper*, 270 U.S. 9. The terms of appointment of federal prohibition agents do not purport to confer upon them authority to violate any criminal law. Their superior officer, the Secretary of the Treasury, has not instructed them to commit crime on behalf of the United States. It may be assumed that the Attorney General of the United States did not give any such instruction.<sup>15</sup>

When these unlawful acts were committed, they were crimes only of the officers individually. The Government was innocent, in legal contemplation; for no federal official is authorized to commit a crime on its behalf. When the Government, having full knowledge, sought, through the Department of Justice, to avail itself of the fruits of these acts in order to accomplish its own ends, it assumed moral responsibility for the officers' crimes. Compare *The Pauquete Habana*, 189 U.S. 453, 465; *O'Reilly deCamara v. Brooke*, 209 U.S. 45, 52; *Dodge v. United States*, 272 U.S. 530, 532; *Gambino v. United States*, 275 U.S. 310. And if this Court should permit the Government, by means of its officers' crimes, to effect its purpose of punishing the defendants, there would seem to be present all the elements of a ratification. If so, the Government itself would become a lawbreaker.

Will this Court by sustaining the judgment below sanction such conduct on the part of the Executive? The governing principle has long been settled. It is that a court will not redress a wrong when he who invokes its aid has unclean hands.<sup>16</sup> The maxim of unclean hands comes from courts of equity.<sup>17</sup> But the principle prevails also in courts of law. Its common application is

<sup>15</sup> According to the Government's brief, p. 41, "The Prohibition Unit of the Treasury disclaims it [wire-tapping] and the Department of Justice has frowned on it." See also "Prohibition Enforcement," 69th Congress, 2d Session, Senate Doc. No. 198, pp. iv, v, 13, 15, referred to Committee, January 25, 1927; also Same, Part 2.

<sup>16</sup> See *Hannay v. Eve*, 3 Cranch, 242, 247; *Bank of the United States v. Owens*, 2 Pet. 527, 538; *Bartle v. Coleman*, 4 Pet. 184, 188; *Kenneth v. Chambers*, 14 How. 38, 52; *Marshall v. Baltimore & Ohio R.R. Co.*, 16 How. 314, 334; *Tool Co. v. Norris*, 2 Wall 45, 54; *The Quachita Cotton*, 6 Wall. 521, 532; *Coppell v. Hall*, 7 Wall. 542; *Forsyth v. Woods*, 11 Wall. 484, 486; *Hanauer v. Doane*, 12 Wall. 342, 349; *Trist v. Child*, 21 Wall. 441, 448; *Meguire v. Corwine*, 101 U.S. 108, 111; *Oscanyan v. Arms Co.*, 103 U.S. 261; *Irwin v. Williar*, 110 U.S. 499, 510; *Woodstock Iron Co. v. Richmond & Danville Extension Co.*, 129 U.S. 643; *Gibbs v. Consolidated Gas Co.*, 130 U.S. 396, 411; *Embrey v. Jemison*, 131 U.S. 336, 348; *West v. Camden*, 135 U.S. 507, 521; *McMullen v. Hoffman*, 174 U.S. 639, 654; *Hazelton v. Sheckells*, 202 U.S. 71; *Crocker v. United States*, 240 U.S. 74, 78. Compare *Holman v. Johnson*, 1 Cowp. 341.

<sup>17</sup> See *Creath's Administrator v. Sims*, 5 How. 192, 204; *Kennett v. Chambers*, 14 How. 38, 49; *Randall v. Howard*, 2 Black, 585, 586;

in civil actions between private parties. Where the Government is the actor, the reasons for applying it are even more persuasive. Where the remedies invoked are those of the criminal law, the reasons are compelling.<sup>18</sup>

The door of a court is not barred because the plaintiff has committed a crime. The confirmed criminal is as much entitled to redress as his most virtuous fellow citizen; no record of crime, however long, makes one an outlaw. The court's aid is denied only when he who seeks it has violated the law in connection with the very transaction as to which he seeks legal redress.<sup>19</sup> Then aid is denied despite the defendant's wrong. It is denied in order to maintain respect for law; in order to promote confidence in the administration of justice; in order to preserve the judicial process from contamination. The rule is one, not of action, but of inaction. It is sometimes spoken of as a rule of substantive law. But it extends to matters of procedure as well.<sup>20</sup> A defense may be waived. It is waived when not pleaded. But the objection that the plaintiff comes with unclean hands will be taken by the court itself.<sup>21</sup> It will be taken despite the wish to the contrary of all the parties to the litigation. The court protects itself.

Decency, security, and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperilled if it fails to observe the law scrupulously. Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means—to declare that the Government may commit crimes in order to secure the conviction of a private criminal—would bring terrible retribution. Against that pernicious doctrine this Court should resolutely set its face.

#### EXHIBIT 2

[From the St. Louis Post Dispatch]

#### IT SMACKS OF RUSSIA

Missouri's Senator LONG is performing a truly national service in his unceasing struggle with the Government practice known as

*Wheeler v. Sage*, 1 Wall. 518, 530; *Dent v. Ferguson*, 132 U.S. 50, 64; *Pope Manufacturing Co. v. Gormully*, 144 U.S. 224, 236; *Miller v. Ammon*, 145 U.S. 421, 425; *Hazelton v. Sheckells*, 202 U.S. 71, 79. Compare *International News Service v. Associated Press*, 248 U.S. 215, 245.

<sup>18</sup> Compare *State v. Simmons*, 39 Kan. 262, 264-265; *State v. Miller*, 44 Mo. App. 159, 163-164; *In re Robinson*, 29 Neb. 135; *Harris v. State*, 15 Tex. App. 629, 634-635, 639.

<sup>19</sup> See *Armstrong v. Toler*, 11 Wheat. 258; *Brooks v. Martin*, 2 Wall. 70; *Planters' Bank v. Union Bank*, 16 Wall. 483, 499-500; *Houston & Texas Central R.R. Co. v. Texas*, 177 U.S. 66, 99; *Bothwell v. Buckbee*, *Mears Co.*, 275 U.S. 274.

<sup>20</sup> See *Lutton v. Bentin*, 11 Mod. 50; *Barlow v. Hall*, 2 Anst. 461; *Wells v. Gurney*, 8 Barn. & Cress. 769; *Isley v. Nichols*, 12 Pick. 270; *Carpenter v. Spooner*, 2 Sandf. 717; *Metcalfe v. Clark*, 41 Barb. 45; *Williams ads. Reed*, 29 N. J. L. 385; *Hill v. Goodrich*, 32 Conn. 588; *Townsend v. Smith*, 47 Wis. 623; *Blandin v. Ostrander*, 239 Fed. 700; *Harkin v. Brundage*, 276 U.S. 36, *id.* 604.

<sup>21</sup> *Coppell v. Hall*, 7 Wall. 542, 558; *Oscanyan v. Arms Co.*, 103 U.S. 261, 267; *Higgins v. McCrea*, 116 U.S. 671, 685. Compare *Evans v. Richardson*, 3 Mer. 469; *Norman v. Cole*, 3 Esp. 253; *Northwestern Salt Co. v. Electrolytic Alkali Co.*, [1913] 3 K. B. 422.

the "mail watch." The Senator, in the absence of any official willingness to cease the practice, now proposes legislation to halt it.

In a mail watch, the Post Office Department keeps a record of return addresses on all mail delivered to a person. Postal officers say they do so at the request of Federal or local law enforcement bodies. The mail check may prove useful, for example, in investigations of suspected income tax evaders, by identifying firms from which they made purchases. Its utility is measured by admissions that there are 500 to 750 checks in effect at any given moment.

Useful though the practice may be to Government, however, it is an unnecessary and legally unauthorized invasion of the citizen's privacy. Americans have always thought their correspondence to be a private matter, and have expected the Post Office Department in particular to protect it as such. The fact that officials do not open the mail, but only note the name of the sender, does not excuse meddling with the mail and interfering with private affairs.

In the perjury trial of Roy Cohn, once counsel to the late Senator Joe McCarthy, it was disclosed that the Government had been operating a check not only on his mail but on that of his attorney. Here the Government seems to have interfered in the privileged relation of attorney and client. Federal District Judge Archie O. Dawson in New York was shocked. "This smacks of Russia rather than the United States," he said.

Judge Dawson did not dismiss the charge against Mr. Cohn, or even agree to suppress any evidence obtained by the mail checks. No doubt the reason was that the law is not clear. There is no law specifically permitting the Post Office to operate such mail checks; neither is there a law against it. But there should be a law against it, as Senator LONG proposes. The mail check is, as Judge Dawson and Senator LONG agree, a police state technique. Private correspondence is no longer private while it exists.

[From the St. Joseph Gazette, Mar. 17, 1964]

#### MAIL SNOOPING

Surely the bill against mail covers sponsored by Missouri Senator EDWARD V. LONG will be passed by the Congress, and with little or no opposition.

Senator LONG's legislation seeks to call a halt to a practice most Americans didn't even know was allowed to exist under our constitutional right to certain privacies and our assumed definition of liberty.

Apparently it has become allowable for Federal agencies, the Justice Department for one, to keep a secret watch on the flow of mail to and from specific addresses and specific individuals. The purpose, they say in cases which have come to light, is to obtain evidence on persons suspected of criminal activity. Their mail contacts may show that the suspicions are true.

Under such mail cover the mail is not opened—only a running tabulation of addresses and return addresses, dates, and like information is kept.

There should be—and there are—laws to punish persons who may use the postal service to defraud the public.

But to allow any governmental agent or agencies to pry into the total mail contacts of the individual without his knowledge that such a watch is being maintained is wrong. Who knows to what ends such power could be used? It is possible that, allowed to stand, they could some day be used to pry into individual politics, business contacts, and other private matters. Such practice should be barred.

[From Chicago's American, Mar. 14, 1964]

#### SNOOPING IN THE MAIL

We agree with Senator EDWARD V. LONG, Democrat, of Missouri, that it is a "police

state technique" for the post office to hold up delivery of a citizen's private mail until it has made a record of the name and address of the sender, the place of the mailing and the date. This is called a mail cover. Senator LONG has introduced a measure providing a sentence of a year in prison for any post office employee convicted of carrying on such a practice, and it should be enacted.

LONG said Government departments had been guilty in the past 2 years of invading privacy in various ways. He said the State Department, Internal Revenue Bureau, and Justice Department had been engaged in wiretapping and the Defense Department had used lie detector tests in West Germany.

He did not accuse the Post Office Department of opening and reading private mail, but others inside the Government have said that information from mail held for inspection sometimes has included facts which could hardly have been obtained from studying return addresses and postmarks.

LONG, who generally supports the Johnson administration, said he was stirred to action by the Post Office Department's inspection of mail sent to Roy M. Cohn, former chief counsel for Senator Joseph McCarthy, and to Cohn's attorney, Thomas Bolan. Cohn has been indicted on charges of perjury and conspiracy for his efforts to defend four clients in a fraud case.

The Government is entitled to prosecute Cohn if it has evidence justifying it, but the Post Office, in our opinion, is not justified in holding up and snooping into his mail.

[From the Milwaukee Sentinel, Mar. 13, 1964]

#### STOP SNOOPING

A halt needs to be called to the Federal Government's snoopiness. Mail watching, wiretapping, eavesdropping, and similar techniques are being practiced with growing frequency and in widening circles.

Noting a whole series of "infringements on privacy" by Government departments in the last 2 years, Senator EDWARD V. LONG, Democrat, of Missouri, is seeking to curb the trend. He is going after the mail cover in particular.

In what LONG calls a police state technique, the post office is not delivering the private mail of hundreds of American citizens until it has recorded the name and address of the sender, the place and date of the postmarking and other data for the use of Government agencies. LONG has introduced legislation providing for a 1-year prison sentence for any postal employee convicted of carrying out such a mail watch or disclosing information obtained by one.

The issue was brought to a head by disclosures of official inspection of the mail sent to Roy M. Cohn of New York City in connection with a perjury and conspiracy indictment investigation. But LONG has been interested in the mail watch practice since 1962, when postal authorities told him that between 500 and 750 watches were in effect at that time.

It would seem that the mail watches are violative of the fourth amendment prohibiting unreasonable searches and seizures. While the mail is not being opened, it is being seized, if only temporarily. The law LONG proposes might be unnecessary if the Post Office Department is acting illegally. The solution would be simply to quit snooping through the mail.

[From the Northern Virginia Sun, Mar. 11, 1964]

#### CLOSE CALL FOR THE PRESIDENT

Only happy accident has saved the Justice Department from putting President Johnson in as embarrassing a predicament as a President can undergo in his relations with the press.

Justice furnished Mr. Johnson with the answer to a question which it anticipated

would be asked at his most recent press conference. Fortunately nobody asked it, for Justice's answer was the exact opposite of truth.

This narrow escape had to do with the case of Roy M. Cohn, one of the late Senator McCarthy's henchmen who is under indictment for perjury. In the course of the proceedings it came to light that Cohn and his attorney had been subjected to a mail watch.

Mail to Cohn and his attorney was intercepted and the return addresses of senders recorded. Whatever opinions may be held of Cohn, none should be lower than the opinion of this device's instigators.

The judge who was hearing Cohn's plea for dismissal put it mildly when he called the practice shocking.

Justice at once protested that this was none of its doing. It said that the watch had been seen by the Internal Revenue Service and had nothing to do with Justice's case against Cohn. And this was what Justice advised the President to say.

Whereupon it came to light that it was a Justice Department action. One of Justice's assistant prosecutors in New York was responsible.

Nothing indicates that Justice lied. It was simply the discouraging old Washington story of the right hand not knowing what the left was doing—and not bothering to find out.

The story is bad enough when different departments stumble over each other. It is decidedly worse when it is within one department.

If the sound of a grindstone is heard coming from the White House it will probably be Mr. Johnson putting an edge on his tomahawk with a view to lifting some Justice Department scalps.

He should. Justice gave him a close call.

[From the Worcester Evening Gazette, Mar. 4, 1964]

#### CHECKING THE MAILS

Revelation of a watch put on the mail of Roy M. Cohn, who is under Federal indictment on perjury and conspiracy charges, indicates real need for defining a citizen's rights in an area now only hazily covered by statute.

Cohn moved to have the indictment dismissed because his mail had been under surveillance. This was not granted. The judge, however, denounced as shocking the disclosure that the mail of Cohn's counsel was also watched.

Perhaps not many are aware that the Post Office Department cooperates with local, State, and Federal agencies in the mail cover. In this procedure all first-class mail of a person under surveillance can be held aside while a record is made of the sender, his address, and the date of mailing. This information is taken from the envelope's exterior. The mail is returned to normal channels in time for delivery on the same day.

The legality of that procedure has not been specifically tested in the courts, at least in this century. The Supreme Court ruled in 1877 that a letter, while in the mails, is entitled to the same protection as a person's private papers in his home. The United States Code deems it a crime to remove a letter from a post office or from a mailman to pry into the business or secrets of another.

An 1893 law permits postmasters to help police track a fugitive from justice, and it is apparently on this ground that covers are placed even on the mail of persons who are not fugitives from justice.

Senator EDWARD V. LONG, of Missouri, brought the matter into the open on the floor of the Senate. He charged that the procedure reminds one of the tactics used in a police state where the government wants to know who is corresponding with whom.

The matter has obviously caused some embarrassment in the Justice Department, where a spokesman said the matter had been mishandled. This is not precisely the reaction that might have been expected. It would be more to the point to have the whole matter clarified by the courts to discover how far invasion of privacy in the mails may be pursued under American laws and traditions.

[From Buffalo Evening News, Mar. 19, 1964]  
POLICE STATE SPYING

The disclosure that secret mail checks by Government officials is a fairly common practice should be a matter of the gravest concern to everyone who regards constitutional guarantees of individual liberties as the foundation of a free society.

The postal-snooping practice was brought to light in the trial of former Senate investigator Roy M. Cohn on conspiracy perjury charges. The U.S. attorney's office admitted that a "watch" had been put on mail addressed to both Mr. Cohn and his former attorney.

Although denying a dismissal motion on these grounds, the Federal judge denounced it as shocking to the conscience to think that the Government after an indictment is filed, may put a mail watch on the attorney for the defendant which might, in some cases, possibly lead to discovery of steps defense counsel was using in preparing for trial.

In the view of Senator LONG, Democrat of Missouri, this is a police state technique—whether instigated by the Post Office or by Justice officials—that should be banned by Congress, or at the least require prior court approval. He reports that the Government has been running as many as 750 mail interceptions.

Balancing the right of society to secure evidence against those suspected or accused of crime with the ancient right of the individual to be secure against invasions of privacy does pose some exceedingly thorny dilemmas. In this connection a nationwide study has been announced by Herbert Brownell, former U.S. Attorney General and president of the New York City Bar Association, of the threat posed against individual privacy by such modern scientific devices as hidden TV sets, truth drugs, lie detectors, and other instruments for delving into the recesses of attitudes, beliefs, and behavior.

A study under such auspices can be immensely helpful in finding the proper balance between the needs of society and Government for information, and the competing needs of individuals for privacy. Whatever that balance, however, it is inconceivable that those who cherish the due processes of law can sit still for a spying operation against defendants or their legal counsels by the same Government that brings charges against them.

This condemns itself, whether practiced today against an unpopular figure or extended tomorrow to others in disfavor. No man's liberty ultimately is secure once the power of Government is permitted to erode individual safeguards wisely written in the Bill of Rights.

#### THIS IS THE LAKE THAT WAS

Mr. BENNETT. Mr. President, Utah is a State where a drop of water is almost as valuable as a nugget of gold. Water in arid States such as ours is the very lifeblood of the economy and the future. Without water there is no future for Utah. Without water there is no future for the West.

That is why I would like today to bring to the attention of the Senate a

grave situation initiated by the Secretary of the Interior, who has ordered the gates at Glen Canyon Dam to be opened, taking water from an upper basin lake for the benefit of downstream water and power commitments in California and Mexico.

I know that the Senate is occupied with other important matters, and normally I would not intrude upon the Senate's time with the details of a problem such as this. However, representatives of the Interior Department have, in public statements, implied that their position is the only sound one and that there is no other side to the story. They have dismissed the arguments of their critics as "gratuitous comments" and said that such arguments were based on "misinformation."

Because I believe that most of the responsibility for any "misinformation" on this subject rests with Interior Department officials and their spokesmen, I rise to set the record straight with a full discussion of the controversy. I have tried to get answers to my questions directly from the Secretary of the Interior, but to date he has not even acknowledged receipt of my letters, let alone answered them. Since he has had over a month to do so, I am justified in assuming that he simply does not choose to try.

We, in the Upper Basin States, fought for years and years to gain authorization and appropriations for the upper Colorado River storage project. Now in an arbitrary and unwarranted move by the Secretary, the entire upper basin, consisting of Utah, Wyoming, Colorado, and New Mexico, has, as Senators DOMINICK and ALLOTT have said, "been sold down the Colorado River."

Unless a national drought or other major emergency exists, there is no justification for such a drastic measure as the drawing down of an upper basin lake.

We realize, of course, that present criteria for filling Lake Powell provide that no water be stored upstream in the upper basin when Lake Mead storage at Hoover Dam falls below 14.5 million acre-feet. But we do not feel bound to uphold the criteria when we also realize that the reason for the shortage at Lake Mead, downstream from Lake Powell, is that considerably more water than is their legal due has been given to Mexico and California. Where I come from, this is called water piracy.

I have received hundreds of communications from upper basin citizens, including the Governors of all four of the Upper Basin States and Members of Congress of those four States and other neighboring States, protesting the action of the Secretary.

It simply boils down to the fact that the water we want to store in Lake Powell behind Glen Canyon Dam is water that is produced in the upper basin and belongs by law to the upper basin. We merely want to store our own water from our own watersheds for our own use.

Let us review the facts of the controversy to try to get them into focus.

The first I heard of the drastic action to be taken by the Secretary was through a newspaper story out of Page, Ariz., after

the Bureau of Reclamation Commissioner, Mr. Floyd Dominy, had toured Lake Powell. Commissioner Dominy is quoted in an article in the Salt Lake Tribune of March 2, 1964, as saying:

It is conceivable that instead of adding [water] to Lake Powell the present level will be reduced to meet downstream requirements for power and irrigation.

The next day the Bureau of Reclamation in Salt Lake City denied there would be a drawdown. The Washington office of the Bureau also informed me that there would be no changes made in the outflow. In an effort to get an official position for the record, I addressed a letter to Secretary Udall on March 16 asking for an explanation. I have yet to receive an answer to that letter. That was a full month ago and 10 days before the gates were opened.

Basically, the letter asked the Secretary of Interior three questions:

1. Why did your Department allow the release of more water from Lake Mead than was required to meet the 1.5 million acre-feet of Mexican entitlements?
2. Why did your Department last year allow the release of more water for California than the 4.4 million acre-feet that the Supreme Court as early as June 3, 1963, said California was entitled to?
3. Why do you now propose draining the dead storage space in Glen Canyon to maintain a power head at Hoover Dam when there are other means available to supply the necessary power and energy to meet the lower basin Hoover power contracts?

Mr. President, I ask unanimous consent to have printed at this point in the RECORD my entire letter of March 16 to Secretary Udall.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

MARCH 16, 1964.

HON. STEWART L. UDALL,  
Secretary of the Interior,  
Department of the Interior,  
Washington, D.C.

DEAR MR. SECRETARY: I have been reading in western newspapers and have heard from Upper Colorado River Basin water users that the Interior Department is considering releasing more and more water from Glen Canyon in order to maintain a power head in Lake Mead for generating power.

For instance, Bureau of Reclamation Commissioner Floyd Dominy said in Page, Ariz., on March 2, "It is conceivable that instead of adding [water] to Lake Powell, its present level will be reduced to meet downstream requirements for power and irrigation."

I join other Utahans and upper basin water users in expressing my deep concern about this policy suggesting a water grab. It is my opinion that unless a national drought or other major emergency exists there is no justification for such a drastic measure as potential draining of an upper basin lake.

It is necessary that the upper basin put the generators at Glen Canyon Dam into operation as soon as possible to make the power revenues available to meet the reimbursable costs and to aid in developing such water use projects as the central Utah project. The deferral of power generation would be inimical with the intent of Congress in the authorization of the Colorado River storage project and not in the best interests of either the upper or lower basin.

I recognize that power commitments downstream must be met and that the Reclamation Commissioner is bound by your August 4, 1962, criteria, but it is also becoming increasingly evident that some interest

should be given by the Interior Department to Utah and the other Upper Basin States.

Meanwhile, it is readily apparent that the power deficit can be made up from other sources. I enclose copies of an article and editorial from the Salt Lake Tribune listing the offers made by Rocky Mountain utilities who said they "can substantially aid in holding water in Lake Powell to operate Glen Canyon Dam generators." Other lower basin power companies also are interested in making up the deficit.

I also am concerned about the "why" of this release of more and more water from an upper basin lake to fill a lower basin lake.

So that the possibility of a recurrence can be minimized, I would like to have answers to three questions:

1. Why did your Department allow the release of more water from Lake Mead than was required to meet the 1.5 million acre-feet of Mexican entitlements?

2. Why did your Department last year allow the release of more water for California than the 4.4 million acre-feet that the Supreme Court as early as June 3, 1963, said California was entitled to?

3. Why do you now propose draining the dead storage space in Glen Canyon to maintain the power head at Hoover when there are other means available to supply the necessary power and energy to meet the lower basin Hoover power contracts?

California has been taking more than 1 million acre-feet of water above the 4.4 million acre-feet to which it is entitled. If you had this excess still in reserve at Lake Mead plus the excess released to Mexico, there would be no need to consider the pirating of water from the upper basin as Department officials are now suggesting.

Therefore, I recommend that you amend the filling criteria to which the Commissioner of Reclamation is bound in order to enable the minimum power head at Lake Powell to be built up.

I would appreciate an early reply from you setting forth any action the Interior Department plans to take to alleviate the problem and stating the Interior Department's position.

As a final matter, I also am interested in some explanation of the contradictory statements made by the various Bureau of Reclamation offices in the West.

I am enclosing a clipping from the Salt Lake Tribune of March 2 quoting Commissioner Dominy as saying that the draining of Lake Powell is a distinct possibility, and a clipping from the Ogden Standard Examiner of March 8 quoting a Bureau of Reclamation source that the report is "erroneous." It seems incongruous to me that the Commissioner of the Bureau of Reclamation can make a statement such as that in paragraph 3 of the Salt Lake Tribune story, yet the Salt Lake office of the Bureau calls the report erroneous 4 days later. Who is right, the Commissioner or the Salt Lake office?

Sincerely,

WALLACE F. BENNETT.

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

Mr. BENNETT. I yield.

Mr. SIMPSON. Did I correctly understand the Senator to say that his letter was sent to Secretary Udall in March of this year?

Mr. BENNETT. It was sent to the Secretary under date of March 16.

Mr. SIMPSON. And no answer has been received?

Mr. BENNETT. I have not received a reply.

Mr. SIMPSON. Is the Senator's letter of March 16 the letter he has just placed in the RECORD?

Mr. BENNETT. I have just placed in the RECORD my letter of March 16.

Mr. SIMPSON. Is that the same letter of which the Senator from Wyoming has had the benefit of receiving a copy?

Mr. BENNETT. Yes; I am sure the Senator has received a copy.

Mr. SIMPSON. I hope it will not be amiss, with the permission of the Senator, to say that I sent a similar letter to Hon. Stewart Udall, proposing some of the questions which I daresay will be raised in the Senator's discourse this afternoon, and that no answer has been received to my letter. With the Senator's permission, I should like to ask unanimous consent that the text of my letter also be printed in the RECORD.

Mr. BENNETT. I am happy to agree to the request that the letter of the Senator from Wyoming be printed in the RECORD.

Mr. SIMPSON. I shall submit it for the RECORD later.

Mr. BENNETT. Mr. President, this demonstrates the concern of all four Upper Basin States.

Four days later, on March 20, the Utah Water and Power Board adopted a resolution urging the Secretary of Interior to adopt a policy under which the minimum power pool at Glen Canyon will be filled in 1964 and hydroelectric generation initiated.

Mr. President, I ask unanimous consent that the resolution be printed at this point in the RECORD.

There being no objection, the resolution was ordered to be printed in the RECORD, as follows:

Whereas under the "General Principles To Govern, and Operating Criteria for, Glen Canyon Reservoir and Lake Mead During the Lake Powell Filling Period," as promulgated by the Secretary of the Interior, and on the basis of the best presently available stream-flow forecast information there appears to be no chance of filling the minimum power pool behind Glen Canyon Dam and initiating power generation in 1964; and,

Whereas failure to commence generation of electric energy at Glen Canyon Dam at the earliest possible date will have adverse effects upon the financial feasibility of the Upper Colorado River Basin resource development program, the rate of development of the water resources of the upper basin, and the integrity of the entire reclamation program of the 17 Western States; and,

Whereas it appears to this board that the problem of initiating power generation at Glen Canyon Dam is susceptible to resolution through united efforts and cooperation of the Secretary of the Interior with entities in both the upper and lower basins of the Colorado River, and without detriment to other water and power uses on the Colorado River system: Now, therefore, be it

*Resolved*, That the Utah Water and Power Board in meeting duly assembled at Salt Lake City, Utah, this 20th day of March 1964, urges the Secretary of the Interior to adopt a policy under which the minimum power pool at Glen Canyon will be filled in 1964 and hydroelectric generation initiated; and be it further

*Resolved*, That the executive director of the Utah Water and Power Board is hereby instructed to immediately transmit copies of this resolution to the President of the United States, the Secretary of the Interior, the Commissioner of Reclamation, Members of the Congress from the Colorado River Basin States, and other interested parties, and to take any action that in his judgment

will aid in attaining the objective of this resolution.

Mr. BENNETT. Mr. President, meanwhile, a group of Rocky Mountain investor-owned utilities announced that they could substantially aid the Government in holding water in Lake Powell to operate Glen Canyon Dam generators.

They had made this report as early as March 11, when a spokesman reported that this could be accomplished by arranging for private utilities to furnish power to Hoover Dam customers, which power would otherwise have to be generated by releases from Hoover Dam of water not required for domestic, irrigation, and industrial uses below Hoover Dam.

Shortly after that, the Governors of the four Upper Basin States—Governors Clyde, of Utah; Love, of Colorado; Campbell, of New Mexico; and Hansen, of Wyoming—addressed a letter to Secretary Udall, pointing out that the utilities had offered to supply power and urging the Secretary to adopt a policy under which the minimum power pool at Glen Canyon will be filled in 1964 without detriment to other water and power uses in the Colorado River basin.

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

Mr. BENNETT. I yield.

Mr. SIMPSON. I should like to add that Mr. N. B. Bennett, of the Bureau of Reclamation, Department of the Interior, advised my office that it is physically impossible to accomplish the transfer of power from the electric system in Arizona across the Hoover powerplant into California. Did the Senator from Utah receive any such information as that?

Mr. BENNETT. The Senator from Utah received information to the effect that while it was possible, perhaps, to generate power, it could not be delivered to California.

Mr. SIMPSON. It is inconceivable to the Senator from Wyoming that such a minor engineering problem would be impossible of solution by an organization that professes to be capable of building huge electric power systems and generating plants throughout the Nation. It would be a comparatively simple thing to do, would it not?

Mr. BENNETT. As the Senator from Wyoming may know, a meeting is scheduled to be held in Boulder City, Nev., next Tuesday, at which the details of the operation of such a plant will be presented and discussed with the Department of the Interior.

Mr. SIMPSON. I should like to advise the Senator from Utah that on March 30, at a press conference, Mr. Dominy said the Department had received no offers from electric utilities which were willing to replace the power deficiency sustained at Hoover Dam as a result of the filling of Lake Powell with a minimum power-head. Does the Senator from Utah have any knowledge of that statement?

Mr. BENNETT. That statement might be technically correct, because the utilities required a little time to develop a specific program. A general offer had been made as early as March 11, if I correctly remember the date. But the Department was not satisfied with that.

The Department wanted a specific plan, and, of course, it has taken the utilities a little time to prepare it. I understand it will be presented next Tuesday in Boulder City, Nev.

Mr. President, I ask unanimous consent to have printed at this point in the RECORD the entire letter dated March 17 from the four distinguished Upper Basin State Governors.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

UPPER COLORADO RIVER GOVERNORS  
OF COLORADO, NEW MEXICO, UTAH,  
WYOMING,

March 17, 1964.

DEAR SECRETARY UDALL: It has been called to our attention that under a strict adherence to the "General Principles to Govern, and Operating Criteria for, Glen Canyon Reservoir and Lake Mead During the Lake Powell Filling Period," as promulgated, there will be very little if any chance of storing sufficient water behind Glen Canyon Dam to generate electric energy in 1964. The purpose of the criteria was to provide guidelines as the basis of securing a practical approach to the problems of reservoir filling within a reasonable exercise of Secretarial discretion, while, at the same time, protecting the interests of water and power users.

Now, at a time when water should be accumulating at Glen Canyon, we find that an exceptional circumstance in the form of a "bad" water year has intervened—a circumstance that could preclude the filling of the minimum power pool at Glen Canyon unless wise and judicious use is made of the available water.

On the basis of water and power analyses that have been made we are convinced that it would be practicable to store sufficient water at Glen Canyon to cause the generators to produce energy by August 1, 1964, and that this objective can be attained without injury to downstream water or power users. We understand that a solution to this problem will entail considerable leadership and cooperation among the many diverse Colorado River basin interests, including your Bureau of Reclamation.

From the information presently available it appears that a policy decision regarding the operation of the various facilities on the Colorado River under the jurisdiction of the Secretary of the Interior should be made prior to April 1 in order to insure power production at Glen Canyon in 1964.

Both private and public entities in the upper and lower basins are willing to cooperate fully to make possible the generation of power at Glen Canyon in 1964. We are also confident that it is in the best interests of everyone concerned to arrive at a method of filling the minimum power pool at Glen Canyon at the earliest possible date.

We know that you are informed regarding the many ramifications of this complex problem. We, therefore, urge that the Department of the Interior adopt a policy under which the minimum power pool at Glen Canyon will be filled in 1964 without detriment to other water and power uses in the Colorado River Basin.

In order to reach these objectives we offer our full cooperation, and respectfully request that you consult with us in the development of your plans with reference to the problems herein outlined.

Sincerely yours,

JOHN A. LOVE,  
Governor of Colorado.  
GEORGE D. CLYDE,  
Governor of Utah.  
JACK M. CAMPBELL,  
Governor of New Mexico.  
CLIFFORD P. HANSEN,  
Governor of Wyoming.

Mr. BENNETT. Obviously they had made a commitment that they could do it. Now, apparently next Tuesday they will tell how they propose to do it, and under what conditions.

The next occurrence came on March 25, when I read in the Salt Lake Tribune a statement by the chairman of the Senate Irrigation and Reclamation Subcommittee, Mr. Moss, in which he quoted the Secretary of the Interior as saying he had agreed to postpone for at least a few days the release of water stored in Lake Powell to meet the generating commitments at Hoover Dam.

The same day, Assistant Reclamation Commissioner N. B. Bennett, met in my office with members of my staff and the two Utah Congressmen, Representatives LAURENCE J. BURTON, of Utah's First District, and SHERMAN P. LLOYD, of Utah's Second District. Mr. Bennett presented the Interior Department's reasons for the proposed drawdown of the lake. He said he did not know exactly when the gates might be opened, but was sure it would be in a few days. One hour later, Secretary Udall issued a press release announcing the opening of the gates. Attached to it was his answer to the four Governors—his first response to any of the inquiries he had had.

At this point in the RECORD I wish to insert that release, along with the Secretary's letter to the Governors.

The PRESIDING OFFICER (Mr. INOUE in the chair). Is there objection?

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

[News release by U.S. Department of the Interior, Mar. 26, 1964]

SECRETARY UDALL ORDERS INTERIM RELEASE OF WATER FROM GLEN CANYON DAM TO COMPENSATE FOR LOW COLORADO RIVER RUN-OFF

Secretary of the Interior Stewart L. Udall announced today that, on the recommendation of Reclamation Commissioner Floyd E. Dominy, he has ordered the outlet gates at Glen Canyon Dam to be opened March 26 sufficiently to release water stored in Lake Powell at a rate that will maintain storage in Lake Mead, behind Hoover Dam on the lower Colorado, at a minimum of 14.5 million acre-feet.

At the same time, Udall also indicated that any final decision would be postponed pending water runoff developments in the basin during the next 2 months.

The action is in accord with the Glen Canyon filling criteria which were first promulgated by the then Secretary of the Interior, Fred Seaton, in 1960, and approved by Secretary Udall in 1962 after careful review of the financial structure of the Hoover, Parker, and Davis Dams on the lower Colorado River and the Federal investment in upper river structures as well.

"This is the only possible decision which can be made at this time," Secretary Udall said, "that will protect the Federal investment and achieve the long-range objectives of the total development program. The Bureau of Reclamation will make a continuing review of the runoff situation."

The minimum water level that must be maintained in Lake Mead to enable Hoover's generators to produce their rated capacity of 1,340,000 kilowatts is 1,123 feet above mean sea level, or 14.5 million acre-feet of storage.

Water will be released from Lake Powell on a varying rate schedule to facilitate the contractor's completion work at Glen Can-

yon Dam. Pending opportunity for firm appraisal of inflow, it is expected that the average release will exceed the average inflow by about 7,000 cubic feet per second.

Secretary Udall advised the Governors of the Upper Colorado River Basin States—Colorado, New Mexico, Utah, and Wyoming—of his decision in a reply to a joint letter from them dated March 17. Copies of letters are attached.

Secretary Udall said the releases will be made on an interim basis until the actual spring runoff of the Colorado River can be more accurately appraised. Present forecasts indicate this year's runoff will fall substantially below the long-term average for the second successive year.

"But a forecast made in March," Secretary Udall said, "is not what decides how much water will run down the mountain slopes in May, June, and July. According to the Department's water experts, this week's storm over the upper Colorado River basin, will do little more than bring the month's precipitation up to normal. It should also be remembered that the effects of normal or even abnormal runoff will not be felt until after mid-May. With Hoover already down to rated head, we are not warranted in permitting Lake Mead to fall below rated head for the Hoover powerplant pending further determinations.

"As of March 1, the median forecast for April-July runoff of the Colorado River was 4.7 million acre-feet. This week's storm does not change that forecast. If the actual runoff is near this figure, or gives promise of exceeding it, the possibility of gaining storage in Lake Powell by further replacement of Hoover power appears attractive. In other words, we might be able to resume storage in Lake Powell, let Lake Mead storage drop somewhat below the 14.5 million acre-foot mark temporarily, and make up for the resultant reduction in Hoover generation by purchases of power from outside sources," Secretary Udall explained.

"However, at least until we have a better knowledge of the 1964 water supply, we must live with the filling criteria for Lake Powell announced in 1962. Those criteria require that until Lake Powell reaches its minimum power-producing level, the storage there shall be available for release to maintain the rated head at Hoover powerplant."

In recommending the increase in releases from Lake Powell, Commissioner Dominy pointed out that the water level at Lake Mead has been dropping, as was expected, since Lake Powell storage began March 13, 1963. At that time, the Commissioner reported, there were over 22 million acre-feet of water in Lake Mead.

"Lake Mead is forecast to fall below the critical 14.5 million acre-foot mark on March 28, if releases from Lake Powell are continued at no more than the present rate of 4,000 cubic feet per second," Commissioner Dominy said.

"The planned releases will maintain Lake Mead at about the rated power-producing level. The stepped-up releases through the gates at Glen Canyon Dam will begin March 26, since it will take the water 2 days to reach Hoover Dam, 370 miles downstream."

Storage in Lake Powell now stands at about 3.1 million acre-feet. The lake is 250 feet deep at Glen Canyon Dam.

U.S. DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SECRETARY,  
Washington, D.C.

HON. GEORGE D. CLYDE,  
Governor of Utah,  
Salt Lake City, Utah.

DEAR GOVERNOR CLYDE: We appreciate very much the letter of March 17 from you and the other Governors of the Upper Colorado River Basin States concerning the operating criteria for Glen Canyon Reservoir, which is now known as Lake Powell, and Lake Mead

during the Lake Powell filling period. We join with you in your expressions of concern over release of water from Glen Canyon Reservoir before the lake has reached the operating level.

Regrettably, and for the time being, we can see no satisfactory alternative to undertaking immediate discharge of sufficient water from Glen Canyon Reservoir to maintain the level of Lake Mead at the minimum operating level of 1,123 feet above mean sea level, or 14.5 million acre-feet of storage. A press release announcing this interim decision is attached.

As the press release explains, there is still a possibility, albeit an unlikely one, that early spring storms could increase the anticipated runoff to the point where Lake Mead storage could be permitted to drop somewhat below the 14.5-million-acre-foot mark temporarily. The resultant reduction in Hoover generation would then be made up by purchase of power from outside sources. Any major interim purchase of power, of course, would require special fiscal arrangements inasmuch as funds are not now programmed for that purpose.

However, the existing situation is such that at least until we have a better knowledge of the 1964 water supply, we have no alternative but to live with the filling criteria which were first promulgated in 1960 by my predecessor Secretary of the Interior, Fred Seaton. After careful review of the criteria in light of the administration's fiscal policy, I approved the criteria in 1962 as the best procedure to protect the Federal investment already made in Hoover, Davis, and Parker Dams, as well as the investment in the upper basin and the objectives of the total development program.

I may add that up to the present time, although we have read newspaper stories concerning an offer by upper basin private utilities to supply replacement power, we have had no proposal with necessary data such as rates and the means the utilities would use to get the power to the lower basin, particularly California. While under present circumstances, we could not avail ourselves of the utilities' offer because of the critical outlook, we hope these data will be forthcoming immediately. It will be necessary to have these data without delay if the proposal is to be considered when the water situation is reviewed and a final decision reached concerning a course of action on operation of the river in this critical water year. I have directed the Commissioner of Reclamation, through his regional offices, to maintain close and continuing contact with the utilities and to keep me advised on a day-to-day basis of any changes in the water situation, in order that necessary decisions can be made on a timely basis.

I should also explain that if the presently forecast mean runoff occurs in 1964, Lake Powell is expected to remain at approximately its present level or even to increase somewhat during the runoff period which coincides with the principal recreation demands on the lake. After the runoff, of course, if there is no material improvement in the water outlook, the lake may be drawn down considerably to meet necessary downstream commitments.

Sincerely yours,

STEWART L. UDALL,  
Secretary of the Interior.

Mr. BENNETT. I found it interesting that Secretary Udall would choose that manner—that is, to use a press release—in which to answer the Governor's letter of March 17. A member of my staff had to read the letter over the phone to Utah's Governor Clyde, because the press release was issued before the letter was delivered.

Mr. DOMINICK. Mr. President, will the Senator from Utah yield?

Mr. BENNETT. I yield.

Mr. DOMINICK. That appears to be a standard practice of the Secretary of the Interior. Later, I shall comment on that situation.

Only today, in connection with the oil shale problem, which exists in our respective States, I received a release on a rejection of patent claims; and only a few days ago I had a discussion with Assistant Secretary Carver and with the Director of the Bureau of Land Management, Mr. Landstrom, and there were numerous communications back and forth, between me and the Department; but they never bothered to let us know what they were doing, except by a press release. Such a procedure is the most callous disregard of concern that I have ever seen.

Mr. BENNETT. I thank the Senator from Colorado for his comment. He, too, has experienced that strange treatment.

After the gates were opened, the total outflow from Lake Powell reached some 18,000 cubic feet per second, where it has generally remained. There have been fluctuations as low as 12,000 cubic feet, and possibly as high as 21,000 cubic feet per second.

As the outflow began, Upper Basin State newspapers and officials of the Upper Colorado River Commission protested vehemently to the Secretary. Much of the disappointment was caused by the fact that the Interior Department had not notified the Utah congressional delegation, Gov. George D. Clyde, or the Upper Colorado River Commission, until only hours before the formal announcement was made. Had we been told earlier, we could easily have participated in the exploration of possible alternate action. At this point in the RECORD I wish to insert editorials from the Salt Lake Tribune, the Salt Lake Deseret-News Telegram, the Ogden Standard-Examiner, and an article from the Provo Herald, discussing the Secretary's action.

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

[From the Salt Lake Tribune, Mar. 27, 1964]

#### UPPER BASIN MUST FIGHT TO SAVE WATER

Secretary of the Interior Udall's decision to start drawdown of Lake Powell to fulfill commitments to maintain the level of Lake Mead have rightly brought strong protests from Utah and other upper basin States.

Mr. Udall cites as basis for his action a 1962 criteria for filling of Lake Powell which fixed a minimum storage of 14½ million acre-feet in Lake Mead.

This was the criteria established by the Department, and reluctantly agreed to by upper basin States. But, as Utah's Senator Moss said, the criteria can be changed by Secretary Udall.

We believe an excellent case can be made for such a change.

Water held in Lake Powell now is like money in the bank earning double interest. Every acre-foot which can be held will do double duty in power production once Glen Canyon begins generating power. It will produce power both at Glen and at Hoover Dam.

If released now it will generate power only at Hoover. Start of generation at Glen

Canyon will be delayed and the water will be forever gone as far as the long-term aim of filling Lake Powell and maintaining a satisfactory level for recreational and fishing purposes.

Recently private power companies in the upper basin States proposed to supply power to fulfill lower basin commitments so that Hoover Dam power output could be decreased. This would make it unnecessary to release additional water from Lake Powell for power generation purposes and presumably assure that the lake would reach the level of 6,100,000 acre-feet storage at which power production can begin. (Present level is about 3,100,000 acre-feet.)

On its face this seems such a sound proposal we are astonished that up to this point neither the Secretary of the Interior nor his subordinate Reclamation Commissioner, Floyd E. Dominy, have made any formal request of the upper basin power companies for specific details.

It is reported an arrangement might be made for a simple power exchange—private, mainly steam-produced power provided now in exchange for Glen Canyon power after Glen generators begin producing.

If such an arrangement could be made, several million acre-feet of water could at no cost be retained in Lake Powell—a tremendous asset, helping to assure success of the entire upper Colorado project, producing double the power revenues, and assuring maintenance of a satisfactory level of Lake Powell for recreational and fishing purposes.

Defenders of the Lake Mead 14½ million acre-feet commitment contend it is necessary to assure proper functioning of generators at Hoover Dam.

But back in 1956 the Bureau of Reclamation voluntarily drew down Lake Mead to 10,700,000 acre-feet.

Furthermore, it is possible to shut down one or two Hoover generators entirely, substituting purchased private power, and maintain Lake Mead at 14½ million acre-feet while still storing enough water in Lake Powell to start its generators this summer.

Some analysts contend that observance of the Lake Mead commitment in drought years would in effect change the 1927 compact agreement to provide 75 million acre-feet of water every 10 years at Lees Ferry. By forcing the upper basin to send more water down the river into Lake Mead, the point of delivery would be in effect Hoover Dam, not Lees Ferry, and the upper basin instead of the lower basin would have to suffer the very substantial water loss due to evaporation in Lake Mead.

This is a possibility which might well subject the whole present arrangement to challenge in the courts.

This is all a very complicated business. It involves continued excess water use in the lower basin, public and private power interests, upper Colorado feasibility, assurance of a fair share of Colorado water to the upper basin for irrigation, industrial, culinary and recreational purposes, and plain politics.

Injection of the last is perhaps unavoidable, but it is unfortunate. Water is so much the lifeblood of Utah and the entire arid Intermountain West that every drop should be put to maximum beneficial use regardless of which party or which individual is in office, federally or locally.

The entire upper basin, irrespective of politics, must challenge the Bureau of Reclamation, as guardian of the Colorado, at every turn to insure against any loss of water which can justifiably be retained for the benefit of the upper basin.

[From the Deseret News, Mar. 26, 1964]

#### MR. UDALL, TAKE ANOTHER LOOK

The decision Wednesday to release water from Lake Powell to meet power needs in California is a shock and an affront to the

entire upper basin. It is an arbitrary action whose damaging effect can only be lessened by a prompt reappraisal of the situation.

In fairness to Assistant Reclamation Commissioner N. B. Bennett, Jr., he said that if recent snows contain enough water "it might not be necessary to drain Lake Powell completely." Even so, his statement that Lake Powell might be "drained dry" if the Colorado River watershed picture does not "improve immediately" seems unnecessarily harsh.

Matters need not go nearly that far. One plan that looks feasible is the suggestion that Lake Powell water be released just until the April forecast of total runoff on the Colorado River watershed is available about April 10. Interior Secretary Udall would then reappraise the situation and, if warranted, purchase power from other sources instead of continuing to release the Lake Powell water.

Such a solution is one with which the upper basin States could live. Officials say this approach could make it possible to fill Lake Powell sufficiently in time to start generating power when generators are installed there in early August.

The door to such a solution ought to be kept open. If that fails, serious consideration should be given to obtaining a court injunction against further draining. The announcement from the Bureau of Reclamation should not be the last word on the issue, for several important reasons.

First, if water is released from Glen Canyon Dam it will leave a \$400 million investment standing idle.

Second, loss of potential power from Glen Canyon can cost an estimated \$15 to \$20 million a year.

Third, if Glen Canyon Reservoir is filled to a level sufficient to start generating, the power produced there from August through June would offset the power lost at Hoover Dam downstream by a total gain of 800 million kilowatt-hours.

Fourth, the low level of water at Hoover Dam's Lake Mead would not necessarily mean a power brown-out for consumers served by the dam. Upper basin officials say those power needs could be filled by producing it through the displacement method at Glen Canyon and through the use of currently idle steam generators in both the upper and lower basins.

Fifth, draining Lake Powell could mean the schedule for filling it will never be met as long as the Colorado River watershed experiences dry years, as it has for 1963 and 1964.

Perhaps the most irritating aspect of all this is that when the criteria for filling Lake Powell were first drawn up, it was known that precisely this kind of problem would develop—which is why upper basin officials objected to those criteria at that time.

If nothing else comes of it, this incident ought to be sufficient reason for taking a new look at those criteria with a view to making them more realistic.

[From the Ogdens Standard-Examiner, Mar. 30, 1964]

#### COLORADO RIVER WATER CONTROVERSY

There are several aspects about the growing controversy of how Colorado River water is to be distributed that have many Utahans confused.

The future of river basin development in the United States, particularly here in the mountain and desert country, will hang in the balance unless this confusion is ended promptly.

Was some kind of a deal made with Mexico to give our southern neighbor extra water?

Are the gates of the Glen Canyon Dam being opened only for the benefit of lower basin States, particularly California?

Is the gate opening order of Secretary of Interior Stewart L. Udall legal? Or does it violate previous agreements between upper basin and lower basin States?

What's the future going to hold for water storage, power development, fishing, boating, and recreation on Lake Powell and Flaming Gorge Lake if these reservoirs are to fluctuate widely?

Representative LAURENCE J. BURTON, Gov. George D. Clyde and others have suggested that release of the water from Lake Powell could be curtailed if the Government would take advantage of an offer from private sources to provide replacement power.

Governor Clyde said such purchases would spare the upper Colorado storage project "serious and unnecessary loss."

Secretary Udall and his engineers owe it to the people of Utah and other upper basin States to investigate this proposal.

Certainly, we do not want Lake Meade, behind Hoover Dam, to fall to an unnecessary low level. Southern Nevada and southern California are too dependent upon the Hoover Dam generators to permit them to become idle.

But there's an obligation, now and for the future, to the upper basin States, too.

Senator WALLACE F. BENNETT has asked Secretary Udall for a full and complete report on events leading up to the Glen Canyon Dam gate opening.

The Secretary should certainly provide such a report by the time Governor Clyde and other members of the legal committee of the Upper Colorado River Commission meet in Denver on April 6.

The people of our States are entitled to know everything about the controversy—both for consideration of the present crisis and for making future plans.

[From the Provo Herald, Mar. 26, 1964]

#### UDALL DRAWS FIRE FOR OPENING GLEN DAM GATES

WASHINGTON.—Interior Secretary Stewart Udall drew fire from four western Governors Wednesday when he changed his mind about letting water run through Glen Canyon Dam.

Udall had said earlier Wednesday he would postpone opening the outlet gates but announced later in the day the gates would be opened today in order to release water to build up storage in Lake Mead behind Hoover Dam.

Gov. John Love immediately protested the action as "shortsighted," and urged Colorado's congressional delegation to back him up, along with Govs. George Clyde, of Utah; Jack Campbell, of New Mexico; and Clifford Hansen, of Wyoming.

The decision to release water from the Glen Canyon Dam was taken to mean a delay of about a year in power production at Glen Canyon.

Love, who indicated a possibility of seeking a court injunction against the action, said Wednesday he was concerned with "the certainty that a potential loss of \* \* \* in revenue will result among the Colorado River storage projects" if there is a delay in storing water.

Udall ordered the runoff so Lake Mead can be maintained with a minimum of 14.5 million acre-feet.

Udall said he ordered the outlet gates opened at the recommendation of Reclamation Commissioner Floyd E. Dominy. The Secretary said 14.5 million acre-feet must be in Lake Mead to enable generators at Hoover Dam to produce their rated capacity of 1,340,000 kilowatts.

"This is the only possible decision which can be made at this time that will protect the Federal investment and achieve the long-range objectives of the total development program," Udall said.

He said the Bureau of Reclamation "will make a continuing review of the runoff sit-

uation," but indicated any final decision would be postponed pending water runoff developments in the Colorado basin during the next 2 months.

Udall advised the Governors of the Upper Colorado River States—Colorado, New Mexico, Utah, and Wyoming—of his decision in a joint letter dated March 17.

Udall said the releases will be made on an interim basis until the actual spring runoff of the Colorado River can be more accurately appraised. Present forecasts indicate this year's runoff will fall substantially below the long-term average, for the second consecutive year.

According to the Department's water experts, the storms this week over the Upper Colorado River Basin will do little more than bring the month's precipitation up to normal.

Udall said that as of March 1, the median forecast for April-July runoff of the Colorado River was 4.7 million acre-feet.

He said this week's storm does not change that forecast. But he added that if the actual runoff is near this figure, or gives promise of exceeding it, it might be possible to gain storage in Lake Powell by further replacement of Hoover power.

In other words, Udall said, "we might be able to resume storage in Lake Powell, let Lake Mead storage drop somewhat below the 14.5 million acre-foot mark temporarily, and make up for the resultant reduction in Hoover generation by purchases of power from outside sources."

He said storage in Lake Powell now stands at about 3.1 million acre-feet. The lake is 251 feet deep at Glen Canyon Dam.

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

Mr. BENNETT. I am happy to yield. Mr. SIMPSON. At this juncture, will the Senator from Utah permit the insertion in the RECORD of a letter and an editorial from the Wyoming State Tribune, one of the leading newspapers in Wyoming, with respect to the show-down on the Colorado?

Mr. BENNETT. Mr. President, I am happy to ask that this letter and editorial also be printed in the RECORD.

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

APRIL 3, 1964.

HON. STEWART L. UDALL,  
Secretary of the Interior,  
Department of the Interior,  
Washington, D.C.

DEAR MR. SECRETARY: I am very much concerned and disturbed regarding your decision on the recommendation of Reclamation Commissioner Dominy to release water from the Glen Canyon Dam in order to maintain a generating power head in Lake Mead.

The necessity for generating power at Glen Canyon Dam is vitally important to the upper Colorado River States so that necessary revenues may be forthcoming in order that a systematic, well-planned development of the upper Colorado River area can be achieved. Powell Lake at Glen Canyon Dam must be filled as soon as possible.

I am well aware of the Government water commitments below Lake Mead. I feel that if in the past any overcommitted supply of water has been released from Lake Mead, or if this is allowed to happen in the future, it is an infringement on the rights of the upper Colorado River States and should not be allowed to occur. Certainly, Glen Canyon Dam should not suffer now from any past overcommitted supply of water below Lake Mead.

I am also cognizant of the Government commitment of power from Lake Mead. In

following your statements, it appears to me that no effort has been made to contact the Hoover power contractors to seek their cooperation in curtailing their power use temporarily so that the vital interests of reclamation can be helped by withholding water in Lake Powell.

I would be most surprised if the people in the lower basin were to react unfavorably to any proposal that would so greatly benefit reclamation merely by a temporary inconvenience to themselves. Certainly, the huge power systems of the California area would be able to find a temporary source of power to offset the very minimum depletion at Hoover during the withholding period.

I am very disturbed by the apparent lack of interest in solving this problem favorably for the States vitally dependent upon the reclamation of water as the life's blood of their economy. Your Mr. N. B. Bennett advised my office that it was physically impossible to accomplish the transfer of power from the electric system in Arizona across the Hoover powerplant into California.

It is inconceivable that such a minor engineering problem could be impossible for an organization that professes to be capable of building huge electric power systems and generating plants throughout the Nation. I am sure that such a minor technical problem would be insignificant in both cost and effort as compared to the tremendous loss being sustained daily because Glen Canyon Dam cannot produce power revenues. I'm also deeply disturbed by your statement made on March 30, at a press conference, that you have received no offers from electric utilities willing to replace the power deficiency sustained at Hoover as a result of filling Lake Powell to minimum power head when I have in my office a copy of a letter to your Mr. N. B. Bennett firmly making such an offer at least 15 days prior to your statement.

Since it is readily apparent to everyone concerned that there is not, and has never been, any reason to release excessive amounts of water from Lake Powell merely to produce power from Hoover Dam, I strongly urge you to alter immediately this policy and withhold the maximum amount of spring runoff water possible in order to save what remains this year to obtain minimum power head from Glen Canyon.

With best personal regards, I am,

Sincerely yours,

MILWARD L. SIMPSON.

[From the Wyoming State Tribune, Apr. 14, 1964]

#### SHOWDOWN ON THE COLORADO

A meeting of great, overriding importance is being held today at the State Services Building in Denver.

There for 2 days of conferences are gathered the Governors of Upper Colorado River Basin States—Wyoming, Colorado, New Mexico, and Utah—their staffs, attorneys general, and other experts, to pore into the problem of growing conflict over use of water from one of the lifestreams of the West: the Colorado River.

Today's and tomorrow's sessions primarily revolve around one facet of the problem of the Colorado and its sources, and those States whose existence depend on it.

This is the Glen Canyon controversy in which Secretary of the Interior Stewart Udall and his Commissioner of the Bureau of Reclamation, Wyomingite Floyd Dominy, have ordered the release of water previously intended to be impounded behind the dam of this huge upper Colorado River project.

The Secretary and the Commissioner say that the water must be released now to maintain the level of Lake Mead backed up behind Hoover Dam on the lower reaches of the Colorado and thus guarantee the delivery of hydroelectrically generated power to public

power consumers in southern California and Arizona.

The upper basin States, led by formidable old Ed Johnson, of Colorado, and a pool of private utility companies have made an offer to supply any power deficiency that might occur as a result of lack of enough water to turn the turbines at Hoover Dam.

The problem with Glen Canyon and the upper basin States is that they, to, need the power revenues from their own project, a problem that has been succinctly stated by Senator MILWARD L. SIMPSON, of Wyoming, in a letter of April 3 to Secretary Udall. "The necessity for generating power at Glen Canyon Dam is vitally important to the upper Colorado River states," wrote SIMPSON, "so that necessary revenues may be forthcoming in order that a systematic, well-planned development of the upper Colorado River area can be achieved. Powell Lake at Glen Canyon Dam must be filled as soon as possible."

SIMPSON said he was fully cognizant of Government commitments for both power and water below Lake Mead, but he suggested that the "huge power systems of the California area" should be able to "find a temporary source of power to offset the very minimum depletion at Hoover during that withholding period."

Then, said the Senator from Wyoming: "I am very disturbed by the apparent lack of interest in solving this problem favorably for the States vitally dependent upon the reclamation of water as the life's blood of their economy. Your Mr. N. B. Bennett advised my office that it was physically impossible to accomplish the transfer of power from the electric system in Arizona across the Hoover powerplant into California."

"It is inconceivable," Senator SIMPSON wrote Secretary Udall, "that such a minor engineering problem could be impossible for an organization that professes to be capable of building huge electric power systems and generating plants throughout the Nation. I am sure that such a minor technical problem would be insignificant in both cost and effort as compared with the tremendous loss being sustained daily because Glen Canyon cannot produce power revenues."

The Colorado River Association, which maintains its headquarters in Los Angeles and which identifies itself as "an organization of public-spirited citizens" dedicated to protection of the "prior" water rights of southern California, bitterly opposes the Upper Basin State Governor's request for the closing of the gates at Glen Canyon.

The Glen Canyon battle seemingly is only one skirmish in a long war over water from the Colorado. The Colorado River Association hinted recently that it was interested in obtaining legislation which would unlock water from sources now held by others, water not now being used. Right now the fight primarily involves southern California against Arizona; and for the present it seemingly centers around southern California's efforts to nall down its delivery of 4.4 million acre-feet of water a year from the Colorado.

But southern California now is getting actually 5.1 million acre-feet annually for a population of 9,234,000; and in 1975, when it estimates its population will reach 14,750,000, it will be getting even less, or the 4.4 million that it seeks to establish on a firm basis.

The perilous proportions of this titanic struggle threaten, as demonstrated by the Glen Canyon controversy, to involve all of the Colorado River States, both upper and lower basins, with the former and less populous States pitted against the lower and heavily populated areas.

Thus the significance of the meeting of today and tomorrow in Denver will concern itself chiefly with the Lake Powell water releases. It is a matter which deserves the

close attention of all our thinking citizens in Wyoming as well as all the upper basin States.

Mr. SIMPSON. Mr. President, I thank the Senator from Utah.

I am much interested in his statement, and also in what the Senator from Colorado has said.

The Senator from Utah is making an important contribution. We seem to be in the same boat, as regards Secretary of the Interior Udall: His office seems to be devoted solely to politics; and we seem to receive little attention or consideration in respect to matters which are of great concern to the Upper Colorado River States.

Mr. BENNETT. I thank the Senator from Wyoming. That, too, is my opinion. Certainly we shall not let the matter rest there.

After this initial furor, I again addressed a letter to Secretary Udall, referring to my unanswered letters of March 16, and seeking answers to further questions raised in the meeting with Mr. Bennett and in the official notification of the drawdown itself.

I wish to insert in the RECORD that letter which, like the others, still remains unanswered.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

MARCH 27, 1964.

HON. STEWART L. UDALL,  
Secretary of the Interior, Department of the Interior, Washington, D.C.

DEAR MR. SECRETARY: In reading your recent press release on Lake Powell and in analyzing the minutes of the meeting in my office with Mr. Newcomb B. Bennett, Jr., of the Bureau of Reclamation, I find that there are many questions remaining unanswered regarding the release of water from Glen Canyon Dam.

I join other Utah citizens in expressing disappointment that the Interior Department did not officially notify the Utah congressional delegation, Gov. George D. Clyde, nor any upper Colorado River officials in Utah until only hours before the formal announcement was made. The releasing of water from Glen Canyon Dam at this time will have a tremendous impact on Upper Basin States. Had we been told earlier we could have participated in the exploration of possible alternate action.

As you know, as early as March 16 I wrote to you asking for an explanation of reports circulating about the potential draining of the lake. I still have had no official answer to my letter.

Therefore, I feel a complete report should be given of the events leading up to the release of the water from Glen Canyon Dam. Specifically, I am interested in the answers to the following questions:

1. Last year when the decision was made to throttle down the release of water at Glen Canyon Dam there was virtually a full Hoover Dam. What happened to this water necessitating the release of water from Glen Canyon? Nowhere in the release nor in the briefing from the Bureau of Reclamation has an answer been given to this question.

2. Why did your Department allow the release of more water from Lake Mead than was required to meet the 1.5 million acre-feet of Mexican entitlements? How much water above the entitlement is still being given to Mexico? How much more Colorado River water above the criteria did President Johnson commit to Mexico in his meeting with President Lopez Mateos at Los Angeles earlier this year?

3. Why did your Department last year allow the release of more water for California than the 4.4 million acre-feet that the Supreme Court as early as June 3, 1963, said California was entitled to? How much water above the entitlement is still being given to California?

4. How much water is going to be drained from Lake Powell? Nowhere have I seen a firm figure. The only figure given in the news story is that the average release will exceed the average inflow by about 7,000 cubic feet per second. However, the Bureau of Reclamation has announced that on March 26 the figure will be 10,000 cubic feet per second; on March 27 it will be 13,000 cubic feet per second; on March 28 it will be 16,000 cubic feet per second; on March 29 it will be 18,000 cubic feet per second, and on March 30 it may reach 21,000 cubic feet per second.

5. What are the economics of the release of the water? How much will draining Lake Powell cost? I understand that each year's delay in power production will cost from \$15 to \$20 million. This is in terms of loss of power revenue, depended upon to help pay the costs. What plans have you made regarding the potential killing of fish and wildlife as result of the water release?

6. If California and Mexico are to demand and be given the water equivalent to the storage now behind Glen Canyon Dam, it raises the fundamental question whether any other reclamation projects should be built on the Colorado River. If we can't even fill Glen Canyon Dam, how can we begin to discuss the construction of the vital central Utah project, of Bridge and Marble Canyon Dams, and of the central Arizona project?

Your early reply to the questions would be greatly appreciated.

Sincerely,

WALLACE F. BENNETT.

Mr. BENNETT. Meanwhile, the Upper Colorado River Commission postponed a meeting which had been scheduled April 6 until April 14, to allow the private power companies sufficient time to work out the transmission and repayment factors of their proposals to furnish power needed at Hoover Dam. These were presented at the meeting in Denver on Tuesday and Wednesday of this week. Interior Department and Bureau of Reclamation officials said they would study the proposals, take them under advisement and attempt to negotiate a power trade. Another meeting has been scheduled for technical officials in Boulder City, Nev., next Tuesday, where concrete offers and power exchanges will be determined.

It was at this Denver meeting, on April 15, that the Interior Department charged that "misinformation and gratuitous comment" had been circulated regarding the Lake Powell issue. I wish to insert that statement at this point in the RECORD.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

STATEMENT BY COMMISSIONER OF RECLAMATION FLOYD E. DOMINY AT COLORADO RIVER COMMISSION MEETING IN DENVER, COLO., APRIL 15, 1964

So much information, misinformation, and gratuitous comment have been circulating in the Upper Colorado River Basin States in recent weeks concerning filling operations at Lake Powell that I welcome this opportunity to meet with the Upper Colorado River Commission.

Between us, we may be able to set the record straight and achieve a greater public understanding of the necessity for our ac-

tions. We have sought to explain this in our letter to the Governors of the upper basin States announcing the step-up in releases for Lake Powell and in public statements, but for some reason, many important details were ignored or pushed aside as critics of our operation rushed into print.

Let me say that Secretary of the Interior Udall and I have a united objective to provide the fairest and most objective treatment possible to both the upper and lower basin States during the filling of Lake Powell. This filling has been made most critical by the coincidence of 2 years of extreme drought conditions.

I may say parenthetically, that the upper Colorado River storage project was designed to remedy just such a situation as we now have. If Lake Powell had been filled to normal operating level, the problem of river operation would have been simplified in these years of drought, even beyond that which had existed if Glen Canyon Dam had not been built. Without Lake Powell storage, it is entirely possible that in periods such as this, the upper basin would not have been able to deplete the river for the uses contemplated by construction of the Colorado River storage project participating projects.

It must be recognized that neither Secretary Udall nor I are free agents in the operation of the river. We are governed by the "law of the river" which includes among other things, a specific direction that the upper Colorado River storage project is subject to the Colorado River compact and to the Boulder Canyon Project Act.

Finally, by way of preface, let me reiterate my statement which has repeatedly been ignored, that there has not yet been a final decision on filling operations for this year. If one could judge from comments, it was a foregone conclusion that we are immediately going to drain Lake Powell dry. When Secretary Udall made the tentative decision March 26 to follow the filling criteria on an interim basis so as to maintain rated head at Hoover powerplant he simultaneously directed the Bureau of Reclamation to keep the runoff situation above Lake Powell under continuing reexamination. You can be certain that Secretary Udall will begin storing water in Powell and undertake a power purchase program at Hoover Dam whenever runoff forecasts make such a decision economically possible. In regard to this latter possibility, the Bureau started in mid-February to explore with power suppliers in the lower basin the availability of replacement power for Hoover.

The normal precipitation registered during March is a big step toward that hoped for runoff. But it will require at least normal precipitation during April and May as well as June and July, together with normal runoff conditions, to achieve this total. The normal precipitation during March postponed into May, the "point of no return" when we must make an irrevocable decision on this year's operations. Thus a final decision may be expected when the early May forecast is in. In the meantime, we will continue to investigate possible avenues for power purchase including the much publicized but undocumented offer of the upper basin States utilities of which we have heard nothing except what we read in the newspapers.

With this preface, I would like to make the following comments concerning particular points of controversy:

Deliveries of water to Mexico: During 1961, we limited Mexico's scheduling of Colorado River water deliveries to the guaranteed annual quantity of 1,500,000 acre-feet provided for in article 10(c) of the 1944 treaty. We insisted upon this same limit in 1962, 1963, and 1964. However, there is always some variance between scheduled and actual water deliveries because of many factors, most of which are out of our control.

In 1963, an overdelivery of 503,890 acre-feet occurred. Of this, 86,050 acre-feet were river regulation water in January and February, and 68,000 acre-feet resulted from storm runoff below Imperial Dam between September 17-25, 1962, leaving a net overdelivery of 349,840 acre-feet caused by physical inability to completely control the river flow. This compares to overdelliveries of 258,700 acre-feet in 1961 and 295,440 acre-feet in 1962. We expect to bring these deliveries closer to schedule when the Senator Walsh Dam and Reservoir, now under construction upstream from Imperial Dam, is completed, as will be further explained.

Adjustment of flood control criteria to conserve water: To conserve the maximum amount of water in 1962, a year of good runoff, we reached an agreement with the Corps of Engineers to infringe on flood control space in Lake Mead to hold back an additional million acre-feet of water. An additional 370,000 acre-feet of water were subsequently stored and 267,640 acre-feet of that released between October 1962 and March 1963, as river regulation flow below Imperial Dam to scour a channel in that aggraded reach where phreatophytes were beginning to consume large quantities of water. Mexico was able to gain ancillary benefits from this release during that period by the resulting lowered salinity of water delivered under the treaty. Details were fully discussed in hearings June 7, 1962, before the Senate Interior and Insular Affairs Committee.

Outback of power generation: Despite the opinions expressed by representatives of the power allottees at Hoover Dam, that sufficient water should be available for generation of firm energy during the 1962-63 year of operation, Regional Director A. B. West held that only sufficient "water be made available at least sufficient to meet downstream requirements." It is a matter of record that water for downstream irrigation and domestic requirements only were released from Lake Mead in that year in anticipation of the needs to start filling operations at Lake Powell the following year. The same condition has since applied. No water has been released at Hoover Dam solely for power production since 1960.

Water salvage on lower Colorado River: Channelization of the Colorado River from Topock Gorge to Big Bend has resulted in an annual water salvage of over 130,000 acre-feet. Since early 1960 the Bureau has had an approved plan for the rectification of 16 miles of badly braided river channel in the Cibola Valley, that would result in an estimated additional annual salvage of 36,000 acre-feet of water. Work has been delayed until early this year by congressional committees pending agreement between the States of Arizona and California on their common boundary.

As mentioned above, up to 285,000 acre-feet annually of additional water salvage will be possible by operation of Senator Walsh Dam and Reservoir, an offstream facility which we now have under construction at a site only 2 miles upstream from Imperial Dam. The reservoir, in a strategic offstream site, will be used for the storage of excess water reaching Imperial Reservoir, including minor floods, for later release as required to satisfy irrigation requirements. As pointed out, in our best years of operation at Imperial Dam, we have seldom been able to regulate flows reaching Imperial so that less than 300,000 acre-feet of water in excess of Mexico's scheduled annual requirement reached the international boundary. We anticipate much closer and accurate downstream deliveries when Senator Walsh Dam is completed.

Need of conserving water in lower basin: Since issuance of the decree in *Arizona v. California* by the Supreme Court less than 6 weeks ago, we have given high priority to a determination of overall operating criteria

to be followed in river operations under the decree.

On August 14, 1962, Regional Director West wrote all contractors of Colorado River water calling attention to the potential critical situation and urging a reduction in water requirements where possible. This has not been too successful, but since issuance of the decree the extent and requirements for uses of water all along the river have been and are presently under scrutiny to develop plans for reduced delivery schedules to irrigation and domestic users conforming with reasonable use provisions of the lower basin water contracts.

Illegal diversions: Reclamation has not been unaware of the problem of illegal use of water along the Colorado River. The decree also strengthens the Secretary of the Interior's authority to enjoin use of river water without a contract.

There is some popular belief that illegal diversions can be halted simply by moving illegal occupants from the land or by shutting off their water supply through the medium of warrants served by a U.S. marshal. Unfortunately it is not that simple.

In some cases the threat of legal action has halted illegal diversion or trespass but generally illegal diversion by those owning private lands can only be stopped by a court-obtained injunction. Illegal diversions by trespassers can also be halted by evicting them from the land.

A trespass case is now in the courts and has been there for about 5 years. A recently instituted illegal diversion case has also been referred to the Department of Justice, but its filing in court was delayed pending the final decree in *Arizona v. California*. Within the last few months we have met in Los Angeles with representatives of the U.S. attorney's offices of both Arizona and southern California in anticipation of processing a number of these cases of both types. Approximately eight trespass cases are now in the office of our regional solicitor in Los Angeles, in preparation for referral to justice. Thirty more cases are in various stages of preparation in the Land Use Office at Yuma, Ariz.

Fishery and recreation resources at Lake Powell: As with most reclamation projects Lake Powell has created an outstanding fishery and recreation resource which outdoor sportsmen, of which I am one, have taken great pride. I must nevertheless point out that these ancillary benefits are secondary to the primary uses of the water for consumptive purposes.

But I will also point out that the expressions of alarm over total draining of Lake Powell are unfounded. Only under the most critical drought conditions could this occur and the normal precipitation during March has virtually eliminated this possibility. Even under the poor forecast conditions as they exist today, if we are not able to resume storage in Lake Powell, there will be a pool of more than 2 million acre-feet of water during the summer. Within this same forecast, we do not foresee any condition requiring a drawdown of Lake Powell below 200,000 acre-feet. This would provide a lake 100 feet deep at the dam and extending 50 miles upstream. This would occur in the late fall and winter when temperatures would be low enough to maintain the trout fishery.

Of course, if we have another minimum water year in 1965, the lake could well be drained. That is one of the exigencies we must face. On the other hand, as I have stated, if our early May runoff forecast shows normal precipitation in April and an April-July runoff of 4,700,000 acre-feet or better, we can carefully consider and, I hope, undertake a power purchase program which will solve our immediate filing problems at Lake Powell.

Mr. BENNETT. This statement attempts to justify the Interior Department policy and the reasons for the delivery of water to the lower basin, at the expense of the upper basin. Most of the blame is placed on nature for giving us a couple of low-runoff years.

But the key questions still remain unanswered. Perhaps the most important one is: "Why is Lake Mead so low; exactly where has the water been going?"

Last year, when the decision was made to throttle down the release of water at Glen Canyon Dam, there was virtually a full lake behind Hoover Dam. What happened to this water necessitating the release of water from Glen Canyon? Nowhere in the release nor in the briefing from the Bureau of Reclamation has an answer been given to this question. As I have said, the Secretary of the Interior continues to ignore it.

Quite frankly, Mr. President, I feel that the Interior Department is filibustering Lake Powell. In early reports, we were told that the Secretary and the water officials would look at the runoff situation, and would give us a report on April 1 before making a final decision on how much water to drain. The date was later changed to April 10. Later, May 1 was set as decision day; and now the papers say it has again been moved up to May 10. I have had no word from the Interior Department, so I must depend on newspaper reports for information.

Another unanswered question is, "Why does not the Bureau of Reclamation buy private power right now?" In his March 25 briefing in my office, Commissioner Bennett made this explanation—these are not his exact words, but are taken from notes made by a stenographer on my staff who attended the meeting.

He said, in effect, "You cannot get Arizona power into the coast areas. The only way you can get power for them is to buy it from the city of Los Angeles. Lake Mead has two powerplants, and they are not connected. Theoretically, you could get Arizona Public Service power up to Arizona's side of Hoover, but you cannot get it across. There are two powerplants, and they are not connected electrically."

To me, this is a startling statement. The Bureau of Reclamation has been known the world over for its ability to build dams and get power into the remotest areas on earth. Yet it cannot jump power across one river in the Intermountain West.

It took a group of outside, private engineers and power company officials to report to the Bureau of Reclamation that both the energy and transmission facilities to make up power deficiencies existed. In fact, the private engineers physically went into the Hoover Dam switches and showed the Bureau officials how the transmission could be accomplished.

It seems to me that the Interior Department should know how to run its own system.

So, while forecast dates are changed and revised, while more meetings are

held, and private power officials are showing the Interior Department how to function, the Interior Department officials continue to try to defend their present position, without doing anything constructive to solve the problem; and the Colorado River water behind Glen Canyon Dam continues its merry way down the stream.

Mr. President, I submit that if the Interior Department is acting in good faith and is, in fact, seeking means of solving the problem of the Lake Powell drawdown and the power deficiency, it will shut the gates immediately, halt the waterflow, and enter negotiations for a power contract with the utility companies. The upper basin is guaranteeing the payment for both water and power, yet the Department is slanting all of its consideration to the lower basin.

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

Mr. BENNETT. I am happy to yield.

Mr. SIMPSON. Is it not the opinion of the Senator from Utah that the attitude on the part of the Bureau of which the Senator has spoken is in violation of the agreement among the upper and lower basin States?

Mr. BENNETT. Not only is it in violation of the agreement, but also it is in violation of the law.

Mr. SIMPSON. The drawing down of the water from Lake Powell and the taking of water overcommitted from Hoover Dam is doing a disservice to the Glen Canyon Dam for power in the upper States; is it not?

Mr. BENNETT. It will delay the development of the related projects in the upper basin area. It could delay them for years. The Secretary himself made up the criteria on the basis of which he claims the authority to withdraw that water.

Mr. SIMPSON. Within the knowledge of the Senator from Utah, was any overture made to any of the Governors or Representatives of the upper basin States prior to what has taken place with respect to the withdrawal of water?

Mr. BENNETT. No representations were made to officials in my State. If they were made in other States, I have not been able to find out about them.

Mr. SIMPSON. None was made in the State of Wyoming. I wish the record to disclose that fact.

Mr. BENNETT. Perhaps our friend the Senator from Colorado [Mr. DOMINICK] could add to that statement. Does the Senator know of any representations made to officials in Colorado prior to the decision which was made?

Mr. DOMINICK. In relation to the release of water from Lake Powell? Absolutely none.

Mr. BENNETT. I thank my friend for furnishing that information.

Finally, I would like to comment further on the Department's "misinformation" charges. The only source of misinformation on this issue so far has been the Interior Department itself. As the various documents and articles from the newspapers point out, the Interior De-

partment failed to notify or seek the views of a single upper basin official before the decision.

Secretary Udall said in his letter to the four Governors:

I may add that up to the present time, although we have read newspaper stories concerning an offer by upper basin private utilities to supply replacement power, we have had no proposal with necessary data such as rates and the means.

On what basis did the Secretary expect the utilities to present a concrete proposal? No one in the upper basin was officially or unofficially notified in time. All we had to go on was a newspaper report out of Page, Ariz., on March 2, which was subsequently denied by Interior Department spokesmen, but which proved to be all true.

In his announcement of March 26, Secretary Udall said:

This is the only possible decision which can be made at this time that will protect the Federal investment.

We have heard the phrase, "protect the Federal investment," time and again during this issue. I question Secretary Udall's placement of values. The upper Colorado River storage project cost \$1 billion. Is that not Federal investment worth protecting?

Furthermore, every year's delay in filling Lake Powell to the level where power generation can start will add from \$15 to \$20 million to the project's cost. The loss will come mainly from lack of power revenue, depended on to help pay for the project. There will also be added interest and other costs.

More confusion has come from the Interior Department on the issue of the filling criteria. We have been told, "These are the criteria you accepted and now you must live by them." In Denver on Wednesday, Commissioner Dominy admitted that the upper basin had never really approved the criteria. He agreed that no one in the upper basin had accepted the criteria after they were promulgated by Secretary Udall on April 4, 1962.

We also have heard the Secretary is "bound" by the filling criteria. Since these criteria are manmade, perhaps we could say "Secretary-made"—certainly man—or Secretary—can amend them. Furthermore, the Colorado River compact is explicit in stating that consumptive uses will have priority over non-consumptive or power uses. The Secretary should be "bound" by this requirement as much as any other.

The Supreme Court, in its ruling on Arizona against California, said that the Secretary of the Interior is the supreme manager of the Colorado River. Frankly, I feel that the Secretary is not managing the river properly. He is following neither the law of the river nor the Colorado River compact. He has proposed and is making releases from Hoover Dam in excess of legitimate downstream interests as confirmed by the Supreme Court.

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

Mr. BENNETT. I yield.

Mr. SIMPSON. Is it not as important that the generating power of Glen Canyon Dam be made available to the upper power States so that the necessary revenues may be forthcoming, in order that there may be a systematic development of the upper Colorado River area in our own upper States?

Mr. BENNETT. I believe we are entitled to think that the interests of the upper Colorado area should be as important as the interests of the lower basin States.

Mr. SIMPSON. Would that not dictate, then, to the mind of the Senator from Utah that Lake Powell behind Glen Canyon Dam should be filled as soon as possible?

Mr. BENNETT. There is no question about it. I believe the Secretary has acted with a great deal of highhandedness in assuming that he has the right to drain Lake Powell for the benefit of the people who want water below Lake Mead.

Mr. SIMPSON. As the Senator knows, we have our commitments, too. I again wish to compliment the Senator. We are fighting for our lifeblood in that western country. As the Senator said at the outset of his fine talk here, in the West a drop of water is as valuable as a nugget of gold. We have been dealing with this problem for many years. The project was instituted in the Eisenhower administration. We worked at a fast pace in order to get the project into operation. Now we find that the States that provide the water in the upper basin are being euchred out of a position with respect to repayment and redevelopment by virtue of this unauthorized, un-American attitude on the part of the Secretary of the Interior. Does the Senator agree with that statement?

Mr. BENNETT. I agree with that statement. The people in the lower basin States are entitled to so much water. I have asked the Secretary to tell me how much more than that they have had. That is one of the questions which the Secretary has refused to answer. Until he answers the question, we shall not know how badly we have been euchred. But I think his silence indicates that we have been "had."

Mr. SIMPSON. It seems to the Senator from Wyoming that we have been shabbily treated with respect to the problem, especially by the Secretary of the Interior, who holds a high position in Government, and who should look at the question from an impartial point of view. The upper basin States are entitled to more consideration by the Secretary of the Interior than they are now being given.

It seems to me that unless at this juncture the Secretary ceases to proceed in his present course, we in the upper basin States shall be so badly hurt that our development can be curtailed for a number of years.

Mr. BENNETT. It seems to the Senator from Utah that unless Senators who represent the upper basin States rose to discuss the problem, the Secretary would probably continue to run that water down and hope that no one would

say anything about it. It is vital that all Senators who represent upper basin States should get into the fight and put pressure on the Secretary to do what the law tells him he should have done in the first place.

Mr. SIMPSON. I agree with the Senator wholeheartedly in his statement. All we are demanding is that the law and the compact be followed.

Mr. BENNETT. Therefore, Mr. President, I request here from the floor of the U.S. Senate that the Secretary of the Interior answer my letters, so that we can hear no more cries of "misinformation" or accusations about "gratuitous statements." I request that he shut the gates at Lake Powell immediately, because if later events prove his present action wrong, it will be too late. The water will have run down. Water runs downhill, and Lake Powell cannot be replaced from Lake Mead.

Finally, I request that he enter into serious negotiations with the power companies instead of spending the Department's main efforts in justification of his past action. If he will do these things, then we can know that he is acting in good faith.

It is obvious that the most serious problem is the problem of supplying water, not power, to the lower basin States. Power can be generated by using means other than falling water. Now that there is obviously an offer which will provide power, the Secretary should move immediately to stop the use of water, using power as an excuse.

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

Mr. BENNETT. I am happy to yield.

Mr. DOMINICK. I wish to express my appreciation for the Senator's clear-cut statement on the problem facing us. It seems to me the Secretary has been taking the position, from the very beginning, that any time a Republican Senator from one of these States spoke, it was a partisan attack on him as an individual and his office as Secretary. But the fact is that this dam and the water behind it are the property of all the people of this country, Democrats and Republicans alike. That is the key feature, it seems to me, in the development of the upper Colorado River project. The revenues from this dam going into the upper basin funds will help finance participating projects beneath them.

Mr. BENNETT. Yes.

Mr. DOMINICK. A good many projects are dependent upon these funds in order to proceed with the construction of projects that are planned. Yet, as the Senator from Utah and the Senator from Wyoming have pointed out, the fact is that efforts to obtain information are treated with utmost discourtesy so far as the offices of the Senator from Utah and the Senator from Wyoming are concerned, as if there were some kind of political mishmash going on between two people in the Arizona desert. Has this impression gotten through to the Senator from Utah?

Mr. BENNETT. This impression was made clear to me within a few months

after the present Secretary of the Interior took office, and it has continued ever since. In defense of the Secretary, I should like to make the point that he kept my Democratic colleague in the dark, just as he did me. My colleague made the statement that the drawdown was to be postponed; and within 24 hours, without notifying him, the Secretary opened the gates.

Mr. DOMINICK. This is rather refreshing news, because it means that the Secretary is being discourteous to everybody rather than picking out the Republicans.

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

Mr. BENNETT. I yield.

Mr. SIMPSON. Since we have participating projects not yet underway in the upper Colorado, does not this type of interference seriously interfere with plans of the upper basin States with respect to the participating projects?

Mr. BENNETT. Yes. Since we are dependent upon money generated from the dam already built at Glen Canyon and Flaming Gorge to make some of the participating projects feasible, by his actions the Secretary is postponing the day when we can obtain the benefits from our share of the water. We cannot pump the water out of the bottom of the Colorado River Gorge. We must get our share of the water out of the high mountains, but before we could do that we must build smaller dams and aqueducts which are a part of the participating projects.

We would not do that until after the big dams were built, to make sure that we could meet our commitments to the lower basin States. The big dams have been built. The Secretary has prevented the biggest one from filling. No one knows by how many years he has postponed the day when our share of the water in Utah, guaranteed to us by the upper Colorado storage project, can actually be delivered either to a municipality or to an irrigation project.

Mr. SIMPSON. After that, there would be a diminishment of the power revenues to enable us to build the participating projects that much faster; would there not?

Mr. BENNETT. Yes; the longer the Secretary delays the operation of the generators on the Glen Canyon Dam, the less income the whole upper Colorado storage project will receive.

Mr. SIMPSON. I thank the Senator from Utah for his statement. This is the place to bring the question up, because I think our colleagues will certainly assist us in trying to rectify the very patent wrong precipitated on the upper basin States.

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

Mr. BENNETT. I yield.

Mr. DOMINICK. On page 6 of the copy of the Senator's statement which I received, the Senator puts the question of what happened to the water in Lake Mead, which required the release of water from Glen Canyon Dam.

Our former colleague from Colorado, who was also our distinguished Governor, Ed Johnson, and who is now the State's representative on the upper basin com-

mittee, had a good deal to say on this matter. He is quoted in an article from the Denver Post of April 7. For the purpose of the record, I should like to read a little of the article into the RECORD, because it is of extreme interest.

Governor Johnson, or "Big Ed," as he is familiarly called in Colorado, has called for an immediate cessation of the release of water from Lake Powell. He has received nothing but the back of the hand from the Secretary. They are members of the same party, so perhaps this is not a one-party deal. The article, quoting former Senator Johnson states:

While the Upper Basin States of Colorado, Utah, New Mexico, and Wyoming are not required under compact to deliver more than 75 million acre-feet of water for a 10-year period to the lower basin, actual deliveries for a 10-year period ending last October amounted to 93,740,000 acre-feet.

At the end of the 1964 water year, the deliveries to the lower basin as measured at Lees Ferry, Ariz., will approximate 90 million acre-feet for 10 years—or 15 million acre-feet more than required by compact.

#### DELIVERY TO MEXICO

Millions of acre-feet of water have been delivered to the Republic of Mexico beyond treaty obligations for annual delivery of 1.5 million acre-feet. This amounts to a 2.6 million acre-feet excess in the last 4 years.

In the spring of 1962, Hoover Dam's Lake Mead contained 24.6 million acre-feet of water. It was nearly full. The lake since then has been drawn down to 14.5 million acre-feet. This despite the fact that in the 1962 water year the upper basin delivered 14,790,000 acre-feet of water at Lee's Ferry and 2,555,000 acre-feet in 1963—a total for the 2 years in excess of compact obligations.

"Thus, there is no question that the upper basin has delivered its commitment to the lower basin and much, much more," said Johnson.

#### WASTING WATER

"They [the U.S. Bureau of Reclamation] have simply been wasting and mismanaging the water. They cannot refute this."

These figures are taken from the records of the Upper Colorado River Commission in Salt Lake City. I shall ask that the entire article be printed in the RECORD.

I have another article from the Denver Post, dated April 12, the headline of which is "Dominy To Face Quiz on River Edict," again pointing out that the Upper Colorado River Commission and the Bureau of Reclamation and the Secretary's office are completely at odds as to whether there is any need for this action, and the fact that they were not given notice ahead of time, as to the fact that there is a violation of the compact, and as to the fact that no planning was made by the Secretary's office in any way to take care of the power shortage problem that the Senator has so ably presented. But if planning had been done, it was perfectly simple to solve the problem by virtue of cooperation with the investor-owned utilities in the area.

Mr. President, I ask unanimous consent to have printed at this point in the RECORD two articles from the Denver Post, the first being published on April 12 entitled "Dominy To Face Quiz on River Edict," and the second being published April 7, 1964, entitled "Udall Pressed To Halt Glen Canyon Drainage."

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

[From the Denver (Colo.) Post, Apr. 12, 1964]

#### DOMINY TO FACE QUIZ ON RIVER EDICT (By Bert Hanna)

Floyd E. Dominy, U.S. Commissioner of Reclamation, will be—in effect—on a hot griddle when he arrives in Denver Tuesday to defend actions of the U.S. Interior Department in its management of storage of Colorado River impoundments.

The Upper Colorado River Commission is prepared, it was reported Saturday, to subject Dominy to a barrage of questions in the meeting called to examine the reasons for draining water from Glen Canyon Dam of the Colorado River storage project.

The Commission meeting in the State Office Building is expected to produce fireworks between Dominy and Ed C. Johnson, Colorado's member of the policymaking water agency.

The Upper River Commission represents Colorado, Wyoming, New Mexico, and Utah. Governors and other officials of these States have been hostile to a decision of Secretary of the Interior Stewart L. Udall ordering water releases from Glen Canyon Dam to satisfy "rated head" power production at downstream Hoover Dam.

Johnson and others have contended this is a violation of the Colorado River compact in which the upper basin may be deprived of power revenues from Glen Canyon Dam for at least a year.

Johnson is prepared to make a report to the Commission contending that the lower basin has been delivered far more water than required by compact and that there has been waste and mismanagement of water in the lower basin.

There has been some optimism in the upper basin in the last few days that nature has largely solved the problem by depositing large quantities of snow in the Colorado River watersheds.

However, Dominy on Friday said there is no justification for confidence that Glen Canyon's Lake Powell will be filled to a power-production level this season, and releases are continuing.

Secretary Udall, on Dominy's recommendation, is basing his decision on filling criteria that assumes maintaining Lake Mead at a rated power head of 14.5 million acre-feet—the present storage.

Any lowering of such storage demands withdrawals from upper basin storage to supply the power requirements in the lower basin, according to these criteria.

However, Johnson and his allies, including Utah's Commission member, Gov. George Clyde, are prepared to argue the case.

They will further present a case for consideration of an offer by investor-owned utilities in the Rocky Mountain region to supply substitute energy to Hoover Dam that would permit water storage for power at Glen Canyon this summer.

The legal committee of the upper commission, which held a special meeting in Denver last week, will report on possible court action against the Interior Department and the lower basin States. The Chairman of that Committee is Felix L. Sparks, director of the Colorado Water Conservation Board.

[From the Denver (Colo.) Post, Apr. 7, 1964]  
UDALL PRESSED TO HALT GLEN CANYON  
DRAINAGE

(By Bert Hanna)

In view of the substantial improvement in the Colorado River watershed created by recent snows, U.S. Interior Secretary Stewart L. Udall, must immediately halt drainage of water from Glen Canyon Reservoir.

This was the demand, Tuesday, of Ed C. Johnson, former Governor and U.S. Senator

and Colorado's member of the Upper Colorado River Commission.

Johnson, who has charged violation of the Colorado River compact in Udall's order opening the gates of Glen Canyon Dam to release water for lower basin power production, said Udall can no longer excuse his action on grounds of inadequate river flow.

At the same time, Johnson released figures he has obtained from the upper commission's office in Salt Lake City, to firm up charges he will air before a meeting of the Commission in Denver, April 14.

The figures, he said, will show that the upper basin has fulfilled far more than its water obligations to the lower basin States and, therefore, releases from the newly completed Glen Canyon Dam of the upper basin's Colorado River storage project "are illegal under any circumstances."

All reports indicate a Colorado River flow far in excess of earlier spring estimates, Johnson said, while water is still being drained from Glen Canyon under Udall's order to maintain rated powerhead at downstream Hoover Dam.

"And this is upper basin water, illegally appropriated, which will be lost to us forever," he declared.

He contended that on the basis of the new spring storms adding great quantities of water for runoff in the 1964 water season, Glen Canyon Dam could be filled to a power production level while Hoover Dam could continue to produce power.

Johnson's new figures, which he says are fully documented by his commission's own records, show:

While the upper basin States of Colorado, Utah, New Mexico, and Wyoming are not required under compact to deliver more than 75 million acre-feet of water for a 10-year period to the lower basin, actual deliveries for a 10-year period ending last October amounted to 93,740,000 acre-feet.

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"Thus, there is no question that the upper basin has delivered its commitment to the lower basin and much, much more," said Johnson.

#### WASTING WATER

"They [the U.S. Bureau of Reclamation] have simply been wasting and mismanaging the water. They cannot refute this.

"Since we have complied with our obligations, the seizure of upper basin water under pretext of 2 years of drought is absolutely unconscionable."

Johnson's figures of upper basin water deliveries as measured at Lees Ferry for 10 years:

In 1954, 6,116,000 acre-feet; 7,307,000 acre-feet in 1955; 8,750,000 acre-feet in 1956; 17,340,000 in 1957; 14,260,000 in 1958; 6,756,000 in 1959; 9,192,000 in 1960; 6,674,000 in 1961; 14,790,000 in 1962; 2,555,000 in 1963; (when impoundment of water started at Glen Canyon).

The total for the 10 years, 93,740,000 acre-feet, while only 75 million was required by compact.

#### TEN-YEAR PERIOD

"I want to stress that our delivery requirements to the lower basin do not stipulate 7.5 million acre-feet in 1 water year but 75 million acre-feet over a 10-year period," Johnson went on.

"With the tremendous drawdown on Lake Mead while we were delivering more water than required for the combined water years of 1962 and 1963, where did all that water go?"

"I want to show where some of it went."

Johnson then released these tabulations he obtained from the Salt Lake City office of his commission of excess water delivered in the last 4 years to Mexico beyond treaty requirements of 1.5 million acre-feet a year.

In 1960, 2,743,000 acre-feet, excess, 1,243,000; 1961, 2,009,000 acre-feet, excess, 509,000; 1962, 1,760,000, excess, 260,000; 1963, 2,116,000, excess, 616,000. Excess for 4 years, 2,628,000 acre-feet.

Johnson said that in addition to the "exposé" of a deliberate policy of withdrawing water from Lake Mead and discharging a surplus to Mexico, he wants firm figures on deliveries to California.

Mr. SIMPSON. As to the statement of the former Governor of Colorado, I recall that in January of 1955 when I was Governor of Wyoming I called a meeting of the Governors of the upper basin States. At that time, we recognized the situation as to delivery, but by the same token we propounded the question to the then Secretary of the Interior as to what would happen if we made delivery in overpluse years, or overrun, if we made more than committed acre-feet of run-over. We were told at that time by the Secretary of the Interior that we would receive credit in the drought years.

I call attention to the fact that there are 14 million acre-feet of water in excess of that which was called for in the compact.

Mr. BENNETT. I have listened to what the Senator has stated with great interest. Will the Senator tell us what year that was?

Mr. SIMPSON. In 1955.

Mr. DOMINICK. One other point which the Senator brought up was the power problem, and the question of whether the investor-owned utilities would be able to supply power to take care of shortages. The Senator brought out very clearly and succinctly the offers which have been made by the private investor-owned utilities to take care of these divisions. It is my understanding, first of all, that the offer they made does not involve a payment by the U.S. Government in any way whatsoever in cash for the power that would be transformed. Is that correct?

Mr. BENNETT. That is my understanding, also.

Mr. DOMINICK. Second, this would mean that at a later date the Government, through the various terms, and the Federal Power Commission would return power for the power that the private investor-owned utilities would use now?

Mr. BENNETT. That is my understanding, with the further understanding that most of the power would come off of the lake at Glen Canyon.

Mr. DOMINICK. We are not talking about anything affecting the budget. We are not talking about anything affecting the appropriations before Con-

gress for Interior Department expenses and funds. Is that correct?

Mr. BENNETT. That is my understanding.

Mr. DOMINICK. All we are doing is having the Secretary say, "For some reason that is completely incomprehensible to me, I am not going to deal with these people."

Mr. BENNETT. Thus far he has not dealt with them, although I understand that at a meeting held the other day, Mr. Dominy indicated that they will sit down next week in Boulder City and try to devise a program.

Mr. DOMINICK. In the meanwhile, we are losing a vast amount of water.

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

Mr. BENNETT. I yield.

Mr. MOSS. I thank my senior colleague. I regret that I have not been present to hear his speech. I have not had an opportunity to see it in print. The thing which my senior colleague is talking about is something very important to me, and very important to Utah.

For the past 8 days, the Irrigation and Reclamation Subcommittee of the Committee on Interior and Insular Affairs has been holding hearings. Each morning we have been discussing this problem along with other problems with the Secretary of the Interior, the Under Secretary, the Commissioner of Reclamation, and the members of their staff. A great many things have been discussed here today, and have been brought out as to our water problem by the Senator from Colorado and my senior colleague. However, I should point out that the private utilities have made no offer about receiving power later in return for power supplied now. The executive secretary of the Colorado River Commission has made such a proposal to the private utilities, with no response up to this time.

That is one of the points I should like to make. In addition, the proposal of the private utility was not communicated at any time before this week to the Department of the Interior, or the Bureau of Reclamation. It was presented to the Upper Colorado River Commission last Tuesday at Denver, with the Commissioner of Reclamation present.

As a result of that meeting, a meeting has been set for next Tuesday, at which meeting the details will be discussed and examined to see if it is possible to arrive at some kind of power transfer.

The point to which I wish to call attention, however, is that what the Secretary has done to this point is in complete accord with section 7 of the filling criterion, which requires that until the elevation at Glen Canyon reaches 3,490 feet, water must be released to keep Lake Mead at 1,123 feet, unless there is a modification of the filling criterion. The Secretary has no other option. I have been discussing this question with him and with the Commissioner of Reclamation to try to find an alternative; but until such time as we can find an alternative, we must deal with the criterion or modify it. I think we are bound by it as a matter of law.

Mr. BENNETT. It is the understanding of the senior Senator from Utah

that the Secretary of the Interior promulgated the criterion and is in a position to promulgate amendments at any time.

Mr. MOSS. No; that is not quite correct. If I may respond to that, the filling criterion was proposed by Secretary Seaton, when he was Secretary of the Interior in the previous administration. Since the present Secretary of the Interior came into office, he made a review of the criterion and accepted it as it was laid down. Then it was published in the Federal Register. During the time of publication, there was a period of 30 days within which objection might be raised, or questions raised, as to the terms of the criterion. During that time, there was never any question or objection raised with respect to paragraph 7, the one that is now covered here. Therefore it became effective and binding.

In order to change it, there would have to be a similar publication at a similar time, subject to comment and objection with respect to either the upper or lower basin. That has not been accomplished at this point.

Mr. BENNETT. My colleague and I have a different understanding of the basis for the former criterion. It is true that former Secretary Seaton, when he went out of office, prepared a criterion. His successor answered immediately that he was not bound by it. He did not promulgate his own criterion for more than a year after he took office. So he did not automatically accept the criterion of his predecessor. Commissioner Dominy, in the meeting in Denver on Wednesday, admitted that the Upper Colorado River Commission in the upper basin States had approved the criterion. But we are nit picking at this point, as to who said what, or what was said. The fact of the matter is that the water is still going down the river. The Secretary has the power to prevent it. I am still waiting for answers to the questions I asked in the letter which I wrote him on March 16.

Mr. MOSS. I agree with my senior colleague that the water is running. But the important thing is to find out, if we can, the way to retain enough water in Lake Powell so that the minimum power head may be reached in August of this year. At the present time, the reservoir is holding about even. And after runoff comes in the next two months, it will begin to rise. It will have to deposit about 3 million acre-feet over what is in the reservoir now, in order to bring it up to the minimum power head.

I congratulate my colleague for being concerned about this problem. The daily meetings which we are having in the Irrigation and Reclamation Committee on the problem indicate that we may be making some progress in favor of changing the criterion in section 7, which governs. The wording of section 7 is precisely the same as Secretary Seaton promulgated, which Secretary Udall adopted when he came into office. So that has not changed up to this time.

Mr. BENNETT. It seems to me it is rather absurd to say that the criteria which have produced this situation are the responsibilities of the former Secre-

tary of the Interior when the present Secretary, as is said, adopted them and promulgated them.

From my point of view, the criteria are the responsibility of the present Secretary, not the former Secretary. He had the power to change them. He waited a year before he promulgated them. I believe he is trying to find a way to cover the embarrassment his action has created by saying, "He did it. He has been out of office for 2 years, but he made me do it."

Mr. MOSS. It is not my intention to say that it is not the responsibility of the current Secretary, who caused criteria to be placed in the Federal Register. What I am saying is that what he proposed was precisely what Secretary Seaton proposed in the previous administration. No objection was ever entered against his action during the time the criteria were published in the Federal Register. Now we come to the crux of the problem: there are 2 dry years back to back. It is the only time in the history of the Colorado River Basin that 2 extremely dry years have come together. The second year is on us now. We encountered a problem that none of us thought would happen. There is not enough water running into the upper basin to meet the commitments that have been made for the lower basin.

Mr. BENNETT. Mr. President, my friend from Utah could not have come into the Chamber in time to hear the figures read into the RECORD by the Senator from Colorado, which show that we have overmet our commitment under the 10-year requirement by between 15 million and 20 million acre-feet.

Therefore, 2 dry years being back to back is not a problem so long as we meet our commitments over a 10-year period.

Mr. President, I am embarrassed because visitors from Argentina are in the Chamber, and the Senator from Oregon [Mr. MORSE] has asked me if I would conclude my remarks as quickly as I could, so he could introduce our friends from Argentina to the Senate. I hope that we may close this discussion.

Mr. DOMINICK. Mr. President, will the Senator yield very briefly?

Mr. BENNETT. I yield.

Mr. DOMINICK. My concern is the lack of planning by the Secretary with respect to this problem. As anyone who lives in the West knows, from time to time there is a 2-year, back-to-back dry period. Such periods have occurred before, and they will occur again. The purpose of letting water out of Powell into Mead is to preserve the powerhead. There is more than one way of doing it. The utilities have offered another way. The lack of planning, and the robbing of water from the upper basin States, exemplifies what has been going on.

Mr. DOMINICK subsequently said: Mr. President, earlier today in a colloquy with the Senator from Utah [Mr. BENNETT] and the Senator from Wyoming [Mr. SIMPSON] we spoke of the action of the Secretary of the Interior in releasing water from Lake Powell in order to fill up Lake Mead. As the time I said that any advance planning would have made that unnecessary, that it was

pretty high-handed, and that we had never received any notice of it nor had the Upper Colorado River Commission.

There were some articles on the subject in a newspaper which I believe are particularly pertinent.

Mr. President, I wish to emphasize one point which was made by ex-Senator Johnson, a former Democratic Senator from Colorado.

I quote what he said from an article appearing in the Rocky Mountain News on April 15. He said:

"Today when we attempt to fill our own Lake Powell (at Glen Canyon) with our own water to protect ourselves and the lower basin, the Secretary of Interior illegally and arbitrarily and against our wishes opens the gates of Glen Canyon," Johnson stormed.

#### BLOCKED ATTEMPTS

Johnson said Udall has blocked attempts for a settlement "of the emergency caused by his own incompetence. Stupidly he failed to harbor water to carry him over the temporary shortage \* \* \* which he knew would occur when Glen Canyon was being put into energy production. The evidence supports a record of reckless water extravagance in 1962, 1963, and in previous years."

That is only part of one article. In another article it is reported that the Secretary said:

Are we ready to accept Glen Canyon as an empty, gaping monument to the perfidy of the Secretary of Interior? Slaves would do so, but not proud States, and we are proud.

Mr. President, I ask unanimous consent that an article entitled "Colorado River Unit Urges United States To Seek Private Power Aid," by Robert Beard, and an article entitled "Utility Plan Would End Water Release of Dam," published in the Rocky Mountain News on April 15, and an article entitled "Big Ed Chides Udall on Dam," by Bert Hanna, published in the Denver Post, April 14, be printed in the RECORD at the conclusion of my remarks.

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

[From the Denver (Colo.) Rocky Mountain News, Apr. 15, 1964]

COLORADO RIVER UNIT URGES UNITED STATES TO SEEK PRIVATE POWER AID

(By Robert Beard)

Upper Colorado River commissioners opened a 2-day strategy session, in Denver, Tuesday with a demand that Uncle Sam turn to private power utilities for help.

The commission faces at least a year-long blackout on long-sought revenues from power production at the new Glen Canyon Dam unless its demand is met.

And Floyd E. Dominy will be under the gun to say "Yes" Wednesday when he meets with the commission representing the upper basin States—Colorado, Wyoming, Utah, and New Mexico.

Dominy, as U.S. Reclamation Commissioner, is the man who runs the Government's western public power production system.

#### HOOVER DAM

Key unit of the Reclamation Bureau's powerplant is at Hoover Dam. And power generators there this year have been kept running at full tilt only because the bureau—acting under the orders of U.S. Interior Secretary Stewart Udall—has started to siphon away water originally scheduled to slake Glen Canyon's power thirst for the first time.

Udall, also a public power advocate, is from Arizona, a lower basin State.

Glen Canyon is the key powerplant on the Bureau's billion dollar upper Colorado River storage project. Revenue earned by power production there is to be used to build irrigation facilities throughout the upper basin's four States.

Thus, any slowdown in Glen Canyon water production will result in a construction cut-back for the irrigation units.

#### RADICAL CHANGES

The commission demanded radical changes in conditions governing the operation of the Colorado River as they affect upper basin States.

The commission threatened to oppose the Bureau's Central Arizona project and the Pacific Southwest project unless Arizona agrees to abide by the seven-State compact governing the Colorado River from Colorado's Rockies to the Pacific.

Colorado Commissioner Ed C. Johnson, former Governor and U.S. Senator, said Glen Canyon must be protected or "it would become an empty, gaping monument to the perfdy of the Secretary of the Interior."

"Today when we attempt to fill our own Lake Powell [at Glen Canyon] with our own water to protect ourselves and the lower basin, the Secretary of Interior illegally and arbitrarily and against our wishes opens the gates of Glen Canyon," Johnson stormed.

#### BLOCKED ATTEMPTS

Johnson said Udall has blocked attempts for a settlement "of the emergency caused by his own incompetence. Stupidly he failed to harbor water to carry him over the temporary shortage \* \* \* which he knew would occur when Glen Canyon was being put into energy production. The evidence supports a record of reckless water extravagance in 1962, 1963, and in previous years."

Johnson's assessment of the dispute over release of water at Glen Canyon was backed in a review of the problem by Ival V. Goslin, executive director of the commission, and Felix L. Sparks, director of the Colorado Water Conservation Board.

The commission urged an immediate end to costs being levied against the Upper Basin for any power loss at Hoover during the filling of Glen Canyon.

Sparks said this could cost upper basin States as much as \$50 million if not changed.

#### AMENDMENT ASKED

The commissioners also want an amendment to the Central Arizona project, currently before Congress, requiring Arizona to admit the seven-State compact covers tributaries of the Colorado River as well as the main stem. The commission threatened to oppose this project as well as the overall \$4 billion Pacific southeast project, if the amendment is not included.

The commission insisted on an immediate halt to the use of Colorado River water out of Hoover to dilute the lower Colorado River, to end a saline problem.

The commission ordered legal steps be taken if the use of the water for the dilution doesn't stop.

The saline problem has been caused by the pumping of heavily saline water out of the Mohawk project operated by the U.S. Bureau of Reclamation into the lower Colorado.

The salt in the water has caused international problems with Mexico.

The commission demanded Udall end the use of about 100,000 acre-feet of water by squatters on U.S. Government lands along the lower Colorado.

The commission charged the squatters are not paying for the land, not paying any taxes, and not paying for the water; and are receiving these special privileges because many of them are former employees of the U.S. Bureau of Reclamation.

Several thousand acres are involved, Sparks said. The situation was uncovered in a study of Colorado River water use in the lower basin by the upper basin legal committee. Udall has not acted, Sparks said.

The commission also demanded the Bureau of Reclamation stop its current practice of attributing nearly 1 million acre-feet annual loss of water in the Colorado to "regulatory waste."

Sparks said this has been a cover under which many of the wasteful practices cited by Johnson were hidden.

[From the Denver (Colo.) Rocky Mountain News, Apr. 15, 1964]

#### UTILITY PLAN WOULD END WATER RELEASE OF DAM

The Upper Colorado River Commission plans to present a proposal by five private utility companies to U.S. Reclamation Commissioner Floyd Dominy, Wednesday. The plan would end water release from Glen Canyon.

Dominy will be asked to negotiate a firm arrangement with the companies who agreed at a meeting Tuesday to replace any power lost at Hoover Dam during the filling of Glen Canyon Dam.

Robert Person, president of Public Service Co. of Colorado, said the five companies will provide the power now in return for power at a later date, after Glen Canyon is in full production.

Person's announcement the power could be traded met a previous objection by Dominy that funds for replacement power aren't available.

#### POWER PLUS COSTS

Person said the power companies would agree to a replacement of the power, plus a minimum 6- to 10-percent increment to repay costs incurred.

The utility company proposal as detailed Tuesday would provide up to 200 million kilowatt-hours, considered to be the maximum amount of power impairment at Hoover Dam if Glen Canyon is filled during the current year.

The Bureau of Reclamation would actually gain 250 million kilowatt-hours by accepting the proposal, utility engineers said.

With Glen Canyon on the line starting in August of this year its total output during the proposed 2-year replacement period would be 500 million kilowatt-hours.

#### SWITCH STATION

Under a plan proposed by Richard F. Walker of the Colorado Public Service Co. there would be no additional equipment needed. Power would be wheeled into the Hoover Dam switching station.

Consolidated Edison of California would be asked to make up its own deficiency from lower power output at Hoover and trade for power later.

The New Mexico and Arizona public service companies would initially replace any power loss at Hoover with all of the companies including Public Service Co. of Colorado, Utah Power & Light Co., and Pacific Power & Light Co. providing power as soon as a new hookup is completed.

This is the long-awaited power pool connection in the Four Corners area.

Walker said the private utility companies have the necessary generating capacity and transmission facilities equal to supplying more power than could possibly be needed for replacement.

#### SHOW ESTIMATE

Walker and Paul Rechar, hydraulic engineer for the commission, said about 4.8-million acre-feet are expected to run into the Colorado from watersheds on the basis of snow measurements taken this week.

The private utilities proposed dropping Hoover storage to 10.5 million acre-feet.

Glen Canyon would be brought up to 6.2 million acre-feet for power generation.

The utilities spokesman said without the power trade, Glen Canyon wouldn't be brought up to full power generation levels until July of 1966.

The commission urged the inclusion of \$1.5 million in the current reclamation budget before Congress for the central Utah project. The resolution was presented by Utah Gov. George Clyde.

The commission also said the lower basin States should not be asked to repay \$25 million of Hoover Dam costs for flood control benefits. No other reclamation projects in the United States have been asked to pay for such benefits.

The commission also said the 17 power generators at Hoover should be interconnected. Felix L. Sparks, director of the Colorado Water Commission, said no other hydroelectric power in the United States and possibly the world has generators which are not interconnected.

Both power and water are wasted at Hoover because excess power from a generator can't be transferred to another user.

[From the Denver (Colo.) Post, Apr. 14, 1964]

#### BIG ED CHIDES UDALL ON DAM

(By Bert Hanna)

"Are we ready to accept Glen Canyon as an empty, gaping monument to the perfdy of the Secretary of the Interior? Slaves would do so, but not proud States, and we are proud."

So spoke Ed C. Johnson, former Governor and U.S. Senator and Colorado's member of the Upper Colorado River Commission, in a statement at a commission meeting in Denver Tuesday.

Johnson's bitter denunciation was the highlight of the meeting in the old State Office Building of the commission which represents Colorado, Wyoming, New Mexico and Utah.

The top subject was the recent action of Interior Secretary Stewart L. Udall in ordering drainage of water from Glen Canyon Dam of the upper basin's \$1 billion Colorado River storage project.

The order, following a long drought, was made to maintain power production at the lower basin's Hoover Dam. It has aroused resentment among Governors and water officials throughout the upper basin.

Johnson declared Udall's action is in clear violation of the Colorado River compact. He said that when pioneering leaders of water policy achieved the compact dividing waters between upper and lower basins, they did not believe "we were dealing with water thieves."

"And yet today," he said, "when we attempt to fill our own Lake Powell (formed by Glen Canyon) with our own water, the Secretary of Interior illegally and arbitrarily and against our wishes opens the gates of Glen Canyon. Is he inviting mob rule?"

Johnson said Glen Canyon Dam, downstream from the Utah-Arizona boundary, cost more than \$425 million to construct, is a very important unit of the upper basin project and was scheduled to start producing power for the upper basin this summer.

He charged that the Colorado River compact requiring the upper basin to deliver 75 million acre-feet of water every 10 years has been more than complied with by the upper States.

He contended that since 1958 the U.S. Bureau of Reclamation has been wasting the water delivered and that about 10 million acre-feet of water has poured out of Lake Mead through Hoover Dam into the Gulf of California.

Mr. STENNIS. Mr. President, I yield to the junior Senator from Kansas [Mr.

PEARSON] under the conditions previously announced.

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

#### MORE SMALL OIL FIRMS SELL OUT AS COMPETITION MOUNTS, PROFITS SUFFER

Mr. PEARSON. Mr. President, many comments have been made on the floor of this Senate regarding the affluence of the oil industry. Time and again, tax policy has been proposed to adversely affect the industry's fiscal posture. Each time it has been necessary for those of us whose States are major producers to try to explain the vital nature of this industry to our Nation and to the economy of our own State, and to point up the precarious financial position of many of our independent producers. We have tried to emphasize major alterations in tax policy could mean the wiping out of many thousands of such producers. In my State alone, it is estimated that as many as 3,000 wells would become submarginal if some of the proposals presented during consideration of the tax bill earlier this year had been adopted.

I call to the Senate's attention an article which appeared in the April 8, 1964, edition of the Wall Street Journal, titled "More Small Oil Firms Sell Out as Competition Mounts, Profits Suffer."

This article points to the very heart of previous discussion; namely, the soaring costs of exploration. In so doing it suggests most dramatically the adverse effect of drastic revisions of depletion allowances in the industry.

Mr. President, I ask unanimous consent that the article from the Wall Street Journal be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Wall Street Journal, Apr. 8, 1964]

**PETROLEUM PINCH: MORE SMALL OIL FIRMS SELL OUT AS COMPETITION MOUNTS, PROFITS SUFFER—DRILLING COST RISE, CRUDE SAG SQUEEZE INDEPENDENTS; BIG CONCERNS ARE EAGER TO BUY—JUSTICE DEPARTMENT STEPS IN**

(By James C. Tanner)

In recent days M. H. Robineau, president of Frontier Refining Co. in Denver, has quietly passed the word in the oil industry that his concern, with an annual volume of \$44 million, is up for sale. The reason, according to Mr. Robineau: "I've been in this business 40 years but I've got to be realistic. It's getting murderous for the independent refiner."

In deciding to sell out, Frontier is joining a growing list of independent oil companies who are giving up the struggle. With crude oil prices sagging, production costs climbing and major companies intensifying their fight for customers, the squeeze on many smaller oil companies has become too much to withstand. "Many independents are operating in the red—those making a profit, like ourselves, are an exception," notes Mr. Robineau. In the past 3 years, oil company mergers have run at a \$1 billion annual clip (based on selling prices) and many industry officials look for the figure to go even higher this year.

In most cases the independents are having little trouble finding buyers. For some of the same reasons that the independents feel compelled to quit the business, fully-integrated major oil companies are ready to take them

aboard. Rising real estate and construction costs, for example, often make a merger or purchase of a smaller company a less expensive way for a big firm to establish a strong regional marketing set-up than to go out and build their own chain of stations.

#### EXPLORATION COSTS SOAR

The same holds true of finding crude oil. Exploration costs have soared to such an extent that major firms often regard acquisition of independents as a cheaper way to get oil than by hunting for it themselves. The steep rise in drilling costs points up what firms face in oil exploration. Last year, according to the trade publication Petroleum Engineer, the average deep oil well cost \$695,984 to drill, a 6-percent increase from 1962 and 27 percent above the \$550,000 average of 1953. Yet, only one in nine expensive wildcat wells ever strikes oil.

Mergers are increasing in many industries, of course, largely reflecting company efforts to diversify. But the trend seems more pronounced in the oil industry and can generally be traced to a different reason: A cost-price squeeze.

"Since 1957 the prices which the company can obtain from its domestic oil have declined approximately 6.5 percent while operating costs have increased approximately 20 percent," says Lawrence S. Reed, president of Houston-based Texas Gulf Producing Co. The company's stockholders this month will vote on a proposal to sell its assets to Sinclair Oil Corp. Directors of Texas Gulf, big independent with interests in Libyan and Peruvian operations and with large U.S. reserves of oil and natural gas, decided to recommend sale of the company for \$250 million rather than continue the "increasingly costly and discouraging" search for oil and gas.

"For many, it's become more profitable to sell than to continue in business," comments Minor S. Jameson, Jr., executive vice president of the Independent Petroleum Association of America. Though the cost-price squeeze, low production allowances by States and declining rates of return are the immediate factors bringing the sell-outs, Mr. Jameson says the independent oilman's woes are more basic. The growing worldwide surplus of petroleum, a slackening in the rate of growth in U.S. oil consumption, an upheaval in gasoline marketing policies and the "increasing intrusion" of the Federal Government into the economic affairs of the industry are at the root of the oil merger trend, he declares.

#### A DROP IN MEMBERSHIP

As an indication of the extent of such consolidations, the Texas Independent Producers and Royalty Owners Association reports the number of oilmen in the State has dropped to 6,200 from 6,600 in the past years. "Even more significant is the growing number of operators who have pulled in their horns on drilling and exploration but are not yet on the dropout list," adds an association official.

The merger trend hasn't escaped the attention of Government officials. The Justice Department, in fact, currently is trying to break up one combination—the \$385 million sale of assets of Honolulu Oil Co. to Pan American Petroleum Corp., and Tidewater Oil Co.

Now in Federal court in San Francisco, the case is being watched closely by much of the industry because of pre-trial remarks made by Government attorneys. "What we \* \* \* propose to show," said the attorneys in a brief, "is that the acquisition is part of a trend which, if not stopped, threatens an undue restriction in the number of independent producers and independent refiners by concentrating ownership of domestic production in the hands of 20 or so large integrated oil companies \* \* \*"

Oilmen don't dispute the trend though they dispute Justice Department conclusions

that it may be unduly restrictive on the independents. Sell-outs will continue to climb, says one oil company executive, adding: "The only limiting factors are the Justice Department and the supply."

#### OLD BREAKUP PLAYS A PART

Ironically, much of the motivation for today's consolidations on the marketing side dates back to the Government-enforced dissolution of the old Standard Oil combine a half century ago. It left some powerful oil companies with only regional markets—a pattern they are trying to break. And, many have found, a quick, painless way to market their brands coast to coast is by acquisition.

Standard Oil Co. of California chose this way to break into five Southeastern States formerly outside its marketing area, with the 1961 acquisition for \$170 million of Standard Oil Co. of Kentucky.

Now, Humble Oil & Refining Co., chief domestic subsidiary of Standard Oil Co. (N.J.), is following the same route by proposing to buy the west coast refining and marketing facilities of Tidewater Oil for \$329 million. Humble 3 years ago began an effort to push into the Far West by building its own stations. It so far has 800 in this region—250 of them in California. With the acquisition of the Tidewater facilities, Humble would pick up 3,900 additional stations, bringing its U.S. total to about 34,000.

"It's hard to justify any big advertising program in an area unless you've got at least 5 percent of the market," says one oil industry executive, putting his finger on the major problem of trying to enter a market by building up from scratch. With the purchase of the Tidewater facilities, "Humble will become a big factor on the west coast in one fell swoop," notes a competitor. "It would have taken years to do it any other way."

#### WANT MORE CRUDE

In today's fiercely competitive atmosphere, oil companies want not only to have their own outlets for their refinery production but also to be self-sufficient in crude oil supplies. Many integrated oil companies are deficit refineries; that is, they process more crude oil than they are able to produce and have to buy much of the crude from independent producers.

E. L. Steiniger, chairman of Sinclair Oil, says that purchase of Texas Gulf Producing's vast oil reserves will help "to enable the company to compete on more equal terms with competitors now more favorably situated." Following the Texas Gulf acquisition, Sinclair will be able to produce about half of its refinery requirements compared with about 43 percent now, says Mr. Steiniger.

Just getting 100 percent of their crude oil needs now is not enough for many companies, one oil executive contends. "Most would like to have double the reserves they need now, as a floor for future growth," he says. "That's why everybody has been trying to make a deal with Superior Oil Co."

Superior is one of the few independent domestic producers large enough to go abroad in the search for oil. But for some time it has been unable to find markets for all its foreign petroleum and in late January plans were announced to sell its Venezuelan subsidiary to Texaco, Inc., which has extensive refinery facilities, for about \$125 million.

Much of the glow of foreign crude is beginning to rub off as market competition worsens and governments abroad get more fickle about such matters as oil royalties. This has played a role in intensifying interest in obtaining more U.S. crude as insurance in case overseas supplies are cut off.

Not all the sellouts, of course, can be blamed on a sag in profits by independents. Many independent companies do well despite industry problems—often because they have themselves pursued an active policy in ac-

quiring smaller firms. But the fierce bidding for properties often pushes the price high enough to make a sellout more attractive than continuing in business. Shell Oil Co., which has been wanting to expand in the Southeast, last month bought the refining and marketing properties of El Paso Natural Gas Products Co., a subsidiary of El Paso Natural Gas Co., for \$37 million, though El Paso by no means was a poverty case. Its 1963 net income, according to W. S. Noel, president, varied little from the \$3,563,283 earned in 1962. "We thought it was a good sale for us to make," he says.

Mr. STENNIS. Mr. President, I yield to the senior Senator from Massachusetts [Mr. SALTONSTALL] under the conditions previously announced.

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

#### ISRAEL INDEPENDENCE DAY

Mr. SALTONSTALL. Mr. President, today, April 17, marks the 16th anniversary of the establishment of the State of Israel as a free, independent, and democratic nation. The hopes and dreams of Jewish people throughout the ages were realized in 1948 when Israel independence was at last proclaimed.

The past 16 years have been filled with problems for the citizens of Israel. The new state immediately opened its doors to Jews still living under the threat of persecution. The resulting population increases have constituted a continuing challenge to the economic and political stability of the nation. The pressures from unfriendly Arab neighbors have required large expenditures for defense purposes and require Israel to sustain a ready military force. Much of the nation's land is dry and arid, and natural resources are limited. The diversity of her population presented difficulties in establishing a stable government.

But, in spite of all of these threats to her existence, which might have overwhelmed a less hardy and determined people, Israel continues to build and to grow strong politically, economically, and culturally.

As a longtime friend and supporter of the State of Israel, I extend my congratulations on this momentous occasion to her people and to the many people in other lands who have contributed to her growth. The 16-year record of Israel's achievements is a source of pride to all of us in the free world who believe, as do the Israelis, in the principles of democracy and the dignity and rights of the individual. Her very existence is a source of hope to the many people who still live under the shadow of tyranny and oppression.

Mr. STENNIS. Mr. President, I yield to the senior Senator from Oregon under the conditions previously announced.

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

#### VISIT TO THE SENATE BY ARGENTINE SENATE DELEGATION

Mr. MORSE. Mr. President, once again members of the Foreign Relations Committee and some of our other colleagues in the Senate were the beneficiaries of another enriching parliamen-

tary exchange at luncheon this noon, when we were privileged to have as guests of the Senate a group of Senators from the Argentine Senate. When I introduce them, and call attention to the positions they occupy in the Argentine Senate, I am sure Senators will agree with me that we have with us some of the outstanding leaders, not only of the Argentine Senate, but also of the Argentine Republic, not only in its political and public life, but also in its economic life.

We listened to the President pro tempore of the Argentine Senate, whom I shall introduce in a moment, make an eloquent, inspiring, and stimulating speech with regard to his understanding—and I agreed with every word he said, as I am sure other U.S. Senators did also—of the common objectives of the people of Argentina and the people of the United States in their respective Governments with respect to our trying to strengthen the cause of freedom in the Western Hemisphere.

As I said at the luncheon, when we strengthen the cause of freedom anywhere, we strengthen it everywhere. We cannot listen to these statesmen from Argentina without appreciating the fact that they share a common objective with us.

As chairman of the Subcommittee on Latin American Affairs, it is a great privilege and honor for me to have this opportunity of welcoming to the Senate and to the United States these great leaders of the Argentine Republic.

I should like to have the attention of the Senator from Pennsylvania [Mr. CLARK] when I make this comment. The Senators from Argentina presented to me a memento gift, which I shall always cherish. I shall make it a part of the library of the Committee on Foreign Relations. It is a copy of the Constitution of Argentina, including the rules of the Argentine Senate.

For the benefit of my friend from Pennsylvania I wish to say that I have scanned these rules sufficiently to know that our friends from the Argentine brought us some lessons from which we can profit in connection with their rules, some of which I think we could copy with profit in our Senate.

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

Mr. MORSE. I yield.

Mr. CLARK. Not having read the rules of the Argentine Senate, I am nonetheless confident that they are better than ours.

Mr. MORSE. I shall leave the book with the Senator, for him to read.

I am privileged to introduce these statesmen from the Argentine Republic:

Hon. Eduardo José Gamond, President pro tempore of the Senate, Federal Senator from Córdoba, Unión Cívica Radical del Pueblo (UCRP), chairman of the Economy Committee.

Senator Felipe Abdala, Federal Senator from Mendoza, Unión Cívica Radical del Pueblo (UCRP). Senator Abdala is chairman of the Defense Committee, which is the equivalent of our Armed Services Committee.

Senator Juan Ramón Aguirre-Lanari, Second Vice President of Senate, Federal

Senator from Corrientes, Liberal Party. Senator Aguirre-Lanari is a member of the Foreign Relations and Interior and Justice Committees.

Senator Rubén Víctor Manuel Blanco, Senator from Buenos Aires, Unión Cívica Radical del Pueblo (UCRP), chairman of the Education Committee, vice chairman of Foreign Relations.

Senator Aldo Hermes Cantoni, Federal Senator from San Juan, Unión Cívica Radical Bloquista (UCRB), who is one of the leading members of the Foreign Relations Committee of the Senate and a man who takes a very active part in United States-Argentine relations.

Senator Roberto de Rege, Federal Senator from Río Negro, Christian Democratic Party (PDC), chairman of the Public Works Committee.

Senator Santiago Carlos Fassi, Federal Senator from Federal Capital, Unión Cívica Radical del Pueblo (UCRP), chairman of the Budget and Treasury Committee.

Senator José Enrique Gadano, Federal Senator from Río Negro, Unión Cívica Radical del Pueblo (UCRP), chairman of the Commerce Committee.

Senator Rolando Olmedo, Federal Senator from Misiones, Unión Cívica Radical Intransigente (UCRP), chairman of the Interior and Justice Committee.

Senator Elías Sapag, Federal Senator from Neuquén, Movimiento Popular Neuquino (MPN), chairman of Industry and Mining Committee.

[Applause, Senators rising.]

To you, Senators, I again wish to say that it has been a great delight to have you with us. If our committee can be of any assistance to you at any time, we shall be delighted to serve you.

It is a great pleasure to have you with us.

Mr. AIKEN. Mr. President, will the Senator from Oregon yield?

Mr. MORSE. I yield.

Mr. AIKEN. In order that our guests may understand, when we consider international matters we try to do so on a nonpartisan basis. I join the Senator from Oregon in welcoming our guests from Argentina today.

When they entered the Chamber I might have thought they were a group of U.S. Senators. We learned that the ancestors of some of them had come from about as many countries as ours did, and that Argentina is a cosmopolitan nation, whose inhabitants represent many countries, and who have melded into one great country in South America. We learn that their problems are our problems, and that the best way to solve the problems of both countries is to cooperate with one another.

I am delighted to add my welcome to that extended by the Senator from Oregon, the chairman of the Subcommittee on American Republics Affairs of the Committee on Foreign Relations.

Mr. MORSE. I wish to supplement what the Senator from Vermont has said by saying that Argentina has one of the most cosmopolitan populations in Latin America. One cannot travel through Argentina without recognizing the cosmopolitan nature of that great population.

Mr. President, all of us are pleased with the visit of the delegation from the Argentine Senate today.

[Applause, Senators rising.]

Mr. MORSE. Mr. President, with the understanding that the Senator from Mississippi will not lose his right to the floor, I ask unanimous consent that the Senate stand in recess for 5 minutes.

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

At 2:52 p.m. the Senate took a recess until 2:57 p.m. of the same day.

At 2:57 p.m. the Senate reassembled, when called to order by the Presiding Officer (Mr. INOUYE in the chair.)

#### 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. STENNIS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk called the roll, and the following Senators answered to their names:

	[No. 148 Leg.]	
Alken	Hayden	Moss
Allott	Hickenlooper	Mundt
Anderson	Humphrey	Muskie
Bayh	Inouye	Pastore
Bennett	Javits	Pearson
Boggs	Johnston	Pell
Brewster	Jordan, Idaho	Prouty
Burdick	Keating	Proxmire
Cannon	Kuchel	Ribicoff
Carlson	Long, Mo.	Robertson
Case	Long, La.	Russell
Church	Mansfield	Saltonstall
Clark	McCarthy	Scott
Cooper	McGee	Simpson
Cotton	McGovern	Smith
Dirksen	McIntyre	Stennis
Dodd	McNamara	Symington
Dominick	Metcalf	Walters
Douglas	Miller	Williams, N.J.
Fong	Monroney	Young, N. Dak.
Gruening	Morse	
Hart	Morton	

The PRESIDING OFFICER. A quorum is present.

Mr. STENNIS. Mr. President—

The PRESIDING OFFICER. The Chair recognizes the Senator from Mississippi.

Mr. STENNIS. I have received several requests to yield. Heretofore I have yielded, but the Senator from Mississippi would like to start his speech and yield later to Senators who have subjects they wish to discuss.

Mr. President, in addressing myself to the pending measure, I wish to say with emphasis, as I have said before during the debate, that this bill, which is commonly called a civil rights bill, does not merely deal with questions of "color, religion, or national origin," as the phrase is used in the bill.

This bill contains grave constitutional questions involving the transfer of power from its natural place under our system to the Central Government. I refer to power not just in one field, but in many fields.

Although the bill is called a civil rights bill, it would take away rights from one group—rights that belong to all of us regardless of color, religion, or any other designation—and would give them as privileges to members of another group. Such action within itself would be contrary to the Constitution, and would be subject to very grave objection on my part and on the part of many others.

I should like to illustrate my point by referring to the section which would take the right of management away from the owner of a small restaurant, hotel, cafe, theater, or, in fact, any owner of a small business even though the owner has established the business with his own efforts, paid for it with money that he has earned, or such funds as he might have borrowed.

It would take away the basic right he has to operate that business, in such fashion as he sees fit so long as it is lawful. He has the right to choose his own business as well as his social associates and to choose his own customers. This bill would take that basic right away from him and transfer it to others, to his prospective customers, and give the latter the right, rather than the owner of the business, to say who shall be associated with the owner or the manager of that little business.

As I have said before, and I repeat with emphasis that there is a way to solve the problem of one race dealing with another and all races improving their relations under our form of government. It is nothing new for America to have racial troubles, and there is a method to certainly, surely, and gradually improve such relations. The way to really improve racial relations and conditions is for the leaders of each race, in each community, to work together in their community, at the local level, voluntarily and without compulsion. They will do it if they are permitted to deal with the so-called racial problems by gradual improvement and gradual solutions. That is the method that has always worked best. That has been true until the past few years, when there have been great pressure movements among the colored people, as well as aggressive movements in the Congress for civil rights bills. Marchers have gone into certain sections of the country, not to accomplish anything, but merely to get arrested. This has driven a wedge between the races and torn down the good relations and has made it impossible for the real leaders of each race in the communities to get together to work toward solutions.

Mr. LONG of Louisiana. Mr. President, I ask unanimous consent that the Senator from Mississippi may yield to me for certain questions without prejudice to his right to the floor and without prejudice to my right to make a subsequent appearance.

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

Mr. STENNIS. I am glad to yield to the Senator from Louisiana.

Mr. LONG of Louisiana. Does the Senator from Mississippi believe that by yielding to these demonstrations and riots, be they lawful or unlawful, we can bring an end to them? Are we going to bring an end to them by yielding to the kind of demands some of these people make?

Mr. STENNIS. No; I do not think that will bring the demands to an end. It will make them worse.

Mr. LONG of Louisiana. Will the Senator yield for a further question?

Mr. STENNIS. I yield.

Mr. LONG of Louisiana. Did it ever occur to the Senator from Mississippi that if the white people of the South, for example, are to be denied their right of privacy, their right to bring their children up in their customs and traditions, because of a march on Washington by the Negroes and integrationists, it might make sense that the white people of the South and those who sympathize with them in other States should be encouraged to march on Washington and engage in similar activities?

Mr. STENNIS. We do not advocate it, but that would be the natural and logical outgrowth. Then some other group could make a march on Washington, and the Government would very quickly become a government by marches on Washington and a government by sit-downs at the local level.

Mr. LONG of Louisiana. Has the Senator from Mississippi had occasion to read the editorial in today's Washington Post entitled "The Evangelist of Chaos"?

Mr. STENNIS. I have not had an opportunity to read the editorial.

Mr. LONG of Louisiana. May I call the Senator's attention to this language from that editorial:

A vote for Governor Wallace, of Alabama, in Maryland's presidential primary, is a vote for the continuous occupation of the Eastern Shore by National Guardsmen who ought to be at home with their families.

May I ask the Senator a question in connection with that statement? Does the Senator feel that when someone expresses his protest against government by mob rule, he is encouraging the people to have government by mob rule?

Mr. STENNIS. Of course not. It is one of the great blessings of our Government that people have a choice, and that different persons may offer choices and make their arguments in support of them. It is a great blessing that we have a free press, but, in my opinion, it is an abuse of the privilege of the free press to make such an argument as that to people who must depend upon the press for their information. Some of them may get the idea that that assertion is correct. It is an abuse of the privilege of free press. It is not sound nor correct.

Mr. LONG of Louisiana. Has the Senator noticed that such demonstrations and riots subside about election time, particularly if one candidate is strongly against such activities, and another candidate is known to be somewhat favorable or liberal toward minority views? Has the Senator noticed that there is a

tendency to call off the demonstrations at about election time, for fear that they might result in the election of a candidate who is not in sympathy with such activities?

Mr. STENNIS. That is correct. The candidate realizes that there may be a reaction to the kind of demonstrations to which the Senator refers.

Mr. LONG of Louisiana. Does that not tend to show that such riots and demonstrations do not particularly impress the white people; that the people they impress are some of the politicians, but not the voters in general?

Mr. STENNIS. The Senator is correct. There is a certain political pressure in connection with such demonstrations, and certain people want to create chaos.

I was somewhat disappointed last night in the plea made by the Attorney General. I was pleased that the Attorney General made the plea that civil disobedience, marches, and demonstrations of that kind should cease. I was glad he tried to get them to cease, but I was disappointed in the ground on which he put it. He said, "Quiet down so we can pass the bill." The implication of that statement is that after the bill passes, the green light will be on again. That brings up the point that if anyone is deluded into thinking passage of the bill is going to stop agitators from promoting demonstrations he will be sadly disappointed. It will do nothing but further encourage them.

Mr. LONG of Louisiana. Mr. President, will the Senator yield further?

Mr. STENNIS. I yield.

Mr. LONG of Louisiana. It is contended that in order to stop the demonstrations and sit-ins and mob actions Congress must pass the pending bill. Is it not a fact that the State of New York already has an FEPC law? Is it not a fact that the State of New York already has an equal accommodations law? Is it not a fact that the State of New York already has all kinds of laws to encourage the Negro voters, beyond anything proposed in the bill, with the possible exception of providing for the rights of Puerto Ricans to vote? Is it not also true that the State of New York has more trouble with these demonstrators and violence and resistance to law than perhaps any other State of the Union?

Mr. STENNIS. That is correct. The Senator from Louisiana and the Senator from Mississippi have had to sit by and see such demonstrations in their own States, to the detriment of both races and race relations in those communities. We have seen our policemen insulted. We have seen our mayors' offices picketed. We have seen serious trouble avoided by an eyelash. We have not had much sympathy from our northern friends. But now when there is a threat of an attempt to block traffic on the highways to the World's Fair, we hear speeches made by the two Senators from New York, condemning this possibility and appealing to the demonstrators to call off their threat. When these demonstrations hit close to home those who have never before recognized how grave

they can become realize the seriousness of them.

Mr. LONG of Louisiana. Is it not correct to say that New York at least has an integrated school system, but Mississippi does not?

Mr. STENNIS. That is correct, at this time.

Mr. LONG of Louisiana. On a racial basis?

Mr. STENNIS. That is correct.

Mr. LONG of Louisiana. Which school system is having the boycott, the school system in New York or the school system in Mississippi?

Mr. STENNIS. It is the school system in New York. New York has most of the things which are contained in this bill, except that its election laws are more stringent than they are in Mississippi or Louisiana, with respect to voting requirements.

Mr. LONG of Louisiana. If that is the method of bringing the long arm of the Federal Government down on the State, to try to enforce integration of schools, is it not quite possible that the fine State of Mississippi, as well as the State of New York, will also experience a boycott?

Mr. STENNIS. That is correct.

Mr. LONG of Louisiana. If not by the colored students, then by the white?

Mr. STENNIS. Yes. We must enact legislation only in the soundness and calmness of our best judgment, not through coercion, intimidation, or threats of violence to our people or threats of retaliation at the polls.

Mr. LONG of Louisiana. When the people feel there is no other way to achieve justice than by taking the law into their own hands, does it not tend toward the result that both the whites and the colored feel they may do violence?

Mr. STENNIS. It creates a very dangerous situation. One demonstration encourages another. One act of violence brings on another. These things quickly get out of hand.

As the Senator knows, we are confronted with the stories—and I think some of them are true—that there are definite plans being made now for an invasion of the Southern States this summer, with all kinds of demonstrations and marches. The invaders are even going to set up schools of instruction. If they are not discouraged by some person of influence from the Attorney General, or maybe the President, seeking to stop these migrations, I do not know what will happen. I do not want to be responsible for what may happen. When we try to stop unlawful acts or prevent violence and someone is injured in any way, we of course are blamed. This is quite a serious matter.

Mr. LONG of Louisiana. I thank the Senator.

Mr. STENNIS. There is a way to solve the problems and a way to improve racial relations, and there is a way for a community to build harmony among the races. This can be done and it is being done in some areas by the leaders of each race working together at the community level, voluntarily and without

compulsion. I repeat that this will not be done if people come into the various communities from other parts of the country for the express purpose of causing disturbances and getting themselves put in jail for publicity purposes or to inspire local colored people to try to have themselves arrested for the same purpose.

Things do not work that way, they never have, and they never will.

We have illustrations of it in many places in the South and in other parts of the country. In my own State of Mississippi there are colored people who are fine leaders, not only among their own race, but also in community and civic matters.

In Mississippi there are 8,440 colored schoolteachers. They are very fine leaders, almost without exception. They are trained in educational work, and they are leaders in their community in other matters, too.

There are several thousand ministers, doctors, and other professional people who are members of the colored race. We also have many colored businessmen and technicians, and many men and women of skill, who have qualities of leadership.

Relations were fine, everything was going very well, and extraordinary progress was being made, until the cleavage came, then a wedge was driven between the races. There was destruction and tearing down of racial relations that had previously been progressing in a very constructive manner.

The attempt to solve the problem by passing laws and changing rules and judicial interpretations and by political pressure has changed the whole picture.

When this method has exhausted itself and failed, as it surely will, we must then go back to the leaders in the various communities who will again have the burden of picking up the pieces, start over again on a voluntary basis without compulsion.

Several instances have been mentioned during the debate with respect to alleged facts—and perhaps some of the statements were true—which showed a bad picture at some point with respect to schools in various parts of the South, including my own State of Mississippi. However, the people who bring out these isolated instances do not undertake to give the full picture.

Mississippi has a very fine school system. Almost 300,000 colored students attend the public schools, which are taught by some 12,000 Negro teachers; all colored teachers paid according to the same State pay scale as are the white teachers. We have fine, modern school-buildings, all of them more than adequate, some of them almost luxurious, for the colored children. We have provided playgrounds and equipment, libraries, school lunch programs, free transportation, and free schoolbooks. All students in the Mississippi public schools are furnished free schoolbooks, from kindergarten through senior high school.

As a result of the modern consolidation of schools, only 24 one-teacher schools remain in the entire State.

Those schools serve small or remote communities; otherwise, they would be consolidated with larger schools. Some other States have as many as 790 one-teacher schools. The great State of Illinois has as many as 237. I do not cite that to discredit Illinois at all, but merely as a comparison to show how Mississippi has modernized and is supporting its schools on a high level by State taxation and local support. We are proud of our school system. No one in the world takes more pride in that system than do the colored people themselves.

But now newcomers are coming into the State and are telling the colored parents and their children, "Yes; you have all these things, but you don't have enough. You ought to have more. Something is being withheld from you."

Some people listen to that sort of talk, but so far the great majority have spurned such advice and counsel and are making the very best of their excellent opportunity to improve their training, their position, and their condition, so as to make themselves more and more worthy of their families, and their State. Mississippi will continue to support those schools, and I believe the children and their parents will continue to support them, also, and that we will continue to make progress.

Coming more directly to the provisions of the bill itself, I shall address myself today to the many grants of power that would be vested in the Attorney General by H.R. 7152. One of the most general, nationwide objections to the bill is the vast transfer of power over the affairs of the people from the local level, whether it be the State, the community, or the county level, to the Central Government at Washington. It is not a sin, of course, to be connected with the Central Government at Washington. The main point concerns the practical solutions of local problems, the conduct of a school can be solved better by the people who are most concerned with them. The tendency toward "bigness" in Washington is to operate through larger authority and bureaucracies without knowledge of local conditions.

Many Senators from States outside the South—for this is not simply a racial matter—have told me that there is a growing concern especially among the so-called little people, who ordinarily do not take part in government problems and affairs, because they are busy with other things at their level, about the transfer of power away from the local level to the centralized government in Washington as this bill would do if it is enacted. This is true not only in one or two fields, but in many fields.

The bill would arm the Attorney General with such far-reaching power in the field of public accommodations, elections, education, and industrial employment that it would constitute the most colossal grant of power that has ever been assembled in peacetime or even, perhaps, in wartime, to one official in the Government—and this time it is the Attorney General. Even more disturbing is the fact this power is given with almost no guidelines.

There has been no previous occasion since Reconstruction days when Congress has considered a bill which would seize from individual citizens so many personal and property rights and place their complete control in the Federal Government. If H.R. 7152 is enacted, the Federal Government will, in effect, assume an all-encompassing authority over practically every business in the United States. It—meaning the Attorney General—will have the power to control public schools, State and Federal elections, and all programs which receive financial assistance from the Federal Government. It will have the authority to virtually take over the operation of every private business in the Nation.

This broadening of Federal power is frightening and alarming, but as disturbing as this sweeping expansion of authority is, it is not nearly so shocking as the realization that all of this power is given to one individual in Government—the Attorney General.

Under the terms of this bill, the Attorney General would become an untouchable czar, unshackled by any restraints at his principal level of operations. He would be granted the broadest authority and armed with the most powerful legal weapons ever given to one individual by the Government of the United States. One instance is the tremendous power through injunction. It would have to be granted, of course, by a court. But with the great power behind the Attorney General, and considering his ability to obtain injunctions and to dictate largely the terms on which they would be enforced, most of them not providing for the benefit of a jury trial, the grant of power is almost unthinkable. With them he would be free to trample upon the most honored of our constitutionally guaranteed freedoms. Indeed, in some instances, he would be compelled to do so.

Mr. President, my remarks on the power of the Attorney General are made without reference whatsoever to any past, present, or future occupant of the office. I am dealing with and vigorously objecting to the principle of vesting power in any individual or office as is done by H.R. 7152.

The power which would be placed in the hands of the Attorney General could, if he chose to so use it, be a weapon of intimidation, threat, and coercion second only to the power of life or death. He would possess the authority and ability to destroy the right of private businessmen to manage their own properties. He could, with the power and authority granted by this bill, dictate the policies of every public school in the Nation. He could, as a practical matter, assume complete supervision over registration and voting in State and local elections. In brief, the enactment of this bill would make the Attorney General the most powerful individual in the domestic affairs of the United States. It would give the Attorney General more power than has ever been held by a single individual, other than the President, in the history of our Nation; and this power would be granted to an officer not elected by the people, and, thus, not responsible to

them at the polls. Indeed, he would not be a constitutional officer.

Mr. SALTONSTALL. Mr. President, will the Senator from Mississippi yield?

The PRESIDING OFFICER (Mr. JORDAN of North Carolina in the chair). Does the Senator from Mississippi yield to the Senator from Massachusetts?

Mr. STENNIS. I am glad to yield to the Senator from Massachusetts.

Mr. SALTONSTALL. I thank the Senator from Mississippi for yielding to me.

I call his attention to title X of the bill, on page 52. This title deals with "Establishment of Community Relations Service." I also call his attention to page 53, where section 1002 provides, in part, as follows:

SEC. 1002. It shall be the function of the Service to provide assistance to communities and persons therein in resolving disputes, disagreements, or difficulties—

And so forth. I also call his attention to title V, which deals with the Commission on Civil Rights, and on page 22, with the functions of the Commission and its duties—

#### 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 so forth. If the Community Relations Service and the Civil Rights Commission carried out their functions and were given sufficient appropriations to enable them to do so effectively, would not that arrangement take away much of the power the Senator from Mississippi is saying would otherwise be concentrated in the hands of the Attorney General?

Mr. STENNIS. No, I do not think so. I say that with all due deference to the Senator from Massachusetts. Those provisions sound good; they are written in smooth language. But, as a practical matter, those agencies would not serve any very useful purpose—not in considerable areas of the country, at any rate. Such an effort would perhaps be milder than the Attorney General might undertake but there would still be elements of coercion in connection with the attempts to deal with these explosive problems. The fact remains the power will still be given to the Attorney General and he may use it if he so desires.

As I have said, the only way to reach a solution of these problems is by means of voluntary efforts by the leaders of each race, working at the community level.

So, with all due deference to the Senator from Massachusetts, I state that I do not believe that the titles to which he has referred would accomplish what he hopes they would, in this most explosive matter, which involves such deep feelings.

Mr. SALTONSTALL. Mr. President, will the Senator from Mississippi yield again to me?

Mr. STENNIS. I am glad to yield.

Mr. SALTONSTALL. The proposed Community Relations Service appeals

very much to me, because of a similar service which was established some years ago in Massachusetts, at a time when there were difficulties there between the races. At that time, I was serving as Governor of the State. We established a committee which was very successful in working out problems of the character of those we are discussing in connection with the pending bill. That committee was successful, even though it proceeded without the use of compulsion; it worked purely on a voluntary basis with the people of the communities.

So it seems to me that the proposed Community Relations Service and the Civil Rights Commission, if staffed with able and understanding persons, could be extremely helpful in connection with the work of the office of the Attorney General.

Mr. STENNIS. That may be the purpose of those proposals, and I understand the feeling of the Senator from Massachusetts in that connection. I am sure that what he has stated about the experience in Massachusetts is correct; but, at the same time, I totally disagree with him as to the effectiveness such proposed agencies would have in dealing with such sensitive problems at the present time.

I point out that for some years the Advisory Committee has served in connection with the Civil Rights Commission, but it has not really taken care of the problem. I am stressing the importance of having the leaders of the racial groups work at the community level with these groups.

I thank the Senator from Massachusetts for his questions.

Enactment of this measure would give more raw, naked, and absolute power to the executive branch of the Federal Government than has ever been granted in peacetime. In actual operation, the power granted may exceed even the powers which have been granted in wartime.

This unlimited grant of power is neither necessary nor proper. Ostensibly, it is given for the purpose of allowing the Attorney General to act as counsel for individuals seeking their civil rights in those instances where the individuals are not able or capable of pressing their claim themselves. This may sound good in abstract theory, as do many of the other provisions of this bill; but its practical effect will be to destroy more individual rights than it could possibly protect.

It has been the custom under our system of justice to provide counsel for a person accused of a crime—although in many instances this is limited to felonies; but this bill goes far beyond this practice. In fact, this bill, if enacted, would reverse the practice. It would make the Department of Justice a legal aid society for all persons who claim that their constitutional rights have been violated. The defendant would be left to depend upon his own resources. He could not avail himself of the vast resources of the Attorney General. On the contrary, he would be forced to compete against these resources on vastly unequal terms.

Mr. President, as I proceed with my remarks, I shall point out more specific

illustrations of that tremendous power, under the various provisions of the pending bill.

There are those who minimize the danger by giving assurances that the Attorney General would in all administrations use and exercise his unprecedented power with prudence, restraint, and sound judgment. But would he be able to do so? Would he really be free to exercise discretion and restrained judgment?

Let us look about the land and see what is happening. Violence has erupted all across the Nation in connection with the fierce and determined drive to wipe out alleged discrimination. Private property has been seized and held. So-called sit-ins and lie-ins have been held in State capitols, city halls, legislative chambers, the offices of boards of education, and other public buildings. Organized demonstrators have committed acts of deliberate, preconceived, and violent trespass. Traffic has been halted by agitators lying in the streets.

Mr. President, the other day a very sad and unfortunate accident happened when a fine, young minister of great promise lay down behind a bulldozer, during a demonstration; and the driver of the bulldozer, not knowing the minister was lying on the ground behind the machine, reversed it, and the bulldozer crushed to death that unfortunate gentleman.

I point out that the demonstration occurred where a new schoolbuilding was being constructed for the children in that part of Cleveland, Ohio. The school was already integrated. The protest was not about an inadequate building. Instead, it was about a new building. The protest was not because of a desire to have the school integrated, because the school already was integrated. Instead, the protest was for the purpose of demonstrating opposition to the construction of the school on that site, because, although the school already was integrated, it was claimed that it was not balanced as between colored children and white children.

The next morning the lead statement of the radio report of the incident which I heard was, "Young Minister Loses His Life in Civil Rights Crisis."

There was no crisis to it. The average listener who heard that statement got the idea that a demonstration took place. He would get the idea that someone's rights were being violated, and during a demonstration to prevent that violation a man had lost his life. As I have said, there was no crisis. No civil rights crisis was involved. The school was already integrated. No crisis existed in respect to an inadequate building. The children were receiving proper attention. The taxpayers in the area were providing them with a modern building.

Still, when that unfortunate incident occurred, a report went out over the radio to the entire Nation to the effect that some kind of civil rights crisis had occurred which had cost a man's life.

The issue related to balanced schools. The demand is not now for integration, but balanced schools. The argument is

made that, if necessary, little colored schoolchildren should be taken out of their communities and hauled to white communities, and white children should be taken out of their community, where they have their playmates, their school, and Sunday school, and hauled across the city to a colored community so that the schools can be balanced.

To begin with, there were provisions in the original bill which would have laid the groundwork for using them to eliminate racial imbalance in schools. The reaction against that proposed program was terrific. That situation did not occur in the South. The South did not object to such procedure. Our communities are already rather well balanced. But the objection came up the eastern seaboard through the States of New Jersey, New York, and Massachusetts. An election took place in Boston. A lady member of a school board said that she would not stand for the transportation of children for such purpose. She was opposed to it. She made her opposition an issue, and she was elected to the school board by an overwhelming vote.

Strong protests came from other areas. What happened? The provision requiring balanced schools was removed from the bill. It is not now in the bill. It was thrown overboard, as the captain of a ship in distress would throw overboard part of its cargo.

The provision has been pitched out. In fact, many provisions to which there was objection in certain areas have been removed from the bill. An amendment was offered on the floor of the House to spell out the fact that "desegregation" did not mean overcoming racial imbalance. It was readily agreed to by Representative CELLER, from New York, who was the manager of the bill in the House. He did not even make a fight against it. He put up no argument against it. He did not contest it. He did not call for a vote. He agreed to it. The amendment was adopted. The proponents of the bill are now quick to point out to their own constituents as well as to us that the bill contains no language with reference to balanced schools.

On almost every hand we are told that, if this bill is not passed promptly, or if it is weakened in any material way, renewed and greater violence will result. We are also told that, even if the bill is passed, demonstrations will follow to test its provisions and compliance with it.

I understand a movement is already underway to urge the Attorney General to use all the powers that would be granted to him under this bill, I understand that the colored leaders are divided on the subject, but that a great majority of them expect to press for that kind of activity. I understand that the newspaper representatives are now being briefed. I suppose they are being briefed at public meetings on what will be done under the bill as soon as it is passed.

Thus, it should be clear that, if we give this vast power to the Attorney General—whoever he may be—and if the Attorney General attempts to utilize it in a prudent, controlled, and restrained

manner, he will become the focal point for all the pressure which these organized minorities and paid agitators can bring. They will insist and demand that he exercise his power to the hilt and that this be done without delay or restraint. There will be a great clamor from the extremists that all such action be taken as is necessary to satisfy their most extreme and radical demands.

To force compliance with their demands, they will take to the streets, organize demonstration after demonstration, stage sit-ins, and lie-ins—perhaps in the Attorney General's own office, if he does not act as fast as they think he should.

Senators may be certain that if they even suspect that there is any foot-dragging on the part of the Attorney General in complying with their never-to-be-satisfied requirements there will be demonstrations the like of which we have not as yet seen.

On the other hand, if the Attorney General is not given the sought-after power, it will not be possible to bring this type of pressure upon him. He could not be forced to take undesirable and extreme actions which might be disruptive and destructive of individual rights. Those persons having grievances in the civil rights field would have to satisfy them, not by unlawful demonstrations in the streets, but by resort to established and orderly judicial remedies in accordance with the regular processes of law. This is as it should be.

Mr. President, at this point in my speech, which is a natural break, I wish to refer to other measures that were connected with or were at onetime considered to be a part of the civil rights bill or program—provisions that were either dropped before they were put in the bill or modified after they were put in.

I have already mentioned the question that arose with respect to the imbalanced schools, a provision that was abruptly and easily thrown overboard by the proponents, without making a fight for it, as soon as opposition appeared, particularly opposition in the Northern and Eastern States.

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

Mr. STENNIS. I am glad to yield.

Mr. COOPER. Before the Senator leaves his discussion of the power given to the Attorney General, may I ask him if it is not correct that in 1957 and in 1960 Congress provided the Attorney General with power to intervene in voting rights cases?

Mr. STENNIS. The Senator is correct. The Senator took part in that debate. Such authority was limited to voting rights cases.

Mr. COOPER. So that section, I would confer no additional power on the Attorney General?

Mr. STENNIS. I think there is a broadening of the power, if the Senator will remember; but, generally, it is not a new power or an original power, as is the case with some of the other titles.

Mr. COOPER. The three sections which would provide the Attorney General with new power deal with the desegregation of schools, public accommodations, and public facilities?

Mr. STENNIS. The Senator is correct.

Mr. COOPER. I have a high regard for the Senator from Mississippi, but I think his speech expresses the essential difference between those of us who believe that such rights as have been declared by the Constitution or the Supreme Court should be assured and secured; and those who do not believe that there are such rights or that such rights should be assured.

The Senator's speech, to which I have listened with great care, comes back to that fundamental issue. I would prefer that there be no need for the Attorney General to have this power, or to be required to intervene in these cases; but the true issue is this: Why is it necessary to provide such authority to the Attorney General? The answer is that some States will not assure to some of our citizens their equal rights guaranteed them by the Constitution. That is the reason that it is necessary for the Congress to act, as it has the right and duty, under section 5 of the 14th amendment.

Mr. STENNIS. Mr. President, will the Senator suspend?

I believe the Sergeant at Arms should advise the gentleman in the rear to use the telephone outside the Chamber. Either we have to suspend until he is through, or he should suspend until we are through. I wish someone would give him those instructions.

The PRESIDING OFFICER. Let there be quiet in the Chamber.

Mr. COOPER. Is it not the issue whether there are such rights and whether or not they should be secured?

Mr. STENNIS. The Senator knows my high regard for him. I think he is somewhat severe in his evaluation of the remarks of the Senator from Mississippi and his interpretation of the bill.

Mr. COOPER. The Senator knows that I always come to listen to him.

Mr. STENNIS. I see the Senator's point very clearly. I do not entirely disagree with the Senator from Kentucky on voting rights. Anyone who is qualified and is legally entitled to vote and has met the requirements of the law—we might argue as to what authority can impose or specify such requirements—should be permitted to vote and, as someone has added, to have his vote counted. I agree with the Senator from Kentucky on that point. I know, too, that there must be some legal machinery to enforce vested rights.

The objection which I am now voicing to the bill, and to the voting rights section, is that it gives too much power, advantage, and authority to the Attorney General. It even permits him to shop around and select his own court in cases under title I.

Coming to another part of the Senator's comment, the Senator has raised a very fundamental question with respect to the title on public accommodations. I do not believe the Congress has any basis whatsoever to pass such a law or to include that title in any bill. That question has been passed on by the Supreme Court of the United States. The only thing that can change it is a constitutional amendment. Just as in the Brown

case—the 1954 school decision—I believe the decision was wrong, but it will take a constitutional amendment to change it.

The Attorney General is given unwarranted power throughout the bill. In the title on the FEPC, the power is placed primarily in the hands of the Commission. At the same time, the Attorney General, as head of the Department of Justice would, by virtue of section 302, get much power.

What I object to is the overwhelming unwarranted and coercive power that he would be given. I have developed that point.

For example, under the public accommodations title, he would have the coercive power to file suits against business owners, even though they had not violated the law, if he believed they might violate the law.

Mr. COOPER. The Attorney General could do that under the voting provision. The Attorney General may institute proceedings if he believes a law will be violated.

Mr. STENNIS. The Government may be charged with some responsibility in the voting field. However, it is unthinkable to the Senator from Mississippi that the owner of a private restaurant—perhaps only 1 week ahead of the bill collector—should be forced to submit to this kind of law or be faced with the vast power of the Attorney General.

Mr. COOPER. Title II of the bill, as now drawn is not based upon the 14th amendment. Title II, of the bill, is presently based on the commerce clause. The constitutional basis for title II may be different from the constitutional basis of other titles, such as voting rights in title I and school desegregation rights under title IV. I do not think the Supreme Court in the civil rights cases of 1883 ever reached the question as to whether discrimination in public accommodations, supported by "State action," would violate the 14th amendment. The Court in its opinion clearly stated it was not searching this question at all. I do not think that point has been adequately developed in the debate. With great deference to my friend from Mississippi, I would like to pose a question: Is not the net effect of his argument that the Federal Government should do nothing and leave everything just as it is now, that is—let discrimination continue—against the constitutional rights of some of our citizens?

The fact that very little has been done to secure the constituted rights of our citizens, has made this bill necessary. It was only last year, after 3 years of warning, that a civil rights bill was introduced. It would have been much better if it had been introduced and passed 3 or 4 years ago. We might not have had the incidents of violence—which I do not like, and which the people of the United States do not like. The use of violence is alien to our democratic process. But if, for a long time, a part of our citizens are denied rights, which are theirs under the Constitution—rights equal to those of their fellow citizens—that explains why it is now necessary to ask for these new procedures, to which the distinguished Senator from Mississippi now objects.

Mr. STENNIS. No Congress has ever told any group that they had any right to go into camps against the wishes of the owner. No court has ever told them that. Who in the government has told them that, except those who support this bill?

Mr. COOPER. I firmly believe that section I, section III, and section IV, are clearly based upon constitutional rights declared either by the Constitution, or by the Supreme Court.

With respect to public accommodations, the question has not been clearly determined by the Supreme Court. Some say it was determined unconstitutional in 1883. I do not believe it was. There was nothing in the act passed by Congress which in any way dealt with any State action.

The Court said that it was not passing upon the question of the right of Congress to enact such a law, but only upon the actual language of the act before it.

It merely said that the act on its face was not within the powers of Congress. It did not mention State action. The public accommodations section of the bill is based on the interstate commerce clause and is before the Congress as a matter of policy. Congress can legislate on the basis of policy under the commerce clause as well as on the basis of the Constitution. I would prefer that the public accommodations clause be based on the 14th amendment.

My point is that these three sections, for which there is a constitutional basis, meet evident needs. The fact that nothing has been done in certain States to meet those needs, is the reason why legislation is sought to provide larger powers to the Attorney General.

Mr. STENNIS. I do not believe it means that we would do nothing. A great deal is being done. The pending proposal is merely a lock, stock, and barrel transfer of power from the local level to the Government in Washington. This is proposed to be done in one sweep and in one stroke of the pen. A great deal is being done at many levels, and in many instances. Definite progress is being made in education and other fields. I shall point out the power which this bill grants and delineate the application of this power.

I hope the Senator will remain. This speech has been very carefully prepared, and an extensive analysis of cases has been made in preparing it.

As I proceed, I shall try to direct some of my remarks to the Senator specifically. I appreciate his comments.

One of the very first things that was emphasized by the proponents when this bill came to the Senate was the fact that there was nothing in the bill affecting housing. The bill had nothing to do with the housing orders, it was said.

If the housing orders were taken out, and I hope they are out—that would be enough to kill the Presidential order on the subject, which, with all due deference, was a usurpation of power, in my opinion. But an amendment was added in the House excepting from section 602 all contracts of insurance and guaranty. That is represented to us as meaning those programs which are insured or underwritten by the Federal Government.

I hope it means what the proponents assert.

There is a very good reason for this action. It is another illustration of something that was thrown overboard because the feeling was that there was strong opposition from the people. Instead of standing and fighting for it, and insisting on a vote on it, the proponents threw it overboard.

To illustrate the sentiment of the people I refer to some elections that have been held within the past few months, on these matters.

In 1964, Tacoma, Wash., had a referendum on a fair housing ordinance, and it was defeated by a vote of approximately 3 to 1.

On the 2d of April of last year Berkeley, Calif., defeated a proposed fair housing ordinance by a vote of 22,700 to 20,323.

In Seattle, Wash., in a referendum in March of this year, a fair housing ordinance was defeated overwhelmingly.

Kansas City had a referendum on April 7, 1964, on an ordinance which would have forbidden racial discrimination in establishments which trade with the public. In that referendum the ordinance was approved. It passed by about a 1-percent majority. The actual vote was 45,476 to 43,733. The difference was provided by an overwhelming affirmative vote in the Negro wards.

Only last week the Rhode Island General Assembly refused to pass a fair housing law by a vote of 62 to 31—exactly a 2-to-1 vote.

Mr. President, I read into that, clearly and unmistakably, the basic opposition of the people who would have to live under these laws. With respect to fair housing, the FEPC, or whatever it may be, when the people get a straight shot at it in an election, they vote it down by a majority of 3 to 1, or 2 to 1, and in some cases by a smaller majority. The only major one that I know of which has passed recently was the one in Kansas City, Mo., and that was by less than a 1-percent majority with an overwhelming vote in favor of it in the Negro wards.

There is a further point with which I should like to deal, and that is the FEPC provision. President Kennedy did not recommend that this title be included in his original bill. He came from a State where such a law is in effect, but he did not recommend that such a provision be included in his recommended bill. It was not in H.R. 7152 as originally introduced. It was added while the bill was in the Judiciary Committee of the House. That committee held no hearings on it. Two minutes of argument were permitted in committee, 1 minute for the chairman and 1 minute for the ranking Republican member of the committee. They had the votes, and that provision was included. Then the bill was reported, after a week of hearings before the Rules Committee. It contained the 11 titles that are now before the Senate. There was a little more than 1 week of debate on the floor of the House and the bill was then sent to the Senate.

The bill is now before the Senate without any hearing having been held on the FEPC title by a Senate committee, al-

though some hearings were held last year on the general subject matter.

There is a provision in title VII that in a State where a State FEPC law is now on the statute books, if the State enters into agreement with the Federal Government, that State will be exempt from the operation of title VII. Those who wrote the title are not willing to live under it themselves, but they insist that others live under it. If their State already has an FEPC law, they will not be subject to the Federal law. There is a built-in escape clause. Some States have enacted such laws, and some have not. The bill provides, in effect, that in some States the policy shall be changed and they will be forced under a Federal system and a Federal law. In other States—those which have such a law—it is specified that the Federal law will not apply. It will be effective only in the other States. In other words, there would be a dual system. That, to me, is nonsense. If we are to have a Federal FEPC law—and I do not believe we should have one—it should apply in all States alike.

Another point to be considered is the matter of racial quotas in employment. A quota system would require, if 20 percent of a certain race are living in an area, that a reasonably comparable percentage of the members of that race be employed in the banks, factories, and other industries.

Although there is some question about it, the proponents have assured us that there is no quota provision in the pending bill. Regardless of this, I am sure that will come in the next civil rights bill. It proved to be a very unpopular proposal with the people. A number of objections have been made to it. Several editorials against it were published in the New York Times, which supports this type of bill almost across the board. I remember the late President Kennedy explaining, a few days after the bill came to the Senate, that the bill did not require quotas. My point is that if a man is to have taken from him his civil right to employ people who would do his business the most good, and that right is to be transferred to the Federal Government, then the quota system is the most logical and expedient manner for the proponents to achieve their purpose.

I point out that no fight is being made now for one of the main pillars and posts of the system that is proposed; it will be made later.

I believe it is clear that the proponents took what would be specifically and directly applicable to the southern part of the country and what was not generally objectionable to the other areas of the country, and decided to let that be the civil rights bill for the time being. However, I believe that this bill had its greatest strength and appeal the day it came to the Senate for debate. Since then there has been a gradual realization that this is a dangerous bill. The people have realized how it would affect their basic rights. They see that there would be taken away from the little man the authority to select those he wants to work for him, and to transfer that authority

into the hands of a far-away Federal Government. That would mean that the Government would have to hire some new personnel, and some who are in the Government now will have to get out to make room for the new system.

I believe that people are beginning to realize what the practical effect of the bill would be. The reaction of the people is being shown in the votes on the various referendums that have been held and otherwise. The same thing is true by the reports of Senators upon the tenor of the mail they have received.

I will join hands with any Senator in trying to devise a voluntary non-coercive and noncompulsive plan, under which both races can work and live together in harmony and make progress. We have been making great strides in our area. We are proud of that fact. The proponents will not help us, but will hinder and hurt us by insisting on the passage of the pending bill.

I wish now to direct my attention to section 302 of the bill.

This is a "sleeper" which was overlooked for a long time. This provision deals with public facilities like swimming pools, parks, amusement centers, and places of that kind. Buried in it is a drastic provision which would give sweeping power to the Attorney General. This is in the nature of a "sleeper" which has largely escaped notice in the debate until recently. Section 302 reads as follows:

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 law 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.

Mr. TALMADGE. Mr. President, will the distinguished Senator from Mississippi yield?

Mr. STENNIS. I yield.

Mr. TALMADGE. Would not that language authorize the Attorney General to intervene in the name of the United States Government in any private lawsuit, if one citizen were to sue another and allege anything relating to the equal protection of the laws or anything relating to race, color, religion, or national origin?

Mr. STENNIS. The Senator is correct; if the case contained the elements the Senator recited—race, religion, or national origin—he could intervene in a private lawsuit. There is not one word in this title that limits the power to public facilities, which is the title under which it is found.

Mr. TALMADGE. Then the bill would authorize the U.S. Government, acting by and through the Attorney General, to choose sides in any private lawsuit in which he saw fit to do so, and to throw the power, influence, prestige, legal talent, and financial support of the United States on the side that he wanted to have win, would it not?

Mr. STENNIS. The Senator is exactly correct. The only thing the Attorney General would have to do would be to have some individual go through the pro-

cedure of filing a suit—a stooge or a dummy or a volunteer—anyone. He could always find someone of that kind. The bill provides that he may then intervene. That means that the court could not keep the Attorney General from intervening. Once he entered the suit, he would dominate it.

Mr. TALMADGE. The option to choose sides would be with the Attorney General, would it not?

Mr. STENNIS. Absolutely; he would have unlimited power under the terms of the bill.

Mr. TALMADGE. If the Attorney General intervened, that would deprive the opposite party, the party against whom the Attorney General intervened, of the right to a trial by jury, would it not?

Mr. STENNIS. It would depend on the type of case. It would bring into play, in any event, the second sentence of section 302:

In such an action the United States shall be entitled to the same relief as if it had instituted the action.

Mr. TALMADGE. That power is even broader than the part III which was stricken from the bill by the Senate on a yea-and-nay vote in 1957.

Mr. STENNIS. It is to an extent. It is a little different, in that the suit must originally be filed by an individual as a nominal plaintiff. But this language is a "sleeper." I have not heard any proponents of the bill say that it does not have the effect I have given it.

Mr. TALMADGE. Such power as this section confers on an individual, be he the Attorney General or any other individual appointed, is inconceivable to me. I cannot conceive that the people of the United States or the Senate would sanction such action.

I, for one, am grateful to the able and distinguished Senator from Mississippi for calling this to the attention of the Senate. It will be shocking to the country, and it will be shocking to the Senate.

But it clearly demonstrates how cunningly and craftily the bill was drafted; how the language was concealed from the Members of the House and Senate; and how it was railroaded through Congress without an opportunity for anyone to be heard in the legislative committees of either the House or the Senate, where witnesses could come and testify and expose such "sleepers" as this.

The Senator from Mississippi has rendered outstanding service in calling such reprehensible language as is contained in this particular section to the attention of the Senate and the country. I commend him for his action.

Mr. STENNIS. I thank the Senator from Georgia for his contribution to the debate. He is always forceful.

This all-encompassing section is neatly and quietly tucked away in and is partially disguised by that title of the bill headed "Desegregation of Public Facilities." On a comparative basis this title has attracted little attention in the Senate. It is, however, of crucial importance, particularly section 302 which goes far beyond public facilities. It authorizes the Attorney General, in his uncon-

trolled and uncontrollable discretion, to intervene and intermeddle in "any action seeking relief from the denial of equal protection of the laws on account of race, color, religion, or national origin." Thus, by the stroke of the pen, the Attorney General will be given the power to become the claimant's attorney, in any litigation filed which allegedly seeks vindication of a right arising under the 14th amendment.

The sweep and scope of the Attorney General's power under this section would be tremendous.

I invite the attention of the Senator from Georgia to the fact that after the Attorney General had intervened, he could name additional defendants. He could name the chief of police; he could name the mayor; he could name anyone against whom he could make any kind of showing to the court under his allegations that such persons were in some way connected with the alleged wrong.

He would have the right of intervention, not only in suits connected with public facilities, but in all cases filed by individuals which involved in any way the claim of equal protection of the laws on account of race, color, religion, or national origin under the 14th amendment.

For practical purposes the power which this section would grant would be almost identical with the power sought for the Attorney General in the Civil Rights Act of 1957, insofar as alleged denials of equal protection of the law on account of race, color, religion, or national origin are concerned. As most of us will recall, when that act came to the Senate from the House it contained title III which would have vested the Attorney General with the authority to institute suits himself in equal-protection-of-the-law cases. That section was fought out on the floor of the Senate and was stricken from the bill, on a yea-and-nay vote, after vigorous and extended debate.

Now, in substance, it is back before us in this "side door" manner.

During the debate in 1957, I recall that former Senator Johnson, now President Johnson, helped to strike out title III. He voted to remove it from the bill, and it was removed. The Senate struck out title III by a yea-and-nay vote. It was by a decided majority of 52 to 38. In conference, the House agreed to remove that title, and it was left out of the bill. It is not the law today, but still, as a sleeper, this provision comes back, just as far reaching in power, and, perhaps, more so in some respects.

I recognize, of course, that section 302 would give the Attorney General the power to intervene rather than to initiate an original action. However, in practical operation, there is very little difference, if any. With thousands and thousands of litigation-conscious civil rights zealots roaming the land, nothing would be simpler than to find an individual who was ready, willing, and anxious to file a suit alleging that someone, somewhere, some time violated his civil liberties. As a matter of fact, with the prospect that the Attorney General, backed by the vast power of the Justice

Department, would become the claimant's counsel, to some the filing of such a suit would become a very attractive proposition indeed.

When the suit was filed, all the Attorney General would have to do would be to walk into court and say that he desired to take part in the litigation. We may be sure that, when he had thus intervened, he would control and dominate the lawsuit. He could call the shots as he has in the cases in which he has intervened in the past. In view of this, the Attorney General might as well be authorized to file suit at the outset.

By using the subterfuge of having an individual first institute an action alleging infringement of a 14th amendment right, and thereafter intervening, the Attorney General could litigate a punitive proceedings involving an alleged denial of a civil right just as effectively and fully as though he was empowered to file the suit in the first instance.

On the other hand, where an individual filed a suit in good faith and on his own initiative, the Attorney General, by intervening and taking control, could effectively usurp the individual's own cause and right of action if it involved a 14th amendment claim. Nothing is more repugnant to the basic principles of Anglo-Saxon justice than this.

It is indisputable that, although hidden and concealed as a part of the public facilities title, section 302 is broader than the bill itself. It touches all the titles of the bill and even goes beyond them. It would embrace any State law which touches upon or regulates individuals or individual conduct provided only that in the litigation a claim was made that there had been a denial of equal protection of the law on account of race, color, religion, or national origin. Therefore, it embraces a wide and broad spectrum of litigation and vests in the Attorney General an almost limitless expanse of legal power.

The broad general power for the Attorney General to intervene which is provided by section 302 was not even contained in the administration's original bill. In some manner it got into H.R. 7152, as reported from the House Judiciary Committee, under the peculiar circumstances which have already been discussed on several occasions. It was referred to on the floor of the House as a "phantom section," and the statement was made that "it came out of the night."

Why are the proponents of this proposed legislation not willing to limit the crushing power of the Attorney General to the subject matters covered by the bill itself? Section 302 does not do this. It goes beyond the bill, and gives the Attorney General the power to control, by the device of intervening in private litigation, any and all of the myriad "equal protection of the law" situations which might arise in any shape or form under the 14th amendment so long as alleged to be based on race, color, religion, or national origin.

#### CONTEMPT PROCEEDINGS UNDER TITLE III

Title III deserves discussion from another aspect. Under section 301 the Attorney General would have a right to initiate a suit in cases involving a dis-

criminatory denial of access to public facilities. Under section 302 he would have a right to intervene in any case involving the denial of equal protection of the laws on account of race, color, religion, or national origin.

Any and all of these cases could result in contempt proceedings which would subject the alleged contemnor to both fine and imprisonment. "Contemnor" means one who violated such an injunction.

However, absolutely no provision in title III guarantees any right whatsoever of trial by jury in either criminal or civil contempt proceedings—even in cases in which the punishment involved a fine in excess of \$300 or imprisonment in excess of 45 days.

We have a very strange and inconsistent situation here. Section 205(c) of title II—the public accommodations title—contains a specific provision that proceedings for contempt arising under the provision of this title shall be subject to the provisions of section 151 of the Civil Rights Act of 1957. By making section 151 applicable under title II, the effect is to give to the defendant the right of a jury trial de novo in criminal contempt proceedings where the punishment is a fine of more than \$300 or imprisonment for more than 45 days.

It would appear that consistency, as well as justice and fair play, would require that the same provision; that is, section 151 of the Civil Rights Act of 1957—be also made applicable to contempt proceedings under title III. But, lo and behold, such is not the case.

Mr. TALMADGE. Mr. President, at this point will the Senator from Mississippi yield?

The PRESIDING OFFICER (Mr. BREWSTER in the chair). Does the Senator from Mississippi yield to the Senator from Georgia?

Mr. STENNIS. I yield.

Mr. TALMADGE. Is it not true that the Civil Rights Act of 1957 added an additional provision in connection with the right of jury trial; to wit, if the sentence was more than 45 days in prison or a fine of more than \$300, the defendant would be entitled to a jury trial; but if the sentence was less severe, the defendant would not be entitled to a jury trial?

Mr. STENNIS. Yes.

Mr. TALMADGE. Does not that provision in itself contravene a provision of the Constitution; namely, that every person who is charged with crime is entitled to a jury trial?

Mr. STENNIS. I think it does, although considerable argument could be made to the effect that in contempt proceedings, in the old days, there was not such a requirement—certainly not under the laws of some States. But certainly the force of the argument the Senator from Georgia makes is very great; and the law proposed in this bill would apply to cases arising in connection with the entire spectrum of human conduct.

Mr. TALMADGE. Is not the right of trial by jury one of the rights which were wrung from King John, at Runnymede, by the barons, when the Magna Carta was established?

Mr. STENNIS. That is correct. It is one of the most important of all the rights provided a free people.

Mr. TALMADGE. The right to be tried by a jury of one's own peers?

Mr. STENNIS. Yes.

Mr. TALMADGE. Does the Senator from Mississippi think it is democratic and in accord with the rights of free citizens to provide that a person charged with contempt may be tried, without having a jury trial, by a Federal judge who would be appointed for life, and who could be removed from office only by impeachment?

Mr. STENNIS. Certainly not.

Mr. TALMADGE. Is it not true that in connection with, I believe, the Norris-LaGuardia Act, Congress itself passed a law which guaranteed labor unions the right of trial by jury in criminal contempt cases?

Mr. STENNIS. That is correct. Whenever Congress has passed on this matter in recent years, and particularly as the activities of the Federal courts have been extended in connection with the rights of the people, Congress has made that provision. Civil rights legislation is the exception.

Mr. TALMADGE. Did not Congress pass the Morris-LaGuardia Act for the purpose of preventing abuse by Federal judges in connection with criminal contempt cases?

Mr. STENNIS. Yes.

Mr. TALMADGE. Does not the Senator from Mississippi think that right should be extended to all the 190 million American citizens?

Mr. STENNIS. Certainly it should—except, of course, in connection with the power of a court to have control of its own proceedings—in other words, in what we call civil contempt committed in the presence of the court.

Mr. TALMADGE. The Senator from Mississippi has been a very able judge and jurist in his own right. I have the utmost respect for judges, and I certainly share the view of the able Senator from Mississippi that a judge should have a right to direct as to the proceedings in connection with a case tried before him. But when it comes to trying people for criminal contempt, no judge should have the right to deny them the right of jury trial.

Mr. STENNIS. Certainly a judge should not have that power. I think that would be treading on most dangerous ground; I believe we shall have serious trouble unless we preserve the safeguard of a trial by jury.

Mr. TALMADGE. I thank the able Senator from Mississippi; and I concur fully in his view.

Mr. STENNIS. I make that statement partly based on experience as a district attorney, when—I say frankly—I used to become impatient, at times, with juries, and thought they made mistakes. But in later years, when I served as a trial judge, I certainly could see both sides of the picture; and I am a firm believer in the jury system. So I know we shall be headed for serious trouble if we abandon it.

Mr. COOPER. Mr. President, will the Senator from Mississippi yield?

Mr. STENNIS. I yield.

Mr. COOPER. The Senator from Mississippi has referred to the various provisions of the bill which authorize a jury trial in contempt proceedings in court.

Mr. STENNIS. Yes.

Mr. COOPER. The public accommodations title of the bill does provide for a jury trial in contempt proceedings does it not?

Mr. STENNIS. Yes.

Mr. COOPER. But, am I not right in saying that the titles which deal with school desegregation and public facilities do not provide for a trial by jury?

Mr. STENNIS. Yes.

Mr. COOPER. The argument is that in such cases we would not be dealing with private individuals, but with officials. In proceedings involving desegregation of public schools we would be confronting the power of the State, as expressed through its school boards. With regard to public facilities under title III, we would again be dealing with the acts of State officials. We can presume that these officials are acquainted with the law and would not be misled under any mistaken conception as to what their duties under the bill, if passed, would be. I think that is the distinction.

Mr. STENNIS. If I may briefly interrupt the Senator, what he has stated is a difference but hardly a distinction. Section 302, about which we are speaking, would not be limited to public facilities, parks, and playgrounds.

Mr. COOPER. I believe it should be defined.

Mr. STENNIS. I commend the Senator heartily.

Mr. COOPER. I wish to know more about it before I favor the provision remaining in the bill. If it remains as part of the bill, it will merit our close consideration.

Mr. STENNIS. I commend the Senator highly for his position. I am confident that a full examination of the question will convince him that the language would give carte blanche authority. There would be no limitation on it.

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

Mr. STENNIS. I am glad to yield further to the Senator.

Mr. COOPER. I believe it has been made clear in the course of debate during the past few days that the right to a jury trial, as a right under the Constitution, applies only to criminal proceedings. The 6th amendment and also the 14th amendment to the Constitution protect the right of a citizen to a jury trial in criminal cases. But the right of a judge to impose punishment for a violation of a court order is not in the nature of a criminal trial. The judge would be sitting as a chancellor, as if he were in a court of equity. He would be issuing orders that his decrees be carried out. If they are not carried out, the only way in which he could maintain the majesty of the court would be to administer some sanction to gain compliance with the court order. This has been the practice at both common law and under the Constitution of the United States. This practice survives in both the Federal district courts and also in most State courts.

A right to jury trial, in contempt proceedings, does not exist as a constitutional right. I think that point should be made very clear every time the question is raised.

It is most unfortunate that people all over the United States are getting the idea that the bill would deprive someone of his constitutional rights to a trial by jury. Since the question has been decided so many times by courts throughout the United States, it is unfortunate to see that impression being made. It is not a fair message to convey to the people of the United States.

Mr. STENNIS. The Senator has said that section 302 would deny the right of trial by jury, has he not?

Mr. COOPER. There is no constitutional right of trial by jury when a court, sitting as a court of equity, issues its orders and they are disobeyed, as it exists today. The question of whether trial by jury should be granted in contempt proceedings is a question of legislative policy which can be determined by the Congress and by the various State legislatures. I agree with the Senator that there should be a provision for trial by jury, whenever this is possible without diminishing the authority of the court.

Mr. STENNIS. I understand the Senator's position. His argument is that there is no absolute right of trial by jury in such cases.

Mr. COOPER. That is correct.

Mr. STENNIS. Does not the Senator agree that the wisdom of Congress would not be diminished one bit by granting the right of trial by jury in such cases as might be brought under the bill?

Mr. COOPER. That would be a question within the discretion and judgment of the Congress.

Mr. STENNIS. Yes.

Mr. COOPER. It would be determined on the basis of what is considered just and effective. The reason I raise the question is that many people in the country today believe that a constitutional right to trial by jury in this kind of case—a contempt proceeding—exists. That is simply not the law.

Mr. STENNIS. If we enact laws in the nature of criminal laws, the whole spirit of the U.S. Constitution is that trial by jury should be afforded to defendants. Perhaps the Court would so hold. Last week, in the Barnett case, the Supreme Court of the United States decided, in a 5-to-4 decision, that defendants were not entitled to a jury trial as a matter of right, but in a footnote the Court said to the lower court:

If you are going to impose a heavy punishment, perhaps you had better grant a jury trial.

Mr. COOPER. The Senator is correct.

Mr. STENNIS. Does not the Senator believe that the statement was a wise one?

Mr. COOPER. I believe so.

Mr. STENNIS. I appreciate the Senator's attitude and his fine sentiments, as always.

Mr. President, I referred to section 151 of the Civil Rights Act of 1957. As I have said, there is no equivalent of section 205(c) in title III and, therefore,

there is no guarantee in that title of any right of trial by jury in contempt proceedings brought under it.

As a matter of fact, in the House of Representatives, Representative ASHMORE, of South Carolina, offered an amendment to title III which would have, in the exact language of section 205(c), made section 151 of the Civil Rights Act of 1957 applicable to contempt proceedings arising under title III.

I should like to have the attention of the Senator from Kentucky on the point I am about to make.

This amendment was vigorously opposed by Representative CELLER, the chairman of the House Judiciary Committee, and others. It was asserted that there is no constitutional right to trial by jury in criminal contempt proceedings and that the provisions of section 151 of the Civil Rights Act of 1957 should not be extended to cover contempt proceedings under title III even though they did cover title II contempt proceedings. In the course of the debate, Congressman CELLER asserted that he opposed the proposed amendment because under title III as written, the punishment "should be swift and it should be sure." He charged that the proposed amendment "would only impede the administration of justice" even though its effect was only to accord a long-recognized basic right—CONGRESSIONAL RECORD of February 6, 1964, at page 2268.

He also attempted to make a distinction between contempt proceedings under title II and those under title III by asserting that title II created new rights and that contempt proceedings under it would be directed mainly against individuals while those under title III would be directed mainly against public officials, who should know better. This is a distinction without a difference. In addition, there is a fallacy in this view. Proceedings under title II can obviously be either directed against individuals or public officials. The same thing is true with respect to proceedings under title III, particularly when section 302 is taken into consideration.

The principal point is, however, that the argument that the adoption of the amendment would be to prevent the punishment from being swift and sure is, in essence, an argument against the jury system itself. In effect, this argument is that the interposition of a jury would, in some cases, either slow down the imposition of the punishment or prevent it. This amounts to a contention that we should dispense with jury trials because guilty men may be acquitted in some cases. While this may occasionally happen, it is one of the prices which we have always been willing to pay for our prized traditions of liberty.

I appreciate the sentiments of the Senator from Kentucky, in connection with section 302, that it is a congressional responsibility to be certain that the subject is fully considered and that a jury trial should be permitted.

The argument that the minimal safeguards provide in section 151 of the Civil Rights Act of 1957 and also titles I and II of the pending bill should be omitted from title III in order to make the punishment swift and sure is one of con-

venience and expediency only. In effect, it is based on the philosophy that it should be easy and simple for the Attorney General to inflict punishment. Unhappily, however, it reflects the philosophy of the Department of Justice today.

As one who has high regard for the constitutional principles upon which the greatness of this country is based, I wholly reject the philosophy that expediency and convenience, and the possibility that some guilty persons may go unpunished, are sound or adequate grounds for a denial of the basic constitutional right of a trial by jury. This right has historically been one of the greatest protective bulwarks against tyranny. Section 151 of the 1957 act, in my judgment, itself violated constitutional safeguards. Title III, which fails to assure the right of trial by jury even to the limited degree that section 151 does, is far worse. It displays a scorn and contempt for constitutional rights which I thought I would never see.

I repeat for emphasis that when the Congress enters the realm of control of the people in their daily affairs in a larger and larger number of cases, when it goes into the schools, into public accommodations, into the employment of people in private industry, and a host of other activities covered by this bill, it is mandatory, in conscience, if not in the plain letter of the constitutional provisions, that Congress provide for jury trials. To do anything less under present conditions would be unthinkable.

It is almost beyond the wildest imagination to realize that a businessman who has conducted his business in the same manner in which it has been conducted with the approval of the Federal Government for a century would suddenly find himself in court defending his right to continue that conduct. It is shocking to realize that under the terms of this bill the Federal Government, through the Attorney General and all the resources of the Justice Department, would be his prosecutor. The result of this illogical and unwarranted reversal of judicial procedure would not promote nor insure justice. It would insure injustice. It would weigh the odds heavily against one accused of unlawful discrimination under the terms of the bill.

The case of United States against Barnett, et al., decided April 6, 1964, has been mentioned in debate. In considering what this bill does, it is important that we understand the precise question decided in that case so that the impression will not be left that it authorizes the Congress to go the limit in denying a trial by jury in all criminal contempt cases.

The question certified to the Supreme Court, and, therefore, the only question before it for decision, was this:

Where charges of criminal contempt have been initiated in this court of appeals against two individuals, asserting that such individuals willfully disobeyed a temporary restraining order of the court, which order was entered at the request of the United States, acting as amicus curiae pursuant to its appointment by an order of the court which granted to it, among other rights, the right to initiate proceedings for injunctive relief,

and the acts charged as constituting the alleged disobedience were of a character as to constitute also a criminal offense under an act of Congress, are such persons entitled, upon their demand, to trial by jury for the criminal contempt with which they are charged?

That was the sole question presented to the court: Are such persons entitled, upon their demand, to trial by jury for the criminal contempt with which they were charged?

The Court, with four of the nine Justices dissenting, decided this question in the negative. I might add that the Court of Appeals of the Fifth Circuit had previously split 4 to 4 on this question. Thus, of the 17 judges who were called upon to pass on the issue, 9 took one view and 8 the other. This alone emphasizes what a difficult and close question is involved.

However, even the majority opinion in the Barnett case is not as sweeping as some seem to believe. The limited question presented, that is, were the defendants, upon demand, entitled to a jury trial as a matter of right for the alleged criminal contempt, was answered in the negative.

However, the certified question did not bring up for decision the issue of whether the severity of the punishment might change the situation and make it necessary that a jury trial be accorded as a matter of constitutional right. Let me call attention, on this point, to the concluding paragraph of footnote 12 to the majority opinion. It reads as follows:

However, our cases have indicated that, irrespective of the severity of the offense, the severity of the penalty imposed, a matter not raised in this certification, might entitle a defendant to the benefit of a jury trial.

For emphasis I repeat that language—"might entitle a defendant to the benefit of a jury trial."

See *District of Columbia v. Clawans*, 300 U.S. 617 (1937). There Mr. Justice Stone, later Chief Justice, citing many cases, said that "commonly accepted views of the severity of punishment by imprisonment may become so modified that a penalty once thought to be mild may come to be regarded as so harsh as to call for the jury trial, which the Constitution prescribes, in some cases which were triable without a jury when the Constitution was adopted." At. 627. In view of the impending contempt hearing, effective administration of justice requires that this dictum be added:

This is the dictum the Court was adding to its opinion:

Some members of the Court are of the view that, without regard to the seriousness of the offense, punishment by summary trial without a jury would be constitutionally limited to that penalty provided for petty offenses.

The Court said that punishment by summary trial without a jury would be constitutionally limited to the penalty provided for petty offenses.

Frankly, I do not see how the Court could say, as a constitutional matter, that the extent of the penalty would determine the right to demand a trial by jury. Nevertheless, that is what the Court said. Frankly, that is the standard Congress adopted in 1957—it granted ~~the right~~ of trial by jury if the penalty

went beyond that of a petty offense. I thought then, and I think now, that if the accused is entitled to a jury trial as a constitutional right, Congress had no right to say anything about the punishment. The Court said in this case that punishment by summary trial without a jury would be constitutionally limited to the penalty provided for petty offenses.

Any way one looks at it, the Court came close to holding that a jury trial was necessary as a constitutional right if there was to be any punishment for a criminal offense, even though it was for contempt.

It is very clear by all the authorities that, so far as the jurisdiction of Congress is concerned, as to whether a jury trial shall apply, it certainly should apply in these cases.

What the Court did in this footnote, it is clear, was to set forth a caveat or a warning that the question of the severity of the punishment was not decided or foreclosed. It told the lower court in no uncertain words that "Some members of the Court are of the view, that, without regard to the seriousness of the offense, punishment by summary trial without a jury would be constitutionally limited to that penalty provided for petty offenses." It felt that "in view of the impending hearing, effective administration of justice" required that this caution be added.

It appears then that the Court deliberately left the question involving the severity of the punishment open and gave the court of appeals clear warning that it was being left open. Thus when the case returns to the Supreme Court there is a very real possibility that it will be held that punishment by summary trial without a jury is "constitutionally limited to that penalty provided for petty offenses." I think it will so hold.

I think that it is important that the Senate get the full import of the Barnett decision and the point I am making. It would be a serious mistake for us to assume that this case gives us carte blanche authority to strip alleged contemnors of their constitutional right of trial by jury in any and all cases and without regard to the severity of the punishment. In fact, the very reverse may be true. I feel that if and when the Barnett case comes back to the Court, it will ultimately decide that in all cases, except those limited to the penalties provided for petty offenses, the Constitution does indeed guarantee a defendant in a criminal contempt case the right of trial by jury.

That is in effect what they have already said they would do, and I feel sure that they would at least go that far.

Regardless of how trivial or how serious the charge, an individual or a businessman who was hauled into court on an alleged violation of the equal employment opportunity title or any other title of this bill would be forced to provide his own defense. It would be necessary for him to finance his own investigation of the facts surrounding the charge. He would have to pay his own legal fees and engage his own attorney. On the other hand, the complainant, even though the allegation might be groundless, would

have at his disposal all of the legal assistance and investigative facilities of the Department of Justice. To those who might say that title VII does not expressly authorize proceedings by the Attorney General, I point out again that section 302 provides for his intervention in any litigation seeking relief from the alleged denial of equal protection of the laws on account of race, color, religion, or national origin.

A defendant might be fortunate to have one lawyer or, at most, a firm of lawyers, but the complainant through the Attorney General would have at his disposal the entire Department of Justice, consisting of more than 30,000 employees. The investigative force available to the complainant at no expense to him could consist of the entire facilities of the Federal Bureau of Investigation composed of more than 13,000 employees specially trained in investigative techniques. He could have access to files collected over many years. Also, at no expense to him, he could obtain the services of an unlimited number of attorneys who specialize in litigation of this nature.

So long as some large corporation which has assets of millions of dollars is being sued, of course it can finance the lawsuit and take care of its legal defense. But what about the owner of a small cafe beside the highway? He who has only a few dollars that he and his wife have saved. Suppose they have bought a little cafe and purchased the equipment on credit. Suppose they have built the business up to where they are paying off the note and are putting a little aside after their debts are paid in order to help take care of them in their old age. What chance do they have to finance a lawsuit against such odds? They will have to do whatever the Federal agents tell them to do. There will be no question about it.

The Federal agents do not have to wait until they deny accommodations to someone or refuse to serve someone a meal.

The Federal agents will say, to all the establishments of that type, "we believe you are about to deny someone service or accommodation and we will take you to court in one group."

What will those people do, as a practical matter? They will have no choice but to surrender to the great power wielded over them.

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

Mr. STENNIS. I yield.

Mr. TALMADGE. The Senator has pointed out a very interesting fact about a little cafe owner with assets of perhaps \$2,000, or less, and a large mortgage on his property. Even if the cafe owner were complying with the statute, and had violated no law, if the Government filed a suit against him, the mere suit itself would bankrupt him.

Mr. STENNIS. That is correct.

Mr. TALMADGE. It would put him out of business.

Mr. STENNIS. Absolutely.

Mr. TALMADGE. He would never have an opportunity to have his rights litigated in court. His resources would not permit him to go to the mat and try

a case against the Government of the United States.

Mr. STENNIS. That is correct. About all he could do would be to talk with a friendly lawyer in the village or in the town, who would not charge him a fee. The lawyer would tell him how the case was set up against him and that in all probability he would not only lose that suit, but he would also lose his business. On the other hand if he was forced to serve all customers he would lose his clientele.

Mr. TALMADGE. In addition to being denied the right to a trial by jury, he would be denied the right of a trial in any manner. He would not have any resources to fight with.

Mr. STENNIS. That is correct, as a practical matter.

Mr. TALMADGE. The minute the suit was filed, he would be effectively put out of business. He could not have his case tried in the court.

Mr. STENNIS. That is correct. It would bankrupt him, as the Senator said. The only thing he would have left would be the unpaid bills and the notes at the bank. He would still be responsible for those.

Mr. TALMADGE. He and his wife, and whatever employees they had, would be unemployed?

Mr. STENNIS. That is correct. He and his wife would be out of work. The people who worked for him would be out of work. But, he would still have his notes at the bank that he and his wife signed. He would have to pay them.

Mr. TALMADGE. Does the Senator believe that an amendment which would be a real civil right would be one which would cause the Government to pay for the businesses that such pernicious legislation as this might cause to go bankrupt?

Mr. STENNIS. I can solicit the support of the Senator from Georgia for an amendment of mine along that line.

Mr. TALMADGE. Due process of law means that the Government cannot confiscate a man's business, or take his property, without condemnation and adequate payment.

Mr. STENNIS. That is a plain constitutional right which is contained in the Federal Constitution as well as in the State constitutions. But under this bill, that right would be denied. They would be taking it under this provision. They would be putting him out of business.

Mr. TALMADGE. The filing of a suit would effectively put him out of business without the right of a trial, not only by a jury, but also by a judge. His resources would not permit him to defend himself against the U.S. Government, which has 190 million people, with a gross national income in excess of \$100 billion, and a national debt in excess of \$300 billion.

Mr. STENNIS. The Senator is eminently correct. The small businessman about whom we are talking does not have to violate any law in order to get into this predicament. He can be caught in a general net under the terms of this bill. He is caught in that net if the Attorney General merely believes he is not going to

comply with this public accommodations provision.

Mr. TALMADGE. As I recall the language of the bill, the only person who has to be satisfied in order to file a suit is the Attorney General himself.

Mr. STENNIS. He does not have to satisfy the court. He does not even have to allege anything. He merely has to satisfy himself. The Senator is correct. And that is what will happen in our section of the country to literally thousands of people running these little cafes under the conditions we have described. They will be coerced out of business. Their little business will be ruined. The Hot Shoppes or Howard Johnson folks can take care of themselves. Whatever they lose in one place they can make up somewhere else.

Mr. TALMADGE. Not only cafes, but barber shops, beauty parlors, and institutions of that kind that render personal service would come under the provisions of this bill. They would be utterly helpless to defend themselves against the power and might, the financial and legal resources of the United States.

Mr. STENNIS. That is correct.

Mr. JORDAN of North Carolina. Mr. President, will the Senator yield?

Mr. STENNIS. I yield.

Mr. JORDAN of North Carolina. Is it the belief of the Senator that under that condition, the very minute the Government files a suit against an individual, or store, the defendant might as well go by the relief agency and sign up for relief on his way to the courthouse?

Mr. TALMADGE. That is what he would have to do. He would have to sign up for relief.

It would require \$50,000 to \$100,000 in cash resources to defend a case of this kind against the Government of the United States. If one did not have resources of that kind—and 90 percent of the people who would be affected would not have such resources—the mere filing of the suit would put them out of business and would deprive them of their property and their jobs, and effectively deprive them of due process of law.

Mr. JORDAN of North Carolina. Mr. President, will the Senator yield?

Mr. STENNIS. I yield.

Mr. JORDAN of North Carolina. At the rate at which the Government usually moves in proceedings of this kind, it would be about 14 years before the man would get an answer. By that time he would be broke, and probably forget where his business was.

Mr. TALMADGE. Assuming that the case was tried and went through the various courts and finally to the Supreme Court, it could very well take 14 years before being settled. Some cases have been litigated for a longer period of time than that.

Mr. STENNIS. If he goes to court and the court orders him to open his cafe to all persons regardless of what effect it might have and he carries out the order of the court, his regular customers will leave. We know that. He will lose on both counts. If he obeys the order, he will lose his regular customers.

If he does not comply with the order, he may go to jail. He will lose either way.

Mr. TALMADGE. And the newcomers will abandon him, too.

Mr. STENNIS. Yes. They are crusaders. They will not stay with him.

Mr. TALMADGE. Therefore, insofar as the Government is concerned, it is "Heads I win; tails you lose."

Mr. STENNIS. Yes. It is certainly that way with respect to the little people. That is the tragedy of it. I have been greatly encouraged by the opposition of our fellow citizens to some parts of the bill. They are beginning to realize that as the Senator has said, it is a matter of "Heads I win; tails you lose."

I come now to another innovation in litigation of this kind. I refer to the three-judge courts.

#### THREE-JUDGE COURTS UNDER TITLE I

Throughout the bill the Attorney General is given the authority to use his offices in the prosecution of claims with almost unlimited discretion. In title I which pertains to voting rights, section 101(h) provides:

(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—

They do not even let the sitting judge receive a copy of the request—

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.

This section differs from the provisions of the present law. It permits the Attorney General to go shopping for judges he feels would be most desirable without even certifying that the general public interest is involved. If the Attorney General is not satisfied with the judge who would otherwise hear the case, he may file with the clerk of the court a request that a court of three judges be convened to hear and determine it.

While section 101(h) provides that either the Attorney General or any defendant may file a request for a three-judge court, there is some doubt that the defendant would have such a right in actual practice. I realize that the House adopted an amendment which was designed to confer such a right on the defendant, but the result was to leave the matter in confusion. Unfortunately, the House failed to adopt a perfecting

amendment to the second paragraph of section 101(h). Therefore, this now provides that if the Attorney General fails to file a request for a three-judge court it shall be the duty of the chief judge of the district in which the case is pending immediately to designate a judge in such district to hear and determine the case. Thus it appears that if the Attorney General is satisfied with the district judge, he might simply refuse to file a request for a three-judge court and thereby cause the immediate appointment of a district judge and prevent the defendant from obtaining a three-judge court even though the bill provides the defendant may file such a request. This point has not been clarified to my knowledge in debate of the bill. The Senator from Minnesota [Mr. HUMPHREY] in a speech explaining the bill—CONGRESSIONAL RECORD, March 30, page 6530—stated that either party may request a three-judge court but he did not discuss nor clarify the provision providing for the immediate appointment of a district judge in the event the Attorney General did not request appointment of a three-judge court. The Senator said:

In order to expedite the handling of voting rights cases by the courts, title I provides that either party may ask the chief judge of the circuit or the presiding circuit judge to appoint a three-judge court to hear the case. Appeals from such a court would go directly to the Supreme Court. The title also requires expeditious handling of all voting cases whether tried by a three-judge court or not.

The conflict is such that this section, in practical operation, might be construed to give the Attorney General the right to obtain a three-judge court but deprive the defendant of the same opportunity. It should certainly be clarified to make it clear that the defendant in a proceeding under this title has an equal right with the Attorney General. Left as is, it could become a heavy club in the hand of the Attorney General which he could use at will to coerce and intimidate individuals against whom he brought charges. Without such a right the defendant will be at the mercy of the Attorney General in the selection of the court before which his case will be tried. Such a situation is contrary to every rule of American justice. It would give an unreasonable and improper advantage to the Attorney General which would place him in a position to make unreasonable and improper demands.

It has been pointed out that there are existing statutes providing for three-judge courts. This is true. It is also true that the provisions of title I in respect to three-judge courts are deceptively similar to the regular three-judge court statute, 28 U.S.C.A. 2284. On analysis, however, they are vastly different. I have already read the provisions of section 101(h)—28 U.S.C.A. 2284 provides:

In any action or proceeding required by act of Congress to be heard and determined by a district court of three judges the composition and procedure of the court, except as otherwise provided by the law, shall be as follows:

"(1) The district judge to whom the application for injunction or other relief is

presented shall constitute one member of such court. On the filing of the application, he shall immediately notify the chief judge of the circuit who shall designate two other judges, at least one of whom shall be a circuit judge. Such judges shall serve as members of the court to hear and determine the action or proceeding."

Under section 2284, the judge before whom the case was brought is automatically a member of the three-judge court. He personally notifies "the chief judge of the circuit who shall designate two other judges" who shall "serve as members of the court." Not so in title I. The request is not transmitted by the district judge. It is "furnished by such clerk to the chief judge of the circuit." Thereupon, such judge shall "designate immediately three judges in such circuit" one of whom shall be "a district judge of the court in which the proceeding was instituted." This is a substantial change from section 2284. The chief judge of the circuit has the general power to appoint a judge "from the circuit" to become an acting judge for any district in that circuit. The judge so designated becomes "a district judge of the court." He necessarily is from a district different from that for which he is appointed acting district judge.

Under title I the chief judge of the circuit may appoint "three judges"—not "two other judges" as required by section 2284—and the district judge before whom the proceeding is brought may be excluded therefrom.

Traditionally, under section 2284 the local circuit judge and a local district judge have been chosen to make up the three-judge court. But under title I, the chief judge of the circuit may conceivably choose three judges from other districts or other States—so long as they are within the circuit—to compose the court. Under title I, three Texas Federal judges could be appointed to try a Florida case, and so forth. This cannot happen under the present statute. This is unprecedented and unwarranted. It is bad policy and bad law. It illustrates the extent to which forum shopping under title I is permitted by the Attorney General.

Centralization of power is always a bad policy. Title I carries centralization to an extreme. Even in constituting panels for the courts of appeals, the court must divide itself into panels. No one judge has that power. Why should either one of the litigants be given the power to decide whether a case should be heard by the U.S. district judge before whom it is brought or by a panel chosen by one judge which—under the peculiar terms of this bill—may exclude such district judge? Such power is unprecedented.

It is no answer to say that the House amended the committee bill to give the defendant the right also to ask for a three-judge court. There is some question as to the efficacy of this amendment. But, in any event, it does not limit the right of the Attorney General to bypass the local Federal district judge and have the chief judge of the circuit choose an entire court. The defendant cannot prevent the Attorney General from doing his forum-shopping. It would be small comfort to say that the defendant can also

bypass the district judge and ask for a panel chosen entirely by the chief judge of the circuit. Two wrongs do not make a right. These two wrongs do not justify each other.

Mr. President, any power granted to anyone which allows them to disqualify a judge or to transfer a case, without just cause, to another judge or to another court, under any such statute, is extreme and sets a woeful precedent that will plague the country, plague Congress, and plague the judicial branch of the Government for many years to come. I think it is a strong reflection upon the judiciary for such a proposal to be made, much less adopted by Congress.

Mr. COOPER. Mr. President, will the Senator yield for a question?

Mr. STENNIS. I yield for a question.

Mr. COOPER. I should like to ask the Senator a question on this point.

Mr. STENNIS. Yes.

Mr. COOPER. It concerns certain procedural and substantive matters, and directly involves the basic justice of these procedures.

I gathered from what the Senator has said that he believes that if this procedure were followed, when a request is made by the Attorney General or by a defendant, it would be possible that when a three-judge court was convened, it might not include a judge of the district where the action has been filed. Is this a fair summation of what the Senator has suggested?

Mr. STENNIS. As I understand from what I have read, the district judge who would ordinarily try the case could be bypassed. The chief judge of the circuit may designate any judge from the circuit as an acting judge of any district. He could send him into a district to act as a district judge.

Mr. COOPER. But there must be a judge from the district court in which the proceeding was instituted. On page five of the bill, we find this language: "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."

Mr. STENNIS. Yes; a district judge of the court. It does not mean that particular bench. It means any district judge, as the Senator from Mississippi understands the language. The judge might be a judge from the circuit who had been appointed by the chief judge.

Mr. COOPER. That is possible; but I believe our experiences with Federal district courts are pretty much the same. My State and the Senator's State of Mississippi would have substantially the same kind of Federal court. We think of a Federal district court as having one judge, but in Federal districts there may be several judges.

Under this section the court of three judges must include a judge from the district in which the action was instituted.

Mr. STENNIS. I was attempting to show that it is possible for the chief judge to assign a district judge to another district—say from the western district of Kentucky to the southern district of Kentucky—and he would technically meet the requirements of the bill.

The regular district judges of that district could be left out.

Mr. COOPER. This might be possible if all the district judges of the district were sick or were on vacation, or something of that kind. But I believe the ordinary meaning of this language is that one member of the three-judge court would be a judge of the district in which the proceeding was instituted. Does not the Senator agree to that?

Mr. STENNIS. I do not think so, because it is entirely possible for what I have said to happen. The other statutes specifically provide that a three-judge court shall include the district judge to whom the application is presented.

But this section is carefully drawn to avoid this requirement and does not provide that the district judge to whom the application for relief is presented shall be a member of the court.

Mr. COOPER. It is good to clarify this point. My judgment is that the language provides that one member of the three-judge court—shall be a district judge of the court in which the proceeding was instituted.

Mr. STENNIS. That is true; but he could be there by special assignment from some other district. That is my point. It is possible for him to be assigned from another district.

Mr. COOPER. I do not believe he could be, unless all the judges regularly assigned to serve that district were absent because of sickness or vacation, or for some similar reason.

Mr. STENNIS. It is significant that the language of the present law was not followed, but was made broad enough to cover a different situation.

Mr. COOPER. I have enjoyed listening to the remarks of the Senator from Mississippi with interest.

I am required now to leave the Chamber for a time; but I hope to be able, later, to engage in further discussion with the Senator from Mississippi.

Mr. STENNIS. I thank the Senator from Kentucky. He has been kind, and I shall be glad to have him return.

Mr. President, I come now to title II:

#### TITLE II

The powers of the Attorney General under the provisions of title II, the so-called public accommodations section, are greater perhaps than those of any other section of the bill, with exception of section 302. Section 204(a) of the civil rights bill provides:

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.

It is clear that under this provision, the Attorney General would have almost unlimited latitude in bringing an action. He would have only to make a unilateral determination that the defendant had deprived or was attempting to deprive a person of the "full and equal enjoyment of the goods, services, facilities,

privileges, advantages, and accommodations of any place of public accommodation on the ground of race, color, religion, or national origin." The person allegedly aggrieved would not even need to file a complaint. The Attorney General could institute a civil action for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order in the name of the United States. All he would have to do to justify such action would be to satisfy himself that the purposes of the title would be "materially furthered by filing of an action."

Who could know how the Attorney General would define "full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations" of a place of public accommodation? How could the owner of any place of public accommodation know on what basis the Attorney General would decide whether the owner "is about to engage in any act or practice" prohibited by section 203 of this title? That would be left entirely to the Attorney General, to decide for himself, for the requirement is only that "he satisfies himself that the purposes of this title will be materially furthered by the filing of an action." It is, then, conceivable that the Attorney General might become satisfied in his own mind that every covered business in a city block or half a city or an entire city or an entire county or, in fact, an entire State was "about to engage in an act prohibited by the title."

Under threat of bringing such a suit, he could demand that the owners comply with what he believed to be necessary to meet the equal enjoyment of all the services, facilities, and provisions of any potential complaint. The Attorney General could dictate the policies of the private establishments in any area he chose. This is not mere supposition. It is the apparent intent of the proponents of this bill. In discussing this section, the Senator from Minnesota attempted to justify this unlimited authority proposed to be conferred upon the Attorney General when he said in his speech of March 30—CONGRESSIONAL RECORD, page 6535:

First, in many cases the persons aggrieved will be travelers who simply will not have the time or means to institute a lawsuit far away from home. Second, suits by the Attorney General will make it possible to go directly to trouble spots and to avoid imposing excessive competitive disadvantages on any one individual. An individual will ordinarily be in a position to sue only one or a small number of establishments which have discriminated against him. The Attorney General could sue all the restaurants or all the motels in a particular area, so that no one owner of an establishment would be at a disadvantage, as against the owners of competing establishments.

The proponents of the bill apparently cannot be satisfied with the ordinary process of judicial procedure. Evidently, they do not consider that an individual whose rights were denied should be allowed to go into court in the usual manner and to obtain justice. The judicial process is apparently not fast enough to appease the groups of agitators who seek what they have arbitrarily

determined to be their rights without regard to the rights of property which they would destroy in demanding equal access or equal accommodation. They would speed up this process, by creating a vast array of power, and by placing it at the disposal of the Attorney General. He could then say to the owners of places of public accommodation in any area, large or small, that his demands must be met or else this great power would be unmercifully thrust against them. They would be forced to surrender or become subjected to the most severe harassment ever possible of infliction by a public official.

Mr. TALMADGE. Mr. President, at this point will the Senator from Mississippi yield?

Mr. STENNIS. I am glad to yield to the Senator from Georgia, for I know he has a special interest in these provisions.

Mr. TALMADGE. Is it not true that an invitee who comes into a man's place of business—whether to purchase lunch, to buy a suit of clothes, or to transact any other business—is an invitee; and his right to be in the store is a privilege which could be revoked by the owner at any time he might choose to do so?

Mr. STENNIS. Yes. That is a fundamental right, under our system of justice. According to the Constitution it is the owner's fundamental right. It is a right not to be taken away, except by due process of law.

Mr. TALMADGE. Is it not true that from time immemorial, in Anglo-Saxon jurisdictions, the owner of private property has had a right—which is constitutional and fundamental—to use his property in any way he might see fit, so long as he did not damage or injure his neighbor or create a nuisance through his use of the property?

Mr. STENNIS. That is true; and our entire economy is based on that right.

Mr. TALMADGE. Does not this provision purport to change the privilege of the invitee to transact business in a man's store to a fundamental right which, by means of the bill, would be supposed to be supported by the taxpayers of the United States, through the Attorney General, and thus deny that property owner the right to enjoy the use of his own private property?

Mr. STENNIS. The Senator from Georgia is correct. That property is something the property owner has earned. It might represent the work of a lifetime. However, the bill would end that property right; it would transfer it to someone who, until then, had had what was only in the nature of a privilege.

Mr. TALMADGE. So the bill would attempt to transform privilege into an unconstitutional right to enjoy and to use property belonging to someone else; is not that true?

Mr. STENNIS. That is correct. If the Senator has a place of business, and if I go into it, as a customer, my presence there is a privilege which I am exercising; the owner has the right to decide how the property shall be used. It is only by his consent, that I am privileged

to enter. The owner has the right to say whether I may associate with him on his property. That decision is for him to make; that decision—whether others may regard it as right or wrong—is his choice.

I may be disappointed or inconvenienced, but the right would rest with the Senator from Georgia and not me. This bill would transfer that right away from the owner without due process of law, without compensation and without any consideration, and it would give it to others, in the way of a privilege. For that reason, as the Senator from Georgia has said, the bill would destroy more rights than it could possibly protect.

Mr. TALMADGE. Would that not be one step towards the Communist principle of denying the right to own and utilize private property?

Mr. STENNIS. It certainly would be. It is a basic and fundamental. It is not merely an incidental or minor use. It would take the property away from its owners. As in the case we discussed a moment ago, a business would be destroyed.

Mr. TALMADGE. Does the Senator know of any country on the face of the earth that has denied the right to own, to utilize, and to enjoy property in which other rights have not fallen as a result thereof?

Mr. STENNIS. Of course, rights go together. The outstanding example in our time has been the overthrow of the regimes in Europe. The Senator mentioned the Communist concept as one example. There are variations, of course. But the rights about which we are speaking belong to all the people. Such a business could belong to a Negro or a white man. It could belong to a Catholic, a Jew, or a Protestant. It is a right that is his.

Mr. TALMADGE. He would be denied his fundamental civil and constitutional rights.

Mr. STENNIS. Absolutely; and, as a practical matter, he would have his means of livelihood taken away from him.

Mr. TALMADGE. Without due process of law.

Mr. STENNIS. Those rights would be taken without compensation and without due process of law. The owner would not have to refuse service to someone desiring to trade with him. Under the bill the Attorney General could merely send his agents down into the South or anywhere else. He could send his agents along the highways obtaining names and filing suits. A business owner may not be doing anything wrong. He may be carrying on his business, as such owners have carried on business in that area for 100 years. But the Attorney General could bring those owners of businesses into court and obtain injunctions against them. The bill does not provide that the Attorney General should necessarily consult with them, and then if they do not comply with his wishes a suit is filed. The bill would merely give the right to sue.

Mr. TALMADGE. All the Attorney General has to do is to satisfy himself.

Mr. STENNIS. That is correct.

Mr. TALMADGE. He may satisfy himself for whatever reason he desires to give.

Mr. STENNIS. Yes. That is what the bill provides.

When the sheriff goes out directing a search for criminals, he cannot take with him blank search warrants and, after he gets to his destination and finds the suspects, put their names in the warrant. But this bill would give the Attorney General carte blanche authority.

Mr. TALMADGE. I agree with the Senator.

Mr. STENNIS. It is terrifying to imagine the consequences resulting from the misuse of such power by a politically ambitious Attorney General.

He could, if he chooses to do so, bring down upon the citizens of any area a reign of terror and harassment from which they would never recover.

He would have it within his power to destroy any business or type of business that did not accede to his demands.

This unlimited power could be used against any section of the Nation or any State to accomplish political objectives.

No one individual should ever have that much authority in a country that boasts of individual liberty and freedom. It should be reserved for dictators and nations whose people will live in enslavement and tyranny.

The fact that an action could be brought under this title only if a person had engaged in, or if there were reasonable grounds to believe that he was going to engage in, a prohibited action, provides no real safeguard against the bringing of unfounded actions. It would be left to the Attorney General alone to decide whether an individual against whom charges were brought was about to engage in a prohibited practice.

The broad grant to the Attorney General of power that would allow him to pick and choose among the businesses he would prosecute cannot be overemphasized. He might, for any reason satisfactory to him, prosecute one establishment, while allowing its competitor to continue to operate without harassment. Nothing in the bill would give the proprietor of an establishment against which the Attorney General brought an action, a means to force similar action against his competitors. Under the bill, an action could be brought only by the person aggrieved or by the Attorney General. If the Attorney General elected to move against a restaurant on one side of the street, but chose not to move against a restaurant on the other side of the street, the owner of the restaurant against whom the charge was brought could not force such an action against his competitor. Under these circumstances the Attorney General would have absolute control over the economic survival of any business or group of businesses he chose.

While it is provided that the court, in its discretion, could allow the defendant costs, including a reasonable attorney's fee, he would in no way be compensated for the loss of business or for the loss of time resulting from an unfounded action by the Attorney General or other complainant. By means of the bill, he would

not by any means be assured that he would be allowed, as part of the "reasonable costs," to be repaid his attorney's fee.

#### TITLE III

Mr. President, I turn now to title III, to discuss it in connection with another purpose.

Title III pertains to the desegregation of public facilities, and has already been discussed to some extent. Under it, the Attorney General would be given the authority to institute a civil action whenever he received a complaint, signed by an individual, to the effect that the individual was 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, other than a public school or college. The circumstances under which the Attorney General might bring such an action are so broad and encompassing that they would, in fact, be unlimited. It would, for all practical purposes, be left to the Attorney General to decide in which instances he would act and in which instances he would refuse to act.

Section 301 provides:

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 subdivision 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 plead 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.

Anyone familiar with the current activity of the many groups who are engaged in pressing for court tests of their right of access to public and private establishments knows that the Attorney General would have no difficulty obtaining complaints. On the contrary, if the bill were enacted, he would immediately

be deluged with a multitude of complaints of alleged violations of this title. If past experience is any guide, most of them would be groundless and without merit. That has been the experience with many so-called demands for civil rights.

Under title III, a person would be deemed to be unable to maintain the appropriate legal proceedings whenever the Attorney General found that such person was, first, unable "to bear the expense of the litigation"; or, second, unable "to obtain effective legal representation"; or, third, to maintain such a proceeding "would jeopardize the employment" of the complainant or his family or their property; or, fourth, to maintain the proceedings "would jeopardize the economic standing" of the person, or his family or their property; or, fifth, to maintain the proceeding "might result in injury" to the person or his family or their property; or sixth, to maintain the proceeding "might result in economic damage to" the person or his family or their property.

With this list of grounds under which he could bring and maintain the action, it is evident that the Attorney General would have the widest latitude in originating litigation. No private attorney or firm of attorneys or organization providing legal services can hope to provide as "effective legal representation" as can the Department of Justice, with all its investigative resources, as represented by the Federal Bureau of Investigation. Furthermore, since the maintenance of litigation always costs money, it is evident that the phrase "might result in economic damage" to the person, his family or property, could include anyone.

This section is so broad that it would invite complaints from the demonstrators, pickets, and organizations campaigning for civil rights. Under the proposed statute, it would be sufficient reason for the Attorney General to institute a suit merely if he was satisfied that the institution of the suit by the complaining party would jeopardize his employment or economic standing or would result in injury or economic damage to him, his family, or his property.

#### TITLE IV

Under title IV, the Attorney General would have similar sweeping power. This title deals with public education facilities. Again, under section 407(a), upon receipt of a complaint, the Attorney General would be authorized to institute a civil action if he merely certified that the signer or signers of the complaint were unable, in his judgment, to initiate and maintain legal proceedings for relief, and that the institution of the action would materially further the public policy of the United States favoring the orderly achievement of desegregation in public education. Just as in title III, no manner is provided in title IV for the judicial testing of the factual basis of the certification. The decision of the Attorney General would be final.

Under section 407(b) the Attorney General could deem a person or persons "unable to initiate and maintain appropriate legal proceedings" if such person or persons are unable to bear the ex-

pense of the litigation or to obtain effective legal representation, or if the institution of the 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.

It requires little imagination to see that the Attorney General could determine that practically every person who complained would be "unable to initiate and maintain appropriate legal proceedings." This, without more, would authorize the Attorney General to institute a civil action himself.

#### IMPACT OF TITLES I, II, III, AND IV

It is clear that the provisions of titles I, II, III, and IV would: First, establish new procedures for the enforcement of vindication of alleged civil rights of purely private individuals at the expense of the taxpayers and with the full might of the Federal Government arrayed behind them; and second, confer upon the temporary occupant of the office of the Attorney General the unrestrained power to grant assistance to some persons and withhold it from others.

The proposed law would be enforced by the Attorney General. He would be free to act without restraint and according to his own dictates. It would not be government by law. It would be government by whim of the Attorney General, without regard for precedent or established law.

The procedure which would be authorized by the bill could be used for or against such persons as the Attorney General alone may select. Such a condition is repugnant to the fundamental concept that our judicial system was created to administer equal and exact justice in compliance with uniform laws applying in like manner to all men in like situations.

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

Mr. STENNIS. I yield.

Mr. SALTONSTALL. I should like to ask the Senator somewhat the same questions I asked him once before today. Would his criticism and opposition to the Attorney General operating under the first four titles be eased if some effort were first made by the Community Relations Service to straighten out the problems and perhaps make some certification to the Attorney General before the Attorney General took jurisdiction of the case?

Mr. STENNIS. It is always relevant for some effort of that kind to be made. I should not say that the Attorney General would not himself try to make some inquiries. But he would be given unlimited power. Some kind of procedure such as the Senator has suggested, in some cases would perhaps do some good. Local groups who, to a large degree, would be associated with school cases would arouse feelings. I believe they would be more associated with whatever prosecution might take place. But the point is that the power that would be granted under the bill would be great.

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

Mr. STENNIS. I yield.

Mr. SALTONSTALL. It seems to me that if a Community Relations Service worked at the community level—and it would be the function of the Service—to provide community service to resolve disputes—we should appropriate sufficient money for that Community Relations Service so that it could do as much work as possible for adjustment of disputes at the community level.

They would be a Federal body and would work at the community level with other community services available in the area. It seems to me that such a procedure would be a much better way of working out some of the problems. I know it has been successful in Massachusetts.

Mr. STENNIS. I would not totally discount what the Senator from Massachusetts has to say on anything. He is far better qualified to speak on the action in his area of the country than I am. But I might illustrate by mentioning a small cafe or restaurant business in our part of the country. I do not refer to a chain business, such as a Howard Johnson affiliate or some other mass group. It is a personal thing. Frequently it is a small business which is owned by a man and his wife. It is operated by them. They feel that any kind of enforced dealing with the Government, other than such things as licenses and sanitary regulations, is an invasion of their rights and their lives. They would not look with favor on such a proposed committee.

In the great industrial areas of the Nation the people live in such large numbers that the individualism, if I may call it that, has been partly submerged into the greater crowds and numbers. There is not a personal feeling about many things.

I have seen in the great city of New York throngs of people coming out of the large office buildings at closing time. I have gone down the side streets in the clothing and manufacturing areas of New York. I could very readily see that in their business matters, to a great extent, they had lost a great deal of their identity and individualism. The system crushed it out of them. It was not their fault. In the rural areas and in the villages and in the less congested parts of the country these little businesses exist. They are not parts of a chain. These small businesses are individual matters.

Frankly, I do not believe that these groups, to which the Senator has referred this afternoon, who would be appointed under the provisions of the bill, would be able to handle the situation very well, or to the extent that they would constitute a check on the Attorney General. I am not speaking of the present Attorney General. I am talking about the power which would be conferred. To the extent that it would be some check and balance on the Department of Justice and the Attorney General, some good might come of it.

Mr. SALTONSTALL. Mr. President, will the Senator yield further for an observation?

Mr. STENNIS. I yield.

Mr. SALTONSTALL. The Senator has spoken of small coffee houses and sand-

wich houses. Is he not really making the same kind of reference that the Senator from Vermont [Mr. AIKEN] made to the "Mrs. Murphy's boardinghouse?"

Mr. STENNIS. Yes.

Mr. SALTONSTALL. What the Senator is saying is that it is a personal affair.

Mr. STENNIS. Yes. It is a personal matter, and decidedly so, if I may add that for emphasis.

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

Mr. STENNIS. I am delighted to yield to the Senator from Alabama. I know that in the part of the country which he represents conditions are very much like conditions in my own State. He is also informed as to conditions in other areas of the country.

Mr. SPARKMAN. I am particularly interested in the statement that the Senator from Mississippi just made, and one that has been joined in by the Senator from Massachusetts. Both are concerned not only with "Mrs. Murphy's boardinghouse," but with small businesses generally. Even though the Senator's great State of Massachusetts is an important industrial State, it is full of small businesses. In my part of the country, probably there is a higher percentage of small businesses. The Senator was speaking of a typically small business, such as a little restaurant.

Under several titles of the pending bill, if not all of them, the Attorney General would have the right to bring suits if a complaint were made to him by an individual. Suppose that a complaint were made against a small restaurant or a small business of some kind. I am not sure this is true of every part of the bill, but in various parts of the bill there is a provision to the effect that if a suit goes against the defendant, the defendant will have to pay all the costs.

Mr. STENNIS. Yes.

Mr. SPARKMAN. The Senator knows that many small businesses operate on a very small margin of profit. Is it not true that many small businesses operate as a family business, from which the entire family gets its income, and lives off that income?

Mr. STENNIS. Yes.

Mr. SPARKMAN. The family lives off the income it makes from that business, and that is all it gets out of the business.

Mr. STENNIS. Yes.

Mr. SPARKMAN. What would happen to that small business if it were brought into court without a right to ask for a trial by jury—in other words, to have the complaint heard and weighed by a jury of the defendant's peers? That is a good old Anglo-Saxon term; is it not?

Mr. STENNIS. That is correct. It sounds very good, too.

Mr. SPARKMAN. What is going to happen to little businesses, operating as family-type businesses, the families living on the income obtained from them? What will happen when they have to answer an action of this kind? Whatever happens finally, is it not true that the sword of Damocles will be hanging over their heads?

Mr. STENNIS. Yes. The threat will face them all the time.

Mr. JORDAN of North Carolina. Mr. President, will the Senator yield?

Mr. SPARKMAN. The Senator from Mississippi has the floor.

Mr. STENNIS. I yield to the Senator from North Carolina.

Mr. JORDAN of North Carolina. I think I answered that question this afternoon. It is a valid question. When the Attorney General files the suit and the defendant is on his way to the courthouse to answer it, he will stop by for relief at the same time.

Mr. STENNIS. I did not hear the Senator make that point.

Mr. JORDAN of North Carolina. The defendant will swell the poverty rolls that we are now working to get rid of. He will help build up those rolls, so Congress will have to enact some more laws to get those people off the poverty rolls.

Mr. STENNIS. But he will still have the notes to pay off for the money he owes on his fixtures. That will still face him.

Mr. SPARKMAN. Whatever he has left in his store will be sold at a forced liquidation. He will be wiped out.

Mr. STENNIS. He will be put out of business.

I am sure the Senator is familiar with this language, but I wish to underscore the point with reference to the title on public accommodations. This proposal reads:

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—

In other words, the Attorney General could go up and down the highway and pick a few cafe owners, or all of them, merely because he thinks they may refuse service to someone, threaten them with a suit, or actually file an action against them. The language continues: a civil action for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order, may be instituted.

By the Attorney General himself.

He does not have to have a grievance. That shows how far this proposal has gone.

That shocked the Senator from Massachusetts; and he made the suggestion that perhaps a committee should consider it. It shows how far this proposal has gone. The Attorney General could simply ask for injunctive relief, and the owner would be out of business. He would be through.

Mr. SPARKMAN. The proponents may say that the Attorney General is not going to do those things; but was not one of the safeguards that our forefathers took when they broke away from Great Britain that we should protect against the possibility of tyrannical acts of government? Was it not the fear of concentrated power and the fear that tyranny might result from it that prompted our forefathers to set up the kind of government they did? Is that not correct?

Mr. STENNIS. Absolutely. One of the basic protections was trial by jury. Now the proposal is to enlarge the power and authority of our Government at a rapid rate, through injunctive relief, but

without the ordinary safeguard of trial by jury.

Mr. SPARKMAN. Mr. President, will the Senator yield so I may ask one more question?

Mr. STENNIS. I am glad to yield to the Senator.

Mr. SPARKMAN. We are speaking of trial by jury. Are we not prone to overlook the significant importance of another part of our judicial system, and that is, to have a charge against a person examined by a grand jury, made up of his peers, to look into those charges to ascertain whether or not they are valid?

Mr. STENNIS. Yes.

Mr. SPARKMAN. In this case is it not true that the Attorney General in so many instances would be empowered to act on the statement of an individual without any grand jury study, indictment, presentment, or any other report?

Mr. STENNIS. I am glad the Senator has brought up that point. A while ago I was thinking about the immense power proposed to be granted. In the State courts of my State—and this is true in most of the States—there is a prosecuting attorney. Except in the case of relatively small misdemeanors, he cannot turn a hand to prosecute any one individual until the grand jury, representing the county at large, on its own responsibility, has determined that there is prima facie evidence to justify prosecution.

Mr. SPARKMAN. If the Senator will permit me, I should like to interrupt him once more. I have not read the Magna Carta in some time, but my recollection is that a grand jury was provided for in the Magna Carta, as was a petit jury.

Mr. STENNIS. It was the forerunner of the grand jury.

Mr. SPARKMAN. It may be that the grand jury preceded the other, but there was a very close connection between them.

We always go back to the Magna Carta for our right of trial by jury. I am rather of the opinion that the grand jury preceded it.

Mr. STENNIS. It is a very sound system.

I meant to bring this point up earlier this afternoon, when the illustration was given about the small restaurant. Under the proposed law, "Mrs. Murphy" would not be exempted if she fed only one person. She must rent at least five rooms, but if she furnishes a meal only to one person, she would come under the law.

I wish to refer to a law of Mississippi with reference to restaurants and cafes. The law does not require any separation of the races. It does not require anyone to exclude a colored person or in a cafe which serves colored people, to exclude white people. That is not in the law.

The law merely provides the civil right that the proprietor, the owner, or the operator has the right to make his own selection. It states that he has a reserved right to choose whom he shall serve.

That is a civil right. That is his property, and the earnings of the busi-

ness are his. He owns what is there. He has worked for it. Everything he owns is at stake and depends on whether he can make a success of his business.

But this bill would allow the Attorney General to go in his place of business, and without the owner having violated any law, force him to remove the sign which says the owner reserves the right to refuse service to any person. In effect the owner would be told "You do not count. Your rights are not to be considered. Unless you serve whoever comes in your place, we are going to put you out of business; we will get a court order because we represent the Attorney General of the United States." The little fellow would not have any chance.

The Federal agents would not have to wait for him to refuse to serve anyone. They could just say the Attorney General believes that the owner is about to refuse service to someone.

There is always danger that discretionary governmental power may permit the public officer in whom it is reposed to rule arbitrarily and without the restraint of law. Only in most extreme circumstances, if ever, should the legislative body adopt any statute conferring unlimited discretionary power upon an executive officer. It should be granted only if it contains rigid checks and balances. The disservice which can result from the power given an officer or public official must never outweigh the good which can result from that grant of power.

The potential dangers inherent in these titles, as in title VI, which would grant the President or his appointees the uncontrolled power to cut off Federal aid to any programs which, for whatever reason, were deemed to be administered in a discriminatory manner, far outweigh the alleged benefits to be derived from them. If enacted, they would vest in the Attorney General, regardless of his character or qualifications, absolute power to act or refrain from acting solely upon his own discretion. Thus, this proposed law would constitute a political weapon of the greatest magnitude which any holder of the office could use to curry favor with some groups or to browbeat others. This is especially true where, as in the case of these bills, the language and terms used in the bill are so imprecisely defined that there is no assurance what interpretation might be given them.

These are powers which no Attorney General or other governmental official should have.

It is up to Congress, as the guardian of all the people's liberties and rights, to be specific in its terms, and to define the words that are so recklessly used.

#### TITLE VII

Mr. President, a most significant but cleverly disguised extension of the Attorney General's power is found in title VII, which deals with equal employment opportunity.

This title contains no mention of the Attorney General but under the all-encompassing authority of section 302 in title III, he would be given the right to intervene in any action brought under title VII which alleged a denial of equal

protection of the law on account of race, color, or national origin.

Under section 707 of title VII, the Equal Employment Opportunity Commission and, under certain circumstances, the aggrieved person may bring a civil action to prevent an act made an unlawful practice under the terms of section 704 of the title. It provides in part:

SEC. 704. (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.

(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.

In any action involving these matters the Attorney General may intervene under the authority granted by section 302 provided that the suit alleged a denial of equal protection of the law on account of race, color, religion, or national origin.

The Equal Employment Opportunity Commission would be given a general, vague, and apparently limitless area in which to exercise the powers which title VII seeks to confer upon it. The Commission will have the authority to make its own determination as to the proper construction of the act, what the definitions of unlawful employment practices encompass, and the powers which would be conferred upon it.

It is idle and unfair to argue that this title would not, in fact, force the hiring, promotion, and retention of minority group members. As a matter of fact, it should be clear, even to the uninitiated, that the entire purpose, design, and ef-

fect of title VII is to force the hiring, promotion, and retention of persons that an employer would not hire, promote, or retain in the absence of governmental interference and coercion. If it does not do this, it has no purpose whatsoever.

One of the most objectionable provisions of the FEPC title is the one dealing with promotions. This would put many industries in a straightjacket. It will place them in the position where any person made a special protectorate under this bill could drag along, merely halfway do their work, and not really earn their pay, if they have a mind to do so. I do not say that all of them will, but some people will react that way. They will not earn their pay, but if their employer attempts to discharge them, they will bring an action for discrimination. Not only can they prevent the management from discharging them, but they can conceivably force management to promote them, even if they do not deserve it.

I do not have personal contact with it, but I understand that that very point is seriously affecting the quality of our civil service organization as a whole in the Government. I have a very high regard not only for the system, but for the untold thousands of those who are under the system.

I understand that the cancerous sore, working year in and year out, and becoming graver all the time, is this provision for forced promotion, whether it is based on qualifications or not. We can argue what we please, but unless we realize that nothing will weaken the fundamentals of our Nation as a whole faster than anything else, we are like ostriches, putting our heads under the sand. We can undermine and destroy and sweep away a very vital and fundamental part of our great system of initiative and free enterprise and personal effort, by piling one thing on top of another with reference to this very point, that a person working for a State government or for the Federal Government does not have to excel, but only has to be good enough to get by, because he will be promoted whether he deserves to be promoted or not. That doctrine is gnawing at the vitals of our economy and our society and form of government.

Mr. SPARKMAN. Mr. President, will the Senator yield for a question?

Mr. STENNIS. I yield.

Mr. SPARKMAN. The Senator has been discussing the promotion system. Of course, a quota system is not provided in the bill, is it?

Mr. STENNIS. No.

Mr. President, I ask unanimous consent that I may suggest the absence of a quorum, and have a live quorum call, and that thereafter I be permitted to resume my speech, without it counting as another speech, and with the understanding that there will be no other quorum calls beyond that.

Mr. McINTYRE. Mr. President, reserving the right to object—

Mr. STENNIS. I can state my purpose.

Mr. McINTYRE. Mr. President, after a brief consultation, I must, regretfully, object.

The PRESIDING OFFICER. Objection is heard.

Mr. ANDERSON. I wish to express my thanks to the Senator from Mississippi for trying.

Mr. STENNIS. Perhaps I should explain the situation a little further. I have not finished my speech. I have other points that I wish to discuss tonight. I am entirely willing to have a quorum call so interested Senators can answer and then go on to what they have to do. Then there would not be another quorum call tonight. However, I wish to reserve the right to finish my speech. If I do not finish my speech by 10 o'clock, the Senator from North Carolina [Mr. JORDAN] will speak next.

Mr. JORDAN of North Carolina. I can promise that there will be another quorum call if the situation is not taken care of now.

Mr. ANDERSON. Some very distinguished people are having a Montana dinner tonight.

Mr. STENNIS. As I understand the Senator from North Carolina, if agreement were had with respect to a quorum call now, the Senator from North Carolina would be willing to go along with that.

Mr. JORDAN of North Carolina. I will.

Mr. McINTYRE. So long as the understanding is that the Senator from Mississippi will complete his speech tonight, and that it will count as one speech, I will not object.

Mr. STENNIS. I ask unanimous consent that there now be a live quorum call, that when the live quorum call is completed, I may continue to have the floor and continue with my speech, which will not count as another speech against me, and that I shall finish my speech tonight.

Mr. SPARKMAN. Before the Senator suggests the absence of a quorum, will he yield to me for a question?

Mr. STENNIS. I yield.

Mr. SPARKMAN. Is it correct to say that the Senator was making his request to accommodate some proponents of the bill?

Mr. STENNIS. The Senator is correct. That request was made solely at the suggestion of some proponents of the measure.

Mr. SPARKMAN. Does the Senator recall that a few days ago, when I was speaking, one of the Senators in charge of the bill, one of the chief proponents of the bill, asked me to make it possible for him to catch a 5 o'clock train?

Mr. STENNIS. Yes.

Mr. SPARKMAN. And that when I asked that I might break off my speech at that point in order that I might suggest the absence of a quorum and then continue it later without counting it as a second speech, objection was made?

Mr. STENNIS. Yes.

Mr. SPARKMAN. I was trying to accommodate one of the managers of the bill.

Mr. STENNIS. Yes.

Mr. SPARKMAN. Does not the Senator from Mississippi believe that if we are to accommodate the proponents, the accommodation ought to work in both directions? I note the presence in the

Chamber of the Senator from Minnesota [Mr. HUMPHREY]. I am sure he would agree that accommodation among Senators ought to work both ways.

Mr. STENNIS. Yes.

Mr. SPARKMAN. If we are called upon to accommodate them, they certainly should return the accommodation.

Mr. STENNIS. I appreciate the Senator's remarks. It is entirely immaterial to me whether the unanimous-consent request is granted. I made it to accommodate Senators who must attend to some other matters that are important, and to give them an opportunity to do so.

Mr. McINTYRE. I understand that; I am withdrawing my objection with the understanding that the Senator from Mississippi will now ask for a quorum call.

Mr. STENNIS. Yes.

Mr. HUMPHREY. How long has the Senator held the floor?

Mr. STENNIS. I have held the floor since 10 minutes after 10 this morning.

Mr. SPARKMAN. But the Senator has not occupied all that time.

Mr. MAGNUSON. The Senator yielded for many interruptions.

Mr. SPARKMAN. How much time did the Senator take in speaking on his own time?

Mr. STENNIS. About 4 hours.

Mr. SPARKMAN. It was about 4 o'clock when the Senator began to speak.

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

Mr. STENNIS. I yield.

Mr. HUMPHREY. Is the Senator from Mississippi planning to continue with his speech after the quorum call?

Mr. STENNIS. Oh, yes. I was requested by a proponent of the bill, incidentally, to stop my speech so that there might be a quorum call now.

Mr. HUMPHREY. Who made that request?

Mr. STENNIS. I can continue with my speech, but I am willing to yield now to have a quorum call, with the understanding that I may continue my speech after the quorum is obtained, and that I may finish my speech tonight.

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

Mr. STENNIS. I yield.

Mr. HUMPHREY. Does the Senator know who will follow him?

Mr. STENNIS. I can speak until 10 o'clock. The Senator from North Carolina [Mr. JORDAN] will follow me, if there is to be another speaker. This idea did not originate with me. I am personally indifferent. However, I would like to accommodate Senators.

Mr. HUMPHREY. I realize that the Senator has been very considerate of other Senators.

Mr. STENNIS. They have been very considerate of me.

Mr. HUMPHREY. I wish to indicate, if the Senator will yield to me further, without jeopardizing his right to the floor or having it counted as a second speech, that starting next week it will be my intention to enforce more vigorously the rules of the Senate on both sides. I make it quite clear that the rules have been applied a little too generously to both

sides. No one has had any particular advantage, and it has accommodated our purposes quite well.

In order that we may move along with the bill, it will be my unpleasant duty—but I will perform it—to insist that the rules be more vigorously and strictly applied. For example, I shall insist that Senators yield only for questions and not yield for unanimous-consent requests. If unanimous-consent requests are made, objections will have to be made. I am reluctant to do that, but it will be necessary, because I believe the Senator from Mississippi has today demonstrated, in his situation, what takes place when we do not follow such procedure.

The Senator from Mississippi has been holding the floor since 10 o'clock this morning. He has been generous in yielding. I appreciate that. I want him to know that I personally thank him for his generosity to all Members of the Senate. But next week we shall have to stop being quite so generous and get down to legislating, because action is needed in this body on the bill. The public will become unhappy with the Senate unless it begins to consider amendments. A large stack of amendments is at the desk. I shall ask and urge that amendments be called up for debate and for action. I believe this is the general view of Senators.

I have no objection to the present request of the Senator from Mississippi.

The PRESIDING OFFICER (Mr. HARR in the chair). The Chair thinks it wise to restate the request. As the Chair understands, the Senator from Mississippi asks unanimous consent that there be a quorum call without his losing his right to the floor and that his resumed speech shall not count as a second speech. The Chair further understands that the speech of the Senator from Mississippi will be concluded tonight.

Mr. STENNIS. That is correct.

The PRESIDING OFFICER. The Chair also understands that there will be no further quorum calls tonight.

Mr. STENNIS. The Senator is correct.

If I may say one further word, the Senator from Mississippi did not encourage any Senator to interrupt him today.

Mr. HUMPHREY. I so understand.

Mr. STENNIS. The interruptions were for legitimate business of the Senate. I was glad to yield.

As for the people of the country becoming disturbed about the Senate, the Senator from Mississippi believes they are becoming disturbed about the bill and what it contains. We want to continue free debate to discuss these questions both ways.

Mr. HUMPHREY. Does not the Senator from Mississippi agree with me that the way to determine whether the people are disturbed about the bill is to begin voting?

Mr. STENNIS. We will get around to that. We shall vote as soon as the Senator from Minnesota believes he has enough votes to carry his point.

Mr. HUMPHREY. Voting could start tonight. I am not at all sure that we have the votes to carry the point.

Mr. STENNIS. Mr. President, may I have action on my request?

The PRESIDING OFFICER. Is there objection to the request of the Senator from Mississippi? The Chair hears none, and the clerk will call the roll.

The legislative clerk called the roll, and the following Senators answered to their names:

	[No. 149 Leg.]	
Allott	Humphrey	Mundt
Anderson	Inouye	Fearson
Bayh	Jordan, N.C.	Pell
Bennett	Jordan, Idaho	Prouty
Boggs	Keating	Proxmire
Brewster	Kuchel	Ribicoff
Burdick	Long, Mo.	Saltonstall
Cannon	Magnuson	Scott
Case	McGee	Smith
Clark	McGovern	Sparkman
Cooper	McIntyre	Stennis
Cotton	McNamara	Symington
Dodd	Miller	Walters
Douglas	Monroney	Williams, N.J.
Fong	Morse	Williams, Del.
Hart	Morton	
Hayden	Moss	

The PRESIDING OFFICER (Mr. WILLIAMS of New Jersey in the chair). A quorum is not present.

Mr. HUMPHREY. Mr. President, I move that the Sergeant at Arms be directed to request the attendance of absent Senators.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Minnesota.

The motion was agreed to.

The PRESIDING OFFICER. The Sergeant at Arms will execute the order of the Senate.

After a little delay, Mr. AIKEN and Mr. MCCARTHY entered the Chamber and answered to their names.

The PRESIDING OFFICER (Mr. BURDICK in the chair). A quorum is present.

Mr. STENNIS. Mr. President, the extent of the continuing supervision over the detailed management of the employees of private firms covered by the title is manifest by the provisions of section 709(c) which require every covered employer to—

(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.

I am quite aware that sections 704 and 705 of title VII do attempt to lay down definitions of what constitute unlawful employment practices.

However, an examination of these definitions will show very clearly the imprecision and vagueness of them. The language used is general and uncertain.

This title, if enacted, would make the Federal Government the operator of every business or other activity that affects the national economy anywhere in the Nation.

Mr. President, in connection with the vagueness and uncertainty in the language of the bill, and the broad scope of the language, I shall read an excerpt from the Washington Star of Tuesday,

January 11, 1964. The Washington Star is a supporter of the bill, and, in the editorial, states its support. But the editorial lists its objections, which are very serious ones, to the bill, nevertheless. I read now from one of the paragraphs of the editorial:

Our third objection goes to title VII, generally known as the fair employment practices section. This section hits hard at both management and union practices which keep Negroes from obtaining jobs commensurate with their abilities. We wholeheartedly agree that legislation to accomplish this is needed. The pending proposal, however, is a draftsman's horror.

Mr. President, those are not my words; those are the words of a responsible and informed editorial writer of one of the strong proponents of the bill. He refers to the title in question, which is title VII, as being a draftsman's horror. No hearings have been held on title VII. That is the title that President Kennedy did not recommend for inclusion in the bill. That is the title that was hurriedly put in by someone whose identity has never been known, but who actually wrote that title as we have it now except for the amendments that were put in by the House. That is the title that was in the bill that was considered for only 2 minutes by the House Committee on the Judiciary and voted upon after only a week's debate. In that same editorial there appears the statement that the bill was railroaded through the House.

The Senator from Mississippi did not make that statement. One of the chief proponents of the bill said, that it was railroaded through the House. No hearings have been conducted by any legislative committee on the title which the editorial writer and I have discussed. There is no report on the title and there are no guidelines whatsoever for the Senate to follow. Yet, the provision would undertake to bring under the direction and control of an agency of the Government, and place in a straitjacket, all of American industry except those employing less than 25 employees. The power that the Commission would have would be unparalleled in American industry and American government. The Commission would pass upon matters pertaining to many billion dollars worth of manufactured products every year. That Commission would also exercise the special privilege contained in the title, which would exempt some States from its provisions. The editorial writer has said that it is a draftsman's horror. As I have said, those are his words and not mine.

I merely say that no one knows what it means. No Senator who votes on the bill will have a clear concept of the meaning of the key words and key provisions of the bill. Under the bill the employer would no longer be responsible for conducting his own business. Instead, he would be shackled to the bureaucratic whim of an all-powerful and constantly present Federal Government, which would continually look with suspicion on his every act involving personnel or procedure.

Mr. President, with all deference, it is unthinkable to the Senator from Mis-

Mississippi that a measure of the far-reaching effect of the bill now before the Senate, with its vise-like grip upon American industry, would be passed in the almost cavalier fashion proposed. When an extended debate or explanation of the bill is called for, the idea is ridiculed by calling it a filibuster.

The hiring of every employee and the discharge of every employee would be done at the peril and risk of being overruled by the Commission or the courts. Every promotion would run the risk of being nullified or delayed, pending the outcome of long and involved investigations, Commission hearings, and possible court actions.

The Attorney General, as a party to the suit, either as an intervenor, or otherwise, could use all the resources of the Department of Justice, including the FBI, to investigate and monitor the activities of an employer against whom a complaint had been filed.

The practical effect of this provision will be to virtually destroy the small businessman. It would cost him all his financial reserve, and more, just to contest one of these cases.

Thus, the threat of expensive and time-consuming litigation prosecuted by the expert personnel of the Attorney General's Office would always be present.

The Attorney General's intervention into the litigation on the side of the complainant would force the employer-defendant into such a disadvantageous position that it would disgrace our system of justice.

I add what I have said with reference to the motels, hotels, and other establishments that would come under the operations of title II. Perhaps big business would be able to contest charges brought under this title. They would have batteries of lawyers. They have reserve funds. They can fight the battles. If they lose money on one operation, they can make it up in another. But the small operator would have to do what the Federal investigators and Federal agents told him to do under the threat of being forced into virtual bankruptcy. That is the way the law would work.

It is already difficult for American business firms, professional people, and others who are in any kind of business activity to comply with all the present rules, regulations, and demands of their Federal, State, and city governments. I do not see how they survive them. I do not see how they survive the demands and requirements of the Federal agencies alone, much less the others.

I am not talking about the load they have to carry in the way of taxes, but I refer to the general accumulated load of all the requirements. The demands of the rules and regulations have already virtually stripped the average person of his freedom, his rights, and privileges, besides making a terrific drain on his resources, in order to comply with all the requirements.

I do not see how they survive. I do not see how the little businessmen will be able to survive. The chainstores and

larger businesses may be able to survive, with the ways they have of cushioning themselves against losses. But the small business operators, who are the lifeblood of the Nation and of citizenship, in many ways, are literally being crushed in the effort to meet all the requirements.

This bill, particularly the section dealing with the Fair Employment Practices Commission, would put additional loads on them, with all the ramifications it would be possible under the extravagant language that is called, by the proponents of the bill—not the opponents—a draftsman's horror.

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

Mr. STENNIS. I yield.

Mr. HART. I take it the Senator would not agree with me that the experience of more than 26 States of this Nation, under fair employment practice laws, which States have been the most highly productive in the Nation, establishes that there can be fair employment practice laws and economic success as well.

Mr. STENNIS. In my opinion, they have survived in spite of the law rather than because of it.

Mr. HART. I take it that the Senator from Mississippi does not believe, notwithstanding the successful experience in one-quarter of the States, which contribute massively to the Federal Treasury under fair employment practice law, that the inclusion of this title in the bill, which is directed at the practices of one of the most massive areas of discrimination committed against the Negroes in this country, is desirable?

Mr. STENNIS. No. I was trying to emphasize, with every force of which I have command, that it is undesirable. I know there is such a law in the State of the Senator, and that is a State policy. I notice, too, that the proposed Federal law on the subject would be a seeming shift from the policy of leaving this matter to the States. It is proposed to enact a Federal law on the subject. Yet I was really astounded that the chief proponents of the measure from States where FEPC laws already exist, wrote a proviso in the bill that this Federal law shall not apply to their States or to any State having an FEPC law. In other words, this title is not to apply to a State having an FEPC law.

With all deference to him, it is inconceivable to me that the Senator from Michigan would say, in effect, to me that "I, the Senator from Michigan know more about writing an FEPC law for your State than you do." That is the only interpretation I can put on his position. The Senator writes one law for his State. Then he writes a Federal statute and then exempts his State from the Federal law provision. But he makes it applicable to Mississippi and other non-FEPC States.

Mr. HART. I would have been surprised if the Senator from Mississippi had not led everyone against any Federal legislation that would have sought to preempt State sovereignty. Normally the Senator would be in the forefront of such a move.

Mr. STENNIS. The proposal of the Senator from Michigan totally destroys State sovereignty by saying, "We will have a Federal law." The Senator refuses to accept State sovereignty. He reverses it. He puts that provision in Federal law, and then turns around and says, "Provided, however, that in my State, which has an FEPC law, the State law will control. We are going to follow the State law in my State, but the Federal law will bind all the rest." That is the substance of that proposal. It is not right.

If any amendment is adopted, I hope there will be an amendment that will make the FEPC provision apply to all 50 States or none of the States. What objection could be made to that provision?

Mr. HART. Would the Senator object if I had inserted at this point in the RECORD the language from the bill beginning at line 11, page 43, through line 7, on page 44, the section which is captioned "Effect on State Laws?"

Mr. STENNIS. I do not object.

The PRESIDING OFFICER. Is there objection?

There being no objection, the language was ordered to be printed in the RECORD, as follows:

#### 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.

Mr. STENNIS. Mr. President, I thank the Senator from Michigan for his questions. We may return to that subject later.

#### TITLE XI

Let me discuss now title XI. Section 1101, found in title XI, provides that nothing in the bill "shall be construed to deny, impair, or otherwise affect any right or authority of the Attorney General."

From this section, it is evident that none of the powers heretofore vested in the Attorney General are intended to be in any way diminished. His authority would not be reduced, restricted, or restrained. On the contrary, it would be expanded far beyond the power ever given any executive officer, with the possible exception of the President, in time of war.

The separation of the executive, judicial, and legislative branches of the

Government and the maintenance of checks and balances among them demand that the trend of conferring increasing power upon the Attorney General be stopped.

And I am not referring to any present, past, or future Attorney General. I am talking about the office, and the power that is contained in this bill.

The gradual merger of the Federal judiciary and the Federal executive, through the office of the Attorney General, has rapidly increased in recent years. It has developed by an increasing tendency for the Attorney General to become both prosecutor and judge. For example, in *Aaron v. Cooper*, 163 F. Supp. 13 (E.D. Ark. 1958), the Federal district court invited the Attorney General of the United States and the U.S. attorney to come into the case as *amicus curiae* and to commence injunction proceedings against the Governor and his subordinates "to prevent the existing interferences with and obstructions to the carrying out of the orders heretofore entered by this court in this case."

On appeal, the *amicus curiae*, the so-called friend of the court, had become so far involved in the case as an interested party that the very style of the proceeding was changed to reflect this, being styled *Faubus v. United States of America (Amicus Curiae, Petitioner)*, 254 F. 2d 797 (8th Cir. 1958). The court of appeals upheld this activity of the Attorney General, appearing in the proceeding both as an interested party and as a branch of the court itself. The Eighth Circuit Court of Appeals said:

In our opinion, the status of the Attorney General and the U.S. attorney was something more than that of mere *amicus curiae* in private litigation. They were acting under authority and direction of the court to take such action as was necessary to prevent its orders and judgments from being frustrated and to represent the public interest in the due administration of justice.

That is cited as an example of the blending of judiciary and executive branches of Government. That is contrary to the general principle in which all of us agree, as to separation of powers. My main point is not with reference to that case. My main point relates to the vast power that is provided in most of the major provisions of the bill, centering around the Attorney General's office; the tremendous force that it has; the professional resources that it has—which will be used as a general guardian and overseer, and general director of much of our industry, much of our educational system, and places of public accommodations and other matters covered by this bill.

I think it is the highest kind of discrimination to grant some States and not others. If it is such a good law, I think it should apply to all States.

Mr. JORDAN of North Carolina. Mr. President, will the Senator yield?

Mr. STENNIS. I yield.

Mr. JORDAN of North Carolina. When the Senator said that it was such a good law that the proponents are anxious for those of us who do not have such a law to have it, I was reminded of an old saying to the effect that, "Misery loves company."

Some of them have a great deal of misery over what they have already done. They would like to see some of the others involved in it.

I know something about some of the fair employment practices commissions in the States that have them. The system does not amount to a great deal. Not much is done about it. The law is circumvented. There is not much enforcement of it.

Mr. STENNIS. I am certainly glad to receive the Senator's information. I did not know that.

Mr. JORDAN of North Carolina. I know some people who have plants in some of the States. They are not bothered too much with the FEPC. They do not want the Federal Government to take it over and enforce it. Some of the inspectors who are sent around remind me of one who came into one of our plants and told a lady who was working there that she was working when she was not 16 years old. She told him that she would take him to her house and show him some children she had that were over 21 years of age. She was young looking, and a small person. Sometimes it is hard to tell their age. But that is the kind of inspectors who come around and tell a man what to do, and how to operate his business. And if he does not do what they say, charges are brought.

Mr. STENNIS. I thank the Senator for the explanation. It gives me a better understanding as to why States that have the fair employment practices commission want to stay under it rather than to come under the one that is proposed here.

I believe that this one, which would be governed by the Federal Government if the bill is passed—which God forbid—will be enforced. I believe it will become a great playhouse, especially in my part of the country, in the hands of those who want to push this bill. I think it will be a burden to commerce everywhere. I mean exactly what I say. I believe it will be a burden to commerce, a burden to industry; but after all is said and done, the gravest, the most overwhelming objection against it is that it interferes with what I believe to be the rights and responsibilities of the owners and operators in control of the small and large industries.

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

Mr. STENNIS. I yield to the Senator from Michigan. He is very much interested in the bill, and has knowledge on this subject in his own State.

Mr. HART. I take it that the Senator from Mississippi would not agree with me that the goal of this title and the objective of all the State laws is to announce as a public policy that an employer will not judge one while he is 50 feet away. In my book, that is a very desirable statement of public policy, and is consistent with all our traditions. I take it the Senator from Mississippi disagrees.

Mr. STENNIS. I think, with all due deference to the Senator, that is a rather general statement.

Mr. HART. It is. It describes in general the objective of this title.

Mr. STENNIS. So far as the color line is concerned, there is a large number of small enterprises down in my State. We do not have any very large one by the standards of the Senator from Michigan. But we have a great number of small enterprises with which I am personally familiar. They hire a great many valuable colored people who render a very fine service. Some are semi-skilled. Some are skilled. Some of them have management ability.

When I was a small boy, there was a great lumber manufacturing industry in Mississippi. I used to watch the operation of those sawmills with the greatest of admiration. Some were of the "belly" type. Some were electrically operated. Some had a carrier, if the Senator knows what a carrier is.

The carrier goes up and down the side of a saw. The saw cuts the logs into planks. These colored men rode the carrier back and forth with split-second precision.

I admired their skill. Many white folks were unable to get a job. They wanted those jobs. But they could not get them because the colored men were performing the job on their merits.

Mr. HART. That is precisely the objective that this title seeks to achieve.

Mr. STENNIS. It is not necessary to have that, if the man has the qualifications and will really work and remain on the job. But consider the case of the man who works about 1 day, and who can make enough money in a day or a day and a half to live for a week. And does not show up for about 3 days in the week. In spite of that, under this bill an employer could be forced to promote him or run the risk of being convicted for violating the law. That is a type of the matter that we would encounter, in addition to the fundamental rights that are involved.

We have some fine industries in our State. I visit some of them from time to time. We have some very fine Negro workers. We have some Indians down there, too. They have jobs in the factories. I have seen them working at the sewing machines, making garments.

Mr. President, Prof. Samuel Krislov, associate professor of political science, Michigan State University, who has watched the evolution of the position of the Attorney General as *amicus* and advocate, has made the following comment:

Thus, even the closest possible relationship of friendship to the court—acting directly for it—has evolved into an active advocacy of the most demanding and consuming nature. This most fervent friendship for the court involves the taking on of the court as a special sort of client, one whose claims are of an even higher and purer partisanship. (Krislov, "The *Amicus Curiae* Brief: From Friendship to Advocacy," 72 *Yale L.J.* 694, 720 (1963).)

As is well known, an attorney takes charge of litigation for his client. So, when the Attorney General takes on the Federal judiciary as his client, he is, in effect, controlling the litigation before the courts. The result of this increase of power is that the Attorney General is coming to dominate the Federal judiciary. This reminds one of the parable

about the camel that was invited into the tent. The Federal judiciary has invited the Attorney General to participate in the administration of the Federal courts, and are now finding that, in many cases, they have become mere clients of an executive official.

I am referring not to any particular case and not to any particular court and not to any particular officeholder. But unfortunately the trend is away from the division of power in our great Government. This bill would not contribute to separation of powers, but diminish the rights of the individual.

Mr. President, I have some special remarks to make, as a lawyer, giving my impressions from a study of the bill.

If the measure is enacted, we shall be creating what is in substance an offense—we can call it a crime or anything we please—and we shall be providing for special prosecutions. We set no standards, except to call it discrimination. We do not lay down any definition of discrimination with reference to religion, race, color, or national origin. I do not know exactly what those words mean in the legal sense. We do not attempt to define discrimination in any of the titles of the bill.

Ordinarily, when an indictment is found against a man, charging him with a crime, it is necessary to be specific. First, it must be based on a specific law. If the law is vague or indefinite, it is declared invalid. If an individual is charged with a violation of law, the indictment must be specific; otherwise it is subject to what we call a demurrer. It must be specific and definite and to the point, in other words, or it will be thrown out and held to be invalid.

That is the American system. That is not challenged by anyone. Nevertheless, we are throughout this bill in effect creating the gravest kind of undefined offense called discrimination. It may occur, in many sensitive fields, as in religion, in a contest between a Protestant and a Catholic, or a Jew and a Presbyterian, or between any two in that group; or in a test between people of different races or different national origins. It will be the basis of proceeding against someone but not on the basis of an indictment which is clear and to the point, found by a jury of a man's peers in the county where the offense is alleged to have been committed.

We shall not have the safeguard of a grand jury, or the protection and benefit of a process that is almost a thousand years old in Anglo-Saxon jurisprudence.

That will be dispensed with. How will we proceed?

We shall proceed by one of the most far-reaching powers ever invented in the law. We will proceed by injunction, by persuasion—I use that word because the proponents of the bill use it—and if persuasion does not get results, and if coercion does not get results, we will use the injunction. I assume that the judge would be competent. I do not impute anything wrong to the judiciary.

However, with the great number of these cases that will be brought, it will be hard for a judge to give them the individual attention that they deserve. First there will be the injunction, and

then the prosecution of those who are thought not to be living up to the injunction. There will not be the ordinary safeguards or protection of a jury trial.

I see the Senator from Kentucky [Mr. COOPER] in the Chamber. He is a very learned man in the law. He gave us a very lucid and clear statement of his position in this regard. He made a very great contribution to the record. We are creating a mass of Federal offenses dealing in the sensitive field of business and public accommodations, elections and schools, and a great host of other things that go with those items.

Only two of these titles contain the safeguard of a jury trial.

In the old days, as the contempt law developed, it was very rarely used. There were not many cases. I referred the other day to the fact that when I sat as a judge for 10 years in a trial court, I never had one contempt case come before me. That may not be a compliment to the Senator from Mississippi. There were very few such cases. One time I had to send a drunk to jail when he came staggering into the courtroom. That is what we call a direct contempt. Even that power was not used much.

Now we are using it in connection with everything. We have the Taft-Hartley law. The laws are full of those powers. We have the antitrust laws. The antitrust laws are filled with the power to try by injunction. It is a new field. As the late lamented General MacArthur said when the Red Chinese came into Korea, "This is another war."

The provisions of this bill will greatly extend the power of the Government to regulate matters by the power of injunction. They constitute another vast array of offenses. If Congress has not already done so, it should get busy and find out what this bill does and stop arguing about the present law on contempt. Most of us agree that if all these powers are to be exercised, there should be an extension of the right of trial by jury. That is exactly what happened in 1957. We made perhaps a more or less arbitrary division; but at least we partly repaired the situation with reference to trial by jury on new offenses.

We should not be considering the idea that the bill must be passed without changing one jot or tittle, or even a semicolon. With all deference, that is a reckless argument at any time. On such matters as jury trials, Congress can move steadily toward the downfall of the protection of individual liberties unless it exercises care. We are turning to what could be the most autocratic power in our system of government; that is, granting such power to a Federal judge—and I say this with all respect to them—in contempt proceedings without any limitation whatsoever. The bill does not attempt to cope with that very grave problem.

I wish to raise another point that, to me, is absolutely fundamental. Let us assume that a man in Kentucky operates a little industry that he built up himself. Perhaps it grew from a kind of family enterprise and expanded, and the owners were successful in building it to the point where it employed 30 persons. I simply do not believe that anyone

would have a right to a job with that small company or concern. He would not have a legal or constitutional right to it. The person who owned that little business and who built it is vested with the right. He would have the right to employ whom he chose. That is a basic and fundamental proposition. It is the man's business, and his employees work for him. He created the business. He was frugal and industrious. He applied himself. He had the know-how, and he used it. It is his business.

Whatever fruits might be derived from the business, I would have no right to a job in that little factory in Kentucky. The owner would have the right to employ and have associated whomever he might choose. It would be his right to select those who he thought would do the work best or suit him the best. It would make no difference whether they were the best workers or not; it is his right to determine whom he would employ. He might want to employ none except men or none except women. He was the creator of the business, and he should be the judge of whom he would employ.

I do not believe Congress—or even the Legislature of Kentucky, so far as that is concerned, although that question is not before us—has any power whatsoever to take away the right of such a man and transfer it to someone else. I simply do not believe it.

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

Mr. STENNIS. I yield.

Mr. COOPER. The Senator from Mississippi alluded to my State and called my attention to his argument, so I should like to respond.

Mr. STENNIS. Yes.

Mr. COOPER. My response goes to the argument the Senator from Mississippi made a while ago as to whether or not there was a great movement toward the adoption of injunction procedures, in an effort to secure and protect certain rights of citizens.

Mr. STENNIS. Yes.

Mr. COOPER. It is my view that there are definite constitutional rights and that there is a duty on the part of the courts, when court actions involving citizen rights are presented, to secure those rights. There is also a duty on the part of Congress to enact legislation which will secure those rights, in those instances where they are denied. I believe there is a constitutional right under the 15th amendment—and I believe the Senator from Mississippi would agree with me—that all citizens are not to be denied the right to vote.

Mr. STENNIS. To those who are qualified and who meet the requirements of the valid laws.

Mr. COOPER. The Senator may not agree with me on this point, but I believe the Supreme Court has held in the school desegregation cases that there is an equal right to attend public schools. In certain later cases the Supreme Court has also affirmed the right of persons to use public facilities without discrimination on the basis of race or color. In my judgment, there is nothing clearer than those two rights;

namely, equal opportunity to attend public schools and equal opportunity to use public facilities. I also believe that there is a constitutional right to have access to places of public accommodation. This right is secured under the "equal protection" clause of the 14th amendment. I believe these rights are clearly protected under the Constitution, and if they are not made available, without discrimination by the States, then the States in effect are acting to deny some of these rights to certain citizens. The courts, in those instances where the enjoyment of these rights is being obstructed, have the power under proper procedures to issue injunctions in an effort to restore these rights, which belong to a citizen. The court's decisions in these cases must be obeyed; otherwise there will be a flouting of the Constitution and a flouting of the law.

So far as the FEP provision of the bill is concerned, I agree with the Senator that this is a matter of legislative policy. The right to a job is not a right which is specifically enumerated in the Constitution. But Congress may act if it so chooses, to correct an existing wrong—such as job discrimination. There is a constitutional basis for such legislation as established through the years. Some States have enacted legislation which will protect individuals against job discrimination. These State statutes have not been found unconstitutional. The States have enacted such legislation under their police power. The authority of Congress to pass similar legislation on the national level is based upon the commerce clause. The right to employment is not a declared constitutional right. However, I believe Congress has the authority to enact such legislation, as a matter of policy, under the commerce clause. Whether Congress desires to do so or not and how far such legislation will reach in eliminating practices of discrimination in employment is ultimately a question for the Congress, in its best judgment, and I hope wisdom, to decide.

Mr. STENNIS. I thank the Senator from Kentucky for his remarks. He is always helpful.

Let me put it this way: We are talking about basic, fundamental rights, rights that are inherent. The main argument made is that these rights belong to people as individuals and that a person has a right not to be discriminated against because of color, religion, or national origin. The bill is based on that proposition.

But I raise this point: If there is a right to these things, why limit the right merely to race, religion, or national origin? Why should we not say there is a basic, inherent right not to be discriminated against because of age, and pass a law providing that no one shall be discriminated against for employment on a job because he is 50 years old or 60 years old? If there are basic rights, they go far beyond discrimination on the grounds of religion, race, or national origin. After all, those are rather artificial lines and differences. If a person is to have a right to a job, why cut off the right at 25 employees? If one has a

right to a job, and if an employer has but one employee, anyone who applied for that job should have the same right to it as if the employer employed 25 or more persons.

If they are rights according to the definition of the proponents—I do not believe they are—what about persons who will be discriminated against in places that employ 24 persons, 20, or 15? Are they to be thrown to the wolves while the law protects all the others? Why discriminate against them?

What is the reason?

Mr. AIKEN. Mr. President, will the Senator from Mississippi yield?

Mr. STENNIS. I yield, for the Senator from Vermont is always constructive.

Mr. AIKEN. I have been trying to obtain some information in regard to some things. Perhaps I have been going to the wrong place for it.

Does the Senator from Mississippi have any information as to how many persons would be exempt from the protection which title VII purports to offer? Does he know how many persons, for example, are employed by corporations which are owned or controlled by religious bodies? Does he know how many policemen, firemen, teachers, and so forth, who are employed by communities and cities would be deprived of the benefits proposed to be provided by the bill?

Mr. STENNIS. I have no knowledge as to that; but it seems to me the bill would be discriminating against them, inasmuch as the bill would not apply to those groups. Therefore, they would be discriminated against by not being given the alleged protection provided by the bill. Of course, a great number who would not be covered are employed by employers having less than 25 employees. I wish that data were available.

Mr. AIKEN. I do not know, but I would guess that almost half of the employees in the country would be exempt from this title.

Mr. STENNIS. That is another illustration of the need for hearings on the bill, although perhaps that point may have been covered in some hearings.

Mr. AIKEN. It may have been covered in the House committee hearings.

I must say that I cannot agree with some of the provisions of the bill; but certainly we should not provide that half of the people of the country would not be entitled to the protection of the bill. Yet that would be the result by excluding the application of the bill to all employees working for employers who employ less than 25 persons, and also by excluding all Federal employees—numbering approximately 10 million—and also by excluding all employees engaged in plants, work, or institutions of any kind controlled by religious organizations.

I must say I have tried to get that information, but I could not get it from any source. The Internal Revenue Service has it, but will not divulge it, insofar as religious organizations are concerned.

My office called one religious organization, and found that they were very happy to tell us what another religious faith owned, in property—an enormous amount. But, strange to say, they had no information on the amount owned by their own faith. So I believe it would be very interesting to know how many persons would be deprived of the protection proposed to be provided by this measure.

Mr. STENNIS. I think the Senator from Vermont has made an excellent point, and certainly we should get that information.

Mr. AIKEN. I should like to see the Senator from Mississippi get it.

Mr. STENNIS. I shall try to get it.

Mr. AIKEN. But that is one thing the Senator will not get from any of the organizations which now are exempt. They may be appealing for the enactment of a law to cover others, but certainly they are very reticent about giving information about their own affairs.

Mr. STENNIS. Yes.

I believe the Senator from Vermont is the author of the "Mrs. Murphy" amendment. How many persons would be exempt under that amendment?

Mr. AIKEN. I do not know; and we cannot get that information, either. So we have to guess at it.

My guess is that, altogether, the total number might amount to half of the employees of the country, or perhaps the number would be only 25 percent. I am sure that at least 25 percent would be exempt.

Mr. STENNIS. Yes, under the provision exempting the employers who employ 25 persons or less.

Mr. President, the bill relates to what we are told are fundamental rights. In that case, why limit the application of the bill to persons engaged in interstate commerce? If all the people have a fundamental right to these protections, why limit the coverage of the bill in any way?

Some may say the Constitution limits certain of these rights. But if they are so fundamental, why not provide them for all the people? Some say these are fundamental rights which should be enjoyed freely by all. I do not believe that is so; but if it is true, why limit the coverage in the way now proposed, and thus exclude from coverage by the bill such large numbers of persons? Why not provide that everyone has a right not to be discriminated against? And why not provide that all jobs will be administered by the Federal Government? Why stop where this bill stops? Instead, why not permit a Federal Government agency to administer all jobs? If it is true that everyone has a right not to be discriminated against, let us go all the way.

However, I do not believe we will do that.

This bill is bottomed on giving political consideration to a privileged group.

Mr. COOPER. Mr. President, will the Senator from Mississippi yield?

Mr. STENNIS. I yield.

Mr. COOPER. It is my firm belief that the sections on employment and on public accommodations of this bill should

be based on the 14th amendment. I do not think the commerce clause is the best constitutional grounds.

I think if such provisions are based on the commerce clause alone that discrimination against certain individuals who claimed the right to enter public accommodations will continue. Some business establishments would be covered by the law, but the affirmative right to equal access to places of public accommodation would not be secured.

In effect, the bill would say to certain places of public accommodations and not to others, "You may continue to discriminate." The application of title II to protect a citizen's right to public accommodation—if the bill is based on the commerce clause alone—may be uneven. I felt very strongly about that.

As far as title II is concerned, last year I introduced a bill to eliminate discrimination in places of public accommodation, which was based on the 14th amendment. But this approach was resisted by the Attorney General. He resisted it because he felt this approach involved certain constitutional risks; the proposed amendment was defeated in the Commerce Committee. But I still believe title II of this bill could be based on the 14th amendment, I still believe it should be based on it, because what is involved is the dignity of these individuals. We should not treat them as if they were so many articles of chattel moving in interstate commerce. And, I might add an opportunity to restore this bill to its proper level of dignity, is still available to the Congress, when we reach direct consideration of title II in the course of these debates.

But I do not believe there is a constitutional right with respect to employment. I think that, as a matter of policy, Congress can provide that discrimination in employment is a burden on commerce; but I never heard that employment was an actual constitutional right, and that it was proposed to base those provisions on that.

Mr. STENNIS. I agree with the Senator from Kentucky that we can argue about the commerce clause and the 14th amendment, and about whether either or both support these titles. However, that is not the point I am making now.

Mr. President, if all the people of the United States are entitled not to have any discrimination against them on account of race, color, and the other factors specified in the bill, why limit the protection proposed by the bill to interstate commerce? If we believe these are rights which should apply to all our people, why not amend the Constitution?

So, after all, if all our people have these alleged basic American rights, the bill is only a halfway measure.

I raise that point, and I think it should receive an answer—if not tonight, then later.

Furthermore, why not have all jobs apportioned by a Federal agency? If a Federal agency will know best about the problems of employers who have more than 25 employees, why not knock out of the bill the 25-employee limitation, and apply the bill to all businesses, in-

cluding both those engaged in interstate commerce and those not engaged in interstate commerce? Thus the Federal Government would control all businesses.

That is what some persons want; and it seems to me that procedure would be consistent with the theory of the bill.

Mr. HART. Mr. President, will the Senator from Mississippi yield?

Mr. STENNIS. I am glad to yield.

Mr. HART. I would suggest a rereading of the point the Senator is making for support of the point that many of us have suggested with respect to the bill: We are approaching the problem with moderation. That is precisely why we have provided a cutoff point.

Mr. STENNIS. But this is discriminating. There would be discrimination against those who are working and those who apply for a job with a man who has less than 25 employees. I make that statement with great sincerity.

There are other conditions about employment which the bill does not touch at all. Why stop on the questions of race, color, and religion? Let us put in the bill a provision in relation to age.

Mr. HART. Mr. President, will the Senator yield at that point?

Mr. STENNIS. I yield.

Mr. HART. The bill would direct the executive department to make a very detailed analysis with respect to the burden on interstate commerce that age is in hiring. I think it is a useful feature of the bill. Specifically it is section 717.

Mr. STENNIS. There should be a provision that an employer could not discriminate against a man because he is of a certain age. The policies of certain companies are that when one reaches a certain age he must get out regardless. The Army has such a policy. Many manufacturers also have. That is the policy of the Government. A man must get out when a certain age is reached. There is something wrong in such policies.

Mr. HART. It may well be that there will be found to be an undue burden on interstate commerce because of that policy, and then we shall be confronted with the same kind of argument, notwithstanding the existence of the report—"Don't do it."

Mr. STENNIS. I am arguing that interstate commerce has nothing to do with the question. Congress does not have the authority now beyond what is permitted under the commerce clause. The Senator argues that the Congress has such power, but if it does not have it, let us propose a constitutional amendment and see what the people think about it. They might broaden the powers of the Congress. I do not argue the point as a matter of right, as the Senator knows.

Mr. HART. I wish to make the note for the purpose of the record that we regard title VII, which is the equal employment opportunity title, as within the reach of the Federal Congress by reason of the commerce clause. It is not premised on the 14th amendment.

Mr. STENNIS. I thank the Senator. Mr. President, I do not desire to detain the Senate very much longer. The argu-

ment has been made that title VII would provide more employment for the nonwhite and particularly the Negro. The facts are it will not help but hinder the Negro in finding employment.

Mississippi has no FEPC law. It is one of the States which has a high ratio of Negro population. It is also one of the States at which the FEPC law is apparently directly aimed. At least, as far as Mississippi is concerned, the facts do not support the implications of the statement of the Senator from Minnesota.

The unemployment rate in Mississippi in 1960 among nonwhites was 7.1 percent of the civilian labor force. In referring to the table which appears on page 109 of the hearings of the Subcommittee on Employment and Manpower of the Senate Labor and Public Welfare Committee, we find that the national rate of unemployment among nonwhites was 8.7 percent. In New York, the first State to enact an FEPC, the nonwhite unemployment rate was 7.4 percent. In Minnesota, it was 12.8 percent; in California, 10 percent; in Montana, 24.8 percent; in Pennsylvania, 11.3 percent; and in Rhode Island, 10 percent.

All of the States which I have mentioned, except Montana, have some type of an FEPC law.

Of the 25 States which are listed as having FEPC laws—as I have previously indicated, the technically correct number is 24—24 of them in 1960 had a higher percentage of unemployment among nonwhites than did the State of Mississippi. Let me repeat that. All but 1 of these 25 States had a higher percentage of unemployment among the nonwhites than did Mississippi.

The conclusion is clear. FEPC laws do not work the miracle in reducing nonwhite unemployment which have been claimed for them.

From the figures I have given, it is clear that FEPC laws have not been effective in relieving the nonwhite unemployment problem in the States which have such a law. Mississippi, a non-FEPC State, has a lower nonwhite unemployment than 24 of the 25 States which have such a law. Where, then, is there any support for the claim that an FEPC law will reduce nonwhite unemployment?

This problem can be solved best by strengthening and encouraging our free enterprise system. The situation will not be speeded by adding restrictions and regulations or new burdens of Government control as this title will do if it is enacted. The figures I have just quoted are another example of how, in practical application, an FEPC-type law will have the opposite effect that its sponsors wish to accomplish.

In considering the practical application of this law, one cannot be limited to the intent of the language given by its proponents. We must look far beyond their construction and interpretation, for naturally they have an interest, although they are, of course, sincere.

Mr. President, I have further remarks on that very point and I have further

remarks on the FEPC provisions of the bill.

The Senate will recall that this afternoon the Senator from Mississippi more or less insisted that he get started on his speech because he knew there was a great deal that he desired to cover.

I thank Senators for their indulgence today. I wish to make clear for the benefit of Senators who were not present at the time that the request of the Senator from Mississippi was in no way designed to try to keep his speech from counting as a speech on the bill.

It was merely an effort to accommodate, in response to a request on the part of several Senators who had other urgent matters, and who wished to answer the quorum call. The Senate understood that, I am sure, and granted the permission.

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

Mr. STENNIS. I yield.

Mr. HART. I confirm that statement. I was in the chair at the time, and I understood the situation fully.

Mr. STENNIS. I make the statement for the benefit of anyone among the press who did not understand. I thank the Senator from Michigan for his fine courtesy today.

Mr. HART. Mr. President, will the Senator yield so that I may make one last request?

Mr. STENNIS. I yield.

Mr. HART. Would the Senator object to the inclusion at the end of his speech of a relatively brief but I believe helpful memorandum of law that is to be found on pages 127 through 133 of the Senate Committee on Labor and Public Welfare hearings on the several equal employment opportunities bills? It is a memorandum of law on the power of Congress to prevent discrimination in employment under the commerce clause.

Mr. STENNIS. Is that in the report?

Mr. HART. It is in the hearings. It is in the record of the hearings.

Mr. STENNIS. I should like to reserve the right to object. Ordinarily, I would not have any basis for the objection, for there would be an opportunity to answer the brief, but the Senator from Mississippi does not have the time to do so.

Mr. HART. Perhaps we could resolve the question in the following manner: For the benefit of the reader of the RECORD, it will be helpful to know that, beginning at page 127 of the hearings before the Manpower Subcommittee of the Senate Committee on Labor and Public Welfare of this Congress, there will be found a memorandum of law discussing the constitutional basis for bills similar to title VII, the title which the Senator from Mississippi has discussed at length today.

I think those who may have concern with respect to the constitutional question can find much guidance in that memorandum of law.

Mr. STENNIS. Can the Senator give us the names of those who prepared the memorandum?

Mr. HART. I am advised it was prepared by the Counsel's office of the Department of Labor. There is no further definition of authorship.

I withdraw my request that it be printed in full, but I should like to have the reference to it in the RECORD.

Mr. STENNIS. I thank the Senator.

Mr. President, may I express my pleasure that the Senator from Kentucky [Mr. COOPER] has been present and has followed the debate and has contributed to it substantially, with very clear questions and also with observations. I appreciate it very much.

Mr. President, I yield the floor.

#### RIGHTS ISSUE AIDS CHURCH UNITY

During the delivery of Mr. STENNIS' speech,

Mr. MAGNUSON. Mr. President, a note hopeful for America and for the religious spirit of the Nation growing out of our Senate debate on the pending legislation was sounded yesterday by Columnist Drew Pearson in the Washington Post and many other newspapers to which his pungent daily news comments are syndicated.

Titled "Rights Issue Aids Church Unity," I commend it to the attention of my distinguished colleagues of both parties whatever may be their religious convictions or faith.

I ask unanimous consent, Mr. President, that the column written by Mr. Pearson which appeared in the Washington Post be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

#### RIGHTS ISSUE AIDS CHURCH UNITY

(By Drew Pearson)

ERIE, PA.—The civil rights issue may cause boycotts and arrests; it may defeat certain Congressmen; it may induce Polish-Americans to turn against their fellow minority because it is black, as in Milwaukee yesterday; and it may cause rightwing Republicans to vote in Democratic primaries in order to embarrass Democratic liberals, as also happened in Wisconsin.

Regardless of all this, civil rights has done more to unite the churches of America than any single issue in American history.

When the late Pope John called for the coming together of Catholic and Protestant churches he could not have foreseen that Catholic, Protestant, and Jewish churches in the United States would march arm in arm far in advance of churches in Europe or any other continent in battling for the rights of the black man.

They have done this not because any votes are involved, or any financial reward. Quite the contrary. The churches will lose money; for the time being, lose parishioners. But they will gain respect.

Because the great majority of churches and church leaders now believe that civil rights is a matter of human rights, of rectifying a deep injustice long suffered by the black American.

#### L.B.J. AND LINCOLN

In the last few months I have traveled and spoken in widely varying sections of the United States ranging from Auburn University in Alabama to Gannon College, a Catholic institution in northern Pennsylvania. The church leaders are unanimous. They are militant in working for human dignity, which Christ taught and which was the basic philosophy of the prophets of Israel even before Christ.

It is my opinion also that President Johnson is motivated by a deep moral conviction in putting his political future on the line in the civil rights fight. The battle will

cost him more votes than he will win. But long before the battle came to a head, he, as Vice President and Chairman of the Equal Opportunity Committee, had done more to get jobs for Negroes than any other man since Abraham Lincoln.

It is true that not all of the church flocks are following the church leaders' advice. In Milwaukee, the Catholic bishop urged Catholics not to give encouragement to the foes of civil rights by voting for Gov. George A. Wallace of Alabama in the Democratic primary. A great many Polish-Americans did not follow that advice.

What they did not know was that in voting for the States rights of the Governor Wallace brand, they were voting, in effect, for a system that has allowed a white boy to shoot a Negro boy in the head and then get only a 2-year suspended sentence, a system in which a Negro church could be bombed in Birmingham with four little girls killed and the bombers go unpunished.

In the House of Representatives, a Polish-American, Representative JOHN LESINSKI, Detroit Democrat, was the only nonsouthern Democrat to vote against the civil rights bill. Ninety-five southerners and LESINSKI voted against the advice of church leaders.

One Republican who stood up to be counted on the other side is Representative WILLIAM McCULLOCH, of Piqua, Ohio, a conservative smalltown lawyer without whom the Democratic leaders probably could not have passed the civil rights bill. He had nothing to gain politically, perhaps something to lose. He voted his religious and personal convictions.

#### PERSONAL THREATS

Some church leaders have undergone fire and brimstone, even threats against their lives in battling for civil rights. The Reverend Powers McLeod, of Auburn, Ala., a Methodist, his brother, Fletcher, and the Reverend John Jeffers, a Baptist, are among them. Despite the initial opposition, however, they are preaching to the largest congregations today.

The patriarch of Louisiana, Archbishop Joseph F. Rummel, has long fought for equal rights, despite the derisive epithets and abuse from some of his own parishioners.

But perhaps the most inspiring and effective church leadership has been in Washington, where genial Catholic Archbishop Patrick O'Boyle; Bishop John Wesley Lord, Methodist; Bishop William F. Creighton, Episcopalian; Rabbi Lewis Weintraub; Bishop Smallwood Williams, Pentecostal Church; and the Reverend Franklin Jackson, Methodist, have met almost weekly to discuss the problems of human rights and better understanding between their fellow men.

The late Pope John would be proud and pleased at this ecumenical conference in Washington. And though the Negroes are the source of many problems, they have given one important thing to the churches that hitherto they lacked—greater Christian unity.

#### STATEMENT BY SENATOR JORDAN OF IDAHO BEFORE SUBCOMMITTEE ON IRRIGATION AND RECLAMATION ON CENTRAL ARIZONA PROJECT

During the delivery of Mr. STENNIS' speech,

Mr. ALLOTT. Mr. President, yesterday, the Senator from Idaho [Mr. JORDAN] appeared before the Subcommittee on Irrigation and Reclamation, and there offered a new approach to a partial solution of our water problems of the West and Southwest. As he said, this is not a fully developed plan, but it is something to think about. With that I

heartily agree. I congratulate him on his foresight in bringing this matter to the attention of the committee and also the Senate.

I ask unanimous consent that the statement of the Senator from Idaho, with the exception of the chart, may be printed in the RECORD at this point in my remarks. I am sure the chart can be found by those who are interested in this subject.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

STATEMENT BY SENATOR JORDAN OF IDAHO

Mr. Chairman, I hope that what I have to say will not be interpreted as an attempt to add confusion to the very complicated problem of water resource development in the Southwest. As I sit here day after day listening to my colleagues from the Southwest struggle with the problems of the Colorado Basin, I am impressed by their seriousness, by their inherent sense of fair play, and also by their dedication to defend the interests and the claims of their respective States. I shall not deviate from that pattern.

Secretary Udall and his staff are to be commended for the tremendous amount of research and study which the Southwest water plan portrays. I shall not, at this time, discuss either the proposed central Arizona legislation or the Secretary's Southwest water plan, and I want it understood clearly that what I propose now is supplemental to, and not a substitute for, the Pacific Southwest water plan or any other plan for State or regional effort.

From all of these hearings, the one impression that must come through unmistakably clear to all of us is that there just isn't enough water in the region to meet the demands of the people and provide for the increased uses of the future.

Desalting is a possibility for some areas and for some uses.

Senator BIBLE has suggested studies of weather control in the hope of inducing greater rainfall in the basin.

Importation of water from outside the basin but within the State of California has been suggested in the Southwest water plan. I quote from the statement of Gov. Edmund G. Brown, of California, on S. 1658 and the Pacific Southwest water plan delivered by Mr. Hugh Fisher, administrator of the resources agency of the State of California at the hearings earlier this week:

"We have made studies in California which show that (consideration of the cost of development aside) we have within the boundaries of our State more water than will be needed to meet the estimated ultimate requirements within California. We are, therefore, in a position to assist in meeting the immediate water needs of the lower basin of the Colorado River, provided a regional plan is adopted which will assure us that the ultimate development of California will not be prejudiced."

Mr. Chairman, I pause to commend the State of California for the great effort it is making to meet the water emergencies that come with great population increases. I do not recall that any other State in the Union has done and is doing so much for itself in water resource development with its own tax money as the State of California.

But for the Southwest, I see endless controversy ahead in resolving such questions as the sanctity of county-of-origin statutes or the conflict of the doctrine of prior appropriation in water use with interstate compact agreement and with Supreme Court decisions. I see neighbor pitted against neighbor, costly litigation, endless frustrations, and delay.

Yesterday, Secretary Udall and Senator KUCHEL engaged in a philosophical discussion of water needs and population shifts looking ahead 100 years, 200 years. This concept strikes a responsive chord in me for I think we should be looking for more than temporary solutions to such a vexing problem.

So I issue the challenge now that we are not thinking big enough in treating this problem for the long pull.

From these hearings I have learned three things:

1. There isn't enough water in the Colorado Basin to go around;

2. The alternative Pacific Southwest water plan may answer present needs and future needs for part of the basin, but the inescapable and inevitable conclusion is that vast quantities of water must be imported to the Southwest; and

3. The best source is the Columbia River.

Now my friends in the Northwest may rise to challenge my impertinence in suggesting a look at the Columbia River. So I hasten to say that I am not authorized to speak for anyone but myself on this matter.

Some may say that I can be reckless with the Columbia in order to draw attention away from the Snake River which supports much of the economy of my State and I do admit a prejudice here, but one that can be supported by facts. No useful purpose could be served by creating a critical water shortage in one State to satisfy the partial needs of another. I quote again from Governor Brown's statement:

"The States of the Pacific Northwest, the Missouri Basin, or more distant areas will insist, and rightly so, upon demonstration that proposed exports will not injure their development potential. Reasonably conclusive demonstration will require study of the supplies ultimate requirements, and the various methods at meeting these ultimate requirements in areas which range from the highly developed to almost virgin wilderness. Western experience in water conservation teaches us that these studies must be comprehensive and critical and will require many years to complete."

Again I commend my friend from California for a statement with which I fully agree.

Idaho presently irrigates about 3 million acres. Future development is limited only by the availability of water. Legislation is before this committee to authorize the lower Teton project. Studies are underway for the best multipurpose development of the last undeveloped storage site on the upper Snake in Idaho for that stretch of the river between Palisades Dam and the irrigation turnouts 30 miles downstream. Studies have been conducted for years on the Guffy project which now includes the Mountain Home division as well. Other projects are being investigated—many with good economic feasibility if water supplies are determined to be adequate.

Should it ever become necessary, I shall go to whatever detail is necessary to convince this committee that Idaho's ultimate requirements will leave no water for export to other basins from the Snake River in Idaho. I hope that will not be necessary because we should not confine our planning to the short range approach of "robbing Peter to pay Paul."

So for the purpose of long-range planning we must turn to a source that is adequate and one from which water could be exported without irreparable harm. And it must have economic feasibility.

In this perspective, let us look at the Columbia River.

From the chart "Columbia River Water Supply Diagram" (not printed in the RECORD) from the Corps of Engineers, June 1958, you will observe that the diagram shows the average annual runoff in millions of acre-feet

under various stages of depletion resulting from upstream irrigation development.

Please note that even under year 2010 level of irrigation development based on the natural flow, 1929-48 acreage, slightly in excess of 160 million acre-feet flows into the Pacific Ocean.

Please note also that, under the same conditions of ultimate depletion, more than 110 million acre-feet will flow past the Dalles Dam some 180 miles upstream from the coast.

It is from this point, the Dalles Reservoir at an elevation of 160 feet, that water might be available for export. This may not be the best place or the only place to tap the Columbia River, but it will illustrate several points which I wish to discuss with you. These are:

1. Water is available in quantity.

2. Quality of water is excellent, very low in salt.

3. The Dalles site is below any possible diversions for irrigation.

4. Power dams develop practically full head at the two sites, the Dalles and Bonneville.

5. Ocean-going navigation to Portland is not affected.

6. Columbia Basin storage in being and planned, including Canadian storage, will total only 25 to 30 percent of average annual basin runoff.

7. Floods occur on the Columbia River in late spring and early summer.

8. About 22 billion kilowatt hours of low grade secondary power is presently available in the BPA system during the time that river flows are the highest.

9. The combination of surplus floodwater and surplus energy presents the same challenge that is so well demonstrated by the irrigation pumps which lift water from Roosevelt Lake to Grand Coulee storage for delivery to the Columbia Basin project.

10. Energy used in pumping can be partly recovered at the other end with the advantage of using cheaper secondary power for pumping and recovering peaking kilowatts at the power drops on the descent.

11. Water might be available in sufficient quantity to serve parts of eastern Oregon, Nevada, California—perhaps even Arizona—and on an exchange basis, if mutually agreeable, the Upper Colorado Basin States as well.

I close, Mr. Chairman, with a plea for continued comity and statesmanship in these deliberations. Let us not hesitate to use a bold approach when one is indicated, because I firmly believe that if we are bold enough to think big and plan accordingly, our problems will best yield to long-range solutions.

I hope this committee will request that a financial and engineering feasibility study be made by the proper agencies of Government on a plan to transfer from the Columbia a substantial quantity of water, perhaps as much as the flow of the Colorado River itself, to beneficial use in the arid Southwest and the States en route.

I.O.U. 22: TAX-FREE ELECTRIC UTILITIES

During the delivery of Senator STENNIS' speech,

Mr. METCALF. Mr. President, I concur with Edwin Vennard, managing director of the Edison Electric Institute, that customers pay the taxes for the I.O.U.'s—investor-owned utilities. However, the I.O.U.'s do not pass on to Government all the taxes which they collect from their customers

Since the end of World War II the Federal Government has granted nine tax reductions to the I.O.U.'s. They are:

First. Repeal of excess profits tax.

Second. Repeal of Federal 3½ gross electric revenue tax.

Third. Accelerated amortization.

Fourth. Liberalized depreciation.

Fifth. Investment tax credit.

Sixth. Revision of bulletin F on depreciation.

Seventh. Use of compound interest depreciation for tax purposes while using straight line depreciation for rate-making, and finally, in the Revenue Act of 1964.

Eighth. Two percent reduction in corporate income tax, and

Ninth. Prohibition against flow-through to consumers, by Federal regulatory agencies, of benefits of 3 percent investment credit.

The regulated public utilities are, in effect, cost-plus contractors. They are guaranteed expenses plus profit. But

when expenses—including taxes—are reduced, these savings are seldom passed back to the consumer who paid the taxes with his light bill.

And—insult to injury—when the stockholders divide up the profit—including money collected as taxes but never paid to Government—they frequently pay no taxes, or reduced taxes, on the dividends. Paine, Webber, Jackson & Curtis, members of the New York Stock Exchange, listed some of the companies whose dividends are partially or entirely tax free in their March 11, 1964, research bulletin entitled "Tax-Free Utilities." I ask unanimous consent to insert that bulletin at this point in the RECORD.

There being no objection, the bulletin was ordered to be printed in the RECORD, as follows:

[Research bulletin from Paine, Webber, Jackson & Curtis]

#### TAX-FREE UTILITIES

Supplementing research bulletin No. 21, the following table lists certain public utility stocks whose 1963 dividends are partially tax free because of accelerated depreciation and/or amortization. There are several additions to the original list, and in some cases the percentages have been changed. It should be realized that these are for the most part company estimates which have not been confirmed by the Tax Department and hence may be subject to further revision. (Dividends have been adjusted for stock splits.)

	1963 dividend	Percent tax free	Remarks
Arizona Public Service.....(NY)	\$0.80	75	Expected substantial through 1967.
Arkansas Western Gas.....(OC)	.50	30	
Atlantic City Electric.....(NY)	1.48	65.7	Expected to continue partially tax free.
California Electric Power.....	.88	95.7	Merged into Southern California Edison.
Central Hudson Electric Gas.....(NY)	1.09	14.96	Expected to continue partially tax free.
Central Louisiana Electric.....(OC)	1.12	19.3	Do.
City Gas of Florida.....(OC)	.375		January and March dividends 100 percent nontaxable; status of July and October dividends to come.
Connecticut Light & Power.....(OC)	1.32	30	Expected to continue partially tax free.
Consolidated Edison of New York.....(NY)	3.225		March and June dividends fully taxable; September dividend 56 percent nontaxable; December dividend 76 percent nontaxable.
Detroit Edison.....(NY)	1.20	10	Expected to continue partially tax free.
Duquesne Light.....(NY)	1.28	6.69	
Equitable Gas.....(NY)	1.85	13	
El Paso Natural Gas.....(NY)	1.00	100	Expected to continue partially tax free; 1963 preferred dividends also 100 percent tax free.
Fitchburg Gas & Electric.....(OC)	3.00	16.71	
Greenwich Gas.....(OC)	.74	54.99	
Hartford Electric Light.....(AS)	1.60	32	Expected to continue partially tax free.
Idaho Power.....(NY)	1.05	45	Do.
Interstate Power.....(NY)	1.05	4.7	
Maine Public Service.....(OC)	1.04	17.3	
New England Electric.....(NY)	1.13	26.62	Do.
Niagara Mohawk Power.....(NY)	2.00	23	Do.
Northwest Natural Gas.....(OC)	1.08	69.13	Expect substantial part tax free for several years.
Orange & Rockland.....(NY)	.675	35.46	Expected to continue partially tax free.
Pacific Gas & Electric.....(NY)	1.00	27.5	Do.
Pacific Gas Transmission.....(OC)	.70	29.2	
Pacific Power & Light.....(OC)	.99	88	Expected to continue partially tax free; lower in 1964.
Pennsylvania Gas & Water.....(OC)	.825	12	Expected to continue partially tax free.
Portland General Electric.....(OC)	.865	66.4	Estimate 45 percent in 1964.
Potomac Electric Power.....(NY)	.96	14	
Providence Gas.....(OC)	.61	38.7	
Public Service of New Hampshire.....(OC)	1.13	37.329	Expected to continue partially tax free.
Public Service Electric & Gas.....(NY)	2.45	13.512	
Puget Sound Power & Light.....(NY)	1.60		February dividend 66.91 percent tax free; May, August, and November dividends 100 percent tax free; February preferred dividend fully taxable; May, August, and November preferred dividends 28.69 percent tax free.
Sierra Pacific Power.....(OC)	.88	17	February and May dividends fully taxable; August dividend 48.32 percent and November dividend 49.78 percent tax free.
South Carolina Electric & Gas.....(NY)	1.675	18	
South California Water.....(OC)	.76	17.74	
Southern Gas & Water.....(OC)	.93	100	Preferred dividends 79.7 percent tax free in 1963.
Southwestern Electric Service.....(OC)	.79		March and June dividends 51.12 percent tax free; September and December dividends 44.61 percent tax free.
Southwestern Public Service.....(NY)	1.08		March, June, and September dividends 8.84 percent tax free; December dividend 3.73 percent tax free.
Tennessee Gas Transmission.....(NY)	1.00	70	Expected to continue partially tax free.
Union Electric.....(NY)	.99	42	Do.
Utah Power & Light.....(NY)	1.32	2.9	Do.
Washington Water Power.....(NY)	2.02	46.04	Do.

Mr. METCALF. Mr. President, although many I.O.U.'s do not rebate to the customer the taxes which they have collected, they have the insolence to advertise, in a multimillion-dollar campaign paid for—where permitted—by the customer, that they are the State's largest taxpayers.

As examples, Montana Power Co. claims to be "the biggest taxpayer in Montana." Public Service Co. of Colorado claims to be "Colorado's largest taxpayer."

I ask unanimous consent to insert at this point in the RECORD the advertisements to which I refer, which appeared in the June 20, 1963, issue of the Missoula County Times, published in Missoula, Mont., and the March 31, 1964,

issue of the Rocky Mountain News, published in Denver, Colo.

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

[From the Missoula (Mont.) Times, June 20, 1963]

#### OUR BIGGEST MONTANA CHECK

Pay to the order of State of Montana (1962) \$6,300,000, by the Montana Power Co. Three million dollars of it is for education.

We spent a lot of money in Montana last year. More than \$7 million was paid to our employees in salaries and wages. More than \$8 million went to many Montana businesses for materials and supplies. But our biggest checks were paid to the State of Montana and the 41 counties we served. Our property taxes in 1962, for example, amounted to \$4,800,000. Montana Power is the biggest taxpayer in Montana.

Nearly \$3 million of our property taxes will be used for schools—\$2,762,000 for primary and secondary education and \$216,493 for the university system.

More than 34 cents out of each dollar we received in 1962 went for taxes. Yet today's electric dollar buys more service at lower cost than ever before in Montana's history.  
MONTANA POWER CO.

[From the Rocky Mountain News, Mar. 31, 1964]

#### TOP MAN ON THE TAX TOTEM POLE

Most everybody pays taxes. And, when it comes to paying their share of taxes, the investor-owned utility industry takes a back seat to no one. In fact, the industry is the Nation's largest taxpayer. Public Service Co., is no different. As Colorado's largest taxpayer, we paid well over \$25 million in taxes in 1963. That's a big bite. But it becomes a little easier to digest when we think

of it in terms of more and better schools, parks, national defense, highways, fire and police protection—and, equally important, an aid to the future well being of the area we serve. At Public Service Co., we look upon paying our fair share of taxes as a part of our citizenship responsibility. We only wish that Government-subsidized power suppliers felt the same way and acted accordingly.—Public Service Co. of Colorado, an investor-owned utility.

Mr. METCALF. Mr. President, as I reported in I.O.U. No. 18, Montana Power enjoys the most exorbitant rate of return—about 9 percent—of any major electric power company in the Nation. If the company only passed onto the ratepayer the 2-percent reduction in corporation tax, as some other electric companies have done, it would probably still enjoy the most exorbitant rate of return of any I.O.U. in the Nation. Yet the president of the company has announced that his company does not plan to pass on this tax reduction. The State regulatory commission has not required the company to do so.

I ask unanimous consent to insert, at this point in the RECORD, the statement on this subject by the president of the Montana Power Co., as reported in the March 24 issue of the Montana Standard, Butte, Mont.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

**MONTANA POWER DOES NOT EXPECT TO MAKE ANY REDUCTIONS IN ITS RATE**

The Montana Power Co., according to J. E. Corrette, president and general manager, "does not expect to make any rate reductions," as a result of the new Federal tax law.

Corrette, apprised Monday night of a statement by Paul Smith, Montana Public Service Commission chairman, relative to possibility of the public service commission asking public utilities to pass along Federal tax savings to consumers, said the company has considered the purposes and effect of the new Federal tax law.

He said: "The basic purpose, and the intent of the Federal income tax reduction was to make available to companies the construction of new property, the creation of new jobs, and the development of the economy of the area.

"The Montana Power Co. is carrying out this intent by materially increasing its construction expenditures for 1964, and thereby creating more jobs and stimulating the economy as contemplated by the new Federal tax law, and does not expect to make any rate reductions."

Mr. METCALF. Mr. President, the Public Service Co. of Colorado overcharged its customers \$20,278,000—over and above a 6-percent rate of return—during the 5-year period from 1956 to 1960, according to a study conducted by the National Rural Electric Cooperative Association, using data and accounting procedures of the Federal Power Commission. Public Service Co. of Colorado also served as technical adviser for the production of the I.O.U.'s propaganda film, "The Power Within," a concoction of phony quotes, half-truths, and distortions carefully calculated to destroy the viewer's faith in the Government which has been so kind to the I.O.U.'s and to antagonize the viewers against the companies' competitors. I discussed "The Power Within" in I.O.U. No. 1 on

January 8, 1964, and in several succeeding statements.

Mr. President, must the intelligence of our citizens be forever insulted by such companies? Must the citizens be required to pay for the insults?

**AMERICAN AGRICULTURE AND THE UPCOMING COMMON MARKET NEGOTIATIONS**

During the delivery of Mr. STENNIS' speech,

Mr. SYMINGTON. Mr. President, agreements reached during the forthcoming "Kennedy round" of trade negotiations under GATT will have a marked effect, not only on America's trading patterns during the next decade, but also upon our balance-of-payments situation.

One of the most disturbing aspects of these pending negotiations is the Common Market's refusal to negotiate agricultural as well as industrial trade impediments.

My colleagues will recall that, during a series of speeches made on the balance-of-payments problem last November and December, I drew attention to the growing protectionist attitude of the Common Market countries in connection with agriculture. I pointed out then that, of our total sales to the Common Market, nearly one-third consisted of sales of agricultural products, a prime source of foreign exchange earnings.

How can it be to the interest of the United States to negotiate on industrial trade barriers without also reaching a satisfactory agreement concerning future access of U.S. agricultural commodities to the Common Market countries?

On March 30 last, the Honorable Christian A. Herter, special representative for trade negotiations, spoke on this subject before the Economic Club of Detroit; and I was gratified that our chief negotiator felt so strongly on this subject.

Because of the far-reaching implications of both the United States and the Common Market positions on this important question, I ask unanimous consent to have excerpts from the address by the Honorable Christian A. Herter before the Economic Club of Detroit on March 30, 1964, printed at this point in the RECORD.

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

**THE ROLE OF AGRICULTURE IN TRADE EXPANSION**

(Excerpts from the address by the Honorable Christian A. Herter, special representative for trade negotiations, before the Economic Club of Detroit, Detroit, Mich., Mar. 30, 1964)

Trade is front and center on the international stage this year. The U.N. Conference on Trade and Development got underway in Geneva last week, as you know. And the sixth round—the "Kennedy round," as it is widely called—of negotiations under the auspices of the General Agreement on Tariffs and Trade (GATT, for short) will open in the same city May 4.

It is the Kennedy round for which my Office is responsible, and which I shall discuss today—but I hope you will follow the course of the U.N. conference in your newspapers, for it will have a considerable bearing

on the GATT negotiations, particularly as they relate to the less-developed countries.

It was the Trade Expansion Act of 1962 which made the Kennedy round possible. Because the European Common Market was often mentioned in the course of the debates leading to the enactment of this historic legislation, there is still in many quarters, I believe, a tendency to think that these negotiations amount to a duet—sometimes harmonious, sometimes sounding less so—between the European Economic Community (the EEC) and ourselves.

As we go into the homestretch, 5 weeks before the negotiations formally open, we have identified five problems as of major importance—tariff disparities, exceptions from the negotiations, nontariff barriers, the role of the less-developed countries, and trade in agricultural products.

The most difficult and complex of the problems that face us is that of trade in agricultural products. I make no apologies for stressing this, here in one of the major capitals of American industry. Agriculture and industry are interwoven at every point in our economy. Farmers buy a great many of your products, and farmers are more dependent upon export markets than any other major segment of the American producers. The crops on 1 out of every 5 acres cultivated here are shipped abroad. Farmers derive 15 percent of their income from exports—whereas the United States as a whole exports only 3.8 percent of its gross national product. Moreover, total farm exports, running at \$5.6 billion a year, amount to 27 percent of our exports as a whole.

This is not a one-way street. Other nations benefit greatly from access to our reasonably priced and wholesome food. This is an important factor in restraining inflation, which is currently giving a number of governments cause for serious concern.

The problem of agriculture is, basically, the problem of plenty. Modern agricultural methods have, like the sorcerer's apprentice, opened the floodgates to abundance. The agricultural revolution of the mid-20th century is as dramatic a leap forward as the achievement of mass production here in Detroit a half century ago. It began here and it is now in full flood in Europe.

A new element has been introduced into an already complex situation by the effort of the European Economic Community to establish a common agricultural policy for its six member nations—an essential step in progress toward the unification of Europe. The implementation of this policy is a matter of major importance to us, for we export over a billion dollars' worth of farm products annually to the EEC. It is our biggest single cash market for agricultural products.

We have made our view clear that the common agricultural policy should be designed so as to preserve the opportunity of efficient suppliers to compete in the EEC market. Moreover, we believe that the community's agricultural policies, like our own, must be negotiable in GATT. This, indeed, was the consensus of the GATT ministers, when they met in Geneva last May and adopted a unanimous resolution calling for "the creation of acceptable conditions of access to world markets for agricultural products in furtherance of a significant development and expansion of world trade in such products."

We had a sharp warning last year of protectionist tendencies in the EEC. The implementation with respect to poultry of the common agricultural policy had the effect of tripling the import charges on the poultry we shipped to Germany and sharply raising the price to German consumers. After patient and persistent efforts over many months had failed to secure any significant easing of these onerous charges, we were compelled, at the beginning of this year, to

raise tariffs upon items involving an equivalent volume of EEC exports to the United States. We regretted doing this, but we felt we had to make the point—and make it forcefully—that the Common Market, in putting its agricultural policy into effect, cannot with impunity ignore the interests of its outside suppliers.

### UNEMPLOYMENT

During the delivery of Mr. STENNIS' speech,

Mr. SYMINGTON. Mr. President, for a long time I have felt that the problem of unemployment, especially hard-core unemployment, in an economy which is reaching new highs every month in gross national product, national income and profits, is a matter of the utmost importance; and should be given the most serious consideration.

Last Monday the St. Louis Post-Dispatch presented this problem in a thoughtful and constructive editorial.

As one who went through the sad days of the depression of the early 1930's, I agree without reservation that continued unemployment can only lead ultimately to distress, demoralization, delinquency, and decay.

I ask unanimous consent that this editorial, "A Warning in Statistics," be printed at this point in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

#### A WARNING IN STATISTICS

Employment rose 500,000 last month, according to the Bureau of Labor Statistics. Unemployment dropped 200,000, but the labor force rose 300,000. Hard-core unemployment (13 weeks or more) rose 150,000 to 1,300,000. The adjusted jobless rate remained at 5.4 percent of the work force. Thus another month has passed with no gain against unemployment. Indeed there was a loss since with a growing population, the unyielding rate of joblessness embraces ever more individuals.

These statistics give a troubling significance to some other figures recently compiled for President Johnson. Since the end of World War II, the time needed to mine a ton of coal has been cut in half, and the number of working miners has been cut from 450,000 to 130,000. The time needed to manufacture an automobile has been reduced from 311 hours to 153—with a related reduction of employment in the industry. The railroads eliminated roughly 500,000 jobs in the 1950's. In the decade, factory production, in general, rose 43 percent but employment in factories fell 19 percent.

This trend toward higher productivity coupled with lower employment now is manifesting itself also in the white-collar field. For instance, between 1960 and 1963 the clerical unemployment percentage rose from 3.8 to 4.9 percent. The automatic vending machine, the automatic elevator and other devices which operate "untouched by human hands" are eliminating jobs in the service trades. Meanwhile, population keeps on rising. So each year sees a larger number of young people looking for their first job—and not finding it. Relentlessly continued, this process could end in a disastrous perversion of national growth. More people, more goods and more services would add up to more and more trouble.

It will not do simply to put the blame on automation—or on individual incompetence. Neither will it do to assert unquestioningly that technological change will create more jobs than it eliminates. Nor will it do to "spread the work" by shortening the work

week. Better information is a primary need, and this may be expected from the study authorized by President Johnson. In any case, increasing productivity should induce more intense marketing efforts—comparable to those of the European miracle workers with whom, incidentally, it is becoming easier to compete now that their boom is inflating their prices.

The best hope, however, is in the neglected public services. The fruits of higher productivity ought to make possible programs of real magnitude in education, housing and health. The employment these generate should buttress the productive process. Budget balancers might ask themselves whether this would not be preferable to the dilemma of increasing productivity and increasing unemployment—and the accompanying distress, demoralization, delinquency and decay.

### DOES FRANCE HAVE A DILEMMA? ADDRESS BY THE FRENCH AM- BASSADOR

During the delivery of Mr. STENNIS' speech,

Mr. DIRKSEN. Mr. President, I ask unanimous consent to have printed in the RECORD an address entitled, "Does France Have a Dilemma?" delivered by the French Ambassador on February 24, 1964, before the Economic Club of Detroit, Mich.

There being no objection, the address was ordered to be printed in the RECORD, as follows:

ADDRESS DELIVERED BY HIS EXCELLENCY M. HERVE ALPHAND, FRENCH AMBASSADOR TO THE UNITED STATES, TO THE ECONOMIC CLUB OF DETROIT, IN DETROIT, MICH., ON FEBRUARY 24, 1964

When your President suggested to me to deal with this subject: "Does France Have a Dilemma?" I thought that in replying to his question I would have the opportunity to explain our problems, and especially those that have created some trouble recently in the minds of certain Americans. In looking up the word "dilemma" in the dictionary, I found that Webster defines it as "a situation involving choice between equally unsatisfactory alternatives." However, in reviewing the various elements of our policies, it seems to me that, if in reality France has had a choice to make, there has always been on each subject a single solution more satisfactory than the others, not only for herself but for the Western World. In other words, we have no dilemma to face.

These solutions are dictated to us by the very nature of our country: by its geographical situation which makes it an essential part of Western Europe, with the Rhine, the channel, the Atlantic Ocean as a natural link with America, the Pyrenees, the Mediterranean Sea as a natural avenue to Africa, the Alps, all this forming its natural framework; by our history which more than 1,500 years ago made France a unified nation, and perhaps more than any other the victim of many wars, because she was involved in all the great international quarrels and possessed interests on all continents. Again, her evolution was determined by her human and physical resources, providing her with a highly skilled working force, a harmonious equilibrium between industry and agriculture and, as a result, the possibility of developing the most varied scientific and economic activities.

It is true that at various times up to the beginning of the 19th century, France has been the most powerful among nations, that she has controlled immense colonial empires. But France is perfectly aware of the fact today that other nations have become richer,

more populous, stronger than she, and that the 20th century is no longer an era of colonialism. However, this evolution has in no way brought us any sort of complex. In spite of the trials to which she has been subjected, in spite of the rise of other peoples, France knows that she can still hold a high rank among nations and exercise an often decisive influence on world problems. At the same time, she has approached these problems with serenity and realism, turning her back resolutely on the past and trying to discover new formulas for herself and perhaps for certain others.

France finds herself before a choice of solutions, and she has chosen.

First of all, at home, she has chosen, by adopting a constitution combining the notions of liberty and of authority. In the country that drew up the declaration of the rights of man, there could never be a question of establishing its institutions on any other principle than that of liberty in all its forms: in the free expression of thought, in the right to vote, in the exercise of religion, in racial nondiscrimination. We have also chosen against the abuse which had formerly led us to entrust the Government not to the executive but rather to the legislative branch, which means to an assembly of 600 persons often incapable of formulating a policy. Today, the Government governs, while the elected Assembly votes the laws, thus giving effect to the fundamental principle of separation of powers put forward in the 18th century by those philosophers who were at the origin of our revolution as well as of yours, a principle that is applied by you as well as by us. Finally, the French people, who elect the President of the Republic, are consulted through referendums and make decisions in case of serious conflict between the executive and the legislative branches, remain the supreme arbiter.

At the same time, liberty does not prohibit an active participation of the state in the social and economic domain, in the interest of justice and equality. However, even though the Government exerts its influence on planning, that influence is not dictatorial. It guides and suggests, rather than commands, economic evolution. Competition remains the mainspring of individual activity in our free society. The results are there: each year our industrial economic growth exceeds 5 percent. There is no unemployment, but a lack of labor, and if we have to defend ourselves against a danger, it is that of an excess of expansion.

Having said all this, I imagine you are now waiting for me to talk about the choice France has been brought to make at present in her foreign policy, whether in the field of diplomacy, of defense, or of international relations. It is these different subjects that I would like to take up with you now.

Today every nation has a primary choice to make: will it be neutral or not? Will it be committed or will it be noncommitted? For all the reasons I have just explained to you, by her position on the map and in history, France is committed. She is a part of the free world; she is a part of it with you, within the same alliance. France believes that a neutral Western Europe, a neutral North America, are unimaginable so long as the perils coming from the East continue to exist. The incidents on the Berlin autobahn, the declarations of the head of the Soviet Government, the attempts at interference that we observe in Africa, in Asia, in Latin America, all these things and many others lead us, alas, to believe that the danger has not been suddenly removed because an agreement has been signed in Moscow.

The image of a France trying to establish a neutral "third force" in Europe, an image all too often reproduced in the international press, does not correspond in any way to reality. Our words, our acts, and simple

reason itself should be enough to reestablish the facts.

This position does not mean that we do not envisage for certain areas of the world a regime independent of all these influences coming from the East and the West; in other words, a regime of nonalignment, as far as the countries concerned are in agreement. But such a solution cannot be applied universally; it is applicable only to regions far away from our frontiers, where both the free world and the Communist world have a mutual interest in maintaining neutrality.

As far as we are concerned, and as we have proclaimed, the Atlantic Alliance is an elementary necessity. The form this Alliance takes—which we should not confuse with the Alliance itself—is called NATO. If the Alliance itself is immutable, its form is called on to vary according to the circumstances of the moment, which is to say according to the gravity of the threat and the modifications that arise in the means at our disposal to meet it. This cannot but result in a certain amount of discussion and sometimes differences of opinion between us, which is only natural among good allies and should not concern us unduly. The ways of combining our forces, of deploying them, or of organizing our lines of communication, of defining our strategy, may lead to arguments, but these are not dangerous so long as our goals remain the same. And our goals consist in deterring our adversaries from undertaking any military action—which in consideration of the strength of our joined forces seems today impossible—and, in case they should do so, in not allowing any part of our territories to fall into their hands. Thus the proportion of our forces and of yours under the NATO command may vary, although we know that in case of a conflict all our means would be used to achieve our goals.

In the same way, if France has decided to provide herself with her own atomic weapons, I cannot see that this should cause you any concern, because in the majority of cases this force will be added to your own and eventually its use will be coordinated with yours against a common enemy. In exceptional cases, at a time we cannot foresee, if our national interests alone were to be subjected to blackmail without your interests being involved, we should have at hand an autonomous and effective deterrent. Our position on this subject does not differ from that of Great Britain.

Do we, as we are so often told, give a bad example to the world in choosing, in our turn, to possess atomic weapons? Let me point out that if this were the case, we would have been preceded by three other nations, which have an arsenal of bombs infinitely greater than ours and which can continue to increase it quite freely. But I do not believe that this accusation is justified. In order to become an atomic power, it is necessary to fulfill a large number of conditions: First not to be committed, for example, as Germany was when it undertook in 1954 not to manufacture nuclear weapons; further to possess a whole series of technical elements such as sources of uranium, a vast industrial infrastructure, a great number of scientists, a certain financial capacity, and finally the necessary test sites, which is to say a series of elements that very few nations possess all together. I believe indeed that, for at least a certain length of time, only France finds herself in this situation. Therefore, her example would not bring in other countries, though even if it did, France's plans would be of little concern to them if they themselves decided to join the race.

In any case, this choice of ours will explain to you why we have not adhered to the partial test ban agreement, because we must make some tests ourselves—even though much less numerous and less powerful than

those made by others before us—in order to assure the functioning of our weapons. This will explain to you also why we are not taking part in the negotiations for the establishment of a multilateral Atlantic force, because we do not have the financial and technical means both to continue with our own effort and to take part in the effort undertaken within NATO. I should add that, even though we do not understand too well the conditions under which such a multilateral force would be used, we have done nothing to discourage anyone from participating in the studies underway at present.

There is another basic choice that France has made, by which I mean the steps she has taken to give life to the great movement, now become irresistible, toward European unity. Her policy in this matter is revolutionary. You know it well, so I shall limit myself to a few basic observations:

We live in an era of grand and vast structures and France has understood that she could not remain up to date without having at her disposal a vast internal free market, the European Common Market of the Six. This transformation is indispensable if we want our industries and our agriculture to specialize their output and reduce their production costs in order to raise the general standard of living and be able to take part on an equal footing in the overall competition with the other great free markets of the world.

There is no question of creating an inward-looking Europe, as is so often said. The decisions taken by the Six as well as statistics are before us to prove that Western Europe is not protectionist but expansionist: In its relations to third countries, it has removed all industrial quotas; it has reduced its customs duties to a level noticeably less than those of Great Britain and even of the United States.

During the last 5 years, 1959-63, American exports to the Common Market have increased by 58 percent, while the exports of the Common Market have only increased by 2 percent. Thus the trade balance between the Community and the United States, which was stabilized in 1959, showed an excess in 1962 of \$1.18 billion in favor of the United States, and this figure will be largely exceeded in 1963. One must point out that this concerns only commercial operations; if one adds the sale of military equipment, the trade deficit of the Six vis-a-vis the United States is obviously higher and should reach almost \$2.5 billion in 1963.

One may ask if this evolution toward trade liberalization will continue, or if it is not possible to detect the beginning of a sort of European economic nationalism. I must reply to this by saying that we are ready to take part in any new efforts aimed at reducing still further the customs barriers, such as proposed by President Kennedy, subject to two conditions: First, that the concessions made by Europe to the United States be reciprocated and balanced, and that they take into account not only tariffs but also other means of restricting trade; and second, that the European Economic Community shall have organized a common market for farm products. The agreement just concluded between the Six in Brussels on these two points shows in what spirit and under what conditions we intend to approach this negotiation with you.

It is precisely in the matter of agricultural products that certain Americans fear to see their export possibilities to Europe reduced. They recognize freely that this has not happened yet, since the United States has increased its sale of farm products to the Common Market by 30 percent, but they believe this movement will be slowed down by the imposition of variable levies on the main American agricultural exports.

This fear might be justified in my opinion if our policy consisted in fixing internal prices for agricultural products at excessively high levels, because this would bring about the unhealthy development of an artificial production in certain of the six member nations to the detriment of traditional imports from abroad; but such is not our aim. We intend for the market prices of European farm products to be as near as possible to present French prices, which are not too far removed from American prices. In this way, if certain modifications take place in present commercial trends, they will be limited to specific individual sections and will not bring about serious distortions in general trade. In any case, we have always thought that levies, which are a sort of customs duty, are a much less harmful protectionist tool than the quota system they are intended to replace, insofar, among other things, as the increase in productivity which should be the result of protection will make it possible to reduce the levies progressively.

I do not believe that it is possible to guarantee, through some inflexible method, a precise proportion of American exports to Europe. It does not seem advisable to me that you should be assured, through a quota system, of a slice of cake and that this slice should grow at the same time as the cake itself.

On the other hand, experience shows us that a free market is more prosperous and more profitable than markets broken up into compartments, and that as a consequence imports will be greater if it is united than if it is divided.

All of these questions will be the subject shortly of discussions that will certainly be difficult, and may be long. Our hope is that these negotiations may end in a liberal solution fully respectful of the interests of all the participants.

I would add that our European policy is not limited to the economic area. We hope that our effort may be extended to the political field, and later perhaps to that of defense. The Common Market will require precisely the creation of a political organization. On the other hand, without such an organization it seems difficult to us to hope that Europe may some day possess its own military force, whose use requires the establishment of institutions capable of taking decisions and implementing them. It must be realized, however, that the process will be long, but that at least, in signing the agreement of January 1963, France and Germany have set the example. We hope it will be followed by our partners.

Such are, gentlemen, the great international choices France has been called upon to make. You can see that in a diversified, confused, and changing world our policy is clear, in line with our tradition and the interests of Western cooperation.

It is not inspired, as so many would like to write, by any desire for domination or by a narrow and obsolete nationalism. Believe me, it is not a proof of nationalism to bring to an end a colonial regime and to recognize the independence of almost 20 new nations in Africa and Asia; to become reconciled to a former hereditary enemy; to aspire to a united economic Western Europe and to search for the means of uniting it politically; to lend assistance to emerging nations that is twice as large in relation to national income as that given by the United States; to open wide our frontiers to the markets of the world.

This French action is inspired only by the desire to favor the establishment of a just peace on this earth and to cooperate in a fraternal way with those billions of human beings who continue to lead a miserable life and lack the essentials in Africa, in Asia, in South America. Please do not consider our initiatives as prompted by a will to rival our

friends and above all the United States of America.

Of course free allies, in the Western sense of the word, although having the same objective, can use different methods to reach it, taking into account the historical and geographical situation which they have inherited. For instance, today you believe that a dialog between Washington and Moscow is desirable and should continue in order to promote what is called the detente. We for our part have some doubts about such tactics, but we do not oppose them, because we trust that the present soundings will not lead you to unacceptable concessions.

In the same trend of thought, we have considered it necessary to establish diplomatic relations between Paris and Peiping. For reasons and commitments that we all know, it is impossible for you to follow this example or even to approve of our move. You must nevertheless rest assured that, in doing what we are doing, our goal is to serve the interests of the free world. In any case, we do not accept the view that our decision was prompted, as some people have said, by the purpose of embarrassing our ally, the United States of America.

During the course of the last 14 years several nations, which are our friends, have recognized the People's Republic of China. They did not break their relations with Peiping during the Korean or Indochinese wars. As for us, we did not follow the same path during this long period of time.

Today the situation is not the same. We are no longer facing a monolithic bloc, with its head in Moscow. That is why we consider it necessary to establish relations with the other great power of the Communist world. In recognizing both Soviet Russia and Red China, we do not intend to interfere in any way with the quarrels which divide them, or to play one against the other. We just acknowledge "the world as it is." Moreover, the fact of sending ambassadors does not imply, according to French custom, any moral judgment about the regime of the country to which our envoys are accredited. As in the past, we continue to disapprove most emphatically of all totalitarian regimes, wherever they are, and whatever their methods and their dealings. But obviously, whether we like it or not, a government exists in Peiping that controls nearly one-quarter of the human race.

We hope that a new line of communication between the Western World and Communist China may be useful, one day. Our old experience of Asia, and especially of southeast Asia, has led us to believe that no peaceful solution can be found in this part of the world without a certain degree of agreement with China, whatever its regime may be.

Confronted with these various aspects of French politics some are inclined to say: "You are alone in your opinion; your neighbors, your traditional friends themselves, are not in agreement with you."

Well. We are sometimes alone in our opinion, but it does not necessarily mean that we are wrong.

In the 1930's General de Gaulle was alone in believing that the Second World War would make necessary the use of tanks and the creation of a professional army; in June 1940 he was alone, with Winston Churchill, in proclaiming that the war was not finished and that there were forces still intact in the world which would tip the scales in our favor; between 1941 and 1945 he was alone in foreseeing that France would regain her place among nations; in 1958 he was forced to fight almost alone against the colonialist forces of the past; in 1964 he has ideas that not everybody agrees with, whether on atomic strategy or diplomatic tactics, especially in Europe or Asia. Has he been wrong in the past? Is he wrong today? Let us

hope his voice will be heard, before history pronounces its implacable verdict.

I think, my friends, that I have explained the decisions taken by France today. They will contribute to make of her a resolute nation conscious of her responsibilities. France, believe me, by sentiment and by interest, remains the friend and ally of the United States, as she has never ceased to be for almost two centuries.

#### ACTION OF THE SECRETARY OF THE INTERIOR—OIL SHALE

During the delivery of Mr. STENNIS' speech,

Mr. DOMINICK. Mr. President, earlier today I commented on the action of the Secretary of the Interior on opening the gates at Lake Powell and releasing water which properly belongs to Wyoming, Utah, New Mexico, and Colorado. I referred in my remarks to the almost total lack of communications between the Secretary of the Interior's Office and the congressional delegation from the Upper Basin States.

While I was discussing that point, another example of the same policy occurred. Yesterday the Secretary announced a legal opinion by Solicitor Barry, rejecting patent applications for more than 200 oil shale mining claims on the Colorado Plateau.

This morning newspaper reporters began contacting me and asking me for my reaction to the announcement. The Secretary or his Office never even had the courtesy to notify me or any of my colleagues in Colorado, Wyoming, or Utah, as far as I have been able to determine, on the contents of the announcement, what it concerned, or what the legal effect of it was.

After several telephone calls to the Department of the Interior I found someone who claimed that we had been mailed a copy of a press release at 4:30 yesterday afternoon. As of right now—and I am making this statement as of earlier this afternoon—I had not received a copy of that release from the Department of the Interior. In fact, we called up and we got a release sent up by hand, which was the only way I was able to find out anything about it at all.

I bring the subject up, not merely to be critical, as I am on the face of it, but for the purpose of showing that there apparently is a deliberate effort to try and ignore the interests of the four-State area in the most important natural resources of that whole area. Obviously, water in the Lake Powell situation is of extreme importance. It concerns the Department in the participating projects in the whole upper Colorado River.

That particular opinion, which is the source of great disagreement within the Department itself, is another effort merely to ignore the vital interests of our area.

I should like to put it as plainly as I can so it cannot be misunderstood. The Solicitor's opinion deals with oil shale patent applications. The decision has been made on an extremely technical point. The Department has acted against them on the basis that the assessment was not done over a period of

years from 1930 to 1935, and goes further to say that the Supreme Court decision in 1935, which said that the annual assessment work did not determine whether a claim was valid or not, could not be brought into the question because of a statute of limitations, and that the adverse rulings which had occurred at that point could not now be challenged because of the statute of limitations.

That is a really narrow technical point. It affects an enormous amount of acreage. The press release asserts that it involves 40,000 acres of oil shale land. That means that this now technical point will now be taken to court by the people who are applying it, and if the applicants are successful in the court hearing, this particular defense will be overruled, and it will be brought before the Department again, and the Department has at least three or four more objections on which they did not even give a ruling in the decision.

So the Department can delay a decision on whether the applications are valid or whether they are not for as far in the future as I as a lawyer can see and I as a person can see. Recognizing that such action might happen, I got in touch with the Assistant Secretary, Mr. John Carver, and talked with him in my office at some length. He reported that the Solicitor was attempting to take this action, and he was trying to persuade the Secretary that this type of action could not do anything to develop oil shale. All it would do would be to delay development. What the Department should do would be to take all of these objections and rule against the applications, and take the best possible case from the point of the applicants and then let it go to court and have the court decide the whole question once and for all and get it over with.

At that point we would know whether or not we were to have development of this land.

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

Mr. DOMINICK. I am glad to yield.

Mr. MORSE. The Senator from Colorado is absolutely correct in the procedure he has just outlined. In view of the fact that the Department knows what the principal objections are, it certainly ought to present them at one and the same time to the court, so there can be a finding by the court as to whether or not any one of them is substantial enough to sustain the Department. I thought the objective we had in mind was to get oil out of the shale as fast as it was possible to do so.

As the Senator from Colorado knows, for a good many years in the Senate the senior Senator from Oregon has been urging the development of our oil shale lands. I think it is of vital importance to the economy of this country to guarantee that the American people have the maximum supply of oil to which I think they are entitled. I think the Senator from Colorado is quite right in asking the Solicitor of the Department to present the whole gamut of the objections for the court's decision at one and the same time.

Mr. DOMINICK. I sincerely appreciate the statement of the Senator from Oregon. I know he has fought for this development. I share with him the desire to get the development moving. This procedure can do nothing but delay it.

There is another point involved which is difficult for me to understand. If the technical defense of the statute of limitations should prevail, it would be perfectly possible for the Department to take action to see that the statutes and the technical difficulties cited in the defense would be equally applicable to the patents which had been issued. This applies not only to the 40,000 acres which have been rejected, but to the 70,000 acres in Colorado which have already gone to patent and which might be used for the development of oil shale right now.

So the Department, by virtue of the action it has taken, has, in my opinion, substantially slowed down the development of one of the most vital natural resources of this country.

This decision very obviously met a sharp and severe battle within the Department, because the announcement by the Secretary of the Solicitor's opinion took place at a time when the Assistant Secretary who was opposed to it, John Carver, was not there. He was notified by telephone. He at least had the courtesy, although he was out West, to try to get in touch with me last night and notify me of what was happening. But the Department, the Secretary, and the Solicitor did not do it, even though they knew of the vital interest of the Colorado delegation in this particular problem.

It seems to me this is, in the vernacular, and toning it down somewhat, a peculiar way to run a railroad. Here they are, at the executive branch, determining a policy matter on a natural resource which should be handled by the Congress.

First of all, there should be a determination of all the issues before the court. If the court decides that the applicants are wrong and that the patent should be repealed, perhaps congressional action would be necessary. If the court should decide that the applicants were right and that the patents are inviolable, oil shell development could start on private land, rather than be carried on under leasing arrangements on public land.

No matter how one looks at it, the Department is taking action, at the executive level, which is designed to do nothing more than slow up the development and downgrade the policymaking function of the Congress.

I want to record here and now my fundamental objections to the action taken by the Secretary and by the Department in this regard. I announce firmly that I shall continue to take whatever action I can to try to promote a policy which will permit the development of this vast natural resource so necessary to industrial economy and so vital to the defense as well as the economy of this country.

I again thank the Senator from Mississippi [Mr. STENNIS] for yielding to me.

### McNAMARA'S WAR IN SOUTH VIETNAM

During the delivery of Mr. STENNIS' speech,

Mr. MORSE. Mr. President, I intend to speak briefly tonight on McNamara's war in South Vietnam, but tomorrow, if I can obtain the floor, I expect to speak at greater length on Mr. Nixon's proposal to escalate the war to North Vietnam.

Apparently Mr. Nixon has come back from Asia very desirous of changing the war from a strictly McNamara war to a McNamara-Nixon war. I shall discuss the former Vice President's proposals tomorrow, but tonight I invite the attention of Senators and, through my desk, of the country, to a sad letter I received from Mrs. Nellie Shannon, of Lynchburg, Va. I shall read it and my answer to it, make a few comments thereon, and then read a letter from the wife of a serviceman from my State.

On next Wednesday or Thursday—I hope Wednesday—I shall speak at some length in the Senate setting forth the international law problems I think are involved in McNamara's war in South Vietnam.

The thesis of that speech, based upon my research of international law authorities, is that the United States does not have one iota of justification, under international law, for killing American boys in South Vietnam.

I now read the letter from Mrs. Shannon:

APRIL 5, 1964.

Senator WAYNE MORSE,  
Senate Building,  
Washington, D.C.

DEAR SIR: I am writing you for an answer to questions that I sincerely hope you can give me.

I am also asking for answers from Mr. Johnson, Mr. Rusk, Mr. McNamara, Members of Congress, and Senate. Certainly, of all mentioned, someone can give a straight answer and not meaningless words that do not amount to a ———.

My son, 1st Lt. Kenneth A. Shannon, a helicopter pilot, departed Lynchburg, Va., on March 8, destination Vietnam. Arriving Saigon March 10, and his operation headquarters March 12. On March 15 we received a telegram from the Secretary of Army, signed Major General Lambert, informing us of his death by hostile enemy action.

Exactly 3 weeks to the day and hour my son had been halfway around the world, in combat, murdered, sent home, and buried.

Senator MORSE, until now I, like thousands, have viewed the Vietnam situation in a passive manner and even amusement at the contradictions of Congress and State. One day announcing to the world the situation was well in hand. The next, admitting it is a losing war. But most of all continually stating our boys are there only in an advisory capacity.

Advisory! Then why was my son killed 2 days after arriving at his destination? Why was my son copilot on a rocket-equipped UH-1B helicopter with three other American boys, flying cover for a troop pickup? Can that be advising? These are the questions I want an answer to.

After learning of my son's death over 400 people visited in my home, all asked the same questions. Why? For what? What can be done?

Thousands of Americans are remembering the police action of Korea and seeking answers.

When my grandson grows up and asks, "Why was my father murdered in a place named Vietnam?" How am I going to answer? The only answer I have now is that our gutless politicians haven't the courage to either go on in or get out of a place named Vietnam.

Thank you for listening.

NELLIE PORTER SHANNON.  
Mrs. Leon Shannon, Jr.

Mr. President, that is a hard letter for anyone to answer. I know I did not answer it well. But I did my best. I expressed my honest, sincere beliefs. I wrote:

APRIL 17, 1964.

Mrs. NELLIE P. SHANNON,  
Lynchburg, Va.

DEAR Mrs. SHANNON: Your letter of April 5 has, of course, moved me very deeply.

You may know that for several weeks I have been speaking out against U.S. participation in what I call McNamara's war in South Vietnam. In my judgment, it is inexcusable and unjustified. My speeches show that I completely share the point of view which you have expressed in your letter and by your questions.

I am, of course, being severely criticized in some quarters in and out of the Government for my opposition to American foreign policy in South Vietnam. This policy crosses party lines because now Nixon is advocating that we extend the war into North Vietnam. However, in my judgment, political criticism of those of us who are opposing U.S. participation in the war in South Vietnam is unimportant as long as American boys are dying in South Vietnam without justification in my opinion.

I am enclosing tearsheets from the CONGRESSIONAL RECORD, containing a few of my speeches.

You may be sure that I have made my views in opposition to McNamara's war in South Vietnam known to President Johnson, Secretary Rusk, Secretary McNamara, the Congress, and I think through my speeches, to the public.

I realize that there are no words I can write to you that will give you any consolation or comfort, but I do want you to know that I extend to you my deepest sympathy and assure you that I shall continue to do what I can in an endeavor to change American foreign policy in South Vietnam so that there will be brought to an end at the earliest possible date what I consider to be the unnecessary killing of more American boys.

Yours respectfully,

WAYNE MORSE.

Mr. President, 10 days or more ago I had inserted in the CONGRESSIONAL RECORD some 150 or 200 letters. Some were from parents. Some were from citizens who did not have boys in South Vietnam. Many were from boys in South Vietnam—including a considerable number of officers. They were from all walks of American life. The letters came from every State in the Union.

Next week, I shall insert in the RECORD—and if denied that privilege, I shall read into the RECORD—a couple of hundred additional letters. The people of this country who are writing to protest what I consider to be this inexcusably unjustifiable military action of the United States in South Vietnam, have a right to petition their Government.

When people write letters to a Senator, and the Senator places those letters in the RECORD, or reads them into the

RECORD, the Senator is aiding them in exercising their precious constitutional right of petitioning their Government.

Tonight, I have selected two letters. I did not want a day to go by and thus cause anyone to think that my silence indicated that I was changing my mind in regard to McNamara's war in Vietnam.

I have a letter from a constituent. In this instance, as in connection with most of the letters which I had inserted in the RECORD before, I have deleted the name. But again the letter is available to Senators to read—and the White House, too.

I have deleted certain identifying references in the letter which would enable the military to determine who the husband of this woman is. As I said, when I followed the same course in regard to the letters that I had inserted in the RECORD before, which were received from servicemen, I, too, know the tactics of the Military Establishment which are employed very frequently in respect to servicemen who appeal to the elected representatives of a free people in Congress for a consideration of their problems.

This letter reads as follows:

Re additional troops to Vietnam.  
Hon. WAYNE MORSE,  
U.S. Senator,  
U.S. Senate Building,  
Washington, D.C.

DEAR SENATOR MORSE: I have just finished reading the enclosed article from the Tuesday Salem, Oreg., Capital Journal, and wish to inform you, regarding your question, "Is Secretary of Defense McNamara planning to send additional U.S. troops to South Vietnam?" the answer is "Yes."

My husband, is now undergoing a 5-week guerrilla warfare training period at the Naval Amphibious Base in San Diego. At the end of this 5-week period of training in arms, survival, brainwashing, etc., he will be sent to South Vietnam for 6 months, or longer. His 7-year military obligation would have been completed this year if he returns from Vietnam. His former ship tried to get his transfer canceled as he had only been aboard it exactly 1 year and since he has such a short time left, but they were told "No." His rate as damage control diver are of little value in this new role of killing, as it has been established he will not be diving and his diving pay has been taken away. His group is a crew of 6-8 on a PT boat to go up and down the rivers and coast to shoot up the junks carrying supplies, etc., to the North Vietnam. His call to me last night was regarding his drawing up of his will, since Americans have a \$2,000 price—dead—on their heads, was rather startling to me, at the age of 27, with our 3½-year-old son.

Obviously, these new assignments are anything but voluntary since the chief assigned to my husband's PT boat is 42 years old and was having his retirement papers drawn up when he was told to go. He tried to get his orders canceled having already served in 2 wars, but was told to "be quiet," or his retirement would be "cut." A fine alternative after spending 20 and more years of his life in service for his country.

Thank you, Senator Morse, for taking time to read these true statements from one who knows what is happening.

Sincerely yours,

Next week I shall show that the two letters which I have inserted in the RECORD tonight are but samplings. I say to Senators tonight: "You cannot run away from this policy question. You will have

to stand up and be counted, whether you want to or not, because the people of this country will count you. The people of this country are entitled to a full disclosure of the facts of the U.S. Government's participation in McNamara's war in South Vietnam. The American people are entitled to have you Senators tell them by what international law right we are in there. The American people are entitled to have you Senators tell them what is happening to our signature on the U.S. charter. The American people will ask you Senators to tell them what kind of record the Secretary of State really made in Manila this past week in respect to SEATO."

Mr. President, I stated last night, and I repeat tonight, that the memorandum he sent to the United States was not worth the paper it was written on. I said last night, and I repeat tonight, that it is a misleading document, because there never was brought up officially in that SEATO meeting a proposal to have the signatories to SEATO assume their obligations under the protocol agreement which they signed when the SEATO Treaty was entered into, they assumed a mutuality of obligation in respect to the protocol agreement that brought South Vietnam into being, holding that it was an area of mutual concern and interest.

The Secretary of State and the Department of State are trying to lean on the reed that Diem asked us to come in. First of all, Diem was nothing but a puppet, just as General Khanh is nothing but a puppet of the United States. Being invited by puppets to proceed to shoot and to engage in hostilities does not give us any international law right to be in there or to do so. I am satisfied that I will convince Senators on the international law question when I discuss this subject next week.

The participation of the United States in McNamara's war in South Vietnam spells out an ugly term—"international political expediency." It should have no place in American foreign policy, particularly with the glorious record we have set over the years in standing up against resort to the jungle law of force by way of military action for the settlement of any dispute that threatens the peace of any area of the world, and through that area threatens the peace of the world.

I shall never be able to understand it. I am at a complete loss to understand it. We finally recognized an obligation to go through the United Nations with regard to Cyprus. I said on the floor of the Senate at the time that I was sorry that we let a Communist leader be the first to propose it.

We know that the Communist leader of Russia deals in the stock of trade of expediency whenever, in his opinion, it serves Russia's purposes. We, as a practice, do not. That is why I dislike to see our record so scarred and blemished by the course of action we are following in South Vietnam.

It is evident that the foreign policy of the United States from the very beginning with regard to South Vietnam should have been that we lay before the

United Nations an affirmative proposal for the United Nations to take over the peacekeeping, that the United Nations assume its responsibility of making clear to Russia, Red China, North Vietnam, Laos, and any other country that the responsibility for maintaining the peace is that of the United Nations. We ought to have been strengthening it, rather than circumventing it.

I said last night, and I quickly mention it tonight, that I never expected to live so long as to hear responsible people in the United States talk about U.S. face saving. I thought that was supposed to be an oriental psychological characterization. Since when is American face saving more important than the right? Since when is American face saving more important than saving the lives of American boys?

As the grief-stricken mother of that lieutenant pilot killed in South Vietnam put it so well: "Advisory!"

Why are American troops in South Vietnam? We all know better. I do not like deception and hypocrisy. I do not like to see us pretending. We are in a war in South Vietnam—a shooting war.

Day before yesterday, the Senator from Alaska [Mr. GRUENING] placed in the RECORD figures to show that at the rate we are now going, we can count, at the same tempo, on a least 91 American boys being killed every month in South Vietnam. This is merely a descriptive statistic. It is only based upon a mathematical calculation of what is happening.

When we get a proposal from Nixon to escalate the war, watch out. The real danger is that that 91 a month can quickly have some ciphers added to the first two figures. I believe it is never too late to do what is right. I believe it is never too late to change a wrong policy.

I am aghast also at the arguments that are made to me in the cloakroom and at some of the meetings I have been addressing across the country. I intend to continue to address them, for I shall give two speeches this weekend in this country against the policies of McNamara's war in South Vietnam, and shall offer no apologies to anyone for the speeches. In my judgment, the American people are entitled to a full and frank discussion of the two sides of the issue.

I am aghast when I am told it is too late to change; that we have gone too far. We have surely gone too far; but we could never go too far to change. That is my point. I wanted to say these few words tonight. I say them with a heavy heart, because so far as my administration is concerned, the record is perfectly clear that I agree with it probably 99 percent of the time both on major and minor issues. But I believe our participation in the war in South Vietnam is a colossal historic mistake, and I want to see my administration reappraise it, review it, and consult with our friends.

I should like to see my administration consult with our friends around the world to see what interest and, I hope, support we could get to try to bring an end to McNamara's war by adopting a procedure of taking it to an extraordi-

nary meeting of the United Nations, to see if we cannot have the United Nations recognize that it is a question of peacekeeping in South Vietnam.

As I said last night, I am not an "overnighter." I realize that we cannot draw out and leave a vacuum until the United Nations moves in. I should think it would be appreciated if we made it clear that we will seek to maintain the peace until the United Nations takes jurisdiction. I should think it would be reasonable to ask New Zealand and Australia, two signers of the SEATO Treaty, Pakistan, Thailand, and the Philippines, three more signers of the SEATO Treaty, and Great Britain and France, the other two signers, along with the United States, to agree voluntarily to send in some peacekeeping forces as a temporary gap approach until the United Nations can take the official action which, in my judgment, the United Nations would have to take under the charter.

Once the matter was formally presented to the United Nations, I believe that under the charter the United Nations would have no other course than to proceed to take jurisdiction of South Vietnam, seek to maintain the peace, and join in helping South Vietnam, as I want to help South Vietnam, in the years ahead to develop a system of economic freedom, so that the people eventually can become self-governing and be free of the military Fascist regime which the United States is supporting in South Vietnam by maintaining in power a totalitarian tyrant who provides the people of South Vietnam with no semblance of freedom.

That is why it pains me to hear people in the United States, who do not know the facts, talk now and then about supporting freedom. Does anybody believe we are supporting freedom in South Vietnam? Apparently two vicious totalitarian systems are engaged in a civil war. But so far as human rights are concerned, there are no more human rights under a military dictatorship based upon the philosophy of fascism than there are under the vicious methods of totalitarianism and communism. Human rights exist under none of those systems.

Yes, I want to support freedom; and I believe the best way to build for the day when freedom can come to pass in South Vietnam is to get the United Nations in and the United States out.

I yield the floor.

#### TRANSACTION OF ROUTINE BUSINESS

By unanimous consent, the following routine business was transacted during the session of the Senate today:

#### EXECUTIVE COMMUNICATIONS, ETC.

The ACTING PRESIDENT pro tempore laid before the Senate the following letters, which were referred as indicated:

#### REPORT ON PROPERTY ACQUISITIONS OF EMERGENCY SUPPLIES AND EQUIPMENT

A letter from the Director of Civil Defense, reporting, pursuant to law, on property ac-

quisitions of emergency supplies and equipment, for the quarter ended March 31, 1964; to the Committee on Armed Services.

#### REPORT ON UNNECESSARY INTEREST COSTS INCURRED BECAUSE OF IMPROPER RETENTION OF CERTAIN OVERPAYMENTS

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report on unnecessary interest costs incurred by the Government because of improper retention of overpayments by Burroughs Corp., Detroit, Mich., dated April 1964 (with an accompanying report); to the Committee on Government Operations.

#### PROPOSED AMENDMENT TO CONCESSION CONTRACT WITH S. G. LEOFFLER CO.

A letter from the Assistant Secretary of the Interior, transmitting, pursuant to law, a proposed amendment to the concession contract with the S. G. Leoffler Co., to operate golf courses and provide related facilities and services in the areas administered by the National Capital Region, National Park Service (with accompanying papers); to the Committees on Interior and Insular Affairs.

#### PROPOSED AMENDMENT TO CONCESSION CONTRACT WITHIN CAPE HATTERAS NATIONAL SEASHORE

A letter from the Assistant Secretary of the Interior, transmitting, pursuant to law, a proposed amendment to the concession contract to operate the Oregon Inlet Fishing Center within Cape Hatteras National Seashore (with accompanying papers); to the Committee on Interior and Insular Affairs.

#### REPORT ON TORT CLAIMS PAID BY SMITHSONIAN INSTITUTION

A letter from the Secretary, Smithsonian Institution, Washington, D.C., transmitting, pursuant to law, a report on tort claims paid by that Institution, during the fiscal year 1963 (with an accompanying report); to the Committee on the Judiciary.

#### CONCURRENT RESOLUTION OF MISSISSIPPI LEGISLATURE

The ACTING PRESIDENT pro tempore laid before the Senate a concurrent resolution of the Legislature of the State of Mississippi, which was referred to the Committee on the Judiciary, as follows:

##### HOUSE CONCURRENT RESOLUTION 46

Concurrent resolution memorializing the Congress of the United States to immediately take the necessary steps to give to the citizens of this Nation an opportunity by constitutional amendment to determine whether or not prayer shall be permitted in the public schools; to urge the legislatures of all the States to join in this recommendation to the Congress; and to provide for sending copies hereof to the President of the U.S. Senate, the Speaker of the House of Representatives in Congress, the Members of the Mississippi Congressional Delegation, the attorneys general of each of the States of the Union, and to each of the legislatures of the various States of the Nation

Whereas no civilization, no government and no nation has ever existed, nor could they be possible, without a fundamental and profound recognition of and reverence for some authority, some ideal, some being, superior to the individual which in our national heritage we have expressed as a belief in and dependence upon Almighty God; and

Whereas our national tradition and heritage of public and civic prayer give purpose and meaning to our Union as a nation, without which we could only suffer the anarchy or tyranny of the oppressed peoples in less enlightened parts of the world; and

Whereas education is a worthless, if not evil and dangerous thing, if limited to merely the dissemination of factual information without the expression and understanding of ideas, ideals, theories, customs and beliefs of other men, whether designated as being of a religious nature or by some other appellation; and

Whereas none of the constitutional safeguards of individual rights and civil liberties of the citizens of these United States were designed or intended to prohibit prayer in the schools or any other public place, so long as no citizen is coerced into a participation therein inconsistent with his own beliefs; and

Whereas the Supreme Court of the United States has had occasion, upon June 25, 1962, in its decision rendered in the case of *Engel, et al. v. Vitale, et al.*, No. 468 upon the docket of its 1961 October term, to so construe our Constitution as to prohibit public prayer in public schools; and

Whereas an identical resolution has been passed by the Legislature of the State of Louisiana, and it is the desire and intent of this resolution to join with our sister State in this endeavor: Now, therefore, be it

*Resolved by the House of Representatives of the State of Mississippi (the Senate concurring therein), That the Congress of the United States be and it is memorialized to immediately take the necessary steps to provide the citizens of this great Nation an opportunity, by way of a proposition, to amend the U.S. Constitution to determine whether or not public prayer shall be permitted in the public schools of the several States; be it further*

*Resolved, That the legislature and the attorney general of every State of the Nation are hereby urged to join in this recommendation to the Congress; be it further*

*Resolved, That copies of this resolution shall be officially transmitted to the President of the U.S. Senate, the Speaker of the U.S. House of Representatives, to each member of the Mississippi congressional delegation, to the attorney general of each State in the United States, and to each of the legislatures of the several States of the Union.*

Adopted by the house of representatives, March 26, 1964.

WALTER SILLERS.

Speaker of the house of representatives.

Adopted by the senate, April 8, 1964.

CARROLL MARTIN.

President of the senate.

#### BILLS AND JOINT RESOLUTIONS INTRODUCED

Bills and joint resolutions were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. CLARK:

S. 2745. A bill to save historic buildings, sites, and antiquities, to provide a program of preservation and restoration of works of art owned by the United States and to provide high standards of architectural excellence in design and decoration of Federal public buildings, and for other purposes; to the Committee on Interior and Insular Affairs.

(See the remarks of Mr. CLARK when he introduced the above bill, which appear under a separate heading.)

By Mr. HAYDEN:

S. 2746. A bill to permit the United States to host the 39th World Shooting Championships in 1966; to the Committee on Armed Services.

By Mr. MCGOVERN (for himself and Mr. MUNDT):

S. 2747. A bill to redesignate the Jewel Cave National Monument in the State of South Dakota, to revise the boundary thereof, and

for other purposes; to the Committee on Interior and Insular Affairs.

(See the remarks of Mr. McGOVERN when he introduced the above bill, which appear under a separate heading.)

By Mr. COTTON (for himself and Mr. McINTYRE):

S. 2748. A bill for the relief of Donald Schultz; to the Committee on the Judiciary.

By Mr. MOSS:

S. 2749. A bill providing an equitable basis for the sale to collectors of standard silver dollars now held in the Treasury; to the Committee on Banking and Currency.

By Mr. MAGNUSON:

S.J. Res. 170. Joint resolution regarding Indian fishing rights; and

S.J. Res. 171. Joint resolution regarding Indian fishing rights; to the Committee on Interior and Insular Affairs.

(See the remarks of Mr. MAGNUSON when he introduced the above joint resolutions, which appear under a separate heading.)

#### PRESERVATION OF HISTORIC BUILDINGS, SITES, AND ANTIQUITIES

Mr. CLARK. Mr. President, I introduce, for appropriate reference, a bill to provide a program of preservation and restoration of certain works of art.

The ACTING PRESIDENT pro tempore. The bill will be received and appropriately referred.

The bill (S. 2745) to save historic buildings, sites, and antiquities, to provide a program of preservation and restoration of works of art owned by the United States and to provide high standards of architectural excellence in design and decoration of Federal public buildings, and for other purposes, introduced by Mr. CLARK, was received, read twice by its title, and referred to the Committee on Interior and Insular Affairs.

Mr. CLARK. Mr. President, the title of the bill is "To save historic buildings, sites, and antiquities, to provide a program of preservation and restoration of works of art owned by the United States and to provide high standards of architectural excellence in design and decoration of Federal public buildings, and for other purposes."

The bill is the result of a great deal of study done in my office with various Government departments, the Fine Arts Commission, and the offices of several other Senators, including particularly the Senator from Rhode Island [Mr. PELL], the Senator from New York [Mr. JAVITS] and the Senator from Minnesota [Mr. HUMPHREY].

I believe the bill will make a very real contribution, if it can be enacted, to the cultural development of the buildings and other activities of the Federal Government.

I ask unanimous consent that the bill be held at the desk for 1 week, to afford other Senators an opportunity to join in sponsoring the bill.

The PRESIDING OFFICER. Without objection it is so ordered.

#### JEWEL CAVE NATIONAL PARK

Mr. McGOVERN. Mr. President, on behalf of myself and my colleague, the

senior Senator from South Dakota [Mr. MUNDT], I introduce, for appropriate reference, a bill to authorize the enlargement of Jewel Cave National Monument in western South Dakota and to redesignate it Jewel Cave National Park. It is clearly an outstanding national speleological phenomenon.

On March 12, I announced to the Senate that exploration of this cave in the Black Hills by Herb and Jan Conn indicated that it has a cubic content of at least 1 billion cubic feet and probably a thousand miles of passages.

The cave volume has been estimated by flows of wind in and out of the aperture when the barometer rises and falls.

I have had a very surprising experience since making that announcement. I have discovered that this is a Nation of skeptics and disbelievers. The veracity of my report to the Senate has been questioned by citizens in several parts of the land.

A spelunker in Philadelphia, Pa., wrote me that the existence of more than 16 miles of passages could not be accurate as only 16 miles was indicated on official maps of Jewel Cave.

According to the same logic, the world is flat, because the official maps showed it to be before Columbus went on his therefore obviously foolhardy voyage in 1492.

A Mr. John Hall, Jr., in Dallas, Tex., has written me, and I quote:

This story about the cave with 1,000 miles of passages is the most ridiculous thing I ever read. I've always felt politicians as a group are intrinsically unintelligent, but this takes the cake. You ought to issue a retraction.

It is a little difficult for me to understand a Texan having trouble with the estimates on Jewel Cave. Considering where he is from, I can only conclude that he regards the statement as ridiculous because the claims are so small.

Unfortunately, I am unable to correspond with Mr. Hall, because he gave me no street address in Dallas.

I was not at all surprised to hear from Mr. Olin Rudolph, president of the Carlsbad, N. Mex., Chamber of Commerce. On March 16 he wired me:

Greatly unimpressed by your claim of huge cave in South Dakota. Similar claims made in past but all such caves haven't yet equaled Carlsbad Caverns National Park Pheasant hunters from here have been visiting South Dakota for years and report finding nothing larger than gopher holes. Gust of wind you report probably hot air from enthusiastic South Dakotans.

On the following day, I replied to Mr. Rudolph:

Your jealous telegram re South Dakota's greatest of all caves only proves you have bats in your cavities. Sorry all States can't be lands of infinite variety like ours. Hope New Mexicans will continue to come to South Dakota to hunt pheasants, view Black Hills, Badlands, world's greatest sculpture at Mount Rushmore, Great Lakes of the Missouri, world's largest cave and myriad other

attractions and to relieve their boredom with bats and saltcedars.

Sympathetically yours,

GEORGE McGOVERN.

In all seriousness, Mr. President, the discoveries at Jewel Cave make it clear that it is a speleological wonderland. I ask unanimous consent to have inserted in the RECORD an article from the Rapid City, S. Dak., Daily Journal on Sunday, March 22 by Mr. Don Hipschman, of the South Dakota Department of Highways, giving further details of the explorations, size and telling of the bizarre and heretofore unknown formations which have been found in the cave.

We hope to be able to settle the matter of the size of the cave beyond controversy within the next few weeks. Federal agencies are making available the necessary scientific equipment to record barometric pressures, wind velocities and other data necessary to make an accurate calculation of the cubic content. The fact is that in my earlier announcement I used the minimum estimated size. The preliminary calculations have indicated a cavern of 1 to 3 billion cubic feet content. By the time the bill I have just introduced can be brought to a hearing, I am sure we will have irrefutable proof of the size of the cave.

Exploration of the cave has been suspended because of the distances from the portal which are now involved in going any farther. The Park Service hopes to develop a new entrance, which will provide public access to some of the newly discovered rooms in the cave and provide a new base for further exploration of the seemingly endless passageways.

I regret that the CONGRESSIONAL RECORD does not print pictures. The article I have inserted in the RECORD includes photos of "Penn Station," one of the rooms in the cave, and of a hollow stalagmite, one of the several unique formations discovered in the new areas which were heretofore unknown.

The ACTING PRESIDENT pro tempore. The bill will be received and appropriately referred; and, without objection, the article will be printed in the RECORD.

The bill (S. 2747) to redesignate the Jewel Cave National Monument in the State of South Dakota, to revise the boundary thereof, and for other purposes, introduced by Mr. McGOVERN (for himself and Mr. MUNDT), was received, read twice by its title, and referred to the Committee on Interior and Insular Affairs.

The article presented by Mr. McGOVERN is as follows:

[From the Rapid City (S. Dak.) Daily Journal, Mar. 22, 1964]

#### BIGGEST CAVE?

(By Hon. Don Hipschman, South Dakota Department of Highways)

A cave in South Dakota's Black Hills that a few years ago was simply a rather small and not-too-interesting hole in the ground is turning out to be a significant geologic find.

It's also becoming something of a never-ending odyssey for the husband-and-wife

spelunking team of Herb and Jan Conn of Custer who have done most of the peril-ridden explorations.

The cave is Jewel Cave, part of the 1,274-acre Jewel Cave National Monument in the rugged Hell's Canyon area in the southwestern part of the Black Hills.

The Conns' explorations, which began in 1959, have found four formations which are unique in the United States, and which may be unique in the world.

Plus they have mapped 13½ miles of new passages and have uncovered leads to others that will total hundreds of miles underground and may well be the largest cave on earth.

The Conns make their estimates of size based on the wind flow in and out of Jewel Cave.

When the barometer is rising, wind rushes into the Jewel labyrinth, and when it falls, the wind flows out. Measuring the aperture of the cave, the speed of the wind, and the length of time it moves in one direction or another, makes it possible to estimate cave volume.

Evidence gathered this way is not conclusive, and no real measure of the miles inside Jewel can be done until the explorations are finally complete.

Wind has moved out of Jewel at high velocity for as much as 3 days on end, though, and from this, the Conns have estimated the cave's total volume at one billion cubic feet of space, which would mean nearly 1,000 miles of passage.

The figures on volume are so staggering that many cave experts discount them at this stage as far too enthusiastic. They say Jewel may fall far short of that much space, but they admit its size is "tremendous, simply tremendous," and they say it with awe.

Jewel is an incredible cave, though, from what the Conns have found thus far. Among the four new formations are bizarre hollow stalagmites, gorgeously beautiful scintillites, hydromagnesite "balloons" which even Walt Disney would hesitate to put in one of his fantasy movies, and stalactite-and-flowstone combinations growing on crystal-covered walls.

With only a small fraction of Jewel's total underground wilderness explored in the 13½ miles of passage mapped to date, chances are good other unique formations will be found.

#### EXPLORATION BANNED

At the moment, though, all explorations have been banned by direct order of the National Park Service's Washington headquarters.

The cave is strictly off limits to everybody—string-pullers, speleological authorities, VIP's, and brass of any kind. Even the Conns are included in this flat, though they continue to work in the cave marking routes they have located so far.

The reason is the extreme danger of the cave.

It wanders in a three-dimensional maze over four main levels, and is boobytrapped with tricky areas such as the "Trap Door" which Nature seems to have designed to protect the cave from intruders.

The Conns have had to travel long passages pinched down to a mere hand's span, and say that one can get hopelessly lost in a matter of moments. From the cave's only known entrance to the farthestmost point of the explorations, the Conns say there are more than 9,000 combinations of routes. And nearly all these routes branch off into areas no one has ever been in.

Even National Park Service rangers have been barred from probing the cave. National Park Service authorities say that any injury incapacitating a person—even as slight as a sprained arm or leg—could be fatal because

of the extreme difficulty of sending in rescue teams.

The best any rescuers could do—provided they could even locate the victim—would be to shoot him full of morphine and drag him out, perhaps breaking bones on the way out, according to Jess Lombard, superintendent of Wind Cave National Park at Hot Springs who also has jurisdiction over Jewel Cave, some 35 miles from his headquarters.

#### APPROPRIATION

After a new entrance is cut from the surface into the farthestmost explored areas, explorations will be resumed, and tours developed through some of the exotic new rooms with the new formations and cathedral-like dimensions, but until then nobody—but nobody—gets into Jewel's new areas.

How soon the new entrance will be cut depends on congressional appropriations for the work. Senator KARL MUNDT has requested \$255,000 to develop the cave. Senator GEORGE MCGOVERN plans a bill to change the designation from a national monument to a national park.

The geologic characteristics of the Black Hills' area point to vastness yet untouched inside Jewel. Indeed, the cave may escape South Dakota and run well into Wyoming inside a limestone shelf that encompasses the dome-shaped granite upthrust of the Black Hills like a necklace. It may also connect to Wind Cave.

There are dozens of caves in the Black Hills—Wind, Rushmore, Crystal, Wonderland, Sitting Bull, Bethlehem, Wildcat, Stagebarn, etc.—and Lombard thinks there is a possibility they were all joined before water cutting valleys separated them.

Jewel Cave was first discovered by gold prospectors in 1900, and turned over to the National Park Service as a national monument area in 1933.

With Wind Cave National Park nearby and much more developed, the National Park Service used Jewel Cave for "primitive" tours that covered about 900 feet and lasted about an hour and 15 minutes.

In 1958 and 1959, the underground boundaries of Jewel began to be extended when a number of rangers made new surveys.

#### CONNS' INTEREST

Herb and Jan Conn became interested when one of their ranger friends invited them on some of the explorations. Herb holds a degree in engineering from the University of Colorado, and Jan is a talented composer and musician. Both are mountain-climbing enthusiasts, which brought them to the Black Hills originally.

As they worked with the rangers in the earlier explorations, they became "hooked" by the cave and the constant satisfaction of discovery.

The Conns' wry humor is marked in names they've given the rooms and passages—Sun Burn Haven, Eerie Boulevard, the Squeeze Room, Long Winded Passage, Thin Man's Misery, the Einstein Tube (which goes through a visible floor level to one unseen, or into the "fourth dimension"), Treasure Aisle, etc.

Some of the names follow this close description, such as the Snow Bowl which is vivid with aragonite frostwork so delicately hung from the walls and ceiling that even the slight heat of the carbide lamps causes it to shower to the floor in deep layers.

Some are a bit more esoteric, such as the Sewing Room, which boasts gypsum crystal needles in huge clumps, with some individual needles two feet long.

Penn Station, Carnegie Hall, King Kong's Cage, the Hub, Shady Acres, and the Hippodrome are, of course, the large rooms. These

have some very respectable dimensions. The Hub is over 250 feet long and more than 150 feet wide, and its "spokes" radiate into a series of passages.

#### UNIQUE FORMATIONS

The large rooms in Jewel Cave found so far are not nearly as large as some of the enormous "reefed arch" rooms of caves in the southwestern United States, though.

What makes Jewel unique is its formations (and perhaps its volume if estimates prove out in exploration).

The "pseudomites" as the Conns call them are a case in point.

In a side passage off King Kong's Cage on March 1, 1963, the Conns found a long row of strange and quite large stalagmites, covered with a knobby calcite "popcorn," and standing 10 to 12 feet high in a rough line.

These had large fluted holes through them, open at the top, with some of the holes extending as much as 18½ feet into the floor below.

The National Speleological Society said it had never had any such formations reported before.

No one has any positive idea of how they happened to be there, except they seem to have been deposited on a vertical column of empty air.

Herb speculates that dripping water, if not already saturated with dissolved material, can dissolve a hole in limestone. If it is saturated, it can deposit the material and build up a stalagmite.

"In this case, both processes seem to have gone on at the same time, the hole getting deeper, and the stalagmite getting higher," he says.

Jan named them "pseudomites" because, as she says, "They're not really stalagmites—a real stalagmite is usually formed from water dripping off a stalactite, and there aren't any stalactites above these."

The National Park Service dubbed them "logomites" because of their resemblance to a hollow log.

The scintillites were the first unusual formation the Conns discovered, those on April 14, 1962. A whole room of a deep red color was found. The scintillites are groups of red helictites covered with a sparkling layer of tiny quartz crystals. They are unique in the United States, and may be unique in the world.

In July 1962, the Conns made another find—a wet room beneath a stream bed was completely covered with hundreds of silvery hydromagnesite balloons. "It looked as if somebody had plastered the walls with bubble gum," Jan said.

The balloons have a shell only about a thousandth of an inch thick, and resemble either a balloon or cocoon. Even stranger than their weird appearance is that while most of them appear to be inflated, some have collapsed, as if a gas had escaped from them. Herb speculates there may be some gas-generating bacteria connected with the balloons. These, too, had never been reported before to the National Speleological Society.

Stalactites, flowstone, and crystal-covered walls are common in many caves, but the combination of all together is also unique, and occurs several places through Jewel Cave.

These discoveries spurred the Conns on. Their work was both hazardous in the extreme and exhausting. Going by the quickest route to the farthestmost point of their explorations means a 5-hour trip. Add to that 10 hours' work for fruitful mapping and new explorations, and the return trip, and you have a 20-hour test of human fiber. And the Conns have made more than 250 such trips.

The ever-new discovery has also been a source of frustration. Each trip to a new area revealed new leads. Because of time and distance, they have had to leave literally hundreds of these unexplored. They found that the more they knew about the cave, the more there was to know.

#### MEAGER FUNDS

As the cave began to unravel before their probing, the National Park Service made its meager research funds available to the Conns to survey and map what they found, but in 4 years, this amounted to less than \$2,000, or about 40 cents an hour apiece—for incredibly hard, dangerous, and demanding work inside the cave. They estimate they have spent an equal amount of time in work above ground, transcribing notes, drawing maps, and recording other cave data.

No more research funds are available until the ban on explorations is lifted, but the Conns are eager to continue in the cave as long as they can because of the bone-deep excitement of the work they are doing.

Jan, in speaking of their work, says Jewel is more than "a pair of grungy spelunkers" can ever explore completely, and is hopeful of enlisting full-scale expeditions to carry the work forward.

What a large assault by a corps of professional geologists and spelunkers will force Jewel to reveal is a matter of speculation. What has been found so far makes Jewel one of the most exciting and beautiful caves in America, and if any cave can outdo superlatives, Jewel seems the most likely candidate.

#### INDIAN FISHERIES

Mr. MAGNUSON. Mr. President, I introduce, for appropriate reference, a joint resolution designed to establish that State statutes, rules, and regulations relating to hunting and fishing shall be presumed to be necessary for conservation in certain areas. This would authorize State regulation of the time and manner of fishing outside an Indian reservation when such regulations are for the purpose of conservation and are equally applicable to all persons.

I also introduce for appropriate reference a joint resolution on the same subject prepared at the request of my staff after consultation with conservationists and sports fishermen. This second approach provides for the acquisition by the Secretary of the Interior of the Indian treaty rights to fish at all usual and accustomed places in common with other citizens. It is a different approach from the first, and I am of the opinion that it will be advantageous to the committee to have both resolutions before it during the consideration of this fisheries problem. I also asked the Department of the Interior to prepare an estimate and I quote from their reply:

We have been unable to place a dollar value on the Indian fishery since this includes commercial as well as subsistence fishing. It also includes Indian fishing on and off the reservation. We are, however, enclosing a table giving some information on the size of the catch for certain species for certain years, and the prices in 1962. I might also call your attention to the payment by the Corps of Engineers of \$26,880,-

395.32 for the loss of Indian fishery rights caused by the construction of the Dallas Dam.

I ask unanimous consent that the full text of the two resolutions, and a chart showing the Indian fishery statistics for the State of Washington be printed at this point in the RECORD. I also ask unanimous consent that a communication from the office of the attorney general of the State of Washington dated October 16, 1963, and a statement from the Washington State Department of Fisheries dated October 22, 1963, be printed in the RECORD.

The ACTING PRESIDENT pro tempore. The joint resolutions will be received and appropriately referred; and, without objection, the joint resolutions, chart, communication, and statement will be printed in the RECORD.

The joint resolutions, introduced by Mr. MAGNUSON, were received, read twice by their titles, referred to the Committee on Interior and Insular Affairs, and ordered to be printed in the RECORD, as follow:

#### S. J. RES. 170

##### Joint resolution regarding Indian fishing rights

Whereas article III of the treaty of June 9, 1855, with the Yakima Nation of Indians (12 Stat. 951) provides that "The right of taking fish at all usual and accustomed places, in common with citizens of the Territory [is secured to said Confederated Tribes and Bands of Indians]"; and

Whereas article III of the Medicine Creek Treaty of 1855 (10 Stat. 1132) provides that "The right of taking fish, at all usual and accustomed grounds and stations, is further secured to said Indians, in common with all citizens of the Territory"; and

Whereas article V of the Treaty of Point Elliott of 1855 (12 Stat. 927) provides that "The right of taking fish at usual and accustomed grounds and stations is further secured to said Indians in common with all citizens of the Territory"; and

Whereas similar language is contained in other Indian treaties; and

Whereas the United States Supreme Court has said that while such treaty language "leaves the State with power to impose on Indians, equally with others, such restrictions of a purely regulatory nature concerning the time and manner of fishing outside the reservation as are necessary for the conservation of fish, it forecloses the State from charging the Indians a fee of the kind in question here" (Tulee against Washington, 315 U.S. 681 (1942)); and

Whereas the United States Supreme Court has recently cited with approval its Tulee decision as a holding that off-reservation fishing rights reserved by treaty are subject to State regulation (Village of Kake and others against Egan, docket numbered 3, October term (1961)) and further litigation on the subject should not be necessary: Therefore be it

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That in accordance with and in furtherance of the purposes of any treaty with American Indians that secures to them a right to take fish at all usual and accustomed places, in common with other citizens, the States involved are authorized to enact and to enforce laws of a purely regulatory nature concerning the time and manner of fishing outside an Indian*

reservation that are for the purpose of conservation of fish, and that are equally applicable to Indians and all other citizens without distinction. State legislation enacted pursuant to this law is hereby declared to be in furtherance of and not in derogation of the treaties involved.

#### S. J. RES. 171

##### Joint resolution regarding Indian fishing rights

Whereas article III of the treaty of June 9, 1855, with the Yakima Nation of Indians (12 Stat. 951) provides that "the right of taking fish at all usual and accustomed places, in common with citizens of the Territory" is secured to said Indians; and

Whereas article III of the Medicine Creek Treaty of 1854 (10 Stat. 1132) provides that "The right of taking fish, at all usual and accustomed grounds and stations, is further secured to said Indians, in common with all citizens of the Territory"; and

Whereas article V of the Treaty of Point Elliott of 1855 (12 Stat. 927) provides that "That right of taking fish at usual and accustomed grounds and stations is further secured to said Indians in common with all citizens of the Territory"; and

Whereas similar language is contained in other Indian treaties; and

Whereas the United States Supreme Court has said that while such treaty language "leaves the State with power to impose on Indians, equally with others, such restrictions of a purely regulatory nature concerning the time and manner of fishing outside the reservation as are necessary for the conservation of fish, it forecloses the State from charging the Indians a fee of the kind in question here" (Tulee against Washington, 315 U.S. 681 (1942)); and

Whereas there has been extended litigation regarding the scope of, and the limitations on, the States' authority to regulate the treaty right in the absence of congressional guidelines, the most recent cases being *Melson against Confederated Tribes of the Umatilla Indian Reservation*, 314 F. (2) 170 (1963) certiorari denied, 375 U.S. 829 (1963), and *Washington against McCoy*, 387 Pac. 2d 942 (1963), petition for writ of certiorari pending, and such litigation has not resolved the issues; and

Whereas Congress could by legislation resolve the issues either (1) by prescribing the kind of regulation that may be imposed on the exercise of these treaty rights in order to conserve, protect, and develop the fishery resource, or (2) by providing for the relinquishment and extinguishment of these treaty rights by purchase and the payment of just compensation therefor; and

Whereas it is the desire of Congress to provide for the relinquishment and extinguishment of these treaty rights by acquisition and the payment of just compensation therefor: Therefore, be it

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior is authorized to purchase from any Indian tribe, band, or group that is entitled to exercise a right secured under any treaty to take fish at all usual and accustomed places, in common with other citizens, a relinquishment and extinguishment of such right, or to acquire such right by condemnation.*

Sec. 2. In purchasing or acquiring a treaty right under the first section of this joint resolution, the value of such right, for the purpose of determining just compensation to the Indian tribe, band, or group, shall be the

current average annual market value of the fishery resources taken under such right by such Indian tribe, band, or group multiplied by twenty-five. Such current average annual market value shall be determined from the three most recent consecutive calendar years

for which satisfactory data is available to the Secretary of the Interior.

The chart, communication, and statement presented by Mr. MAGNUSON are as follows:

*Indian fishery statistics in the State of Washington*

Species	Average annual catch (number of fish), 1958-62	Average weight per fish (pounds)	Average annual total weight (pounds)	Price per pound, 1962	Total average annual value
Chinook <sup>1</sup> .....	52,403	16	838,448	\$0.50	\$419,224.00
Chum.....	65,692	8	525,536	.18	94,596.48
Pink.....	55,537	5	277,935	.22	61,145.70
Silver.....	105,086	8	840,688	.30	252,206.40
Sockeye.....	36,219	6	217,314	.42	91,271.88
Total salmon.....	314,987		2,699,921		918,444.46

<sup>1</sup> Includes chinook reported from the Columbia River, from Bonneville to the Dalles Dam, by several tribes; and including both spring and fall runs.

NOTE.—The above data are taken from the annual report of the Washington Department of Fisheries for 1962 and supplemented from other sources.

STATE OF WASHINGTON,  
DEPARTMENT OF FISHERIES,  
Olympia, Wash., October 22, 1963.

HON. WARREN G. MAGNUSON,  
U.S. Senate,  
Old Senate Office Building,  
Washington, D.C.

DEAR SENATOR MAGNUSON: Basically, the State is not quarreling with reservation fisheries at this time, although their control and integration with the State's regulation would greatly enhance the fisheries resource for the Indians as well as the rest of our citizens.

Our most difficult and rapidly growing problem at this time is the "off-reservation" fisheries being pursued by the Indians. Those fisheries in this category that have caused the most attention in recent months and that have caused near violence in some cases include the recent attempt on the Green River by the Muckleshoot Indians. This fishery has been temporarily halted by injunctive action. I can only hope at this time for permanent restraint. The Puyallup fishery is a second example of the large expansion of an Indian fishery with no restraints. This fishery started in 1953 and has now virtually destroyed the Puyallup runs. As a matter of fact, this fishery was instrumental in causing the Muckleshoots to move to the Green, since the Stuck River, tributary to the Puyallup, is the historic fishery for the Muckleshoots. Single season catches in the Puyallup Indian fishery have included 25,000 silver salmon; 10,000 chinook salmon; and several hundred chum salmon. The five or six Indians operating this fishery have received as high as \$75,000 to \$100,000 in a single year for their efforts.

Another recent rapid expansion of an Indian fishery has taken place on the Columbia River above Bonneville Dam where no commercial fishery is allowed. This Indian fishery started several years ago and conducted largely by Yakimas is still growing rapidly. During one recent aerial survey, 121 gill nets and set nets were observed above Bonneville. Their catch this year was over 20,000 chinook salmon. The tribe has made some attempt at regulation but have no scientific basis and are tailored largely to the convenience of the Indian fishermen. This fishery offsets any gains made by regulation in the lower river for spawning purposes.

The Kllickitat River is another recent example of the virtual destruction of a fish run. The Federal Government has invested over \$2 million in this river in a salmon hatchery and an elaborate fishway system. This year the Indians were fishing at the fishway entrances and on nearly every rock on

down to its confluence with the Columbia River. Our hatchery was only able to get several hundred fish this year while the Indians caught and sold thousands.

The Skagit River is seeing the same thing. In addition to an intense gill net and trap fishery near the mouth by the Swinomish Indians, the so-called Upper Skagit Tribe is currently fishing the spawning grounds hard with gill nets and set nets. It is also their practice to stretch nets from bank to bank in the tributaries and then drive the fish from their spawning nests into the net with stones and clubs. Aerial surveys of the Skagit this year revealed 800 to 900 salmon nests in an index area where 5,000 nests are normally seen.

We feel that only Congress can clarify the rights of the Indians in these areas of the reservations. It is our feeling that the treaties intended them to fish under the white man's control when in these areas. It is certain that if this control is not achieved soon, we will not have to be worried about negotiating with the Japanese and Russians over high seas fisheries for salmon. They will have been destroyed on the spawning grounds at home by uncontrolled Indian fisheries.

I trust this information will be of use to you and urgently hope that Congress will enact this legislation which is so desperately needed to enable our efforts at salmon conservation to succeed.

Very truly yours,

GEORGE C. STARLUND,  
Director.

STATE OF WASHINGTON,  
Olympia, Wash., October 16, 1963.

HON. WARREN G. MAGNUSON,  
U.S. Senate,  
Old Senate Office Building,  
Washington, D.C.

DEAR SENATOR: I am enclosing a draft of a proposed bill for congressional action which the Department of Fisheries and the Department of Game of the State of Washington feel would resolve the present Indian fishery problems. As you are aware, the Indian fishery has expanded greatly in recent times due to certain court decisions and is reaching such proportions as to constitute a serious threat to the anadromous fishery resource of the Pacific Northwest. The legal history giving rise to this situation may be briefly summarized.

Until 1942, we had experienced no problem in applying State conservation measures to

Indian citizens of the United States. In that year, the U.S. Supreme Court rendered its decision in a case entitled *Tulee v. Washington*, 315 U.S. 681. In the Court's own language, the treaty provisions guaranteeing the Indian tribes the right to fish at their usual and accustomed grounds in common with the whites was subject to the following interpretation:

"We think the States' construction of the treaty is too narrow and the appellant's too broad; that while the treaty leaves the State with power to impose on Indians equally with others such restrictions of a purely regulatory nature concerning the time and manner of fishing outside the reservation as are necessary for the conservation of fish, it foreclosed the State from charging the Indians a fee of the kind in question here."

The *Tulee* case, supra, was subsequently cited by the U.S. Supreme Court with approval in *Village of Kake v. Egan*, 369 U.S. 60 (1962).

From the foregoing decisions, it is clear that the State does have the power to apply its fishery conservation laws to Indians fishing at their "usual and accustomed" grounds "where necessary for conservation."

Although the State does have such power, the problem of when such conservation laws or regulations may be applied remains unresolved due to further interpretation of the *Tulee* language by other Federal courts.

Unfortunately, the emphasized language of the *Tulee* case, supra, has subsequently been interpreted by other Federal courts to mean that the State must assume the burden of proving a conservation law it attempts to apply to a treaty Indian fishing at his "usual and accustomed" grounds is "necessary for conservation."

In *Makah Indian Tribe v. Schoettler*, 192 F.2d 224 (9th Cir. 1951) the court issued an injunction prohibiting the enforcement of Washington fishing regulations prohibiting Indians fishing at their usual and accustomed grounds on the Hoko River. The court held that the State must assume the burden of proving that the regulation in question (the regulation prohibited all fishing in the river except by hook and line) was "necessary for conservation" beyond a reasonable doubt and further held that the State had not sustained its burden of proof.

*Maison v. Confederated Tribes of Umatilla Reservation*, F.2d (9th Cir. 1963) held that regulations restricting fishing in off-reservation tributaries of the Columbia and Snake Rivers could not be applied to them because of the usual and accustomed ground treaty provisions. In this case the State contended, through its expert witnesses, that the high value of brood stock necessary to preserve the runs of fish coupled with the extreme vulnerability of the fish on the spawning beds justified closing these streams during the spawning seasons. It was argued that the area closure regulation in question was essential to the preservation and conservation of the resource. The court rejected these contentions, holding that the State had failed to prove the regulation was necessary for conservation and also indispensable for the preservation of fishery resources. The court stated:

"Therefore, while a restriction of the fishing activities of the plaintiffs must be indispensable, as required by the treaty (*Tulee v. Washington*, supra), a restriction of the fishing activities of other citizens of a State is valid if merely reasonable, as required by the 14th amendment to the U.S. Constitution."

This case is presently on appeal to the U.S. Supreme Court.

The *Makah* case, supra, struck down the attempted application of a gear limitation regulation and the *Umatilla* case, supra,

struck down the attempted application of an area limitation regulation.

The net import of these two cases is that the State not only must sustain the burden of proving its fish conservation laws and regulations are "necessary for conservation" in a criminal prosecution, but also must prove beyond a reasonable doubt that there is no alternative method that can save the resource from extinction. Conceivably this would mean that non-Indians could be excluded from the fishery as an "alternate method of regulation." The State also must prove that the application of its laws is "indispensable" to the preservation of the fishery resource. Presumably, if a few fish remain, the "indispensability" test could not be met.

What has happened here, in essence, is that the burden of proof has been shifted from a violator of valid State laws to the State to prove necessity for conservation. The converse of this proposition is that there is a presumption of unconstitutionality of all State conservation laws as they are applied to treaty Indians at their usual and accustomed grounds. Because of the extreme need to retain control over all fishing efforts on the anadromous fishery, both the department of fisheries and the department of game in the State of Washington strongly urge that you and your colleagues give serious consideration to the enclosed proposed bill which would accomplish a shifting of the burden of proof in these Indian fishery cases so that the State would, once again, be able to apply its laws equally to all of its citizens whether Indian or non-Indian outside a reservation.

Any comments or suggestions which you may have concerning the enclosed bill would be greatly appreciated. Of course, any further information or assistance from either of the departments will be immediately forthcoming upon your request.

Very truly yours,

JOHN J. O'CONNELL,  
Attorney General.

Mr. MAGNUSON. Mr. President, I wish to comment briefly on the treaties between the Federal Government and the Indian tribes, particularly as they apply to my State. They are the same type treaties. Most of them were entered into with the tribe over 100 years ago, from 1850 to 1858. Of course, the treaties are still on the books. They must be respected. They are treaties, but the conditions have changed a great deal. This is similar to discrimination in reverse. There are very few Indians who are despoiling some of the very fine salmon and steelhead trout streams in the area. We are merely suggesting to them that they practice conservation, and that they be treated like everyone else, and that we be treated like they are being treated, consistent with the treaties.

Many treaties between the Federal Government and the Indian tribes, and this is especially true in the State of Washington, contain the following language:

The right of taking fish, at all usual and accustomed grounds and stations, is further secured to said Indians, in common with all citizens of the State or territory.

This right of the Indians—the right of taking fish at all usual and accustomed grounds—was purchased by them very dearly, through giving up two-thirds of the State of Washington. They ceded to the United States a vast territory which has contributed much to the economy of our country.

These treaties were entered into with the Indian tribes over 100 years ago, from 1850 to 1858. These treaties are still on the books today. They are the supreme law of the land and they must be respected and preserved.

These treaties have the same weight and effect as does any other treaty that we have ever entered into.

The only concession reserved to the Indians was the right of taking fish at all usual and accustomed grounds and if they are to be deprived of any part of this right they should be properly compensated.

This is an "aboriginal right" that they have possessed since time immemorial and this right is just as compensable as any real right that any of us have ever owned.

I have a great appreciation of the good citizenship of the Indians of my State and I take no issue here with treaty rights to fish on Indian reservations and accustomed fishing grounds. I believe these treaties are a part of our heritage—but solely, in support of fish conservation. I believe that these treaties should fit present day conditions in the overall consideration for maintaining our fishery resources.

American historians agree that so bountiful were fisheries resources in our early history that settlers could not conceive that the supply would ever be seriously impaired. Unfortunately, however, the presumption was not well founded. Nature could not compensate for the exploitive commercial and personal uses made by man of the fish. Natural breeding and spawning areas have been destroyed as our country has been settled more densely. Industrialization has resulted in waterway pollution. Particularly damaging to migratory fish life has been the construction of dams and water diversions for power and irrigation purposes.

As our fish runs began to decline, as the results of over fishing became evident, it became necessary to limit catches, to limit days of fishing—and all of these practices have been observed and respected by all citizens—with the exception of a small segment of our Indian fishermen.

With conservation and management of our great fish wealth becoming more and more important to guarantee its survival, I believe that it is absolutely necessary that the Indian fisheries be managed as a part of the total management picture and that in contrast to the fears of some persons, this management will benefit the Indians as well as their neighbors.

An immediate action plan to modify the effects of the unregulated Indian fishery is imperative. That change is necessary is indisputable—and there are many Indians who are in agreement with our conservation agencies.

I believe that the two Senate joint resolutions that I have today submitted for appropriate reference will provide a starting point for consideration of a workable and fair solution to this most vexatious question.

In my mind there is no question but that the Indian has historic special fishing rights and that these rights must be

respected. However, I believe that these rights must be reviewed in the light of conservation today, so that the few—fewer than 1½ percent of the Indians—who are under neither tribal nor State controls do not destroy these fisheries for themselves, their fellow tribesmen and everyone else.

#### AMENDMENT OF ATOMIC ENERGY ACT OF 1954—ADDITIONAL CO-SPONSORS OF BILL

Under authority of the orders of the Senate of April 9 and 16, 1964, the names of Mr. BEALL, Mr. BYRD of West Virginia, Mr. COOPER, Mr. HARTKE, Mr. LAUSCHE, Mr. MCGEE, Mr. METCALF, Mr. MORTON, and Mr. RANDOLPH were added as additional cosponsors of the bill (S. 2720) to amend the Atomic Energy Act of 1954, as amended, to eliminate further waiver of fuel use charges and to establish a minimum charge for leasing atomic fuel to producers of power for sale, introduced by Mr. Moss on April 9, 1964.

#### ADDRESSES, EDITORIALS, ARTICLES, ETC., PRINTED IN THE RECORD

On request, and by unanimous consent, addresses, editorials, articles, etc., were ordered to be printed in the RECORD, as follows:

By Mr. MOSS:

Statement by him of his income and financial holdings.

Article entitled "Quality Stabilization," published in the Wallpaper & Wallcoverings magazine.

#### SIXTEENTH ANNIVERSARY OF ISRAEL

Mr. HART. Mr. President, the people of Israel are celebrating their 16th birthday today—another milestone in human advancement.

Israel is still a young state. Its days are filled with action and progress. Its doors are open to Jewish refugees escaping from discrimination and persecution. And its doors are also open so that Israel envoys may go out to carry their nation's message to peoples all over the world. This is the message that peoples can advance to a higher standard of living, through cooperation and in freedom.

We like to believe that each year that Israel lives free from hostilities on her borders brings Israel closer to peace. But the celebration of Israel's birthday today is clouded by the realization that, 16 years after her creation, Israel's neighbors still refuse to recognize her, still threaten her with destruction. Indeed, in the last few months the dangers seem to have increased. Once again, Arab leaders have reaffirmed their determination to liquidate Israel and to continue to acquire weapons to make that possible. These threats cannot go unnoticed. Silence is not the answer to the threat of aggression.

Let us hope that the Arabs will reconsider and that some day soon they may come to realize that cooperation with Is-

rael is of the highest interest to all the peoples in the Middle East. Let us help them to that realization by making it clear that the United States, both by guarantee and aid, is determined to reinforce Israel's security. At that time, as we aid all the peoples of the Middle East, let us consistently advocate negotiations looking toward a settlement. Peace must come and we must do all that we can to bring it about.

**ORDER FOR RECESSES EVERY DAY NEXT WEEK UNTIL 10 A.M. EACH DAY**

Mr. HUMPHREY. Mr. President, I ask unanimous consent that when the Senate concludes its business on Saturday it stand in recess until 10 a.m. Monday, and that when it concludes its business each day next week it recess and that it meet each day at 10 a.m.

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

**RECESS TO 10 A.M. TOMORROW**

Mr. HART. Mr. President, in accordance with the order previously entered, I move that the Senate stand in recess until 10 a.m. tomorrow.

The motion was agreed to; and (at 10 o'clock and 21 minutes p.m.) the Senate, under the order previously entered, took a recess until tomorrow, Saturday, April 18, 1964, at 10 o'clock a.m.

## EXTENSIONS OF REMARKS

### Statement by Senator Moss of His Income and Financial Holdings

#### EXTENSION OF REMARKS

OF

### HON. FRANK E. MOSS

OF UTAH

IN THE SENATE OF THE UNITED STATES

Friday, April 17, 1964

Mr. MOSS. Mr. President, in the past few years, several Members of the Senate have voluntarily made public a statement of income and financial holdings. I now ask unanimous consent that such a statement on my part be printed in the RECORD.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

#### STATEMENT OF SENATOR MOSS

Like Caesar's wife, a U.S. Senator should be above suspicion. I have, therefore, filed with the Senate a statement of my financial income and holdings and of my business connections.

I receive an annual salary of \$22,500 from the U.S. Senate. I earn \$788.66 annually in reserve training pay from the U.S. Air Force.

Since coming to the Senate, I have earned approximately \$1,000 as honorariums for speeches.

I receive no income from the practice of law or from any business. Upon my election to the Senate, I withdrew from the law practice entirely and since then have received no income of any kind—present or future—from the law practice. My name remains on the door of my old law firm, but I have had no connection with or knowledge of the firm's business since 1958. I resigned from the boards of two corporations and sold my stock when elected to the Senate. I now have no connection with or income from any business corporation, partnership, or proprietorship.

My wife and I own an equity of about \$4,000 in the home in which we live in Maryland. I also own an unimproved lot in Holladay, Utah, having a value of less than \$500.

Besides our household and personal effects, we own a 1959 Rambler American and a 1960 Comet. We own U.S. savings bonds of face value of \$1,250, a savings account of \$3,244.53, and maintain a fluctuating checking account between \$900 and \$3,300.

We have two sons in college at the University of Utah; one son in junior high school in Maryland; and our daughter is married.

I think that the contents of this financial disclosure indicate why I felt no compelling reason to make it sooner. I believe, however, that all public officeholders, and those who seek public office, should make full disclosure of their income, financial assets, business re-

lationships, and every other matter which might be a basis for conflict of interest. I know of no conflict of interest on my part.

### Quality Stabilization

#### EXTENSION OF REMARKS

OF

### HON. THRUSTON B. MORTON

OF KENTUCKY

IN THE SENATE OF THE UNITED STATES

Friday, April 17, 1964

Mr. MORTON. Mr. President, of the 24 Members of the House and the 11 Senators who are sponsoring the quality stabilization bill, none is more sincere and hard working in his efforts to enact this vital legislation than the distinguished senior Senator from California [Mr. KUCHEL], the Senate's assistant minority leader.

In a recent article published in the trade journal, Wallpaper and Wallcoverings, my colleague analyzed the terms and scope of the quality stabilization bill and offered his reasons for supporting this legislation. This article should be read and studied by everyone who seeks a solution to the current problems facing the Nation's retailers.

I ask unanimous consent, Mr. President, that the article referred to be printed in the Appendix of the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

**QUALITY STABILIZATION: NEW BILL MAY RELIEVE DECORATING PRODUCTS DEALER OF COMPETITION WOES**

(By Senator THOMAS KUCHEL)

(Growing numbers of decorating products dealers across the country have expressed fear that they will be hard hit by unscrupulous merchandising tactics at the hands of discounters. Some dealers feel that their operations are relatively unaffected by discount competition; however, the appearance of many brand-name decorating products on discounter's shelves has given rise to a great deal of apprehension in many quarters of the paint and wallpaper field. Will loss-leader selling, bait advertising and the use of well-known product names by price cutters force many independent paint and wallpaper dealers out of business? The answer is an emphatic "Yes," many industry men and retailers assert. Senator THOMAS H. KUCHEL, a California Republican, feels that the best interests of manufacturers and retailers of paint and wallpaper would best be

served by the quality stabilization bill now before a subcommittee of the House Interstate Commerce Committee. Here, in an exclusive article for Wallpaper and Wallcoverings, Senator KUCHEL explains the provision of the measure and tells why he strongly supports it.)

Let me state very plainly: I am firmly committed to a vigorous, competitive free enterprise system.

Today, small business—an essential part of our American free enterprise system—is being pushed toward economic extinction. There is more than a casual relationship between this skyrocketing rate of retail business failures, and unfair, deceptive practices prevailing in the distribution of trademark, brand, and name products. If small business in America should be plowed under, a bruising blow would be dealt our system of free competitive enterprise. Regrettably, there is very real trend in this direction.

It will probably come as a surprise when I say that each day of the year in America some 1,200 retail establishments and other small businesses close their doors forever because of the distributional malady that has invaded our economic bloodstream. It is a sad commentary on this land of abundant opportunity when the marketplace is so disorganized that 438,000—nearly one-half million—businesses fail each year.

With these failures are the concomitant increases in unemployment, new additions to the welfare rolls, and many other human and economic disruptions.

Is it any wonder that we have 6 million unemployed in a nation that is looked upon as the most prosperous in the world? How can we as a nation hope to employ gainfully that static 6 percent of our work force which is unable to find jobs if we do not act to prevent these 1,200 daily business failures?

#### THREAT OF MASS MERCHANDISERS

The mass merchandisers say that by 1970 they will take over lock, stock, and barrel 80 percent of the retail business of the country.

An acknowledged expert even predicts that by 1966 about 50 giant retail organizations will control 50 percent of the Nation's total retail volume in practically all major merchandise classifications.

One of these huge discount chains lays it right on the line as to its practices. Its president has stated bluntly:

"We plan to own and operate our own traffic appliance departments. It will be simply a loss-leader operation. We are going to take a percentage of the store items that will identify value and use them as giveaways to build an image."

Thus, this gentleman confirms the use of two ingredients in the merchandising formula. The first is the low price, oftentimes a loss-leader baiting price, used in part to give the false impression that all of the store's prices, for all of its multitude of products, are also bargains. The second ingredient is the use of a reputable brand name as the bait.

## KILLING COMPETITION

The pricing policies of the discount house may present deceptive attractiveness to the public, but the long-range result is almost certain to be a reduction in competition—and greater monopolistic concentration in distribution at severely higher costs to consumers. This clearly is not in the public interest.

Nor is it in the public interest that the marketplace in the last few years has degenerated to that resembling an oriental bazaar. The consumer has been the victim of come-ons; he has been baited, he has been switched, he has been gouged.

Commercial predators—and those who would fully merit the phrase and admonition common in my profession of the law, "caveat emptor"—are probably ancient in origin. What should concern us today is that the breed is growing in its pestilence, and in its effect on the more responsible members of our business community.

It is time for a legislative insecticide to be applied to this parasite of the free enterprise system, if the American system is to survive over one which believes solely in the fast buck.

Independent retailing in all fields—and this includes wallpaper and wallcoverings—is being relentlessly liquidated as a result of this unscrupulous price cutting. There may be, and probably are, other reasons for the decline of independent retailing. But the inability of the small storekeeper to sell—at a fair profit—the famous brand-name products which are his bread and butter, must come at, or near, the top of these reasons.

## WHAT'S IN A NAME?

Four centuries ago, Shakespeare asked: "What's in a name?" Two centuries later, Thomas Campbell answered that there is "magic in a name." But it was for 20th century America to prove that Campbell was right, that in the world of commerce, the goodwill and quality which the name on a product represents have become an essential element of our distribution and marketing system.

The manufacturer has a great stake in protecting the goodwill and quality which the trademark, brand or name on his product implies. To permit this goodwill to be undermined by offering a product below actual production cost to build traffic for a store is not only wrong from the standpoint of ethical retailing, but destroys confidence in our entire pricing system. It is wrong morally and economically.

The predator hopes that these bait prices, rigged at profitless levels on recognized items of merchandise, will create the impression that such "bargains" abound in his store on all commodities. Simple economics tells us that this cannot be so, or even the price juggler soon would be among America's one-half million annual business casualties.

Continuance of the independent retailer is essential to the American distribution system. Many small manufacturers in the wallpaper and wallcovering industry, and in other industries, as well as distributors of drugs, gasoline, groceries, sportswear, toys, automobile parts and many others who have written me have a real stake in the economic growth of their community. They—and you—provide enormous strength to America.

As one writer told me: "The predator does not go down to the store at 3 a.m. to fill the prescription, or grant credit for groceries, or gasoline, or hardware items until the man can get another job. The local small businessman, an active and highly regarded member of the community, does."

## NATIONAL LAW NEEDED

As a young State assemblyman in California over a quarter of a century ago, I vigorously advocated legislation to protect the legitimate retailer from the price slashers. I take the same position today on a national level. Federal law is urgently needed if we are to get at predatory pricing. I was delighted to join with my counterpart in the Senate on the other side of the aisle, Assistant Majority Leader HUBERT HUMPHREY, in leading a bipartisan coalition of Senators who are particularly interested in a solution to this growing problem by coauthoring S. 774, the quality stabilization measure. Twenty-three Representatives and 11 Senators have sponsored this much needed legislation.

They, along with other Members of Congress, have seen firsthand what is happening to businesses in their own States, in their own districts, and in their own communities. They know that this blight must be halted before the malady grows beyond cure.

The quality stabilization legislation is permissive, not mandatory. It does not require the owner of a trademark, brand, or name to set a uniform retail price unless he desires to do so to protect his product and his goodwill.

Only then could he use the provisions of the bill; only if his product was in free and open competition. This legislation does not require a set price on comparable articles sold by competitive manufacturers. It would not prevent the retailers from making a greater profit on volume sales because of a manufacturer's discount for quantity purchases. It would permit goods to be sold at any price after the trademark, or brand, or name is removed.

## NONDISCRIMINATORY

The manufacturer, at his discretion, would be able to stop resellers from misrepresenting his product and from using it as "bait merchandise" by selling it at other than an established price or within a price range—by court action, if necessary.

The bill does not discriminate against discount houses. It says to the discount house, just as it says to the corner druggist, the small hardware store, and to all retailers, don't misuse someone else's property—and a trademark is property which the manufacturer does not relinquish even when he sells his merchandise to a reseller.

Under the quality stabilization measure, the discounter has four honorable choices:

1. He, along with all other merchants using a name brand under the proposed act, must respect pricing requirements of the manufacturer.
2. He may remove the manufacturer's trademark, brand, or name and sell a product at any price he desires.
3. He may refuse to handle the product.
4. He may stock private brands.

The giant stores opposing S. 774 obviously have the financial strength to develop their own private brands. In many cases they are

already doing so. They already have. Thus, large merchandisers would be creating business on the strength of their own reputation.

## NO PROTECTION FOR INEFFICIENCY

This legislation does not protect the inefficient producer or reseller from elimination if he fails to provide consumers with quality merchandise and the kind of high-type service they have come to expect. It would prevent those with large accumulations of capital, and little interest in service, from using unfair practices to increase the rate of the small retailer's demise.

The House Committee on Interstate and Foreign Commerce recognized the long overdue need for this legislation when it reported favorably on H.R. 3669, a companion bill to S. 774. Only 1 Representative on the 33-man committee filed a minority report opposing the measure.

In this long hard fight to make for a more vibrant and stronger economy in the marketplace, the opponents of quality stabilization have not been asleep. They have raised a tremendous slush fund to bring every pressure to bear on Congress to defeat this most necessary legislation.

They are using every type of false and misleading propaganda to make consumers—the very people who have the most to gain from this measure—believe that it would increase prices to them. Nothing could be further from the truth, since it would force the mass merchandisers to use their own unbranded merchandise for loss-leader selling—meaning lower prices to consumers.

## YOUR DUTY TO YOURSELF

Moreover, many editors have been misled by this propaganda and, as a result, have been berating Congress in behalf of the opposition. Newspaper editors across the country would cry to high heaven if a law should be passed decreeing that newsdealers must be allowed to sell newspapers at any price they desired—to use them as loss leaders, if they cared to, to sell magazines and other merchandise. But these editors forget that their one protection in maintaining the quality of their papers is the fact that they are permitted to fix their resale price.

As an elected representative of the people, I can assure you that the thoughtful letter detailing the effect of legislation on one's life and one's business is meaningful.

You, as citizens and businessmen, have a duty to perform, as does Congress and the President.

Congressmen not only welcome letters from their constituents, they read them carefully and are influenced by what they say. Remember, we are human. If we receive a preponderance of letters in favor or in opposition to a given measure, naturally we are going to be influenced by them.

I know that members of the wallpaper and wall-covering industry believe that passage of the quality stabilization measure would go far toward remedying many of the insidious diseases which now infect the American marketplace.

So, if you want the Congress and the President to stand up and be counted on this matter, your immediate duty to yourself, to your employees, and to your customers is to write your Senators and Representatives—now—and let them know where you stand on quality stabilization.

## SENATE

SATURDAY, APRIL 18, 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:

Our Father God, as the end of a draining week draws near, we pause at this wayside altar not just in a passing ges-

ture of devotion and then to go on our busy way with our lives empty of Thee; rather we come to ask Thy presence and Thy guidance as this day and in the days that loom ahead there is faced in this Chamber the stress of decision, the strain of toil, the weight of responsibility, and the solemn call of duty.