3, 1926, and February 27, 1931, and for other purposes; to the Committee on the District of Columbia.

Also, a bill (H. R. 9100) limiting the duties of the chief Clerk and Chief Inspector of the Health Department of the District of Columbia; to the Committee on the District of Columbia.

By Mr. SCOTT: A bill (H. R. 9101) to amend the act of June 6, 1924, entitled "An act to amend in certain particulars the National Defense Act of June 3, 1916, as amended, and for other purposes"; to the Committee on Military Affairs.

By Mr. COFFEE of Washington: A bill (H. R. 9102) to provide for a permanent Bureau of Fine Arts; to the Committee on Education.

By Mr. WENE: A bill (H. R. 9103) to provide for the appointment of an additional district judge for the district of New Jersey; to the Committee on the Judiciary.

By Mr. BOREN: Joint resolution (H. J. Res. 572) requesting a report from the Bureau of the Public Health Service pertaining to the prevention of syphilis; to the Committee on Interstate and Foreign Commerce.

MEMORIALS

Under clause 3 of rule XXII, memorials were presented and referred as follows:

By the SPEAKER: Memorial of the Legislature of the State of South Carolina, memorializing the President and the Congress of the United States with reference to an increased and adequate national defense; to the Committee on Military Affairs.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. BEAM: A bill (H. R. 9104) for the relief of Alfred J. Mulvaney; to the Committee on Naval Affairs.

By Mr. BURDICK: A bill (H. R. 9105) to confer citizenship on John Erickson; to the Committee on Immigration and Naturalization.

By Mr. CHANDLER: A bill (H. R. 9106) to afford an opportunity of selection and promotion to certain officers of the United States Naval Academy class of 1909; to the Committee on Naval Affairs.

By Mr. CROWE: A bill (H. R. 9107) granting a pension to Isaac A. Chandler; to the Committee on Pensions.

By Mr. FITZGERALD: A bill (H. R. 9108) for the relief of John J. Connors; to the Committee on Military Affairs.

By Mr. HARTLEY: A bill (H. R. 9109) for the relief of Joseph Anthony Cordick; to the Committee on Naval Affairs.

By Mr. HULL: A bill (H. R. 9110) for the relief of the Wisconsin Milling Co. and Wisconsin Telephone Co.; to the Committee on Claims.

Also, a bill (H. R. 9111) for the relief of Theodore J. Thompson; to the Committee on Claims.

By Mr. KEOGH: A bill (H. R. 9112) for the relief of E. A. McCormack; to the Committee on Claims.

By Mr. MAGNUSON: A bill (H. R. 9113) for the relief of Forest F. Gott and Emeline Gott; to the Committee on Claims.

Also, a bill (H. R. 9114) to admit Mrs. Henry Francis Parks permanently to the United States; to the Committee on Immigration and Naturalization.

Also, a bill (H. R. 9115) for the relief of Martha A. Donaldson; to the Committee on Claims.

By Mr. O'TOOLE: A bill (H. R. 9116) for the relief of William A. Reithel; to the Committee on Claims.

By Mr. REECE of Tennessee: A bill (H. R. 9117) granting a pension to Alfred Arrowood; to the Committee on Pensions.

By Mr. RICHARDS: A bill (H. R. 9118) for the relief of Mark H. Doty; to the Committee on Claims.

By Mr. TAYLOR of Tennessee: A bill (H. R. 9119) granting an increase of pension to Ebb Hundley; to the Committee on Invalid Pensions.

By Mr. TREADWAY: A bill (H. R. 9120) for the relief of Charles Lawrence; to the Committee on Military Affairs.

PETITIONS, ETC.

Under clause 1 of rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

3857. By Mr. ANDREWS: Resolution adopted by the International Hod Carriers' Building and Common Laborers Union of America, Local No. 173, of Lockport, N. Y., favoring passage of the General Welfare Act; to the Committee on Ways and Means.

3858. By Mr. CARTER: Petition of the Board of Supervisors of Contra Costa County, State of California, urging the enactment of House bill 4199, the general welfare bill; to the Committee on Ways and Means.

3859: By Mr. COLDEN: Resolution of the Teamsters Joint Council, No. 42, of Los Angeles and vicinity, and endorsed by Lumber and Sawmill Workers, No. 2607, San Pedro, Calif., protesting against antiunion activities and asking that same be investigated; to the Committee on the Judiciary.

3860. By Mr. CULKIN: Petition of the Rochester Association of Credit Men, urging repeal or modification of the undistributed profits tax with recommendations thereon; to the Committee on Ways and Means.

3861. Also, petition of the National Association of Swine Records, Peoria, Ill., asking the excise duties on imported pork and pork products be increased, that no processing tax on pork be included in the new agricultural bill, and that Congress not ratify the Argentine sanitary pact; to the Committee on Agriculture.

3862. By Mr. FULMER: Concurrent resolution, submitted by J. H. Hunter, Jr., clerk, House of Representatives, of Columbia, S. C., to commend the President and to memorialize the Congress of the United States for an adequate national defense; to the Committee on Military Affairs.

3863. By Mr. KENNEY: Petition of the New Jersey Farm Bureau and New Jersey State Grange, favoring the discontinuance of the Federal gasoline tax at the close of the fiscal year ending June 30, 1938, and asking that it not be levied again in any way whatsoever, and that the Federal Government permanently withdraw from the field of gasoline taxation; to the Committee on Ways and Means.

3864. By Mr. KEOGH: Petition of the Chamber of Commerce of the State of New York, protesting against the interruption of pneumatic-tube mail service in New York City; to the Committee on Appropriations.

3865. By Mr. O'NEILL of New Jersey: Petition of the New Jersey State Grange and New Jersey Farm Bureau, protesting against the continuance of the Federal gas tax; to the Committee on Ways and Means.

SENATE

MONDAY, JANUARY 24, 1938

(Legislative day of Wednesday, January 5, 1938)

The Senate met at 11 o'clock a. m., on the expiration of the recess.

JAMES H. HUGHES, a Senator from the State of Delaware, appeared in his seat today.

THE JOURNAL

On request of Mr. BARKLEY, and by unanimous consent, the reading of the Journal of the proceedings of the calendar day Friday, January 21, 1938, was dispensed with, and the Journal was approved.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Chaffee, one of its reading clerks, announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H. R. 8730) to amend the National Housing Act, and for other purposes.

The message also announced that the House had passed the following bill and joint resolution, in which it requested the concurrence of the Senate:

H. R. 8993. An act making appropriations for the Navy Department and the naval service for the fiscal year ending June 30, 1939, and for other purposes; and

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

H. J. Res. 571. Joint resolution making appropriations available for administration of the Sugar Act of 1937 and for crop production and harvesting loans.

CALL OF THE ROLL

The VICE PRESIDENT. When the Senate took a recess on last Friday the Senator from Tennessee [Mr. McKELLAR] stated that he would like to get the floor this morning to address the Senate. The Chair feels that if the Senator from Tennesseee desires the floor he should be recognized.

Mr. CONNALLY. Pending that, I make the point of no quorum.

The VICE PRESIDENT. The clerk will call the roll.

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

Adams	Connally	Johnson, Calif.	Pepper
Andrews	Copeland	Johnson, Colo.	Pittman
Ashurst	Davis	King	Pope
Austin	Dieterich	La Follette	Radcliffe
Bailey	Donahey	Lee	Russell
Bankhead	Ellender	Lewis	Schwartz
Barkley	Frazier	Lodge	Schwellenbach
Bilbo	George	Logan	Sheppard
Bone	Gerry	Lundeen	Smathers
Borah	Gibson	McAdoo	Smith
Bridges	Gillette	McCarran	Steiwer
Brown, Mich.	Glass	McGill	Thomas, Okla.
Brown, N. H.	Guffey	McKellar	Thomas, Utah
Bulkley	Hale	McNary	Townsend
Bulow	Harrison	Maloney	Truman
Burke	Hatch	Miller	Vandenberg
Byrd	Hayden	Minton	Van Nuys
Byrnes	Herring	Murray	Wagner
Capper	Hill	Neely	Walsh
Caraway	Hitchcock	Norris	Wheeler
Chavez	Holt	O'Mahoney	
Clark	Hughes	Overton	

Mr. MINTON. I announce that the Senator from Rhode Island [Mr. GREEN] is absent from the Senate because of illness.

The Senator from Tennessee [Mr. BERRY] and the Senator from Wisconsin [Mr. DUFFY] are detained in their respective States on public business.

The Senator from Connecticut [Mr. LONERGAN], the Senator from North Carolina [Mr. REYNOLDS], and the Senator from Maryland [Mr. TYDINGS] are necessarily detained.

Mr. AUSTIN. I announce that the Senator from North Dakota [Mr. NYE] and the Senator from Minnesota [Mr. SHIPSTEAD] are unavoidably absent.

The VICE PRESIDENT. Eighty-six Senators having answered to their names, a quorum is present.

SENATOR FROM NEW JERSEY

During the delivery of Mr. McKELLAR's speech,

The VICE PRESIDENT. Will the Senator from Tennessee yield for the purpose of having brought before the Senate a privileged matter, the Chair holding that, if the Senator yields the floor for the purpose, he may resume the floor without having it counted as one speech against him?

Mr. McKELLAR. Certainly, Mr. President, I yield.

Mr. SMATHERS. Mr. President, I present the credentials of the Senator-designate from New Jersey, Hon. JOHN MILTON. I send the credentials to the desk and ask that they be read.

The VICE PRESIDENT. The clerk will read.

The legislative clerk read as follows:

THE STATE OF NEW JERSEY.

To the PRESIDENT OF THE SENATE OF THE UNITED STATES:

This is to certify that pursuant to the power vested in me by the Constitution of the United States and the laws of the State of New Jersey, I, A. Harry Moore, the Governor of the said State, do hereby appoint JOHN MILTON a Senator from the said State to represent said State in the Senate of the United States until the vacancy therein caused by the resignation of A. Harry Moore is filled by election as provided by law.

Witness: His Excellency our Governor, A. Harry Moore, and our seal hereto affixed at Trenton this 18th day of January A. D. 1938.

A. HARRY MOORE, *Governor.*

By the Governor:
[SEAL]

THOMAS A. MATHIS,
Secretary of State.

Mr. SMATHERS. Mr. President, the Senator-designate is present and desires to take the oath of office.

The VICE PRESIDENT. If the Senator-designate will present himself at the desk the oath of office will be administered to him.

Mr. MILTON, escorted by Mr. SMATHERS, advanced to the Vice President's desk; and the oath required by law having been administered to him, he took his seat in the Senate.

The VICE PRESIDENT laid before the Senate the petition of E. L. Oliver, of Labor's Nonpartisan League, and Carl Holdeman, of Labor's Nonpartisan League of New Jersey, praying that the Senate either refuse to seat JOHN MILTON (appointed Senator from the State of New Jersey) or to refer his right to hold the office of United States Senator to the appropriate committee of the Senate for public hearing and investigation, which, with the accompanying papers, was referred to the Committee on Privileges and Elections.

He also laid before the Senate letters in the nature of memorials from Grace Sardegna, district manager, Local No. 234, International Ladies' Garment Workers Union, and George Heller, business agent, Local No. 35, Textile Workers Organizing Committee of the C. I. O., both of Easton, Pa., in behalf of sundry textile workers in the State of New Jersey, remonstrating against the appointment of JOHN MILTON as Senator from the State of New Jersey and favoring an investigation of his qualifications, which were referred to the Committee on Privileges and Elections.

Mr. GEORGE presented memorials and letters and telegrams in the nature of memorials, numerously signed, from sundry citizens and labor organizations of the State of New Jersey, remonstrating against the seating of JOHN MILTON as Senator from the State of New Jersey, which were referred to the Committee on Privileges and Elections.

WITHDRAWALS AND RESTORATIONS OF PUBLIC LANDS

The VICE PRESIDENT laid before the Senate a letter from the Acting Secretary of the Interior, transmitting, pursuant to law, a list of withdrawals and restorations of public lands under the act of June 25, 1910 (36 Stat. 847), during the period from January 1, 1937, to December 31, 1937, inclusive, which, with the accompanying paper, was referred to the Committee on Public Lands and Surveys.

PETITIONS AND MEMORIALS

The VICE PRESIDENT laid before the Senate the following concurrent resolution of the Legislature of the State of South Carolina, which was referred to the Committee on Military Affairs:

Concurrent resolution to commend the President and to memorialize the Congress of the United States for an adequate national defense

Whereas the President of the United States has publicly expressed growing concern over the recent trend of world events, and he has requested of the Congress an adequate national-defense program for the protection of the American people; and

Whereas wars and rumors of war and rearmament for war are engaging practically all the nations of the earth; and

Whereas autocratic and militaristic regimes in three powerful nations now threaten the peace and security of their neghbors and, unless restrained, will eventually menace the independence and security of the American Continents; and

Whereas the American people are not responsible for outside world conditions, but we are responsible for the safety and integrity of our own country; and

Whereas the construction of a necessary national defense will provide employment and will improve the internal economic conditions of the people of the United States; and

Whereas we believe that only through preparedness can the United States command the respect of other countries and maintain friendly relations with the other nations of the world and remain an active and effective force for the promotion of peace: Now, therefore be it

Resolved by the house of representatives (the senate concurring), That we commend President Roosevelt for his wise remarks and timely efforts on behalf of an increased and adequate national defense for the protection of the United States and the American people.

That we memorialize the Congress to forthwith provide this country with an army, militia, navy, and air force large and effective enough to defeat promptly an attack from any source or from any likely combination of sources upon the United States or their vital interests in the Western Hemisphere, and powerful enough that American influence for peace, the sanctity of treaties, and international justice may have some deterrent effect upon aggressive nations.

That copies of this memorial be forwarded by the clerk of the Senate and by the clerk of the House of Representatives of the General Assembly of South Carolina to the President of the United States and to the President of the Senate and to the Speaker of the House of Representatives of the Congress of the United States.

The VICE PRESIDENT also laid before the Senate a resolution adopted by Col. Earl H. Bruns Post, No. 12, Regular Veterans' Association, Denver, Colo., favoring the enactment of legislation for the benefit of the enlisted personnel, and dependents, of the regular armed forces of the United States, which was referred to the Committee on Military Affairs.

He also presented a petition endorsed by a community mass meeting held under the auspices of the Puget Sound Navy Yard League, Bremerton, Wash. (including representatives of business, fraternal, veterans, and labor organizations), favoring making emergency funds available to increase employment in the Puget Sound Navy Yard, which was referred to the Committee on Naval Affairs.

Mr. CAPPER presented a petition of sundry citizens of Fredonia, Kans., praying for the enactment of the bill (S. 25) to prevent profiteering in time of war and to equalize the burdens of war and thus provide for the national defense, and promote peace, which was referred to the Committee on Finance.

He also presented petitions of members of the Woman's Home Missionary Society of the Methodist Episcopal Churches of Fredonia and Topeka, in the State of Kansas, praying for the enactment of legislation to prohibit compulsory block booking and blind selling of motion-picture films, which were referred to the Committee on Interstate Commerce.

Mr. COPELAND presented a resolution adopted by representatives of business and employers of Rensselaer and Albany, N. Y., favoring the immediate repeal of the undistributed-profits tax and the capital-gains tax, or that the capital-gains tax be so amended as to promote legitimate investment in productive enterprise, which was referred to the Committee on Finance.

He also presented a petition of sundry citizens of Gloversville, N. Y., praying for the adoption of the so-called war referendum amendment to the Constitution, which was referred to the Committee on the Judiciary.

He also presented a memorial of sundry citizens of Long Island City, N. Y., remonstrating against the ratification of the proposed copyright treaty, which was ordered to lie on the table.

He also presented a resolution adopted by Niagara County (N. Y.) Pomona Grange, Patrons of Husbandry, protesting against the enactment of pending agricultural legislation, which was ordered to lie on the table.

He also presented a resolution adopted by Pierstown Grange, Patrons of Husbandry, at Cooperstown, N. Y., protesting against the enactment of pending agricultural and hour and wage legislation, which was ordered to lie on the table.

He also presented a resolution adopted by the executive committee of the St. Lawrence County (N. Y.) Farm Bureau, protesting against the enactment of pending hour and wage legislation, which was ordered to lie on the table.

REPORTS OF COMMITTEES

The VICE PRESIDENT. As the Chair remarked prior to the roll call, the Senator from Tennessee expressed a desire to address the Senate this morning. With the permission of the Senator from Tennessee, the Chair will recognize any Senator who has something to insert in the RECORD or a bill to introduce or other routine business.

Mr. McKELLAR. If it will not take me off the floor, I will be delighted to yield.

Mr. BULOW, from the Committee on Civil Service, to which was referred the resolution (S. Res. 198) to investigate the administration and operation of the civil-service laws and the Classification Act of 1923, as amended (submitted by Mr. ELLENDER on November 18, 1937), reported it with amendments and submitted a report (No. 1311) thereon; and, under the rule, the resolution was referred to the Committee to Audit and Control the Contingent Expenses of the Senate.

Mr. ADAMS, from the Committee on Appropriations, to which was referred the joint resolution (H. J. Res. 571) making appropriations available for administration of the Sugar Act of 1937 and for crop production and harvesting loans, reported it with amendments and submitted a report (No. 1312) thereon.

BILLS INTRODUCED

Bills were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. LEE:

A bill (S. 3299) to amend section 3 of the Liquor Enforcement Act of 1936; to the Committee on the Judiciary.

By Mr. MINTON:

A bill (S. 3300) for the relief of Mrs. Pearl Bundy (with accompanying papers); to the Committee on Claims.

By Mr. CAPPER:

A bill (S. 3301) granting an increase of pension to Hattie L. Aimes (with accompanying papers); to the Committee on Pensions.

By Mr. NEELY:

A bill (S. 3302) granting a pension to Lucille Stanley Shrader; to the Committee on Finance.

A bill (S. 3303) granting an increase of pension to E. H. Layfield; to the Committee on Pensions.

By Mr. COPELAND:

A bill (S. 3304) to promote air commerce by providing for the closing of Military Road; and

A bill (S. 3305) to amend laws for preventing collisions of vessels, to regulate equipment of motorboats on the navigable waters of the United States, to regulate inspection and manning of certain motorboats which are not used exclusively for pleasure and those which are not engaged exclusively in the fisheries on inland waters of the United States, and for other purposes; to the Committee on Commerce.

A bill (S. 3306) to amend section 112 of the Revenue Act of 1936, as amended, relating to recognition of gain or loss in case of certain sales; to the Committee on Finance.

A bill (S. 3307) for the relief of Domenico Goffredo; to the Committee on Immigration.

A bill (S. 3308) to provide for a reduction in the postage rates applicable to charitable and philanthropic organizations; to the Committee on Post Offices and Post Roads.

By Mr. HAYDEN:

A bill (S. 3309) to amend the Federal Aid Highway Act, approved July 11, 1916, as amended and supplemented, and for other purposes; to the Committee on Post Offices and Post Roads.

By Mr. HAYDEN and Mr. O'MAHONEY:

A bill (S. 3310) to amend section 35 of the act entitled "An act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain," approved February 25, 1920, as amended, and for other purposes; to the Committee on Public Lands and Surveys.

By Mr. McNARY:

A bill (S. 3311) authorizing the Secretary of War to convey to the Port of Cascade Locks, Oreg., certain lands for municipal purposes; to the Committee on Military Affairs.

HOUSE BILL AND JOINT RESOLUTION REFERRED

The following bill and joint resolution were each read twice by their titles and referred to the Committee on Appropriations:

H. R. 8993. An act making appropriations for the Navy Department and the naval service for the fiscal year ending June 30, 1939, and for other purposes; and

H. J. Res. 571. Joint resolution making appropriations available for administration of the Sugar Act of 1937 and for crop production and harvesting loans.

INVESTIGATION OF THE T. V. A.—AMENDMENT

Mr. BANKHEAD submitted an amendment intended to be proposed by him to the joint resolution (S. J. Res. 239) authorizing the Federal Trade Commission to make an investigation of the Tennessee Valley Authority, which was ordered to lie on the table and to be printed.

ADDRESS BY SENATOR BARKLEY ON THE OCCASION OF A TESTIMONIAL DINNER GIVEN HIM AT LOUISVILLE, KY.

[Mr. CLARK asked and obtained leave to have printed in the RECORD an address delivered by Senator BARKLEY at Louisville, Ky., on the occasion of a testimonial dinner given

him Saturday evening, January 22, 1938, which appears in the Appendix.]

THE INTERNATIONAL SUGAR TREATY

[Mr. THOMAS of Utah asked and obtained leave to have printed in the RECORD a statement prepared by him explanatory of the provisions of the international sugar treaty, which appears in the Appendix.]

WAGE AND HOUR BILL AND THE FARMER—ARTICLE BY CHARLES W. HOLMAN

[Mr. MCNARY asked and obtained leave to have printed in the RECORD an article entitled "What the Wages-and-Hours Bill Means to the Farmer," by Charles W. Holman, which appears in the Appendix.]

LT. COL. JAMES ROOSEVELT—ARTICLE BY WESTBROOK PEGLER

[Mr. HOLT asked and obtained leave to have printed in the RECORD an article by Westbrook Pegler entitled "Question for the Colonel," published in the Washington Post of January 24, 1938, which appears in the Appendix.]

THE AMERICAN SYSTEM OF BROADCASTING—ADDRESS BY WILLIAM S. PALEY

[Mr. WHEELER asked and obtained leave to have printed in the RECORD an address delivered by William S. Paley, president of the Columbia Broadcasting Co., before the Second National Conference on Educational Broadcasting, in Chicago, Ill., November 29, 1937, which appears in the Appendix.]

JACKSON DAY DINNER ADDRESS BY ROY D. STUBBS AT BRADENTON, FLA.

[Mr. PEPPER asked and obtained leave to have printed in the RECORD a Jackson Day dinner address delivered by Roy D. Stubbs before the Manatee County Democratic Club at Brandenton, Fla., January 8, 1938, which appears in the Appendix.]

"CRIME IN CAPITAL DISGRACE, CUMMINGS DECLARES IN SPEECH"—ARTICLE FROM THE WASHINGTON STAR

[Mr. MCKELLAR asked and obtained leave to have printed in the RECORD an article from the Washington Star of January 24, 1938, under the heading "Crime in Capital Disgrace, Cummings Declares in Speech," which appears in the Appendix.]

PREVENTION OF AND PUNISHMENT FOR LYNCHING

The Senate resumed the consideration of the bill (H. R. 1507) to assure to persons within the jurisdiction of every State the equal protection of the laws and to punish the crime of lynching.

TENNESSEE VALLEY AUTHORITY

Mr. MCKELLAR. Mr. President, last Tuesday the distinguished Senator from New Hampshire [Mr. BRIDGES] made a speech on the subject of the Tennessee Valley Authority. I have given notice that this morning I should reply to it, and I now desire to do so.

Mr. President, the Tennessee Valley Authority was established in 1933 for the purpose of aiding navigation on the Tennessee River, for the purpose of aiding in flood control, for the purpose of disposing of power created by dams necessary on the Tennessee River, and for other purposes. Three directors were authorized. Dr. A. E. Morgan was made president, and Dr. H. A. Morgan and Mr. Lilienthal were made directors.

Soon after they began work they completed or put into operation the Wilson Dam, or Muscle Shoals Dam. They built Norris Dam in Tennessee and Wheeler Dam in Alabama. The cost of these three dams was as follows: The Wilson Dam, $31,745,000; the Norris Dam, $36,195,000; and the Wheeler Dam, $30,816,000, making a total of $98,486,000 for these three dams. I should say that all the power which is now being disposed of, or attempted to be disposed of, comes from these three dams.

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

The VICE PRESIDENT. Does the Senator from Tennessee yield to the Senator from Oregon for a question?

Mr. MCKELLAR. Yes; for a question.

Mr. MCNARY. Is it the purpose of the able Senator from Tennessee to limit his debate and statements to the T. V. A., or is he going to consider the whole of the improvement in that valley, starting in with the construction of the Wilson Dam and the adjacent plants?

Mr. MCKELLAR. I shall have very little to say about the Wilson Dam. If there is any question any Senator wishes to ask about it, I shall be delighted to answer it.

Mr. MCNARY. Recently I received a statement from one of the officers of the T. V. A. to the effect that the total amount appropriated by Congress and allotted by the President to the T. V. A. and the projects which it absorbed was about $315,000,000.

Mr. MCKELLAR. I will tell the Senator what that money has been spent for.

Mr. MCNARY. I do not say that in the sense of criticism.

Mr. MCKELLAR. Oh, no; I understand.

Mr. MCNARY. That is said to be the whole investment the Government has made in this project, only a portion of which is represented by the T. V. A. Act which was passed in 1933.

Mr. MCKELLAR. The question is a perfectly proper one, and I am going to answer it. Only these three dams have been completed, and, of course, all the power that is being sold comes from these three dams. The Authority is also constructing dams at Hiwassee, N. C.; Chickamauga, Tenn.; Guntersville, Ala.; Pickwick, Tenn.; and Gilbertsville, Ky. Pickwick Dam is nearing completion, and the dams at Chickamauga, Guntersville, and Hiwassee are well on toward completion.

Very large sums have been spent on those dams. I imagine that the $315,000,000 of which the Senator speaks includes the building of a plant at the Wilson Dam and also includes the entire cost of the Wilson Dam for all purposes, as well as the cost of these other dams.

The installed capacity of the three dams is 348,000 kilowatts. Almost from the very moment that the T. V. A. organization was perfected the T. V. A. has been beset with all kinds of opposition—opposition in the Congress, opposition in the newspapers, opposition on the radio, and lawsuits and injunctions galore. The private power companies, some 19 in number, or some of them, first attacked the T. V. A. in Georgia, then in Alabama, and finally in Tennessee; and only Saturday a decision was rendered by the three-judge court at Chattanooga absolutely upholding the constitutionality and validity of this law. However, in the years intervening between 1933 and 1938 injunctions were issued by various courts, and have retarded the work, upset the plans, and caused the T. V. A. great loss. Further than that, when the Authority began to sell or contract to sell power to municipalities suits were immediately begun to enjoin the sale of this power to municipalities and enjoin the Government from lending or granting money to municipalities with which to build distribution plants. For instance, Knoxville, Tenn., early after the institution of the T. V. A., became an applicant for T. V. A. power, and she has been enjoined until quite recently. Memphis, Tenn., was enjoined. Chattanooga, Tenn., was enjoined, and other smaller cities in the whole area were enjoined; and for that reason the operations of the T. V. A. have been retarded and every effort made by the private power companies to destroy it. The work has been held up; the building of distributing plants, the building of distribution lines, have been enjoined; and perhaps no corporation or organization ever formed in this country has been subject to greater harassments and difficulties. These injunctions carried small bonds, and it is doubtful if the T. V. A. ever can be compensated for the losses actually sustained.

Notwithstanding all this, however, the Authority has proceeded in a remarkable fashion. It has completed the Wilson Dam. It has built and put into operation the Norris and Wheeler Dams. It has sold electric power to many towns and cities and built lines and sold power to many rural communities and many cooperatives and to many industries; and it has been estimated that the revenue from these three dams for 1938 will be more than $5,000,000 in that year, with 132,500 kilowatts not sold nor contracted for.

Now, remember, the cost of these three dams together is $117,000,000. The revenue from the three dams for 1938 will

be more than $5,000,000 in that year, with 132,500 kilowatts not contracted for and not sold. In other words, by reason of these injunctions, by reason of these lawsuits, the city of Memphis and the city of Chattanooga and the city of Knoxville and many other cities have not been able to use this power, although they have contracted for it. So, by reason of these lawsuits, and notwithstanding these lawsuits and injunctions, the T. V. A. is getting something like $5,000,000 a year on an investment of $98,486,000.

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

Mr. McKELLAR. Yes; I yield.

Mr. VANDENBERG. Can the Senator break down that cost item for me on a basis of kilowatt-hours?

Mr. McKELLAR. No; I cannot. I regret that I cannot do it, but I will get the information if the Senator would like to have it.

When this surplus of 132,500 kilowatts from the three dams already built and in operation is contracted for and sold, it will mean an increase of income of more than double the sum of $5,000,000; and now that injunctions have ceased to be issued and lawsuits have all been decided in favor of the Authority, we can reasonably expect from the product of these three dams more than $10,000,000 a year income; and, while I am talking about injunctions, let me digress long enough to say that although almost innumerable injunctions have been either sought or granted, and most of them granted, not one exists today. They have all been dissolved by the Supreme Court or by other courts.

Mr. CONNALLY. Mr. President, will the Senator yield for a question?

Mr. McKELLAR. For a question.

Mr. CONNALLY. Does the Senator realize that under the legislation passed at the last session by the Congress, providing for three-judge courts in these injunction proceedings, it will be much more difficult in the future than it has been in the past to secure any such injunctions?

Mr. McKELLAR. I want to say that I introduced a bill providing for a three-judge court. I believe it has done more good than any other bill that has been reported from the Judiciary Committees of the two Houses in a long time; and, in my judgment, glaring inequities in the granting of injunctions will be overcome by having three-judge courts.

Mr. President, the Senator from New Hampshire lives, as we would say down South, a "fur piece" from the T. V. A.; but he says he has spent all his vacation in learning about it. I do not know whether he went down there or not. He does not say in his speech; but he says that the T. V. A. is not selling power to cities and towns and to farmers as it should. Listen to this:

Notwithstanding all the hindrances, injunctions, and lawsuits, notwithstanding the fights that have been made in Congress and out of it, the Authority is today selling power to Amory, Miss.; Athens, Ala.; Bolivar, Tenn.; Dayton, Tenn.; Dixon, Tenn.; Florence, Ala.; Holly Springs, Miss.; Jackson, Tenn.; Milan, Tenn.; Muscle Shoals City, Ala.; New Albany, Miss.; Okolona, Miss.; Pulaski, Tenn.; Sheffield, Ala.; Somerville, Tenn.; Tupelo, Miss.; and Tuscumbia, Ala.—17 cities and towns in that district. In addition to that, the T. V. A. has contracted to sell, but is not now selling because of the injunctions to which I have referred, to Chattanooga, Tenn.; Decatur, Ala.; Knoxville, Tenn.; Memphis, Tenn.; and Russellville, Ala.; and within another year will be selling to all these five cities and, no doubt, many others, since the issuing of injunctions has been stopped. It is now selling a total of 14,200 kilowatts.

In the year 1939 it will be selling to those same cities, and the other five that have just been mentioned, 64,000 kilowatts. In 1940 it will sell 90,800 kilowatts to those cities and towns; in 1941, 111,330 kilowatts; and in 1942, 129,250 kilowatts.

The Senator from New Hampshire has referred to the farmers, the cities, and the communities and other consumers receiving no benefits. Listen to this: The T. V. A. is now selling to cooperatives, town cooperatives, farm cooperatives—Alcorn County, Miss.; Coleman County, Ala.; Duck River, Tenn.; Gibson County, Tenn.; Meigs County, Tenn.; middle Tennesee; Monroe County, Tenn.; north Georgia; Pickwick and Pontotoc, Miss.; Prentiss County, Miss.; southwestern Tennessee; Tishomingo County, Miss.; Tombigbee County, Miss.; and Lincoln County, Tenn., a total of 12,631 kilowatts. It is likewise selling to industrials primary power—Goodyear Mills, 3,000 kilowatts; Monsanto, 8,750 kilowatts; Aluminum Co., 7,300 kilowatts; Volunteer, 3,000 kilowatts; Victor, none this year; Electro-Metallurgical Co., none this year, but with both of these companies it has contracts for succeeding years; Sardis Dam, 8,000, or a total of 52,750 kilowatts.

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

Mr. McKELLAR. The Senator declined to yield to me when he was speaking a few days ago, and I decline to yield to him.

The VICE PRESIDENT. The Senator from Tennessee declines to yield.

Mr. McKELLAR. After I conclude I shall be delighted to yield for any question the Senator may desire to ask.

While the Authority is selling this much primary power to the industries I have mentioned, it is selling secondary power to the Aluminum Co. in the amount of 30,000 kilowatts.

I do not believe I need to explain to the Senate what secondary power is. It is power that does not run all the year, probably runs about 300 days of the year, and it is power from dams which to a great extent goes to waste. The T. V. A. is selling to industries the amount of primary power I have just mentioned, and it is selling secondary power to the Aluminum Co. to the extent of 30,000 kilowatts, and to Monsanto to the extent of 16,250 kilowatts, or a total of 46,250 kilowatts of secondary power, and next year it will sell to the Victor Co. 12,000 and the Electro-Metallurgical Co. 8,000.

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

Mr. McKELLAR. In just a moment. It is selling a total of 46,250 kilowatts of secondary power.

It will thus be seen what wonderful progress the T. V. A. is making in selling her power. Now that the injunctions brought by the private power companies have been dissolved, it will furnish all these cities just as soon as distribution plants can be built with power which will bring the amount to be sold next year to enormous figures, and at the same time there are other cities and towns and other cooperative associations that are being contracted with for the purpose of adding to such sales. This record is truly remarkable.

I now yield to the Senator from Indiana, if he desires to ask a question.

Mr. MINTON. I desired to ask the Senator what would have become of that secondary power if the T. V. A. had not sold it to the industries he has mentioned.

Mr. McKELLAR. It would have gone to waste. I am glad the Senator has asked the question, because I desire to make a further explanation.

With all these sales to farm associations, to cities, and to towns, from these three dams, there is still a surplus of 180,000 kilowatts of primary power, a fact which can be proven. Therefore, all this power about which the Senator from New Hampshire speaks is going to waste, and will go waste unless it is sold. Talk about selling power to favored interests; any other company in the world which desires to buy that power and use it can buy it, up to the 180,000 kilowatts of power on hand now, and which is going to waste.

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

Mr. McKELLAR. I yield.

Mr. VANDENBERG. If there is a substantial surplus of power now from existing dams, why is it necessary to proceed with the construction of any other dams at the present time?

Mr. McKELLAR. The T. V. A. has contracts now with the city of Memphis for the sale of 50,000 kilowatts of power. It has a contract to sell Chattanooga something like 40,000 kilowatts, as I remember the figure, although I cannot be certain of that. It has a contract for about the same amount with Knoxville, Tenn., and it has contracts with a number of

other cities, which will take a great deal of power from these dams. A number of other cities in that vicinity will be compelled to take this power because they can get it at a lower price from the T. V. A., when the injunctions are finally ended.

SENATOR BRIDGES

Now, just as soon as we have gotten rid of all the other propagandists, just as soon as we have gotten rid of the lawsuits, just as soon as we have gotten rid of the injunctions, just as soon as we have gotten rid of so much other opposition, on last Tuesday the T. V. A. was assaulted here from another angle. The assault comes from a Senator whose State has probably the highest power rates in the country, save one. It comes from a Senator who has been a utilities commissioner in his State for 5 years. It does not come like a bolt of lightning from a clear sky, but it comes like a ghost from the departed. It is not a bolt, but only a flutter. Lawyers have done their best, politicians have done their best, private utilities have done their best, many courts have done their best, lawsuits and injunctions have done their best to destroy the T. V. A., and on last Tuesday there came with much advertisement a tap on the wrist from the junior Senator from New Hampshire, saying the T. V. A. is naughty, because that is about all it means, for selling power to private industries, three of which he points out as being "wicked" industries.

The Senator states that last summer he took advantage of the recess of Congress to study the T. V. A. situation. If the Senator from New Hampshire spent his vacation in studying the T. V. A. situation, he certainly did not strain himself, if his speech is a result of that study. I do not see how any man could talk 2 hours and say very much less. His speech shows that he is in Egyptian darkness so far as the T. V. A. is concerned. After telling of the great study that he had made of the T. V. A., he said:

> I had hoped that the Authority was selling that power to groups of citizens, not to corporations; but I found this was not the case.

I call special attention to this. This is the Senator from New Hampshire speaking:

> It was enriching not alone the people of this area but some of the wealthiest stockholders in the country. Its great source of electric energy was, in effect, not alone helping to build up farms along the Tennessee Valley but helping to build swimming pools in Hawaii.

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

Mr. McKELLAR. I yield.

Mr. McNARY. I appreciate the Senator's courtesy. I am very much interested in what the Senator said about large monopolies purchasing power created by the T. V. A. organization. Am I right in having the impression that it is secondary power only they have acquired, and not primary power?

Mr. McKELLAR. No; not entirely. Usually the smaller part of it is primary power and the larger part is secondary power, or what is known as run-of-the-stream power, which would otherwise go to waste. All of it would go to waste so long as the 182,000 kilowatts remained.

Mr. McNARY. That is perhaps a light dismissal of a very important phase of this discussion. Inasmuch as the Senator made the statement, and has shown some familiarity with rates and kilowatts, I think he should state the proportion between primary and constant power, on the one hand, and secondary power, on the other.

Mr. McKELLAR. I have the information and will read it to the Senator in just a moment.

Mr. McNARY. Let me ask, following that, whether there is anything in the contracts which were made, or any policy of the T. V. A. exercised through the board, giving preferential rights to domestic consumers over and above those accorded industry.

Mr. McKELLAR. Yes. The act gives preferential rights to States, counties, and cities, and to farm associations. I believe those are the four categories which are given preferential rights. That preference has caused no difficulty, however. We have more power than we have been able to sell to cities and towns and farmers' associations, but we have been hampered in the sale, and forbidden to sell by injunction and other court processes.

Mr. McNARY. Will the Senator further bear with me?

Mr. McKELLAR. Yes; I will be glad to so long as I do not lose the floor, of course.

The VICE PRESIDENT. The Senator has yielded for a question, and if the Senator from Tennessee is willing the Senator from Oregon can make it as long as he wants to.

Mr. McKELLAR. With that assurance by the Vice President, I feel a great deal better.

Mr. McNARY. I appreciate the courtesy of the most distinguished and illustrious Vice President.

I call the Senator's attention to a very large project, one very much larger than the combined projects in the Tennessee Valley, namely, the Bonneville Dam between the States of Oregon and Washington. The able Senator from Washington [Mr. SCHWELLENBACH] and his colleague [Mr. BONE], and my colleague [Mr. STEIWER] and I prepared the bill creating that project, with the assistance of the Department and of the President and his advisers. We reserved 50 percent of all the power created, primary or secondary, for home consumption on the farms and in urban homes for a period of 4 years after the installation of the plant; and provided that the farms and urban homes should have a preferential interest in the other 50 percent through all the years in the future, which in my opinion, standing by itself is a splendid yardstick for the T. V. A. to follow in the future in dealing with monopolies and with the people.

Mr. McKELLAR. I think the Senator from Oregon is right, but that, of course, will have to be put in the act by amendment.

Mr. President, I was reading an excerpt from the speech of the Senator from New Hampshire. He said:

> I had hoped that the Authority was selling that power to groups of citizens, not to corporations; but I found this was not the case. It was enriching not alone the people of this area but some of the wealthiest stockholders in the country. Its great source of electric energy was, in effect, not alone helping to build up farms along the Tennessee Valley but helping to build swimming pools in Hawaii for the extremely wealthy, and great yachts for wealthy multimillionaires in which to cruise upon the seven seas. The multimillionaires, the great stockholders of the largest corporations in the country, have been the chief beneficiaries of T. V. A.

Mr. President, the Senator from New Hampshire could just as safely have argued that the T. V. A. was furnishing money to run the Japanese-Chinese war and paying for the cost to both sides. He might as well have argued that the T. V. A. had financed the Russian trip to the North Pole. He might as well have asserted that the T. V. A. was financing the Sultan of Sulu, or that it was contributing large sums to the marriage ceremonies of King Farouk, of Egypt. The Senator evidently imagines that he is a Republican candidate for President on an old-time Hoover platform, which no one ever was able to understand and no one ever will be able to understand. I have tried to ascertain what he really meant, and have come to the conclusion that he himself did not know; but, piecing it together as best I can, ferreting it out as best I can, his idea seems to be that the T. V. A. has done a dishonest and corrupt thing in selling surplus power which it had on its hands to five corporations—the Monsanto Chemical Co.; the Aluminum Co. of America; the Electro-Metallurgical Co., which he says is a subsidiary of the Union Carbide Co.; the Victor Chemical Works; and the Arkansas Power & Light Co.

I am going to take them up in order.

Mr. McNARY. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Tennessee yield to the Senator from Oregon?

Mr. McKELLAR. I yield.

Mr. McNARY. Is it not a fair implication from the remarks of the Senator from New Hampshire [Mr. BRIDGES] that he had in mind the great profits made by these great monopolistic concerns because of the cheap rate they paid for power received from the T. V. A.?

Mr. McKELLAR. I think by an unusual use of one's imagination such an implication might be made, but I am now going to show what are the facts.

Surely the T. V. A. Act expressly authorizes the sale of this power to corporations and to individuals, and the T. V. A. has simply carried out that authority in these five contracts. It is true that the act gives a preference in the sale of power to States, counties, cities, cooperatives, and farm organizations, and this preference has been given to the limit of the ability of the T. V. A.

It has plenty of surplus after all the demands of the preferred classes have been met.

This disciple of Mr. Hoover, and follower of his logic, never says a word about the Authority being tied up by injunctions in the sale of power to cities and counties and others who are given preference, but he limits his argument to what a horrible policy the Authority has adopted in selling to industries. If the Authority had the power to sell, and had given to all those who had preference all they wanted or all they could get, and the T. V. A. still had surplus power, and had not sold it to these private companies, the Authority would certainly have violated its duty under the law. Knowing the Senator from New Hampshire as I do, and knowing his political views as I do, knowing how Hooveresque they are, I do not believe anyone in this body would have been quicker to criticize the T. V. A. if it had been unwilling to sell to industrial plants power on which there was no priority.

The Senator says these five were "favored" industrial plants; that the contracts were made at night, between suns, in the dark; that the power was not put up to open bids; that it was sold secretively; that it was sold to big corporations and bad big corporations; and that it was sold to aggregations of capital unfriendly to the people. The Senator said the T. V. A. sold more to industrial concerns than it would to municipalities and cooperatives, without ever explaining in the least that the Authority had been enjoined by the courts from selling to municipalities and cooperatives. He finds something wrong in this, or claims to find something wrong in it.

What are the facts? The Senator from New Hampshire certainly knows very little about the facts. I doubt if he ever looked into the facts. I do not know who gave him his information, or, rather, his misinformation. Somebody evidently gave it to him, because the Senator would not attempt to give facts without getting information. Somebody gave him this misinformation. He does not tell where he got it, but he does say he spent his vacation in getting it.

Let us now put the light of day upon some of the Senator's contentions. We will take the Arkansas Power Co. first. He first takes up this contract and says:

Mr. Harvey Couch, president of the Arkansas Power & Light Corporation, has been a financier and industrial manager for some years, and has at least been as successful in that complicated business as have many others. He has been on at least one investment bankers preferred list. What claim he could have to such preference by the T. V. A. I do not know, but he has successfully asserted one. I have said other contracts were not "couched" in simple terms. This contract, which the Arkansas Power & Light Corporation secured, may have been simply "couched."

Playing on words.

How many more men of wealth and influence are going to be able to benefit at the taxpayers' expense by simply "couching" contracts with the T. V. A.?

What rare wit. What humor. What delightful sarcasm. What play upon words. After reading it I imagine that the Senator from New Hampshire must have employed a considerable part of his vacation in framing that one sentence alone. After indulging in this tirade of words and paucity of thought, he then said that there were no reductions of rates provided for in this contract, and that the only good that came from it was to Mr. Couch and his company and its stockholders. This is his argument as best I can understand it. What are the facts? I asked Mr. Lilienthal, who deals with the sale of power, about the facts and here is what he had to say about it:

The contract with the Arkansas Power & Light Co. is an interim contract subject to cancelation within 2½ years of date of the entry of the contract with notice that makes a maximum term of 5 years.

It can be terminated in 2 years and a half. It can be terminated at any time after the power company increases its rates or does not lower them at the request of the T. V. A.

Said Mr. Lilienthal:

It was entered into in order to produce revenue from water that would otherwise be wasted. That water would be wasted otherwise, for two reasons:

1. It is a principal part of the commitments under the contract involving secondary power, that is, power that is not available all the year and, therefore, is the kind of power that the householder and the farmer and the ordinary small industrial plant can use. Rather than have the water go to waste and the Treasury deprived of the revenue, this power is being sold for a short period of time to the Arkansas Co.

2. The second reason for entering into the contract is that due to the efforts of 19 utility companies joined into a single court attack on the T. V. A., and due to a cloud of litigation over a period of years, T. V. A. has been unable to carry out arrangements with public agencies for the supply of power. While that vicious and groundless litigation is being disposed of it did not seem wise for us to permit the Federal Treasury to be deprived even temporarily of a total of $3,000,000 revenue during the 5-year period of this contract.

So, we have more power from these three dams than can presently be sold because of injunctions, and complaint is being made because the T. V. A., acting strictly within the limits of the law, sold to a power company $3,000,000 worth of power. Mr. Hoover, the ideal of the Senator from New Hampshire until he became a candidate himself, sold this power for practically nothing to the Alabama Power Co., and I never heard the Senator from New Hampshire say anything about it.

I continue to read from Mr. Lilienthal's statement:

I should also point out that nothing in this contract in any wise excludes or purports to exclude public agencies or agencies serving domestic and rural consumers in Arkansas or anywhere else from purchasing power from T. V. A. There is no shadow or basis for suggestion that by selling this temporary surplus to the Arkansas Power & Light Co. and returning $3,000,000 to the Treasury that would otherwise be wasted, that T. V. A. has jeopardized or limited or impaired the paramount rights of the domestic user, farmer, or public agencies as provided for in this law.

This contract is a covenant openly arrived at between representatives of the Arkansas Power & Light Co. both on the management and engineering end and representatives of the T. V. A. The statute directs and authorizes the power to be sold on the basis of contract. These contracts are necessarily the suggestion of negotiation. The fact that negotiations were pending is a matter of public knowledge, was noted in the press, was the subject of public statements during the course of the negotiation, and while the conferences being of a technical nature were not held in the town hall, not being a matter of public interest, they and all other matters were arrived at openly.

On the day the contract was entered into, the complete text of the contract was made available to the public, and as provided by law, the contract was printed in full in the annual report of the T. V. A. I may add that during the discussions of the T. V. A. appropriation before the House committee on that subject in the spring of 1936, the committee was advised in a record which is public that negotiations of such contract were in progress. The committee was advised of the estimated revenues and of the reasons in support of such an arrangement. This same practice in more or less degree has prevailed in all our industrial contracts, namely, that where knowledge of a pending contract has been before us at the time of reports to Congress or congressional hearings respecting our budget, we have discussed the matter frankly and fully with the Committee on Appropriations in two respects: (a) As to prospective revenues that would affect our appropriation needs; (b) as to prospective needs for transmission and other facilities to meet the contracts.

These negotiations have been carried on with a greater degree of publicity and public knowledge than any major contracts of a necessarily technical nature that I know of in a public business.

Mr. President, the Senator from New Hampshire said that this contract did not provide for a reduction of rates. What are the facts? I again quote from Mr. Lilienthal:

The question has been raised and has been frequently discussed as to whether the savings which the Arkansas Power & Light Co. makes by purchasing this power is reflected in the rates of the domestic and farm consumers of Arkansas.

I understand that it has been said that saving to consumers under this contract is merely a "pious hope." This is far from accurate. The fact is that the Arkansas Co. agreed to a reduction in rates. The fact is that the Arkansas Co. would save in the first year of the contract by buying from T. V. A. the sum of $40,000 and over a period of 5 years an average saving of $100,000 a year. Immediately when the current was turned on and transmitted to Arkansas, that company, with the approval of

the State commission and under the arrangement provided by this contract, put in a rate reduction of over $40,000 a year, which was the amount of the savings to them of over $100,000, which was an average saving for 5 years by an initial immediate reduction of $217,000 a year, with the definite prospect of further reductions before the end of the 5-year term of the contract.

In other words, Mr. President, instead of not reducing the rate, instead, as argued by the Senator, of this being a favored corporation which received the power at a lower rate than it could otherwise create it, without any corresponding rate reduction to consumers, what do we find? We find that the average diminution of cost to the Arkansas Power Co. was $100,000 a year, while the average decrease in rates to the consumers in Arkansas was $217,000 a year.

Why did the Senator from New Hampshire not find out about the reduction of rates in Arkansas? He seems not to have been interested in that part of it. Whoever got him the information imposed upon him. The Senator ought not to allow himself to be imposed upon. I hope he will not let his investigators impose upon him any more while he is investigating.

Mr. President, one of the necessary things in the T. V. A. program is to make a return to the Government on the investment. This is in addition to the T. V. A.'s other direct and indirect benefits to the people as a whole. The chief means of realizing dollars-and-cents income expended for T. V. A.'s flood control and navigation projects is through the sale of power, a byproduct of these dams.

Under section 10 of its organic act the T. V. A. is specifically empowered to sell this power to "States, counties, municipalities, corporations, partnerships, or individuals," with preference to public bodies not organized or doing business for profit.

Section 11 further states that sale of power to industry—

Shall be a secondary purpose, to be utilized principally to secure a sufficiently high load factor and revenue returns which will permit domestic and rural use at the lowest possible rates and in such manner as to encourage increased domestic and rural use of electricity.

I want to emphasize the point about industry:

To be utilized principally to secure a sufficiently high-load factor and revenue returns which will permit domestic and rural use at the lowest possible rates.

Well, that is just what T. V. A. is doing in its industrial contracts. Rates for dwelling and farm use cannot be lowered unless a sufficient quantity of electricity is sold. That is plain common sense. That is plain business, and I am unable to understand, after the Senator from New Hampshire spent his whole vacation studying this subject, why he did not learn about it.

The essential facts about the contract are these:

First. Arrangement is temporary.

The contract is an interim arrangement, subject to termination at the end of 5 years by notice given 2½ years after its effective date; extension after that time must be by mutual consent. This is an exceedingly short period for a contract of this nature, 20 years being the term of all other contracts with public agencies and cooperatives.

Second. Power supply is small proportion of company's requirements and small proportion of T. V. A.'s available surplus capacity.

This power is to be pumped into the Arkansas Co.'s system, which extends throughout the State. In the first year the amount purchased represents about 6 percent of the company's total needs, never exceeding 25 percent at the maximum, in the fifth year.

The power involved is a small fraction of the total which the T. V. A. has available and unsold, so that no possible question arises as to the adequacy of the amount of power remaining for public agencies or for industrial demands within the Tennessee Valley region proper.

Third. The contract contains no restrictions against nor discouragement of publicly owned distribution of T. V. A. power.

There is nothing in this contract which in any way prevents the Authority from furnishing power, at the same wholesale rate schedule as is provided in this contract, to municipalities, rural cooperatives, and other public agencies in Arkansas or elsewhere, which under the statute have a preferred right to receive T. V. A. power. This is an especially important fact in view of the insistence of the Commonwealth & Southern that they will not purchase power from T. V. A. unless such a restriction against sale to public agencies is part of the contract. Furthermore, the secondary power sold in this contract is not of the kind which could be used by public agencies, since they require continuous power, nor is there any possibility that the amount of firm and continuous power sold in the contract will impair the Authority's ability to supply power to preferred public agencies.

Fourth. Nearly half the block is part-time power, subject to interruption at the Authority's discretion.

Much of the power sold is not continuous, 24-hour-a-day power, but is so-called secondary, supplied to the Arkansas Co. only 300 days a year, the days to be selected entirely in the Authority's discretion. This class of power cannot be sold to municipalities nor to other customers who do not have another source of supply—and unless sold it is wasted. In the first year the company receives only secondary power, 10,000 kilowatts; in the second and third years, half secondary; in the fourth year, 15,000 kilowatts secondary out of a total of 40,000; and in the fifth year, 10,000 secondary out of a total of 40,000 kilowatts.

Fifth. Revenue from contract produced is without substantial additional investment by T. V. A.

The power is delivered by T. V. A. at the Arkansas Co.'s substation on the Tennessee side of the Mississippi River, at the end of a transmission line built by T. V. A. for service to the public plant being constructed by the city of Memphis. The transmission line has adequate capacity for both services. The contract, therefore, yields a minimum of about $3,000,000 of revenue in the 5-year period, but involves T. V. A. in additional investment in substation facilities of probably not more than $200,000, most of which can be salvaged at the end of the contract.

Sixth. Emergency stand-by service furnished to Memphis public plant.

The contract requires the company to furnish emergency break-down service to the municipal plant now under construction at Memphis to be supplied with T. V. A. power, and thereby adds to the reliability of service at that point and shortens the time when Memphis can reliably begin rendering service. If the property of the Memphis Power & Light Co. is sold to the city of Memphis, in accordance with an offer of the city of Memphis of long standing, even then this privilege of emergency stand-by would be valuable both to T. V. A. and to Memphis.

Seventh. Protection of consumers in Arkansas.

(a) Authority retains right to control rates at which this power is resold.

Under the contract the Authority has the right, recognized by the company, to fix the rates to be charged by the Arkansas Co. to the ultimate consumer of the power supplied by the Authority. Section 12 (b) of the contract reads:

If Arkansas Co. shall resell to the ultimate consumer any power supplied by Authority hereunder, for an amount which is in excess of any applicable schedule fixed by Authority for the resale of such power, the remedy of Authority shall be to cancel this agreement. * * *

(b) All savings by company due to purchase of T. V. A. power passed on, in reduced rates, to Arkansas consumers.

Although not inserted in the contract itself, but by collateral understanding, the Arkansas Co. has agreed that, as soon as it begins to receive delivery of the first block provided in this contract, 10,000 kilowatts of secondary power, it will reduce its rates throughout the State of Arkansas in a sum estimated at $149,000. There will be passed on to the consumers of Arkansas, in reduced rates, more than the amount of money saved by the Arkansas Co. by purchasing its power from T. V. A. instead of constructing additional generating capacity of its own.

(c) No "yardstick" rates in Arkansas.

Neither the contract nor the collateral arrangement contemplates that the resale rates which have been inserted in contracts between T. V. A. and public agencies—sometimes called T. V. A. yardstick rates—will be charged by the Arkansas Co. No such condition could be required for the following reasons:

First. The short term of the contract (5 years) and the small proportion of power supplied by T. V. A. would make it unreasonable to ask the company to reduce its entire rate structure throughout the State by about $2,000,000, such $2,000,000 to be balanced by a saving to the company in power cost in the first year of $40,000 and an average saving to the company of about $100,000 a year.

Second. The noncontinuous character of much of the power sold makes resale rate control almost impossible. The resale provisions, according to the statute, reach only the power sold by T. V. A. If literally applied, a T. V. A. schedule of resale rates would be applicable in Arkansas during 300 days of the year and some other schedule would be applicable during the rest of the year. This, of course, is not feasible.

Under all the circumstances, therefore, it was felt that if the full savings to the company were passed on in rate reductions, the intent of the law was satisfied. If any other policy were adopted under the circumstances of a short-term, largely interruptible power contract of this character, the contract could not be entered into, and the Authority would lose a large amount of revenue—$600,000 a year—and, what is even worse, waste a valuable natural resource beyond recovery.

The Authority's need for revenues during the period of litigation and obstruction are as follows:

On February 3, 1937, the Commonwealth & Southern Corporation allowed its contract for the purchase and interchange of power with the Authority to expire, and stated that it would refuse to supply any further revenues to the Authority unless the Authority changed its policy. The policy in question was the Authority's insistence that it would not, as a condition of selling power to private utilities, refuse to sell power to public agencies in the same territory. The Commonwealth & Southern announced its plan to construct a steam plant at Nashville. While thus cutting off the Authority's revenues from private utilities, the same companies, by securing injunctions against the Authority and many cities with which the Authority has contracts for power supply, had plainly decided upon starving out the Authority. Revenues from public agencies which are existing customers of the Authority total only about $500,000. Under these circumstances there was grave danger that continuation of such inadequate revenues would endanger the Authority's chance to secure adequate appropriations from Congress to continue its construction program, and would endanger its public position.

If the Authority were not making money, if it were not showing a reasonable return, we should have all kinds of trouble in getting the appropriations necessary to complete the dams which are now being built.

The Board was, therefore, of the opinion that the contract with the Arkansas Power & Light Co. provided revenues which the Authority badly needed, without sacrificing any principles, and in complete conformity to the statute.

In regard to the legality of the provisions regarding resale rate control, the question has been raised as to whether section 12 (b) of the contract, regarding resale rates, complies with the statute. The statute contains two provisions on this matter.

A proviso in section 10—added by amendment in 1935—gives the Authority discretion to include or not include a resale provision. The proviso in section 12 makes it mandatory that the purchasing company agree to abide by any schedules fixed by the Authority. The statute is not entirely clear, but it is the well-considered opinion of the General Counsel of the Authority, Mr. James Lawrence Fly, that the provisions of the contract are in compliance with the statute. Mr. James Lawrence Fly is the same general counsel who was at the head of the defense of the T. V. A. in the recent case in Chattanooga, which was unanimously decided by a three-judge court in favor of the T. V. A.

The contract with the Arkansas company involves no change of policy by T. V. A. There has been some criticism of this contract on the ground that it represents a basic change in policy. There is no basis in fact for such concern. The Authority has 32 contracts with public agencies, and 1 contract with a private utility. Those with public agencies are for 20 years and provide for 100 percent supply. The contract with a private company is for 5 years and provides a small proportion of its supply. The Authority is negotiating with a large number of communities in several States, and, were it not for injunctions and other hindrances, would be serving an even larger number of public agencies. At the same time, the contract represents an effort on the Authority's part, consistent with its obligation to public agencies, as provided by law, to put this project on a financially sound basis at the earliest possible time and to bring to the Treasury $3,000,000 in revenues during the period of obstruction and litigation, when without such revenues public sentiment might well turn against the Authority's administration of the project.

Now, about the Arkansas Power Co. being a "favored corporation": The truth is that by reason of the injunctions and lawsuits brought against the T. V. A. by a long list of power companies the T. V. A. found itself with a large amount of power on its hands that was going to waste; and it was exceedingly fortunate for the T. V. A. and for the Government that the Arkansas Power Co. was able to take a portion of this banked-up power from the T. V. A., banked up by the scores of injunctions, every one of which has been dismissed by the Supreme Court of the United States.

Now about Mr. Couch: Despite the alleged play upon words and attempted witticisms of the Senator from New Hampshire, I have known Mr. Couch for quite a while. He is a man of ability and of uprightness and integrity. He is able to defend himself. He does not need any defense from me. I do not know what the Senator from New Hampshire has against him. It is true Mr. Couch is president of one of these "giant" power companies, but the Senator's whole record shows that he has been exceedingly friendly to the power companies, because when he was utilities commissioner of New Hampshire for 5 years he allowed the power companies of New Hampshire to have the highest rates of any State in the Union except one. The plain facts are that the contract with the Arkansas Power Co. benefited the T. V. A., and is benefiting the T. V. A., and is benefiting the Arkansas consumers very much more than it is benefiting the Arkansas Power Co. It has brought about reduced rates to the power consumers in Arkansas and has very largely increased the income of the T. V. A.

The argument of the Senator from New Hampshire about the matter, as shown in his speech, is based on virtually an entire ignorance of the true facts of the situation. He evidently did not know that the Arkansas Power Co. had reduced its rates and he evidently did not know that the T. V. A. had this banked-up power which it could not use unless it sold it in the way it has sold it. The law directs the T. V. A. to sell to corporations. It did not except the Arkansas Power Co. and it did not except the Union Carbide Co. and its affiliates and it did not except the other industries to which the T. V. A. has sold power.

I wonder if the Senator from New Hampshire will not be good enough to make out a list of companies to which he thinks the T. V. A. ought to sell power. Of course, I understand he stated in his speech that he does not want power to be sold to the Arkansas Power Co., to the Electro-Metallurgical Co., the Victor Co., the Monsanto Chemical Co., or the Aluminum Co. of America. But are there any companies that the Senator from New Hampshire, in his righteousness and love of decent corporations, would be willing for the T. V. A. to sell to? Has the Senator introduced any bill to change the T. V. A. law, narrowing the line of customers that the T. V. A. may sell to?

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

Mr. McKELLAR. No; I am not going to yield.

The PRESIDENT pro tempore. The Senator declines to yield.

Mr. McKELLAR. That is the first step that the Senator could take. Of course, the Senator will not be guided by my advice. If he did, he would let entirely alone a matter concerning which he knows little, notwithstanding the fact that he spent his whole vacation in study of the question.

THE ALUMINUM CO. OF AMERICA

The Senator next specifically denounces the T. V. A.'s contract with the Aluminum Co. because of its being a "giant" corporation. Well, the Aluminum Co.'s contract was made in the open light of day. It was published to the world. It was highly beneficial to the T. V. A., because it has a large amount of power banked up by reason of the lawsuits and injunctions that had been brought by the power companies, with which the Senator from New Hampshire is supposed to be in entire sympathy, that it could not sell to municipalities, although it had contracts to sell to municipalities. This power was going to waste because of injunctions and lawsuits.

I never heard a word of complaint from the Senator from New Hampshire of the lawsuits and injunctions which the power companies brought; but I think the T. V. A. was exceedingly lucky to make this contract with the Aluminum Co.

The Senator says that the Aluminum Co. is a "wicked" company, and that not only the T. V. A. but also the administration is opposed to wicked companies like the Aluminum Co., and that it is, therefore, "inconsistent" on the part of the T. V. A. to sell this 30,000 kilowatts of primary power and 30,000 kilowatts of secondary power to the Aluminum Co. at a good price. Again the Senator from New Hampshire is not advised as to the facts. His reasoning is not sound.

Because the Aluminum Co. is a "giant" company, must the Government have nothing to do with it? Must it not be taxed by the Government because it is a "giant" company? If the Government needs aluminum, must the Government not buy it from the Aluminum Co. because it is a "big, wicked company"?

Mr. President, in my judgment, the argument of the Senator from New Hampshire on this point is without the slightest merit or force. The Senator says the Aluminum Co. of America is saving by its contract with the T. V. A. perhaps $400,000 a year, plus an indefinite sum which he does not state. Of course, this is a mere statement from the Senator and is not backed up by the facts at all and could not be. But, suppose such were the facts, the T. V. A. makes $3,000,000 out of the contract during its term, $3,000,000 that is simply taken out of the water, so to speak, because nobody is using that power and will not use that power during the term of the contract.

Not only this, but the Senator may not know that the Aluminum Co. of America has a very large plant at Alcoa, Tenn. At the time of making the contract it was employing 2,400 men. Since it secured this contract it has been constantly increasing the number of employees, and it has practically doubled its plant, and when it is completed the number of men employed by that plant will be in the neighborhood of 8,000. Thus this contract not only aids the T. V. A., not only saves the Government $3,000,000, which it could not have obtained otherwise, not only makes it easier to reduce the rates to farmers and to municipalities, but the contract aids the unemployment situation and gives steady labor to people who need it.

The Senator says these contracts were made behind closed doors and that they should have been made after bidding. The Senator should have examined the law. The law is perfectly plain; there is no requirement that the T. V. A., in selling power, shall ask bids for it. The Senator ought to know the law, whether he does or not. The contracts which the T. V. A. has made with all these industries have been made for the benefit of the T. V. A. and for the interests of all the people, but the Senator claims that these were secret contracts, made behind closed doors. The terms were published in every newspaper in Tennessee and in many newspapers throughout the country. The contracts themselves are in the report of the T. V. A. to the Government, to which, by the way, the Senator from New Hampshire carefully avoids referring.

The Aluminum Co. may be a "giant" company or it may be a bad company, and its stockholders may live in Hawaii, but I do not see how that has the slightest effect on the bona fides and the propriety of the T. V. A. having sold power to it just as it has.

I will give the Senator an illustration: I do not generally agree with the Senator from New Hampshire. I have nothing against him. He is always trying to make the headlines. I admire him for that. I hear he is a very ambitious candidate for the Republican nomination for President.

I admire him for that. Any man should be ambitious. But even supposing all these things to be true, I ought not to refuse him any rights in the world which he has as a Senator or as a man. I would not do anything under heaven to injure him, and I do not think that I ought to refuse to have intercourse with the Senator merely because he is a political "giant" or has views different from mine, or because he has an ambition to be President. It would be very foolish for any Senator to take that attitude toward another Senator; and in like manner I think it would be very foolish for the T. V. A. to refuse to sell power it wanted to sell, and which would go to waste if it did not sell, to a corporation like the Aluminum Co. or to the Electro-Metallurgical Co., or to the Arkansas Power Co., and especially as the act authorized the T. V. A. to do that very thing.

THE CONTRACT WITH THE ELECTRO-METALLURGICAL CO.

The Senator from New Hampshire seems to believe, judging from his speech, which he had used the entire time of his vacation, some 3 months, to prepare, that it was a wicked thing for the T. V. A. to sell power to the Electro-Metallurgical Co. because it was a subsidiary of the Union Carbide Co. Well, I am frank to say that I do not know much about the Union Carbide Co. except that it is a great corporation, manufacturing many articles of merchandise, and I have understood it to be a very large company. As to its being good or bad or wicked, I am unable to say. I knew many years ago, and still know, the president of that corporation, Mr. Jesse Ricks. He was a young man who came from Wisconsin to Chicago. I had some business with him and found him to be a high-standing, able, splendid young lawyer. He succeeded in Chicago, afterward moved to New York, and afterward became the president of the Union Carbide Co. I would not like to think that he is the head of a wicked corporation such as the Senator from New Hampshire describes; and, frankly, the Senator from New Hampshire would have to bring proof to uphold an indirect charge that Mr. Ricks is the head and front of a dishonest and corrupt corporation. I have not seen Mr. Ricks in years. I remember him with a great deal of pleasure and admiration, and I would not like to think that he has turned the Union Carbide Co. into a wicked concern with which the Government of the United States ought not to have any connection. Certainly the Government ought to tax it if it has any property, and it has a great deal of property; and if it has subsidiaries, these ought to be taxed.

The T. V. A. contract was made in the open. It was made on the 17th of last August, and was published. The first article of the contract provides for the building of a plant in Colbert County, Ala., "as an expression of good faith." It has not bought any power yet, but it will begin next year. It will take 8,000 kilowatts of primary power now going to waste, and it will take 8,000 kilowatts of secondary power now going to waste, as sold on the T. V. A.'s yardstick plan. Anyone else who wants to build a similar plant or a rival plant can make a similar contract, and it is remarkable that the Senator from New Hampshire should object to this contract, made to the great advantage of the T. V. A. and of the Government.

I think that what really troubles the Senator from New Hampshire is that he is against the T. V. A. coming and going, and he is just afraid that, judging by its marvelous success against all the vicissitudes and hindrances that have been put in its path, the T. V. A. is going to be successful, and he wants to prevent it from being successful.

MONSANTO CHEMICAL CO.'S CONTRACT

The Monsanto Chemical Co.'s contract was made May 15, 1936. The Monsanto Co. gets 8,750 kilowatts of primary power and 16,250 kilowatts of secondary power.

It seems from the records that the Monsanto Co. has other plants, including one at Anniston, Ala. They are moving a part of these operations into the Tennessee Valley area, where they get not only the advantage of cheaper power, but also they are nearer to the raw materials. They are shipping products from middle Tennessee to the Anniston, Ala., plant.

Again, Dr. Curtis says:

The cost of raw material is the determining factor in many instances. I do not think you could make a general statement as to what would be the principal factor. In case of the Monsanto Chemical Co., the largest single factor is that of raw materials, and they have located the new plant near the raw materials. The fact is that power would not represent perhaps more than 20 to 30 percent of the total cost of production as against 40 to 50 percent for raw materials. (House hearings, p. 982.)

Here is a plant which wants to get nearer raw materials and wants to get cheaper power, and it comes to the T. V. A. to better itself. It enters into a contract with the T. V. A. by which it acquires a relatively small amount of primary power and a relatively large amount of secondary power, all of which was going to waste. It is a fine contract for the T. V. A., but in some way it has brought down upon itself the wrath of the Senator from Hampshire. It is a "wicked" company. Some of its stockholders are basking in the balmy weather of Hawaii, or riding on the ocean in a private yacht; and, therefore, the Senator from New Hampshire believes that the Government should not sell this power to the Monsanto Chemical Co. He does not disclose any reasons except those that I have given. It may be a big company. It may be a wicked company, but up until this writing I never heard of the Senator from New Hampshire being opposed to big or wicked companies. Talk about consistency being a jewel, the Senator from New Hampshire is not very consistent himself.

I will now take up the Victor Chemical Co. The Victor Chemical Co. is likewise building a new plant (House hearings, p. 979). That company is one of those which now proposes to produce in the Tennessee Valley a material which they have been producing and will continue to produce in Nashville (hearings, p. 980). In other words, it will be an expansion of their business. If anyone ought to object to that company removing a part of its business from Nashville to Alabama, I ought to be the one; but I am not, because I am delighted that the Victor Co. wants to expand its business. I am delighted that it wants to have more employees. I am delighted that it wants to get cheaper rates for power, and I am delighted that the T. V. A. is able to sell its power as required by law to this company.

It may be true that certain Victor stockholders are riding in yachts on the high seas, or basking in the sunshine of Hawaii, but I see no reason why the T. V. A. should refuse to sell power to the Victor Co. because of that fact. Indeed, it would violate its duty to itself and to the Government if it did not sell its unused power to this concern. All these contracts provide that the buyers take the power subject to the needs of those who are preferred in the act, such as farmers and the cities and counties.

T. V. A. A PROFITABLE INVESTMENT

The T. V. A. is one of the most profitable investments the American people ever made. It, along with the other power policies of this administration, has resulted in reducing light and power rates to the American people to the amount of $556,000,000 a year.

Here is the ocular proof:

During the year ended February 28, 1932, we used 62,653,000,000 kilowatt-hours of electricity, for which we paid $1,803,000,000. During the year ended February 28, 1937, we used 91,555,000,000 kilowatt-hours, for which we paid $2,086,080,300. If we had paid the same rate for that 91,555,000,000 kilowatt-hours that we paid in 1932, the year before the T. V. A. was created, the cost would have been $2,642,000,000, or $556,000,000 more than we actually paid.

Where is the Senator from New Hampshire [Mr. BRIDGES]? I am going to refer to a number of things he stated, and I do not want to do him an injustice by quoting his remarks while he is not present. Can the Senator from New Hampshire be found?

SOME OF SENATOR BRIDGES' UNFOUNDED CHARGES

First. Senator BRIDGES says:

The failure of the T. V. A. was neither admitted nor explained.

The idea, Mr. President, of calling a failure what has been done by the T. V. A.! It is one of the greatest successes financially and otherwise that has been achieved up to this time.

The Senator from New Hampshire continued:

It is a failure for that Government agency so to have overextended its power facilities that in order to dispose of its power it had to pledge to a few large industrial concerns four times as much as the municipal and cooperative load—

He says that it has overextended its power facilities. Yet he does not say a word about the injunctions against Memphis, against Chattanooga, against Decatur, and against other cities preventing them from buying the power—

and it is worse than failure for the T. V. A. to fall so from its high purpose that it ends only by peddling the people's power to a few giant industries.

No statement could be further from the fact. The T. V. A. has been a wonderful success and has done a marvelous amount of good. It is simply ridiculous to bring up the criticism that it has overextended its power facilities when, as a matter of fact, it has been deprived of the opportunity of selling power all over the area by reason of lawsuits and injunctions by 19 power companies. When we look at the long lists of farmers, cooperatives, and municipalities that it is selling to now, the charge becomes simply more ridiculous.

Second. Again the Senator from New Hampshire says:

The entrance of the T. V. A. into the business of selling light and power was justified by the need of applying a Government yardstick to prices of electricity, but the theory behind the yardstick operations had nothing to do with sales to large industrial concerns. It had to do primarily with light and power for residential and farm uses—for private citizens, represented by municipalities and cooperatives.

Evidently he had not read the law. How unfair! How unjust is this criticism in view of the fact that 19 power companies have by every quirk of the law obtained temporary injunctions stopping the T. V. A. from selling to municipalities. Of course, municipalities and farmers and cooperatives have the first claim, but the law directs that after these uses have been met the T. V. A. is to sell to industries and others holding power in order that the rates may be lowered.

The Senator probably had not read the bill.

Third. Standing firm by the utilities companies, the Senator in his exuberance says:

Utility companies cannot possibly exploit industrial clients. Utility companies have no monopoly in selling power for industrial purposes. * * * As I have stated, utility companies cannot possibly exploit industrial clients, T. V. A. or no T. V. A.

That is an unjust and unfair statement, in view of the previous statement of the Senator from New Hampshire that the T. V. A. is operating in the interests of the big companies by reason of selling its product to them at a lower rate than the private utility companies can sell it.

Fourth. Again the Senator and former utility commissioner says:

Four great industrial concerns, four giant corporations in this country, and one great utility company, the leading man in which is friendly with the powers that be, are the beneficiaries, not the plain people, not the people for whom the yardstick was intended.

This is another statement wholly without foundation in fact. If there are any other concerns that want to buy the same kind of power from the T. V. A. and who have not done so, if Senator BRIDGES will give the names of such concerns, the T. V. A. will be delighted to sell to them.

Fifth. The Senator says:

These contracts were not open to public bidding.

* * * * * * *

Mr. President, why did they not ask for public bidding? Why did they not give the public the opportunity to offer bids? Why was it done behind closed doors?

All these charges in the form of questions are without the slightest merit. The contracts were made openly. They were made in accordance with the law. The law does not require public bidding. The T. V. A. could not do so in the very nature of the contract. The contracts themselves are before the public. They have been published in every local newspaper. They have been published in the report of the T. V. A., and had the Senator looked at it he could have read it. He does not refer to it in his speech. I suppose he did not read it.

Sixth. Again the Senator says:

The Tennessee Valley Authority will have 1,878,800 kilowatts rated capacity.

I hope it will in the future, and if so, it will sell it all unless prohibited by injunctions from the power companies.

The Senator from New Hampshire did not tell the Senate that the present installed capacity is 348,000 kilowatts. Oh, no; his 3 months' study during his vacation last year did not give him this information, although it was in the July report of the T. V. A., which he perhaps never looked at.

Seventh. Again, the Senator bursts out:

Finally, what of the sales price? Did the T. V. A. prices really cover the cost of the power not only of the dams but the generating facilities needed to make and deliver it? We are not told. Nobody knows. The action was arbitrary, concealed.

Consider all this secrecy—closed doors, hotel rooms—in the light in which the ordinary, everyday American citizen is forced to divulge his every move, every penny he makes, the sources of each dime that he earns, in his income-tax return, his social-security returns.

Mr. President, I happened to be in Memphis and was present when the Memphis and T. V. A. contract was signed. Its full terms were published in the newspapers. It was signed in a densely packed hall in which there were probably 1,000 persons or more. Moving pictures were taken of the transaction, and every detail of the transaction was known. Memphis accepted the proposition by a vote of 17 to 1 in a popular election. The truth is that in all of his study in the 3 months, evidently the Senator from New Hampshire did not undertake to make much investigation. If he did, he made only a one-sided investigation. If the Senator had looked into the reports of the T. V. A. instead of rambling around some "assertion bureau," he would have known that the T. V. A. is making more than the cost of power.

Again, the Senator says:

Meanwhile there is the fact that a few corporations benefited at the expense of the taxpayers, for the taxpayers are assuming the difference between the prices charged and the cost of such power to these companies, whether they bought it elsewhere or produced it themselves.

It has been shown me that several of these companies bought power from the T. V. A. While they might have helped themselves to some extent—and I hope they did—certainly they very greatly helped the T. V. A. and the Government, and what was done was entirely within the law and within their rights.

The next assertion made by the Senator from New Hampshire is in reference to differences in the Board. He refers to a difference between Dr. A. E. Morgan and Mr. Lilienthal and Dr. H. A. Morgan. The Senator offers this as the piece de resistance, and charges that there ought to be an investigation because the several directors of the T. V. A. do not agree with each other in all matters. This is another strange so-called argument. Does the Senator think we ought to have a Senate investigation of the State of New Hampshire because the two Senators do not agree? Does he think we ought to have an investigation of the Republican Party because we have in the Senate a number of reactionaries like the Senator from New Hampshire, and because we have a number of progressive Senators like the Senator from Nebraska [Mr. NORRIS]? I see no need for an investigation in New Hampshire. I think it is a rather happy coincidence that the senior Senator from New Hampshire and the junior Senator from New Hampshire do not agree.

I have referred here to political differences. If the Senator objects to those remarks, I will agree that they may go out.

The senior Senator from New Hampshire is for the people. I imagine he is for lowering the rates of power to the people, to the farmers, and to the industries. I have not talked with him, but I have no doubt he is on the side of the people, while the junior Senator from New Hampshire from 1930 to 1935 aided in maintaining in New Hampshire the highest rates in America, except those in one other State.

It would be a strange coincidence indeed if the three directors of the T. V. A. were together on every question that comes up before the T. V. A. In this connection, I am wondering why the Senator from New Hampshire, away up close to Canada, is taking so much interest in the T. V. A. down in Tennessee, more than 1,000 miles away, and in Alabama and adjoining areas. It is remarkable how far away from home some Senators like to indulge in reforms. He puts himself in the same attitude as some of our northern and western friends who are trying to pass the antilynching bill, disregarding the beams of law violations in their own States, and coming down in our part of the country to hunt for motes in the eyes of our people.

I think the Senator would much better perform the duties of his office if he aided in bringing down the enormous power rates in New Hampshire, if he gave the farmers of his State, the industries of his State, the housewives of his State, and the consumers of electricity everywhere in his State lower rates, instead of trying to perpetuate, as I understand his position, the monopolistic trend of the power trusts. How is he going to explain to the people of New Hampshire his fight here for the power trusts and for a continuation of the enormous rates that his own constituents have to pay? It is a question I will let him decide for himself.

Again, the Senator says:

Wall Street at its worst never had a better example of a preferred list of customers benefiting from inside negotiation than is evident here.

There has been talk about personalities, and complaint that something I said a while ago was of a personal nature. It was not so intended. I was merely stating the facts as they appear here in the RECORD. What sort of a thrust is that at the members of the T. V. A.? The charge that customers benefited from inside negotiations is a charge of fraud. What a statement coming from the Senator from New Hampshire!

I want to say to the Senator that if he will give me the name of anyone who wants to buy power on the same terms on which it was sold to these five companies, I can assure him that such proposed purchaser will get power from the T. V. A. on the same terms. Of course, there is no preferred list. Of course, there is no one benefiting from inside negotiations.

Again, he says:

What a bargaining weapon the Authority had here. Could not the Authority have said to the Aluminum Co. of America, "Yes; certainly we can offer you a reduction in rates from what you would ordinarily have to pay in other industrial centers. But we represent the United States Government and we give you no concessions unless you also concede something which is of value to the Nation."

That is precisely what was done in each case. In the Arkansas Power Co. case they had the rates reduced, and that company bought unused power that was going to waste to the extent of $3,000,000.

In the Aluminum Co. case the Aluminum Co. bought not only unused power but largely secondary power, and at the same time provided for the building of another large plant and work for perhaps some 4,000 people.

Ah, but lastly here comes the real milk in the coconut. The Senator says:

I want the power in New England controlled by the States in which I have a little more confidence than in the T. V. A., which has bartered away power to some of the great corporations of this country, so that a few more multimillionaires may sail the southern

seas on palatial yachts. That is what has happened. That is one of the things we are afraid of in New England.

That southern seas cruise seems to have caught the Senator's attention—the southern seas cruise on palatial yachts and basking in the sunshine of Hawaii. Where is its relevancy in regard to the Tennessee Valley Authority? I do not know. Perhaps the Senator does.

I continue reading the Senator's statement:

We have only a few great natural resources in New England. We have our forests; we have our deep-sea fishing; we have our lumber. We have our scenery and our climate, and the New Deal cannot take those away from us. But we have another great resource. Every little industry, every village, every city that has prospered in New England has developed around some waterway, some little stream, some river.

Mr. President, this tells the whole story. New Hampshire has the second highest power rates of all the States in the Union. It charges more than 100 percent more for its power than does the T. V. A. It charges more than 100 percent more for its power than power is sold for in the State of Washington. It charges more than 100 percent more for its power than the power companies in Canada right across the line from New Hampshire.

Evidently what the Senator is after is keeping up the price of power in New Hampshire. He does not want people ever to have cheaper power in his State. He wants the power barons to continue to have their way. He was a utility commissioner in New Hampshire. He did not reduce the rates while a commissioner to the farmers, the householders, the industries, and other consumers. Why does he think the rates should be reduced in the Tennessee area? It is the same old story of standing by the big interests. It is the same old fight of the predatory interests against the rights of the people. That is the sum total of the Senator's speech on the T. V. A.

I ask, Mr. President, that two tables from the House hearings on the independent offices bill for the year 1939 be attached to and considered part of my remarks, together with five contracts entered into by the T. V. A.

The PRESIDING OFFICER (Mr. ANDREWS in the chair). Is there objection? The Chair hears none.

The tables and contracts are as follows:

Tentative estimate of possible T. V. A. system requirements and capacity available, by fiscal years

	1938		1939		1940		1941		1942	
	Kilowatts	Percent	Kilowatts	Percent	Kilowatts	Percent	Kilowatts	Percent	Kilowatts	Percent
Firm power:										
Municipal contractors now served	14,200	8.6	15,900	5.5	17,300	4.1	18,400	3.6	19,300	3.3
Municipal contractors not now served	20,000	12.1	64,000	22.0	90,800	21.4	111,300	21.9	129,300	22.3
Cooperatives now served	12,600	7.6	14,400	5.0	15,600	3.6	16,400	3.2	17,100	3.0
Industrial contractors	41,500	25.0	74,700	25.7	93,500	22.0	101,500	19.9	93,500	16.2
Utility contractors			15,000	5.2	20,000	4.7	25,000	4.8	30,000	5.2
T. V. A. construction, etc	20,000	12.1	20,000	6.9	20,000	4.7	20,000	3.9	20,000	3.5
Subtotal	108,300	65.4	204,000	70.3	257,200	60.5	292,600	57.3	309,200	53.5
Estimated new load			2,000	.7	61,800	14.6	115,400	22.6	170,800	29.5
Total firm demand	108,300	65.4	206,000	71.0	319,000	75.1	408,000	79.9	480,000	83.0
Secondary power:										
Industrial contractors [1]	34,700	21.0	52,800	18.2	71,000	16.7	71,000	14.0	71,000	12.3
Utility contractors [1]	7,500	4.5	11,200	3.9	15,000	3.5	11,500	2.2	7,000	1.2
T. V. A. fertilizer	15,000	9.1	20,000	6.9	20,000	4.7	20,000	3.9	20,000	3.5
Total secondary demand	57,200	34.6	84,000	29.0	106,000	24.9	102,500	20.1	98,000	17.0
Total firm and secondary demand	165,500	100.0	290,000	100.0	425,000	100.0	510,500	100.0	578,000	100.0
Minimum reserve	50,000		50,000		50,000		50,000		60,000	
Minimum capacity required	215,500		340,000		475,000		560,500		638,000	
Installed capacity	348,000		420,000		468,000		573,000		697,000	
Margin [2]	132,500		80,000		7,000		12,500		59,000	

[1] 75 percent of commitments for fiscal years.

[2] 40,000 kilowatts under contract as available.

Estimated Tennessee Valley Authority system load—Kilowatts by fiscal years

MUNICIPAL CONTRACTORS

	1938	1939	1940	1941	1942
CONTRACTORS NOW SERVED (JUNE 30, 1937)					
Amory	479	526	557	588	618
Athens	1,233	1,327	1,422	1,504	1,580
Bolivar	250	339	391	443	496
Dayton	453	497	538	572	601
Dickson	570	631	686	727	767
Florence	2,800	3,112	3,398	3,620	3,818
Holly Springs	400	443	479	512	540
Jackson	430	475	475	475	475
Milan	460	504	548	579	610
Muscle Shoals City	200	215	228	241	250
New Albany	915	1,008	1,062	1,146	1,210
Okolona	668	715	747	779	813
Pulaski	885	977	1,040	1,103	1,164
Sheffield	755	1,010	1,198	1,290	1,374
Somerville	200	220	240	253	266
Tupelo	2,842	3,147	3,408	3,608	3,785
Tuscumbia	700	797	866	927	982
Total	14,240	15,943	17,303	18,367	19,349
Say	14,200	15,900	17,300	18,400	19,300
CONTRACTORS NOT NOW SERVED (JUNE 30, 1937)					
Chattanooga		20,000	30,000	40,000	50,000
Decatur		3,000	3,600	4,000	4,300
Knoxville		10,000	16,000	21,000	25,000
Memphis	20,000	30,000	40,000	45,000	48,500
Russellville		1,000	1,200	1,330	1,450
Total	20,000	64,000	90,800	111,330	129,250
Say	20,000	64,000	90,800	111,300	129,300

Estimated Tennessee Valley Authority system load—Kilowatts by fiscal years—Continued

COOPERATIVES

	1938	1939	1940	1941	1942
COOPERATIVES NOW SERVED					
Alcorn Co. E. P. A	2,298	2,498	2,658	2,795	2,929
Cullman Co. E. P. A	311	350	382	415	444
Duck River E. M. C	642	727	812	853	895
Gibson Co. E. M. C	1,144	1,357	1,491	1,568	1,638
Meigs Co. E. M. C	481	602	705	746	780
Middle Tenn. E. M. C	631	808	943	990	1,035
Monroe Co. E. M. C	550	585	615	645	676
N. Georgia E. M. C	685	927	996	1,054	1,099
Pickwick E. M. C	484	550	613	647	675
Pontotoc E. P. A	943	1,017	1,043	1,066	1,085
Prentiss Co. E. P. A	845	914	961	1,000	1,036
Southwest Tenn. E. M. C	783	1,009	1,196	1,311	1,374
Tishomingo Co. E. P. A	619	662	696	727	755
Tombigbee E. P. A	1,912	2,023	2,115	2,188	2,259
Lincoln Co. E. M. C	303	344	366	384	397
Total	12,631	14,373	15,592	16,394	17,077
Say	12,600	14,400	15,600	16,400	17,100
INDUSTRIALS (FIRM POWER)					
Goodyear Mills	3,000	3,000	3,000	3,000	3,000
Monsanto	8,750	10,675	17,500	17,500	17,500
Aluminum Co	30,000	30,000	30,000	30,000	30,000
Volunteer	3,000	3,000	3,000	3,000	3,000
Victor		12,000	16,000	16,000	16,000
Electro-Metallurgical		8,000	16,000	24,000	24,000
Sardis Dam	8,000	8,000	8,000	8,000	
Total	52,750	74,675	93,500	101,500	93,500
Say	[1] 41,500	74,700	93,500	101,500	93,500

[1] Reduced during developmental period.

Estimated Tennessee Valley Authority system load—Kilowatts by fiscal years—Continued

SECONDARY POWER

	1938	1939	1940	1941	1942
Aluminum Co	30,000	30,000	30,000	30,000	30,000
Monsanto	16,250	19,825	32,500	32,500	32,500
Victor	----------	12,000	16,000	16,000	16,000
Electro-Metallurgical	----------	8,000	16,000	16,000	16,000
Total	46,250	69,825	94,500	94,500	94,500
Say 75 percent	34,700	52,800	71,000	71,000	71,000

AMENDATORY AGREEMENT BETWEEN TENNESSEE VALLEY AUTHORITY AND ALUMINUM CO. OF AMERICA

Whereas the Authority and the company are parties to an agreement dated July 17, 1936 (hereinafter designated as "the 1936 agreement"), for the exchange of power, the purchase and sale of power, and for other purposes; and

Whereas the citizens and farmers of north Georgia have organized, and are organizing, cooperative associations for the purpose of distributing electricity to the members thereof, and have requested the Authority to supply the bulk electric power requirements of said association; and

Whereas said area in north Georgia cannot now be served from the Authority's transmission lines, but is within convenient transmission distance of the transmission lines of the Nantahala Power & Light Co., a subsidiary of the company; and

Whereas the Authority has available, and the company desires to purchase, power in addition to that described in the said agreement as "purchased power":

Now, therefore, subject to the provisions of the Tennessee Valley Authority Act of 1933, the 1936 agreement is amended as follows:

1. The company will supply, or cause to be supplied, power to the Authority for sale in said area in north Georgia, at any mutually agreeable point or points on the transmission system of the Nantahala Power & Light Co., in such amount or amounts as the Authority may request when, in the judgment of the company, the available capacity of the facilities of the Nantahala Power & Light Co. so permit: *Provided*, That the total power to be delivered to the Authority shall not exceed 12,000 kilovolt-amperes, including the power delivered pursuant to paragraph 4 of the 1936 agreement.

The expense of an interconnection between the facilities of the Nantahala Power & Light Co. and the facilities of the Authority shall be paid by the Authority. The Authority shall have the same rights and obligations with reference to the additional facilities necessary for such interconnection as are provided by the 1936 agreement with reference to the substation and facilities to be constructed by the Authority at the Santeetlah powerhouse of the Carolina Aluminum Co.

2. The power supplied pursuant to paragraph 1 of this amendatory agreement shall be metered where taken and shall be returned to the company at Alcoa, as provided in paragraph 5 of the 1936 agreement, at a total rate not to exceed 12,000 kilovolt-amperes, including power reimbursed under paragraph 5 of the 1936 agreement.

3. Paragraph 6 of the 1936 agreement is amended to read as follows:

"6. In addition to the power which the Authority is to supply the company at Alcoa, Tenn.; under paragraph 5 hereof, the Authority will deliver to the company at Alcoa, from a substation at Norris Dam, Tenn., such other power as the company may demand to the extent that, in the judgment of the Authority, it has such power available as a surplus over navigation and flood-control requirements and other present and future commitments, which power is herein referred to as 'purchased power.' This purchased power shall be supplied and taken at as near 100-percent-load factor for the period of the demand as the parallel operation of the power systems of the Authority and the company will permit, in blocks as specified in such demand, not less than 10,000 kilovolt-amperes nor more than 40,000 kilovolt-amperes (in addition to the demand to which the company is entitled under paragraph 5 hereof) upon 15 days' notice by the company for a period of not less than 90 days. Delivery of said purchased power shall be terminable at any time at expiration of or after the minimum period by either party on at least 15 days' notice. The company shall pay for purchased power at the rate of 2.2757 mills per kilowatt-hour, and shall demand power in the manner herein provided.

"On or before May 1 of each year the company shall make demand on the Authority in writing, specifying what amount of purchased power, if any, it desires during the last 7 months of said calendar year and the date upon which commencement of delivery is desired, together with the other matters hereinabove specified. The Authority shall within 30 days after receipt of said demand, but not earlier than May 15, advise the company by notice in writing whether it will deliver power to the extent called for in said demand and, if not, to what lesser amount, if any, or for what lesser period (but not less than 90 days), if any, it will deliver power as herein provided during the last 7 months of said year. Thereupon the company shall be obligated to take and pay for, and the Authority shall be obligated to deliver, the amount of power which the Authority has so agreed to supply, but not in excess of the amounts demanded by the company. The company agrees to demand not less than 85,000,000 kilowatt-hours in every calendar year, and the Authority agrees that it will not before May 1 in any year disable itself from supplying the company not less than 85,000,000 kilowatt-hours of purchased power in the last 7 months of every calendar year by selling to any other customer power at the same or substantially the same price and at the same or substantially the same terms. The Authority will, on or before the 10th day of each calendar month, render to the company a statement of the amount payable under this paragraph for the preceding calendar month, and within 20 days thereafter the company will pay the Authority in lawful money of the United States of America the amount so due the Authority.

"If at any time the Authority shall sell any power of similar or better quality to any person or corporation engaged in any business of a similar or competitive nature to that of the company at a rate less than that set forth herein for purchased power, then in such case the rate to be applied to purchased power hereunder shall be reduced to the lesser rate and continue so long as such lesser rate is operative."

4. Paragraph 9 of the 1936 agreement shall apply to all deliveries of power under this amendatory agreement and to all facilities necessary therefor.

5. This amendatory agreement shall take effect at midnight of December 31, 1937, and shall continue in effect until midnight of December 31, 1947, except that the parties may at any time prior thereto extend this agreement for an additional period of 5 years, and if so extended may at any time prior to midnight of December 31, 1952, by agreement extend this agreement until midnight of December 31, 1957. Until midnight of December 31, 1937, the provisions of the 1936 agreement shall continue in full force and effect, and after said date the provisions of the 1936 agreement shall continue in full force and effect, as specifically amended by this amendatory agreement, until midnight of December 31, 1947, or until the expiration of any period of extension agreed upon as above provided.

In witness whereof, the parties hereto have caused this amendatory agreement to be executed in four counterparts, each of which shall be considered an original, pursuant to authority of resolutions of their respective boards of directors duly adopted.

TENNESSEE VALLEY AUTHORITY,
By ——— ———, *Chairman*.

Attest:

——— ———.

ALUMINUM COMPANY OF AMERICA,
By ——— ———, *President*.

Attest:

——— ———.

This agreement, made this —— day of ———, 1937, by and between Tennessee Valley Authority, a corporation organized and existing under the act of Congress of May 18, 1933, as amended by the act of August 31, 1935 (hereinafter designated as the Authority), first party, and Aluminum Company of America, a corporation organized and existing under the laws of the Commonwealth of Pennsylvania (hereinafter designated as the company), second party, witnesseth: That

Whereas the company proposes to increase the capacity of its Alcoa Works and desires to purchase part of the power required to operate such increased capacity, in addition to the power which it can secure from other sources of supply; and

Whereas the Authority has available a supply of power as hereinafter set forth, after fulfilling the requirements of the Authority and the United States, and without prejudice to any preferential rights of States, counties, municipalities, and nonprofit organizations of citizens and farmers to purchase electric power from the Authority; and

Whereas the Authority now has under construction, and will shortly have in operation, a transmission line to the company's substation at Alcoa, Tenn., which will be adequate for the transmission of the power herein specified, without additional expense to the Authority:

Now, therefore, the said parties hereto, subject to the provisions of the Tennessee Valley Authority Act of 1933, mutually agree and bind themselves to the following covenants and conditions, to wit:

1. The Authority will sell and deliver to the company 30,000 kilowatts of firm power as herein defined. The company will pay the Authority $60,000 per month for such power for each month during the life of this agreement, except when temporarily discontinued as provided herein. Firm power shall be defined as power available to the company at all times, except as provided in sections 7 and 9 hereof.

2. The Authority will sell and deliver to the company 30,000 kilowatts of power herein designated as run-of-stream secondary power. The company will pay the Authority the sum of $1,800 for each day said power shall have been delivered, except as otherwise provided herein.

The Authority shall give not less than 21 days' notice of its intention to interrupt the run-of-stream secondary power hereunder.

To compensate the company for the expense incurred by reason of an interruption of run-of-stream secondary power and difficulty in resuming power takings after notice of availability, there shall be deducted from the current bill the sum equal to the cost of run-of-stream secondary power for 21 days for each interruption.

The Authority shall give the company notice of its intention to resume the delivery of run-of-stream secondary power so interrupted, and the company shall accept delivery thereof 7 days after the date of said notice.

Immediately following a period in which the delivery of run-of-stream secondary power has been interrupted, as provided for herein, the Authority shall deliver run-of-stream secondary power to the company, without charge therefor, for a number of days equal to one-third the number of days between the date of interruption and the date of notice of resumption. Delivery of run-of-stream secondary power shall not be interrupted except when, in the judgment of the Authority, deficiency in stream flow so requires, and in any event the Authority shall make run-of-stream secondary power available for at least 75 percent of the time in any consecutive 10 years.

Authority may elect to interrupt the delivery of 15,000 kilowatts of run-of-stream secondary power and to continue the delivery of the remaining 15,000 kilowatts of such power, in which case the company shall be obligated to pay only one-half the amount set out above, so long as only 15,000 kilowatts of such power is available. The credits for interruption specified in this section shall likewise be prorated. Each day of delivery of only half the contract run-of-stream secondary power shall be considered as equivalent to the delivery of the full 30,000 kilowatts of such power for one-half day for purposes of fulfilling the Authority's obligation to deliver such power 75 percent of the time.

3. The Authority will, on or before the 10th day of each calendar month, render to the company a statement of the amount payable for power delivered during the preceding calendar month, and within 20 days thereafter the company will pay the Authority, in lawful money of the United States, the amount so due the Authority. Upon failure of the company to pay for power as herein contracted for within 60 days after due date, the Authority shall have the right, upon reasonable notice, to discontinue the supply of power and refuse to resume delivery so long as any part thereof remains unpaid.

Discontinuance of supply under this section will not relieve the company of its liability for the agreed monthly and daily charges during the time the supply of power is so discontinued. To any amount remaining unpaid on the 1st day of the calendar month following the due date, there shall be added a penalty of 1 percent, and an additional 1 percent shall be added on the 1st day of each succeeding month until the amount is paid in full. All payments shall be made to the Authority at its offices at Wilson Dam, Ala., or at such other place as the Authority may from time to time designate.

4. The electric power supplied hereunder shall be in the form of three-phase alternating current, at a frequency of approximately 60 cycles per second, and at a normal voltage of 154,000 volts. The point of delivery for all power to be supplied hereunder shall be the 154,000-volt side of the company's substation at Alcoa, Tenn. Maintenance by Authority at the point of delivery of stated voltage and frequency and capacity contracted for shall constitute delivery of electric power for the purposes of this agreement.

5. The company will provide space at its Alcoa substation in which the Authority may, at its expense, install all metering equipment which in the Authority's judgment shall be necessary to determine the amount of power supplied hereunder. The Authority may, at its option, utilize such space for such purpose, or may install metering equipment in any other suitable location; in which event, the power sold hereunder shall be measured and computed as at the 154,000-volt side of the company's Alcoa substation. The Authority shall provide space adjacent to its meter installation in which the company may, at its option and expense, install check meters. The company will, at its expense, install metering equipment on the low-tension side of its Alcoa substation, so that the power supplied hereunder may be measured and computed as of the high-tension side of said substation as a check on the Authority's measurements, and will provide space adjacent thereto in which the Authority may, at its option and expense, install check meters.

The Authority and the company shall each be responsible for the accuracy and maintenance of its own metering equipment, and shall make, each at its own expense, such periodic tests as may be necessary to maintain the same at the highest practical commercial standard of accuracy.

The meters of each party shall be read simultaneously at mutually agreeable times, and the readings taken by each shall be furnished the other. Should any discrepancy occur, either party may request the other to test its metering equipment, and such test shall be made in the presence of a representative of the other party. Should any test show the meters on which the bill for power is based to be in error by more than 1 percent fast or slow, the bill for not exceeding the preceding 30 days shall be adjusted to accord with such corrected meter reading.

Each party shall have free right of access to its metering equipment installed on the premises of the other party. Any equipment or facilities installed by either the Authority or the company on the property of the other shall be considered to be the personal property of the party installing same.

6. The power specified herein shall be supplied and taken at as nearly 100 percent load factor for the period of availability and at as nearly uniform voltage, contract demand, and frequency as the parallel operation of the power systems of the Authority and the company will permit. Should the company fail to take, in any calendar month, the maximum number of kilowatt-hours available within the contract demand, the amount payable by the company shall not be reduced below the contract amount. Should the company inadvertently take, in any calendar month, a number of kilowatt-hours in excess of the maximum number of kilowatt-hours available within the contract demand, the Authority may, at its option, bill the company for such excess number of kilowatt-hours at 1½ mills per kilowatt-hour, or require the company to reduce the number of kilowatt-hours taken by it during the succeeding month by an amount equal to said number of kilowatt-hours.

7. If the operations of the Authority's power plants and power systems, or the operation of the company's manufacturing works at Alcoa, Tenn., are suspended, interrupted, or interfered with for any cause reasonably beyond their control, including, but not by way of limitation, the failure or break-down of generating or transmitting facilities or equipment, floods, backwater caused by floods, fires, strikes, or acts of God, or the public enemy, the Authority need not deliver and the company need not accept or pay for power for such period of time and to the extent that such suspension, interruption, or interference makes it reasonably impracticable to deliver or use such power. Each party will promptly notify the other of any such suspension, interruption, or interference. Interruptions or suspensions of delivery for any such cause shall not entitle the company to the delivery of power without charge, as provided in section 2 hereof.

8. The company agrees that it will consume all power furnished to it by the Authority under this agreement in its own operations, and that such power shall not be so used as to increase the amounts of power sold by the company of its own generation, except that when the company's production or manufacturing operations are curtailed it may, for the period of such curtailment, sell so much additional power of its own generation as may be released by such curtailment.

9. If conditions in the company's business become depressed, so that the company, in its judgment, cannot use all of the power contracted for, the company shall have the right, upon giving the Authority 6 months' written notice, to temporarily discontinue taking either the entire contract run-of-stream secondary power or both the entire contract firm power and run-of-stream secondary power. The company may request the Authority to resume the delivery of the run-of-stream secondary power or both firm power and run-of-stream secondary power if both have been temporarily discontinued hereunder. The Authority shall resume the delivery of the same within 6 months of the date of such notice; provided that the Authority is not obligated to resume the delivery of said power until 1 year after discontinuance. During the period in which delivery is interrupted under this section, the company shall pay to the Authority three-eighths of the otherwise applicable charge per day for run-of-stream secondary power and (if the company discontinues to take firm power hereunder) one-half of the otherwise applicable charge for firm power.

Whenever delivery of power shall have been discontinued under this section, it shall be assumed that run-of-stream secondary power would have been available 100 percent of the time during any period of discontinuance.

10. The Authority and the company will each endeavor to assist the other in furnishing power for emergencies, within the capacity of their respective power systems and reservoirs, and without unduly impairing the ability of the party furnishing the emergency service to meet its existing requirements, if any, for power, or the requirements of the Authority for improving navigation or for controlling destructive floodwaters, of which capacity and undue impairment the party furnishing the emergency service shall be the judge, and the party receiving such emergency power shall return to the party supplying the same, upon demand of the latter, the same quantity of power so received and at the rate specified in said demand; subject, however, to the capacity of the power system and reservoirs of the party returning such power and without unduly impairing its ability to meet its then existing requirements for power, of which capacity and undue impairment the party returning such power shall be the judge.

11. Any notice or demand required by this agreement shall be deemed properly given if mailed, postage prepaid, to the chief electrical engineer, Knoxville, Tenn., on behalf of the Authority, or to the superintendent of power of the company at Alcoa, Tenn., on behalf of the company. The designation of the person to be so notified, or the address of such person, may be changed at any time and from time to time by either party by similar notice.

12. Inasmuch as damages would be an inadequate remedy under this agreement, each of the parties hereto shall be entitled to the remedy of specific performance of this agreement.

13. Any waiver at any time by either party hereto of its rights with respect to the other party, or with respect to any other matter arising in connection with this agreement, shall not be considered a waiver with respect to any subsequent default or matter.

14. The obligations of the parties to purchase and sell power hereunder are in addition to the obligations under the agreement of July 17, 1936, and nothing herein shall be deemed to alter or modify the rights or obligations of the parties under said agreement.

15. The provisions of this agreement shall bind and inure to the benefit of the company and its subsidiaries, and their successors and assigns, and the Authority, its successors and assigns.

16. Nothing in this agreement shall authorize the Authority to require the company or any of its subsidiaries to engage in the transmission of power in interstate commerce.

17. This agreement shall become effective upon the date first above-mentioned, and shall continue for 20 years, but the obligation of the Authority to deliver, and the company to purchase,

power hereunder shall not begin until June 1, 1938. Either party may cancel this agreement upon 5 years' written notice to the other party, effective not earlier than 10 years from the date hereof.

In witness whereof, the parties hereto have caused this agreement to be executed in four counterparts, each of which shall be considered an original, pursuant to authority of resolution of their respective boards of directors duly adopted.

AGREEMENT BETWEEN TENNESSEE VALLEY AUTHORITY AND VICTOR CHEMICAL WORKS

This agreement, made this —— day of ———, 1937, between Tennessee Valley Authority, a corporation created by the Tennessee Valley Authority Act of 1933, hereinafter called "Authority," and Victor Chemical Works, a corporation organized and existing under the laws of the State of Illinois, hereinafter called "customer," witnesseth:

Whereas, by said Tennessee Valley Authority Act of 1933, authority was entrusted with and is now operating Wilson Dam and generating plant, and has constructed and is now operating other dams and generating plants; and

Whereas customer intends to erect a chemical plant at or near Mount Pleasant, in Maury County, Tenn., which will include one or more electric furnaces, and may require up to 32,000 kilowatts of electric power in the operation of said plant; and

Whereas customer has requested Authority to supply all of its purchased power requirements in Maury County, Tenn.; and

Whereas Authority has determined that it has and will continue to have sufficient power available for the performance of this agreement after fulfilling the requirements of the Authority and the United States, and that this agreement will not prejudice any preferential rights of States, counties, municipalities, and nonprofit organizations of citizens and farmers to purchase electric power from Authority: Now, therefore

In consideration of the premises and the mutual covenants and agreements hereinafter set forth, and subject to the provisions of the Tennessee Valley Authority Act of 1933, the parties hereto mutually agree as follows:

1. Construction of plant: As an expression of good faith to Authority, customer agrees to begin construction of a chemical plant at the site indicated above at or near Mount Pleasant, in Maury County, Tenn., which will include one or more electric furnaces capable of utilizing approximately 8,000 kilowatts of electricity, and customer agrees to continue said construction to completion with diligence and good faith; and should customer fail to so continue, Authority shall have the right, upon 30 days' notice, to cancel this agreement and terminate all of its obligations assumed herein: *Provided*, That Authority shall not have such right of cancelation if the continuance of said construction is prevented, delayed, or impeded by reasons of injunction, strike, riot, invasion, fire, accident, break-down, act of God, or any other like causes beyond the customer's control; and

Provided further, That in the event of failure to construct or to continue construction due to any such cause, customer agrees to resume construction and continue the same to completion as soon as reasonably possible, and in the event of failure so to do, Authority shall be entitled to exercise the right of cancelation as hereinabove provided; and

Provided further, That should Authority give notice of cancelation pursuant to this section, customer may, within said 30-day notice period, elect to pay minimum charges upon the contract demands as specified in section 9 hereof, and in such case Authority shall not have such right of cancelation until 12 months from the date of said notice, and then only if during said 12-month period customer has failed to continue the construction of said plant with diligence and good faith.

2. Sale of electric power: Authority shall sell and deliver to customer, and customer shall take and buy from Authority, all of customer's electric power requirements for the operation of customer's chemical plant, equipment, and facilities to be erected and installed at the above-mentioned location, in the quantities hereinafter set forth, all in accordance with this agreement and with the terms and conditions which are attached hereto and hereby made a part hereof: *Provided*, That customer may generate electric power as a byproduct of its manufacturing and processing operations, subject to the minimum bill provisions of section 9 hereof, and with the understanding that such self-generated power shall not be so used as to reduce the load factor at which purchased power is taken from Authority: *Provided, further*, That if at any time during the period of this agreement customer requires in its operations electric power in amounts in excess of the amount for which Authority is obligated, or in excess of such larger amount as Authority may at the time be willing to supply under the terms of this agreement, customer shall have the right to purchase from other sources or to generate any such excess requirements.

3. Duration of agreement: This agreement shall be for a period of 20 years commencing on the date first above-mentioned. It is agreed, however, that if, during the period of this agreement, conditions arise which make the continuance of customer's electric furnace operations in Maury County, Tenn., disadvantageous, customer shall have the right, provided its said furnacing operations in said county are completely and permanently discontinued, to cancel this agreement upon not less than 1 year's written notice, said cancelation to be effective, however, not earlier than 5 years from the date hereof: *Provided*, That customer shall not be entitled to exercise this right of cancelation unless its obligations under section 1 hereof to construct a plant have been performed.

4. Service specifications: This agreement covers two types of power: (a) Firm power, which is power that is available continuously, and (b) run-of-stream secondary, which is power that is available to customer at the discretion of Authority: *Provided*, That run-of-stream secondary power shall be available to customer not less than 75 percent of the time in each calendar year, and there shall not be any continuous suspension of more than 100 days, nor total suspensions of more than 120 days in any 12 successive months, nor any suspension of less than 30 days' duration. Authority shall give not less than 14 days' written notice before suspending the run-of-stream secondary power service, and not less than 7 days' written notice before resuming run-of-stream power service.

The electric power supplied hereunder shall be in the form of 3-phase, 60-cycle, 13,200-volt alternating current. The frequency, generation, transmission, service, and voltage shall be maintained in accordance with the best commercial standards for hydroelectric systems. Voltage variations at the 13,200-volt substation bus shall not exceed 2½ percent up or down under normal load, except in case of temporary interruption to service.

5. Quantity: Electric power delivered hereunder shall be supplied by Authority and taken by customer as follows:

(a) If written request is made by customer not less than 30 days prior to the date specified in such request, Authority shall, on the date specified (but not earlier than February 1, 1938), or if no such request is made, then on June 1, 1938, whichever date is earlier, make 8,000 kilowatts of firm power available to customer, and the contract firm demand shall be 8,000 kilowatts.

(b) If written request is made by customer not less than 4 months prior to the date specified in such requests (but such request must be made not earlier than February 1, 1938, nor later than March 1, 1940), Authority shall, on the date specified, increase the amount of power available to customer from 8,000 kilowatts of firm power to 12,000 kilowatts of firm power and 12,000 kilowatts of run-of-stream secondary power, and the contract firm demand shall be 10,500 kilowatts, and the contract run-of-stream secondary demand shall be 10,500 kilowatts.

(c) If further written request is made by customer, not less than 4 months prior to the date specified in such further request (which request must be made not later than March 1, 1941), Authority shall, on the date specified, increase the amount of power made available to customer from 12,000 kilowatts of firm power and 12,000 kilowatts of run-of-stream secondary power to 16,000 kilowatts of firm power and 16,000 kilowatts of run-of-stream secondary power, and the contract firm demand shall be 14,000 kilowatts and the contract run-of-stream secondary demand shall be 14,000 kilowatts.

(d) When delivery of run-of-stream secondary power is suspended by Authority, Authority shall be under no obligation to supply firm energy in any month in excess of 8,000 kilowatts at 100 percent load factor or the average monthly firm demand during the preceding 12-month period at 100-percent load factor, whichever is the higher, unless the amount of power available to customer has been increased, pursuant to section 5 (b) or section 5 (c) hereof, less than 12 months prior to any such suspension, in which case Authority shall be under no obligation to supply firm power in excess of 8,000 kilowatts at 100 percent load factor or the average monthly firm demand at 100 percent load factor since the date of such increase, whichever is the higher: *Provided, however*, That after the amount of power available to customer has been increased pursuant to section 5 (b) hereof, and prior to July 1, 1941, customer shall not be required to reduce its takings below 12,000 kilowatts at 100-percent load factor if such amount of power is not more than 15 percent in excess of the amount of power to which customer would be entitled but for this proviso.

(e) Customer shall pay for power beginning with the date on which customer begins using power, but not later than June 1, 1938, and shall pay for increases in power when such increased power is used by customer, but not later than 120 days after the date specified in the request for increased power.

6. Point of delivery: Point of delivery shall be on the 13,200-volt side of Authority's substation to be located on customer's property at or near Mount Pleasant, Tenn. Customer shall furnish Authority, without charge, a suitable substation site for the transformers and other equipment of Authority necessary for service hereunder, and shall furnish wihout charge the necessary rights-of-way for transmission lines through customer's property to such site, and Authority shall have the right of ingress to and egress from said site and rights-of-way. The route of said rights-of-way and the location of said substation site shall be agreed upon between the parties hereto, and said substation site shall be within 1,000 feet of said plant if a suitable site is available within said distance.

Maintenance by Authority at the point of delivery of the stated voltage, frequency, and the capacity contracted for shall constitute delivery of electric power for the purposes of this agreement.

Authority agrees, at its own expense, within 4 months of the date of receipt of request from customer for an increase of power, pursuant to section 5 (b) hereof, or within such longer period as may reasonably be required, either (1) to make available at least two transmission circuits over different routes from the sources of supply, each of which shall be of adequate capacity to enable Authority to comply with its obligations as to delivery of power and energy hereunder, or (2) to provide equivalent service by other facilities.

7. Rates: Customer shall pay Authority monthly in accordance with the following rate schedule:

For run-of-stream secondary power: 6 cents per day per kilowatt of run-of-stream secondary demand as hereinafter defined when available.

For firm power: Demand charge: 90 cents per month per kilowatt of firm demand as hereinafter defined.

Energy charge (for all energy taken in excess of the run-of-stream secondary demand as hereinafter defined at 100-percent load factor):

First 100,000 kilowatt-hours consumed per month at 4 mills per kilowatt-hour.

Next 200,000 kilowatt-hours consumed per month at 3 mills per kilowatt-hour.

Next 700,000 kilowatt-hours consumed per month at 2.5 mills per kilowatt-hour.

Excess over 1,000,000 kilowatt-hours consumed per month at 2 mills per kilowatt-hour.

Charge for firm energy billed in excess of 360 times the difference between the total measured demand and the run-of-stream demand shall be subject to a reduction of 0.5 mill per kilowatt-hour from the otherwise applicable rate.

Authority, recognizing that the rate schedule applicable to power and energy delivered hereunder results in a relatively high average power cost to customer during customer's development period, agrees to charge customer each month at an average rate not exceeding 3½ mills per kilowatt-hour for the first 12 months of service hereunder.

The rates quoted in this section are based upon the supply of service through a single delivery and metering point and at a single voltage. Separate supply for the same customer at other points of delivery or at different voltage shall be separately metered and billed.

8. Demand: The demand measurement for billing purposes shall be made by suitable instruments located at the point of delivery. Total measured demand for any calendar month shall be the highest integrated load taken during any 60-consecutive-minute period during said month.

For periods when run-of-stream secondary power is not available, firm demand shall be taken as 100 percent of the total measured demand, but in no case less than 8,000 kilowatts or 75 percent of the highest firm demand in the previous 12 months, whichever is the higher, except that if Authority shall in any month, pursuant to the provisions of section 5 (d) hereof, limit the firm demand available to customer, firm demand in said month shall not exceed the demand Authority shall make available in said month.

For periods when run-of-stream secondary power is available, the firm demand shall be one-half the total measured demand, but in no case less than 8,000 kilowatts or 75 percent of the highest firm demand billed in the previous 12 months, whichever is the higher.

For periods when run-of-stream secondary power is available, the run-of-stream secondary demand shall be one-half the total measured demand, but in no case less than 75 percent of the contract run-of-stream secondary demand.

Customer's demand shall, whenever the normal power factor is less than 85 percent, be determined upon the basis of 85-percent power factor; whenever said normal power factor is less than 85 percent, the demand shall be taken to be 85 percent of the kilovolt amperes indicated, unless such low-power factor is due to causes beyond customer's control.

9. Minimum bills: Customer shall be billed and shall pay monthly as a minimum for demand and energy not less than (a) 90 cents times the firm demand in kilowatts, determined as provided in section 8 hereof, and in no case less than 75 percent of the contract firm demand, (b) plus the charges for 75 percent of the contract run-of-stream secondary demand.

When run-of-stream secondary power is not available, there will be no minimum bill for run-of-stream secondary power. If run-of-stream secondary power is available for only a fraction of a month, the minimum bill for run-of-stream secondary power shall be prorated. Notwithstanding any other provision of this agreement, customer shall not be obligated to take, and if not taken shall not be obligated to pay for, run-of-stream secondary power for as many days immediately preceding January 1 of any year as is equal to the difference between the number of days the delivery of run-of-stream secondary power was suspended in the preceding year and one-quarter of the time in said preceding year.

10. Curtailment: If during the life of this agreement conditions in customer's business are such that customer cannot use all of the then contracted capacity, customer shall have the right, upon giving Authority not less than 12 months' written notice, to reduce the then existing contract demands to an amount to be designated by customer, of which one-half or 8,000 kilowatts, whichever is the greater, shall be firm power and the balance run-of-stream secondary power. Customer shall not thereafter have the right to increase its demands above such reduced contract demands without the consent of Authority. Nothing in this section shall be construed to waive customer's right of cancelation of this agreement as provided in section 3 hereof.

11. Adjustment of rates: If at any time hereafter transmitted electric power is sold by Authority to any competitor of customer engaging substantially in the production of phosphorus or phosphorus-containing compounds at rates or under terms which produce a lower net cost per kilowatt-hour than is provided to be paid by customer under this agreement, then customer shall have the right to change to and take power at such rates and terms in lieu of the rates and terms in this agreement provided, so long as such more favorable rates or terms are extended to such competitor. The provisions of this paragraph shall not entitle customer to claim the benefit of lower rates or better terms contained in agreements heretofore made by Authority.

12. Previous agreements: All previous agreements between the parties hereto, whether oral or written, with reference to the subject matter of this agreement, are hereby abrogated. This agreement (including the terms and conditions hereto attached) constitutes the entire contract between the parties, and there are no understandings, representations, or warranties of any kind not expressly set forth herein.

13. Waiver of defaults: Any waiver at any time by either party hereto of its rights with respect to the other party, or with respect to any other matter arising in connection with this agreement, shall not be considered a waiver with respect to any subsequent default or matter.

14. Assignment: This agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties hereto. The parties hereto shall remain liable for the faithful performance of this agreement in all respects by such successors or assigns, and the successors and assigns by acceptance of such transfer or assignment shall likewise become bound for the full performance of this agreement until the expiration thereof.

In witness whereof, the parties hereto have caused this agreement to be executed in three counterparts, each of which shall be considered an original, by their officers, each thereunto duly authorized, the day and year first above written.

TENNESSEE VALLEY AUTHORITY,
By ARTHUR E. MORGAN, *Chairman*.

Attest:

JAMES LAWRENCE FLY, *Secretary*.

VICTOR CHEMICAL WORKS,
By AUGUST KOCHS, *President*.

Attest:

——— ———.

TERMS AND CONDITIONS

1. Metering: Authority shall at its expense install and maintain the necessary meters for determining the amounts of power delivered to customer. The point of metering shall be mutually agreed upon and shall be at a point which permits the power sold at the point of delivery to be readily determined. Customer shall have the right to install and maintain at its expense metering equipment and housing, adjacent to Authority's meters, as a check on Authority's meters. If Authority should elect to meter the power delivered hereunder on customer's side of the point of delivery, customer shall provide Authority without charge with a convenient site for Authority's metering equipment, and shall allow Authority's accredited employees free access to said equipment.

Authority shall at its expense and in the presence of representatives of customer, upon reasonable notice given to customer, make quarter-yearly tests and inspections of its metering and other equipment in order to maintain a high standard of accuracy.

Authority shall make additional tests and inspections of its meters upon request of customer and in the presence of customer's representatives. If any tests show that the meters are accurate within 1 percent fast or slow at the average load during the preceding 30 days, no adjustment shall be made in customer's bills. If any tests or inspections show the meters to be in excess of 1 percent fast or slow, an adjustment shall be made in customer's bill in accordance therewith over a period not exceeding 30 days prior to the date of such tests. Any of Authority's meters or other equipment found to be defective or more than 1 percent inaccurate shall be promptly repaired, replaced, or readjusted by Authority. Should Authority's meters at any time fail to register, the consumption during the period of failure shall be determined from customer's meters or by other mutually satisfactory means.

2. Billing: Bills for electric power service hereunder shall be rendered monthly. Payment for electric power used in any calendar month shall be due on the 15th day of the succeeding month or 10 days after receipt of bill from Authority, whichever is the later. Upon failure of customer to pay for electric power used in any calendar month within 15 days after the due date, Authority shall have the right upon 10 days' written notice to customer to discontinue the supply of electric power and to refuse the resumption of delivery so long as any past-due account remains unpaid. To any amount remaining unpaid on the 1st day of the calendar month following the due date, there shall be added a penalty of 1 percent, and an additional 1 percent shall be added on the 1st day of each succeeding month until the amount is paid in full.

All payments shall be made to Authority at its offices at Wilson Dam, Ala., or at such other place as Authority may from time to time designate.

3. Notice: Any notice or demand required shall be deemed properly given if mailed, postage prepaid, to the Chief Electrical Engineer, Wilson Dam, Ala., on behalf of Authority, or to the Furnace Plant Superintendent of Customer at post-office box 1130, Nashville, Tenn., on behalf of customer. The designation of the person to be so notified, or the address of such person, may be changed at any time, and from time to time, by either party by similar notice.

4. Resale of electric power: The electric power supplied hereunder is for the use of customer's plant, equipment, and facilities, and the plant, equipment, and facilities of any wholly-owned subsidiary of customer at the specified location, and shall not be resold. Power delivered to such a subsidiary shall be deemed part

of customer's requirements and shall be billed to and paid by customer in the same manner as if customer were using all of said power.

5. Ownership of properties: Authority shall furnish all facilities for delivering electric power to the point of delivery to customer, including such circuit breaker and protective equipment as, in its opinion, is necessary for the protection of Authority's apparatus and service, and such metering and auxiliary equipment, housing, and fencing as it deems necessary. Except for such metering equipment of Authority as may be installed on customer's side of the point of delivery, customer shall provide, operate, and maintain all necessary facilities and equipment on its side of the point of delivery, including terminal.

AGREEMENT BETWEEN TENNESSEE VALLEY AUTHORITY AND ELECTRO METALLURGICAL CO.

This agreement, made this —— day of ——, 1937, between Tennessee Valley Authority, a corporation created by the Tennessee Valley Authority Act of 1933, hereinafter called Authority, and Electro Metallurgical Co., a corporation organized and existing under the laws of the State of West Virginia, hereinafter called customer, witnesseth:

Whereas by said Tennessee Valley Authority Act of 1933, Authority was entrusted with and is now operating Wilson Dam and generating plant, and has constructed and is now operating other dams and generating plants; and

Whereas the Wilson Dam Reservation is in part located in Colbert County, Ala.; and

Whereas customer has determined to erect an electric-furnace plant in Colbert County on land adjoining or in the vicinity of said reservation and may require up to 40,000 kilowatts of electric power in the operation of said plant; and

Whereas customer has requested Authority to supply all of its purchased power requirements in Colbert County, Ala., by the sale of nontransmitted electric power at the boundary of the Wilson Dam Reservation, and Authority has determined that it has and will continue to have sufficient power available for the performance of this agreement after fulfilling the requirements of Authority and the United States, and that this agreement will not prejudice any preferential rights of States, counties, municipalities, and nonprofit organizations of citizens and farmers, to purchase electric power from Authority.

Now, therefore, in consideration of the premises and the mutual covenants and agreements hereinafter set forth, and subject to the provisions of the Tennessee Valley Authority Act of 1933, the parties hereto mutually agree as follows:

1. Construction of plant: As an expression of good faith to Authority, customer agrees to begin, not later than March 1, 1938, actual construction of an electric-furnace plant at the site indicated above in Colbert County, Ala., which will include one or more electric furnaces capable of utilizing approximately 8,000 kilowatts of electricity, and customer agrees to continue said construction to completion with diligence and good faith; and should customer fail to so continue, Authority shall have the right upon 30 days' written notice to cancel this agreement and terminate all of its obligations assumed herein: *Provided*, That Authority shall not have such right of cancelation if the continuance of said construction is prevented, delayed, or impeded by reason of injunction, strike, riot, invasion, fire, accident, break-down, act of God, or any other like causes beyond customer's reasonable control: *Provided further*, That in the event of failure to construct or to continue construction due to any such cause, customer agrees to resume construction and continue the same to completion as soon as reasonably practicable, and in the event of failure so to do, Authority shall be entitled to exercise the right of cancelation as hereinafter provided: *And provided further*, That should Authority give such notice of cancelation pursuant to this section, customer may, within said 30-day notice period, elect to pay the minimum charges specified in section 9 hereof, and in such case Authority shall not have such right of cancelation until 12 months from the date of said notice, and then only if during said 12-month period customer has failed to continue the construction of said plant with diligence and good faith.

2. Sale of electric power: Authority shall sell and deliver to customer, and customer shall take and buy from Authority, all of customer's electric power requirements for the construction and operation of customer's electric furnace plant, equipment, and facilities to be erected and installed at the above-mentioned location, in the quantities hereinafter set forth, all in accordance with this agreement and with the terms and conditions which are attached hereto and hereby made a part hereof: *Provided*, That customer may generate electric power as a byproduct of its manufacturing and processing operations, for requirements in excess of the energy and demand contracted for hereunder: *Provided further*, That if at any time during the period of this agreement, customer requires in its operations firm electric power in amounts in excess of the amount that Authority is obligated, or in excess of such larger amount thereof as Authority may at the time be willing, to supply under the terms of this agreement, customer shall have the right to purchase from other sources, or to generate, any such excess requirements.

3. Duration of agreement: (a) This agreement shall be for a period of 20 years commencing on the date first above mentioned. It is agreed, however, that if, during the period of this agreement, conditions arise which make the continuance of customer's electric furnace operations in Colbert County, Ala., disadvantageous, customer shall have the right, provided its said furnacing operations in said county are completely and permanently discontinued, to cancel this agreement upon not less than 1 year's written notice, said cancelation to be effective, however, not earlier than 5 years from the date hereof; *Provided*, That customer shall not be entitled to exercise this right of cancelation unless its obligations under section 1 hereof to construct a plant have been performed.

(b) Notwithstanding any other provision of this agreement, customer shall have the right, at any time within 90 days from the date hereof, by notice in writing to Authority and upon the payment to Authority of $5,000, to cancel this agreement; and thereupon this agreement shall be of no force or effect, and all rights and obligations under this agreement shall cease and determine.

4. Service specifications: This agreement covers two types of power: (a) Firm power, which is power that is available continuously; and (b) run-of-stream secondary power, which is power that is available to customer at the discretion of Authority: *Provided*, That run-of-stream secondary power shall be available to customer not less than 75 percent of the time in each calendar year, and that there shall not be any continuous suspension of more than 100 days, or total suspensions of more than 120 days in any 12 successive months, or any suspension of less than 30 days' duration. Authority shall give not less than 14 days' written notice before suspending the run-of-stream secondary power service, and not less than 7 days' written notice before resuming run-of-stream secondary power service.

The electric power supplied hereunder shall be in the form of 3-phase, 60-cycle alternating current at either 44,000 or 110,000 volts, at the discretion of the Authority. The frequency, generation, transmission, service, and voltage shall be maintained in accordance with the best commercial standards for hydroelectric systems. Voltage variations at the point of delivery shall not exceed 2½ percent up or down under normal load, except in case of temporary interruption to service.

5. Quantity: Electric power delivered hereunder shall be supplied by Authority and taken by customer as follows:

(a) Authority shall on January 1, 1939, or on such earlier date as may be mutually agreed upon, make 8,000 kilowatts of firm power available to customer, and the contract firm demand shall be 8,000 kilowatts.

(b) If written request is made by customer not less than 6 or more than 8 months prior to the date specified in such request (but such request must be made not later than October 1, 1939), Authority shall, on the date specified, increase the amount of power available to customer from 8,000 kilowatts of firm power to 8,000 kilowatts of firm power and 8,000 kilowatts of run-of-stream secondary power, and the contract firm demand shall be 8,000 kilowatts and the contract run-of-stream secondary demand shall be 8,000 kilowatts.

(c) If further written request is made by customer, not less than 8 or more than 10 months prior to the date specified in such further request (which further request must be made not later than October 1, 1940), Authority shall, on the date specified, increase the amount of power made available to customer from 8,000 kilowatts of firm power and 8,000 kilowatts of run-of-stream secondary power to 16,000 kilowatts of firm power and 16,000 kilowatts of run-of-stream secondary power, and the contract firm demand shall be 14,000 kilowatts and the contract run-of-stream secondary demand shall be 14,000 kilowatts.

(d) If further written request is made by customer, not less than 10 or more than 12 months prior to the date specified in such further request (which further request must be made not later than October 1, 1941), Authority shall, on the date specified, increase the amount of power made available to customer by an additional 8,000 kilowatts of firm power, and the contract firm demand shall be 21,000 kilowatts and the contract run-of-stream secondary demand shall be 14,000 kilowatts.

(e) Customer shall pay for power beginning with the date on which customer begins using power, but not later than January 1, 1939, and shall pay for increases in power when increased amounts of power are first taken by customer, but not later than 120 days after the date specified in the request for increased power.

(f) If not later than 4 months after the date of either or both of the written requests in paragraphs (b) and (c) of this section 5 provided for, customer shall give to Authority written notice, requesting substitution of an amount of firm power equal to and in lieu of the amount of run-of-stream secondary power theretofore requested but then undelivered, Authority shall from and after the date specified in such request furnish such amount of firm power (in lieu of run-of-stream secondary power) at the rates and upon the terms and conditions herein provided for firm power deliverable hereunder; and from and after the date of any such substitution (1) the words "one-half" and "three-fifths" wherever they occur in sections 6 and 12 hereof, and the word "two-fifths" wherever it occurs in section 8 hereof, shall be replaced by other fractions expressing the ratios of firm demand to total demand and of secondary demand (if any) to total demand that may result from either or both of such substitutions theretofore made under the provisions of this section 5 (f); (2) the contract firm demand shall be increased by the amount of firm power substituted for run-of-stream secondary power hereunder, except that when the aggregate amount of power available has been increased to 32,000 or 40,000 kilowatts, then (a) if customer has, as hereinabove provided, requested the substitution of firm power for only 8,000 kilowatts of run-of-stream secondary power,

the contract firm demand shall be, respectively, 21,000 or 28,000 kilowatts, and the contract run-of-stream secondary demand shall be 7,000 kilowatts, or (b) if customer has, as hereinabove provided, requested the substitution of firm power for 16,000 kilowatts of run-of-stream secondary power, the contract firm demand shall be, respectively, 28,000 or 35,000 kilowatts, and there shall be no contract run-of-stream secondary demand; (3) if customer shall, as hereinabove provided, request the substitution of firm power for 16,000 kilowatts of run-of-stream secondary power, then the provisions of this agreement relating to run-of-stream secondary power shall be of no force or effect; (4) and the provisions of this agreement relating to firm power shall apply to the amounts of firm power as increased hereunder by the substitution of firm power for run-of-stream secondary power.

(g) When delivery of run-of-stream secondary power is suspended by Authority, Authority shall be under no obligation to supply firm energy in any month in excess of 8,000 kilowatts at 100-percent load factor or the average monthly firm demand during the preceding 12-month period at 100-percent load factor, whichever is the higher, unless the amount of power available to customer has been increased pursuant to section 5 (c) or 5 (d) hereof less than 12 months prior to any such suspension, in which case Authority shall be under no obligation to supply firm energy in any month in excess of 8,000 kilowatts at 100-percent load factor or the average monthly firm demand since the date of such increase at 100-percent load factor, whichever is the higher.

6. Point of delivery: Point of delivery shall be at a point on the boundary of Wilson Dam Reservation in Colbert County, Ala., to be mutually agreed upon.

Maintenance by Authority at the point of delivery of the stated voltage, frequency, and the capacity contracted for shall constitute delivery of electric power for the purpose of this agreement.

7. Rates: Customer shall pay Authority monthly in accordance with the following rate schedule:

For run-of-stream secondary power: $0.054 per day per kilowatt-hour of run-of-stream secondary demand, as hereinafter defined, when available.

For firm power:

Demand charge: $0.81 per month per kilowatt-hour of firm demand, as hereinafter defined.

Energy charge (for all energy taken in excess of the run-of-stream secondary demand, as hereinafter defined, at 100-percent load factor):

First 100,000 kilowatt-hours consumed per month, at 3.6 mills per kilowatt-hour.

Next 200,000 kilowatt-hours consumed per month, at 2.7 mills per kilowatt-hour.

Next 700,000 kilowatt-hours consumed per month, at 2.25 mills per kilowatt-hour.

Excess over 1,000,000 kilowatt-hours consumed per month, at 1.8 mills per kilowatt-hour.

Charge for firm energy billed in excess of 360 times the difference between the total measured demand and the run-of-stream secondary demand shall be subject to a reduction of 0.45 mills per kilowatt-hour from the otherwise applicable rate.

Authority, recognizing that the rate schedule applicable to power and energy delivered hereunder would result in a relatively high average power cost to customer during customer's construction and development period, agrees, notwithstanding any other provisions of this agreement, to charge customers each month at an average rate not exceeding 3½ mills per kilowatt-hour for all power taken during the first 12 months of service under this agreement.

The rates quoted in this section are based upon the supply of service through a single delivery and metering point and at a single voltage. Separate supply for the same customer at other points of delivery or at different voltage shall be separately metered and billed.

8. Demand: The demand measurement for billing purposes shall be made by suitable instruments located at the point of delivery, or elsewhere at the discretion of Authority. If located elsewhere, the demand shall be computed as at the point of delivery. Total measured demand for any calendar month shall be the highest integrated load taken during any 60-consecutive-minute period during such calendar month.

For periods when run-of-stream secondary power is not available, firm demand shall be taken as 100 percent of the total measured demand, but in no case less than 8,000 kilowatts, or 75 percent, of the highest firm demand in the previous 12 months, whichever is the higher, except that if Authority shall in any month, pursuant to the provisions of section 5 (g) hereof, limit the firm demand available to customer, firm demand in such month shall not exceed the demand which Authority shall make available in such month.

For periods when run-of-stream secondary power is available, the firm demand shall be one-half the total measured demand (or, if the amount of power available to customer has been increased pursuant to section 5 (d) hereof, three-fifths of the total measured demand), but in no case less than 8,000 kilowatts, or 75 percent, of the highest firm demand billed in the previous 12 months, whichever is the higher.

For periods when run-of-stream secondary power is available, the run-of-stream secondary demand shall be one-half the total measured demand (or, if the amount of power available to customer has been increased pursuant to section 5 (d) hereof, two-fifths of the total measured demand), but in no case less than 75 percent of the contract run-of-stream secondary demand.

Customer's demand shall, whenever the normal power factor is less than 85 percent, be determined upon the basis of 85 percent power factor; that is, whenever said normal power factor is less than 85 percent, the demand shall be taken to be 85 percent of the kilovolt amperes indicated, unless such low power factor is due to causes beyond customer's control.

9. Minimum bills: Customer shall be billed and shall pay monthly as a minimum for demand and energy not less than (a) $0.81, multiplied by the number of kilowatts of firm demand, determined as provided in section 8 hereof, and in no case less than 75 percent of the contract firm demand, plus (b) the charges for 75 percent of the contract run-of-stream secondary demand.

When run-of-stream secondary power is not available, there shall be no minimum bill for run-of-stream secondary power. If run-of-stream secondary power is available for only a fraction of a month, the minimum bill for run-of-stream secondary power shall be prorated. Notwithstanding any other provision of this agreement, customer shall not be obligated to take, and if not taken shall not be obligated to pay for, run-of-stream secondary power for as many days, terminating on December 31 of any year, as is equal to the difference between the number of days the delivery of run-of-stream secondary power was suspended in such year and 25 percent of the time in such year.

10. Excess takings with consent of Authority: In the event that customer shall at any time take from Authority amounts of power in excess of the amounts Authority is then obligated to make available to customer, the supply of such excess power by Authority shall not constitute any commitment that Authority will continue to supply any excess power: *Provided*, That Authority will give whatever notice Authority may deem feasible before discontinuing the delivery of such excess power.

11. Adjustment of rates: If at any time hereafter electric power is sold by Authority to any competitior of customer engaged substantially in the production and sale of calcium carbide or its derivatives, artificial graphite products, or ferroalloys (excluding ferrophosphorus), at rates or under terms which produce a lower net cost per kilowatt-hour than is provided to be paid by customer under this agreement, then customer shall have the right to change to and take power at such rates and terms in lieu of the rates and terms in this agreement provided, so long as such more favorable rates or terms are extended to such competitor. The provisions of this paragraph shall not entitle customer to claim the benefit of lower rates or better terms contained in agreements heretofore made by Authority.

12. Curtailment: If, during the life of this agreement, conditions in customer's business are such that customer cannot use all of the then contracted power, customer shall have the right, upon giving Authority not less than 12 months' written notice, to reduce the then existing contract demands to an amount to be designated by customer, of which one-half (or three-fifths, if the amount of power available to customer has been increased pursuant to section 5 (d) hereof), or 8,000 kilowatts, whichever is the greater, shall be firm power, and the balance run-of-stream secondary power. Customer shall not thereafter have the right to increase its demands above such reduced contract demands without the consent of Authority. Nothing in this section shall be construed as a waiver of customer's right of cancelation of this agreement as provided in section 3 (a) hereof.

13. Previous agreements: All previous agreements between the parties hereto, whether oral or written, with reference to the subject matter of this agreement, are hereby abrogated. This agreement (including the terms and conditions hereto attached), constitutes the entire contract between the parties, and there are no understandings, representations, or warranties of any kind not expressly set forth herein.

14. Waiver of defaults: Any waiver at any time by either party hereto of its rights with respect to the other party, or with respect to any other matter arising in connection with this agreement, shall not be considered a waiver with respect to any subsequent default or matter.

15. Assignment: This agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties hereto. The parties hereto shall remain liable for the faithful performance of this agreement in all respects by such successors or assigns, and the successors and assigns by acceptance of such transfer or assignment shall likewise become bound for the full performance of this agreement until the expiration thereof.

In witness whereof the parties hereto have caused this agreement to be executed in six counter parts, each of which shall be considered an original, by their officers, each thereunto duly authorized, the day and year first above written.

TENNESSEE VALLEY AUTHORITY,
By ——— ———, *Chairman.*

Attest:

———, *Assistant Secretary.*

ELECTRICAL METALLURGICAL CO.,
By ——— ———

Attest:

———.

TERMS AND CONDITIONS

1. Metering: Authority shall at its expense install and maintain the necessary meters for determining the amounts of power delivered to customer. The point of metering may be mutually agreed upon and shall be at a point which permits the power sold at the point of delivery to be readily determined. Customer shall have the right to install and maintain at its expense metering

equipment and housing for similar purposes, adjacent to Authority's meters, as a check on Authority's meters. If Authority should elect to meter the power delivered hereunder on customer's side of the point of delivery, customer shall provide Authority without charge with a convenient site for Authority's metering equipment and shall allow Authority's accredited employees free access to said equipment.

Authority shall at its expense and in the presence of representatives of customer, upon reasonable notice given to customer, make quarter-yearly tests and inspections of its metering and other equipment in order to maintain a high standard of accuracy.

Authority shall make additional tests and inspections of its meters upon request of customer and in the presence of customer's representatives. If any tests show that the meters are accurate within 1 percent fast or slow at the average load during the preceding 30 days, no adjustment shall be made in customer's bills. If any tests or inspections show the meters to be in excess of 1 percent fast or slow, an adjustment shall be made in customer's bill in accordance therewith over a period not exceeding 30 days prior to the date of such tests. Any of Authority's meters or other equipment found to be defective or more than 1 percent inaccurate shall be promptly repaired, replaced, or readjusted by Authority. Should Authority's meters at any time fail to register, the consumption during the period of failure shall be determined from customer's meters or by other mutually satisfactory means.

2. Billing: Bills for electric power service hereunder shall be rendered monthly. Payment for electric power used in any calendar month shall be due on the 15th day of the succeeding month or 10 days after receipt of bill from Authority, whichever is the later. Upon failure of customer to pay for electric power used in any calendar month within 15 days after the due date, Authority shall have the right upon 10 days' written notice to customer to discontinue the supply of electric power and to refuse the resumption of delivery so long as any past-due account remains unpaid. To any amount remaining unpaid on the 1st day of the calendar month following the due date, there shall be added a penalty of 1 percent and an additional 1 percent shall be added on the first day of each succeeding month until the amount is paid in full.

All payments shall be made to Authority at its offices at Wilson Dam, Ala., or at such other place as Authority may from time to time designate.

3. Notice: Any notice or demand required shall be deemed properly given if mailed, postage prepaid, to the general manager, Wilson Dam., Ala., on behalf of the Authority, or to the vice president and general manager of the customer at 30 East Forty-second Street, New York City, N. Y., on behalf of the customer. The designation of the person to be so notified, or the address of such person, may be changed at any time, and from time to time, by either party by similar notice.

4. Resale of electric power: The electric power supplied hereunder is for the use of customer's plant, equipment, and facilities, and the plant, equipment, and facilities of any wholly owned subsidiary of Union Carbide and Carbon Corporation (of which customer is a wholly owned subsidiary) or any successor of said corporation and/or Niacet Chemicals Corporation, a partly owned subsidiary of said corporation, at the specified location, and shall not be resold. Power delivered to any such subsidiary shall be deemed part of customer's requirements and shall be billed to and paid by customer in the same manner as if customer were using all of said power.

5. Ownership of properties: Authority shall furnish all facilities for delivering electric power to the point of delivery to customer, including such circuit breaker and protective equipment as, in its opinion, is necessary for the protection of Authority's apparatus and service, and such metering and auxiliary equipment, housing and fencing, as it deems necessary. Except for such metering equipment of Authority as may be installed on customer's side of the point of delivery, customer shall provide, operate, and maintain all necessary facilities and equipment on its side of the point of delivery, including terminal circuit-breaker equipment. Customer shall exercise reasonable care to protect the property of Authority on customer's premises, and in the event of loss or damage to Authority's property on customer's premises arising from failure of customer to exercise reasonable care for same, the cost of necessary repairs or replacements shall be paid by customer. Authority shall remove at its expense its meters and other property from customer's premises upon the termination of this agreement.

6. Liability: Authority shall hold customer harmless against any loss or damage to the public or Authority's employees arising out of the operation of Authority's transmission lines or equipment and the transmission of electric power delivered hereunder up to the point of delivery herein specified, unless it be proven that such loss or damage was caused by the sole negligence of customer or of any of such subsidiaries, its or their agents, servants, or employees. Conversely, customer shall hold Authority harmless against any loss or damage to the public or employees of customer or of any of such subsidiaries, arising on the customer's side of point of delivery, unless it be proven that such loss or damage was caused by the sole negligence of Authority or its agents, servants, or employees.

7. Service: Authority shall furnish electric power continuously as agreed upon, but Authority, its officers, agents, or employees shall not be liable for damages or breach of contract when service is interrupted or suspended by reason of injunction, strike, riot, invasion, fire, accident, break-down, floods, backwater caused by floods, act of God, or from any other like causes beyond Authority's reasonable control, or caused by the making of necessary repairs on Authority's system, or by connecting or disconnecting customer's services, but Authority shall make appropriate adjustment of the demand and energy charges in the event of such interruption or suspension of service. Authority shall give as much notice as possible before interrupting service to make repairs. Authority shall as far as possible avoid discontinuance of service hereunder for routine operating purposes, and when such discontinuance is necessary, Authority shall restore service as speedily as possible. During such interruption or suspension of service, customer shall have the right to purchase such other power as may be available, and/or to generate power in amounts up to the amount rendered unavailable by reason of such interruption or suspension of service.

Customer shall notify Authority immediately should the service be unsatisfactory for any reason, or should there be any difficulties, trouble, or accidents affecting the supply of electricity. Such notices, if verbal, shall be confirmed in writing.

In the event of customer's operations being interrupted or suspended by reason of injunction, strike, riot, invasion, fire, accident, break-down, floods, backwater caused by floods, act of God, or from any other like causes beyond customer's reasonable control, customer will not be obligated to take or buy any electric power as herein provided for, nor to pay demand or minimum charges during the period of such interruption, and the demand and minimum charges for the month in which such interruption occurs shall be adjusted accordingly.

Either party shall have the right to maintain suit at any time for any loss that may previously have occurred, without waiting until expiration of the contract period and without losing or waiving any right to maintain suit for subsequent losses occurring during the period of the agreement, and recovery in any such suit shall not be deemed a splitting of the cause of action.

8. Addition of land: The service connection, transformers, meters, and equipment supplied by Authority for customer have definite capacity, and no addition to customer's equipment or load connected thereto, in excess of such capacity, shall be made except after reasonable notice to Authority. Failure to give such notice of additions or changes in load shall render customer liable for any damage to Authority's lines or equipment caused by the additional or changed installation.

9. Customer's lines and equipment: All lines and equipment of customer must conform to accepted modern practice. Authority shall have the right but shall not be obligated to require a certificate from the chief engineer of customer as to the quality and condition of customer's installation before electricity is introduced, or at any later time, and reserves the right to reject any wiring or equipment so certified which is not in accordance with Authority's reasonable standards. The requirement of such a certificate, or the failure to require such a certificate or to reject any installation so certified, shall not render Authority liable or responsible for any loss or damage resulting from the defects in the installation of any electrical equipment, or from violation of the agreement, or from accidents which may occur upon customer's premises.

10. Voltage fluctuations caused by customer: Electric service must not be used in such manner as to cause fluctuations or disturbances to Authority's system unusual to normal electric-furnace operations, and Authority may require customer at its own expense to install suitable apparatus to reasonably limit such fluctuations. Electric-furnace operation is to include, in addition to normal operation, those occasional operations incidental to starting, stopping, and emergency conditions.

11. Phase balancing: Customer shall at all times take and use energy in such manner that the currents will be balanced between phases to within 10 percent. In the event of polyphase loads unbalanced in excess of 10 percent, Authority reserves the right to require customer on 60 days' written notice at its own expense to make the necessary changes to correct such unbalancing, and if such unbalancing is not then corrected, to compute the demand on the assumption that the currents of each phase are equal to that on the greatest phase.

AGREEMENT BETWEEN TENNESSEE VALLEY AUTHORITY AND ARKANSAS POWER & LIGHT CO.

This agreement, made this 16th day of June 1937, by and between Tennessee Valley Authority, a corporation organized and existing under the act of Congress of May 18, 1933, as amended by the act of August 31, 1935 (hereinafter designated as "Authority"), first party, and Arkansas Power & Light Co., a corporation organized and existing under the laws of the State of Arkansas (hereinafter designated as "Arkansas Co."), second party, witnesseth:

Whereas Arkansas Co., in order to meet anticipated growth in the requirements of its market and expected decreases in the amount of power available to it under present purchase arrangements, is desirous of obtaining an additional source of power supply without at this time constructing additional electric-generating facilities; and

Whereas Authority has available an adequate supply of power as hereinafter set forth, after fulfilling the requirements of Authority and the United States, and without prejudice to any preferential rights of States, counties, municipalities, and nonprofit organizations of citizens and farmers to purchase electric power from Authority; and

Whereas Authority is constructing a transmission line from Pickwick Dam to a point at or near the limits of the city of Memphis, Tenn.; and

Whereas the transmission system of Arkansas Co. is connected with the existing South Memphis substation near Memphis, Tenn., and Arkansas Co. has certain contractural arrangements for the receipt and delivery of power through this substation, to the extent and in the manner required by the provisions of this agreement:

Now, therefore, in consideration of the mutual covenants and agreements hereinafter set forth, and subject to the provisions of the Tennessee Valley Authority Act of 1933, as amended, the parties hereto mutually covenant and agree as follows:

1. Term of agreement: The term of this agreement shall commence on the date of commencement of delivery and receipt of power hereunder and shall extend thereafter for a period of 5 years, and for a successive period or periods of 1 year from the expiration of such 5-year period or extension thereof: *Provided*, That either party may cancel this agreement as of the date of expiration of such 5-year period or as of June 30 of any subsequent year by delivering to the other at least 30 months' notice in writing of intention to cancel this agreement, but no such cancelation shall become effective prior to the expiration of 5 years from the date of commencement of delivery and receipt of power hereunder.

2. Definition of classes of power: For the purpose of this agreement, the terms "firm power," "interruptible power," and "run-of-stream secondary power" shall be defined as follows:

(a) Firm power shall mean power available continuously.

(b) Interruptible power shall mean power available not less than 300 days (to be selected by Authority) in each year, beginning July 1.

(c) Run-of-stream secondary power shall mean power available at the discretion of the Authority, but not less than 75 percent of the time from the date of commencement of delivery thereof to the date of termination of delivery thereof, except that in the event of cancelation of this agreement by Arkansas Co. the obligation of Authority to deliver such power 75 percent of the time shall be deemed waived by Arkansas Co.

3. Service specifications: The power contracted for hereunder shall be delivered as three-phase alternating current at approximately 110,000 volts and at a frequency of approximately 60 cycles. The point of delivery of such power shall be the boundary line of the existing South Memphis substation site near Memphis, Tenn., where there now terminate two 110-kilovolt transmission lines which connect with Arkansas Co.'s system. Maintenance by Authority at the point of delivery of the stated voltage and frequency and the capacity contracted for shall constitute delivery of electric power for the purposes of this agreement.

The parties shall exercise due diligence to establish facilities for the delivery and receipt of power hereunder, and agree to commence the delivery and receipt of power hereunder at the earliest practicable date. Each party shall notify the other promptly of the completion of its facilities for the delivery and receipt of power hereunder, and such delivery and receipt of power shall commence on a date to be agreed upon and within the 15-day period next succeeding the later of such notices.

4. Amounts of power: During the period of this agreement Authority will deliver power of the classes described above for the periods and in the amounts set out below, all in accordance with and subject to the provisions of this agreement and the terms and conditions attached hereto and hereby made a part hereof:

Period (1)	Firm (2)	Interruptible (3)	Run-of-stream secondary (4)
	Kilowatts	*Kilowatts*	*Kilowatts*
Date of commencement of service to July 30, 1938	----------	10,000	----------
July 1, 1938, to June 30, 1939	15,000	15,000	----------
July 1, 1939, to June 30, 1940	20,000	20,000	----------
July 1, 1940, to June 30, 1941	25,000	15,000	----------
July 1, 1941, to June 30, 1942	30,000	10,000	----------
After June 30, 1942	35,000	----------	5,000

The contract firm demand in any year shall be the number of kilowatts for such year as set out in the corresponding line of the second column of the above table. The contract interruptible demand in any year shall be the number of kilowatts for such year as set out in the corresponding line of the third column of the above table. Beginning July 1, 1942, the contract run-of-stream secondary demand shall be 5,000 kilowatts for the remainder of the term of this agreement, except that after delivery of run-of-stream secondary power has commenced Authority may at any time on 2 years' notice terminate the delivery thereof.

Except as provided in section 5 hereof, in periods of suspension of run-of-stream secondary power occurring after such power shall have been available for periods aggregating more than 15 months, Arkansas Co. shall not be entitled to take firm power at a demand in excess of the average of the 3 highest monthly firm peak demands occurring during the last 15 months when run-of-stream secondary power was available.

5. Peaking privilege: During any periods (within years in which Authority is obligated to deliver, and Arkansas Co. to pay for, firm and interruptible or run-of-stream secondary power) when delivery of interruptible or run-of-stream secondary power is discontinued by Authority, Arkansas Co. may, at its option, refrain during its off-peak hours from taking any fraction of the firm power to which it is entitled, and Authority shall thereupon deliver an equivalent amount of energy to Arkansas Co. during Arkansas Co.'s on-peak hours; except that Authority does not undertake to deliver power during a period of discontinuance of interruptible power to a greater amount than the sum of the contract demand of firm power plus the contract demand of interruptible power less 5,000 kilowatts, nor to deliver power during a period of suspension of run-of-stream secondary power in a greater amount than 40,000 kilowatt of demand. Arkansas Co. shall have the right, from time to time, upon not less than 24 hours' advance notice, to specify its off-peak and on-peak hours for the purposes of this section.

In any month in which Arkansas Co. shall so increase its demand above the contract firm demand, Arkansas Co. shall pay Authority $0.30 per kilowatt per month for the amount by which the measured demand exceeds the contract firm demand.

The peaking privilege set out in this section 5 shall not be exercised without the consent of Authority after run-of-stream secondary power shall have been available for periods aggregating more than 15 months, if Arkansas Co. has not taken firm power in the amount of the contract firm demand in at least 3 of the last 15 months when run-of-stream secondary power was available.

6. Rate schedule: Arkansas Co. shall pay for power purchased hereunder prior to July 1, 1938, at the following rates:

Demand charge: 30 cents per kilowatt of measured demand per month when power is available.

Energy charge:

First 100,000 kilowatt-hours per month at 4 mills per kilowatt-hour.

Next 200,000 kilowatt-hours per month at 3 mills per kilowatt-hour.

Next 700,000 kilowatt-hours per month at 2.5 mills per kilowatt-hour.

Excess over 1,000,000 kilowatt-hours per month at 2 mills per kilowatt-hour.

The charge for energy per month in excess of 360 times the total measured demand as hereinafter defined shall be subject to a reduction of 0.5 mill per kilowatt-hour from the otherwise applicable rate.

Arkansas Co. shall pay for power purchased hereunder beginning July 1, 1938, and prior to July 1, 1942, at the following rates:

Demand charge:

For firm power, 90 cents per kilowatt of measured demand per month up to the contract firm demand.

For interruptible power, 30 cents per kilowatt of demand per month in excess of contract firm demand when such power is available.

Energy charge:

For total energy delivered (for firm and interruptible power combined):

First 100,000 kilowatt-hours per month at 4 mills per kilowatt-hour.

Next 200,000 kilowatt-hours per month at 3 mills per kilowatt-hour.

Next 700,000 kilowatt-hours per month at 2.5 mills per kilowatt-hour.

Excess over 1,000,000 kilowatt-hours per month at 2 mills per kilowatt-hour.

The charge for energy per month in excess of 360 times the total measured demand as hereinafter defined shall be subject to a reduction of 0.5 mill per kilowatt-hour from the otherwise applicable rate.

Arkansas Co. shall pay for power purchased hereunder beginning July 1, 1942, at the following rates:

Demand charge: 90 cents per kilowatt of measured demand (less the contract run-of-stream secondary demand when available).

Energy charge:

For total energy in excess of available contract run-of-stream secondary power at 100 percent load factor:

First 100,000 kilowatt-hours per month at 4 mills per kilowatt-hour.

Next 200,000 kilowatt-hours per month at 3 mills per kilowatt-hour.

Next 700,000 kilowatt-hours per month at 2.5 mills per kilowatt-hour.

Excess over 1,000,000 kilowatt-hours per month at 2 mills per kilowatt-hour.

The charge for energy per month in excess of (a) available contract run-of-stream secondary power at 100 percent load factor plus (b) 360 times the excess of total measured demand over available contract run-of-stream secondary demand, shall be subject to a reduction of one-half mill per kilowatt-hour from the otherwise applicable rate.

Rate for run-of-stream secondary power:

For run-of-stream secondary power, $0.0554 per day per kilowatt of contract run-of-stream secondary demand when available. Arkansas Co. shall be entitled, after a suspension of run-of-stream secondary power, to a credit of $92.33 for each day of the period from the commencement of the suspension to the date of resumption of supply of run-of-stream secondary power, such credit to apply to the current monthly bills until the credit is exhausted.

7. Measurement of demand: Demand measurement shall be made by suitable instruments at the point of delivery. Total measured demand shall be determined on the basis of the highest integrated load taken during any 60 consecutive-minute period during the month for which determination is made: *Provided*, That in deter-

mining total measured demand for any month, no account shall be taken of (1) such temporary inadvertent swings in load as are unavoidable in the operation of two systems in parallel at a delivery point remote from the point of load control, or (2) temporary excess loads resulting from disturbed operating conditions in Arkansas Co.'s system (such as might result from rapid change in system load or from unavoidable delay in starting reserve generating capacity after an unforeseen outage of an important transmission line or of an operating generating unit), or (3) any excess loads which might be taken by Arkansas Co. as a result of a tendency toward higher than normal frequency in Authority's supply. During any month in which the interruptible power is available for only a portion of the time, the demand charges applicable to interruptible power shall be prorated.

Arkansas Co.'s demand shall, whenever the normal power factor is less than 85 percent, be determined upon the basis of 85 percent power factor; that is, whenever said normal power factor is less than 85 percent the demand in kilowatts shall be taken to be 85 percent of the kilovolt amperes indicated.

8. Advance schedule of loads: Arkansas Co.'s system operator shall furnish to Authority's system operator, by mail, at intervals of not less than 2 weeks, a schedule, by days and hours, showing Arkansas Co.'s expected use of Authority's service for 4 weeks ahead, such schedule to be solely for the convenience of Authority's system operator and not to constitute a commitment by Arkansas Co.

9. Temporary excess takings with consent of Authority: In case Arkansas Co., with the consent of Authority, shall at any time take from Authority amounts of power in excess of the then current contract demands, the supply of such excess power by Authority shall not constitute any commitment that Authority will continue to supply any excess power: *Provided, however,* That Authority will give whatever notice may be feasible before discontinuing the delivery of such excess power. Any such deliveries of excess power shall, unless otherwise specifically agreed at the time of delivery, be billed monthly to Arkansas Co. at the rates for interruptible power; except that for any such excess supplied in the period prior to July 1, 1938, the rate applicable thereto shall, in the absence of such specific agreement, be in accordance with the energy charges herein provided, without demand charges.

10. Minimum bills: Arkansas Co. shall be billed and shall pay monthly for all power and energy taken; except that in the period prior to July 1, 1942, the monthly bill shall not be less than three-quarters of the contract firm demand multiplied by $0.90 plus three-quarters of the contract interruptible demand multiplied by $0.30; and after June 30, 1942, the monthly bill shall not be less than three-quarters of the contract firm demand multiplied by $0.90 plus the charge for run-of-stream secondary power when available; and except further that should Arkansas Co. fail, for any year ending June 30, to take energy when available at 50-percent load factor as applied to the aggregate contract demands for firm and interruptible power (or as applied to the contract firm demand after June 30, 1942), it shall, not later than the first day of August next following pay to Authority 2 mills per kilowatt-hour for the number of kilowatt-hours by which the total energy taken is less than the number of kilowatt-hours which would be taken at such load factor. Any energy which may have been taken by Arkansas Co. in excess of the contract firm and interruptible power available, under the provisions of section 9 hereof, and all energy taken as run-of-stream secondary power shall not be considered for the purposes of this section in determining whether Arkansas Co. has taken energy equivalent to 50-percent load factor aggregate use of the aforesaid contract demands. If for any year Arkansas Co.'s use of firm power (or firm and interruptible power in the period ending June 30, 1942) should exceed a 50-percent load factor based on contract demand, the excess shall be credited to any deficiency in the use of such power in the following year. Monthly minimum bills shall not apply to interruptible or run-of-stream secondary power in months when such power is not available, and for fractional months such minimum shall be prorated. In the event of an interruption in excess of 1 hour in the delivery of any class of power, the minimum bill applicable thereto shall be prorated.

11. Reciprocal emergency stand-by: (a) In the event of break-down or other emergency in Arkansas Co.'s system or involving its sources of power and impairing or jeopardizing its ability to meet the loads of its system, Authority will stand by for Arkansas Co.'s load within the limits of its transmission facilities, and to the extent that it has power available or can obtain power from interconnected systems. In the event of break-down or other emergency in Authority's system or involving its sources of power and impairing or jeopardizing its ability to meet the loads of its system, Arkansas Co. will stand by for Authority's load within the limits of its transmission facilities, and to the extent that it has power available or can obtain power from interconnected systems. In the event that a portion of Authority's system in an emergency becomes isolated from its main system but remains connected with Arkansas Co.'s system Arkansas Co. agrees, without limitation of any other obligation of Arkansas Co. to supply power under this section, to make available to Authority at the point of delivery, within the limits of its transmission facilities and except as limited by generating equipment being out of service, due to accident or repairs, such amount of power up to 7,500 kilowatts as Authority may need and for which Authority has no other source of power available; provided, that the delivery of such emergency power is subject to such delay as may be necessary in starting idle generating equipment; and provided, further, that during the months of August, September, and October of each year (or such other 90 days' period in a year as Arkansas Co. may from time to time specify, except that Arkansas Co. will not specify an earlier 90 days' period of the year during the first 3 years of this agreement), Arkansas Co. does not guarantee to have such emergency power available during the peak-load hours on its system.

At the option of the supplier, energy supplied in an emergency shall be paid for at 2 mills per kilowatt-hour, or at out-of-pocket costs plus 10 percent thereof, plus any additional loss resulting from curtailed revenues or damages or penalties.

(b) Without limitation of any other obligation of Arkansas Co. to supply power under this section, Arkansas Co. agrees, whenever it is making use of controllable stored water, upon request of Authority, to accept from Authority energy in excess of the amount Arkansas Co. is then purchasing and to store the water which it would otherwise have used for the generation of power in reservoirs at its hydroelectric plants. Such excess energy shall be returned to Authority upon request during periods of emergency in Authority's system, subject to the following conditions:

(1) All receipts of energy from Authority for equivalent water storage and all redeliveries to Authority are subject to the limits of Arkansas Co.'s transmission facilities.

(2) Energy will be received from Authority for equivalent water storage only after Authority has supplied so much of the power to which Arkansas Co. is entitled as Arkansas Co. at the time may desire to take, and only to the extent that Arkansas Co. shall have been able to curtail the use of controllable stored water which it would otherwise have used.

(3) Arkansas Co.'s obligation to return to Authority energy so delivered for its account is limited at any time to the amount of hydroelectric generating capacity otherwise not used by Arkansas Co. at that time.

(4) In the event of filling of Arkansas Co.'s reservoirs resulting in overflow, the water equivalent to Authority's energy credit shall be considered to be the first water lost, but Arkansas Co. will endeavor to advise Authority in advance of danger of loss of water storage, and will deliver to Authority, upon request and within the limits of its transmission system and its otherwise unused hydroelectric generating capacity, so much of Authority's energy credit as Authority may deem necessary to protect itself from the loss of its energy credit by the waste of stored water.

(5) Authority may at any time release for use by Arkansas Co. any water stored for Authority's account, such use by Arkansas Co. to be in substitution for deliveries to Arkansas Co. under this agreement.

(6) When Authority requests delivery of its energy credit, Arkansas Co. may at its option supply steam-generated or hydroelectric energy.

(7) The amount of Authority's energy credit shall be the amount of energy delivered to Arkansas Co. under this section, less a reasonable allowance for transmission losses in the delivery and redelivery thereof.

(c) If after either party shall have notified the other of its intention to cancel this agreement, pursuant to the provisions of section 12 (b) hereof, then at the written request of Arkansas Co., made at any time prior to the specified cancelation date set forth in such notice, the obligations of each of the parties with respect to the delivery and receipt of and payment for power and energy, except emergency stand-by power provided for in this section 11, shall terminate pursuant to such request of Arkansas Co. and thereafter, until the specified cancelation date set forth in such notice of cancelation or until 30 days after Arkansas Co. shall have requested the termination of the arrangement for delivery and receipt of such emergency stand-by power under this section 11, whichever shall be the earlier, Authority and Arkansas Co. will operate their respective systems in parallel at the point of delivery for the mutual exchange of unused excess power and for emergency or break-down relief in the manner provided in this section 11, subject to the terms and conditions attached to this agreement and the applicable provisions set forth in this agreement under the headings of Measurement of Demand (sec. 7), Service Specifications (sec. 3), Reservations (sec. 13), Notices (sec. 14), and Waivers (sec. 15).

For the stand-by service supplied by Authority to Arkansas Co. pursuant to this section 11 (c), Arkansas Co. will pay to Authority, instead of the rates specified in section 11 (a) hereof, a demand charge of 3 cents per day per kilowatt of measured demand established in such day plus 2 mills per kilowatt-hour of energy taken, and, in any event, will pay a minimum bill of $10,000 each month, provided that any amount by which such minimum bill may exceed the charges specified in this section 11 (c) for demand and energy supplied shall apply as a credit against any sums due from Arkansas Co. in excess of the said minimum bill for demand and energy supplied under this section 11 (c) in any subsequent month.

12. Resale of power: (a) This agreement is made by Arkansas Co. in lieu of the construction by it of additional electric generating facilities, to supply power to meet the expanding requirements of Arkansas Co.'s own consumers and in substitution for other power purchases by Arkansas Co., and not for resale to other utilities. It is recognized that Arkansas Co., in the ordinary conduct of its business, purchases power from and sells power to other utilities, and that the power purchased hereunder will form a part of the aggregate power supply from which such sales will be made. Arkansas Co. agrees, however, that except as it may sell power to other utilities in the ordinary conduct of its business, it will not, directly or indirectly, subcontract or resell to any utility all or any part of the power purchased by it hereunder.

(b) If Arkansas Co. shall resell to the ultimate consumer any power supplied by Authority hereunder, for an amount which is in excess of any applicable schedule fixed by Authority for the resale of such power, the remedy of Authority shall be to cancel this agreement, and if Authority shall elect to cancel this agreement for the cause aforesaid, such cancelation shall be effected by delivering to Arkansas Co. 2 years' written notice of intention to cancel this agreement. If any schedule for the resale of such power fixed by Authority shall in the judgment of Arkansas Co. be, or become, less than a fair and reasonable schedule of rates for the service to be rendered thereunder, and Arkansas Co. shall so advise Authority, and Authority should within 60 days after written request so to do fail or refuse to agree to a new schedule of resale rates which in the judgment of Arkansas Co. shall be fair and reasonable, Arkansas Co. shall thereupon have the right to cancel this agreement at any time within 2 years after Authority shall have failed or refused to agree to such new schedule, by delivering to Authority written notice of intention to cancel this agreement on a date within such 2-year period to be specified in such notice.

If either party shall notify the other of its intention to cancel this agreement pursuant to this section 12 (b), Arkansas Co. shall not be required to reduce its then applicable rate schedules prior to the effective date of the cancelation.

13. Reservations: It is understood that the Arkansas Co. is subject to regulation with respect to its rates and other matters by the governing bodies of cities, under franchise or charter power, by the Department of Public Utilities of the State of Arkansas, by the Federal Power Commission, and by other regulatory bodies having jurisdiction, and that in executing this agreement, Arkansas Co. does so saving to itself the power to assert all constitutional rights with respect to rates and with respect to matters unrelated to this agreement heretofore available to it, as well as the right to perform its duties and obligations with respect to each of such regulatory bodies.

14. Notices: Any notice, demand, or request required or authorized by this agreement shall be deemed properly given if mailed, postage prepaid, to the chief electrical engineer, Tennessee Valley Authority, Knoxville, Tenn., on behalf of Authority, or to Harvey C. Couch, president, Arkansas Power & Light Co., at Pine Bluff, Ark., on behalf of Arkansas Co. The designation of the person to be notified or the address of such person may be changed by either party at any time, or from time to time, by similar notice.

15. Waivers: Any waiver at any time by either party hereto of its rights with respect to the other party, or with respect to any other matter arising in connection with this agreement, shall not be considered a waiver with respect to any subsequent default or matter.

16. Consent or approval by public bodies: Subject to the rights of each of the parties hereinabove set forth, Arkansas Co. agrees, promptly upon the request of Authority, to apply to the public bodies whose consent or approval is required by law to make effective the provisions of this agreement for such consent or approval, and to prosecute such applications with diligence.

17. Previous agreements: All previous agreements between the parties hereto, whether oral or written, with reference to the subject matter of this agreement, are hereby abrogated. This agreement constitutes the entire contract between the parties, and there are no understandings, representations, or warranties of any kind not expressly set forth herein.

18. Assignment of agreement: Subject to the provisions of section 12 (a) hereof, this agreement shall inure to and be binding upon the successors and assigns of the respective parties hereto.

In witness whereof the parties hereto have caused this agreement to be executed in five counterparts, each of which shall be considered an original, pursuant to authority of resolutions of their respective boards of directors duly adopted.

TENNESSEE VALLEY AUTHORITY,
By ——— ———, *Vice Chairman.*

Attest:

——— ———, *Assistant Secretary.*

ARKANSAS POWER & LIGHT CO.,
By ——— ——— *President.*

Attest:

——— ———, *Secretary.*

TERMS AND CONDITIONS

1. Metering: Arkansas Co. will provide or cause to be provided current and potential transformers and cause to be made available to Authority suitable space in the South Memphis substation for the installation of its meter. Authority will provide, operate, and maintain the necessary additional metering equipment. Each party shall have the right to install, operate, and maintain at its expense such metering equipment and housing as it may deem necessary as a check on the metering equipment of the other party.

Each party shall, at its expense, and in the presence of representatives of the other party, upon reasonable notice and at approximately 90-day intervals, make or cause to be made tests and inspections of its metering equipment in order to maintain a high standard of accuracy. Each party shall make or cause to be made additional tests and inspections of its metering equipment upon request of the other party and in the presence of representatives of such other party. If the tests or inspections show that the meters are accurate within 1 percent, fast or slow, at the average load during he preceding 30 days, no adjustment shall be made in Arkansas Co.'s bills. If the tests or inspections show the meters to be in excess of 1 percent, fast or slow, an adjustment shall be made in Arkansas Co.'s bills in accordance therewith over a period not exceeding 30 days prior to the date of such tests. Any metering equipment found to be defective or more than 1 percent inaccurate shall be promptly repaired, replaced, or readjusted by the party responsible therefor. Should the metering equipment at any time fail to register, the consumption during the period of failure shall be determined by other mutually satisfactory means.

2. Ownership of property: Arkansas Co. shall provide or cause to be provided terminal circuit-breaker equipment and current and potential transformers. Authority shall provide only such circuit breaker and protective equipment as, in its opinion, is necessary for the protection of Authority's apparatus and service.

Except as hereinabove provided and except as the parties shall hereafter specifically agree, each party shall provide, operate, and maintain, or cause to be provided, operated, and maintained, all equipment on its side of the point of delivery. The Authority's facilities on Arkansas Co.'s side of the point of delivery shall be and remain the property of and be maintained by Authority.

Arkansas Co. shall cause reasonable care to be exercised to protect the equipment of Authority installed at south Memphis substation in the event of loss or damage to such equipment of Authority arising from lack of exercise of reasonable care for same, the cost of necessary repairs or replacements shall be paid by Arkansas Co. Authority's properly accredited employees shall have access to Authority's equipment at south Memphis substation at all reasonable times for the purpose of reading meters and for testing, repairing, replacing, or removing any and all equipment belonging to Authority. Authority shall remove at its expense its meters and other equipment from the south Memphis substation upon the termination of this agreement.

3. Billing: Bills for electric power service hereunder shall be rendered monthly in accordance with the rates provided for herein. Such bills for any calendar month shall be due on the 15th day of the succeeding month or 10 days after receipt of bill from Authority, whichever is the later. Upon failure of Arkansas Co. to pay its bill for any calendar month within 15 days after the due date Authority shall have the right, upon 10 days' written notice to Arkansas Co. to discontinue the supply of electric power and to refuse the resumption of delivery so long as any past-due account remains unpaid. To any amount remaining unpaid on the 1st day of the calendar month following the due date there shall be added a penalty of 1 percent and an additional 1 percent shall be added on the 1st day of each succeeding month on the remaining past due and unpaid balance until the amount is paid in full: *Provided,* That when any dispute arises as to the correctness of the amount billed, Authority shall not have the right to discontinue supply of electric service, nor shall any penalties accrue, if within such period of 10 days after such written notice the parties cannot agree on the amount due, and within a further period of 10 days thereafter Arkansas Co. pays to Authority the amount which Arkansas Co. believes to be due.

All payments shall be made to Authority at its offices at Wilson Dam, Ala., or at such other place as Authority may from time to time designate.

4. Liability: Authority shall hold Arkansas Co. harmless against any loss or damage to the public or its employees arising out of the operation of Authority's transmission lines or equipment and the transmission of electric power delivered hereunder up to the point of delivery herein specified, unless it be proven that such loss or damage was caused by the sole negligence of Arkansas Co., its agents, servants, or employees. Conversely, Arkansas Co. shall hold Authority harmless against any loss or damage to the public or its employees arising on the Arkansas Co.'s side of point of delivery, unless it be proven that such loss or damage was caused by the sole negligence of Authority or its agents, servants, or employees.

5. Service: Authority shall furnish electric power as agreed upon, but Authority, its officers, agents, or employees shall not be liable for damages or breach of contract when service is interrupted or suspended by reason of injunction, strike, riot, invasion, fire, accident, floods, backwater caused by floods, act of God, or from any other like causes beyond Authority's control, or caused by the making of necessary repairs on Authority's system, or by connecting or disconnecting Arkansas Co.'s services, but Authority shall make appropriate adjustment of the demand and energy charges in the event of such interruption or suspension of service. Authority shall give as much notice as possible before interrupting service to make repairs. Authority shall so far as possible avoid discontinuance of service hereunder for routine operating purposes, and when such discontinuance is necessary, Authority shall restore service as speedily as possible. Interruptions or suspensions of run-of-stream secondary power for causes beyond the control of Authority as specified herein, shall not be considered a suspension of the delivery of such power within the meaning of section 6 of the agreement of which these terms and conditions are a part.

Arkansas Co. shall notify Authority immediately should the service be unsatisfactory for any reason, or should there be any difficulties, trouble, or accidents affecting the supply of electricity. Such notices, if verbal, shall be confirmed in writing.

In the event of Arkansas Co.'s operations being interrupted or suspended by reason of injunction, strike, riot, invasion, fire, accident, floods, backwater caused by floods, act of God, or from any other like causes beyond Arkansas Co.'s control, Arkansas Co. will not be obligated to take or buy or deliver any electric power as herein provided for, nor to pay demand or minimum charges during the period of such interruption, and the demand and mini-

mum charges for the month and year in which such interruption occurs shall be adjusted accordingly.

Either party shall have the right to maintain suit at any time for any loss or claim that may previously have occurred or arisen without waiting until expiration of the contract period and without losing or waiving any right to maintain suit for subsequent losses occurring during the period of the agreement, and recovery in any such suit shall not be deemed a splitting of the cause of action.

6. Adjustment of rates: Authority agrees that if at any time it lowers its basic rate level for a class and quality of service covered by this agreement, it will make corresponding reductions in the rate to Arkansas Co. for the class and quality of service to which the reduction is applicable, so long as such reduced rate level remains the basic rate level of Authority for such class and quality of service.

7. Voltage conditions at delivery point: Authority will provide necessary facilities to deliver power to Arkansas Co. at a nominal voltage of 110,000 volts. This voltage may be raised 2½ percent or lowered 5 percent by 2½ percent steps, at the request of Arkansas Co., subject to the completion by Authority of the facilities necessary therefor, which Authority agrees to complete by September 1, 1938, or as soon thereafter as feasible with the exercise of due diligence.

Arkansas Co. will not use service from Authority in such manner as to cause fluctuations or disturbances, unusual to normal electric utility operations to Authority's system and Authority may require Arkansas Co. at its own expense to install suitable apparatus reasonably to limit such fluctuations or disturbances.

8. Phase balancing: Arkansas Co. shall at all times take and use energy in such manner that the load will be balanced between phases to within 10 percent of normal. In the event of polyphase loads unbalanced in excess of 10 percent, Authority reserves the right to require Arkansas Co. on 60 days' written notice at its own expense to make the necessary changes to correct such unbalancing and if such unbalancing is not then corrected to compute the demand on the assumption that the load of each phase is equal to that on the greatest phase.

9. Notices with respect to interruptible or run-of-stream secondary power: Authority will give 15 days' notice of its intention to discontinue and 7 days' notice of its intention to resume supply of interruptible power. Authority will give 5 days' notice of its intention to discontinue supply of run-of-stream secondary power, and reasonable notice of its intention to resume supply of run-of-stream secondary power, such resumption, however, not to be made effective on a Saturday, Sunday, or legal holiday except by consent of Arkansas Co.

Authority will endeavor to keep Arkansas Co. advised, from time to time, during a period of suspension of delivery of interruptible or run-of-stream secondary power, of the probable duration of such suspension.

Mr. McKELLAR. Before closing I wish again to call the attention of the Senate and of the country to the municipal contractors who, despite the injunctions, despite the lawsuits, and despite all the opposition that has been urged against the Tennessee Valley Authority, have bought power and are now buying power from the Tennessee Valley Authority. They include the following: Amory, Miss.; Athens, Ala.; Bolivar, Tenn.; Dayton, Tenn.; Dickson, Tenn.; Florence, Ala.; Holly Springs, Miss.; Jackson, Tenn.; Milan, Tenn.; Muscle Shoals City, Ala.; New Albany, Miss.; Okolona, Miss.; Pulaski, Tenn.; Sheffield, Ala.; Somerville, Tenn.; Tupelo, Miss.; and Tuscumbia, Ala.

There are four or five large cities among those which have contracts, but as to which service has been stopped by the same tactics that are being used now, namely, by injunction. They are Chattanooga, Tenn.; Decatur, Ala.; Knoxville, Tenn.; Memphis, Tenn.; and Russellville, Ala.

Note the cooperatives which have received the benefit of rural electrification, as a result of which hundreds of homes have been supplied with electricity that could not have been so supplied in any other way. I will name them: The Alcorn County Association—that is in Mississippi—the Cullman County Association, in Alabama; the Duck River Association, in Tennessee; the Gibson County Association, in Tennessee; the Meigs County Association, in Tennessee; the Middle Tennessee Association, composed of five or six counties; Monroe County Association, Tennessee; the North Georgia Association; the Pickwick Association, which, I presume, is near the Pickwick Dam; Pontotoc (Miss.) Association; the Prentiss County (Miss.) Association; the Southwest Tennessee Association; the Tishomingo County Association; the Tombigbee (Miss.) Association; and the Lincoln County Association.

It is perfectly remarkable that the T. V. A. has been able to sell so much power to those who were intended to be prime beneficiaries of such power and who are now getting it at a very low rate.

I remember that the little town of Muscle Shoals, right at the Wilson Dam, during all the years of the Republican administration under Mr. Hoover, bought power right at the dam, with houses built all around it, at 12 cents a kilowatt. That rate has been reduced to less than 3 cents; and yet the Senator from New Hampshire talks about no good being done to all the surrounding cities which previously had to pay the same kind of high rates. Think of all that has been accomplished since this great project has been put in operation along the Tennessee River. Think also of the opposition it has had. My own judgment is that if the T. V. A. had not sold its power to industries, as it was required by law to do, Senators here and people all over the country would now say that it ought to have done it; that the law provided that it should do it. The statute gives specific authority to sell power, not by public bidding but by negotiation, and every care was taken by the T. V. A. in negotiating these contracts. They were made in the open, were ratified in the open, in many instances by a vote of the people, and were known to all the people there.

I have been a friend of the T. V. A. from the very beginning. I was a friend of it long before it was constituted. I have been fighting for public control of this great system since away back yonder in 1916, if I remember aright, when I offered in the House of Representatives, of which at that time I was a Member, the first amendment providing for the use of the power at Muscle Shoals for the benefit of all the people instead of turning it over to the power companies that were producing power for about 2 mills, one-fifth of a cent, and selling it to the people for as much as 10 and 12 cents a kilowatt.

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

Mr. McKELLAR. I yield.

Mr. McNARY. I think if the Senator will review the statute passed by the Congress in 1916, he will find that the Muscle Shoals project was included in the National Defense Act.

Mr. McKELLAR. It was.

Mr. McNARY. There was no reference to rates. It was simply declared that the Muscle Shoals plant should be used to produce nitrates in time of war and fertilizer in time of peace.

Mr. McKELLAR. That is true; it was charted with that in view. I remember that the amendment was offered by me in the committee in the House of Representatives in the winter of 1916. It was defeated in the House; but the Senator from South Carolina [Mr. SMITH] took it up in the Senate and had it incorporated in the bill, and in conference it was agreed to. That was the beginning of the power question, so far as it relates to the Tennessee Valley. We have gone a long way, Mr. President, since then.

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

Mr. McKELLAR. I yield.

Mr. McNARY. The purpose of the act at that time was not to furnish cheap power to cities throughout the Valley or to the people of the South or to sell large quantities of power to monopolistic power companies, but it was to free ourselves from the clutches of the Chilean nitrate producers who were then gripping the world.

Mr. McKELLAR. That was one of the purposes.

Mr. McNARY. That was the real purpose.

Mr. McKELLAR. There was another purpose. Many of us knew that the World War was coming on and could not be avoided; we did not know whether the routes to Chile would be interfered with, and we wanted a plant that could produce nitrates for war purposes. That was one of the purposes on the basis of which action was taken. The other purpose was the manufacture of fertilizer in time of peace. There was also a very general provision about the disposition of surplus power. Later on, it will be remembered, for the Senator from Oregon was here at the time and took part in the discussion, that Mr. Henry Ford made an offer and

submitted a price—I have forgotten what it was—for the Muscle Shoals property.

Mr. McNARY. I can amplify the record by saying that the offer was $5,000,000, and it was turned down, of course.

Mr. McKELLAR. Yes, it was turned down. At that time, as the Senator will remember, the Finance Committee had charge of the matter, as I recall. It was presided over at that time by my good friend, Mr. Reed Smoot, of Utah, a very able legislator, although he sometimes made mistakes, as we all do. Senator Smoot stated that the committee had not recommended an appropriation to complete the so-called Wilson Dam because he did not believe "in throwing good money after bad money"; that it could never be utilized, it could never be of any value, and, therefore, his committee did not recommend an appropriation, and none was made for it. A year or two after Mr. Ford galvanized life into it by making an offer for Muscle Shoals Dam, under which it was to be completed and turned over to him for a small amount, everybody became very greatly interested in the Muscle Shoals Dam; and it was finished, and for many years thereafter it was used by the Alabama Power Co., which bought power for a song, for less than 2 mills, if I remember aright, and then resold the power for 10 cents per kilowatt, generally speaking. The result was that other bills were introduced; that finally the T. V. A. bill was introduced, and passed, which provided that the surplus power should be sold for the purpose of giving the people cheaper rates for power within the area to be reached.

Mr. BRIDGES. Mr. President, is the Senator ready to yield for a question?

Mr. McKELLAR. Yes; I am glad to yield.

Mr. BRIDGES. The Senator, in his discourse today referring to this matter, used the pronoun "we" continually, saying "We will do this" and "We will make contracts," and so forth. To whom did he refer?

Mr. McKELLAR. I referred to the T. V. A., and it was what might be called a Lapsus linguae. The truth of the matter, as Senators know, is that relations have frequently been strained between the T. V. A. and myself. The Tennessee Valley Authority is wholly independent in their views and in their actions. I will also say to the Senator I have long been connected with this matter. The Senator was a little boy in short breeches, I presume, when I first began to work on this problem, away back yonder in 1916, and, of course, he would not remember about it; but the fact is that I have been tremendously interested in the project. I think I sought appropriations, as members of the Appropriations Committee can substantiate, every year to complete the Tennessee River dams, so as to provide navigation, so as to provide flood control, and so as to furnish the power that would pay for it all. The power will pay for it if we simply proceed to act, and it will not take a long time, for we have four more dams which, on an average, are about halfway completed, and some of them at least are nearly completed. The Pickwick Dam is practically completed.

Mr. BRIDGES. The Senator has referred to Mr. Hoover continually, and has also referred to Mr. Couch, one of whom he holds up as a horrible example and the other as a great benefactor. I wonder if the Senator will tell me who appointed Mr. Couch to the Reconstruction Finance Corporation.

Mr. McKELLAR. I did not remember at the time, but I believe Mr. Hoover appointed him. I meant no disrespect to Mr. Hoover; I never agreed with his views—and there are many others who have not agreed with him—but I have nothing against him personally at all. Personally he is a very likable man, but politically I think he has made more mistakes than has any other public man in this country for many years.

Mr. BRIDGES. I presume the Senator would not deliberately make any false statements in connection with his speech. I assume that to be the case.

Mr. McKELLAR. The Senator should assume it, because I do not make false statements in my speeches or elsewhere, and anybody who says I do will have to answer for it.

Mr. BRIDGES. I assume that that is so. Perhaps the Senator, then, will realize that the statement he made about the power rates in New Hampshire not being reduced in 5 years is false.

Mr. McKELLAR. Oh, I did not say that!

Mr. BRIDGES. Does not the Senator know that such a statement is a reflection upon his own colleague, the Senator from New Hampshire, Mr. BROWN, who sits on the Democratic side of this Chamber, and who sat with me on the New Hampshire commission for 3 years? Does he know the reputation of the New Hampshire commission? Does he know that his own Democratic colleague, FRED BROWN, sat on the New Hampshire commission with me for 3 years? Does he know of the reduction of rates brought about by the commission in that period?

Mr. McKELLAR. I do not say the rates were not reduced at all. The Senator is mistaken about that. What I did say was that the record shows that New Hampshire has the second highest rates in the country. The Senator does not deny that, does he?

Mr. BRIDGES. Does the Senator know that in New Hampshire a greater percentage of farms are electrified than in any other State in the Union, and that there is a greater diversity of service; that farmers get the same rates as the big centers?

Mr. McKELLAR. No; I do not know that. I do not know what the facts are in those respects; but I know that if the farmers and other citizens of New Hampshire are suffering from the second highest power rates in the Union, they are not getting a great deal of advantage from the power available in that State, because, as I have shown by figures taken from the record, the New Hampshire farmers and industries and merchants and other users of power pay next to the highest rates paid in any State in the Union. If the farmers of New Hampshire do use electric power, they pay a big price for it, and a great deal more than the farmers have to pay down our way, over 100 percent more, and over 100 percent more than is paid in the State of Washington, and over 100 percent more than is paid in Canada, immediately adjoining the Senator's State.

Mr. BRIDGES. I will enlighten the Senator fully on that subject when I formally reply to his remarks. I should like to ask him if he would favor an impartial investigation of the T. V. A.?

Mr. McKELLAR. I have no objection to any kind of investigation——

Mr. BRIDGES. Will the Senator support one if one is requested here?

Mr. McKELLAR. It depends. I never vote for a "cat in a bag." I will vote for any investigation that I think is all right; and the fact is that a resolution calling for one has been submitted in the Senate by the Senator from Nebraska [Mr. NORRIS], who is one of the finest men we have in the Senate, and one of the most level-headed men here. He has submitted a resolution calling for an investigation of the Tennessee Valley Authority by the Federal Trade Commission. I think that would be entirely all right, and I expect to vote for the resolution. I am not committing myself to it, but I am expecting to vote for it.

Mr. BRIDGES. Would the Senator support a request for an investigation by an impartial senatorial committee?

Mr. McKELLAR. I do not know about that. I think that would be rather doubtful. That would make the investigation political. The Federal Trade Commission is not a political body, and I believe it would be better to have it make the investigation. Under some circumstances I might even support an investigation by a senatorial committee, but I am not committing myself about it at this time. I have already committed myself to the proposal of the Senator from Nebraska [Mr. NORRIS], saying that I think it would be a very wise thing, because the T. V. A. has nothing in the world to keep under cover. Its officials are perfectly willing that their affairs shall be investigated. The Federal Trade Commission is admirably suited to that kind of work. Such an investigation would not be political, and I think that would be the best way to have it made.

Mr. BRIDGES. Did the Senator ever hear rumors that there might be another Teapot Dome scandal in connection with the Tennessee Valley Authority?

Mr. McKELLAR. I have never heard such a rumor, and I do not believe it. I do not think we ought to talk about rumors here.

Mr. BRIDGES. Would the Senator, then, be willing to commit himself to an impartial investigation of T. V. A., if there is nothing to this rumor?

Mr. McKELLAR. I have already stated that I was in favor of an impartial investigation, not a political investigation. To be perfectly frank, I do not think the Senator, coming as he does from away up in New Hampshire, and having made the speech that he made about the T. V. A. the other day, would be an impartial investigator. I think he would have made up his mind before he went on the investigating committee. For that reason, if the Senator wants to commit me to an investigation by a senatorial committee of which he would be a member, I say to him with the utmost frankness that I should not be in favor of such a committee investigating the T. V. A.

Mr. BRIDGES. The Senator at various times quoted from Mr. Lilienthal. In fact, a great part of his speech consisted of quotations from Mr. Lilienthal.

Mr. McKELLAR. No; only about two and a half pages of my speech are quoted from him, and there are 40 pages of the speech. I make my own speeches. I write them all myself, too.

Mr. BRIDGES. Did the Senator confer with Mr. Lilienthal or the other members of the T. V. A. Board?

Mr. McKELLAR. I conferred with Mr. Lilienthal, who happened to be in town. He is the only one I had an opportunity to confer with, and I conferred for only a very few minutes with him.

Mr. BRIDGES. Is the Senator familiar with the statement made by Dr. Morgan, chairman of the T. V. A., appearing in the newspapers of yesterday?

Mr. McKELLAR. I saw it.

Mr. BRIDGES. Does the Senator believe that statement to be accurate?

Mr. McKELLAR. I do not know about its accuracy, but I do not believe in the proposal Dr. Morgan makes about the matter. I think we could well afford to have a T. V. A. yardstick all over the country. The Senator from New Hampshire especially ought to welcome it, because he has such high rates in his State.

Mr. BRIDGES. The Senator from Tennessee need not worry about New Hampshire. If the Senator would worry about Tennessee, it would be more to the point.

Mr. McKELLAR. The Senator from New Hampshire brought on this contest, and he comes from New Hampshire. He is butting in down in Tennessee, where he ought not to butt in.

Mr. BRIDGES. Does the Senator believe that the people of Tennessee are all in accord with his stand on this matter?

Mr. McKELLAR. I think that at least three-fourths of them are; perhaps four-fifths of them. There is a tremendous majority who are in accord with it. I will give the Senator the majority. This is solely from memory.

In Memphis, Tenn., the contract was endorsed by a very large vote, and was 17 to 1. In Chattanooga it was 3 to 1. In Knoxville, if I remember correctly, it was 7 to 1. In Parrish, it was 6 to 1; and in other towns the vote was overwhelmingly one way. Indeed, there has been no organized opposition to the T. V. A. anywhere in Tennessee. It is exceedingly popular. I will tell you why it is popular: It is saving the plain people of that State a great deal of money in power rates, and of course it is proper for those who are being saved money by the introduction of these lower rates to be in favor of the scheme that does it.

Mr. BRIDGES. The Senator asks why people in New Hampshire should be interested in the T. V. A.

Mr. McKELLAR. Yes.

Mr. BRIDGES. May I comment and say it is because they are paying part of the bill? That is why they are interested, and so are the people all over the Nation, because the funds of the T. V. A. come out of the Public Treasury. They are public funds.

Mr. McKELLAR. The Senator from Tennessee takes the same stand. Here is the T. V. A. By entering into contracts as its officials were authorized by law to do, and as they have done, they have run the income of T. V. A. up to a point where neither the citizens of Tennessee, the citizens of New Hampshire, the citizens of New York, nor the citizens of any other State have to pay any part of the expense, because if the T. V. A. is allowed to go on and do its duty it will be a self-sustaining proposition. It will not cost the Government a cent; it will not cost the people of New Hampshire a cent; it will not cost the people of Tennessee a cent; but it will result in an enormous reduction of rates to about one-third of what the people of those States used to pay.

Mr. BRIDGES. Does the Senator call supplying power to the Aluminum Co. of America at bargain prices, below cost of production, good business?

Mr. McKELLAR. Oh, no; but that is not a correct statement of the situation. The T. V. A. is not supplying power below the cost of production. It is supplying it at rates which have been carefully computed by engineers, which show that the Government will actually make a profit upon the sale. The Senator is wholly mistaken. He ought to look up the record.

Mr. BRIDGES. The Senator made the statement that the Tennessee Valley Authority was established for the benefit of the farmers, the merchants, and so on.

Mr. McKELLAR. It was.

Mr. BRIDGES. Then how does the Senator justify the T. V. A. in selling the great majority of the power to four great corporations and one great utility?

Mr. McKELLAR. That was a temporary expedient, provided for under the law, and it was done for the purpose of utilizing the power that the private power companies have enjoined the T. V. A. from selling to cities and towns and farm operatives. By reason of these injunctions, the power has been banked up; and the T. V. A., following an excellent business principle, in entire accordance with the law, has sold this power so as to prevent loss to the Government, and so as to be able to let the farmers and the municipalities and the ordinary consumers have it at a very low price.

Mr. BRIDGES. Does the Senator realize that in the Aluminum Co. contract there was no provision for a minimum kilowatt-hour price as there was in the other contracts which were made; that the contract was made with that provision eliminated?

Mr. McKELLAR. I do not know that I understand what the Senator says. I have the contract here; and in order that there may not be any secrecy or even any alleged secrecy about these contracts, I have already asked that the five contracts be printed in the RECORD, and that will be done.

What was it that the Senator said about the Aluminum Co. of America?

Mr. BRIDGES. The Aluminum Co. contract eliminates the minimum kilowatt-hour rate. That, I understand, was brought out in the second deficiency appropriation hearings in the House of Representatives in 1936.

Mr. McKELLAR. I have not those hearings before me; but I know that the Aluminum Co. is getting the power at yardstick rates, and the Aluminum Co. is being sold all of its power for the benefit of the T. V. A. and not for the benefit of the Aluminum Co., though I presume it is a great convenience to the Aluminum Co. to get it.

By the way, as I said before, in addition to getting a sale for power which has been dammed up by reason of injunctions by the power companies, the T. V. A. also has brought about a doubling of the facilities of the Aluminum Co. in Alcoa, Tenn., and the employment of some 4,000 more men than had been employed.

Mr. BRIDGES. Mr. President, the Senator referred today to the president of the Union Carbide Co. as being a particular friend of his.

Mr. McKELLAR. I cannot say he is a particular friend, but we were young lawyers at the same time, and at one time we were offered the same position. I was offered the

place first and turned it down and continued to live in Memphis. Mr. Ricks was a poor young fellow, just as I was.

He was from some small place in the southern part of Wisconsin, the name of which I cannot recall at the moment. He was discovered there, and was thought to be a great trial lawyer, and was brought to Chicago and given exactly the place I had been offered and had refused. He made a wonderful success, although that statement is based on what I have been told, as I never heard him try a lawsuit. Our relations have been very pleasant, and he is a very fine man. I have not seen him for years, and I do not know anything further about him.

Mr. BRIDGES. I merely desire to ask the Senator whether his opinion relative to the Union Carbide Co. is different from what it was on March 3, 1926, according to what he then said.

Mr. McKELLAR. That depends on what I said in 1926.

Mr. BRIDGES. The Senator referred to the Union Carbide Co. as an enormous monopoly, one of the largest monopolies in the United States.

Mr. McKELLAR. I think it is. I think that statement is accurate. I have not changed my mind about it at all. I say it is one of the largest monopolies in the country. I understand they make a large number of very useful products, perhaps several hundred in number. It is a very large corporation. I understand it is a monopoly, too. I am merely speaking generally, just as I spoke before. But I do not think that everyone connected with it is a scoundrel. I know Mr. Ricks is not. I know he is a fine man.

Mr. BRIDGES. In the meat of his speech the Senator tried to justify the sale of power at bargain prices, under private contracts, without public bids, to great monopolies in this country. That is what the Senator attempted to defend.

Mr. McKELLAR. The Senator can have that opinion about it if he desires. My speech does not show anything of the kind. I differ with the Senator entirely about it, but the Senator can think of it just as he pleases. I thank the Senator for saying that my speech had meat in it. I hope it did. If it had any meat in it, it exploded the views the Senator from New Hampshire expressed last Tuesday. I never have been what is known as a "utility man" or a "power-company man."

Mr. BRIDGES. Does the Senator believe that the majority of the board of the T. V. A.—Mr. Lilienthal and Mr. Morgan—are absolutely right and that the third is absolutely wrong?

Mr. McKELLAR. Oh, no; I have not meant to say that. I have not passed on it at all. I have not referred to it. I said that all the members of the Commission frequently differ, just as the Members of the Senate differ. For instance, my views on public questions are as far from those of the Senator from New Hampshire as the poles are apart, but that does not mean that the views of either are wrong or that either is corrupt or crooked.

Mr. BRIDGES. No; but I am very thankful that my views are as far apart from the Senator's as are the poles.

Mr. McKELLAR. I entertain the same feeling of satisfaction, so we are agreed on that.

Mr. BRIDGES. Has the Senator ever investigated relative to any of the so-called purchases of T. V. A.?

Mr. McKELLAR. The Senator asks whether I have investigated. I have investigated, and the results of my investigation are apparent in the speech I have made today. Besides I have had a personal knowledge of it from the very beginning.

As the Senator knows, my interests are not so varied. I have taken a great deal of pride in the growth and progress and development of the T. V. A. and what it is doing in Tennessee. I know it is doing a good work. I am almost as familiar with it as the Senator is with the maple-sugar industry in New Hampshire, and I have kept up with it. I was present when the contract was agreed upon and signed in Memphis. I was there only as an onlooker; I had nothing in the world to do with it in any way, shape, or form, except that I believe we all had our pictures taken together. To show how much notoriety there was, I assure the Senator that the contract was not agreed upon or signed in secrecy, or behind closed doors, or in any other manner mentioned by the Senator a while ago. Knowing the T. V. A. as I know it—and I think I know a great deal about it—I do not believe the Senator utilized his time very well in looking up the history of the T. V. A. I say in all kindness that he does not refer even to the reports of the T. V. A., which were all in the RECORD. They were printed. The Senator could have referred to them, but he did not refer to them in his speech, as I recall.

Mr. BRIDGES. Does the Senator believe that the T. V. A. should stand by itself and not be subject to some of the provisions of law providing for reports and financial returns to Federal officials with which other Government agencies have to comply?

Mr. McKELLAR. No; I do not.

Mr. BRIDGES. Has not that been the case?

Mr. McKELLAR. I do not know. I could not say offhand. But if it does not make reports, if it is not subject to examination and accounting, I should be very glad indeed to support a law providing that it should do so.

Mr. BRIDGES. Will the Senator tell us how many men are employed under the T. V. A. today?

Mr. McKELLAR. I have not the slightest idea.

Mr. BRIDGES. Can the Senator state how many are under civil service, or what percentage are under civil service?

Mr. McKELLAR. I have heard that most of them are, but I do not know. If the Senator wishes to find whether any of my recommendations have been accepted by the T. V. A. and the parties appointed because of my recommendations, I assure him that I do not know of a man I have recommended who has been appointed by the T. V. A.; not one.

Mr. BRIDGES. I am just amazed at that statement.

Mr. McKELLAR. The Senator will be amazed at a great many things if he will investigate the T. V. A. He will find it a big, clean organization, trying to do a splendid work, and after the courts have substantially let it alone, and after the power companies have substantially let it alone, and after other big interests have substantially let it alone, I should think the Senator would let the matter rest for a while, and would not desire to issue propaganda against the T. V. A. Does not the Senator believe in courts? Does he not believe that after they have decided a thing, that should be the law?

Mr. BRIDGES. My regard for courts is probably as high as that of the Senator from Tennessee.

Mr. McKELLAR. I am glad to hear that.

Mr. BRIDGES. I have heard the Senator make remarks about certain courts of the land within the last year.

Mr. McKELLAR. I do not believe the Senator ever heard an uncomplimentary thing from me about the courts. I hope he did not, anyway, because I have the highest respect for them.

Mr. BRIDGES. I am glad to know that the Senator will support some sort of an investigation of the T. V. A.

Mr. McKELLAR. Not "some sort." I told the Senator from Nebraska [Mr. NORRIS] that I thought his bill providing for an investigation by an impartial body such as the Federal Trade Commission was a very excellent idea, and that I would be very happy to support him in it; and I shall do so, if it comes before us.

Mr. BRIDGES. Will the Senator support an investigation to go into every phase?

Mr. McKELLAR. Any phase of the T. V. A., because they have nothing in the world to conceal. They have done a good job under the most adverse circumstances ever experienced by any arm of the Government in the history of the United States.

Mr. BRIDGES. That is quite a broad statement.

Mr. McKELLAR. It is a broad statement, but it is a true statement.

Mr. MINTON. It is a broad subject.

Mr. McKELLAR. Yes; it is a broad subject. I agree entirely.

Mr. BRIDGES. Mr. President, if I may, I ask to have inserted in the RECORD a statement made by Dr. Morgan,

the Chairman of the T. V. A., appearing in the New York Herald Tribune of January 23.

Mr. CONNALLY. Mr. President, reserving the right to object, I ask the Senator not to offer that now, but to wait until later.

Mr. McKELLAR. If there are any other questions, I shall be glad to answer them, so far as I can. Of course, I have not spent 3 months in investigating the T. V. A., as the Senator from New Hampshire has. I have spent only the last few days, since last Tuesday. I will say to the Senator, in extenuation of that statement, that I think I knew something about it beforehand, and the man who lives a thousand miles away from a project and who never saw it, I suppose——

Mr. BRIDGES. I have seen it.

Mr. McKELLAR. When was the Senator there?

Mr. BRIDGES. I have been there on a couple of occasions.

Mr. McKELLAR. How long did the Senator stay there?

Mr. BRIDGES. Not very long.

Mr. McKELLAR. I thought so. If the Senator had spent part of his 3 months' vacation looking into some of the facts, he might be nearer in agreement with me.

Mr. BRIDGES. I doubt it. I think I would be more opposed than ever, because, judging by the speech the Senator has made, I do not think I could agree with him.

Mr. McKELLAR. I believe that is all I wish to say.

Mr. CONNALLY. I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. SCHWARTZ in the chair). The clerk will call the roll.

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

Adams	Clark	Herring	Neely
Barkley	Connally	Hill	Pope
Bone	Copeland	Hitchcock	Radcliffe
Borah	Davis	Johnson, Calif.	Russell
Bridges	Donahey	Lodge	Schwartz
Brown, Mich.	Ellender	McGill	Townsend
Brown, N. H.	George	Maloney	Truman
Bulkley	Gerry	Miller	Vandenberg
Bulow	Gibson	Milton	
Byrnes	Guffey	Minton	
Caraway	Hatch	Murray	

The PRESIDING OFFICER (Mr. SCHWARTZ in the chair). Forty-one Senators having answered to their names, there is not a quorum present. The clerk will call the names of absent Senators.

The Chief Clerk called the names of the absent Senators, and Mr. ANDREWS, Mr. ASHURST, Mr. AUSTIN, Mr. BAILEY, Mr. BANKHEAD, Mr. BILBO, Mr. BURKE, Mr. BYRD, Mr. CAPPER, Mr. CHAVEZ, Mr. DIETERICH, Mr. FRAZIER, Mr. GILLETTE, Mr. GLASS, Mr. HALE, Mr. HARRISON, Mr. HAYDEN, Mr. HOLT, Mr. HUGHES, Mr. JOHNSON of Colorado, Mr. KING, Mr. LA FOLLETTE, Mr. LEE, Mr. LEWIS, Mr. LOGAN, Mr. LONERGAN, Mr. LUNDEEN, Mr. McADOO, Mr. McCARRAN, Mr. McKELLAR, Mr. McNARY, Mr. NORRIS, Mr. O'MAHONEY, Mr. OVERTON, Mr. PEPPER, Mr. PITTMAN, Mr. SCHWELLENBACH, Mr. SHEPPARD, Mr. SMATHERS, Mr. SMITH, Mr. STEIWER, Mr. THOMAS of Oklahoma, Mr. THOMAS of Utah, Mr. VAN NUYS, Mr. WAGNER, Mr. WALSH, and Mr. WHEELER answered to their names when called.

The PRESIDING OFFICER. Eighty-eight Senators having answered to their names, a quorum is present.

Mr. BRIDGES. Mr. President——

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. BRIDGES. I ask unanimous consent to have inserted in the RECORD an article appearing in the New York Herald Tribune of January 23, 1938, entitled "More T. V. A.'s Opposed by Dr. Morgan."

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

[From the New York Herald Tribune of January 23, 1938]

MORE T. V. A.'S OPPOSED BY DR. MORGAN—AUTHORITY HEAD REJECTS ROOSEVELT PLAN BEFORE HOUSE GROUP, DECRYING WATER POWER "OBSESSION"—FAVORS INTERSTATE PLANNING DISTRICTS—UTILITY FIRMS PREPARE A SUPREME COURT APPEAL ON LEGALITY OF T. V. A.

WASHINGTON, January 22.—Secret testimony of Dr. Arthur E. Morgan, Chairman of the Tennessee Valley Authority, opposing extension of T. V. A. power principles to other parts of the Nation was revealed tonight, 24 hours after a Federal district court in Chattanooga upheld constitutionality of the controverted agency.

Dr. Morgan's statement charged that water-power development "has become an obsession with some men." He opposed establishment on other watersheds of agencies patterned after T. V. A.

His congressional testimony sharpened the serious split among directors of the T. V. A., in which Dr. Morgan has repeatedly opposed the policies of codirectors David L. Lilienthal and Harcourt A. Morgan.

His views were made public as attorneys for 18 utility firms, many of them subsidiaries of Commonwealth & Southern Corporation, prepared to rush to the Supreme Court an appeal of yesterday's decision. The decision, by a three-judge Federal court headed by Circuit Judge Florence Allen, upheld the validity of T. V. A. and its right to enter into competition with private utilities firms.

It was expected that application to the Supreme Court for review of the decision would be filed in February. Arguments could be heard in March or April, and a decision could be given before the end of this year's term in June.

Dr. Morgan's assertions were made at a secret hearing of the House Rivers and Harbors Committee as he presented recommendations that interstate water-control districts be set up in place of the regional resources agencies proposed by President Roosevelt.

"It would seem better," said Dr. Morgan, "to deal with the ownership of the remaining water-power resources in separate legislation rather than to encumber general water-control legislation with the problem, possibly with the result of defeating that more inclusive purpose.

"The part which water-power development will play in a unified river control is being greatly exaggerated in the public mind. It is unfortunate that water power has become an obsession with some men, since that attitude may be a handicap to enactment of legislation for unified river control."

Dr. Morgan said regional authorities should be restricted to "strictly planning" activities.

His proposed "Federal interstate water-control district act" would go into effect in any integrated drainage basin when two or more States signed a compact agreeing to its terms. Dr. Morgan explained that planning difficulties arising from State lines and division of power between Federal and State Governments could thus be removed.

The result, he said, would be "an orderly method for handling interstate water projects with Federal cooperation," but with regional or local administration.

"A program of regional and national planning bodies supplemented by such a Federal interstate water-control-district law would provide an orderly and nonpolitical method for the unified development of our water resources," Dr. Morgan said.

His plan was understood to have been received favorably by the Rivers and Harbors Committee.

"A direct amendment to the Constitution would greatly simplify the process if it should become feasible," he added, "but it does not seem to be necessary to wait for such action."

Dr. Morgan pointed out that the country had never had an "over-all agency for planning the interrelated use of its waters." But he warned against concentration of that power in the Government.

"By the term 'planning,' as used here, I refer to the determination of the major types and characteristics of water-control programs, and not to those specific plans and designs which are required for the actual execution and operation of water-control programs.

"The time is past when our water resources can be properly treated for a single purpose, such as flood control or navigation, or power, or industrial water supply. The interrelations of different purposes must be recognized by deliberate and over-all planning. Every possible benefit of unified control should be recognized and prepared for. Otherwise we shall find that our treatment of water resources has become one of the 'bottle necks' or limiting factors of our national life."

He recommended that costs of water conservation be levied primarily against those it most benefited, explaining: "It would seem as reasonable to charge fees to boats operating in the New York Harbor, which is improved at public expense, as to charge fees for autos going under the harbor through a tunnel."

While recommending that no provision be made in planning legislation for power development, Dr. Morgan continued:

"It is probable that a few great watersheds, such as the lower Mississippi, the Columbia, the lower Colorado and the Tennessee, and the St. Lawrence, with which the Government has had long-established relationships and commitments, might by the force of circumstances continue to be administered under special legislation.

"Whenever hydroelectric power can be economically produced without sacrifice of greater values, it would be an unjustifiable waste of public resources to omit water-power development."

He warned against taking a chance of floods by filling dams to the brim for power generation.

"Aside from a few rivers, including the Columbia, the Colorado, the Tennessee, and the St. Lawrence, and some streams along the Pacific and south Atlantic coasts, water power probably will be a minor item in the control of most American rivers," he said.

"In my opinion, the question of ownership of water power as between the Nation and the individual States should not be dealt

with in an act creating planning authorities or an interstate water-control district act."

MESSAGES FROM THE PRESIDENT

Messages in writing from the President of the United States were communicated to the Senate by Mr. Latta, one of his secretaries.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Chaffee, one of its reading clerks, announced that the House had agreed to the amendment of the Senate to the amendment of the House to the bill (S. 2463) to authorize an additional number of medical and dental officers for the Army.

PREVENTION OF AND PUNISHMENT FOR LYNCHING

The Senate resumed the consideration of the bill (H. R. 1507) to assure to persons within the jurisdiction of every State the equal protection of the laws and to punish the crime of lynching.

Mr. GEORGE. I desire to discuss certain phases of the bill now before the Senate. I realize, of course, that the Senate is not minded to listen to argument on the pending bill, and particularly argument which addresses itself to the validity of the bill or the power of the Congress under the Constitution to enact this particular bill. Nevertheless, Mr. President, I am particularly anxious to put into the RECORD my own views on the validity of this bill under the Constitution, with special reference to section 5 of the bill.

It becomes necessary to make certain general observations and to submit some general authority and specific authority more particularly applicable to other provisions of the bill in order to make clear my view with respect to section 5 of the bill.

If I may be permitted, Mr. President, I should like to read at this point my analysis of the bill—all that it is and all that it undertakes to do.

The bill, in the first place, raises a criminal offense against three or more persons acting together to exercise or attempt to exercise any power of correction or punishment by physical violence unlawfully and for the purpose or consequence of preventing arrest, trial, or legal punishment, of any citizen or person, first, in the custody of a peace officer; second, suspected of an offense; third, charged with an offense; or, fourth, convicted of an offense. Such assembly of three or more persons, for the purposes enumerated, is defined to be a mob, but no punishment, as such, is provided for the members of the mob.

The bill also creates the crime of lynching, if such unlawful violence by a mob, as defined, results either in the death or in the maiming of a victim.

It will be observed, Mr. President, that the extent of injury to the victim, that is, the person who is seized by the unlawful assembly of three or more persons, is not defined except as it may find definition and meaning in the generally accepted law of the land.

The bill raises a criminal offense against, first, any officer, or, second, any employee of a State or subdivision thereof possessing the power of a peace officer or possessing the police power as applied to the subdivision who, first, willfully neglects, or, second, refuses, or, third, fails to make all diligent efforts to protect the citizen or person from, first, a lynching within the meaning of the bill, or, second, a lynching of a person who has been taken into custody by a peace officer, or, third, failure to apprehend, keep in custody, or prosecute the members of the lynching mob.

The punishment provided for this offense by the terms of the bill is a fine of $5,000 or less, or 5 years imprisonment or less, or both, within the discretion of the court trying the case.

Mr. President, I wish to repeat that the second offense raised by the language of the bill is against any officer or any employee of a State or of a subdivision of a State which subdivision possesses police power. It will be noted that a crime, by the terms of this bill, is created as against any officer of the State who possesses the power or is charged with the duty of maintaining the peace or protecting the life and property of the citizen or person within the jurisdiction of the State. It, of course, follows that under the terms of the bill the Governor of a State would be amenable, and so the Governor of a State could be tried and convicted under the terms of the bill of the offense of lynching as defined by this bill, if the bill is held to be an exercise of a valid power of the Congress under the fourteenth amendment to the Constitution.

Mr. President, a humble employee of a State, not merely one of its officers but an employee, someone employed by the State and charged with a specific duty of maintaining the peace or of protecting life in given circumstance, under the terms of the bill, may be prosecuted for his willful neglect or his refusal or his failure—to do what? To use all diligent efforts to protect the citizen or person against the lynching mob before he is taken into custody, or against the lynching of a person who has been taken into custody.

What does the bill mean by the use of the words "all diligent efforts"? There is no use of the words "ordinary care" or "ordinary diligence" or "commcn care" or "common diligence" or "extraordinary care" or "extraordinary diligence." There is no such measure of diligence placed upon the officer or mere employee of a State. He may be a jailer; he may be an assistant jailer of a county; he may be charged specifically with the protection of the jail and of its inmates on a particular occasion, and yet if he does not use "all diligence" to prevent a lynching, as defined in this bill, or to prevent one from being taken from the custody of a peace officer and subsequently lynched, or if he fails by that same extraordinary degree of diligence, to which I shall again refer, to apprehend, and to keep in custody or to prosecute the members of a mob who have engaged in a lynching, under the terms of this bill he is guilty of the offense of lynching and may be punished by 5 years' imprisonment and a fine of $5,000, or both.

What is meant by "all diligence"? It can mean but one thing, and that is that the officer must use every power that he possesses; the citizen charged with the duty of a police officer must use every power, and I dare say that, under the very language of this bill, no valid defense could be interposed by the officer or by the county unless the officer had gone the full length and sacrificed his life or offered to sacrifice it, as a penalty, in order to prevent a lynching, because that is "all diligence," and nothing less is all diligence; nothing less can be said to be "all diligence."

Mr. President, I come now to the third phase of the bill. In the two instances crimes are raised, first, against the mob if it accomplishes a lynching in the meaning of the terms of the bill, and, second, against the officer or any employee of a State or any officer having the power to protect, which, the Governor, of course, has in the highest degree within the State, or being charged with the specific duty of protecting life or protecting a prisoner or protecting a person accused of a crime or of protecting a person suspected of a crime, fails to do so. A crime is raised against the officer and against the employee, and the requirement is the exercise of "all diligence" as the only open defense against this charge in this bill.

The fifth section of the bill is a most extraordinary one. It is difficult to understand how this section could have been inserted by men familiar with our system of law; it is difficult, Mr. President, for me to understand how men eminently qualified as lawyers, learned in the law, could have committed themselves approvingly to the proposition contained in section 5 of this measure.

Section 5 raises an action in tort against every subdivision of a State to which police power has been delegated in all cases (1) where a lynching occurs within its territorial jurisdiction; (2) where a lynching has followed seizure within its territorial jurisdiction, whether such lynching occurs beyond its jurisdiction or within its jurisdiction and whether such lynching occurs beyond the jurisdiction even of the State.

Liability is fixed at not less than $2,000 and not more than $10,000 for any lynching; that is to say, any maiming or any death resulting from the unlawful act for the purposes stated in the bill of three or more persons. The only open defense of the political subdivision of the State is the affirma-

tive proof that the peace officers and citizens used all diligent efforts. Private citizens are included in this extraordinary tort which is raised against a political subdivision of a sovereign State, in violation of the simplest political morality of the English-speaking race. Even citizens may render the political subdivision liable in tort if they have failed to do—what? To exercise "all diligence" and all powers vested in them to prevent the lynching.

I again come to the language of the bill and invite the Senate and invite the American people to contemplate the extraordinary proposal contained in section 5 of the bill. Every political subdivision of a State is made liable in tort, so declared by the Congress of the United States, in all cases if a lynching occurs within that particular subdivision or if a seizure occurs within that political subdivision followed by a lynching elsewhere in the State or beyond the borders of the State.

The only defense open under the bill is affirmative proof by the State or by its political subdivision that its officers, and every person called by the officers to assist them—the bystanders summoned by the officers in an hour of excitement and of pressure and of danger—used all diligence and all power vested in them to prevent a lynching.

Again I say that, under the language of this bill, if it were given effect, the officer and the citizen are called upon practically to offer themselves as a living sacrifice, or else judgment goes against the county for not less than $2,000 and not more than $10,000.

The tort action which the bill by its terms raises against the political subdivision of the State, runs to the aggrieved person—that is, the victim of the mob who is only maimed, but not killed—or to his next of kin, with the rather drastic provision that the cause of action survives if the next of kin passes away after the suit is brought. But, Mr. President, the action is to be brought if some citizen can be found to make an affidavit—and of course he can always be found to make an affidavit and lodge it in the Department of Justice—by the Attorney General for the use of the victim of the mob or his next of kin. The bill barely escapes the eleventh amendment to the Constitution in terms.

Senators who do me the honor to remain in their places and hear my remarks know very well that the eleventh amendment came about as the result of a suit brought against a State by a citizen. When that suit had resulted in judgment the State of Georgia, being the State against which the judgment was rendered, refused to pay it. The eleventh amendment followed, and wrote into the Constitution itself what always had been the law—a positive inhibition against the bringing in a Federal court of a suit by any private citizen, or citizen of a foreign State, against any State of the United States. It could not be done. As I say, the bill barely escapes, if it does escape, that constitutional amendment.

Mr. BORAH. Mr. President, would I be taking the Senator from the floor if I should ask him a question?

Mr. GEORGE. I shall be glad to have the Senator ask the question.

Mr. BORAH. The Senator says that the bill barely escapes the eleventh amendment to the Constitution. As the Senator knows, the Supreme Court has held that a suit against a county or a subdivision of a State is a suit against the State.

Mr. GEORGE. Exactly.

Mr. BORAH. As this bill creates a cause of action in favor of a private citizen against a State, that would be in violation of the eleventh amendment.

Mr. GEORGE. Undoubtedly so, unless it may be contended that technically the fact that the suit is brought in the name of the United States for the use of the person maimed, or his next of kin, takes it out of the eleventh amendment.

I was about to say, if the Senator will permit me to do so, that if the bill escapes the language of the eleventh amendment at all, it barely escapes it; and I think it does not escape it, because the cause of action is in behalf of the individual. The tort action is raised in behalf of the individual. The right of action is given to the individual who is aggrieved, or his next of kin. The right to initiate the suit is vested in a private citizen or person residing in the United States who may make and file an affidavit with the Department of Justice, and the suit is for the use of the private individual, eo nomine.

The real party plaintiff is the usee in such suit. The courts have always looked through the mere form to the substance of the thing. In many States, under rigid pleading laws, another party suing for the use may be substituted, but there can be no substitution for the usee, or the party for whom the action is brought or for whose benefit it is brought, because the court looks through the form to the substance, and says that the real party to the suit is the usee.

Now, Mr. President, I propose to proceed one step further. If this section is not in the very teeth of the eleventh amendment to the Constitution, the Congress of the United States nevertheless has no power to make a State suable in tort at the instance or for the benefit of anyone.

I pass over, without going into the field, the question whether or not, under certain circumstances, suits may be instituted by a private person, or whether the Congress may give to a private person some rights against a State arising out of a contract. We may as well dismiss from our minds, to begin with, all the vast field of law that lawyers and laymen alike know as the law of principal and agent, and the liability of the master for the acts of his servant so far as contracts are concerned.

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

The PRESIDING OFFICER (Mr. SCHWARTZ in the chair). Does the Senator from Georgia yield to the Senator from Indiana?

Mr. GEORGE. I do.

Mr. MINTON. The Senator has raised a most interesting question. Am I to understand him to say that the State may be sued for a Federal right growing out of a contract, but may not be sued for one growing out of tort?

Mr. GEORGE. I say, I pass that question by without arguing it. I do not think it may be done, but I can conceive of some circumstances in which it may be possible. But, passing that by, and coming to the real question involved here under the fifth section of the bill, this is an effort to create a tort liability against a State or a political subdivision thereof exercising police power, the highest power of a sovereign; and in its last analysis the police power may be defined simply as the power of self-preservation. That is its all-embracing meaning. This is an attempt by the Congress to raise a tort liability against a State or a political subdivision of a State for the benefit of a private person, when under all the law, ancient and modern, the sovereign never has been subject to suit, especially for tort, except by his own consent.

Is this a fanciful argument? I think not. Long, long ago, in the very beginning of the development of our system of jurisprudence, John Marshall thundered from the Bench of the Supreme Court the doctrine familiar to lawyers and laymen alike that the power to tax is the power to destroy. What did he mean? He meant that looking through and beyond the Constitution, one of the dual governments in a copartnership of governments could not exercise the power to destroy the other through taxation.

Here is the case of Day against the Collector; here are numerous cases in the books, beginning with the case of McCulloch against Maryland, all to one end—that a power wholly outside the explicit language of the Constitution which gave to the Federal Government practically unlimited taxing power, for given purposes at least, a power arising out of the very nature of our system of government, stayed the Federal Government when it undertook to levy a tax upon a necessary instrumentality of the State or stayed the State government when it undertook to levy a tax upon a necessary instrumentality of the Federal Government, an instrumentality exercising governmental functions either for the State or for the Federal Government.

Mr. CONNALLY. Mr. President, will the Senator yield for a question?

Mr. GEORGE. I should be glad if the Senator would let me proceed for just a few minutes.

Mr. President, it should not be necessary, but I will read just one sentence from a well-recognized writer on torts. Says this writer:

> It was thoroughly established at the time of the adoption of the Constitution of the United States that the States could not be sued without their consent. It is also equally well established that the United States cannot be sued without its consent either by a citizen, or by a State. In 1855 the Federal Government established a Court of Claims, with jurisdiction of certain classes of claims against the United States, but cases "sounding in tort" are expressly excluded. Though redress in Great Britain may be had by petition of right, in case of breach of contract, or where real or personal property has found its way into the possession of the Crown, there is no remedy against the Crown for a personal tort committed by the sovereign or by a person in the Government service.

The rule is applicable in all of its force and in all of its vigor when the State or the sovereign is sought to be held liable for a tort action committed by one of its officers or employees or servants. The rule is universal in our jurisprudence that there can be no liability of the sovereign to suit by any person because of the tort of an officer of the sovereign or its employee without the consent of the sovereign. The rule is also universal that the consent must be clear and unequivocal and that the language in which the sovereign consents to be sued must be free from doubt.

Let us look just a little to our own Constitution. The Supreme Court said in the case of *Loan Association* v. *Topeka* (20 Wall. 663):

> Of all the powers conferred upon government that of taxation is most liable to abuse. Given a purpose or object for which taxation may be lawfully used, and the extent of its exercise, is in its very nature unlimited. It is true that express limitations on the amount of the tax to be levied or the things to be taxed may be imposed by constitution or statute; but in most instances for which taxes are levied, as the support of government, the prosecution of war, the national defense, any limitation is unsafe. The entire resources of the people should in some instances be at the disposal of the Government.

Yet, speaking of this vast power, in McCulloch against Maryland, involving the power of Congress to charter a bank, and the question of whether the Legislature of Maryland could pass a law taxing a branch of the bank located within the State without violating the Federal Constitution, the Court held that the States have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control the operations of the constitutional laws enacted by Congress to carry into execution the powers vested in the General Government.

Also the Supreme Court has held in a long line of cases that an implied constitutional restriction upon the taxing power is as effectual as though expressed in the Constitution, and such an implied restriction prevents the taxation of an instrumentality of the Federal Government by the States, and of a State agency by the Federal Government.

Mr. President, I take it that no responsible authority can be found which will dare assert that either one of the governments in our dual system may make the other government liable in tort to a citizen or person for an act committed by the officer or agent of the government sought to be held liable, because if that power were admitted, it would follow as certainly as the day the night that one government could destroy the other government by destroying the agencies of the government.

If the Federal Government can, through its Congress, raise a tort against a State or a county because of the mere negligent refusal or failure of an officer thereof to protect another charged with the violation of the law, and in the custody of the officer, or who may be known to the officer as a violator of the law, and if the officer of the State can be subjected to a fine under an act of the Congress of $5,000, or imprisoned for 5 years, it follows that the power is vested in the Federal Government to remove an officer of the State. There is no escape from that conclusion, in my opinion.

For 5 years the peace officers of the State might be incarcerated, and if that power is given under the fourteenth amendment, then the power necessarily extends to the removal of the peace officers of the State. Aye, if the power exists under the fourteenth amendment to imprison a State official or any employee of the State charged with the duties of a peace officer, the Federal Government may make it impossible for the agents of the State to discharge their obligations to the State, and may destroy the States. But it may do more, it may go directly to the question and, by a simple act of the Congress, provide for the removal of the sheriff of county A or county B, or county C, if a lynching occurs in county A, B, or C, if that officer cannot show that he used all diligence and all power, which, as I have already said, calls for the virtual sacrifice of the officer's life or limb or health, because the extraordinary degree of diligence required demands it.

Let me repeat, if under the fourteenth amendment an affirmative power were given to the Federal Government to make criminal the failure of a State officer to act under given circumstances, then undoubtedly that power would be broad enough to authorize the Federal Government to remove the officer of any State or any subdivision of a State upon his failure to protect a prisoner suspected of a crime.

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

Mr. GEORGE. I yield.

Mr. MINTON. The Senator has raised an entirely new question, and a very interesting one. Let me see if I understand his position. He contends that though the Federal Constitution may confer a right, and that Federal right may be recognized by a statute of the Federal Government, it could not be enforced against a State if the State did not consent to be sued. In other words, the mere giving of the right by the Constitution would not carry with it the necessary right to sue. Is that the Senator's position?

Mr. GEORGE. Not merely that, but only in part.

Mr. MINTON. This is what I have in mind. As the Senator knows, the fourteenth amendment provides that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States," and so forth. Suppose a State actually passed a law which clearly abridged the rights of a citizen of the United States, and it was clearly admitted that it did, and the Federal Government took cognizance of that and passed a law to enforce the fourteenth amendment. The State could absolutely nullify the action of the Federal Government by denying the right to sue. Therefore the provision of the fourteenth amendment which gives the right and the right of the Federal Government to enforce it would be nullified by the mere action of the State in refusing to permit itself to be sued.

Mr. GEORGE. I do not think so, Mr. President. The Federal Government could strike down the invalid State act in the first instance; but the Federal Government undoubtedly has the power to tax, yet the Federal Government cannot take a dime of the tax out of the money paid to a State judge for salary. Is that because of anything in the Constitution prohibiting it? No; it is because a consideration of the very form and framework of our Government makes it impossible for that doctrine to prevail, because, as Marshall has said, that power would imply the power to destroy a State.

In my opinion, the fourteenth amendment does not give any affirmative power to raise a crime against a State officer under the circumstances recited in the bill, but assuming that it does, and then proceeding to consider whether or not the Federal Government may raise a tort action against a State or one of its political subdivisions, I say that we come back to a consideration of the fundamental character of the Government itself, known as the American system of dual governments, and that the very concept, the basic, fundamental principle upon which the two governments stand, and under which they complement each other, and without which neither is a perfect government, nor would be able to function perfectly, we come back to the basic consideration, and it must follow that section 5 is unconstitutional. That must follow because there is not even an implication that the State in its ratification of the fourteenth amendment

undertook to consent to a suit in tort for a wrong committed by one of its citizens or by one of its officers, to say nothing of that clear and unequivocal surrender of the right of the sovereign, which all courts have said must be in unmistakable words before it can be inferred that the State has consented to surrender its immunity to suit.

Mr. President, that doctrine is not new. It simply is one that transcends the Constitution, but it is one by which can be understood the very nature of the American Constitution. The doctrine is essential to any understanding of the American Constitution, and, therefore, of any understanding of the fourteenth amendment.

I undertake to say that before the fourteenth amendment, or, let us say, the thirteenth, fourteenth, and fifteenth amendments, which came after the ending of the War between the States, no one would have asserted that the Federal Government had power to define a mob as defined in the terms of this bill, and mob lynching, as defined in this bill, and provide punishment against State officers or employees of the State who had offended against the prohibitions of the fourteenth amendment. In other words, Mr. President, not until the war amendments to the Constitution could anyone assert that the Federal Congress had the power to create criminal offenses against an officer of a State for any mere failure to protect the life or the liberty of anyone within the jurisdiction of the State.

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

Mr. GEORGE. I yield.

Mr. WHEELER. As a matter of fact, by making it a felony for someone willfully to neglect or willfully to fail to make diligent efforts are we not practically changing the whole theory of the criminal law of this country?

Mr. GEORGE. That is true. I expect at a later time to discuss that question.

Mr. President, I return to the fourteenth amendment. While the fourteenth amendment may in effect create certain additional powers in the Federal Government to make effective the prohibitions under the amendment, it ought to be settled beyond all question, beyond the peradventure of a doubt, that the action which the fourteenth amendment of the Constitution prohibits is State action, is action by the State—and, of course, the State has to act through an officer—and it is therefore an action by the State through any of its officers or any person clothed with the power of the State, but it is, nevertheless, State action.

In the Slaughterhouse cases, which came after the War between the States, and after the ratification of the thirteenth, fourteenth, and fifteenth amendments, the Court made the meaning of the fourteenth amendment abundantly clear. The essential principle laid down in the Slaughterhouse cases has remained our law all the while. In other respects the Supreme Court has given an unusual construction to the fourteenth amendment. I do not care to go into it now, but into the word "persons" it wrote "corporations"—artificial persons. I do not care to discuss it now, but it actually found a guaranty of a 6-percent return under the fourteenth amendment. I have never shared very strongly the reasoning upon which the court proceeded in some of those extraordinary cases. But the essential principle laid down in the Slaughterhouse cases was and is that the action prohibited by or forbidden by the fourteenth amendment was State action and State action of a particular kind. Not State action severally, but State action of a particular kind.

As I have said, that has been the doctrine to which the Court has steadily adhered. That must be the sound interpretation of the fourteenth amendment, because if the fourteenth amendment gives to the Federal Government the power against individual citizens, within the State, then it must follow that the Federal Government has by the amendment usurped the whole power of the State if the Federal Government elects to exercise its power.

Mr. President, the Constitution created or dealt with four interrelated but definite entities. First, the United States; second, the States as such; third, the citizens of the United States; and fourth, the citizens of the States as such.

The fourteenth amendment can never be held by the Supreme Court now or at any time to have given power to the Congress to regulate or to prohibit the action of individual citizens, persons within the State, for the protection of the rights of the citizens of the State, because if that power be once conceded to have been conferred by the fourteenth amendment, then it must follow that when the Federal Government desires to do it, it may take possession of the entire field of contract law, of criminal law—of all law—because the fourteenth amendment prohibits any State from depriving any citizen or person within its jurisdiction of life or liberty or property—the whole subject matter for which government may make laws.

Mr. President, in Ninety-second United States Reports, in the old Cruikshank case, the Supreme Court, after the ratification of the fourteenth amendment, again clearly recognized the true meaning of that amendment in all of its provisions.

It reaffirmed the essentially basic doctrine in the Slaughterhouse cases, and reannounced the law as it has remained to this date. I will not read from that case. I merely wish to say that it very clearly enumerates the rights, privileges, and immunities of the citizen, indicates the vast domain in which the State is supreme, emphasizes over and over again the existence of two governments under the American system, and indicates also those special instances and fields in which the Federal Government is itself supreme.

Again in the Cruikshank case the Supreme Court laid down the doctrine without equivocation that it is State action, and State action only of a particular kind, against which the fourteenth amendment is aimed.

In the One Hundredth United States Reports, Mr. President, there were several cases reaching the Supreme Court at the same term, and in some of those cases language may be found that seems to give justification to the proponents of this measure. Although they have not done us the courtesy even to provide us with a brief indicating the authority upon which they propose to base their case in support of the validity or constitutionality of this bill, one must assume that they will lay particular emphasis upon the language of one or more of these cases.

Yet I wish to invite attention to the fact that in this series of cases beginning with the case of *Davis* v. *Tennessee* (100 U. S. 249), and following with the case of Strauder against West Virginia, the subsequent case of Ex parte Virginia, and, indeed, the series of cases considered by the Supreme Court at that time, the majority opinions in all of them were written by one Justice. Even at that time, and even under the rather guarded ruling of the Court in those cases, there were dissents. There was dissent by Mr. Justice Field, in which Mr. Justice Clifford concurred, in all the cases; but the prevailing opinion, or the majority opinion, was written in each case by one Justice. Therefore, it must be assumed that that Justice was aware of what had just been decided, and was aware of what he meant when he used certain broad, general language for the purpose of emphasizing his view, which was different from that of Justice Field on the construction of the fourteenth amendment.

I should like to read, Mr. President, the language from Ex parte Virginia, which I assume will be taken as authority for the validity or constitutionality of this proposed act. I shall not read much of the decision, but only sufficient to indicate to those who want to read it what I have in mind.

The Court:

> We have said that the prohibitions of the fourteenth amendment are addressed to the States. They are:
>
> "No State shall make or enforce a law which shall abridge the privileges or immunities of citizens of the United States * * * nor deny to any person within its jurisdiction the equal protection of the laws."
>
> They have reference to actions of the political body denominated a State, by whatever instruments or in whatever modes that action may be taken. A State acts by its legislative, its executive, or its judicial authorities. It can act in no other way. The constitutional provision, therefore, must mean that no agency of the State, or of the officers or agents by whom its powers are exerted, shall deny to any person within its jurisdiction the equal protection of the laws. Whoever, by virtue of public position under a State government, deprives another of property, life, or liberty,

without due process of law, or denies or takes away the equal protection of the laws, violates the constitutional inhibition; and he acts in the name and for the State, and is clothed with the State's powers, his act is that of the State. This must be so, or the constitutional prohibition has no meaning. Then the State has clothed one of its agents with power to annul or to evade it.

Mr. President, that and similar language may be found in the language of Justice Strong, who wrote the majority opinion; and the assertion is made by Justice Strong that the fourteenth amendment does carry with it a certain additional grant of power, but he confines it strictly to the power to make effective, as expressly declared in the fifth subsection of the fourteenth amendment, the powers granted to the General Government by the fourteenth amendment.

Mr. President, when we come back to the opinion which was written just before the one I have read, and when we refer to the opinions which were written immediately following the one from which I have read and examine certain other language of the same Justice and certain other views to which he gave unqualified expression, we see that he intended to say, after all, that the fourteenth amendment was to act as a prohibition; that the Congress should have the power to make that prohibition effective, and that that involved the grant of some affirmative power, perhaps not theretofore possessed by the Government, but that the power to make that prohibition effective against State action, and State action of a particular kind, was the extent and limit, the purpose, and the whole effect of the fourteenth amendment.

In the case of Virginia against Rives the opinion in which was written by the same justice, and which precedes, Ex parte Virginia, in One Hundredth United States Reports, and in the following case, some loose language may be found upon which the validity of this act may be asserted, insofar as it raises a criminal offense.

In the case of Virginia against Rives certain defendants sought removal from a State court to a Federal court because of certain facts enumerated in a Federal act then in force and effect. Removal was actually granted, but the State, through its proper officer, entered an appeal in the case. The case came to the Supreme Court, and the Supreme Court remanded the defendants to the custody of the State court.

Perhaps I had better read from the syllabus in Virginia against Rives in order to make perfectly clear the particular provision of the act under consideration, or so much of it, at least, as may be necessary to an understanding of what the Court meant by its ruling:

Section 641 of the Revised Statutes, which provides for the removal into the Federal court of any civil suit or prosecution "commenced in any State court, for any cause whatsoever, against any person who is denied or cannot enforce in the judicial tribunals of the State, or in the part of the State where such suit or prosecution is pending, any right secured to him by any law providing for the equal civil rights of citizens of the United States," etc., examined in connection with sections 1977 and 1978.

Section 641 was held to be good. But here is the important ruling: It will be noted that the act referred to provided for the removal of the cause if the party against whom the suit was brought could not secure his rights because of any law of a State, or was unable to assert his rights in the State tribunal. Let us go to the language of Justice Strong in passing upon certain allegations and certain contentions made by those defendants who were remanded by the Supreme Court to the State court for trial. He says:

If, as was alleged in the argument, * * * the officer to whom was entrusted the selection of the persons from whom the juries for the indictment and trial of the petitioners were drawn, disregarding the statute of the State, confined his selections to white persons, and refused to select any persons of the colored race, solely because of their color, his action was a gross violation of the spirit of the State's laws, as well as of the act of Congress of March 1, 1875, which prohibits and punishes such discrimination.

He made himself liable to punishment at the instance of the State and under the laws of the United States. In one sense, indeed, his act was the act of the State and was prohibited by the constitutional amendment.

Speaking of the fourteenth amendment, he says:

But inasmuch as it was a criminal misuse of the State law, it cannot be said to have been such a "denial or disability to enforce in the judicial tribunals of the State" (Virginia) the rights of colored men, as is contemplated by the removal act.

Then the Justice goes on to say that, if on the trial of the case this officer had in fact refused to select any colored person for service on the grand jury or trial jury solely because of his race or his color, or previous condition of servitude, and if the courts of Virginia gave validity to his act by approving it and by denying the rights undertaken to be asserted in that court by a colored citizen on trial for a criminal offense under the laws of that State, the court would have the power to relieve him. That is all it means.

Here is the same Justice who wrote the opinion in the West Virginia case, in Ex parte Virginia itself, in Rives against Virginia, in Davis against Tennessee, and in the whole series of cases, using perhaps the only loose language which would tend to give color to the claim that this is a valid or constitutional bill.

Here is the same Justice saying, "You did wrong, Circuit Court, to remove these colored people from the State court down in Virginia to the Federal court for trial, not because the act of Congress is not valid, for we assert its validity, but because you are relying upon an allegation, a charge, the statement of a custom that the officers of Virginia would voluntarily close their eyes to the express commands of the Virginia statute and would decline to select any colored man for service as a juror, either grand or petit." The Court said, "Wait until your rights are denied." It is true he is a State officer—in a certain sense, a sheriff is a State officer when he goes out with his venire and has on it the names of colored people qualified for jury duty and cannot see a colored man but can see a white man; it is true he is a State officer; it is true he is an officer of the State, and, in a certain sense, represents it, but Mr. Justice Strong said:

So long as he is acting in the very teeth of the statute of the State of Virginia, so long as he is violating the laws of that Commonwealth, you cannot predicate your appeal to this Court for the removal of your cause upon his willful and criminal abuse of his power.

In my judgment, that does not afford the slightest ground upon which the proponents of this measure may stand.

But following these several decisions in One Hundredth United States Reports, and in the reports that immediately followed it, we come very quickly to the case of the United States against Harris, reported in One Hundred and Sixth United States Reports. In that case Mr. Justice Woods, in the clearest language, in tones that ring down through the centuries themselves, reaffirmed in all its strength and vigor the essential doctrine in the Slaughterhouse cases, the essential doctrine in the Cruikshank case, the essential doctrine in Virginia against Rives and in Strauder against West Virginia, and in all the other cases to which I have referred. He again said:

It is State action and State action alone of a particular kind against which the fourteenth amendment directs its prohibition, and which the fourteenth amendment gives to Congress the power to prohibit or to strike down.

Now let me read just a little from the body of that decision.

The purpose and effect of the two sections of the fourteenth amendment above quoted were clearly defined by Mr. Justice Bradley in the case of *United States* v. *Cruikshank*, as follows:

It is a guaranty of protection against the acts of the State government itself. It is a guaranty against the exertion of arbitrary and tyrannical power on the part of the government and legislature of the State, not a guaranty against the commission of individual offenses; and the power of Congress, whether express or implied, to legislate for the enforcement of such a guaranty does not extend to the passage of laws for the suppression of crime within the States. The enforcement of the guaranty does not require or authorize Congress to perform "the duty that the guaranty itself supposes it to be the duty of the State to perform, and which it requires the State to perform."

Mr. President, it would be useless to read more of this decision, but it came after the decision in One Hundredth United States Reports; it came after the language which its own author in the case just decided unmistakably meant as a warning against any effort on the part of the Federal Government to interpose and assert power merely because a State officer had willfully, if you please, or negligently, if you please, or deliberately, if you please, violated a plain statute of his own State through which some harm came to some person accused of crime.

But, Mr. President, that is not all. We pass quickly from the cases in One Hundred and Sixth United States Reports to the great Civil Rights cases in One Hundred and Ninth United States Reports, when that great Justice, Mr. Justice Bradley, speaking for the whole Court, there being no dissent on the point, reaffirmed the doctrine to which I have just referred. There was some difference of view in the civil rights cases, but not upon this essential point. So, Mr. President, I think it might be well to read a little of the opinion of Mr. Justice Bradley in the Civil Rights cases in One Hundred and Ninth United States Reports. Said he:

The first section of the fourteenth amendment (which is the one relied on), after declaring who shall be citizens of the United States and of the several States, is prohibitory in its character, and prohibitory upon the States. It declares that:

Then the fourteenth amendment is quoted; I omit the quotation.

It is State action of a particular character that is prohibited. Individual invasion of individual rights is not the subject matter of the amendment. It has a deeper and broader scope. It nullifies and makes void all State legislation and State action of every kind, which impairs the privileges and immunities of citizens of the United States, or which injures them in life, liberty, or property without due process of law, or which denies to any of them the equal protection of the laws. It not only does this but, in order that the national will, thus declared, may not be a mere brutum fulmen, the last section of the amendment invests Congress with the power to enforce it by appropriate legislation. To enforce what?—

The Court asks; it is not my question—

To enforce what? To enforce the prohibition.

To enforce the prohibition aimed exclusively against State action and State action of a particular kind. Here the Justice is speaking for the Court upon that question as late as in One Hundred and Ninth United States Reports, and that decision has been followed all the way down.

One must assume that those who assert the validity of the pending bill probably take some comfort from some of the later cases that have been handed down by the Supreme Court particularly from the opinion in what is known as the Scottsboro case, which came up from the State of Alabama.

In the case of Norris against Alabama we find a very clear discussion of this whole matter. We find an absolute reaffirmance of the basic doctrine recognized first in the Slaughterhouse cases, followed in the Cruikshank case, and that case was itself expressly reaffirmed and followed in a decision subsequent to the case of Virginia against Rives and Ex parte Virginia, on which those who favor this bill may take some shelter or find some comfort. We find the doctrine of the Cruikshank case down to this time affirmed and reaffirmed by the Supreme Court.

But now it becomes necessary to examine the Norris case to see what that case is, to see if it has any bearing, even the slightest, upon this bill, that is to say, whether it sheds any light upon the validity of this particular measure.

In the Norris case, Mr. President, the defendant, one of a number of possibly nine Negroes, was indicted for the offense of rape. His particular case had been removed from the county or jurisdiction in which the indictment was found or transferred to another county for trial, but upon the trial of the case the defendant, Norris, timely presented his challenge to the array of jurors, both grand and petit, upon the express ground that upon the selection of the grand jury which returned the indictment and in the selection of the trial jury before whom he was called to plead, the officers of the State of Alabama had intentionally discriminated against the colored race, had deliberately violated the prohibitions of the fourteenth amendment in that no Negroes were called to serve upon the grand jury returning the indictment or upon the panel before whom the defendant was called upon to plead.

Mr. President, that objection was timely presented; it was heard by the judge of the trial court.

Motions, both with respect to the quashing of the indictment and with respect to the panel of trial jurors, were overruled by the trial judge. The case came on to the Supreme Court of the United States. The Supreme Court of the United States considered it. Now I am going to read a little for the sake of showing what the Supreme Court did decide, because I apprehend that this is possibly one of the authorities upon which the proponents of the pending measure may base their contention that it is within the power of Congress under the fourteenth amendment.

The Supreme Court, after reciting the facts, said:

A motion was also made to quash the trial venire in Morgan County upon the ground of the exclusion of Negroes from juries in that county. In relation to each county, the charge was of long-continued, systematic, and arbitrary exclusion of qualified Negro citizens from service on juries, solely because of their race and color, in violation of the Constitution of the United States.

Particularly the fourteenth amendment thereof.

The Supreme Court, in considering that case, called attention to the fact that the question was of the application of the long-established principle just quoted by the court to the facts disclosed by the record.

That the question is one of fact does not relieve us of the duty to determine whether in truth a Federal right has been denied.

Proceeding to read from the opinion of the Court:

That testimony in itself—

That is, certain testimony which the Court had recited at length—

made out a prima facie case of the denial of the equal protection which the Constitution guarantees.

Citing the old case of Neal against Delaware.

The case thus made was supplemented by direct testimony that specified Negroes, 30 or more in number, were qualified for jury service. Among these were Negroes who were members of school boards, or trustees of colored schools, and property owners and householders. It also appeared that Negroes from that county had been called for jury service in the Federal court. Several of those who were thus described as qualified were witnesses. While there was testimony which cast doubt upon the qualifications of some of the Negroes who had been named, and there was also general testimony by the editor of a local newspaper who gave his opinion as to the lack of "sound judgment" of the "good Negroes" in Jackson County, we—

Says the Supreme Court—

think that the definite testimony as to the actual qualifications of individual Negroes, which was not met by any testimony equally direct, showed that there were Negroes in Jackson County qualified for jury service.

Mr. President, the court goes on in its opinion, after reviewing certain other testimony offered in support of the motion submitted by the defendant Norris, as follows:

As we have seen, there was testimony, not overborne or discredited, that there were in fact Negroes in the county qualified for jury service. That testimony was direct and specific. After eliminating those persons as to whom there was some evidence of lack of qualifications, a considerable number of others remained. The fact that the testimony as to these persons, fully identified, was not challenged by evidence appropriately direct—

That is, evidence offered by the State—

cannot be brushed aside.

So, Mr. President, the court proceeds to find that, as a matter of fact, as disclosed by the evidence, there were Negroes in that particular county in Alabama who were qualified for service upon the grand and petit juries of the county, and that they had been excluded for no reason except race, or color, or previous condition of servitude of their forbears.

In other words, Mr. President, the Court resolved the matter into a simple question of fact, and said:

The very fact that it has long been the custom to exclude Negroes from jury service in this county, the very fact that the officers charged with the duty of making up the panel, or the sheriff charged with the duty of executing the venire, have habitually left off Negroes, would raise a prima facie case that the officials were discriminating against the race as such.

But the Court did not rest the matter on that statement. They said:

In addition to this prima facie case, and in support thereof, there is evidence which was not overborne or directly contradicted showing unmistakably that those charged with the duty of selecting juries, grand and trial, in Morgan County, Ala.—

If that be the county—

excluded the Negro simply because of his race.

That is not all, Mr. President, but the case is no possible authority for the contention that the mere neglect or even the willful neglect of the officer to put Negroes on the jury list, grand or trial, would authorize the Congress of the United States to make criminal their acts, and to punish them as provided in this bill, and especially to raise an action sounding in tort against the county, against the political subdivision itself exercising the functions of the State; indeed, the necessary agency through which the State must exercise its highest power. Why?

Simply for this reason: At the very beginning of the trial, Norris challenged the grand jurors who served, and who returned the indictment against him, upon the grounds stated; and he challenged the trial jury—that is, the panel put upon him—for the reasons stated.

He went directly into the court established by the State of Alabama, through which, and through which alone, the judicial power of the State as a sovereign could be exercised, and he said:

> I call upon the court of Alabama established under the constitution and laws of Alabama for the protection of my rights as a defendant, and I invoke the prohibitions of the fourteenth amendment, and I ask for the action of the State, I ask for the voice of the State, I ask for the commands of the State, upon my plea and upon my motion now submitted.

When the court of Alabama sanctioned the negligent or willful or purposeful action of the officers charged with the duty of making up a jury list in this county in Alabama; when the court said, "Your rights are not denied, and you have no ground for complaint," that became State action—State action of the highest dignity, State action of the highest character—and then it was the duty of the Supreme Court of the United States to say that the fourteenth amendment reached that situation, and that the State of Alabama would not be permitted to disregard the rights of this defendant, Norris, in the manner in which the court found that those rights had been disregarded.

But, Mr. President, that is not all. Not one of the cases in which the Supreme Court has said that the defendant was deprived of a fair trial as guaranteed him by the fourteenth amendment to the Constitution, not one of the cases in which the court has made that statement upon the basis of the fact that the officers of the State charged with the duty of selecting the grand jury and the trial jury had merely neglected to perform a duty, can be authority for the constitutionality or validity of this particular bill. Why?

In each one of those cases, it mattered not whether the officer of the county was called a jury commissioner, or a registrar, or merely a county officer charged with that particular duty. That is what the court held in the Virginia case—that it did not make any difference if a man happened to be a judge; he was charged merely with the ministerial or administrative duty of the State, and was not discharging a judicial function of the State, and therefore he had to execute the law properly and give protection as guaranteed by the thirteenth, fourteenth, and fifteenth amendments to the Constitution. But whether the State acts through a county commissioner, or a registrar, or some particular official charged with the duty of making up the jury list, that particular official is charged with doing a specific thing. It would be analogous to this bill, and its proponents might invoke the principle, if they now sought to create a criminal offense in a case where the jury commissioner went on about his business, went fishing, and did not make up a jury list.

Even if he had in his heart the purpose to omit to do his duty, flying in the very face of the statute of the State because he did not want to put a Negro on the jury list, that would be a case which might come within the terms, at least within the spirit, of the particular bill which is presented to this body.

In each case of that character, down to the Scottsboro cases, the jury commissioners were tried for the doing of a particular act. They did that act, and the Supreme Court of the United States says that when they did that act they deliberately excluded Negroes from the jury list. That was not a negligent act, it was not a careless act, it was not an act induced by a mob as far as the evidence goes.

The jury commissioners, sitting in the quiet of the courthouse of this Alabama county, fortified by all of the power of the State, charged with the affirmative duty of selecting a certain number of names for the grand jury box and a certain number of names for the petit jury box, made its choice and the court finds as a fact that those commissioners made that choice deliberately and intentionally for the purpose of excluding Negroes who were citizens of the county and who were qualified and who, according to the evidence, which was not overborne, were entitled to serve as jurors, both grand and petit. Therefore, the court said that since the affirmative act of the officer of the State which involved his deliberate judgment, his intent, his purpose, and which constituted a step leading to the ultimate conviction or vindication of every colored man in the county and in the State charged with an offense, and who was called before the court of his county to answer for that offense—since that affirmative act was given validity and approved by the courts of Alabama, by the very arm of the State government, through which the whole judicial power of the State in many cases and particularly in all criminal cases had to be exercised, that was State action.

Mr. President, I wish now to return to the statement, as was held in one of these cases, that while the Congress had and exercised the right to make criminal the deliberate act of the jury commissioner, who excluded Negroes from the jury list and boxes solely because they were Negroes, and for no other reason, and while the power of the Congress to make that a criminal offense, nevertheless, the act which constitutes the gravamen of the offense is a positive act, and the Court has never conceded the power, it has never even blinked in the direction of any assertion of power upon the part of the Congress to make criminal the mere neglect of a State officer to do his duty under a State act. But they have said that when one acts under the authority of the statute and does certain things, he commits a crime, and the Congress has the power to prevent it, has the power to intercept it, and has the power to provide punishment for it.

The mere neglect or the mere negligence of officers of the State who do not undertake to comply with a State statute, but who deliberately violate the law of their own State by commission or omission, is here sought to constitute the essential element in a criminal case against individuals who happen to hold certain official positions in the State, as described in the bill, under certain circumstances occurring as set out in the bill.

As I tried to point out in the beginning, the bill includes not only the officers of the State, that is, the county officers, but it includes even an employee of the State, who might not be anything more than a caretaker of the physical property in which the county housed its prisoners. If he failed to exercise all diligence in the county the sovereign is held liable in a tort action, and hence the caretaker is made liable to trial for a criminal offense created by the Congress of the United States.

Mr. President, let me repeat just a few words. We live in a land of a written constitution, destined partly as a framework of government, but concerning itself largely, if not primarily, against the free and oppressive operation of the mere will of the majority.

The forefathers knew that the tyranny of majorities is often more oppressive than the tyranny of monarchs. Besides, the voice of the people sometimes is simply an echo of some skilled propagandist.

These constitutions were designed and written to perpetuate and extend the principle already developed in England of government by law as contrasted with government by the will of any man or any number of men. Therefore, one man plus the Constitution may outweigh any number of men, "just as in another context one man plus God constitutes a majority."

When our constitutions do not mean this, it is due not to the fault of those who originally framed them. but it is due to the activities and to the efforts and the attempts of those who would abuse them in their administration. The might of the law by which the framers of our Constitution intended us to be governed is "neither emotional nor is it dramatic. It lacks the elegance and the eloquence and the show and the trappings by which kings and dictators and tyrants appeal to the people."

The United States came into existence as a unique and special form of national government, as a national entity, through which the sovereign States which created it could carry on unitedly international affairs, could unitedly deal with foreign nations, could provide for common action in matters of war, in the establishment of diplomatic relationships, in the conclusion of war, and in the declaration of peace. It also was given jurisdiction over some other matters which, if left to individual State action, might and would have led to confusion, to dispute, and perhaps to conflict, particularily commerce between the several States and foreign nations.

Four interrelated entities, four separate entities, are recognized and dealt with by the Constitution of the United States, as I have already said in the course of this address, the United States itself, the several States, the people or citizens of the United States, and the people or citizens of the several States.

The United States is as to the several States and as to the citizens of the States a government of limited power. All sovereignty not granted to it is especially reserved to the States or to the people. The States have every power not denied to them by the Federal Constitution or their own constitutions, which they have not voluntarily delegated to the General Government. The United States has no power except that granted expressly or by necessary implication so far as the States are concerned, and so far as the citizens or inhabitants of the States are concerned.

While citizens of the several States, as well as citizens of the District of Columbia and of the Territories, are citizens of the United States, still, until very recent times, no one would have seriously contended that the citizens of the several States or their daily lives and affairs or their general welfare were subject to the jurisdiction of the United States in any of its departments, except insofar as they connected themselves with those subjects over which the United States is by the Constitution given exclusive jurisdiction. The Constitution of the United States gives to the Congress the power to tax to provide for the general welfare of the United States. It says nothing whatever about providing for the general welfare of the citizens of the United States. The recent decisions of the Supreme Court seem to have overlooked or else broken down this long-recognized distinction between the United States and citizens of the United States.

Failure to observe this distinction to my mind is pregnant with possibilities of a most serious nature. The States under the United States Constitution have imposed on themselves the limitation that no State shall deny to any person within its jurisdiction the equal protection of the law. The Constitution does not impose that limitation upon the United States. Our fathers, I am sure, omitted to put any such limitation upon Congress and other Federal departments because the powers that they thought they had given to the United States related in so small a degree to the lives, liberty, and property of persons as to give but little opportunity for unequal treatment and discrimination, or to deny to those persons due process of law, and the United States itself, is forbidden to deny due process of law.

Mr. President, I think from what I have said I have made my position upon the legal phases of this bill as clear as I can. First, there is no power under the fourteenth amendment in the Congress of the United States to raise a crime against the officers or the employees of a State or its subdivisions exercising governmental functions, for the mere neglect, for the mere failure of its officers to discharge their duties as such State officers under the positive command of a State law, and certainly the power does not exist under the fourteenth amendment to authorize the Federal Government to raise as a crime against an officer of a State the acts committed by him in positive, definite, intentional, and deliberate violation of the law of the State itself.

None of the cases dealing with the action of jury commissioners have any just bearing upon the question that is now before the Senate, because in all of those cases the jury commissioners or other State officers charged with the duty of making a selection were charged with positive duties. They did not commit a crime against the fourteenth amendment so far as the State was concerned until they had discharged a positive duty. They could not themselves be prosecuted by the Federal Government, because the power of the Federal Government under the fourteenth amendment is aimed exclusively at State action, and State action alone, and State action of a particular kind. They did not violate any valid law that Congress has made or can make so long as they merely failed to act. However, when, as in the case of the jury commissioner, there is a positive act which is made the subject of a subsequent examination in the tribunal set up by the State through which it exercises its sovereign power and judges between men and between society and men, that positive act, if confirmed and affirmed and followed by the courts of the State, would give to the Congress of the United States, indeed to the Supreme Court of the United States, power under the fourteenth amendment to intervene in the interest of a fair trial, in the interest of due process, and of equal protection of all citizens under the law.

Let me repeat, Mr. President. The jury cases have nothing to do with it, because the jury cases all involve first a deliberate and conscious and positive act—the selection by the jury commissioner of the men whose names are to go in the box. There is deliberation, there is the wrong, there is the harm, there is the offense against the fourteenth amendment. There it commences in a positive and deliberate act. There is not a case in the books and there is not a doctrine in the books anywhere that will justify the assertion that if the jury commissioner merely runs away from his duty and does not make up a jury list at all, that either he or his State can be reached by the Congress of the United States.

Not only is that a distinction, Mr. President, vital and to be constantly kept in mind, but from that first action of the jury commissioners the question is carried into the courts of the State, through which the State exercises one of the great powers reserved by it as a sovereign, the judicial power, and there decision by the State is invoked, and when the State through its court denies the plea of the colored man, as in Norris against Alabama, then the Supreme Court says rightly that that is the act of the State, and that act, because it does deny the equal protection of the law to the colored man in Alabama who is charged with a criminal offense, and is called into court to meet that charge, brings the case within the prohibition of the fourteenth amendment. Mr. President, all I have heretofore said with respect to other provisions of the bill applies to the tort action which the bill seeks to raise against the sovereignty itself, against the State, or a political subdivision of the State exercising police power. What I have heretofore said applies to the validity or constitutionality of that particular section of the bill.

All that I have said with respect to the provisions of the bill seeking to create the crime of the mob, of lynching, and the crime of the officers for mere failure and neglect to do certain things under the laws of the State—all I have said upon those two provisions of the bill applies equally here.

But there is far more involved than that. Ours is a dual system. Here is a general government, with limited powers, and others arising by necessary implication out of the powers granted, operating in a few great fields, exercising the great power of a national or general sovereign. Side by side with that sovereign is the State. There is the other member in that copartnership or dual government that we know as the

American system. It has been the law always in the English-speaking jurisdictions that no sovereign can be sued in a tort action, particularly, except by his own consent clearly and unmistakably given. That is the right of the State.

It does not rest in any letter of that Constitution; it does not breathe in any line of that Constitution save and except as that Constitution constitutes the great framework of the newly created general government side by side with the framework of the several States that had long been in existence claiming and asserting their right of immunity against actions sounding in tort for any willful or negligent act, for any deliberate or criminal act of any of their officers or agents. It is a doctrine that springs out of necessity; it is on an exact par with the immortal doctrine announced by John Marshall, that the State could not tax a necessary instrumentality of the Federal Government, nor could the Federal Government tax an instrumentality of the State government, because the power to tax would involve the power to destroy.

The power to raise an action in tort against a sovereign State for the negligent or willful act of one of its officers in direct violation of the State's enacted law—that power, Mr. President, is a far more direct power and leads more directly and immediately to the destruction of the sovereign against which it is aimed, because if the power exists to make criminal the act of an officer of a State who merely fails or neglects to discharge, as in the case of a jury commissioner, an intentional, deliberate, positive act, and to raise an action in tort against which practically no defense is open under this act, then, Mr. President, the power to destroy every American State is at hand. It but awaits the opportunity for those of inflamed passions or sinister purposes to call that power into exercise.

It would be no great stretch of the human imagination to say that America certainly must choose between the form of democracy which we know as republicanism, as reflected in our Constitution, in our governments, State and Federal, and either fascism or communism. Indeed, that choice is always present. It is always pressing; but at this time it presses with peculiar force and power all over the world. Contrary doctrines are in a death grapple, and all over the world democracy has suffered ill at the hands of the hostile and sinister doctrine to which I have just adverted.

There is one final hope against the destruction of the General Government exercising power over so vast a territory, with such divergent interests, with such conflicting concerns, driven by such diverse and hostile doctrines and purposes. That final hope is the maintenance of 48 independent States, that government of "indestructible States and an indestructible Union" that was asserted in the language of the court by which the proponents of the bill are seeking to establish its validity.

The dual system of government and the division of our vast territory into States, each with its jurisdiction over the intimate personal affairs of human life and the daily affairs of its citizens, always has been and always will be, if preserved in its integrity, the only certain, final answer against the prevalence of sinister doctrines that have overthrown free governments in other lands within the short memory of men who sit in this body at this hour.

As long as this dual system recognizes the sovereignty of the States, as long as it recognizes that the State cannot be destroyed, we are safe against whoever sits upon the Supreme Court. We are safe against the enforcement of any act of this kind which seeks to raise an action in tort against a sovereign State for a mere negligent omission to act by one of its officers, in the face of a statute that makes it criminal for him to omit to act. We shall be safe, Mr. President, against that kind of an act, because to recognize the power to raise a tort against a State in the circumstances is to deny the existence of a dual system. It is to deny the existence of two sovereignties. It is to strip the one sovereignty of the basic elemental attributes of sovereignty exercised by every civilized state, present in the very beginning of human society, and springing out of the doctrine of necessity.

The sovereign cannot, except when it voluntarily consents, be held liable for an action in tort because of the willful or negligent act of one of its officers, particularly when the officer is violating the law of the State or of the sovereign when he acts or when he refuses to act. The soundness of that contention seems to me, Mr. President, to be too plain for argument. It seems to me that it is fortified, it is impregnably established, by all the reasoning in McCulloch against Maryland, Collector against Day, and a long series of cases that might be read here for a whole month without exhausting the subject.

Think of the inequity of the thing! I am not willing to sit down without speaking of its iniquity. Let us suppose a case, Mr. President. Suppose that down at the forks of the creek and river in a little county in Georgia, Alabama, Tennessee, Virginia, or any other State, there lives a little woman with three or four dependent children. A lynching occurs in that county, and the victim or his next of kin bring suit. Assume that the pending bill is held to be valid, and that suit is brought against the county in the name of the United States, and a judgment is obtained against the county in the sum of not less than $2,000, nor more than $10,000 in a single instance, for a single offense or tort. Then the officers of the Government have the right to invoke all the power of the State to compel the collection of taxes out of the people of the county to pay the judgment.

This is a case in which in the midst of field or forest, remote from human habitation, some man—it matters not whether he be black or white—has committed an unspeakable outrage upon a helpless child, and left her dead at the scene of his crime. The officer was not able to get there, or he did not get there, or, even if he got there, he was not able to stay the hands of a group of men who came in, saw the offense, understood and appreciated the hideousness of the details of that unspeakable crime, and simply took charge of the victim and lynched him.

Here is this little widow down at the forks of the creek and the river, living on a little plot of land, with two or three small children to support and to educate, and having a hard time. The sheriff of the county comes to her and says, "The district court of the United States has found a judgment against this county in the sum of $10,000, and that means that we shall have to raise so much taxes. That means that so much taxes will have to come out of your little property."

The little woman to whom I have referred never heard of the crime. She did not know that an innocent child had been ravished and murdered. She did not know that the officer had gone, or had failed to go. She had no knowledge of the offense or of any subsequent happening. She may never have learned of it until days or weeks or even months after. Perhaps her own husband gave his life in the defense of his country on the battlefields of France. Perhaps her own husband was himself in life a peace officer and gave his life to protect a black or a white criminal against an infuriated mob gathered to take the law into its own hands. Yet that little widow is forced to pay her part of that judgment.

Is that American doctrine? Is that common political or civic morality? Does that commend itself to any man or to any race in these United States? Think of the villainy of it all, Mr. President! The county has no money except as it gets it by a tax out of its people, and it hardly gets sufficient to meet its annual budget, and frequently has to levy an additional tax. Yet here in America, under an act which the Congress of the United States is called upon to pass, the innocent are to be punished when they have not even a chance of being heard except through their county and in a court not of their own selection. Mr. President, it seems to me that the proponents of the bill should strike out this tort action. It is hard to think there can be a doubt in the mind of anyone that the court must strike it out. I am equally clear that all the remainder of the bill will be declared to be unconstitutional.

Mr. President, good men have spoken in this debate, spoken sincerely to the point, that all the States with a mixed population have been doing their level best to eliminate the crime of lynching, and they have shown that rapid, marked, pronounced progress in that direction has been made everywhere. The crime has almost disappeared, while other crimes of every kind are on a very definite, positive increase in all our States. Those who have spoken seriously about these facts have made an earnest plea to the American people, without regard to party, without regard to section, without regard to State, for that tolerant judgment that America always has exercised when America knew all the facts and was able to rise above clouds of prejudice such as have long hung about the whole subject of lynching.

So, Mr. President, I wish to make the further statement that those who seek to pass this bill, those who urge it upon the Congress, who would drive it through and send it up to the President, either in its present form or in the form of conference report made up by a joint committee of the two Houses for the President's signature, are doing a great disservice not alone to the white people but they are doing a great disservice to the colored people in the South.

There is no lack of sympathy with our southern Negroes on the part of responsible white men and women anywhere; there is no lack of understanding; but if this bill should pass, the same spirit that drives it forward will call for more and more legislation moving more and more rapidly toward a social equality as well as a civic and political equality in this Nation. Even if I be wrong in that supposition, Mr. President, if this bill passes, driven by the spirit that lies back of it, it will be misunderstood; it will be misinterpreted by the vicious element, white and black, in every Southern State, and when it is misinterpreted it will serve ill, aye, it will result in irreparable injury to the civilization of the white man and the civilization of the colored man and to the definite, positive, marked, noteworthy progress forward which he has made. It will be misinterpreted by the vicious element in every place where the two races come face to face, where they touch elbows, and where exists the opportunity for the happening of those events and occurrences which enrage men of the opposite race. It will be a definite and decided disservice to a race of people that need all that we can legitimately and properly and rightly do to advance them socially, politically, and civically, to advance them as citizens of our common country.

It will inevitably destroy the very incentive of a people who have been willing, out of their own poverty, to divide the last crust with the worthy men and women of the colored race. It is bound to discourage that effort, and that effort has been worth more to the American Negro than have been the efforts of his political lovers who profess admiration for him for no higher purpose than his vote.

The disposition of self-sacrifice on the part of the white men and white women of the South which has been evinced year in and year out, despite the agitation of the agitators, despite the professions of the holier-than-thou hypocrisy which has pervaded and which has paraded itself up and down this land since the last shot was fired in that memorable war between our American States, is worth more to the Negro than all that those men who frame and drive this kind of a bill in the Congress have ever been worth to the Negro and to his race or to the civilization of the white man or to the civilization of the colored man or to the civilization of both.

I am aware, Mr. President, that I speak very strongly, but I am speaking very seriously. Do not intermeddle when the crime of lynching is rapidly disappearing; do not undertake, through Federal intermeddling, to create a recurrence of conditions against which all honest and good men and women in the South have struggled since the days when Lee handed his sword to Grant at Appomattox and Grant, like the great American soldier he was, handed it back to him.

Mr. President, if we can but be given a few years more, just a little while, and there will be not an idle moment, not a second lost in the time that lies ahead of us—if we can be given immunity against this pernicious intermeddling, we will solve our problem, and we will have achieved the most glorious chapter in the history of a free people, a white race living in peace and understanding side by side with a colored people but lately slaves, and we will have saved the civilization of both that white man and of that colored man. That Mr. President, will be a new page in all the glorious pages of human history.

Mr. RUSSELL. 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:

Adams	Connally	Johnson, Calif.	O'Mahoney
Andrews	Copeland	Johnson, Colo.	Overton
Ashurst	Davis	King	Pepper
Austin	Dieterich	La Follette	Pittman
Bailey	Donahey	Lee	Pope
Bankhead	Ellender	Lewis	Radcliffe
Barkley	Frazier	Lodge	Russell
Bilbo	George	Logan	Schwartz
Bone	Gerry	Lonergan	Schwellenbach
Borah	Gibson	Lundeen	Sheppard
Bridges	Gillette	McAdoo	Smathers
Brown, Mich.	Glass	McCarran	Smith
Brown, N. H.	Guffey	McGill	Steiwer
Bulkley	Hale	McKellar	Thomas, Okla.
Bulow	Harrison	McNary	Thomas, Utah
Burke	Hatch	Maloney	Townsend
Byrd	Hayden	Miller	Truman
Byrnes	Herring	Milton	Vandenberg
Capper	Hill	Minton	Van Nuys
Caraway	Hitchcock	Murray	Wagner
Chavez	Holt	Neely	Walsh
Clark	Hughes	Norris	Wheeler

The PRESIDING OFFICER (Mr. TRUMAN in the chair). Eighty-eight Senators having answered to their names, a quorum is present.

Mr. PEPPER. Mr. President, it is my considered opinion that the bill now pending has the following objectionable characteristics: It is designed as a piece of legislation intended to be and having the consequence of being offensive to the South. It is in violation of the express provisions of the Federal Constitution. It is contrary to the dual system of government established by our forefathers and specifically recognized and provided for in the Federal Constitution. It is contrary to all democratic principles. It is out of harmony with the spirit of that philosophy which has prevailed in the national life of this country since the 4th of March 1933, known under the terminology of the New Deal. It is contrary to the principles of true liberalism. It is a tragic prostitution of the processes of government which ought at this time be employed for the alleviation of suffering and the betterment of the condition of the whole American people.

Believing that this proposal possesses the vices I have named, being a descendant of a family of the South of long before the Revolutionary War; being by my oath bound by the Federal Constitution; being both by inheritance and by inclination a Democrat; being not only an advocate of but a believer in the principles of the New Deal; being concerned about the preservation of the fundamentals of our system; being of a political faith which associates itself with the philosophy of progressive democracy, which may otherwise by called "liberalism," and believing in my heart that the processes of government should not be prostituted to the regard of this measure when matters of national import involving human suffering and human despair are clamoring at the doors of the Government for attention—believing those things and entertaining those sentiments, I am one who has solemnly resolved and covenanted, not only with my own spirit but as well with my colleagues, that the pending bill shall not pass unless the proponents are prepared not only to abolish the right of self-government and to destroy American institutions, as this bill would do, but likewise rob this body of its inalienable characteristic as the last citadel of free speech in the territorial limits of the United States.

I do not suppose anyone could mistake the significance of these utterances. I think it is fair to our colleagues that these thoughts be at this stage of the controversy distinctly known and understood. Did I not feel that the most

fundamental of possible questions is involved, I certainly would never utter such a sentiment upon the floor of this body. I would not be willing to jeopardize my personal fortune and the progress of legislation did I not entertain sentiments of that degree of seriousness. But all of us come to periods in our lives when we have to make decisions, and I believe that the principles embodied in the proposed legislation are so vital to the future of this country that those who have taken the position to which I have given expression have taken a patriotic, yes, an essential course.

No one regrets more than I that we find ourselves in this lamentable situation. No one has tried harder, in his humble and immature way, in counsel, in suggestion, in earnestness of endeavor, to avoid this crucial controversy and contest than have I, and no one regrets more than I the failure of that effort. Likewise no one is sterner in his determination to adhere to the resolve I have just expressed than I.

Mr. President, I have seen my father raise a rifle to his shoulder and look into the faces of an indignant mob clamoring to lynch a Negro man. Everything that was filial in my heart went out in fear for his bodily safety. But he left me an example and a memory of great, patriotic courage, and he saved the life of a Negro in his custody at the jeopardy of his own life.

I have never, directly or indirectly, countenanced the unlawful act of lynching anywhere or at any time. No one appreciates more than I the savage passions which it unlooses in the minds of an inflamed citizenry. No one regrets more than I those temporary reversions which occur from time to time and bring about a condition of anarchy in our civil affairs, and no one would be longer or more earnest in his declaration of opposition to lynching than I am and shall ever be.

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

Mr. PEPPER. I yield.

Mr. CONNALLY. The Senator has just related a very outstanding and heroic accomplishment of an officer in dispersing and overcoming a mob. I suggest to the Senator that there are other examples throughout the South of similar heroic actions. What kind of an answer to the examples of those men does this bill make when it covers them with opprobrium, scorn, and odium in seeking to take away their functions and give them to the Federal Government?

Mr. PEPPER. It is very obvious that the bill in its very nature and from its very pendency here castigates as unworthy every peace officer who has held office in the southland for generations past.

Mr. President, I have before me a telegram from the Governor of my State, which reads as follows:

TALLAHASSEE, FLA., *January 16, 1938.*

Hon. CLAUDE PEPPER,
United States Senator,
Senate Office Building, Washington, D. C.:

Wired Senator MCKELLAR today people of Florida composed of citizens from every State in the Union bitterly opposed to anti-lynching law. We do not think it wise at this time of international unrest to pass a sectional bill like this, which can do nothing but cause bitter sectional feeling, as everyone knows it is aimed at southern people. You can state to the Senate that Florida has always and always will be loyal to our country and our flag, but we do not want a return of the shackles of reconstruction days upon the backs of our people, and we appeal to you Senators, as loyal American citizens, not to pass this bill.

FRED P. CONE,
Governor of Florida.

I know of my personal knowledge, Mr. President, that that same Governor within the last 4 months has called out the State militia to defend Negroes suspected of crimes against the hazard of lynching. I know from personal conversation with that Governor, had just a few days ago, that there is not any Governor in the whole country more determined in his resolve to prevent lynchings in his State than he is.

There is not any individual anywhere who desires more forcibly and earnestly that there shall never be a lynching within the confines of our State than that Governor, who is a man of conscientious scruples and sentiments, a proponent and a faithful upholder of law and order, who will keep the oath that he solemnly took upon his inaugural day faithfully to observe the principles of the Federal and State Constitutions and to see to it that the laws of his State were faithfully executed.

Mr. President, I also know something of reconstruction days. I had two grandfathers who served in the Confederate Army. I remember the stories that I learned around the family hearthstones at the time when those grandfathers came back to the old homesteads, which were virtually destroyed. I know the sad conditions they found when they placed their feet again upon the sacred hearthstones of home. I know how righteously and how fervently they fought for the cause they deemed just. And yet I know the patriotism with which they acquiesced in the dominance of the stronger cause.

They were ready to accept the results of that catastrophic and disastrous war. They asked only that they be allowed to live again in peace upon their own farms, to operate again without molestation their own places of business. They asked only that they be permitted to come back into the family of citizens of this country as equals, penitent, insofar as they were wrong, not apologetic for the honesty of their motives to anybody. They asked only that they might be permitted to cultivate the beautiful flower of civilization that had grown in the fallow soil of their past. They asked only that they might be given the weapons of economic power with which to mold a new South that, while it retained the beauty of the tradition of the old, had an economic power which the old by untoward circumstances had never known.

They asked only that they be permitted to work out their own destiny in a political and social way and to reconcile into practicality the very delicate problem of living in harmony and legal equality with a race which had just been a slave race and had come to a new-found liberty and an unexpected emancipation. They asked only that there might be sympathetic understanding of this problem and that they, who were in proximate contact with that problem, they who understood the nature of it, they who understood the psychological and emotional factors involved, should be aided and not hindered so long as they made a conscientious effort toward a definite and an honorable solution of that problem.

They thought when Lee laid down the sword at Appomattox, and when Johnson surrendered a little later, when that great, chivalric commander of the armies of the Union forces accepted the pure sword of Lee that they should be able to rely upon a similar spirit in the civil authorities of their erstwhile foe.

It was their tragic discovery, as the years sped away, as passions became inflamed, as emotions became aroused, as lust for power began to make itself disgracefully felt even upon the floors of the American Congress, that there was no civil counterpart for the great, generous, strong, straightforward heart of Ulysses S. Grant. They found that men were willing to build political fortunes upon the enslavement of what had been a proud people. They found that men were willing to crack the lash of party discipline upon the backs of those who had sentiments that made them cherish the traditions and keep alive the flower of southern civilization. They learned that the nonunderstanding heart of conscientious men, far removed from their problems, lent themselves to policies and to practices the like of which the white man had never employed even in dealing with captive inferior races.

But the years sped away and, as will always happen, Mr. President, the small gentle voice of conscience eventually made itself to be heard. There were always those stalwarts, even in times when passion raged unrestrained in the deliberations of the National Congress, who held up the warning hand and pleaded for restraint and reasonableness, and a righteous remembrance of the principles of national brotherhood. Eventually they made themselves heard, and those people in the far portions of the country who had been imposed upon by the propaganda which had come to their attention, mischievously disseminated, began to see, as their eyes and their ears were able to penetrate the labyrinth of mischievous propaganda, that there was a more righteous course, a course more befitting the traditions of our country, and gradually they came to a recognition of the fact that

fratricidal strife could never be the foundation upon which there could be builded this glorious Republic contemplated by those who established the beginnings of our country.

A few years later a national war, another crusade for emancipation, was joined in alike by men who once wore the blue and men who once wore the gray, and captained by the leaders of both forces, the sons of the United States, a united country, marching under the folds of the Stars and Stripes, one country, one citizenry, one national brotherhood. All of us were grateful for the fact that we could forget that there was ever the ignoble chapter of reconstruction in the annals of American history.

I do not believe, Mr. President, that there is a Senator on this floor, from whatever section he may come—certainly not the Senator from New York [Mr. WAGNER], the proponent of this bill—who would not rejoice, even tomorrow, if the memory of it could be obliterated, and if he could feel that the days of reconstruction have passed forever in American history.

I believe that the Senator from Indiana [Mr. VAN NUYS], who is the coauthor of this bill, would rise here to commend that great statesman of his own State in an earlier day, who pleaded with his colleagues against the policy which came to be known as the iniquitous reconstruction policy of the Government in reconstruction days.

It is not a division, therefore, Mr. President, of southerners and northerners with respect to that tragic era.

Old "Fighting Joe" Wheeler, after whom my own father had the honor to be named because my paternal grandfather had followed him for long years in the Civil War, applied the genius that had led the Confederate forces to lead the Union as well as the Confederate sons and veterans during the Spanish-American War. I thought after that day, Mr. President, that surely there would never be any further necessity for the amalgamation of the sentiments of the American people; but another day came when we launched as a Nation upon another crusade. The heart of the world almost stopped in staggered surprise at the heroic unselfishness of this Nation, which, without the prospect of pecuniary reward, without the hope of national aggrandizement, without any aspiration save to alleviate human suffering wherever it existed, threw its colossal power into a world-wide conflict and caused victoriously to emerge the cause of the allied nations in the World War.

When that spectacle occurred, Mr. President, I felt that if any doubt had ever existed before that there was but one heart and one aspiration in the American people; that was a course which should remove all doubt and make possible the working out of the greatest possible destiny for the American people. I knew that there would be differences of opinions, of course; that we would have different ideas; that we would express different points of view; that our variety of experience and representation here would cause a degree of conflict and clash in the presentation of our views. But I never thought, Mr. President, that one section of this country would be arrayed in mortal combat against another section, the purpose of which would be to lay upon the backs of one section the kind of condemnation characteristic of the harrowing days of reconstruction.

We find ourselves here now discussing a piece of legislation which for more than 2 weeks past has occupied the attention of the Senate. It is characterized and publicly known as an antilynching bill. It is said, Mr. President, that it is intended as an effectuation of protection of the civil liberties provided for and guaranteed in the fourteenth amendment. I think it would be well for us to observe whether this is an antilynching bill; whether there is any occasion for an antilynching bill; and whether the effect of this legislation, if enacted, would be only the enactment of an antilynching bill.

I have heard no one on either side of the Chamber champion the cause of lynching. I have heard no one speak who did not denounce that crime. I have heard no utterance upon this floor calculated to give countenance or encouragement to a repetition of that ghastly offense.

Mr. President, the crime of lynching—a homicide which is the result of violently inflamed passions manifesting themselves in physical violence—is not of sufficient importance to justify this legislation and this effort if it is actually an antilynching bill, because, Mr. President, it is common legislative knowledge that when an evil is diminishing, when it has virtually disappeared, that is not the time when you will find the greatest effort made by legislation to obliterate that evil. The intensity of the efforts to eradicate and to obliterate an evil by legislation can always be observed to be in direct ratio to the increase in that evil.

Let us see, Mr. President, whether or not there is anything to justify the Herculean efforts to obliterate the crime of homicide by more than one person in an unlawful manner, which is generally called lynching.

The fact is well known that in the period from 1889 to 1899 in the United States there was an average of 187.5 lynchings per year. In the period from 1900 to 1909 that average had fallen to 92.5 per year. In the succeeding 9 years, from 1910 to 1919, the average had fallen to 61.9 per year. From 1920 to 1924 the average was 46.2 per year. From 1925 to 1929 the average was 16.8 per year. The greatest decline in the era of which I have spoken was contemporaneous with the greatest economic prosperity this Nation has ever enjoyed.

Now, note the tendency thereafter. In the year 1931 the number of lynchings in the United States fell to 13. In 1932 the number throughout the entire United States fell to nine, and that marked the period when we began to reach the pit of the depression and all the social loss which ensued therefrom.

In 1933 the lynchings in the South jumped from 9, in 1932, when the accumulated savings of the people of this Nation had been dissipated and destroyed, and when the national aspiration was at the lowest point then within the memory of this generation, to 29. Then, for the year 1934, the number was 17. In the year 1935 the number was 23, and in 1936, when economic conditions in this country were again on the upgrade under the masterful leadership and guidance of the Democratic Party and its incomparable leader, Franklin D. Roosevelt, the number went down to 10. For the year 1937, at the midpoint of the year, the number was five, and by the end of the year the total number of lynchings in the United States was eight.

Now, Mr. President, when a national crime—if it be a national crime—by the efforts of local people, by the aroused indignation of liberty-loving and law-loving citizens, by the fidelity of our law-enforcement officers the country over, in response to a sensitive social conscience, has diminished from an average of 187.5 in the year 1889 to 8 for the year 1937, I ask you is that a crime which requires the herculean efforts behind this bill to force its enactment?

In connection with the citation of those figures, Mr. President, I mentioned a very interesting fact, I indicated a correlation between the economic condition of the country and the number of lynchings. In a former declaration upon this floor I said that it could be established, factually and statistically, that there was a direct relationship between the price of cotton and the number of lynchings.

I wonder if the full significance of that statement has come to the consciousness of the proponents of this bill. I repeat that the statistics and the facts relative to the crime of lynching unequivocally establish the truth of the statement that the greater the economic depression, the larger the number of crimes which provoke inflamed public passions, resulting in lynchings; and the greater the prosperity of the country, the fewer the crimes committed by the potential lynch victims, and therefore the fewer lynchings in the United States.

Mr. President, if those are facts—and I have heard no denial of them—if that be a true statement, I wonder if not only the consciousness but the consciences of the proponents of this legislation should not be pricked into something that would substantially try to diminish the crime of lynching, instead of dealing with it in this purely arbitrary and tragically prostituted manner.

For example, Mr. President, if it is a fact that the number of lynchings goes up as the price of cotton goes down, I should think the proponents of this bill would say, "Mr. President, let us stop this mimicry. Let us stop this tragic waste of time. Let us stop the expense of these great efforts and employ them in a better cause. Let us try to aid the conference committees in bringing back to this floor the bill recently enacted by this body, designed to increase the price of cotton." They would go down to the Southland and wherever lynchings may occur in the whole wide breadth of the country and examine into the economic factors which bring forth the occasion of lynching. They would say, "Mr. President, let us devote our energies and our efforts to an intelligent and a conscientious effort to help the Southland, so that the occasion for this offense shall never again arise." They would go down there, and they would see our industrial efforts, which have been strangled by a degree of competition, aided by the National Government, which we have hardly been able to break or to cope with. They would see that in the great money centers of New England and New York reposes the real control of the economic power of this Nation. They would see that those interests have not tried to build the South.

In too many instances they have laid their heavy hand upon its intended progress, and held it down until its lips virtually kissed the base soil from which it tried to spring. They would look at a system of freight rates which has been so constructed, by intent and design, as to give favor, encouragement, and preference to that very section of the country. They would shamefully repudiate the declaration of the New England Council of Governors, recently made, that the only way in which New England industry could compete with the South was to preserve the preferential system of freight rates now favoring that portion of the country.

They would not stop there, Mr. President. They would go down to those one-teacher country schools, where, as I have sat, those boys and girls in many instances sit upon rough-hewn benches under the tutelage of one teacher only in the public school, able by virtue of the ad valorem tax facility of many of those communities to have a public school for only 3 months of the year, attributable not to the fact that the people were unwilling or unconcerned or unappreciative—to the contrary, in spite of the fact that those people were paying a larger amount per capita for the support of the public schools than almost any other portion of the country—but on account of the fact that because they had not yet completely survived the tragic days of reconstruction under their impoverishment a generation ago, they have not yet been able to raise themselves to a better power in the education of America's future citizens.

How tragically is that true of the Negro race. It is a fact that there is not an equal division of public-school funds between the white and the colored races. I grant that, Mr. President. I contend that there is a degree of social justification for it. I sometimes marvel that the Negroes have done as well as they have. I honor them for what they have done. It is a question of self-preservation. If there is a Negro child in the community, and a white child in the same community, and you have not enough money to give both of those children an education, I suppose it is only human nature to err a little bit on the side of your own kind, and on the side of the more powerful race. I suppose that is a quality of selfishness which has manifested itself from the beginning of time.

Mr. President I deplore the necessity for that situation. If I had my way, there would not be a child in all the United States who was not able to go for at least 9 months out of the year to a public school well equipped with a teaching staff, well equipped with laboratories and experimental stations, so prepared in atmosphere as to be conducive not only to learning but to the flowering of the cultural sentiments of our people, and adapted to the teaching not only of a general curriculum but of vocational education, the purpose of which would be to fit every single child to be not only a self-supporting economic unit in a complex modern civilization but a human being, a human and spiritual force which should vindicate the hopes of the ancestors, and should raise higher and yet higher, generation by generation, the flag to which we have dedicated our lives, our sacred honor, and all of our hearts' aspirations; and I would include in those categories the Negro children as well as the white children.

As a boy I grew up very near to Tuskegee Institute, in Alabama. One of the great citizens of America was Booker T. Washington, who founded that institute for the education of his own people. There is not any State in the Union which honors Booker T. Washington more, which tried harder to hold up his hands in the great work he was doing, than the people of Alabama, among whom he labored and died, and where he left his everlasting monument. Also, I live, Mr. President, at Tallahassee, Fla., which is the seat of the Negro agricultural and mechanical college of my State. A little while ago the Public Works Administration, upon the application of the board of control which governs the institutions of higher learning of my State, builded additional dormitories at that Negro college even before they were builded at the white college in the State, because of the necessity that appeared more rigorous at the Negro college. I will say, Mr. President, being a resident of that town, that there has not been in years any crime, any disturbance of the peace, or any wrongdoing on the part of either the faculty or the students of that Negro college.

On Sunday evenings the Negro college is the rendezvous of the white people of my city and of my State. It is delightful to go to the picturesque hill upon which this illustrious college stands and see the beautiful discipline that an understanding president and a long-visioned faculty have written into the character of that student body, the courtesy with which visitors are met, the admiration with which the accomplishments of those students and that institution are received by an appreciative populace and citizenry, the good will that exists between the white and the colored races, and the ardent earnestness of the colored students of that institution to fit themselves into an economic and social order wherein they shall worthily perform their part of our cultural development. I know also that the things they learn there make them extremely valuable to the people of the State, so much so that it is almost impossible for one of the graduates to be obtained by the citizens of the State who desire to employ them for one work or another for which they have been trained in that splendid institution.

So, Mr. President, the State of Florida is proud of the relation prevailing between the white and the colored races of the State. Each understands the other. Each is sympathetic with the problems of the other. Each desires to be helpful to the other.

If I may mention a personal illustration, a few months ago a bright-eyed Negro boy came to me at my home and said he wanted to go to that college. I made it possible for him to go to the college, where he now is a student. I paid very little attention to the matter, because it was largely an impulse of wanting to help him that made me participate in the matter at all; but every time I return to my home, almost the first person I see is that boy, who will meet me at the station or meet me at my home or meet me at my office, and have either some vegetables or just a few simple flowers that he has gathered perhaps by the roadside or somewhere upon the grounds of the college. He merely desires to bring something in appreciation of my having tried to help him at a previous time.

We do not sit down together, we do not go to the same public places, we do not participate together in public affairs, we probably do not have the same professional, personal, intellectual, and emotional interests, but I have the highest regard and affection for that Negro boy, the keenest interest in his progress, in his becoming a useful citizen, and I believe he has a degree of pride in being worthy of the friendship which I have tried to bestow upon him. There is no question of jealousy, there is no question of each one sparring with the other about social position, or anything like that. We understand each other so perfectly that that conflict never arises.

Mr. President, that is the situation which prevails throughout the South. I was born in a farm home. I grew up with Negroes. I played with them as a child. Many a dark night, 12 miles from the nearest town, 3 miles from even the nearest farm house, a good Negro woman or a good Negro man was the only company and protection my mother and I had from what might have been the crime of the night marauder. I have never been back to that place. Even now I send clippings, or a letter now and then, or some memoir, to the old Negroes who were my friends and my family's friends in those interesting days.

If there had been in that community one who had been inclined to give expression to his base passions, if there had been one whose beastly instincts had prompted him to invade the sancity of that home, there was not one of them but who knew that the manhood of that community was pledged to vengeance upon what might have been done of violence in the absence of the strong arm of a protecting father. That sentiment and that knowledge, both of love and fear, have so commingled in the hearts of the white men and the colored men of the South that we are getting along all right. All we ask is just to be let alone. It is our own problem, it is our own duty, it is our own privilege to solve that social problem in what we know as the best way to solve it.

It is traditional that the best people to give advice about how to rear children are old maids and old bachelors, because they have not had any and they do not know anything about raising them. One who knows a little about it is inclined to give the father or the mother an opportunity to work out the child's progress in the best possible way.

I do not know whether my friend the Senator from New York [Mr. WAGNER] has ever visited my State or not. I hope he has. I hope he will come many times hereafter. I have a very great personal respect for him and a very great admiration for his liberal philosophy, about which I shall speak later. I do not know that he has ever been to Alabama and resided for a while upon a southern farm, or plantation; has ever sat around a country store, has ever sat during the winter, when men gathered around in the village store and spit tobacco juice upon the stove and discussed, in their own inimitable way, the problems of the country and of their own community.

I do not know whether the Senator has ever employed southern labor or not, whether he has seen southern children at school and at play. I do not know whether he has ever examined our institutions with a view to determining what is the proper relationship of one to another in the working out of a common problem. I do not know how much he knows about this situation. I do know that, having lived in New York and having seen daily the problems which naturally come to his attention, having the background of residence in New York, he is not as likely to be acquainted with the nature of the problem in the South as are the people who have resided there and have, by residence and experience, a full understanding.

I imagine the same is true of the Senator from Indiana [Mr. VAN NUYS]. I do not question the laudableness of the aspirations of these men, but I do question the adequacy and the completeness and the soundness of the knowledge of those who, if this bill were just an antilynching bill, should even dare to disturb the delicate equilibrium of the social balance of the South.

Mr. President, although I have never been to California, I understand there is a racial problem in that great State. I understand that it has to do with certain racial conflicts between the white race and the yellow race. What would the able Senators from California, of both parties, think if I should rise on this floor and say, "Senators from California, I am going to inform you about how you should adjust your social conflict with the yellow race," admitting at the same time that I have never been to California, and that all I had ever seen of the yellow race was just here and there in some American city. What would the Senators from California think of me if I took that position?

I lived for a short period of my life in Texas, although I was so young a lad that I knew very little about what was going on. I do remember seeing on one occasion cowboys ride into a little town and down the streets astride their horses, with a six-shooter blazing from each hand. Suppose that upon that one memory I should say, "Senators, I am not going to worry about the number of people dying of tuberculosis, I am not going to concern myself about the number of deaths from lack of maternal care in this country; I am not going to agitate my mind about our delicate and very challenging international problems, I am not going to concern myself about the betterment of the housing facilities of the people of this Nation, I am not going to try to stimulate the educational advantages of the children of this country until we shall have a better equipped and a more prosperous citizenry; I am going to tell the people of the West how to deal with their problem of drunken cowboys, or, called more appropriately, possibly, 'cattle rustlers.'"

I do not know why it was that the people of the West exhibited a determination at one time in their history—and whether it is gone or not I am not prepared to say—to indicate that the only way to deal effectively with cattle stealing was with the noose and the tree. I do not know whether they were right or not. I know there were some mighty good men in the Western States. I know that they went to a frontier and builded the standards of civilization there. I know that they not only planted the flag of their country, but I know that they set up the standards of law and order and civilization.

I know that a great social order has flowered from the early efforts of those hardy men and those heroic women. Whether or not another course might have been employed in dealing with their intricate and personal problems I do not know, and, not knowing, I would not say; but I would say that if the honorable men of the West felt that it was a local situation, and that only a particular remedy would deal with it, they being honorable men, I have confidence in their judgment and their experience, and I am not going to stand on the floor of the Senate and try to lay down standards for their guidance which are inappropriate to their local conditions. Least of all am I going to try to break down the framework and the fabric of the local institutions which their heroism and sacrifice have built up.

I also understand that there are certain sections of this country where the alien constitutes a problem, a problem in racial unity and solidarity. I understand that there are sections in New York City where there are great groups of people who cannot even speak the English language, who have their own newspapers, their own particular speech, their own particular ways of living, who are no more assimilated into the national life of this country than they were when they dwelt upon foreign shores.

I understand that in latter days, when dictatorships have reached the eminence of breaking down the boundaries of local self-government, and have completely come to dictate the affairs of their nation, those groups have given allegiance to a foreign flag and to foreign national ideals. If that condition exists, that constitutes primarily a local problem, which may better be dealt with by local people who understand the facts and circumstances, and I shall not attempt to tell the Senators from New York how they shall apply their law to this particular problem.

Just a short time ago the pages of the newspapers of this country were almost dripping with the blood of citizens whose lives were taken by the rampaging gangsters of city after city.

There was a time when the name of the great metropolis of the West was almost synonymous with gangster crime. It was a place where gangsters even went to the extent of lining up their opponents in a group, the way the Japanese, thirsting for blood, did to the innocent Chinese recently in that theater of war. These gangsters did not find the use of shotguns and pistols effective enough or fast enough, so in that wholesale killing they used machine guns and mowed down their gangster opponents 8 or 10 at a time.

Mr. President, was that not a national scandal? Was that not a scar upon the national escutcheon? Was that not a matter of the taking of human life? In one massacre in that one city at one time there were more people killed in 10 minutes than were lynched in the whole United States last year.

Did representatives from Florida at that time come up here, frothing at the mouth, and passion in control of all their being, and demand that we stop the program of the President of the United States, of the National Congress; that we throttle the aspirations of the people of this country who want better economic and social conditions, until we could cure the local crime problem of the city of Chicago? We had honorable Senators here at that time from Florida. We had here that grand old man whom I succeeded, Senator Fletcher. There never was a heart which beat with stronger sympathy for the distressed anywhere than the heart which beat in his noble breast. I am sure like sentiments were entertained in the heart of the other Senator, Senator Trammell. The records, however, are bare of any mention of their having entertained the thought, much less raising hand or voice in an effort to break down the power or the privilege or the duty of local self-government in the city of Chicago simply because that city had a particular crime problem.

Mr. President, I remember when I was just a little boy one of the colorful things of which I read, and which stuck in my memory, was of the criminal element in the city of New York, when Gyp the Blood, Lefty Louis, and the police lieutenant—I believe Rosenthal—and others were involved in a national crime scandal; and I dare say that in connection with that single incident and event more people lost their lives than lost their lives last year throughout the whole United States as the result of the crime that is known as lynching. But did the Senators get excited? Did they rush to the forefront here with an antigangster bill? Did they say that the wheels of the Government must stop, that the progress of the Nation must cease, that the legislative program must be stagnated, that the recommendations of the President must be ignored or repudiated, that all the progress of a Nation must be stopped and throttled until we deal with New York City's particular crime problem?

I dare say there is not a city in the country which last year did not have as many as eight murders. What difference does it make whether those murders grew out of one local emotional disturbance or as the result of rival gangs fighting for some illicit supremacy, which is a vicious sort of thing, just as lynching is, or whether some other local situation so aroused the passions of one or two men that they committed murder. Generally, homicides are not conceived of in the mind or breast of one man or executed by one single hand. If more than eight homicides occurred in almost any sizeable American city last year, growing out of a particular crime problem indigenous to that territory, why does not the Congress concern itself with that? Not only that, but if we take any particular kind of crime we will find more than eight homicides growing out of that crime anywhere in the country last year.

Therefore it is not just those homicides which come from lynchings that make up all the national homicides. If eight homicides are only an infinitesimal portion of the total number of national homicides, then why not concern ourselves with the causes of the other homicides and propose national legislation which will deal with that subject?

As the matter is investigated, therefore, Mr. President, and as it is further observed, it must be, as I know it is, obvious to everyone that this bill is not an antilynching bill. It is not a bill the purpose of which is to protect life or to prevent homicides. It is at least not bona fide the result of that kind of an aspiration.

Let me indicate what crimes have been the occasion of lynching in this country. Between 1889 and 1930, lynchings were attributable to the following causes and in the following number: Homicides, 1,399; rape, 622; robbery and theft, 267; attempted rape, 249; felonious assault, 214; insult to whites, 66; miscellaneous, 897.

Mr. President, those are the occasions of lynchings. Is this bill, if passed, going to stop the incentive for lynching? Is anything being done to eradicate the cause for lynching, or are we just making a superficial pretense that we are trying to do something to that end?

Mr. President, look at those crimes. Of course, I know that the old way of an eye for an eye and a tooth for a tooth has been repudiated by every religion, and particularly by the religious sentiments of our people, as well as by the law of our country, and yet it is not altogether an unnatural thing for violence to beget violence. One who lives by the sword probably will die by it. That is almost a scripturally recognized principle. When a man commits homicide it is only natural that an indignant relative or group of friends in their inflamed passions will try to vindicate the wrong that has been done in a manner more speedy than the ordinary dilatory practices of the law.

Yet is anything being done to speed up justice? Is anything being done to make more expeditious the judicial processes? Is anything being done to restore the confidence of the public in the courts? Is anything being done to place in the heart of a relative whose loved one's brains have been beaten out by some crazed criminal, the conviction that in just a reasonable length of time the processes of justice will have wrought a just retribution upon the offender?

Mr. President, I say as a lawyer, and I say it as one who has defended many criminals for many crimes, that if I were going to try to eradicate the crime of lynching, if I set my heart upon that laudable object, I would reach deep down into the lower courts, deep down into the legal and judicial processes, and I would try to sweep away the technicalities which in many cases make the courts of justice merely a place of legal combat, to which come enthusiastic and admiring multitudes to gloat over the heroics of the contending lawyers.

Instead of having the sentiment prevailing which causes people to come to the courthouse to see the battle of legal giants, where a lawyer champions a cause and joins in combat with his fellow lawyers, and makes a mockery of the courts of justice—instead of that I would have the public come solemnly to observe where in the holy atmosphere of a dignified and honorable courtroom justice under God's heaven may be done to everyone.

Instead of letting criminals languish for years in jail, instead of letting a case go from court to court over some foolish technicality, which the lawyer, who may be a highly paid lawyer, may discover, I would provide a criminal law which is not like our present law, which is in many respects, as has been said by one of the eminent judicial lights of this country, a disgrace to the United States of America.

I would employ the genius of my mind and the sensibility of my conscience and the determination of my socially concerned heart with the problem of making more effective and expeditious the administration of the criminal law in the United States, because I know very well that a great many of these 1,399 wound-be lynchers or lynching parties only participated in their disgraceful act after they in many instances had seen the regular processes of the law break down or fail to function, or fail to function in time which would give effective redress for the wrong committed.

Take the case of the 622 would-be lynchers or lynching parties which took into their own hands revenge upon those who had committed the crime of rape. Why was punishment for that crime taken directly in hand by many otherwise reputable and law-abiding people? One reason, of course, was their inflamed and indignant minds, justly aroused at the thought of these heinous crimes. The other, Mr. President, was that they knew if their case went to court that in the first place the little girl, or that wife, or that mother, would have to sit before the gaping eyes of a curious multitude, under the glaring lights of photographers and of yellow newspapers, in some instances, and have her name and her picture spread all over this country.

Then there may be technicality after technicality interposed, delaying the determination of that case until finally

a discouraged and disgusted citizenry takes the law into its own hands—because there is such a thing as a sentiment that demands justice in some fair proximity to the time when the wrong is committed.

I have not heard of anything being done, Mr. President, to improve the judicial process. A little while ago we had a proposal here upon the floor in connection with which the judicial process was under examination. I have been here for a little more than a year. I have not heard very much said about the improvement of the judicial process—not even by the proponents of this bill. As a matter of fact, I have not heard very much recognition that there was the problem of the judicial process, nor the problem of the interminable delays of the law. To the contrary, when even a suggestion to that end is made, there are many who raise their hands in holy horror and say, "You must not remove even a jot or a tittle of these technicalities, because if you do you will be repealing a part of my stock in trade as a lawyer."

That is the reason that I have repeatedly said, Mr. President, that the lawyer, worthy as he is, and honoring his profession as I honor it and what it has done, is not a dependable legislator, because naturally he knows the problem from the professional man's point of view and not from the point of view of the citizen.

I shall be glad to join the Senator from New York or the Senator from Indiana, or any other proponent of this bill in an effort to make the administration of law in this country so expeditious, so honorable, and so above question that no one will want to take the law into his own hands, because he would rather wait for a few days and have the orderly process of the law bring the case to an honorable and proper hearing, and an honorable and proper conclusion, than to bloody his own hands or to soil his own heart with the blood even of a criminal.

I know right now, Mr. President, of a man who has had 60 death warrants issued against him.

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

The PRESIDING OFFICER (Mr. McKELLAR in the chair). Does the Senator from Florida yield to the Senator from Texas?

Mr. PEPPER. I yield to the Senator from Texas.

Mr. CONNALLY. Under some of the contentions here the Senator cannot be interrupted for a quorum call, because thereby he might lose the floor. Would the Senator mind saying, however, in his remarks, how many Senators are actually on the floor at this time, and who they are?

Mr. PEPPER. Mr. President, it would be more complimentary to the speaker if those who read the RECORD—if there are ever those—might indulge the generous presumption that all the Senators are present than that I should disclose the rather uncomplimentary fact that there are literally only a few present. I know that the Senators who are not today observable on the floor are just outside, but within hearing distance, so they miss nothing of the comments that are made with respect to this matter.

Mr. CONNALLY. Will the Senator yield for another question?

Mr. PEPPER. I yield.

Mr. CONNALLY. Is not just the converse of what the Senator has said true, about it being uncomplimentary to him? Is it not true that the more devastating the argument of the Senator on this bill the fewer men who have the courage and the nerve to stay in here and listen to it? Is not the fact that there may not be a quorum present a great compliment to the Senator? With the exception of the Senator from New York, who happens to be here today, no one else seems to have the courage to stay here and listen to the Senator destroy the pretensions of the proponents of this bill.

Mr. MINTON. Will the Senator yield for a question?

The PRESIDING OFFICER. Does the Senator from Florida yield to the Senator from Indiana?

Mr. PEPPER. I yield.

Mr. MINTON. Did the Senator yield for anything but a question?

Mr. CONNALLY. No.

Mr. PEPPER. The reason I expressed in the very beginning of my remarks the sentiments which I did is that it has long ago become obvious to all of us that this matter is not to be settled by argument, although I still hope that it is. It is not to be settled by analysis. It is not to be determined by the righteousness of the issues involved. It seems, Mr. President, that there is some underlying, unexpressed, inexpressible reason for the advocacy of this cause which is not an issuable fact in debate.

The reason I say that, Mr. President, is this: This bill is now before the Senate for the third time. It was first offered in the regular session. As I recall, brief statements were made by one of its proponents, the Senator from New York, my esteemed and admired friend, Senator WAGNER. As I recall, the Senator spoke only a relatively short time in advocacy of the measure. Soon it was displaced. It came up, for the second time, in the special session. At that time I know there were not more than two Senators, at the most, who spoke for the bill, and again very briefly. All the debate in both instances—all the argument—was on the part of the opponents of this bill.

The bill came up again for consideration on the 6th of January, after it was known that provision had been made for it to come up about that time. When it reached the floor again, hardly a comment was made by the proponents of the bill. Now, Mr. President, unfortunately I am a new Senator here. I do not know all the processes of the Senate, but this is the first time in my short tenure here that I have seen a bill come to the floor and reach the calendar by the determined efforts of its proponents and have its constitutionality and its desirability absolutely and very clearly resolved in the negative by honorable, well-intending, and honest-minded opponents, when it is generally admitted that it has no more than a skeleton of a defense behind it, and yet have the overwhelming support numerically of the Members of this body.

I do not understand, Mr. President, that the Senate of the United States in the year 1938 has absolutely lost the just appellation of being a deliberative body.

If Senators standing at the apex of the legislative pyramid of this country, inheriting a tradition than which there is none more honorable in the public life of any nation, past or present, coming with authority from a sovereign people, accredited to another sovereign power, are but minions of an aroused passion, heedless to conscience or argument, how ghastly will be the spectacle of this generation which historians of a destroyed people will hereafter record. If in the greatest deliberative body in this Nation argument is of no avail and reason something that but tears the air with the hollowness of its sound, and if things that would prick the conscience of any man sensitive to the cause of local government fall upon deaf ears, I know not what may be expected to be the issue of the deliberations of this body.

As I have said, I observe that robbery and theft have provoked 267 lynchings; attempted rape, 249; felonious assault, 215; and insult to whites only a mere 66. Mr. President, those figures are for the period from 1889 to 1930. So, what I am pointing out is that white men do not go up and down the length and breadth of their States swaggering like drunken lords, swinging and cracking their whips in scorpion-like fashion over the backs of these recently emancipated blacks just for the purpose of vindicating a so-called and believed racial superiority. I am pointing out, Mr. President, that violence begets violence. One who lives by the sword often dies by the sword.

Southerners, Mr. President, are no different in that respect from other men. If we take violence out of the heart of the criminal, or make the conditions such that it will not express itself, we will not have the violent reaction of a lynching party that may be inspired to vengeance as a more effective way to justice than the dilatory or technical crowded courts may afford.

I say, Mr. President, that statesmanship is manifested by him who will take the sword out of the hand of the slayer. Then there will be no necessity for another sword to take its retribution upon the slayer.

It is interesting, Mr. President, to observe that the crime of lynching is not such as to require this bill or this Herculean effort to establish the doctrine manifested by those who are its proponents.

Do you realize, Mr. President, the choice that has been made? It has been clearly indicated by the proponents of this bill that it is, in their opinion, the most important piece of legislation now pending or soon likely to be pending before this Congress. It is a startling announcement that this bill is to be given priority of consideration at all costs; that the recommendations of the President are to be as sounding brass and tinkling cymbals, or the murmurings of a diseased or a deluded man, because the man who sits in the White House has some reputation for being a humanitarian. The leader of this Nation has quickened the conscience of mankind and aroused its admiration as no other man in this generation has done. Only the immortal Woodrow Wilson lifted higher the banner of this Nation's idealism and more effectively quickened the idealistic impulses of its people than has his protégé and his spiritual heir, Franklin D. Roosevelt.

There was a time when 130,000,000 people hung upon his word, and his every gesture wrote itself into their hearts. He stood out preeminently their leader, both legislatively and spiritually. They have followed him with a unanimity with which they have never before followed any man in the Nation's history, and well has he vindicated their confidence by what he has achieved. The humble child that lives with a twisted limb in a little impoverished cottage now has a smile upon its face because almost directly the hand of Franklin D. Roosevelt reached down and straightened its little limbs, and as the Master did in the days of long ago, said "Walk"; and the little crippled child has walked into a fuller life, walked into a greater life, Mr. President, because of the tender humanity of that man's heart. The man away down in some remote section of the country who lived in a little hovel, who never dreamed of such a thing as a painted house with windows of glass, with a sacred hearthstone and a beautiful mantelpiece upon which might be put the pictures of loved ones, and perhaps in the corner might stand a radio, and into which might come the impulses of a fuller and a new culture—that man now, Mr. President, lives in a home, not a house.

His heart thrills with the heartfelt enthusiasm of one who is the master of a home, and not the inhabitant of a poverty-stricken house. Mr. President, for every one of those glass panes in his window, for every time a little piece of music or a voice comes in over the radio, for the electrical equipment which lightens the burden of toil upon the back of the housewife, for the price which he receives for his commodity, for every one of those things he is indebted to the tender humanity of Franklin D. Roosevelt; and as generations live and gratefully remember his name, they shall say that he incarnated the spirit of the Man of Galilee more perfectly than any other man in modern public life, whatever his traducers may say.

So, Mr. President, mentioning only those few instances, I should say that the proponents of this bill have no monopoly upon the sentiment of humanitarianism; and yet that great humanitarian in the White House has not recommended, as it is his constitutional obligation to do, that the Senate or the House of Representatives concern themselves with this bill in preference to any other piece of legislation. He has not recommended it directly or indirectly in any manner, shape, form, or fashion at all. To the contrary, as clearly as a man could, as distinctly as the English language could couch it, he recommended a course of legislation to this Congress.

Mr. President, there were four points in that program as far back as the beginning of the special session in the middle of November, only two of which we have yet purported to deal with. Then the President came again and stood before us at the beginning of this session, and he enunciated great plans. He opened unto our vision vistas of great legislative possibilities. He told us that here was a nation whose whole prosperity was beginning to totter, perhaps to fall, and he enjoined us to do our share in the preservation of the prosperity we had so laboriously won. And yet, Mr. President, in spite of all of those recommendations, in spite of all that earnest challenge, the greatest deliberative body in the world, heedless of argument, insensible to debate, insists upon cramming a so-called antilynching bill down the throats of an honorable portion of this country!

This, of course, is not the first time this Chamber has echoed to the discussion of a so-called antilynching bill. I read now from Lynching and the Law, a book by Chadbourn, on page 117; and this is what is given as to the history of proposed Federal legislation on the subject of lynching:

> Attempts to curb lynchings by means of Federal action began in the nineteenth century. In the post-war period a Federal bill seems to have been introduced by North Carolina's Negro Representative White. In 1899 the National Afro-American Council of the United States recommended a similar bill. Then, as an aftermath of large indemnities paid to foreign governments because mobs in several States had lynched citizens of these countries, there was agitation for a Federal law to protect aliens.

Did southerners lynch those aliens? I wonder who the proponents of the antilynching bill then were. Let me repeat:

> Then, as an aftermath of large indemnities paid to foreign governments because mobs in several States had lynched citizens of these countries, there was agitation for a Federal law to protect aliens.
>
> Lynching of foreigners became more than a matter of indemnities when a threatened Mexican boycott was reported for the lynching of a Mexican in Texas, and when German reprisals in the form of injury of American prisoners were reported threatened for the lynching of pro-Germans during the World War.

Mr. President, that is the early history of Federal legislation on the subject. Then it seems that the American Bar Association in San Francisco in 1921 said that "further legislation should be enacted by Congress to punish and prevent lynching and mob violence." Was that recommendation based on the fact that Negroes had been lynched since 1890 and long before that time?

In other words, Mr. President, what we see is that it is just recently that people have begun to concern themselves about the matter of Negro lynchings; that lynchings have been going on for a long, long time in our history in a manner much more violent and far more numerous than any Negro category; and yet none of these humanitarian champions had taken up the cause in behalf of the Negro. They waited until the Negro lynchings got down to eight in the year 1937, and then the most determined effort of all time—an effort so determined that it challenges the Congress to enact any other bill before it—is suddenly manifested, and every other kind of lynching becomes obliterated in public importance. The proponents of the bill are not any longer concerned about the aliens, on whose account we used to pay large indemnities to foreign governments. Even the lowly Mexican is not within the scope of their humanity. They have followed the lead of the American Bar Association in taking up the cudgels for an antilynching bill designed to affect no section except the South and no people except the colored people, by intent and design, and have made that the Herculean effort of a very large majority of the United States Senate.

Mr. President, I said I was a lawyer. I finally got to be a big enough lawyer to join, upon sufferance as it were, the American Bar Association; but I know the conscience of the Senator from New York [Mr. WAGNER] must be pricked—I know how sentiments of remorse must creep into his consciousness—to learn that the progenitor of his Herculean effort was the American Bar Association in 1921. So far as I know, this is the only instance in which the American Bar Association and the distinguished Senator from New York [Mr. WAGNER] have ever had the same opinion

about anything; and I say that to the credit of the Senator from New York. I am not even prepared to agree with the American Bar Association upon this matter.

Five years earlier a mass meeting of citizens at Abbeville, S. C., went on record as favoring calling in Federal aid in the event that the State and county government were unable to suppress the local mob violence then prevalent.

This sentiment was crystallized in 1920 by Congressman Dyer, of Missouri. At this time he first introduced a Federal antilynching bill designed to protect citizens as well as aliens. In 1922 the bill passed the House but was defeated in the Senate by a filibuster of southern Senators. It provides in brief for jurisdiction of the Federal courts to punish county officers and lynchers, and for the forfeiture to the United States of $10,000 by any county which is the scene of a lynching.

Mr. President, that is the history of the antilynching bill down to the present effort, beginning with the last regular session of the Congress.

Why has there been such unanimity of sentiment on the part of southern Senators with regard to this bill?

Is it because they are unconcerned about human life? It it because they are heedless of the consequence of wrong? Is it because they court anarchy, because they welcome mob violence? Is it because they are in their hearts desirous of wrong for the Negro? No, Mr. President, the whole history of the South effectively denies any one of those assertions.

The real reasons are that this is but an effort to break down the traditional principle of local self-government in this country. Southerners are not Negro haters and Negro killers. They are in their hearts constitutional Democrats, the cardinal principle of whose philosophy is a due respect for and observance of local self-government.

It would not make a bit of difference to me, or to my colleagues who share with me the sentiments I have expressed about the bill, that the people whom it proposes to protect might be white people, or might be women, or might, for that matter, be children.

We would not countenance the Federal Government coming into our State—and I know when they reflect upon it other Senators would share this view—and taking over the exercise of the police power of our municipalities, our subdistricts, our counties, and our States. So, relatively, the importance of the bill is not that it merely is offensive by design to the South—although God knows that is reason enough why it should neither be proposed nor pressed—but just as fundamental as a cause of opposition by us are the other categories which I mentioned, the second of which is that the bill is in direct conflict with the provisions of the Constitution of the United States. So, if I believe in my heart that that is true, I am bound not only by my southern tradition and by my obligation to my own people as a Senator; but I took on the floor of the Senate an oath solemnly proclaimed in the presence of the Senate, administered by that great American, the Vice President of the United States, the presiding officer of this body, that I would faithfully preserve the Constitution of the United States. So I am bound by the sanctity of an oath and the expression of that opinion.

A great many analyses have been made of the bill. I doubt if I am able to add a great deal to the elucidations which have preceded what I have said or shall say, but I should like to make some scrutiny of the bill with a view to pointing out the respect in which it offends the sacred organic law of this Nation. Let us examine the provisions of the bill.

On page 6 of the printed bill I read the first sentence. This is the declaration of purposes which the bill expresses:

That the provisions of this act are enacted in exercise of the power of Congress to enforce, by appropriate legislation, the provisions of the fourteenth amendment of the Constitution of the United States and for the purpose of better assuring under said amendment equal protection to the lives and persons of citizens and due process of law to all persons charged with or suspected or convicted of any offense within the jurisdiction of the several States.

Mr. President, we all know that the fourteenth amendment does provide for certain civil rights, and does give the Congress power to protect those rights by appropriate legislation. If the purpose were as stated and were constitutionally appropriate that provision would be all right.

The bill proceeds:

A State shall be deemed to have denied to any victim or victims of lynching equal protection and due process of law whenever that State or any legally competent governmental subdivision thereof shall have failed, neglected, or refused to employ the lawful means at its disposal for the protection of that person or those persons against lynching or against seizure and abduction followed by lynching.

Section 2, after what might be called the declaration of principles, purposes, and objectives, provides as follows:

SEC. 2. Any assemblage of three or more persons which shall exercise or attempt to exercise by physical violence and without authority of law any power of correction or punishment over any citizen or citizens or other person or persons in the custody of any peace officer or suspected of, charged with, or convicted of the commission of any offense, with the purpose or consequence of preventing the apprehension or trial or punishment by law of such citizen or citizens, person or persons, shall constitute a "mob" within the meaning of this act. Any such violence by a mob which results in the death or maiming of the victim or victims thereof shall constitute "lynching" within the meaning of this act: *Provided, however,* That "lynching" shall not be deemed to include violence occurring between members of groups of lawbreakers such as are commonly designated as gangsters or racketeers, nor violence occurring during the course of picketing or boycotting or any incident in connection with any "labor dispute" as that term is defined and used in the act of March 23, 1932 (47 Stat. 70).

SEC. 3. Whenever a lynching of any person or persons shall occur, any officer or employee of a State or any governmental subdivision thereof who shall have been charged with the duty or shall have possessed the authority as such officer or employee to protect such person or persons from lynching and shall have willfully neglected, refused, or failed to make all diligent efforts to protect such person or persons from lynching, and any officer or employee of a State or governmental subdivision thereof who shall have had custody of the person or persons lynched, and shall have willfully neglected, refused, or failed to make all diligent efforts to protect such person or persons from lynching, and any officer or employee of a State or governmental subdivision thereof who, having the duty as such officer or employee, shall willfully neglect, refuse, or fail to make all diligent efforts to apprehend, keep in custody, or prosecute the members or any member of the lynching mob, shall be guilty of a felony and upon conviction thereof shall be punished by a fine not exceeding $5,000 or by imprisonment not exceeding 5 years, or by both such fine and imprisonment.

Mr. President, section 2 defines what is known as a mob as being three or more persons who attempt to administer correction or punishment to any person "suspected of, charged with, or convicted of" any offense for the purpose or with the consequence of preventing the apprehension, trial, or punishment by law of such citizen or citizens, person or persons. That is an instance of the Federal power reaching down within the boundaries of a State and county or municipality and defining an unlawful assemblage.

The next provision connotes the consequence of such unlawful assemblage, with one very distinct exception; that is to say, the bill provides that it is not an unlawful assemblage if it is a group of gangsters who set upon another group or another individual to destroy by physical violence that group or that individual.

Mr. President, it is a singular thing that the proponents of law and order do not want to penalize gangsters killing other gangsters or another gangster. It is certainly an extraordinary inconsistency to find humanitarian proponents of a bill like the pending one in the first part of the bill making that conspicuous exception.

A reasonable man could come to but one conclusion after having read this exception—that the proponents of the bill were not great humanitarians, were not striving for law and order, were not trying to suppress crime, but must have had some other purpose in view, some purpose much less laudable or general; that they must have had in mind only a particular crime, the righting of a specific or relatively inconsequential wrong, not for the purpose of establishing law and order and preserving sacred humanitarism but indicating a particular prejudice, attempting to inflict a specific sectional domination upon particular offenders, whether with justification or not.

Mr. President, what would any man say to a legislator who came to him and said, "Mr. Senator, I am not trying

to punish all criminals, but just those criminals who live in Florida," or, Mr. President, just those few criminals who live in my fair city, the beautiful capital of the great State of Florida, with its ancient tradition, which is full of historic monuments, in whose bosom resposes the distinguished remains of the nephew of the great Emperor Napoleon I, and the wife of Napoleon's nephew, the grandniece of the Father of our Country? In that beautiful foliage enshrouded cemetery lie the remains of Napoleon's nephew and George Washington's grandniece, husband and wife, who came for refuge to Florida, and dwelt upon one of our glorious hills in one of the bright cultivated spots in that section, and finally left their historic remains to repose in honor in our hallowed soil.

Suppose, Mr. President, there should be a legislator so ignoble as to say, "I wish to punish the crime that emanates occasionally from that fair city, while I shall let the criminal run rampant throughout the length and breadth of the land elsewhere," would any Senator expect me to stand here docile and submissive to the infliction of that kind of discriminatory legislation?

Yet those who drafted this bill, those who conceived its purpose, those who first expressed its objectives, wrote here in black and white, to be read by all critics, what they had in their minds. So, Mr. President, is anyone surprised that there should come to pass here this determined opposition to that kind of discriminatory legislation?

The proponents of the bill proceeded a little further, to exempt from the saving provisions of this bill, from its humanitarian protection, those causing violence during the course of picketing or boycotting, or in connection with—

> Any incident in connection with any "labor dispute" as that term is defined and used in the act of March 23, 1932 (47 Stat. 70).

Mr. President, these humanitarians can look upon a spectacle such as that which is said to have occurred—although I sincerely believe the statement of my learned and honored friend, the Senator from Illinois [Mr. LEWIS], that it did not occur—that is to say, the reported occurrence, when some persons purporting to be police officers, wearing the uniforms of honorable policemen, carrying the weapons entrusted to the impartial disposers and observers of the law, were so influenced by employers' thirst for the blood of their employees that they deliberately shot down helpless and defenseless American citizens assembled to remonstrate under the age-old tradition of the right of assemblage against industrial and economic wrong, committing no offense, Mr. President, except to entertain in their hearts the aspirations of historic American freedom and justice and economic liberty.

I say, Mr. President, that if that had not been the fact, and if it did not occur in the State of Illinois, as I hope it did not, yet it has occurred in many States of the Union. So these great humanitarians can see that kind of thing happen; they can see violence emanate from an industrial dispute growing out of labor difficulties, where one man, or five men, or 100 men may in violence set about the destruction of another man or men, maybe a woman or a child, and in cold blood, with cruel purpose and heartless design, accomplish their objective, and yet these great humanitarian proponents can do like the man on the way to Jericho did, who passed by on the other side when the man who had fallen among thieves and robbers lay wounded and bleeding on one side of the road, or else they look upon this ghastly spectacle like Pilate of old, but wash their hands in some fancied water of nonresponsibility, while they concern themselves about the eight lynchings that were committed last year by inflamed citizens when murder and rape and robbery by violence had invaded the sanctity of homes and the rights of citizens.

People are made up with all sorts of emotions. They have all kinds of backgrounds. All of us, Mr. President, are the residuum of innumerable influences which have entered in Time's slow process into the molding of our lives. Back down the line of history there may have begun the impulse that manifested itself in the heroic patriotism of the Father of our Country. It may have been a humble mother generations removed who dreamed the impulses of freedom which spoke in the eloquent words of Thomas Jefferson. It might have been some sturdy ancestor whose fame never spread beyond the boundary of the forest or a rustic community from whom came the courage and the steel that entered into the heroic heart of Andrew Jackson, who made the democracy conceived in the philosophy of Thomas Jefferson and wrought it into the bone and sinew of America. It may be, Mr. President, that influences not quite so laudable as those from time to time express themselves in what we do. From many an honest past has emanated a son who did not live up to the traditions of a great ancestry.

Then, Mr. President, there are some of us who somehow or other have become the victims of design, or of peculiarity, or of some fancied interest more important in our view than in the minds of our fellows. Those people, Mr. President, we say are unbalanced. They are not stable counselors in the affairs of government, if they be in government.

There may be those, Mr. President, who are just as honorable and laudable and noble in other respects, but attach an undue significance to a particular thing. All of us are capable of wrong. As great as is our debt of gratitude to the genii of the past, there have been many men who would not have been safe counselors in the affairs of the Government because of the undue significance they attached to a particular objective.

And now, Mr. President, I ask the Senate—as honorable and as laudable as has been the legislative career of the great, distinguished Senator from New York [Mr. WAGNER], as honorable and as laudable as have been the accomplishments and the expressions of the able Senator from Indiana [Mr. VAN NUYS], can it not be possible that these Senators are capable of error? Can it not be that they have given undue emphasis to a particular situation which the national welfare neither deserves nor permits? Is it not therefore our duty, Mr. President, to determine whether or not the facts, the circumstances, the conditions require or permit the enactment of legislation that will have such a purpose and so discriminate in the punishment for crime which it proposes to impose?

Of course, I know that since the bill has been on the floor, since the searchlight of critical examination has been turned upon it, that the proponents of the bill are ready—yea, anxious—to withdraw this provision which I have just read, which shows in such poor light what was actually within the mind of the authors of the measure. They would rather, like the chameleon, be able to change the color of their bill to the conditions under which it must be examined, and, when one part discloses too well their remote design, to withdraw that proposal, delete it, as it were, and beg of their colleagues that it be obliterated from their memories as not a part of the measure.

So now an amendment impends to withdraw that provision and put again within the protection of the bill those who are engaged in crime, either as gangsters or as participants in a labor dispute. But, Mr. President, I wonder if the authors of this measure really drew it in order to protect against the violence that frequently ensues from a labor dispute, when the passions of men are likewise agitated and aroused?

I look back over the scene of American industrial history and I see the bones of martyrs to industrial liberty bleaching the pages of the Nation's history. I see the emaciated bodies, I see the dynamited houses, I see the wrecked property which lies in the path of industrial conflict and controversy. I see literally thousands of white tombstones in the cities of the dead as silent sentinels to an inglorious chapter in the Nation's history. Yet, Mr. President, I do not see here all of the proponents of this measure bringing those sad pictures to our mind.

They say very little about them. In fact, I am persuaded that they thought very little about them, and therefore indicated that their objectives were far different from those of men who, either like the abolitionists of old or the true liberals of today, fight wrong and alleviate suffering wherever and in whatever color or condition it may be found.

Then I find that section 2 defines a mob and defines the crime of lynching. Those are the first two steps in the iniquitous process.

Section 3, Mr. President, proceeds to make lynching a crime. To make lynching a crime, did someone think I said? Surely one would say, "Is not lynching a crime in the Christian United States? You do not mean to tell me that lynching is not a crime, so that it is necessary for the Federal Government to make it a crime before it is a crime?"

I say to him, "Of course you are right. Lynching is a crime in every State in the American Union—the grossest of crimes; a crime of such heinousness that in almost every State it involves the death penalty."

Then surely it is not necessary for the Government of the whole Nation to step into the National Congress to define for the first time the crime of lynching. But it is made a crime for the first time in the criminal jurisprudence of the National Government.

That fact would make what impression, I wonder, on Thomas Jefferson, could that keen ear and that alert mind of his function in mortal form again? The statement of that fact would make, I wonder, what impression upon the mind of the father of the Constitution, James Madison? The statement of that fact would make, I wonder, what impression upon those heroic men who affixed their signatures in 1787 to the historic statement of American liberties, powers, and privileges?

The statement of that fact would make what impression, I wonder, Mr. President, upon the mind of old Andrew Jackson, if that man, with his penetrating eye and his forthright countenance, could turn the searchlight of his vision upon the Democratic Party and say, "Gentlemen, Democrats, you do not mean that you speak under the mantle of democracy when you make that declaration, do you?

"In the time since life fled from my frail body, in those intermittent eternal seconds since I have been here, has the name of democracy so been transformed that these crimes can be committed in my name, and by a pretense as a part of my tradition?"

The statement of that fact would make, I wonder, what impression upon the mind, not of Jefferson, not of Madison, not of the signers of the Constitution, not of the great Pinckney, of South Carolina, who gave the first true elucidation of American constitutional principle, but upon the mind of Alexander Hamilton, if he lived, if he strode upon the floor of the Senate, or if he sat in the gallery, or if he could attach a mortal ear to his alert mind and sense the significance of that statement. I wonder if any man could stand before the frown of Alexander Hamilton and say that he spake Alexander Hamilton's political philosophy, and countenance the declaration of that fact in the law of the United States.

There was not any doubt in Alexander Hamilton's mind about the demarcation of power, and the separation of authority among and between the various political entities of the United States, much less in the minds of those who espoused the principles which we have called democracy in the generations intervening. And yet section 3 makes a Federal crime of lynching—that is to say, violence by which three or more people attempt to administer correction or punishment to another individual or group of individuals without authority of law, for the purpose of preventing their apprehension of their punishment according to the form of law.

Mr. President, in what court is that crime to be tried? I have read to the Senate section 3. All it does is to define the crime of lynching and to establish the conditions of criminal liability. What are those conditions?—

> Whenever a lynching of any person or persons shall occur, any officer or employee of a State or any governmental subdivision thereof who shall have been charged with the duty or shall have possessed the authority as such officer or employee to protect such person or persons from lynching and shall have—

And shall have done what? Joined the lynchers? Lent aid and encouragement to the consummation of the crime? Become an accessory to the crime? No; not that, Mr. President. It says, "any officer or employee," whether of the status of an officer or not. Lawyers will know what I mean when I speak in terms of definitions of "employee" and "officer"—

> and shall have willfully neglected, refused, or failed to make all diligent efforts to protect such person or persons from lynching—

It says "willfully neglected." That means, I suppose, willfully, consciously, did not; consciously failed to do; refused or failed.

That is to say, willfully failed? No; just "failed," just "refused" or "willfully neglected" to make "all diligent efforts."

What are "diligent efforts"? Is driving a car toward the scene of the lynching at the rate of 10 miles an hour "all diligent efforts"? Is driving a car in the direction of a lynching party at the rate of 10 miles per hour over a snow-covered, slippery road "all diligent efforts"? Or if, instead of driving the car himself, he waits for his son to come home and drive the car because he is a better driver, is that "all diligent efforts"? There are those whose wives are better drivers than they are. Is waiting for his wife to come and drive the car "all diligent efforts"? Is that diligence, Mr. President, or is it refusal, or is it failure, or is it willful neglect, or is it "all diligent efforts"—if it is any diligence—to prevent the lynching?

Would it also be a failure if the officer went to the point of threatening to shoot the leaders of the mob, but quit before they called his threat and did not shoot them, but clubbed two of them over the head with his rifle?

Is that "all diligent efforts," or should he have shot the leaders of the mob? Suppose he just shot the leader, one man who seemed to be the most prominent. He might say, "Now, I have shot one man. It seems to me that ought to be 'all diligent efforts' in the opinion of anybody."

But suppose later he comes to trial. Has he any protection from the Federal judge, appointed for life, and the Federal jury acting under the scowl and the frown of the Federal judge who, many people think, is just this side of God in his power? Some of them try to exercise a comparable authority. Has he any assurance that that kind of a trier is not going to determine that he did not use "all diligent efforts" when he stopped with shooting the front man and let the rest of them take the prisoner?

I wonder if the zeal of the proponents, Mr. President, would be satisfied with the officer just shooting the leading man or men, or if they insist that he stand back with a machine gun and shoot all the men. There have been employers who have felt that an officer was not doing his duty and was not exercising all diligence unless he took a machine gun, which will shoot about 500 shots a minute, and shot down all the persons in a remonstrating crowd of people who wanted industrial liberty and fair industrial opportunity. What is going to be the measure of official diligence in the trial of these sheriffs who come before a Federal court for supervision of their acts?

Section 3 goes further and says:

> Any officer or employee of a State or governmental subdivision thereof who shall have had custody of the person or persons lynched and shall have willfully neglected, refused, or failed to make all diligent efforts to protect such person or persons from lynching, and any officer or employee of a State or governmental subdivision thereof who, having the duty as such officer or employee, shall willfully neglect, refuse, or fail to make all diligent efforts to apprehend—

I wonder, Mr. President, if there is any Senator who does not know the limitations upon the power of a sheriff to apprehend a criminal for a crime committed in his jurisdiction. Let me pose this question: Suppose there are lynchers who lynch a man in a certain county in my State. Take the county of Liberty, the least county in my State, or among the least, with only a few hundred people in it—although those people are as good people as God ever blessed with residence in a fair State. Those lynchers may go down to Miami, a distance of at least 400 miles from that sheriff, and take up residence there for the purpose of avoiding apprehension. This sheriff says to himself, "Well, not only am I amenable to the State law, amenable to my oath, and amenable to a Governor who can remove me from

office, but they have passed this Federal law up there in Washington; and it says that I must use 'diligent efforts' to apprehend the criminal, not just a murderer but a lyncher, whatever his provocation, and I suppose that means to apprehend all of them, not just a few of the leaders."

So I start out on my pilgrimage of apprehension. The sheriff is told that they are down in Miami. He goes down there, 400 miles, and 400 miles back, making 800 miles in all. Suppose he gets down there and does not find them. He has traveled 800 miles. Although the law allows him 12 cents a mile, even at 5 cents a mile, which I suppose every one will admit is the lowest cost for which an automobile can possibly be operated, that amounts to $40 expense which he has incurred. He also has some hotel bills while he is away and some food expenses, and he may have some automobile trouble in making such a long trip. After he goes to Miami and comes back, do Senators not know that when he presents his bill to the county commissioners, unless he can show that he apprehended the culprits he does not get any pay from his county?

I do not know whether or not that is the law in the other States, but that is the law in my State. I use Miami because that represents a distance of 400 miles. Let us suppose that the lynchers go not to the beautiful city of Chicago but, we will say, up into the wilds of Wisconsin, in the woods near where Dillinger once retreated. The sheriff finds out that they are up there or hears they are, and he reads this law again. He goes to his lawyer and asks, Have I got to go to Wisconsin and walk all through the woods there trying to find these culprits? Have I got to go up there by myself? Those men may have machine guns for all I know. How far is it to Wisconsin? From Liberty County in Florida I should say it certainly must be at least 1,200 or 1,400 miles.

The sheriff goes there and spends time looking for these criminals. Suppose he fails to find all of them or does not find some of them, and he comes back home without any of them, after all his efforts, and presents a bill on the first of the next month when his county commissioners meet to pass on bills. They may take the bill of the sheriff for the trip to the wild woods of Wisconsin and say to him—and he always stays around during that period in order to get his bills paid, if he can, for they may not have enough money to pay him—"Sheriff, you did not bring these fellows back, did you?" He answers, "No; I did not, but I had to go there, and I did the best I could. Here is the evidence; here is the tip I had. I did not know whether I could rely on the Wisconsin officers to keep me out of the penitentiary; so I myself went. I did not want to get into the Federal penitentiary for 5 years."

They say, "Sheriff, we are sorry as we can be, but you did not take them, you did not arrest those fellows." He says, "I wonder what is meant by all diligence." Do you know, Mr. President, that that sheriff jeopardizes his own liberty, his own office, and his own property by the requirements of this law in the language which I have just read? Yet not even the proponents of the bill can say that they are not asking that that be done. And it is not left to the kindly gentlemen who are the authors of the bill. Their kindly, sympathetic interest may follow it; they have the power to control it on the floor of the Senate; but they do not have the power to control the district attorneys and the Federal grand juries functioning under the district attorney's lash, and they do not have the power to control the Federal judges, who, once confirmed, are not answerable for their conduct to anybody this side of heaven except the superior courts.

Mr. President, the bill reads, who shall fail "to make all diligent efforts to apprehend." I have a great sympathy for peace officers. That may be because I know much about their problems. My father has been a sheriff and a chief of police and a policeman. I know how little they are paid; I know the risks they take; I know the hours they work; I know the hardships they all experience; I know the sinister fingers that are trying to lay their heavy restraint upon the conscientious performance of their duty. I know how often they are arrayed against powerful criminal cliques and how many times they have to carry the burden, sometimes even without public interest, let alone public sympathy. So my heart, perhaps more than the hearts of other Senators, goes out in honor to the peace officers of this country.

If I were writing a law in my Nation, instead of castigating them as sluggards and slothful performers of their duty, I would write upon the statute books of the Nation a pension law; I would write upon the statute books an insurance law that would safeguard the families, the loved ones of the peace officer who lost his life or sustained a permanent injury trying to preserve law and order in his country at a pitiful compensation.

(At this point Mr. PEPPER yielded to Mr. MCKELLAR, who asked and obtained leave to have printed in the RECORD an article on crime from the Washington Evening Star, which appears in the Appendix.)

Mr. PEPPER. Mr. President, reading a little bit further I find that failure or refusal "to make all diligent efforts to keep in custody" the persons suspected or convicted of crime becomes a criminal act. "All diligent efforts to keep in custody." Again I ask, What is meant by "all diligent efforts" on the part of a sheriff to keep a criminal or one suspected of crime in his custody? Must he carry him to a stronger jail in the adjacent county or to the strongest jail of which he knows in the State? What is diligence, Mr. President, in keeping a prisoner in custody? Ah, how soon must he summon a posse comitatus to aid him in keeping custody of his prisoner, or how quickly must he summon aid of the militia and invoke the assistance of the Governor and the military power in protecting his prisoner?

As soon as he has a prisoner should he anticipate the assembling of a mob and immediately summon the military authorities to his aid, or should he depend upon the strength of his own jail and the aid of his posse comitatus? In other words, an obligation to make a decision is imposed upon a peace officer, upon the right determination of which depends his own liberty, his own property, his own office, and perhaps his own life.

Mr. President, if the sheriff had to be answerable only to the people of his county, as uncertain as is that criterion, still he might be able to meet their requirements and demands, because he knows those people and they know him. They know his problem; they know his general reputation; they know either by witnesses or by repute how hard he tries to perform his duties; they know his financial position; they know his sentiments; they know, generally speaking, whether or not he is a faithful officer.

They will pass upon his case according to their knowledge of local conditions, which is the criterion inherent in English law and criminal trials from Magna Carta down to date—a trial of one's peers. I will show later on that this bill would not even let him be tried in his own county. It would give a Federal judge, appointed for life, the right to try him in the most remote county in the Federal judge's jurisdiction, which in my State would mean that for an offense committed in Nassau County, in the extreme northeastern portion of the State, but which is in the southern district of Florida, he could be prosecuted either in Key West or in Fort Myers, and Key West is 500 miles away and across a body of water.

But I say, Mr. President, it would be bad enough if the sheriff were accountable for his conduct only to the people of his own county. Instead of that, he is not accountable to the people of his own county. He is not even accountable to the people of his own State. Even if the Governor of his State were the one to whom he remained answerable, as he is under the constitutions and statutes of the several States, that, bad as it would be, would still be within the bounds of reasonableness, because, after all, the Governor probably has lived in the State all of his life or for a long time. He has a number of personal friends in the county. He himself has been there campaigning, no doubt, a number of times, and probably personally knows the officer in question, and knows his general

reputation for being a faithful officer. He knows the reputation of the county, whether it is a so-called rough county or a county where, generally speaking, there is no excuse for lynching.

He has all that local knowledge in the back of his head. So even the Governor of the State can pass much more favorably in supervision upon the conduct of the sheriff than can the authorities in whose power he must rest his case under this proposed law. Why? Because he is not accountable to his county, to a jury of his peers, of his own electors, in his own county. He is not accountable to the Governor of his State or even to the citizens of his State acting through State agencies. His conduct is made dependent upon the opinion and judgment of the Attorney General of the United States in Washington. Do you realize that? Whether or not a criminal prosecution shall be inaugurated against that officer depends upon the Attorney General of the United States, who makes an investigation and determines whether or not the officer has used all diligence in conforming to the requirements of this proposed statute.

Talk about a dictatorship! Talk about the centralization of government! Talk about the usurpation of power! Speak about vesting in a single hand powers of life and death without review, Mr. President! That is this bill; because far away from little Liberty County, sitting in the great Department of Justice in Washington, the Attorney General acts, not personally, but of necessity through an employee of the Department of Justice not even appointed by the President and confirmed by the Senate. I suppose he acts through the Assistant to the Attorney General, appointed by the Attorney General himself. It may be that he is appointed by the President; I do not know; but at least he is not a Cabinet officer. Obviously, I say, the Attorney General acts upon information and advice furnished him by a subordinate, who, however honorable, is an employee of the Government, not elected by the people nor taking, so far as I know, a constitutional oath. That man in actual practice determines whether or not the sheriff of Liberty County is to be answerable at the bar of a Federal criminal court which has the power of taking away from him the vestments of his office, the characteristics of his honor and his reputation, not to speak of his liberty.

Mr. President, is there no limit beyond which Senators will not go in their zeal? Are they willing to make every sacrifice of principle? Is this matter so incomparably important that they are willing to vest in the hands of one man those extraordinary powers? In order that this vague something that they complain about, and which in many instances is despicable, may be enjoined by a Federal law, are they willing to go to this vast extent?

I say that this bill reposes technically in the Attorney General of the United States, but actually in some subordinate of the Attorney General, the power to hale before a court of Federal criminal justice every peace officer in the United States if in his jurisdiction a lynching happens to occur.

The bill says any officer shall be punished who fails "to keep in custody," and so forth. In other words, the sheriff may be criminally prosecuted, and subjected to imprisonment for 5 years in the Federal penitentiary, if he has failed to apprehend or to keep in custody one suspected of, charged with, or convicted of crime.

Now, let me go a little further. The bill also says:

> Or prosecute the members or any member of the lynching mob.

What does that mean? It means that the bill makes it a Federal felony, punishable by imprisonment in the Federal penitentiary for as much as 5 years or by fine of as much as $5,000, or both, for any State's attorney in any State court to fail to use all diligent efforts to prosecute the members or any member of a lynching mob.

There, Mr. President, is a very interesting fact. Remember that not only the executive officers, the peace officers, but the prosecuting officers of every State court are made criminally accountable to the Federal Government, acting through the Federal machinery, upon a prosecution theoretically initiated by the Federal Attorney General, but practically initiated by a subordinate in his Department, who goes down and makes what? An ex parte examination and investigation of the facts!

Let me pose, if I may, a typical case which might occur under this measure.

Let us suppose, in the first place, that it is a typical lynching case; that the sheriff exercises due diligence, and makes what I may call an honest effort to get to the scene of a lynching, and tries to prevent the lynching. For example, in Jackson County, Fla., about 3 years ago, a Negro attacked a white girl. He ravished her, and left her mutilated and with her throat cut, lying between the rows of a cotton field; and he fled. Her relatives and the indignant citizenry of the county pursued him, but the sheriff took him into custody.

The sheriff spirited him to two successive jails in an effort to protect him against an angry mob. In addition to that, the sheriff even finally took the prisoner over into Alabama and tried to preserve his life there. Eventually, while the sheriff thought the prisoner was safe in an Alabama jail, a mob crossed the State line, took the prisoner out of the Alabama jail—where the sheriff, I am led to believe, was not aware that they knew the prisoner was—brought him somewhere in the nighttime, killed him by shooting him with pistols, and at daybreak next morning his mutilated body was found hanging from a tree in the courthouse yard.

Mr. President, there was the ghastly spectacle of a lynching upon as great provocation as the human mind is able to conceive.

Now let us take that particular case. There was never, so far as I know—and I am confident there was not—any criminal prosecution in that case, attributable perhaps to the opinion of the State's attorney of the district, whom I know to be an able and an honorable man, that he could not secure a conviction in court. Has he failed to exercise "all diligence" because he did not put the county to the expense involved in the grand jury indicting these unknown men, or known men if they were known, and bringing them to trial before a petit jury in the State court, with the certain knowledge that he would not be able to convict them? Is that "all diligence," or is it not? Was he acting as a reasonable officer in the exercise of a reasonable discretion, or, in his accountability to a Federal Attorney General, has he any right to exercise a reasonable discretion of that kind under this bill? What attitude is the Attorney General going to take if, in the honest opinion of the State's attorney, a prosecution would be fruitless and futile?

Now, let us take another case. Let us suppose that the State's attorney goes before the grand jury and presents the case, and no witnesses can be found who will testify that they saw the mob lynch the Negro. The State's attorney does that at one term of court, and there is no evidence upon which the grand jury can indict anybody. "Well," he says, "I know perfectly well that the Attorney General in Washington is going to think I am 'lying down' on this case. It is only natural, perhaps, with their point of view and their remoteness from the situation, that they should think so; so how can I show the Attorney General in Washington, or the Federal investigator who is sent down here, that I am trying to do my duty?" He says, "Well, I will bring the matter before a second grand jury at the next term of court."

The grand jury meets the second time. Again the State's attorney comes before them and says, "Fellows, I will be perfectly frank with you. Not only I but, within the bounds of legal possibility, all of you are going to be haled before a Federal criminal court and criminally prosecuted, and tried in a county other than your own, before a judge appointed for life, not accountable to anybody for his conduct, in the custody of a marshal appointed by the executive branch of the Government and confirmed by two United States Senators, and in a tribunal where the judge may comment on the facts to the jury, if you and I do not convict somebody or indict somebody in the lynching case that occurred here 6 months ago."

With the specter of fear hovering over the deliberations of a grand jury, are they going to live up to their oaths, or are they going to start thinking about their skins? Self-preservation still is the first law of Nature, whether this bill passes or whether it does not pass. What are the members of the grand jury to do? Suppose the evidence is such that they have, perhaps, one or two members of the mob very clearly identified but not all of them. The proposed statute says that it shall be a crime if they fail to prosecute any member of the mob—members, or any member of it. If they prosecute nine of them and leave out the tenth fellow because they say, "Oh, well, he is only half-witted, anyway; the mob just went over and got him and took him along with them," is the Attorney General going to say that the grand jury used all diligence in leaving out old half-witted Bill, or that they should have sent half-witted Bill to the penitentiary, where the rest of them, in the Attorney General's opinion, should have gone?

Then what is going to happen? The zealous proponents of the bill say, "Well we have got to do something about that. We cannot just let a grand jury turn these fellows off." Suppose that instead of indicting anybody the grand jury just says, "The devil with the Attorney General! We are not going to pay any attention to what he wants. We have a right under the law to turn a man loose or to indict him, and no power under heaven has the right to review the action of a grand jury."

Not since away back in the dawn of English history, when the grand jury originated, has anybody had any power to castigate a grand jury for not indicting a man if they did not want to indict him. That is their business. It just goes to show that whatever the law be, we cannot raise the standards of criminal jurisprudence above the standards of morality and citizenship in a community, except in one case—that is, by abolishing the right of a grand jury investigation and a petit jury trial.

That is one way by which the administration of criminal law can be put upon a standard higher than the morality and the civic righteousness of the community in which a crime is committed, or it can be done by destroying the right of a man to be tried at the place where the crime is alleged to have been committed.

I wonder if the zealous proponents of the measure are willing to go that far. They have done so. Let me read this provision to the Senate:

> Any judge of the United States district court for the judicial district wherein any suit shall be instituted under the provisions of this act may by order direct that such suit be tried in any division of such district as he may designate in such order.

It is nearly 900 miles from Pensacola, Fla., in the western part of my State, to Key West, in the southeastern part of my State. It is almost 500 miles from Nassau County, Fla., in the northeastern corner of my State, to Key West, in the southeastern part of it, or to Fort Myers, in the southwestern corner. The Attorney General or his subordinate in Washington, whose opinion may be relayed to a district attorney in Florida, answerable to the Attorney General here, and relayed further to a Federal grand jury, summoned by and large, under the fear and the impulse of that district attorney's scowl of displeasure, or the Federal judge's displeasure, in the face of whom they stand in almost holy submission, may call the State's attorney in one of the counties of the State to account for an alleged dereliction or delinquency in duty at least 500 miles away, where he does not know anyone, where the citizens of his own State are utter strangers to him. To that jurisdiction he must bring his witnesses, paying their expenses out of his own pocket, and be answerable in a long-drawn-out investigation or petit jury trial as to whether or not he used all diligence to prosecute all the members of a mob in the county in which a lynching, under any provocation, may have occurred.

Mr. President, I wonder if Senators are zealous enough in furtherance of the pending measure to break down our system of criminal law, and to deprive a man of a trial, first, of investigation by a grand jury in the vicinity where his offense was committed; second, a trial by a jury of his peers drawn in the vicinage in which he lives, or in which the crime was committed, and prosecuted by officers who know a little bit about the general environment in which the alleged crime may have been committed, because after all there are varying standards of conduct in different portions of the country. Our law contemplates that, and makes provision for it, and takes recognition of it, by the proviso that a man shall be tried by a jury of his peers, and, in our State law, it is provided it is to be in the county in which the crime may have been committed.

I wonder what United States Attorney General would take possession of so vast a power. I wonder what Attorney General would want the power such a provision carries.

If this were the law, what would be the attitude of mind of the peace officers of this country? I wonder what degree of safety would exist. When a man ran for election as sheriff, what would he say to his constituents and to the voters? Would he say, "I am going to make you a good sheriff of this county. I am going to serve you honorably. I am going to try to enforce the law"?; or would he say, "My friends, I promise you that I am going to so conduct myself that I shall heed the most exacting demand of the Federal power, and if there is ever in my mind a doubt as to whether or not a man is a guilty participant in a lynching, I will resolve that doubt in favor of the Federal authorities, because if I am wrong I will not only subject myself to a possible sentence of 5 years in the Federal penitentiary or to a fine of as much as $5,000, but I will subject you to a personal pecuniary judgment of from $2,000 to $10,000"?

They say, "Surely you don't mean that." Yet the bill so provides.

Mr. President, I spoke about the Attorney General. I am sure that must have seemed an astonishing statement, because surely the people of this country who talk about not making the President a dictator do not want to make the Attorney General an absolute dictator. The President has not any such authority as is proposed to be given the Attorney General. All the President can do is to see that the laws are faithfully executed. The Attorney General has a right to recommend to a district attorney that a criminal investigation in Jackson County be initiated. But listen to the authority proposed to be invented in the United States Attorney General by the pending bill:

> SEC. 4. Whenever a lynching of any person or persons shall occur, and information on oath is submitted to the Attorney General of the United States that any officer or employee of a State or any governmental subdivision thereof who shall have been charged with the duty or shall have possessed the authority of such officer or employee to protect such person or persons from lynching, or who shall have had custody of the person or persons lynched, has willfully neglected, refused, or failed to make all diligent efforts to protect such person or persons from lynching or that any officer or employee of a State or governmental subdivision thereof, in violation of his duty as such officer or employee, has willfully neglected, refused, or failed to make all diligent efforts to apprehend, keep in custody, or prosecute the members or any member of the lynching mob, the Attorney General of the United States shall cause an investigation to be made to determine whether there has been any violation of this act.

Talk about the duties of the Department of Justice now being far reaching and laborious! What will those duties become, Mr. President, if by some fortuitous circumstances this bill should ever become law? The Attorney General of the United States is here in Washington, nearly 3,000 miles removed from some sections of this country. He is totally unacquainted with local conditions, not locally responsible to anyone, not accountable to the Senate, not accountable to the House, not accountable to the President, not accountable to the people of the United States, unless his conduct should proceed, perhaps, to the point of an impeachable offense; and yet there is vested in him by this bill the power to supervise and to dictate the administration of the criminal law in this respect to every peace officer, every prosecuting attorney, every constable, and every State judge in the United States.

Heretofore, Mr. President, I have mentioned the sheriff, because I imagine he would be one of the first persons who

would be jumped on. I have mentioned the prosecuting attorney, because I imagine he would be the second one who would be jumped on; but I have not mentioned the judge. I wonder if anyone contemplated that by this bill the judges in the State courts of the United States would become amendable to the bar of the Federal courts of this country for their judicial conduct in the trial of persons charged with lynching? I look around the group of the proponents of this measure, and I think I see some Senators who a little while ago were talking about the disinterestedness and the immunity from interference of the judiciary. I suppose they meant all the judicial system in the United States; not simply Federal judges, but also State judges.

I posed some cases a while ago about a sheriff and a State's attorney. Let us pose a case about a State judge. In my State the judges under the State constitution are supposed to be appointed by the Governor, but the State statute authorizes the State Democratic committee or the State Republican committee to place candidates for judgeships in the primary, and therefore the circuit judges, who are the nisi prius judges who would try lynching cases if they came up in the State courts as homicide cases, are answerable to the members of the Democratic Party or the Republican Party, of whichever party they are the candidates in the primary. Almost without exception, the Governor appoints the nominee of the primary to the judicial position.

A case comes up in which there has been a lynching. A zealous and frightened sheriff has apprehended some suspects, incarcerated them in prison, and required them to make bond. Eventually they have made bond. Finally, at the ensuing term of the circuit court, their cases are brought by a zealous and frightened State's attorney to a zealous and frightened grand jury. That grand jury is perhaps under the lash of threatened criminal prosecution from Washington; and, so far as I know, if it is the duty of the United States district attorney to bring this matter to the attention of the Federal court, it is the privilege of the United States Attorney General to have an investigator watching it, standing right at the door of the grand jury room in one of these cases, to see whether or not the State officers seem to be consciously performing their duty and able to report back to his superior in Washington what he saw down there in that courtroom.

And by hypothesis, if the Attorney General can send one spy, one reporter, one investigator, I assume he may send two. And by further hypothesis, if he may send two, as we would have said in law school, a fortiori he may send three; and if he may send three, as we would have said in law school, a multi pluribus a fortiori, he may send five, and having sent five I suppose that he might send more reinforcements for the first trial, and five more to spy upon the second five to see that they were not contaminated by local influence, either by the pangs of conscience, which they would possibly experience by seeing a degraded citizenry suffering under such lashing, or perhaps they might have gone out and have seen the grave, the humble white headstone that marks the resting place of a ravaged girl, the child of a poor family, and when they came back they might have glossed over a few of the details out of a sympathetic concern for what inflamed passions in such cases may do.

The case proceeds. Perhaps they do not respond to those human sentiments, and the frightened grand jury, perhaps having seen what happened to some other grand jurors, and a frightened State's attorney, perhaps remembering that he is successor to a predecessor who languishes in a Federal jail because he conscientiously went wrong, and a frightened sheriff, who is the successor to a sheriff who vacated his place and who also reposes in a Federal prison because he did not drive his car fast enough over a slippery, water-covered road to prevent a lynching—perhaps all of them together bring a suspect into the courtroom in what has been called a temple of justice.

Honorable men are summoned in the venire. They are asked by an honest judge whether they have any conscientious scrupies against the infliction of capital punishment upon a man convicted of first-degree murder. They all answer in the negative, and therefore become qualified as members of the jury. Finally the witnesses are called. They, too, within the terms of this bill may have failed to use all the necessary diligence in the prosecution of a suspect haled before them. The petit jury sits in the box. An honorable judge, gray with the passage of time, whose shoulders are bent with the experience of judicial years, and who has heavily resting upon his brow the weight of judicial honor in the mind of all of his people, sits upon the bench.

The witnesses testify. It may be, Mr. President, that a frightened State's attorney, conscious of the possibility of a United States Attorney General in Washington haling him before a Federal criminal court, may have gotten the witnesses off to one side in the jury room and said, "Fellows, I believe you told me you were not quite sure of the identity of some of the members of this mob. It was at night. You saw them only hastily as they drove past in a closed automobile, and yet the Federal agents down here know that you said you saw the defendant. If you go on the witness stand and start quibbling about this thing, the defense attorney on cross-examination will say, 'Are you sure you could identify the defendant in that closed automobile passing you at 60 miles an hour on a lonely road?' If you say, 'I think it was the defendant,' he will say, 'I don't want to know what you think, and I don't care what you think. I am asking you if you can swear under oath on this witness stand that it was the defendant you saw in that car at that place on that night.' If you say, 'I think it was, yes,' he will say, 'I didn't ask you if you think it was. Will you swear that it was?' "

Normally, the witness would have said, "I cannot swear that it was the defendant. I thought it was. That is my best judgment, but I cannot swear that it was." The defense attorney would say, "Your Honor, I move that the testimony of the witness be stricken."

Take that state of facts, with a witness who would have testified in that way. If the ordinary State's attorney gets such a witness back in the jury room with him, what is he going to say to him? He is going to say, "Mr. Smith, is that your best judgment?" The witness will say, "Yes." Then the State's attorney will say, "You realize that unless you can testify positively as to the identity of these men, the court will probably throw your testimony out. You realize that you are one of the principal witnesses in this case, do you?" The witness will say, "Yes."

In the light of his responsibility, the State's attorney ordinarily will say, "You tell me that you cannot positively identify this defendant?" The witness will say, "Yes." Then the ordinary State's attorney will say, "That is all right. That is your duty. I would not have you change your testimony for a million dollars."

When a case of that sort comes into court, and the witness quibbles, is the State's attorney going to get credit before an investigating Attorney General in Washington, to whom a report may be made by a Federal investigator snooping in the court-room, for using all diligence?

The investigator will report back to the Attorney General in Washington, "Mr. Attorney General, that fellow lays down on the job. I saw him out there talking to this witness. If he had borne down on the witness, the witness would have come through and said, 'Yes; that was the defendant.' He did not do it." So the State's attorney comes before the bar of justice, and is answerable for his so-called failure to use all diligence to prosecute a defendant charged with lynching. That is in the State court, mind you.

What is going to be the result of that, Mr. President? As I said a while ago, regardless of this proposed law, self-preservation is still the first law of nature. A man sometimes tries very hard to get to be a State's attorney. It is an honorable position. It is a recognition of professional distinction and public confidence. The fellow who sits in his office and looks up at the ceiling and who goes home at nights with his eyes restless from fear, thinks of his own professional career and of his aspirations. Perhaps, after being State's attorney, he may become attorney general, then

Governor, and then perhaps a United States Senator, if the Senate remains a deliberative body. The man is full of his own future and plans. Perhaps he has a daughter in college, or a wife in the hospital.

The prospect of a protracted, expensive defense in a Federal court, with the power of the Federal Government exercised against him, is not an attractive one. I wonder if there is going to be any incentive on his part to push that honestly hesitant and honestly uncertain witness further than his conscience and the facts allow. When a representative of the State does that, what has he done? He has prostituted the American judicial system.

I spoke about the State's attorney and I spoke about the judge. There sits the judge on the bench. The case proceeds to a conclusion upon the basis of the testimony of this honestly uncertain witness, corroborated only by the testimony of some more uncertain witnesses. Perhaps the evidence is circumstantial. All the facts seem to make a whole, but men may honestly differ as to whether or not they require a verdict of guilty. The judge sits there with his mind evenly balanced as between the prosecution and the defense.

Perhaps the scale may be tipped a little on the side of the defendant, because a tear may have fallen from the goddess of mercy. The judge, after the conclusion of the testimony, says, "Mr. State's Attorney, you rest." He may feel certain that the testimony is not adequate to sustain a conviction, as the law says in my State, "beyond and to the exclusion of a reasonable doubt." The defense, let us say, offers no testimony, or offers some testimony which tends to throw doubt upon the testimony of the State. The judge says, "Is there any further testimony for the defendant?" The defense says, "We rest, Your Honor."

The judge says, "Gentlemen, would you like to argue the case?" The defense makes a motion for a directed verdict. The State's attorney argues the case in the light of his fear as to what the Attorney General in Washington may do, forgetting the dual obligation that rests upon the State's attorney to be the protector of the innocent and the shield of the guiltless as well as the prosecutor of the guilty. It is his duty to see that justice is done. Forgetting the duality of his obligation, in his zeal he argues only his side of the case. Finally the judge, upon the conclusion of the argument, says, "Gentlemen, I am of the opinion that the evidence does not sustain the State's case. I propose to direct a verdict."

Then what can you imagine the sheriff saying? What can you imagine the State's attorney saying? Can you not imagine them calling the judge aside and saying, "Judge, let us take a little recess now and let us talk to you." On one pretext or another the judge declares a recess of court for 15 minutes. The State's attorney and the sheriff get the judge aside and say, "Judge, did not you see all these investigators in court? We have seen them making notes of the testimony for 2 weeks." The sheriff will say, "I have already heard that these invesigators have said that I did not make an honest effort to apprehend these people, and that I made a dilatory apprehension, and that when I finally did apprehend them I did not bring in all the witnesses who know the facts, and that I refused to examine one of the witnesses whose name they brought to me."

The State's attorney says, "Judge, those fellows have been hounding our office for 2 weeks. I have enough information to know what kind of a report they are going to make. Do not forget your own interest in this case. The evidence is closed. It may be decided either way. Let us just go on and convict some of these fellows. Let us go on and convict old Bill, anyway. That will keep us out of any trouble. I do not mean just to convict old Bill, but let us leave it up to the jury. That is the jury's responsibility. If the jury turns him loose, it gets you out, and it gets me out, and it gets Tom, here, out. I have to run for office again in a little while and so does Tom. You have to run again, too, Judge, and you know what shape you are in financially. If all of us are going to have to go through 6 months' prosecution in the Federal court, where in the name of God are we going to get the money to defend ourselves? Meanwhile our offices will go to pieces. If I were you, I would just let the jury try this case. That is the best way to pass the buck. Let the jury decide it. If the jury wants to go to the Federal penitentiary, it will be they and not you and Tom and I."

There sits the judge on the bench. Honor struggles with self-preservation. Duty engages in mortal combat with self-interest. I suppose no mind is so perfectly adjusted, and so free from the dross of contaminating impurities, that it does not on occasion have to be reprimanded by conscience; and I suppose not even the judicial ermine so clothes the mortal body with the sacraments of honor that those murmuring suggestions of wrong done, in soft and subtle voice, do not creep into the inner consciousness. If they do, I am willing to indulge the presumption that in the majority of cases the judge remains true to his great traditions.

I have seen in my circuit a circuit judge who protected a defendant from lynching, who sent for the sheriff and personally summoned a posse comitatus to his aid, after adjourning court, to the defense of a man charged with a heinous crime in spite of the fact that that judge was pretty soon to contest in the primary the right to his office with a lawyer whose standards were not nearly so high. I am willing to assume that all judges will come to that decision, but, Mr. President, there may be exceptions. Every now and then there may be one who will not, and then again this bill, if enacted, will have prosecuted not only the conscience of an honorable man but the judicial system in whose bosom repose the lives, liberty, and property, not to speak of the safety and honor and the right to the pursuit of happiness of the men, women, and children of America. I wonder if zealots would go that far. Yet there is a distinct possibility if not a probability of that sort of thing occurring. So there again we have the Attorney General of the United States under the Federal system having absolute control over the administration of criminal justice in the State courts of the country.

Mr. President, what else does the bill provide? I read from section 5:

> Every governmental subdivision of a State to which the State shall have delegated functions of police shall be responsible for any lynching occurring within its territorial jurisdiction.

As Senators heard me read those words, did they note anything that would exempt a municipality? A municipality has police powers. The bill does not specify the particular kind of police power that has the legal right to try an offender for the crime of lynching, but it says to which has been delegated the functions of the police power. So, according to that language, if a lynching occurred in a municipality, the municipality would be liable for the civil fine thereafter imposed, as would the county in which the lynching may have occurred.

> Every governmental subdivision of a State to which the State shall have delegated functions of police—

What about a drainage district? Such districts have police functions, as road and bridge districts have special police functions. A special tax school district in my State also has such functions. A special tax school district has certain very distinct police powers. Very well. The zealots of this bill have contented themselves with that vague provision of responsibility.

It will be noted that every such governmental subdivision shall be responsible. I do not suppose some people would mind being castigated as participants or particeps criminis in a lynching. In instances I know there are certain people who would not mind it. But let us take the head of the Baptist Church in my county. If he were at home praying in communion with his God, conducting himself according to the precepts of his Master, and because of what some ruffians in his county did, he was to be castigated as a lyncher, I have some doubt as to whether or not he would approve of that. I have a great deal more doubt as to whether one who did that could approve of his conscience that let him do it.

There may be a mother in the community who taught her sons obedience to law and order and gave them a high example of civic duty and morality. That mother, in my opinion, would not like to be castigated as a lyncher if she had nothing to do with the lynching party.

Mr. President, I think legal history informs us that away back in the early days of England, immediately after the Norman conquest, there seemed to develop on the part of the Saxons a habit of causing the disappearance of Normans. The habit grew so general that the Normans, who were in control of the Government, decided that they had to put a stop to activities which resulted in good Normans showing up dead from day to day. So they enacted a law under which the "hundreds," as they were then called, which were about as our townships are today, became civilly responsible to pay a fine if a Norman was killed within the territorial jurisdiction of the hundred. The Normans thought that by the imposition of such a law they would give to the inhabitants of the hundred an incentive to prevent that sort of crime and that the crime itself would disappear. But the first thing that happened was a subtle avoidance of the civil penalty.

The people of the hundred began to mutilate the body of the deceased to such an extent that he could not be recognized and, therefore, it could not be determined whether or not he was a Norman, and, being unable to show that he was a Norman, those in control were unable to impose upon the hundred the civil liability for which the law made provision. Then the Government, composed of Normans, decided that they would certainly remove the possibility of subterfuge, and, consequently, they provided that when an individual should be found dead prima facie in law he would be considered to be a Norman. Therefore, as this bill does they put the burden on the hundred of showing affirmatively that it was not a Norman who was killed. But, in spite of that precaution, the years passed, and finally, due to the unsatisfactory nature of that provision, due to the fact that the people at fault escaped civil liability and the responsible citizen not at fault had to pay the fine, so that relatively two or three or four or half dozen responsible people were civilly accountable for the wrongdoing of others, for the conduct of whom they were not responsible, even the Normans in the centuries ago repealed that statute.

Then there came about the abolition of the principle in English law making a man civilly responsible for a crime or for a wrong for which, on some fair basis, he was not legally or morally responsible. Yet ignoring the experience and wisdom of centuries, ignoring the experience of the Normans of centuries ago, the zealots who are the proponents of this bill come here now and say:

> Every governmental subdivision of a State to which the State shall have delegated functions of police shall be responsible for any lynching occurring within its territorial jurisdiction.

Mr. President, listen to this language. The bill not only establishes, in the first place, the principle of civil liability without personal fault, but it goes further and provides—

> Every such governmental subdivision shall also be responsible for any lynching occurring outside of its territorial jurisdiction, whether within or without the same State, which follows upon the seizure and abduction of the victim or victims within its territorial jurisdiction.

It is not enough if one is a citizen of the county in which the lynching occurs; he is also apprehended as a lyncher if he is a citizen of a county in which the abduction occurred, regardless of whether that was the county in which the lynching occurred.

Mr. CONNALLY. Mr. President, will the Senator yield for a question?

Mr. PEPPER. I yield.

Mr. CONNALLY. Has the Senator's attention been called—and I am sure it has been—to the eleventh amendment to the Constitution of the United States in which it is provided that—

> The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State or by citizens or subjects of any foreign State.

How can the Congress by statute provide for a suit against a county or State by the heirs of the victim who might reside in other States? Has the Senator had his attention called to that provision?

Mr. PEPPER. I thank the Senator from Texas very much for that suggestion. Every lawyer knows that on account of the case of Chisholm against Georgia, the determination of the Congress and the people of the United States was so strong that a sovereign State should not be haled into a Federal court and suffer the humiliation of being answerable to a Federal tribunal for a civil liability, that the eleventh amendment to the Constitution of the United States was adopted; and it went further than to deny the right of a plaintiff to bring such a suit. It went further than to confer upon a State immunity from suit. It said that the judicial power of the Federal courts should not extend to a case of that sort.

Obviously, therefore, if the plaintiff selects the Federal court, and the defendant even acquiesces in it, the Federal court has no more power to try that kind of a case than a justice of the peace court has power to try a homicide in the jurisprudence of our State laws. Yet the zealots who are the proponents of this bill are little concerned about what may happen to constitutional guaranties in what they endeavor to accomplish by this bill.

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

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

Mr. McKELLAR. I was very much interested in what the Senator had to say in reference to the sheriffs and judges, and their supervision by Federal authority. My attention was distracted a while ago, and I am wondering if the Senator also considered the power and authority of the Federal Government, in case this bill should be enacted, over the Governors of States. For instance, if the Governor of a State fails to call out the militia in time to prevent a lynching, he, too, is to be prosecuted, indicted, and tried for not calling it out in time, if in the opinion of some Federal officer such as the Senator describes he should have done so.

Mr. PEPPER. Mr. President, I am very grateful to the able Senator from Tennessee for that suggestion. We have just been speaking about the humiliating spectacle of a sovereign State being haled before a Federal court. The able Senator from Tennessee has just imagined another case, which certainly is no less disgraceful or humiliating, the Governor of a sovereign State, the head of one of the sovereign entities of the Nation, standing in his sphere as the chief of the executive branch of the State government, as a parallel with the Chief Executive of the Nation, with all the tradition which there is historically behind the governorship of a great State.

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

Mr. PEPPER. I yield to the Senator from Kentucky.

Mr. BARKLEY. I am interested in the Senator's discussion from the standpoint of law as well as that of government. What would a State have to do in order to deny to any of its citizens the equal protection of the laws, so as to be in violation of the fourteenth amendment? Would it have to enact a statute positively providing against the protection or denying to any number of its citizens the protection that it guaranteed to others; or might it be guilty by refusal to act, by a passive attitude toward a widespread situation which might result in discrimination in the exercise of rights of the people?

What is the Senator's view about that matter? Does he contend that it cannot be a violation of the fourteenth amendment to do nothing, but that the State has to do something which inflicts upon certain of its citizens, or citizens of the United States, a condition or a lack of protection which would be in violation of the law?

I am interested in that phase of the discussion.

Mr. PEPPER. I am very glad the Senator asked that question, because, in the order of my discussion, I was coming first to a consideration of the actual provisions of the bill which, if carried out, would produce certain spectacles which I do not believe the American people would countenance. One of those was making the act a Federal crime, so as to constitute an extension of the Federal jurisdiction into a new field. The next thing was the unsalutary effect of the Federal Government having supervision of State criminal agencies to the degree that this bill would make possible.

Just a word or two more about the actual provisions of the bill, and then, if the Senator from Kentucky will indulge me, I shall come to that point.

These, then, are what are known as the civil provisions of the bill. I have just read the part which deals with the imposition of civil liability upon a county even if the lynching did not occur in the county, but if there was a mere abduction there. Suppose a group of lynchers from one county slipped over into the adjacent county and took custody of a defendant and lynched him. By that act the abductors might have freed their own county from civil liability, and imposed civil liability upon the county to which they went clandestinely for the purpose of abduction.

So, then, we have the eleventh amendment, if I may advert at that point to the provisions of the eleventh amendment; but the bill goes on, although it provides that the governmental subdivision may prove by a preponderance of the evidence an affirmative defense. There, again, the requirement is that the parties must use all diligence, with the requirement that the agency which is alleged to have committed the wrong of inaction must prove by a preponderance of the evidence that there was an exercise of all diligence; and again we have the vague matter of what constitutes all diligence.

Mr. President, that suit is maintained in what manner?

Liability arising under this section may be enforced and the compensation herein provided for may be recovered in a civil action in the United States district court for the judicial district of which the defendant governmental subdivision is a part.

The civil liability may be enforced where? In a Federal court, perhaps remote from the county or the district itself by hundreds of miles. Here is a little county with 1,500 inhabitants in which a lynching occurs. Thereby it incurs a civil liability of from $2,000 to $10,000, and the necessity of defending itself in a civil suit in the Federal court. It costs money to hire lawyers to defend you in the Federal court, particularly where you have the situation of the power of the Federal Government being asserted in behalf of the prosecution. So the civil action is brought.

Such action shall be brought and prosecuted by the Attorney General of the United States.

The Federal Government is suing a sovereign State, which has immunity from suit under the Federal Constitution. But it says—

Or his duly authorized representative in the name of the United States for the use of the real party in interest, or, if the claimant or claimants shall so elect, by counsel employed * * * without free payment of costs.

A sovereign State's county, a sovereign State's municipality is haled into a Federal court charged with a civil wrong which none of the authorized and lawfully constituted officers of that State may have committed.

Mr. President, that makes the people of the county the guarantors of the conduct of the county. Am I to be told that the majority of our people approve of lynchings? No; we do not. It is always a minority which asserts itself. Yet there is to be imposed a civil liability upon everyone—man, woman, and child. It is to be imposed upon the little child which rests with its innocent, red, glowing cheeks in a baby's cradle. It is not immune from the reach of the zealous hand of the proponents of the measure. It provides:

If the amount of any such judgment shall not be paid upon demand, payment thereof may be enforced by any process available under the State law for the enforcement of any other money judgment against such a governmental subdivision.

The judgment may not only be rendered; it may be enforced. It may be enforced in what way? In the way in which any judgment recovered in a State court may be enforced. What does that mean? It means in my State that the writ of mandamus is available, or a tax may be imposed upon the real and personal property as an ad valorem tax, to enable the State to respond to the civil liability. That means that every piece of property amenable to an ad valorem tax is responsible for the payment of the fine.

There, Mr. President, is liability without fault to an astonishing degree in a court the judicial power of which has been restricted against the entertainment of a suit against a sovereign State.

Mr. ANDREWS. Mr. President——

The PRESIDING OFFICER (Mr. GEORGE in the chair). Does the junior Senator from Florida yield to his colleague?

Mr. PEPPER. I gladly yield.

Mr. ANDREWS. Has my colleague found any Member of the Senate, lawyer or layman, expressing the view that this particular section of the bill could possibly be constitutional?

Mr. PEPPER. Mr. President, I answer my gracious and esteemed colleague by saying that I remarked just a little while ago that I have not heard anyone, practically, speak for the bill.

Mr. BARKLEY. Mr. President, will the Senator from Florida yield to me?

Mr. PEPPER. I yield.

Mr. BARKLEY. The Senator's colleague asked him if he had heard either lawyer or layman express any opinion as to the constitutionality of this particular part of the bill. If he had heard both lawyers and laymen express views in the matter, for which would he have the greater respect, the opinion of the lawyer or the opinion of the layman?

Mr. PEPPER. Mr. President, there have been times when, in respect to the constitutionality of a measure, I would just about as soon take the opinion of a layman as of a lawyer, because there have been times during the history of our jurisprudence when the matter of constitutionality became a matter of speculation, anyway. As a general rule, I suppose the lawyers have been right more times than the laymen.

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

Mr. PEPPER. I yield.

Mr. McKELLAR. The Senator no doubt knows that the senior Senator from Virginia [Mr. GLASS] is one of the best constitutional lawyers in this body, and he is a layman. I think the Senator from Virginia has a wonderful knowledge of the Constitution. I do not know of anyone who has a better knowledge of it.

Mr. PEPPER. I can sympathize with the difficulty of a constitutional lawyer. I can imagine a lawyer who, by the interposition of the divine hand, has lived to be just partially as old as Methuselah, say; and I can imagine his being alive in the late sixties, and seeing the Civil War concluded, and seeing the zealous desire of the people of the northern part of this country to give civil rights and the rights of suffrage to the Negroes, and to see to it that those rights, so conferred should not be taken away.

I can conceive of that lawyer being thoroughly conversant with everything that went on in the legislative assembly at the time of the proposal of the constitutional amendments following the Civil War, and present at every constitutional convention, or legislature, as the case may have been, which ratified the amendments. I can imagine his being thoroughly versed in the provision of the Constitution which provides that no State shall deprive any person of life, liberty, or property except by due process of law, nor deny to any person the equal protection of the law. Yet, however good a constitutional lawyer this man may have been, I can imagine the astonishment of that constitutional lawyer in having seen the unfolding of the pages of history, and to have seen the word "person," which everybody thought meant an individual, applied with equal force to the totally imaginary entity called a corporation, and the amendment, which was framed and proposed for the protection of the Negro, used more to protect corporate interests in this country than it was ever used for the protection of the Negro.

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

Mr. PEPPER. I yield.

Mr. BARKLEY. I can imagine, of course, that if a legislature were to enact a law providing that all those guilty of the murder of men should suffer a certain penalty, but that they should not be held guilty of murder or suffer the same penalty if they killed women; or if they killed a person over 21 years of age they should be punished in a certain way, but if they killed anyone under 21 years of age they

should not be punished at all. That would be a positive enactment of the legislature denying to certain classes of people the equal protection of our own laws.

Mr. PEPPER. That is correct.

Mr. BARKLEY. The question on which it seems to me this whole matter hinges is whether the failure of the legislature to enact legislation of a certain sort dealing with certain offenses or conditions, the failure of the State to do that, is a denial of the equal protection of the laws guaranteed to all citizens. I am very much interested in that line of demarcation, because I think the constitutionality of the pending measure may hinge upon that very question.

Mr. PEPPER. Mr. President, I have no doubt on that score. If the Senator will give me just about 1 or 2 more minutes, I should like to proceed to that question logically, and I promise the Senator I will cover that.

Mr. BARKLEY. I beg the Senator's pardon; I thought he had gotten into that.

Mr. PEPPER. I appreciate the Senator asking the question. I wanted to propound an inquiry right at this point. There is no provision of statute under which, if a law officer loses his life in the performance of his duty, his relatives recover from anyone enough to sustain them for a reasonable length of time. Is there any such provision within the knowledge of any Senator? If a man is the victim of an enraged criminal, white or black, and is killed and leaves a widow and nine little children, the law makes no provision for their care, does it?

This is the spectacle we get, to show almost the same thing the Senator has suggested. Between 1889 and 1930, of the lynchings committed, 1,399 were in retribution of homicides committed by the persons lynched. An eye for an eye, a life for a life, live by the sword, die by the sword—a sort of rough kind of justice, after all.

In the case to which I have called attention, the wife and the children or other dependents of the person who is the victim of the wrongdoing of the lynched person gets nothing from anyone. They are left to struggle along as best they can. The little children grow up uneducated, the family moves out of the house, the children go from the schoolroom to the cotton mills, or to some other sort of work. They take up anything they can get. One of these children may be a girl working in one of the stores in my State, making six or seven or eight dollars a week, and expected to live decently on it, because the family has no competence left them from the good husband or father who has gone on beyond.

It may happen that one of the little children grows up into a young man who works in some of the sawmills of my State, run by those fighting the wage and hour bill because they would rather pay their labor 20 cents an hour and work them 40 hours a week, and expect them to live like Americans, and for those people no competence has been provided by a father who went on ahead through someone's wrong.

Mr. President, if the family of the first person killed, the first girl ravished and killed, who might be the sole support of a widowed mother, have no claim upon the charity of the State, I see no reason why the State should compensate and remunerate the dependents and the survivors of the wrongdoer who might have bitten the same dust he put into the lips of another human being. Yet that is what the bill provides.

Let me read from the measure further:

> Any officer of such governmental subdivision or any other person who shall disobey or fail to comply with any lawful order or decree of the court for the enforcement of the judgment shall be guilty of contempt of that court and punished accordingly.

The tax assessor comes and squeezes the last dime out of the taxpayer to pay the judgment. It makes no difference how heavy the civic burden may be; it makes no difference that the bonds are in default; it makes no difference that they cannot maintain the county hospital but have had to give it up because their bonds are in default; it makes no difference if they have had to fire the county health nurse because they did not have the money to pay her; it makes no difference if they have been unable to continue to make their contributions to our State tuberculosis hospital, which is being sustained partially by the county commissioners of my State—those things make no difference. I say that, whatever the sacrifice may be, the $2,000 or $5,000 up to $10,000 must be paid, and if the tax assessor or if the county commissioners fail to levy the taxes and to exercise all diligence in their collection, are they given a trial? No. In Federal courts people are not tried before a jury when they are charged with contempt. They are haled into Federal courts, and the Federal courts adjudicate whether or not they should be committed for contempt of court.

Mr. President, I wish to digress here to say one thing. Those charged with the crimes provided for in the bill are made amenable, of course, to trial in the district courts of the United States. There is one very great difference between those courts and the State courts, at least the courts of my State, in this respect, that in the Federal courts the judges comment on the facts. The Federal judge can say, "Gentlemen of the jury, it is obvious to any fair-minded man that this defendant is guilty, and I think that if you gentlemen are worthy of the salt that goes into your bread, you should go out and find him guilty."

Mr. BONE. Mr. President——

The PRESIDING OFFICER (Mr. OVERTON in the chair). Does the Senator from Florida yield to the Senator from Washington?

Mr. PEPPER. I yield.

Mr. BONE. I understood the Senator from Florida to read from page 10 of the printed bill where is found the provision:

> If the amount of any such judgment shall not be paid upon demand, payment thereof may be enforced by any process available under the State law for the enforcement of any other money judgment against such a governmental subdivision.

I am rather curious as to what the laws of the Senator's State might provide. In a great many States, if a judgment were taken in a proper court, there would be no way under the law in those States to compel the subdivision to levy the tax and pay it. It would have to be purely a voluntary act on the part of the tax assessors. The court would not step in and compel the assessment of the tax to pay the judgment. Of course, those things follow as a matter of form in such States. But I am rather curious as to whether or not the Senator finds any compulsion in the bill other than in the language indicated.

Mr. PEPPER. Mr. President, I apologize for what is, perhaps, my own error in statement, but I did not give the statute anything like the legal significance which the Senator from Washington does. In my State if there is a judgment against a county, it is possible to go right into another court and file an application for mandamus, and have a tax assessed as an ad valorem tax, as I think my colleague, who is an eminent lawyer, will attest, upon the real and personal property of the county to pay the judgment.

As I construe the pending measure, the holder of the judgment could do either one of two things: He could go into the State court which has jurisdiction over actions in mandamus and apply for a writ of mandamus, and then, if the State judge did not issue it, he would be in contempt of a Federal court.

That is one way to do it. Or he could go into a Federal court and apply for mandamus, and the Federal court could use the process of the State court, jurisdiction being conferred on it by this measure to use the State process, but it is administered in the Federal tribunal, and then, if the State tax assessor upon whom the writ operated failed to make the levy, or if the collector failed to make the levy, he would be guilty of contempt of the Federal court.

Mr. BONE. I am not familiar with the provisions of the law of Florida, but I assume the Senator has served in the State legislature and is familiar with the usual practice in connection with an appropriation bill of providing the funds to satisfy judgments against the State. A sovereignty cannot be sued without its consent, and no State court can compel the sovereignty to pay a judgment. Those things follow

as a matter of form. It may be that in the Senator's State there is ample provision in the State statutes whereby a writ of mandamus could be employed to compel the levy of the tax. I merely asked the question.

Mr. PEPPER. I am interested in the suggestion made by the Senator from Washington. If the Senator is correct, then everyone will know that the bill is simply a futile gesture, that it is simply a pretense. I never knew of anyone in my life who would pay a judgment if he did not have to pay. If this is the theory of the bill, if it is just a pretense, an attempt to arouse the expectations of those who might possibly be beneficiaries because they are relatives of the victim of a lynching, then of course I suppose it is all right, but I think they ought to be told the truth. I am sure we would not contend and labor here upon a nullity for all this length of time. I think the Constitution forbids the enactment of such a statute, and I think the Federal power does not go to the extent of authorizing such a suit. At any rate, I did think that the proponents were conscientious in their belief that it would effectively make the governmental subdivision civilly liable.

As the concluding part of this subsection of the bill, Mr. President, I read:

The cause of action accruing hereunder to a person injured by lynching shall not abate with the subsequent death of that person before final judgment but shall survive to his or her next of kin. For the purpose of this act—

The lawyers in the Chamber should listen to this—

For the purpose of this act the next of kin of a deceased victim of lynching shall be determined according to the laws of intestate distribution in the State of domicile of the decedent.

Laws of intestate distribution. I want some lawyer to tell me what are the laws of intestate distribution. That is a new one on me. I am probably just ignorant, but I did not know there was more than one kind of probate law, which is the local probate law, which determines the succession of property. Yet I am afraid the authors of this bill have exhibited the same knowledge of this phase of the law that they have of certain other phases of it.

For the purpose of this act the next of kin—

The court determines the next of kin, whether it is called a probate court or whether it is called the county court, as in my State. All the law I know in this connection is probate law, and the probate court is the court which determines who is the next of kin, who is the heir.

For the purpose of this act the next of kin of a deceased victim of lynching shall be determined according to the laws of intestate distribution in the State of domicile of the decedent.

Mr. President, that is the first time I ever heard of intestate probate law. I always thought that the reason for conflict between States when a rich man died was the question of residence. Colonel Green, the son of the late Hetty Green, died, but I do not remember where. My State and the State of the distinguished Senator from Texas [Mr. CONNALLY] and, I think, the State of the distinguished Senator from New York [Mr. WAGNER] are contesting for part of the tax.

By what I am saying I do not want to be understood as ridiculing a provision of the bill, but I do say that if the authors of this bill made such a glaring error with respect to such a simple question as probate law, what may we expect with respect to some of the nicer distinctions of constitutional law.

Mr. McKELLAR. Will not the bill be just as good for vote-getting purposes anyway, regardless of any such distinction?

Mr. PEPPER. I suppose its efficacy in that respect would not be impaired by any technical provisions or any errors it might make.

Mr. McKELLAR. I should not think so.

Mr. PEPPER. I read further from the bill:

Any judgment or award under this act shall be exempt from all claims of creditors.

(3) Any judge of the United States district court for the judicial district wherein any suit shall be instituted under the provisions of this act may by order direct that such suit be tried in any division of such district as he may designate in such order.

What is that designed for? Why is that provision in the bill, Mr. President? The Federal Constitution provides that a person shall be tried in the vicinity where the crime was committed. He must be indicted there. Why is that? It is to give a man whatever advantage there may be from the trial occurring in the vicinity of the commission of the crime. Was there not a rather celebrated historical occurrence in this country in connection with which the trial of a man in the vicinity of the place of the crime had a great deal to do with his conviction of treason and the establishment of a precedent in the jurisprudence of this country on the very vital subject of treason?

So, under this provision of the bill, a man may be deprived of whatever benefits may be derived from being tried by a jury of his peers, because in substance the bill provides that it shall be within the power of the judge to keep the defendant from being tried by a jury of his neighbors.

The concluding part of the bill is section 6, as follows:

SEC. 6. The essential purpose of this act being the furtherance of protection of the lives and persons of citizens and other persons against unlawful and violent interference with or prevention of the orderly processes of justice, and equal protection and due process of law, and against possible dereliction of duty in this respect by States, or any governmental subdivision thereof, or any officer or employee of either a State or governmental subdivision thereof. Therefore if any particular provision, sentence, or clause, or provisions, sentences, or clauses of this act, or the application thereof to any particular person or circumstance, is held invalid, the remainder of this act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

Mr. President, that is a very laudable aspiration and declaration. Is that consistent with the provisions of the bill?

The essential purpose of this act—

Says this provision—

being the furtherance of protection of the lives and persons of citizens and other persons against unlawful and violent interference with or prevention of the orderly processes of justice.

Is that the purpose of the bill, Mr. President? If so, why does it not apply to all cases where there is interference with the process of justice, whether in labor disputes, in gangster disputes, or in any other kind of disputes? If the purpose is really to extend the protection of the law and preserve due process of the law, why does it not include all cases involving the denial of equal protection of the law and the denial of the due process of law, and make all violators of those provisions amenable in the Federal courts for criminal and civil liability as the bill in its provisions purports to do as to a particular class?

I have made a little résumé of the actual provisions of this bill, on occasion adverting to the question of constitutionality; but I have spoken primarily of the practical effect of the material provisions of the bill, assuming that every one of its provisions is constitutional.

What have we? In substance, we have a Federal law which makes lynching a Federal crime, punishable in a Federal court, and establishes a civil liability upon the governmental subdivision in which either the lynching occurred, or the omission occurred, which is the culpable act described in the bill, or in which the abduction occurred, although the lynching may not have occurred in that governmental subdivision.

Senators will certainly admit that if the bill is enacted it will be an innovation in the system of American jurisprudence. Let us look a little at the Federal Constitution to see whether or not the provision referred to is within the confines of the organic law of this country.

Let us start with the Constitution as it was prior to the adoption of the fourteenth amendment. It is not really necessary, but in order to make the case clear I want to refer to what I believe to be most, if not all, of the provisions of the Federal Constitution with respect to States prior to the adoption of the fourteenth amendment.

In section 9 of article I it is provided that—

No bill of attainder or ex post facto law shall be passed.

That is a direct prohibition of the Federal Constitution upon the Federal power.

In section 10 of article I it is provided:

No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts; or grant any title of nobility.

In another paragraph of section 10 of article I it is provided that—

No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts laid by any State on imports or exports shall be for the use of the Treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

No State shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

Those three paragraphs all inhibit affirmative action by a State.

Let us proceed to article II, section 1, the second paragraph. This is something that each State shall do, a mandatory requirement laid upon the State by the Federal Government:

Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

There is a mandatory requirement by the Federal Constitution that the State shall do something affirmatively.

We proceed further in the Constitution until we come to the second paragraph of section 2 of article IV:

A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

That is our fugitive law. That is the predicate in the Constitution for the requirement upon the States that they return an escaped fugitive to the State from which he fled, or the State in which he committed the crime. Of course, I may add parenthetically that it has been established by law that even that provision is not legally mandatory.

The sovereignty of the States has been recognized as such. In spite of that flat provision in the Constitution, if a Governor refuses to honor a request for extradition, what can anybody do about it? Nothing. There is not any Federal power that can do a thing. If the State of New York demands the extradition from my State of a prisoner and my Governor thumbs his nose at the State of New York and says, "We are still a sovereign State here in Florida; I do not think this man ought to be prosecuted anyway, and I am not going to send him back," I do not know who could do anything about it. But we still have this provision in section 2 of article IV:

A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

That provision is further buttressed and supported by provisions in the Federal statutes.

The next paragraph is:

No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

That is another provision imposing upon the States a prohibition and a duty.

We come now to section 3 of article IV:

New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures of the States concerned as well as of the Congress.

That, Mr. President, is a protection for the State.

Section 4 of article IV provides:

The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

There are two provisions to that section. The first one imposes a duty upon the Federal Government to preserve intact the independence and the sovereignty of the several States. If a State wanted to cease being a sovereign State, it could not do so. The Federal Government could not permit it to do so and observe its constitutional obligation.

So sincere, therefore, were the forefathers who wrote our organic law in their determination that the States should remain sovereignties, that they imposed upon the National Government the duty to see to it that the States should retain their sovereign integrity as republics.

The States were also given an immunity. They had the vestments of a sacred sovereign immunity laid upon their backs in these words:

and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

What does that mean? That means that the Federal Government is inhibited by the Federal Constitution itself from going into the territory of a sovereign State to suppress domestic violence without the consent of that State. What is proposed here? It is proposed to send the hand of the Federal power into the territories of the several States, to do what? To suppress domestic violence. Lynching is a breach of the peace, domestic violence. Directly in the face of that constitutional safeguard it is proposed that the Federal Government shall send its agents into the several States to suppress domestic violence.

We well remember the debate which occurred on the floor of the Senate during the last session when the whole question of the right or power of the Federal Government to go inside the boundaries of a State and interfere with the administration of the criminal law in that State was aired and discussed.

I think ample authority was presented to prove that the Federal Government, unless one of the conditions has occurred indicating the consent of a representative authority of a State, is just as impotent as was the Crown to cross the threshold of the humblest citizen's home. So, Mr. President, there was a time in the history of Anglo-Saxon law when a man's home was his castle, and even the king could not go across his threshold uninvited.

Now, under the provisions of our Federal Constitution, embodying that principle and incorporating it into our organic law, every State enjoys immunity against the Federal power transgressing its boundaries to suppress domestic violence and, by implication, to interfere in the local affairs of that State, unless it has been invited to such participation by the highest power, either executive or legislative, of that State.

Going further, in article VI, paragraph 2, we find the following:

This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land.

Then this follows:

And the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding.

There is a case of the Federal Constitution imposing a distinct duty not upon sheriffs, for they do not have to enforce the Federal law, they do not have any authority to enforce the Federal law, but upon the judges who are obligated to enforce the Federal law.

Mr. President, so far as I am able to find, those are the only provisions of the Federal Constitution prior to the adoption of the fourteenth amendment which may have any bearing whatsoever upon the issues here involved. I wonder if we may not get some help on the question of

whether or not it was the intention of the Constitution as written by the forefathers to extend into the government of local affairs. I read now from a book the title of which is The Republic of Republics, by B. J. Sage, published by Little, Brown & Co., at page 108, where the following appears:

James Madison had previously written in No. 46 of the Federalist: "The Federal and State Governments are, in fact, but different agents and trustees of the people, instituted with different powers * * *. The ultimate authority—wherever the derivative may be found—resides in the people alone." And he explained in the Virginia Convention, as well as in the Federalist, that it is "the people as composing 13 sovereignties" who possess this ultimate authority and "are parties to" the Constitution. * * * In No. 40 of the Federalist he said: "The States were regarded as distinct and independent sovereigns * * * by the Constitution proposed."

Mr. President, the language I have just read was from one of the fathers of the Constitution, James Madison. Another comment from the same author is as follows:

Mr. Madison (whom I have quoted, supra, as saying, with a concurrence of everybody of note, that the Constitution was made by "the people as composing 13 sovereignties" and that "the States are regarded as distinct and independent sovereigns * * * by the Constitution proposed"), declared in reference to the proposed coercion—

This refers to the coercion of the States by the Federal power—

"An attempt to coerce States would be a dissolution of all previous compacts. A union of States, containing such an ingredient, seems to provide for its own destruction." Again: "Any government formed on the supposed practicability of using force against the unconstitutional proceeding of States would prove visionary and fallacious."

Quoting further from page 383 of the same volume from which I have just read is the following:

Hamilton, the advocate par excellence of a strong government, repeatedly expressed himself against such an idea. Said he: "To coerce States is one of the maddest projects ever devised."

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

Mr. PEPPER. I yield.

Mr. LEWIS. I should like to bring the Senator from Florida back for a moment, anxious as I am not to disturb him, to his statement that it is not in the power of the Federal Government to enter into the States under this proposed act as it is now written.

I ask the Senator does he not recall in the history of his country that the first Cleveland administration, which was Democratic, entered the State of Oregon over the protest of its then Governor, who name was Pennoyer, and justified the action upon the ground that there had been a violation of a Federal statute which the administration was then seeking to enforce, and later, the second Cleveland administration, in my great State of Illinois, because of the charge of offenses in Chicago against the mails, sent the Federal forces into the State of Illinois on the ground that the Federal law was being violated, and it was within the power and the right of the Federal Government to protect those who claimed protection and to punish those who had violated the law? I ask my able friend from Florida, supposing this law should be passed; would it then become an act of Congress, and if any violation should occur under the act in any of the States would not that be a violation of the law of Congress, because of which the Government would enter a given State in order to execute and vindicate it, rather be an interference with the sovereignty of the State?

Mr. PEPPER. Mr. President, in answer to the learned Senator from Illinois, I should say that the answer to his question depends upon the validity of the enactment of the National Congress. The provision of the Constitution to which I just referred does not say that the President's duty is anything less than the full execution of the valid statutory Federal law of the country. It says that the Federal power cannot be extended into the several States to suppress domestic violence, and, by implication and connotation, the powers of the United States cannot be used to supersede purely local law. Distinctly, as the Senator will recall, in the Pullman strike case in Illinois the theory upon which President Cleveland acted, whether rightly or wrongly, was not that of suppressing domestic violence in Illinois, but of insuring the movement of United States mails. Had not that question been related to the exercise of Federal power in that case, there would not have been, to my knowledge, any ground of authority for this action.

Mr. LEWIS. May I ask the distinguished Senator, who seems to have given this subject most commendable investigation, was not that on the theory that the annoyance to the mails was an obstruction of the mails, and therefore a violation of the Federal statute?

Mr. PEPPER. That is correct. The Senator states it more accurately than I did. It is the same thought, but the Senator's statement, with his customary lucidity, is more accurate than mine. In that case the Constitution gives the Federal Government the power to establish a post system and post roads. Therefore it has the right to provide safeguards around the movement of matters passing through the post office and along roads, as it were, selected for the transportation of the mails. That was an instance of legitimate exercise of Federal power. But, Mr. President, where is there any analog in the constitutional provision with respect to the pending measure or any comparable authorization for the enactment of this proposed legislation?

Now, Mr. President, going on a little further, after having discussed the main part of the Constitution, I come now to the amendments. The fourteenth amendment provides as follows:

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.

That merely establishes citizenship. Previously some persons were not citizens; they were slaves; and they were not citizens until their citizenship was provided for by that amendment to the Constitution. Then comes the language of the fourteenth amendment which is relied upon as the basis for this proposed legislation:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.

Going that far, has any State made or attempted to enforce any law purporting to abridge the privileges or immunities of colored citizens of the United States? At least, if so, it is not involved in this proposed legislation. There have been times in our history when the States have laid down educational tests, when they have laid down qualifications for jurors, when they have attempted to impose restrictions with respect to riding in public conveyances, or with respect to certain persons seating themselves in public terminals or depots, and the like, when the States have passed laws which have been attacked under the first provision I have just read, as laws designed to abridge the privileges or immunities of citizens of the United States; but that is not this case.

Mr. McKELLAR. Mr. President, not at all. May I ask the Senator a question by way of suggestion? Is it not true that between 1884 and 1934—a period of something like 50 years—a great many white persons were lynched in this country? So if lynching in itself was an abridgement of the privileges or immunities of citizens, it was applied to both white and colored citizens; so a question of that kind could not be raised.

Mr. PEPPER. The Senator is exactly correct.

Mr. McKELLAR. The constitutional amendment was directed solely to the States themselves, and not to any individual crime.

Mr. PEPPER. The Senator is entirely correct.

Mr. President, I am taking these clauses one by one. The obvious and clear answer to that question is, as the Senator from Kentucky inquired a while ago, that no statute of any State is involved. What State has passed a law legalizing lynching? What State has provided that Negroes may be lynched with impunity, and without criminal responsibility to the State government? None; so that question is very simply answered by the fact that no one makes any pretense that that provision of the fourteenth amendment is in anywise affected or involved.

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

The PRESIDING OFFICER. Does the Senator from Florida yield to the Senator from Texas?

Mr. PEPPER. I yield.

Mr. CONNALLY. The Senator from Florida is familiar, is he not, with the statements of Mr. Thaddeus Stevens and Mr. James G. Blaine on that subject?

Mr. PEPPER. Yes, Mr. President; I am coming to those two provisions. I am about to quote them from the speech of the Senator from Texas, where they are very readily available. I wish to go one clause further before doing so.

So that part of the fourteenth amendment, down to that point, does not authorize any such legislation.

Here is the next clause:

> Nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Mr. President, the whole question, then, hinges right upon those two clauses of the fourteenth amendment, and upon them alone are the proponents of this bill, if upon any, entitled to rely for the constitutional validity of this measure.

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

The PRESIDING OFFICER. Does the Senator from Florida yield to the Senator from Kentucky?

Mr. PEPPER. I yield.

Mr. BARKLEY. The Senator, of course, differentiates between the two clauses of the fourteenth amendment?

Mr. PEPPER. I do. In the spirit in which I was going to use them, I put them together, because I was proceeding to the statement that each of them inhibits an affirmative act of the State.

Mr. BARKLEY. That raises the question whether a positive, substantive act of the legislature or of the State is necessary in order to deny to somebody something to which he is entitled, or whether that denial may be brought about simply by refusal to take any action at all. I think that is the crux of this whole question.

Mr. PEPPER. The Senator from Kentucky is entirely correct about that. By the way, all this information is collated in a very splendid speech by the Senator from Texas. The Senator quotes from Thaddeus Stevens, who was the mover of the provisions of the fourteenth amendment. This is what he said about it:

> The Constitution limits only the action of Congress, and is not a limitation on the States.

That means that that is what the Constitution did up to the time of the adoption of the fourteenth amendment. Then, speaking about the fourteenth amendment, Thaddeus Stevens said:

> This amendment supplies that defect and allows Congress to correct the unjust legislation of the States so far that the law which operates upon one man shall operate equally upon all. Whatever law punishes a white man for a crime shall punish the black man precisely in the same way and to the same degree.

Mr. President, if anybody should know what the provisions of the fourteenth amendment were designed to effectuate, it should be the father of reconstruction, Thaddeus Stevens, of Pennsylvania.

Mr. BARKLEY. Mr. President, will the Senator yield at that point?

Mr. PEPPER. Yes, sir.

Mr. BARKLEY. Has the Supreme Court, in interpreting the fourteenth amendment, followed the logic or the philosophy or the intention of Mr. Stevens in proposing it as an amendment to the Constitution?

Mr. PEPPER. Unfortunately not in all respects; but I will say that I do not know of a single case in which mere inaction, mere failure to act, has been regarded as action by the several States in violation of the provisions of those clauses of the fourteenth amendment. I could name case after case in which it will be found that what I say is correct.

Let me give you an illustration of what I mean, if the Senator will allow me; and then I shall appreciate it if he will interrupt me again.

I think it was in the case of Ex parte Virginia, perhaps, that the question of jurors came up. Of course, there were the Slaughterhouse cases and the Civil Rights cases. In the Slaughterhouse cases there were certain municipal regulations in which the State had acted affirmatively, and the question involved was that of the validity vel non of the municipal regulations and provisions.

In the Civil Rights cases, the Federal Congress had passed a statute providing that Negroes must not be deprived by the States of certain civil rights, and so forth; and the Supreme Court held that in those cases there was a negation of the Federal power, because they said the Federal Congress did not have authority to regulate civil rights all down in the States, which indicated that the authority to regulate those rights was in the several States; and it is those regulations of the several States which have come to the Supreme Court of the United States from time to time for examination and review.

Mr. BARKLEY. Mr. President, in that connection, if the Senator will yield further, what interpretation does the Senator place upon the decision of the Supreme Court in 1932 reversing the Scottsboro cases on the ground that a denial to afford counsel for the defendant constituted a violation of the fourteenth amendment?

Mr. PEPPER. I was about to refer to those cases. I am glad the Senator mentioned the subject. I shall use them as an illustration of my point. I meant to come to those cases.

Mr. President, the fourteenth amendment says:

> No State shall * * * deprive any person of life, liberty, or property without due process of law.

What is "due process of law"? In the Scottsboro cases the Supreme Court held that deprivation of due process of law amounted in substance to something which was not a judicial procedure; as, for instance, they decided in other cases where the racial question was involved that a mob in the courtroom intimidating the jury and the court officials kept the trial from being the exercise of the judicial process. Again, there we have an affirmative matter. The States must affirmatively give a man a fair trial. They must not have a mockery of justice. They cannot take out a man and have a hanging bee and say, "Why the judge was there, and the State's attorney was there, and there were enough fellows there for a jury. In fact, we said to 12 of them, 'All right; you 12 stand over here, and you be the jury.'" That is not due process of law. Justice must be administered according to the form and the substance of the judicial process; and in the Scottsboro case the State denied something which kept the proceedings from meeting the requirement of due process of law. The thought was that they attempted to take the defendant's life without adequate justification. In pleading, I should say the State has a right to take a man's life, but it must show justification for it; and it can show justification only by showing that it has observed the judicial process, which means due process of law.

Mr. BARKLEY. Mr. President, if the Senator will yield further, how does the Senator connect that up with the failure of the State court to afford counsel for the defense, and the decision of the Supreme Court that that was a denial of the equal protection of the laws of the State?

Mr. PEPPER. Mr. President, the matter which my friend from Kentucky overlooks is that the defendant was not complaining about having had a trial as the wrong that was done him. He was complaining that the State was about to hang him without sufficient justification. In other words, what the State was doing, and what the man complained about, was the hanging. The man was complaining about an affirmative act.

Mr. BARKLEY. Of course any man would complain of that. I myself should do so. [Laughter.]

Mr. PEPPER. That is correct.

Mr. BARKLEY. But the point is that in discussing the case, the Supreme Court held that the refusal to appoint counsel, to give the defendant the opportunity for counsel and advice and consultation, was a denial of the equal protection of the laws; not merely that the defendant was tried without due process of law. The things linked in together, of course; but the point I am trying to draw the attention

of the Senator to is that the refusal, without any positive law on the statutes of the State, to grant to a defendant or a group of defendants a privilege or a right that is supposed to be accorded to all defendants who have not the ability to employ counsel, itself was held to be a denial of the equal protection of the laws of the State; and upon that, in part, the Supreme Court reversed the case.

Mr. PEPPER. Mr. President, I will state the matter in this way: I wish lawyers would make a distinction between points at issue. I say the analogy would be perfect if the sheriff were about to hang a man as part of an effort to lynch him, as it were. What I am trying to say is that the denial of due process of law was not that the State of Alabama failed to allow a lawyer to do certain things, or, as in other cases, failed to maintain order in the courtroom. The point was that the State of Alabama was about to take the life of a citizen, and they could not show that they were about to do it pursuant to the exercise of due process of law.

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

Mr. PEPPER. I yield to the Senator from Indiana.

Mr. MINTON. What was it in the failure to exercise due process of law, except the neglect and the failure to do something, which made it a lack of due process of law?

Mr. PEPPER. What the Senators overlook is that the sheriff is not trying to hang the victim.

Mr. MINTON. I am not talking about the sheriff, I am talking about the court, and the court's failure to give due process of law in the Scottsboro case. The only reason why it did not comply with the requirement of due process of law was that there was a failure, a neglect.

Mr. PEPPER. That is exactly correct.

Mr. MINTON. It was not some affirmative act; it was a failure to do something.

Mr. PEPPER. Of what was the defendant complaining before the Supreme Court—that he did not have a lawyer, that his lawyer was not permitted to do certain things? No; of course not. He did not care whether the lawyer had those rights or not. What he was complaining of was that they were about to hang him without having granted him due process of law. It is not due process of law to get a mob together and try a man.

Take the case in which Justice Holmes wrote the opinion, the title of which I have forgotten. The courtroom was so full of people with hostile sentiment against the defendant that, although he was convicted according to the forms of law, the United States Supreme Court reversed the case because it held they were taking a man's life without having followed the judicial process in doing it. If a man is convicted by a mob that cannot be called due process of law.

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

Mr. PEPPER. I yield.

Mr. BARKLEY. In the case of Howell against Alabama, reported in Two Hundred and Eighty-seven, United States Reports, in the syllabus and in the opinion of the court there is emphasized the fact that the court denied to the defendant the benefit of counsel.

Mr PEPPER. Of course they did.

Mr. BARKLEY. And they commented at length on that and went back even to the law of England in order to build up the background. Of course, the question of due process of law enters into the consideration of the method by which a trial is had, whether it is a criminal or civil trial, if any citizen is deprived of his life or his liberty or his property without due process of law. This case also involved the question whether there had been a denial of equal protection, and the court held that the denial had existed, not because of any statute of the State of Alabama but because of the refusal or failure of the court to do a certain thing which might contribute to affording equal protection of the law.

Mr. PEPPER. Mr. President, let me get this straight. The difference is that in the case from which the Senator has just read, the State was trying to take the man's life, and in the lynching case it is not the State which takes his life but the lynchers take his life, and the State does nothing through its officials.

If the victim of the mob could get access to a judge and present a petition for a writ of habeas corpus, he would be entitled to a discharge, in spite of the fact that this mob had had a solemn mock trial and condemned him, because that is not due process of law. The difference is that in the case about which the Senator has been speaking, and in the Scottsboro case, in all the cases where the jury question has arisen, the State was the one taking the man's life, and the State could not take a citizen's life without showing justification for it, and the only justification for taking a citizen's life is due process of law. Then there is determined, by definition, what is or is not due process of law. So, to my mind, the situation is clear.

In the case involved, the State has not passed any law, the State is not taking anybody's life. All that can be charged to the State, if anything can be charged to it, is a failure to do anything.

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

Mr. PEPPER. I yield.

Mr. BARKLEY. If the State enacted a law of any sort which might be in violation of the fourteenth amendment, how would Congress enforce the right of the people against whom the denial was directed? What would Congress do to punish a State or a county or other subdivision of a State? These are all interesting questions, and the Senator is discussing them in an interesting way.

I am interested in the philosophy of the Senator's theory. This question may arise hereafter in many other cases besides the pending bill, as to any alleged denials of equal protection, because whatever is decided and whatever is regarded as the philosophy and settled policy of the Government in dealing with the fourteenth amendment in this case, may have some bearing on legislation in the future. What could Congress do?

Mr. PEPPER. There may be more than two possibilities, because the Constitution makes provision that Congress shall have authority to enforce the provisions of the Constitution by appropriate legislation. Whether it does or not, if the Constitution confers those rights, the Federal power could vindicate them.

One of the things the Constitution provides is, in the article pertaining to the judiciary, a method of redress, a method of relieving against any penalty which might unlawfully be imposed.

Let us assume that a sovereign State, Texas or Alabama, had gone through what purported to be the forms of law and convicted a man according to what purported to be the forms of law, and there was pronounced the old form, "Let him be hanged by the neck."

Then the man comes in and says, "Wait a minute. The United States judicial code provides that when we are relying on the Constitution in a certain case I can take an appeal and in a certain case get a writ of certiorari to the Federal court for a review of my case, and you cannot hang me. I can get a stay order from the appropriate court. That is provided for by the Federal statute. Then when I go into the Federal court, the constitutional authority, enacted pursuant to the authority which referred to the judicial power, which means a review in a judicial manner, vests the court with jurisdiction to hear the case and authority to decide it in accordance with the provisions of the Constitution."

One of the powers we have exercised for the vindication of the principle is to give a man immunity, to clothe him with protection against the loss of his life, liberty, or property, unless it is accomplished through that narrow channel called due process of law.

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

Mr. PEPPER. I yield.

Mr. BARKLEY. Suppose the legislature of some State should enact a law declaring that those who live in cities of the first and second class in the State should be entitled to recover damages against a railroad or any other corporation for injury sustained by a citizen, but that that remedy should not be applicable in behalf of those who lived anywhere else in the State outside of the first- and second-class cities. That

evidently and obviously would be a discrimination among the citizens of the State with respect to their life or liberty, or as to their property, if it should apply to damages to their property.

If they could get to the Supreme Court, undoubtedly the Court would hold that it was a violation of the fourteenth amendment because it did not give equal protection to the people of the State, and was probably a deprivation of property without due process of law. How would Congress enact a law to enforce the fourteenth amendment? What sort of an act could Congress pass to remedy the situation? Would it be necessary for it to pass a law that any person damaged might go into a Federal court, where he was denied opportunity to go into a State court? What could we do?

Mr. PEPPER. I am of the opinion that the constitutional provision does not contemplate the necessity of any affirmative Federal statute, because the constitutional provision was designed only to be an inhibition against affirmative force.

Mr. BARKLEY. What does it mean when it provides that Congress shall enact appropriate legislation to enforce the fourteenth amendment?

Mr. PEPPER. I think one of the cases decisive of that is the one I have just cited. If the Congress, by appropriate review that is permissible in a Federal court, gives a person who is a citizen complete protection from every violation of this article, what other affirmative relief does he need? However, I am willing to go further, and say that there are imaginable cases where there might be a Federal statute, which it might be within the power of Congress to enact, to prevent affirmative action of the State. That is a theoretical possibility, but that would be only in a case where a State law, for instance, might provide that the sheriff of a county could shoot down any colored person he wanted to without being liable to anyone.

Mr. BARKLEY. That would be a violation of the fourteenth amendment.

Mr. PEPPER. Let us assume it is.

Mr. BARKLEY. What could Congress do? Could Congress pass a law providing that the sheriff could not shoot down a colored person?

Mr. PEPPER. It is within the bounds of possibility that the Federal Congress might make something like that a Federal offense.

Mr. BARKLEY. There would be a very great conflict there between the State and the Federal law as to whom the sheriff might shoot.

Mr. PEPPER. That is true; but I have very great doubt that there is any case in which it is contemplated that the Congress shall exercise the affirmative power, because my hypothesis is that all the Constitution, in the fourteenth amendment, does is to inhibit the affirmative action of the State, as is indicated by the statement of Thaddeus Stevens I have just read.

Another statement by James G. Blaine is to this effect:

> Both of those amendments operate as inhibitions upon the power of the State and do not have reference to those irregular acts of the people which find no authorization in the public statutes.

Now, one more quotation:

> The defect in both amendments, in so far as their main object of securing rights to the colored man is involved, lies in the fact that they don't operate directly upon the people.

That is a quotation from James G. Blaine, and he said away back in his day that the chief defect of the amendments was that they did not adequately protect the colored man in all the civil rights he might enjoy, that all they did was to inhibit the State in the passage of a law.

With the Constitution making it the duty of the Governor to execute the law, with it providing that the duties of a sheriff shall be prescribed by statute, with one of the sheriff's duties being defined by statute as the obligation to enforce all the criminal laws of the State, with the criminal law of the State making it a capital crime to commit a homicide, which lynching is, with all those provisions on the statute books, without any legislative cognizance of lynching how can anyone say that the State has caused a lynching when acting authoritatively through its executive or its legislative or its judicial branch?

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

Mr. PEPPER. I yield.

Mr. LEWIS. I wish to ask a question of the Senator from Arizona [Mr. ASHURST], the chairman of the Committee on the Judiciary.

The Senator from Florida in his very able discussion intimated that mere omission could not be the basis for legal action unless there were some statute upon the subject. The Senator said that the mere omission to perform a duty would not bring one within the law. I ask the Senator from Florida [Mr. PEPPER] if he does not recall in history that a Justice of the Supreme Court of the United States by the name of Field, having rendered an opinion which ran counter to certain interests of some lawyer and his clients out in California, found himself in a dining room in or near the city of San Francisco, and there, without protection, was assailed by a man named Terry, who had been one of the counsel in the case in question, and subsequently, upon investigation of the subject, the Supreme Court of the United States held a marshal and another officer in contempt on the ground that they failed to execute their duty in that in the ordinary discharge of their duties they failed to protect Mr. Justice Field against the personal assault of this gentleman, Mr. Terry. I ask my able friend from Arizona [Mr. ASHURST] if I have recited the history as he recalls it, in view of the fact that his State is geographically near the State in which this incident occurred.

Mr. CONNALLY. Mr. President, I have no objection to these proceedings——

Mr. LEWIS. I did not want to take the Senator from Florida off the floor by my question.

Mr. CONNALLY. But if they operate to take the Senator from Florida off the floor I shall object. The Senator cannot yield except for a question, under the highly technical rule under which we are proceeding now.

Mr. LEWIS. I would not want the Senator to take that risk.

Mr. ASHURST. Mr. President, I have no desire to be drawn into the discussion, because I do not wish to interrupt the uniform argument of the able Senator from Florida, but the Senator from Illinois [Mr. LEWIS] does me honor to presume that I should have knowledge of the event to which he refers.

If I remember correctly—and I have not read the case for many years—the incident occurred in the summer of 1889. At that time the Justices of the Supreme Court of the United States traveled upon circuits. Mr. Justice Field was assigned to the ninth circuit, and California then, as now, was in the ninth circuit. Mr. Justice Field was traveling in the State of California, in pursuance of his duties, accompanied by a man named Nagle, and as the Justice entered the dining room in a town called Lathrop, between Fresno and San Francisco, a celebrated man named David S. Terry, who had sometime been chief justice of the State of California, and who on the 13th day of September, 1859, had shot and killed in a duel David Broderick, a United States Senator from California——

Mr. LEWIS. Against whom he had been a candidate for the Senate.

Mr. ASHURST. Yes. Mr. Terry, who had some alleged or fancied grievance against the Justice, advanced upon the Justice to assault him, or, as he said, to slap his face. When Mr. Terry reached a point a few feet from the Justice, Mr. Nagle fired and killed Mr. Terry. The sheriff of the county—San Joaquin—attempted to arrest Mr. Nagle, but some writ issued which released Mr. Nagle from the custody of the sheriff, or forbade the sheriff from arresting him, I do not remember which. It has been years since I read the case. I believe that Nagle was released from all charges upon the ground that he was accompanying the Justice upon the circuit in the performance of his—Nagle's—duties as an officer of the Supreme Court.

That is the case as I remember it. The State court might have attempted to take jurisdiction, but the Supreme Court held that the State court could not try him for that offense.

Mr. PEPPER. I appreciate it very much. The Senator has very clearly pointed out what I have always understood was the real point involved in that case. There was a sort of application of the unwritten law, that a man was not committing an unlawful act when by shooting another he saved a Justice of the United States Supreme Court.

Mr. ASHURST. Let me say, however, that I believe the Supreme Court of the United States had authorized Nagle to accompany Justice Field on this trip on the circuit.

Mr. PEPPER. That is correct.

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

Mr. PEPPER. I yield.

Mr. CLARK. I do not wish to take the Senator's time, but a situation of very similar character arose in the State of Missouri in the last 4 or 5 years, in which the case of In re Nagle was followed. Some G-men or Federal officers had been informed that gangsters had taken refuge in a certain house, and they attempted to enter the house without a search warrant. They demanded that the door be opened, and when the door was not opened they fired through the door and killed a woman who was asleep in the bed. It turned out that the people who were inhabiting the house were not gangsters, that the attempted entry on the part of the Federal officers was entirely erroneous, and that the killing of this woman was entirely without justification of law whatever. One of the Federal officers involved was arrested by the State authorities, and, by direction of the Attorney General of the United States, the Federal district attorney intervened and took this man away. A State officer sought to prosecute him in the Federal court, but the Federal officer was discharged. That case followed the case of In re Nagle, to which the Senator referred.

Mr. PEPPER. I want to thank Senators for not raising the point of order in respect to what has just taken place, because we all acted in good faith, and, of course, I did not intend to let this discussion break into my first speech. I appreciate the fact that Senators have not raised the point of order relative to the procedure which has just taken place.

Mr. President, I do not see any consolation the Nagle case could give any proponent of this bill, because as the Senator from Arizona [Mr. ASHURST] correctly stated, it was known that some threats had been made against the Supreme Court Justice in question on account of some personal difficulty between the Justice and Terry. Two subjects had caused considerable difficulty—a fair lady and considerable money. Consequently a deputy marshal was sent along to guard the Justice. When Terry approached the Justice in the restaurant the man who accompanied the Justice shot Terry. That raised the question whether Nagle was amenable to the State court or not, and naturally the Supreme Court protected a man who had kept one of its own Justices from being assassinated.

Mr. CONNALLY. Mr. President, will the Senator yield for a question?

Mr. PEPPER. I yield.

Mr. CONNALLY. I wish to ask the Senator a question with respect to the distinction he has just pointed out so very well. Several Senators have come in since the Senator made the distinction. Is it not true that the distinction between the two sets of citizens is that under the fourteenth amendment, which is purely a prohibition against affirmative State action, the action, in order to come within the prohibition, must be by a State, and in the cases which have been cited in selecting juries and matters of that kind the officers are doing what the State commands them to do as officers, selecting juries to try the accused, and that when they do those things it is the State's power and not their individual power which is being exerted? But in the instant case, the one being cited, the effort is to punish sheriffs and others who are not carrying out the orders of the State government, but are defying the orders of their State government, which requires that they protect rather than turn over their victim to the lynchers. So in the one case it is State power which is exerted and in the other, action is taken by individuals to whom the fourteenth amendment, under all these decisions, has no application whatever.

Mr. PEPPER. Mr. President, I wish the Senator from Texas would follow the comment I am about to make. If the contrary of what we have been saying were true, then it would follow that if a sheriff out of personal vengeance and passion crept around to the window of an enemy and shot him down in cold blood, that would constitute action of the State which would be federally amenable, and the next step would be that any citizen who takes the life of a United States citizen would be amenable to the Federal law. Then the whole jurisdiction of criminal law would have passed over to the Federal Government instead of being in the State, or they would be dually capable of prosecuting.

Mr. ASHURST. Mr. President, until my able friend, the Senator from Illinois [Mr. LEWIS] did me the honor to ask a question I had no intention of entering the debate. But will the Senator permit me to ask him a question? I do not desire to mar the uniform symmetry of his argument. I could not, if I wished to do so, mar the uniform symmetry of the able Senator's argument. The Senator from Kentucky [Mr. BARKLEY] propounded a question. To my mind, his question is unanswerable. We cannot assume that any phrase, or, indeed, any word, in the Constitution is meaningless; and unless and until the question of the Senator from Kentucky is answered we must assume that it was intended that Congress may legislate in effectuating the fourteenth amendment.

The question the Senator asked was with relation to section 5 of the fourteenth amendment, which reads as follows:

> The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Unless and until someone answers that question and explains what the fifth section of the fourteenth amendment means, I am bound to conclude that Congress must have some power respecting the fourteenth amendment. Was that the Senator's question?

Mr. BARKLEY. Yes.

Mr. PEPPER. Let me make an effort to answer the Senator. Would not a statutory provision which gives to a citizen who is about to be hanged under an unconstitutional State law, or an unconstitutional State process, an immunity from that punishment and a restoration to his liberty, be a statutory provision that vindicated the prohibitions of the fourteenth amendment?

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

Mr. PEPPER. Let me ask this question: Is not that a a clear-cut instance of Congress exercising the power to enforce the immunities granted by the fourteenth amendment?

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

Mr. PEPPER. I yield.

Mr. McKELLAR. When the Congress passes legislation, whether it has previously passed it, and it is then in existence or whether it has subsequently passed it, which permits a review of a case tried in a State court, and permits carrying it to the Supreme Court of the United States, is not that "appropriate legislation"?

Mr. PEPPER. That is one step in that direction. I am willing to go a step further. The Constitution does not define the adequacy of the provisions Congress may make. It merely confers power upon Congress. It does not say how far it may go. That is one step.

There is a second step. If a State, for example, made by law a provision which was clearly in violation of the fourteenth amendment, it would be within the power of Congress to provide redress either in the form of immunity against that affirmative action, or a counter form in the nature of making it a criminal offense for any officer to enforce a statute in violation of the Federal Constitution.

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

The PRESIDING OFFICER. Does the Senator from Florida yield to the Senator from Kentucky?

Mr. PEPPER. I yield.

Mr. BARKLEY. Does not the Senator think that in any case where the Supreme Court held that either by the passage of an act of the legislature or by a failure to enact legislation the citizens of a State have been denied the equal protection of the laws, and reversed the case because of that, Congress, under the amendment, would have power to enforce the fourteenth amendment by appropriate legislation?

Mr. PEPPER. I do not.

Mr. BARKLEY. In any case where the Supreme Court held that there was a denial of the equal protection of the law, could not Congress act?

Mr. PEPPER. All of us who know the history of this amendment know that it was not a guaranty that these people should actually enjoy their civil rights. If it had been intended as a guaranty that they should enjoy their civil rights, private citizens should have been prohibited from a deprivation of them. All the decisions of the courts say that Congress does not have power to prohibit private citizens from doing wrongs, even Federal wrongs, to other private citizens, because that is a part of the rough-and-tumble of life. But, Mr. President, the Federal Constitution contemplated that there would be cases where the Southern States, with the newly enfranchised Negroes enjoying citizenship for the first time, would want to pass laws that would discriminate against them, that would deny to them the equal protection of the laws, and that would not give them the benefit of the same police power which protected white citizens.

The amendment did not say, "The Negro's life is more sacred than that of the white man." It merely said to the States, "If you enact a law saying that it is illegal to kill a white man, you cannot say that there is immunity from punishment for killing a colored man." The framers of the amendment were afraid of that kind of a discriminatory statute. They were afraid that the colored race would be deprived of the right of the ballot, which they had studiously conferred upon them as an incident of their citizenship, by intention. They did not contemplate that the States could lay down standards of education or something else which would have the effect of discriminating with respect to the colored man at the ballot box.

Since that time, in Ex parte White and all the cases down to the last year or two, where the Supreme Court reviewed the Texas primary law, they have always looked to see whether the statute—for example, with regard to being a member of a political club—was actually employed to keep the Negroes from voting; and in each of the cases where they found that it was they have stricken down the statute, because it was the organized power of the State attempting to take away from a citizen his constitutional right.

The fourteenth amendment says that persons born or naturalized in the United States shall be citizens of the several States and of the United States. If we go on the assumption that a man is a citizen of the United States and enjoys the protection of the Federal Constitution, the same power would give authority to make a private homicide a Federal offense. If that may be done, what is meant by the differences between local and Federal police powers?

So, Mr. President, I hope the proponents of this bill, in the opportunity they will have in abundance, will come before the Senate and produce a case where the omission per se—not the incident, not the eventual consequence of the omission, but the omission per se, the failure of the sheriff to get into his automobile and hurry to the scene of the lynching, or the failure of the district attorney to prosecute supposed lynchers with sufficient ardor and enthusiasm, or the failure of the judge to exercise all diligence on the bench—has been held to be a Federal offense.

If I should come into this Chamber and lay my hand upon the gentleman who is writing here, I should have no authority to do that. That would constitute a trespass. That would be an assault. But suppose in a certain case that gentleman should be intoxicated and should be misbehaving upon the floor of the Senate. The Sergeant at Arms who sits over there I assume would have the legal and actual authority to go over and lay hands upon that man and take him out of the Senate Chamber. Why? Because in that instance he would be acting upon a situation that would justify official action.

In the States, a man cannot be arrested or hanged without a writ. If the officer has not the proper kind of writ, he cannot hang a man. That is the analogy which I wish to bring to the question asked me by the Senator from Kentucky. He said that the reason why the Supreme Court reversed the case which was referred to was that the State court did not let the lawyer for the defense do something. That was not the thing that was complained of. The Supreme Court said:

> You have not had the regular processes of the law in this case. You might just as well have taken the defendant out and had a mock court martial.

Let me invite the attention of the Senator from Kentucky to a hypothetical case. Let us suppose that certain Army officials thought that a man who had once been in the Army was still in the Army, and they subjected him to a court martial, and after they had convicted him they got ready to hang him pursuant to what they thought was the lawful authority of a court martial, which has jurisdiction over certain offenses committed in the military affairs of the United States.

Suppose that man should come in and say that he was not in the Army; that he had been discharged 6 months previously; he had again become a private citizen. The officers did not know that he had become a private citizen, and they tried him by court martial for the crime which he had committed. What would the court do? On a habeas corpus proceeding, or on any kind of review, the court would dismiss him. He would be granted immunity from that kind of punishment, because the process justifying the taking of his life had not been complied with.

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

The PRESIDING OFFICER. Does the Senator from Florida yield to the Senator from Kentucky?

Mr. PEPPER. I yield.

Mr. BARKLEY. The hypothetical case described by the Senator does not come within the provisions of the fourteenth amendment, because it does not involve the denial by any State of due process of law or the equal protection of the laws. It is an assumed jurisdiction by an Army court-martial. That is a Federal institution, not a State institution.

Mr. PEPPER. Very well. I shall perfect the example.

Let us suppose that in a certain county a homicide has been committed, and let us suppose there is a justice of the peace there. Inasmuch as there is no one else around to try the man, and there is no court in session, the justice of the peace concludes that it would be perfectly proper to try the man for homicide in the justice of the peace court. Suppose he tries the man and sentences him to death in his justice of the peace court, without a jury. He adjudicates that the man is guilty, having gone through the form and the ritual of law.

The sheriff of the county goes out one morning and starts to hang the defendant, and in the meantime he has sued out a writ of habeas corpus before a judge somewhere. The law has been complied with in a certain form, and the man is about to be executed. What does the court say? The court says, "You have not given the defendant due process of law—that is, not due process of law for that case—and when you have not given him due process of law, your action is without law." It is unlawful, as it were, because it is without law.

So, Mr. President, I believe that any fair examination of the provisions of the Constitution prior to adoption of the fourteenth amendment and any comment that is contemporaneous with the enactment of the fourteenth amendment——

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

Mr. PEPPER. I yield.

Mr. BARKLEY. It had been the understanding that we would not continue the session later than 10 o'clock tonight.

Mr. PEPPER. Mr. President, I do not want to lose the floor.

Mr. BARKLEY. Before taking the Senator off his feet, I wish to propound a parliamentary inquiry, in the Senator's own protection and interest as well as in order to clear up the situation. Is the Senator now making his first or second speech on the pending question?

Mr. PEPPER. I suggest that I am making my first speech.

The PRESIDING OFFICER. The Chair is informed by the Parliamentarian that this is the first speech made by the Senator from Florida on the pending bill.

Mr. CLARK. Mr. President——

The PRESIDING OFFICER. It is the first time he has addressed the Senate on this bill, and no point of order has been made that he is making a second speech.

Mr. BARKLEY. That point of order would not lie anyway, because the point of order could not be made until the conclusion of his second speech, and the beginning of a third speech.

Simply to arrive at the correct status, for I do not wish the Senator from Florida to lose any rights and I do not want to take any advantage of him, under the rulings that have been made here when a Senator yields for a recess or adjournment, that is the conclusion of one speech—that is the conclusion of the speech he is making at the time—and if he is recognized the next day to make another one, that is the beginning of another speech. If the Senator from Florida is making his first speech, there is no trouble about it; he will be entitled to recognition tomorrow when the Senate resumes its session; but, if he is making his second speech, and anybody should make the point tomorrow when he asks for recognition, then it might have to be passed upon. For that reason I want to clear up the parliamentary situation now.

The PRESIDING OFFICER. The Chair understands the parliamentary situation to be that the Senator from Florida spoke this afternoon for the first time upon the pending bill.

Mr. BARKLEY. Mr. President, just a moment. The parliamentary situation is that Senators are now speaking on the amendment of the Senator from Illinois [Mr. LEWIS] to the bill as reported by the committee. That is the pending question, is it not?

The PRESIDING OFFICER. The Senator is correct.

Mr. BARKLEY. That is a different situation from that which obtains when we have entered into a unanimous-consent agreement to limit debate on a bill and all amendments, in which case the Senator may speak on an amendment for a certain length of time and then on the bill. That does not apply now, and no Senator can speak more than twice on the pending question, which is the amendment of the Senator from Illinois to the amendment of the committee.

The PRESIDING OFFICER. The Chair inadvertently referred to the pending bill. It is the amendment of the Senator from Illinois to the amendment reported by the committee that is pending before the Senate, and the Senator from Florida has spoken only once upon the pending amendment, and that is this afternoon.

Mr. BARKLEY. That is satisfactory to me.

Mr. CLARK. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. CLARK. Under the ruling announced by the Vice President 2 or 3 days ago if a Senator yields for the purpose of the insertion of matter into the RECORD during the course of his remarks, does not that constitute the transaction of business and does not the Senator thus yielding thereby lose the floor?

The PRESIDING OFFICER. It does constitute the transaction of business, but the Presiding Officer at the time, being the Vice President, stated that if that question arose he would not determine that the Senator had thereby yielded the floor and upon resuming had begun his second speech, but that he would submit the question to the Senate.

Mr. CLARK. Mr. President, we of course all understand it is impossible to take an appeal from the opinion expressed by the Chair in reference to a parliamentary inquiry, but, in all fairness to the Senator from Florida, I feel that I should reserve the right when the question is again presented to submit that question to the then occupant of the Chair as to whether the third speech has been begun.

Mr. CONNALLY. Mr. President, I desire to propose a unanimous-consent agreement. I ask unanimous consent that the Senator from Florida may proceed tomorrow, since he is now about to be interrupted by a recess, and that it continue to be his first speech.

Mr. BARKLEY. Reserving the right to object to that, I think it is much better procedure to follow parliamentary rules than to violate them by unanimous consent. The other day after the Senator from Louisiana [Mr. ELLENDER] had spoken for 5 days and asked unanimous consent to speak the sixth, I made no objection, but I made it perfectly plain that I would not consider that a precedent by which I would be bound or by which any of us would be bound in the future if unanimous consent were requested that a Senator may make his third speech.

I am satisfied, under the ruling of the Chair, that the Senator from Florida is now making his first speech which would entitle him to recognition tomorrow, and, for that reason, I do not feel that I am at liberty to consent to the request of the Senator from Texas, because I do not think it is necessary.

Mr. CONNALLY. Does the Senator object? I ask unanimous consent, as I have indicated, and if the Senator from Kentucky wishes to object, very well.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Texas?

Mr. CLARK. I object.

Mr. BARKLEY. Mr. President, I am making the point that it is not necessary under the ruling of the Chair for the Senator from Texas to make such a unanimous-consent request. If the Senator from Florida is making his first speech, as the Chair holds, then he is entitled to speak tomorrow without unanimous consent.

The PRESIDING OFFICER. The Chair understands the unanimous-consent proposal suggested by the Senator from Texas to be that the Senator from Florida may continue his speech tomorrow and it not be considered as his second speech, notwithstanding the fact that a motion to recess may have intervened.

Mr. BARKLEY. I would not agree that it should not be considered his second speech, because, under the rule, when an adjournment or recess is taken at any time during the day while a speech is in process, that concludes one speech, but the Senator is entitled to be recognized tomorrow for his second speech. He does not have to get unanimous consent in order to do that. For that reason I rose to try to protect the Senator from Florida in the exercise of his rights. I do not want to be in the position of objecting to the Senator proceeding on tomorrow, because I do not object, for he has a right to go on under the ruling of the Chair.

The PRESIDING OFFICER. The Chair understands that there is no necessity for ruling on this parliamentary situation at the present time. The Senator from Florida will be recognized tomorrow to continue his speech. Whether he makes his first speech or second speech, that question can properly be presented to the Chair when the point of order is made that the Senator from Florida can no longer retain the floor in the discussion of the pending amendment.

Mr. CONNALLY. Mr. President——

Mr. BARKLEY. With the understanding that the Senator from Florida will be recognized tomorrow, I wish to move to suspend the proceedings of the Senate at this time.

Mr. CONNALLY. Mr. President, was my unanimous consent put to the Senate? I insist on it.

The PRESIDING OFFICER. The Chair understands the request for unanimous consent made by the Senator from Texas to be that, in the event the Senate takes a recess until tomorrow, when it reconvenes the Senator from Florida shall be recognized, and shall be considered as continuing the first speech made by him on the pending question. Is there objection?

Mr. CLARK. Mr. President, reserving the right to object, the request as put by the Senator from Texas, of course, precludes the question as to whether, under the ruling of the

Vice President announced a few days ago, the Senator from Florida concluded his first speech by yielding to the Senator from Tennessee [Mr. McKELLAR] for the insertion of matter in the RECORD. Therefore, since the request of the Senator from Texas is so all-embracing, I feel constrained to object.

The PRESIDING OFFICER. Objection is heard.

Mr. BARKLEY. Mr. President——

The PRESIDING OFFICER. Does the Senator from Florida yield to the Senator from Kentucky?

Mr. PEPPER. Not for the present, Mr. President.

The PRESIDING OFFICER. The Senator from Florida declines to yield.

Mr. PEPPER. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. PEPPER. My understanding now is that if the Senator from Florida yields for a motion for a recess, then, beginning tomorrow morning, if I sought recognition, I would be considered to have begun my second speech.

The PRESIDING OFFICER. The Senator from Florida would obtain recognition tomorrow when the Senate reconvenes. As to whether he would be making his second speech is not a question that now arises.

Mr. BARKLEY. Mr. President, I am trying to protect the Senator from Florida in the only possible way.

The PRESIDING OFFICER. The Chair did not state that it would be the second speech of the Senator from Florida, but stated that the question did not now arise for determination.

Mr. BARKLEY. I agree that the point cannot be made now; but when the Senator from Florida asks the Chair for information, if the Chair can afford the information to the Senator, I think it would probably be in the interest of the Senator to do so.

The PRESIDING OFFICER. It is the understanding of the present occupant of the chair that the precedent of the Senate is to the effect that if a Senator yields for a motion to recess or adjourn then the Senator yields the floor, and when he is recognized when the Senate reconvenes he is then making his second speech on the question pending.

Mr. PEPPER. Mr. President, a further parliamentary inquiry. The pending issue is the amendment of the Senator from Illinois [Mr. LEWIS] to the bill, as I understand.

The PRESIDING OFFICER. The Senator from Florida is correct.

Mr. PEPPER. If the Senator from Florida secured recognition tomorrow the Senator from Florida would be making his second speech upon the amendment, which would exhaust his right to speak upon the pending amendment when the next recess intervenes.

The PRESIDING OFFICER. The Senator states the situation correctly.

Mr. PEPPER. A further parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. PEPPER. If the Senator from Florida were to propose an amendment to the amendment, would he be privileged to begin his first speech upon the amendment to the amendment at the time he made that proposal?

The PRESIDING OFFICER. In the event the Senator from Florida should propose an amendment to the pending amendment, the Senator from Florida would then be entitled to make two additional speeches on the amendment proposed by him to the amendment.

Mr. PEPPER. With that understanding of the parliamentary situation, I yield to the Senator from Kentucky to make a motion for a recess.

Mr. BARKLEY. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. BARKLEY. In that event the speculative and hypothetical amendment which might be offered by the Senator from Florida should be the pending question, and not the amendment of the Senator from Illinois [Mr. LEWIS]?

The PRESIDING OFFICER. The Senator from Kentucky is correct.

Mr. PEPPER. And in such case the Senator from Florida would have the right to make two speeches on the then pending amendment?

The PRESIDING OFFICER. The Senator from Florida is correct.

Mr. PEPPER. With that understanding, I yield to the Senator from Kentucky to make a motion for a recess until tomorrow.

ADDITIONAL PETITION

Mr. SHEPPARD presented the petition of Rev. Paul W. Evans and sundry other citizens of Salado, Tex., praying for the adoption of a constitutional amendment providing a referendum on war, which was referred to the Committee on the Judiciary.

EXECUTIVE REPORTS OF COMMITTEES

As in executive session,

Mr. LOGAN, from the Committee on the Judiciary, reported favorably the nomination of Stanley Reed, of Kentucky, to be an Associate Justice of the Supreme Court of the United States, vice Sutherland, retired.

Mr. McGILL, from the Committee on the Judiciary, reported favorably the nomination of William B. Fahy, of Missouri, to be United States marshal for the eastern district of Missouri.

Mr. KING, from the Committee on the Judiciary, reported favorably the following nominations:

Daniel B. Shields, of Utah, to be United States attorney for the district of Utah; and

Gilbert Mecham, of Utah, to be United States marshal for the district of Utah.

Mr. CONNALLY, from the Committee on the Judiciary, reported favorably the following nominations:

James R. Wright, of Texas, to be United States marshal for the northern district of Texas; and

William R. Smith, Jr., of Texas, to be United States attorney for the western district of Texas.

Mr. McKELLAR, from the Committee on Post Offices and Post Roads, reported favorably the nomination of Paul Morrison Shadel to be postmaster at Ramona, Calif., in place of E. H. Russell, resigned.

The PRESIDING OFFICER. The reports will be placed on the Executive Calendar.

EXECUTIVE MESSAGES REFERRED

The PRESIDING OFFICER, as in executive session, laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

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

RECESS

Mr. BARKLEY. Mr. President, I move that the Senate take a recess until 12 o'clock noon tomorrow.

The motion was agreed to; and (at 10 o'clock and 12 minutes p. m.) the Senate took a recess until tomorrow, Tuesday, January 25, 1938, at 12 o'clock meridian.

NOMINATIONS

Executive nominations received by the Senate January 24 (legislative day of January 5), 1938

UNITED STATES ATTORNEY

Joe V. Gibson, Esq., to be United States attorney for the northern district of West Virginia, vice Howard L. Robinson, resigned.

APPOINTMENT IN THE NATIONAL GUARD OF THE UNITED STATES

GENERAL OFFICER

Brig. Gen. Edgar Carl Erickson, Massachusetts National Guard, to be brigadier general, National Guard of the United States.

APPOINTMENTS AND PROMOTIONS IN THE NAVY

Capt. Forde A. Todd to be a rear admiral in the Navy, to rank from the 1st day of January 1938.

The following-named commanders to be captains in the Navy, to rank from the date stated opposite their names:

Franklin Van Valkenburgh, December 1, 1937.

Vance D. Chapline, December 1, 1937.
Frank A. Braisted, December 1, 1937.
Mark C. Bowman, January 1, 1938.

The following-named lieutenant commanders to be commanders in the Navy, to rank from the date stated opposite their names:

John J. Ballentine, November 1, 1937.
John R. Sullivan, December 1, 1937.
John D. Alvis, December 1, 1937.
Clifton A. F. Sprague, December 1, 1937.
Harold Biesemeier, January 1, 1938.

The following-named lieutenants to be lieutenant commanders in the Navy, to rank from the date stated opposite their names:

Franklin O. Johnson, November 25, 1936.
Woodson V. Michaux, June 30, 1937.
George E. Nold, September 1, 1937.
William F. Jennings, October 14, 1937.
Jesse R. Wallace, November 1, 1937.
Bradford Bartlett, December 1, 1937.
Frank R. Walker, December 1, 1937.
John J. O'Donnell, Jr., January 1, 1938.

The following-named lieutenants (junior grade) to be lieutenants in the Navy, to rank from the dates stated opposite their names:

Henry F. Ripley, June 30, 1936.
William J. Galbraith, June 30, 1937.
Augustus R. St. Angelo, June 30, 1937.
Charles F. Phillips, June 30, 1937.
James A. Adkins, June 30, 1937.
Harvey P. Burden, September 1, 1937.
Gilbert C. Carpenter, September 1, 1937.
Frank B. Miller, December 1, 1937.

The following-named ensigns to be lieutenants (junior grade) in the Navy, to rank from the date stated opposite their names:

Joseph L. LaCombe, November 29, 1937.
Denis H. Biwerse, May 31, 1937.
Charles R. Ware, May 31, 1937.

Passed Assistant Surgeon John F. Luten to be a surgeon in the Navy, with the rank of lieutenant commander, to rank from the 30th day of June 1937.

The following-named assistant surgeons to be passed assistant surgeons in the Navy, with the rank of lieutenant, to rank from the date stated opposite their names:

Murphy K. Cureton, June 3, 1937.
Richard S. Silvis, June 30, 1937.

The following-named assistant civil engineers to be civil engineers in the Navy, with the rank of lieutenant, to rank from the date stated opposite their names:

Charles L. Strain, May 1, 1936.
Robert H. Meade, June 1, 1936.

The following-named lieutenants (junior grade) to be assistant civil engineers in the Navy, with the rank of lieutenant (junior grade), to rank from the 31st day of May 1937:

Lewis C. Coxe
William C. G. Church
Richard L. Mann

Chaplain Albert E. Stone to be a chaplain in the Navy, with the rank of commander, to rank from the 30th day of June 1936.

The following-named boatswains to be chief boatswains in the Navy, to rank with but after ensign, from the 15th day of October 1937:

Cecil E. Dowling	Frank Guthrie
Wilbur D. Platt	Francis P. Moran
Harvey M. Anderson	John J. O'Brien

Carpenter Jack Seward to be a chief carpenter in the Navy, to rank with but after ensign, from the 15th day of October 1937.

Gunner Samuel W. McGovern to be a chief gunner in the Navy, to rank with but after ensign, from the 15th day of October 1937.

HOUSE OF REPRESENTATIVES

MONDAY, JANUARY 24, 1938

The House met at 12 o'clock noon.

The Reverend Frederick Brown Harris, D. D., pastor of Foundry Methodist Episcopal Church, Washington, D. C., offered the following prayer:

Our Father God, at the high altar of the Republic, in this shrine of each patriot's devotion we bow in contrition, confessing the sins that so easily beset us. With pure hearts and clean hands may we ascend the hill of the high trust and task which has been committed to us.

In a torn and troubled world we hear bitter, discordant voices, accents of hate, the sound of fearful stupidities which spoil the good earth and mar the beauty of brotherhood. In such a day may we fail not man nor Thee. While millions are being bound by mental and spiritual chains, may America keep on her victorious way of brotherly cooperation without slavish coercion. Save us in days like these from a spineless neutrality which blinds us to the eternal distinctions between right and wrong. Deliver us from an easy belief in statutory substitutes for character. Scorning any compromise of our ideals, may we never adopt shabby and unworthy means even as we aim at high and shining objectives. And thus, not being disobedient to the heavenly vision may we serve the present age. We ask it in the Ever Blessed Name. Amen.

The Journal of the proceedings of Friday, January 21, 1938, was read and approved.

EXTENSION OF REMARKS

Mr. TREADWAY. Mr. Speaker, I ask unanimous consent to extend my own remarks in the RECORD and to include some questions asked me by a paper in my district together with my replies thereto.

The SPEAKER. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

Mr. ROBINSON of Utah. Mr. Speaker, I ask unanimous consent to extend my own remarks in the RECORD and include therein a speech made by Director of Parks Arno B. Cammerer, on January 21, before the American Planning and Civic Association.

The SPEAKER. Is there objection to the request of the gentleman from Utah?

There was no objection.

PERMISSION TO ADDRESS THE HOUSE

Mr. DUNN. Mr. Speaker, I ask unanimous consent to address the House for 20 seconds.

The SPEAKER. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

Mr. DUNN. Mr. Speaker, I hope there will be enacted into law at this session of Congress a wage and hour bill. At the special session of Congress the wage and hour bill was recommitted to the Committee on Labor. As a member of the Labor Committee I want to go on record as saying that I am very much in favor of reporting the bill back to the House and hope it will be enacted into law.

The wage and hour bill is very much needed in this country. According to information I have received—and I believe it to be an absolute fact—there are people employed in different sections of the country who are compelled to work 10 to 12 hours a day and 7 days a week for less than 75 cents per day. This kind of treatment to human beings is damnable, abominable, and vicious. No person should be forced to work long hours for starvation wages. There is not any necessity for it. There is plenty of work for everybody who is physically and mentally able to work.

It has been said by outstanding economists that if we would put into law the present wage and hour measure now being considered by the Labor Committee, several million people would be put to work.

Let us eradicate sweat shops, child labor, and all the other social evils which are responsible for the human suffering that is existing throughout the land. The way to end poverty in our country and in every other country is to pass laws which will give people permanent employment at a living wage and provide adequate pensions for the aged, widows with dependent children, and others who are physically incapacitated. Our natural resources are inexhaustible; therefore there should not be any reason why humanity should be compelled to live in poverty.

EXTENSION OF REMARKS

Mr. FISH. Mr. Speaker, recently I propounded a unanimous consent request, as follows:

Mr. FISH. Mr. Speaker, I ask unanimous consent to extend my own remarks in the RECORD and include therein an article on the Haitian massacre in connection with a speech I delivered a few weeks ago in which I promised to present this information.

The SPEAKER. Is there objection?

There was no objection.

Mr. Speaker, this was taken out of the RECORD, I believe in accordance with the practice, because the article I submitted was over the two pages permitted by certain rules or practices of the House. I find the article is just a little over the two pages allowed and would cost $56 more than the amount allows.

I asked for consent to insert this article not only because I thought it was useful information for the House, but I was also asked by a very high Government official to include this article in the RECORD. I am not at liberty to give the name of the gentleman, but I will do so to the Speaker and to the majority leader.

Mr. Speaker, I therefore ask unanimous consent to have the article printed although it will cost an additional $56.

The SPEAKER. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. MARTIN of Massachusetts. Mr. Speaker, I ask unanimous consent to extend my own remarks in the RECORD and include therein an address I made in Boston last Saturday.

The SPEAKER. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

PERMISSION TO ADDRESS THE HOUSE

Mr. WOODRUFF. Mr. Speaker, I ask unanimous consent to address the House today for 15 minutes after the disposition of business on the Speaker's table and at the conclusion of the legislative program in order for the day.

The SPEAKER. Is there objection to the request of the gentleman from Michigan?

There was no objection.

EXTENSION OF REMARKS

Mr. DOUGLAS. Mr. Speaker, I ask unanimous consent to extend my own remarks in the RECORD, and include therein an article I have written on socialized medicine.

The SPEAKER. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. NELSON asked and was given permission to extend his own remarks in the RECORD.

ADDITIONAL NUMBER OF MEDICAL AND DENTAL OFFICERS FOR THE ARMY

Mr. MAY. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill S. 2463, with a House amendment, and concur in the Senate amendment to the House amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment to the House amendment, as follows:

After the word "Corps", at the end of section 1, insert "and the authorized commissioned strength of the Army is hereby increased by 150 in order to provide for the increases herein authorized in the Medical and Dental Corps."

The SPEAKER. Is there objection to the request of the gentleman from Kentucky?

Mr. MARTIN of Massachusetts. Mr. Speaker, reserving the right to object, will the gentleman from Kentucky explain the Senate amendment?

Mr. MAY. Mr. Speaker, the Senate amendment merely increases the number of dentists and the number in the Medical Corps to correspond to the legislation that was reported in the original bill as well as the appropriation made for 1938.

Mr. MARTIN of Massachusetts. The House reduced the number?

Mr. MAY. No. The Military Affairs Committee failed to state the number. The Senate figured out the number that would be proper under existing legislation and added 50 dentists and 100 medical officers to the Medical and Dental Corps.

Mr. MARTIN of Massachusetts. In other words, the gentleman's committee did not definitely state the number but the Senate did put in the exact number?

Mr. MAY. That is right.

Mr. THOMASON of Texas. Will the gentleman yield?

Mr. MAY. I yield to the gentleman from Texas.

Mr. THOMASON of Texas. Does the bill as now amended include veterinarians?

Mr. MAY. I am not sure, but I do not think it does.

The SPEAKER. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

The Senate amendment to the House amendment of the Senate bill was agreed to.

A motion to reconsider was laid on the table.

DISTRICT OF COLUMBIA DAY

The SPEAKER. This is District of Columbia Day.

BARBERS IN THE DISTRICT OF COLUMBIA

Mr. PALMISANO. Mr. Speaker, I call up the bill (H. R. 7085) to regulate barbers in the District of Columbia, and for other purposes, and ask unanimous consent that the bill may be considered in the House as in Committee of the Whole.

The Clerk read the title of the bill.

The SPEAKER. Is there objection to the request of the gentleman from Maryland?

There was no objection.

The Clerk read as follows:

Be it enacted, etc., That this act may be cited as the District of Columbia Barber Act.

SEC. 2. When used in this act—

(a) The term "Board" means the Board of Barber Examiners for the District of Columbia.

(b) The term "certificate" means a certificate of registration issued by the Board.

(c) The term "Commissioners" means the Commissioners of the District of Columbia.

(d) The term "barber instructor" means the teaching of the barber profession as provided for in this act.

(e) The term "barbering" means any one or any combination of the following practices when done upon the head and neck for cosmetic purposes and not for the treatment of disease or physical or mental ailments and when done for payment either directly or indirectly or without payment for the public generally constitutes the practice of barbering within the meaning of this act.

To shave, trim the beard, cut or bob the hair of any person of either sex for compensation or other reward, received by the person performing such service or any other person, to give facial and scalp massages or treatments with oils, creams, lotions, or other preparations either by hand or mechanical appliances; to singe, shampoo the hair, or apply hair tonics; or to apply cosmetic preparations, antiseptics, powders, oils, clays, or lotions to scalp, face, or neck.

SEC. 3. There is hereby created a Board of Barber Examiners for the District of Columbia. The Board shall consist of three members, two of whom shall be practical barbers who have followed the practice of barbering in the District of Columbia for at least 5 years immediately prior to his appointment. One of said members shall be recommended by the Journeymen Barbers' Union, one of said members be recommended by the Associated Master Barbers of the District of Columbia. The members of the Board shall be appointed by the Commissioners of the District of Columbia, one for the term of 1 year, one for the term of 2 years, and one for the term of 3 years. Thereafter one member of said Board shall be appointed each year for the term of 3 years and shall hold office until his successor is appointed and qualified.

The Commissioners of the District of Columbia shall have the power to remove any member of said Board for incompetency, gross

immorality, disability, for any abuse of his official power, or for other good cause, and shall fill any vacancy thus occasioned by appointment within 30 days after such vacancy occurs. Members appointed to fill vacancies caused by death, resignation, or removal shall serve only for the unexpired term of their predecessors. The Commissioners shall appoint a president, a vice president, and a secretary-treasurer from the members of the Board.

The secretary of the Board shall keep a record of its proceedings, a register showing the name and business and residence addresses of persons to whom it has issued certificates, and the number and date of the certificate of each such person. Subject to the approval of the Commissioners, the Board shall adopt such rules and sanitary regulations as prescribed by the Health Department of the District of Columbia and as are necessary to carry out the provisions of this act. The Board shall report annually to the Commissioners all of its official acts during the preceding year and shall make such recommendations as it deems expedient.

SEC. 4. The Board shall issue a certificate of registration as a registered barber to any person of good moral character and temperate habits who has practiced as a registered barber apprentice for 2 years under the immediate personal supervision of a registered barber, and who passes an examination, conducted by the Board to determine his fitness to practice barbering, accompanied by a health certificate showing that he is free from contagious and infectious diseases and issued by a registered licensed physician of the District of Columbia under oath.

SEC. 5. The Board shall issue a certificate of registration as a registered barber apprentice to any person who is at least 16 years of age and is of good moral character and temperate habits who passes an examination conducted by the Board to determine his fitness to practice as a barber apprentice, accompanied by a health certificate showing that he is free from contagious and infectious diseases and issued by a registered licensed physician of the District of Columbia under oath.

SEC. 6. The Board shall conduct examinations of applicants for certificates of registration as registered barbers or registered barber apprentices on the third Tuesdays in January, April, July, and October, at such hours as the Board shall prescribe. Such examination shall include both a practical demonstration and a written examination.

Mr. PALMISANO (interrupting the reading of the bill). Mr. Speaker, I ask unanimous consent that further reading of the bill may be dispensed with.

Mr. O'MALLEY. I object, Mr. Speaker.

The Clerk resumed the reading of the bill.

Mr. LEMKE. Mr. Speaker, I move to strike out the last word of section 6.

Mr. Speaker, I ask unanimous consent to revise and extend my own remarks in the RECORD and include therein excerpts from public documents.

I also ask unanimous consent, Mr. Speaker, that I may proceed out of order.

The SPEAKER. The gentleman from North Dakota asks unanimous consent to revise and extend his own remarks in the RECORD and include therein certain documents and records. The gentleman also asks unanimous consent to speak out of order for 5 minutes.

Is there objection to the request of the gentleman from North Dakota?

There was no objection.

Mr. LEMKE. Mr. Speaker, I am going to review the processing tax on hogs levied under the Agricultural Adjustment Administration, and types of legislation enacted by Congress to refund processing tax to processors and distributors after the A. A. A. was held unconstitutional by the Supreme Court. Congress acted very promptly to provide legislation to refund taxes to processors and distributors, but to date it has not given the farmers, who it now appears really paid the processing tax, the same just legislation.

I shall, therefore, point out the legislation needed to be enacted to make restitution to hog producers of the unjustly exacted processing tax on hogs. I shall point out the effects of the tax on hog producers. I shall submit evidence showing that the burden of this tax was thrown entirely on the shoulders of the producers and not upon the shoulders of the consumers or the processors. I shall show the justice of the producers' claim for restitution by the Government.

In the collection of the facts that I am now presenting I had the assistance and cooperation of Edward E. Kennedy, of the Washington Farmers' Service. I am sure Members of Congress who are familiar with farm legislation will agree with me that Mr. Kennedy is one of the best authorities and one of the best informed men on farm legislation and the needs of farmers in this Nation.

RESTITUTION OF PROCESSING TAX TO HOG PRODUCERS

SYNOPSIS

The Agricultural Adjustment Act, which was enacted May 12, 1933, provided, among other things, for the collection from the processors of a processing tax on the first processing of live hogs, beginning at 50 cents per hundredweight and graduated up to $2.25 per hundredweight. This tax remained in effect until January 6, 1936, when the United States Supreme Court declared it to be invalid and unconstitutional.

The theory of the A. A. A. and the intent of the Congress was that the burden of the tax would be borne by the consumer and that from the proceeds of such tax a fund would be provided out of which to pay benefits to farmers in consideration of curtailing hog production.

The A. A. A. provided for the collection of processing taxes from three sources: First, a tax on imported hogs; second, a tax on processors' floor stocks at the time the tax first went into effect; and, third, a tax on the first processing of live hogs sold to processors by domestic producers. We are concerned only with this last-mentioned tax, the aggregate amount of which, during the effective period of the tax, was about $361,230,867.47.

The facts now show, beyond every reasonable doubt, that the full burden of this tax was borne by the hog producers. Processors, who were obligated to remit the tax to the Government, deducted the amount of the tax from the prices they paid the farmer for the hogs he marketed for slaughter.

After the Supreme Court of the United States invalidated the processing tax the Congress enacted legislation permitting processors to file claims for refund of such taxes as they had not only paid but the burden of which they had actually borne and not passed on to others. This is known as title VII of the Revenue Act of 1936. It failed, however, to provide for the filing of claims by the producers who had actually borne the burden of the tax.

JOINT RESOLUTION FOR RESTITUTION TO PRODUCERS

Senator LYNN J. FRAZIER has introduced in the Senate (S. J. Res. 202) and I have introduced in the House (H. J. Res. 474) a joint resolution which provides that producers shall have the right to file claims under the provisions of title VII and may have restitution of such tax on proving that it was, in fact, charged to and borne by them; provided that no claimant shall recover any part of such tax "on any hogs that he marketed for slaughter on which he received a benefit payment." Such claims must be filed within 5 years. The joint resolution is as follows:

"Joint resolution making provisions for the refund of the processing tax on hogs marketed for slaughter by the raisers and producers who in fact bore all or part of the burden of such tax

"Whereas it is now generally recognized that the processing tax, under the Agricultural Adjustment Act, which has been held unconstitutional, on hogs marketed for slaughter was in fact charged to the raisers and producers and was deducted from the market price of such hogs; and

"Whereas provisions were made under title VII of the Revenue Act of 1936 for the refund to the processors of such part of the tax that they in fact bore and did not shift to the consumer or the raiser and producer; and

"Whereas the Revenue Act of 1936 made no provision for a refund of such processing tax to the raisers and producers of hogs, who, in fact bore the burden of such tax on hogs marketed for slaughter: Therefore be it

"*Resolved, etc.*, That any person or persons, or their assignees, who raised or produced and marketed hogs for slaughter on which there was collected and paid a processing tax, under the provisions of the Agricultural Adjustment Act, prior to the time that the act was held unconstitutional, may have such tax refunded, provided such claimant or claimants or their assignees show to the satisfaction of the Commissioner, under the provisions of title VII of the 1936 Revenue Act, that all or part of the burden of such processing tax was in fact charged to and borne by the raisers and the producers, and was in fact deducted from the market price of such hogs: *Provided, however*, That no claimant shall be allowed a refund of any part of such processing tax on any hogs that he marketed for slaughter on which he received a benefit payment under the provisions of the Agricultural Adjustment Act. Any such person who raised or produced and marketed such hogs for slaughter may prove his claim under the provisions of title VII of the 1936 Revenue Act. Such claim, however, must be filed and proof submitted to the Commissioner within 5 years from the date that this act takes effect."

INTRODUCTORY DISCUSSION

This legislative proposal seeks the enactment by the Congress of legislation to provide procedure for the filing of claims by hog producers for the recovery of hog processing taxes collected from producers by processors for the Government, such collections being realized by lowering the prices paid to producers for live hogs sold by them for slaughter for market.

In passing the A. A. A. the Congress did not intend to make an unjust or an illegal exaction of money from the pockets of the producers. The processing tax was, by the terms of the act, levied upon the meat packers, the processors. The Congress did not intend that the processors should collect this tax from the producers. But that is what the processors did, as is now conclusively proven and generally admitted. They passed this tax down to the producers. They acted, in fact, as a collection agency and took this money from the hog producers and turned it, or most of it, over to the Government. It is just and right that the Government should make restitution to the producers.

It was undoubtedly the intention of the Congress, in enacting the A. A. A., that the hog processing tax, as well as other processing taxes, should be passed on to the ultimate consumers and be borne by them. That was not done, and in the very nature of things, in the face of the inevitable operation of natural economic law, that could not be done.

INVALIDATION OF PROCESSING TAXES

On January 6, 1936, in the case of *United States* v. *Butler et al., Receivers of Hoosac Mills Corporation,* the Court held these processing taxes to be invalid and their imposition by the Congress to be beyond its constitutional authority. Whether valid or invalid, those hog processing taxes should never have been imposed, and were never intended to be imposed, directly or indirectly, on the producers. From this double cause, first, because the law was invalid, and, second, because the intent of the law was perverted, the hog producers were compelled unjustly and illegally to pay, during the period when these taxes were in effect, the aggregate sum of $361,230,867.47 (Agricultural Adjustment 1933 to 1935, a report of the Administration of the Agricultural Adjustment Act, p. 291, and Refunds of Processing Taxes, S. Doc. 178, 74th Cong., 2d sess., p. 3). This was both an unjust and an illegal exaction of money from the hog producers of the United States, and restitution should be made to them by the Government.

HISTORY OF THE HOG PROCESSING TAX

The A. A. A. went into effect on May 12, 1933. Under its provisions and under the regulations of the Secretary of Agriculture made pursuant thereto, the following schedule of hog processing taxes was established:

Effective November 5, 1933, 50 cents per hundredweight, live weight.

Effective December 1, 1933, $1 per hundredweight, live weight.

Effective February 1, 1934, $1.50 per hundredweight, live weight.

Effective March 1, 1934, $2.25 per hundredweight, live weight.

(See Agricultural Adjustment 1933 to 1935, supra, p. 294.)

Stated in another way, the hog producers paid an unjust and illegal tax on all live hogs sold by them for slaughter for the domestic market at the rate of 50 cents per hundredweight from November 5, 1933, to November 30, 1933; at the rate of $1 per hundredweight from December 1, 1933, to January 31, 1934; at the rate of $1.50 per hundredweight from February 1, 1934, to February 28, 1934, and at the rate of $2.25 per hundredweight from March 1, 1934, to January 6, 1936. That this vast sum of money, aggregating $361,230,867.47, came out of the pockets of the hog producers, there can be no doubt.

THREE TYPES OF TAXES

The A. A. A. provided that this tax should be collected "upon the first domestic processing of the product, whether of domestic production or imported" (sec. 9 (a) of the act), and it further provided for the collection from the processors of a similar tax on floor stocks on hand whenever the processing tax should first take effect (sec. 16 (a) (1) of the act). Thus there were three types of hog processing taxes collected, namely: (1) a tax on the first domestic processing of hogs sold to processors by domestic producers, (2) a tax on the first domestic processing of imported hogs, and (3) a processors' floor stocks tax.

Taking these three types of hog processing taxes in inverse order, it appears that, during the effective period of the tax the processors paid floor stocks taxes in the aggregate sum of $6,321,640.97; import compensating taxes in the aggregate sum of $528,576.45, and processing taxes in the aggregate sum of $263,230,867.47 (Agricultural Adjustment 1933 to 1935, supra, p. 291). In addition to this last-named sum the processors collected from the producers approximately $98,000,000 which, on January 6, 1936, when the tax was declared invalid, they had not paid over to the Government (Refunds of Processing Taxes, supra, p. 3). These two last-named sums, totaling $361,230,867.47, represent the amount the processors collected from the producers in the form of lowered prices paid by them for live hogs.

ENACTMENT OF REMEDIAL LEGISLATION

After the Supreme Court declared the processing tax to be invalid, the Congress did what it thought best to save harmless those whom it supposed had borne the burden of the illegal tax. The Congress never dreamed that the processing tax, in whole or in part, had been passed back to the producers for whose benefit the A. A. A. was supposed to have been enacted. The Congress supposed the tax would be and actually had been passed on to the distributors and by them passed on to the ultimate consumers. So far as hogs and hog products are concerned, that is not what happened.

So the Congress, working on the theory that the processing taxes had, in whole or in part, been passed on by the processors to the distributing wholesalers and retailers, enacted title IV of the Revenue Act of 1936, which provided procedure for the distributors to file claims for refund of processing taxes the burden of which, in whole or in part, they had actually borne. The Congress also enacted title VII of the Revenue Act of 1936, which provided procedure for the processors to file claims for refund of processing taxes the burden of which, in whole or in part, they had actually borne and had not passed on to the distributors in the form of increased prices or had not passed back to the producers in the form of lowered prices.

The wording the Congress used in this latter connection, "through reduction of the price paid for any such commodity" (title VII, sec. 902–a), indicates that some Member of Congress had a suspicion that the processors might attempt to pass at least a part of the processing tax back to the producers. But there the matter ended. It was not seriously supposed by the majority of the Members of Congress that that suspicion was well founded. Had the Congress honestly believed that any part of these processing taxes, on live hogs or on any other commodity covered by the A. A. A., had actually been passed back to the producers, it is incredible that the Congress would refuse to provide procedure for restitution to producers for whose benefit rather than detriment A. A. A. taxes were intended to be levied.

RECOVERY OF REFUNDS BY DISTRIBUTORS AND BY PROCESSORS

The Congress has swung the doors wide open to the distributing wholesalers and retailers to file claims for and to recover refunds of any and every kind of processing tax the burden of which they have actually borne, in whole or in part. The Congress has also swung the doors wide open to the processors to file claims for and to recover refunds of any and every kind of processing tax the burden of which they have actually borne, in whole or in part.

The A. A. A. processing taxes applied not only to live hogs but also to other basic agricultural commodities, such as cotton, wheat, corn, tobacco, paper and jute, sugarcane and sugar beets, peanuts, and rice. Large numbers of claims have been filed under title VII in the offices of the collectors of internal revenue throughout the country by the processors of these nine basic commodities for the recovery of refunds of all three types of taxes paid by the processors. Very few of these claims, comparatively speaking, have been assembled as yet in Washington, D. C. The number of such claims on file in Washington as of June 30, 1937, was 9,409. The time for filing such claims expired on that date. The total number of such claims filed throughout the country within the time allowed is not yet known. At the end of the fiscal year 1937 only 560 of such claims for refund had been allowed by the Commissioner of Internal Revenue, aggregating the sum of $392,983.89 (1937 Report of Commissioner of Internal Revenue, pp. 27, 28). In studying these figures, it must be remembered that these claims have been filed not only by hog processors but also by processors of all of the other basic agricultural commodities above mentioned. It must also be remembered that these claims for refund filed under title VII cover all three types of taxes paid by processors.

It has been estimated that one-twelfth of the total number of claims filed under title VII have been filed by processors of live hogs for refund of (1) floor stocks taxes, (2) import compensating taxes, and (3) processing taxes. In other words, for illustration, about 46 of the 560 claims that have been allowed were claims of hog processors and about $32,750 out of the amount of $392,983.89 allowed was allowed to hog processors. It must be remembered, however, that not all of the processors' claims had reached Washington by the end of the fiscal year 1937.

On referring back to the figures representing amounts of money paid by hog processors as floor stocks taxes, as import compensating taxes, and as processing taxes, and on recalling the fact that the processors probably bore the burden of the floor stocks taxes and of the import compensating taxes so far as the producers were concerned, and on recalling the fact that the processors certainly did not bear the burden of the processing taxes on live hogs sold to them by the producers, it can readily be understood that some of the claims of processors for refund might be allowed and some of them might be rejected by the Commissioner of Internal Revenue, especially as to processing taxes, concerning which the processors would be unable to prove that they had not passed the tax back to the producer.

THE PROCESSORS DID, IN FACT, SHIFT THE TAX TO THE PRODUCERS

The idea of the processing tax did not originate with the New Deal. It had been proposed during the previous administration. The A. A. A. was an outgrowth of legislation previously proposed. On June 15, 1932, Mr. Rainey introduced a processing-tax bill in the House (H. R. 12649). A similar bill was introduced in the Senate (S. 4940). That was in the Seventy-second Congress. The Rainey bill was sidetracked but a similar bill was soon prepared by Mr. Frederic P. Lee, a local attorney, and it was this bill that was under consideration by the House Committee on Agriculture in December 1932 when public hearings were had. At that time many processors, their economic advisers, and also producers testified before the committee that the burden of the hog processing tax would be shifted by the processors to the producers.

That was prior to the enactment of the A. A. A. Nearly 2 years after the enactment of the A. A. A., hearings were again held on the same subject before both Senate and House committees in March 1935. Mr. George E. Putnam, economist of Swift & Co., again appeared and testified. He repeated his prophecy of 1932 and he also testified that the burden of the processing tax had, in fact, been shifted by the processors to the producers, and that the producers had, in fact, been paying the tax in lowered prices received from the sale of live hogs.

TESTIMONY OF J. H. JEFFERSON IN DECEMBER 1932

In December 1932 Mr. J. H. Jefferson, manager of Iowa Producers Co., Cedar Rapids, Iowa, appeared before the House Committee on Agriculture and testified as follows:

"I feel that this cost, the tax, processors' tax, will the day it is put in operation reflect in a lower price back to the farmers, and with the levels we now have it means that instead of having cash to meet his obligations that he will have the market price minus whatever it costs to assess and collect this tax." (Hearings, p. 298.)

In extending his remarks Mr. Jefferson said:

"In reference to the proposed passage of this allotment bill, after thoroughly studying the same, I am satisfied that the intent of the bill to pass the tax on to the consumer cannot be carried

out. I think in the hearings so far the packers have proven that they cannot absorb the cost of this tax, neither can they pass it on to the consumer. Much as I wish this could be brought about, being sure that this is a fact, there is only one place to obtain this tax; that is from the producer." (Hearings, p. 300.)

TESTIMONY OF T. G. LEE, IN DECEMBER 1932

In December 1932 Mr. T. G. Lee, president of Armour & Co., Chicago, Ill., appeared before the House Committee on Agriculture and testified as follows:

"* * * There are only three ways in which the processors and manufacturers can obtain the money with which to pay the tax:

"The first—and presumably the method contemplated—would be to add the tax to the selling price of pork. Incidentally this would be equivalent to a sales tax of from 35 percent to 40 percent on a very important portion of the Nation's meat supply—on that portion, in fact, which is generally regarded as the 'workingman's meat.'

"The second method calls upon the processors to pay the tax out of their own funds.

"The third method would be to deduct it from the price paid for live hogs.

"I am here for the purpose of stating to you from an experience of over 30 years in selling meat products that the proposed tax cannot be passed on to the consumer, and, likewise, that the processors cannot pay it." (Hearings, p. 291.)

TESTIMONY OF OSCAR MAYER, IN DECEMBER 1932

In December 1932 Mr. Oscar Mayer, a meat packer, Madison, Wis., appeared before the House Committee on Agriculture and testified as follows:

"Both the live hog and hog products are highly perishable and come to the market in a supply entirely beyond the control of the processor or packer. The animals must be promptly bought when sent to market by the farmer, and at least one-third of the live weight must be sold within 2 to 4 days after slaughter as fresh pork. Another 30 percent matures in from 20 to 60 days as cured and smoked pork, such as hams and bacon.

"* * * Since the demand for pork products has always been highly sensitive to price, it is axiomatic to a person versed in the pork business that the selling price of a given supply of pork cannot be raised without a part of the supply remaining unsold. * * *

"* * * There have been several years, notably 1921, 1931, and 1932, during which the aggregate of the industry has been a loss, as the records of the packers and stockyards administration will show. Under these conditions any absorption of the tax by the packing industry is clearly impossible and there remains only the final alternative of pushing the tax back upon the farmer in the form of lower prices for livestock." (Hearings, pp. 282, 283.)

TESTIMONY OF THOMAS E. WILSON, IN DECEMBER 1932

In December 1932 Mr. Thomas E. Wilson, president of Wilson & Co., Chicago, Ill., appeared before the House Committee on Agriculture and testified as follows:

"The expense of this tax which is proposed to be put on the manufacturers must land somewhere; it must either be passed on to the consumer, it must be paid by the packer, or it must be borne by the producer." (Hearings, p. 267.)

Mr. Wilson testified further:

"Now, you are talking about passing the tax on to the consumers, and I say to you men that, in my opinion, it is utterly impossible. It cannot be done. We have tried to pass on to the consumers all that they would stand for without cutting down the output, and I will say that it cannot be done without very, very materially reducing the volume of the product, because when the consumer goes off of pork he stays off for a long time. * * *

"In my own company, taking the year 1931, we suffered a substantial loss, and three-eighths of a cent per pound would have been sufficient to put us on the profit side. * * *

"Now, as to the packer being able to pay this tax, there is nothing out of which he would be able to pay it, in his business. As I figure it, this would amount to approximately $300,000,000, the tax as proposed, and the manufacturers cannot take that out of their earnings; the packer has nothing out of which it can come. Therefore, if it cannot be passed on to the consumer and cannot be paid by the packer, it must come out of the producer, in my opinion." (Hearings, p. 268.)

TESTIMONY OF GEORGE E. PUTNAM IN DECEMBER 1932

In December 1932 Mr. George E. Putnam, economist for Swift & Co., Chicago, Ill., appeared before the House Committee on Agriculture and testified as follows:

"Now, with reference to the packer, I can speak primarily of the profit margin which is normally received by Swift & Co., and I can testify very frankly that the profit margin received by Swift & Co., is not sufficient to absorb such a tax of 50 cents a hundredweight on hogs, or a sales tax of any kind. * * *

"Now, as regards the consumer: * * * There is one thing that is peculiar to pork, * * * in the packing house pork is the most perishable product we deal in. Fresh pork I speak of, and fresh pork must be in the hands of the retailer within 7 to 10 days at the most after the hog has been slaughtered. We have no option in the matter. Meat never goes to waste around the packing house. We must get it away promptly in order to get rid of it at all." (Hearings, p. 229.)

Mr. Putnam further testified:

"The second reason is, if any packer attempted to pass along that tax to the consumer, he would find that the consumer would substitute right and left. In other words, the fact of substitute, which is the second feature, makes the passing of the tax along to the consumer in case of pork products impossible." (Hearings, p. 230.)

Mr. Putnam further testified:

"There are a lot of economists who have never analyzed this thing fully. The point I am making is that the man in the street thinks of this business and says, 'What you get for pork products is determined by what you pay for your hog.' That is absolutely untrue. The relation is just the opposite. What we pay for the hog—in other words, the hog cost—is determined by what we can get for the perishables that come from the hog less the expense of processing and distributing it. Now, that is very important for this reason: The packer cannot pay this tax. He cannot pass it on to the consumer. So if the proposed bill, this kind, putting a tax on the packer, is passed, it increases the packer's operating cost by the amount of the tax and the packer has no alternative but to instruct his buyer when he goes into the market to buy hogs to take that tax in account." (Hearings, p. 231.)

SUBSEQUENT TESTIMONY OF GEORGE E. PUTNAM IN MARCH 1935

In March 1935, nearly 2 years after the enactment of the A. A. A., Mr. George E. Putnam, economist for Swift & Co., Chicago, Ill., appeared before the Senate Committee on Agriculture and Forestry and testified as follows:

"The reason I opposed it was twofold: First, it provided for a processing tax on hogs; and I knew at the time, just as I know now, that a processing tax on hogs would automatically have the effect of making live-hog prices lower by the amount of the tax, and I was fearful——

* * * * * * *

"Senator MURPHY. We grant all that; but I want to get the first incidence of this tax.

"Mr. PUTNAM. That is correct.

"Senator MURPHY. It was taken out of the farmer in the lower price paid him?

"Mr. PUTNAM. That is correct.

* * * * * * *

"The CHAIRMAN. The trouble with this proposition is that in all other businesses except agriculture an additional cost to the consuming purchaser comes out of the consumer; but on account of the unorganized condition of the farmer, and everyone being a competitor with the other by necessity, any additional cost that inheres to the raw material is thrown back on the farmer himself.

* * * * * * *

"Senator MURPHY. So in the last analysis the processing tax does come out of the pocket of the producer?

"Mr. PUTNAM. Yes; I would state it this way: If the tax were removed today and the price of hogs is $9.50, which is the current price, the price of hogs would instantly jump $2.25 a hundredweight." (Senate hearings, pp. 183–185.)

MORE SUBSEQUENT TESTIMONY OF GEORGE E. PUTNAM, IN MARCH 1935

In March 1935, nearly 2 years after the enactment of the A. A. A., Mr. George E. Putnam, economist for Swift & Co., Chicago, Ill., again appeared before the House Committee on Agriculture and testified as follows:

"The CHAIRMAN. Are you still of the opinion that the processing fee is charged back to the farmer and that he is getting a less price than he would if there were no processing fee and no adjustment?

"Mr. PUTNAM. I know it. That processing tax automatically reduces the price of hogs by the amount of the tax.

"The CHAIRMAN. Are you sure of that?

"Mr. PUTNAM. I am quite sure of that; as I told this committee in a letter over 2 years ago when I appeared here.

"The CHAIRMAN. Then you think the rise in meat prices has been brought about in spite of anything contained in the adjustment program?

"Mr. PUTNAM. Well, we have had the adjustment program, and we have had a rise in livestock, and we have had the drought; we have had a rise in price, just as we have after every other depression, when we did not have the Agricultural Adjustment Act * * *." (House hearings, p. 253.)

Mr. Putnam further testified:

"The market price is less by the amount of the processing tax. Let me see if I can state that again: If the processing tax were to come off, it would have no influence whatever on the supply of pork—none whatever today—and therefore it would have no influence on the price of pork.

"Mr. HOPE. It might have some influence on the price of pork 6 months from now.

"Mr. PUTNAM. To the extent that it affects the supply of hogs 6 months hence, and therefore the potential supply of pork. The short-time effect and the long-time effect are to be considered." (House hearings, p. 255.)

ARTICLE OF GEOFFREY SHEPHERD, ECONOMIST, MAY 1935

In the May 1935 issue of the Journal of Farm Economics, Dr. Geoffrey Shepherd, of Iowa State College, had an article on The Incidence of the A. A. A. Processing Tax on Hogs. He said:

"The test as to the direct incidence of the tax is relatively simple. It involves determining whether the price or margin is higher or lower after the tax is applied than it would have been if there were no tax. * * *

"The question whether packers are paying the tax out of their own pockets apparently can be answered by direct statistical observation. The Bureau of Agricultural Economics publishes weekly the wholesale value of hog products derived from 100 pounds of live hogs compared with the prices of live hogs. Both series are

based on Chicago prices. * * * The two series therefore do not show the full margin taken by packers. But they do show changes in the margin, and that is what we are interested in here.

"Figure 1 shows that the packers are not paying the tax. Broadly speaking, they have widened their margin by an amount equal to the tax * * *."

Dr. Shepherd then considers whether the retailers or the consumers were paying the tax, as follows:

"The packer naturally charges 'all the traffic will bear'—that is, all the consumer will pay—all the time. If the packer tries to charge more, the consumer eats less pork than the packer has to offer, surpus stocks of meat accumulate, and the price has to come down again. This mechanism works all the time, as well when the packer tries to raise the price in order to pass the tax on to the consumer as when he tries to raise the price for any other reason. The tax cannot be passed on to the consumer, because of the elasticity of his demand for pork, which in turn traces back to the flexibility of consumer habits and the availability of pork substitutes.

"The conclusion that the consumer is not paying the tax, based simply on ordinary economic reasoning, was originally published in this journal in the issue of July 1934. It has been tested and verified by the course of events during 1934. This is shown in figure 2."

Dr. Shepherd then discusses the farmer's fix, as follows:

"But the farmer is in a different fix. He cannot respond as quickly in his production as the consumer can in his consumption. It has been shown that the elasticity of the supply of hogs varies from about 7 in Missouri to about 3.5 in Nebraska. But it takes 1 or 2 years for this response of production to price to show up in the market place. During the first year the elasticity of supply of hogs is practically zero.

"The packer is, therefore, able to pass the tax back to the farmer, in the form of lower prices for hogs, without at once provoking a scarcity of hogs which would soon force him to raise his prices again.

* * * * * * *

"It appears, then, that the farmer 'pays the processing tax' himself. That is the conclusion of economic theory, and that conclusion is confirmed by the evidence of the facts."

RECENT LETTER FROM DR. GEOFFREY SHEPHERD, IOWA STATE COLLEGE

In a recent letter from Dr. Shepherd, dated January 17, 1938, he writes as follows:

"The most recent treatment of the same subject is to be found in An Analysis of the Effects of the Processing Taxes Levied Under the Agricultural Adjustment Act, United States Treasury Department, Bureau of Internal Revenue, published a month or two ago. This is probably the most authoritative analysis yet published. It agrees almost paragraph for paragraph with our original position. This unanimity among economists is startling."

REPORT OF DR. L. H. BEAN, ECONOMIC ADVISER OF THE A. A. A.

On February 13, 1936, Senator NORRIS addressed a letter to the Secretary of Agriculture, requesting information with reference to impounded and outstanding processing taxes not collected. Six days later the Secretary wrote Senator NORRIS and attached to his letter the report of Dr. L. H. Bean, economic adviser of the A. A. A. Excerpts from the Secretary's reply and from the report follow, quoted from Senate Document 178, Seventy-fourth Congress, second session.

The Secretary of Agriculture said:

"The facts show (1) that the impounded and other unpaid processing taxes are far in excess of the annual net earnings of processors; (2) that in the case of cotton, wheat, and hog processors as a group, the accumulated unpaid taxes represent about three and a half times their average prosperity net profits of 1927–29; (3) that in the case of hog processors alone the unpaid taxes are approximately eight times their average prosperity net profits from hogs; and (4) that processors by increasing their operating and profit margins during the period when processing taxes were in effect have collected the equivalent of the impounded taxes from consumers or producers and are therefore being given money that except for the recent court action would have gone to the Public Treasury, where Congress intended it to go." (S. Doc. 178, pp. 1, 2.)

Dr. Bean's report shows the following:

"Meat packers ordinarily charge around 60 cents for processing 100 pounds of live hogs weighing about 200 pounds, and in addition get certain returns for byproducts and gains or losses from curing operations. This 60-cent margin represents the operating and profit margin between the Chicago price of 100 pounds of live hogs and the wholesale value of all edible fresh hog products. The processing tax of $2.25 per hundred pounds is thus nearly four times the usual operating and profit margin. * * * This fact alone is sufficient to indicate how hollow and ridiculous is the argument of processors that they paid the tax out of their own pockets.

"Hog margins during the first half of 1931, 1932, and 1933 were respectively 68, 63, and 56 cents per hundred pounds. During the first half of 1934, when the processing tax averaged $1.93 per hundred pounds, the gross margin was lifted to $2.52. During the first half of 1935, when the tax was $2.25, the gross margin was raised to $2.91; and for January 1936, when the tax was not in effect, the gross margin was almost immediately reduced to its former amount." (S. Doc. 178, pp. 5, 6.)

Thus it clearly appears that the processors did not pay the tax.

STUDY MADE BY THE BUREAU OF AGRICULTURAL ECONOMICS

A most significant document was on May 10, 1937, transmitted by Dr. A. G. Black, Chief of the Bureau of Agricultural Economics, to the Bureau of Internal Revenue of the United States Treasury Department and was subsequently published under the title "An Analysis of the Effects of the Processing Taxes Levied Under the Agricultural Adjustment Act." This is the document which Dr. Geoffrey Shepherd says is "the most authoritative analysis yet published." This work fully proves (1) that the processors did not pay the tax; (2) that the distributors did not pay the tax; (3) that the consumers did not pay the tax; but (4) that the producers did pay the tax. The introduction sets forth certain general summary and conclusions from which it may be well to quote as follows:

"Since the total amount paid for hog products by consumers apparently was no greater with the tax than it would have been if the tax had not been in effect, and since the processors and distributors did not absorb any appreciable proportion of the tax, it follows that the prices received by producers for hogs were lower by the amount of the tax than they would have been if the tax had not been in effect." (An Analysis, supra, pp. 6, 7.)

The hog producers did pay the tax:

"It follows that live-hog prices were lower by about the amount of the processing tax than they would have been if no tax had been imposed but all other conditions had been the same. * * *

"The evidence presented in the foregoing analysis indicates that the direct effect of the hog-processing tax was to cause prices received by hog producers to be lower than they otherwise would have been by approximately the amount of the tax. The evidence indicates, moreover, that processors of hogs and distributors and consumers of hog products were not materially affected by the tax." (An Analysis, supra, pp. 18–20.)

CONCLUSION

In the studies made by economists of the incidence of the hog-processing tax they carefully exclude, and rightly so, two more or less related matters. First, they exclude the matter of the aggregate income of the corn-hog contract signers derived from the sale of live hogs at the lowered market price plus benefit payments received in consideration of production control. These two forms of income were, in theory, derived from two separate and distinct sources. Furthermore, only a comparatively few hog producers were corn-hog contract signers.

In the second place, the economists exclude the matter of the increase of price of hog products which resulted not from the imposition of the processing tax but from reduced production of hogs and increased purchasing power of the public during "recovery" days.

What effect did the receipt of benefit payments have on the economic condition of farmers who bore the burden of the processing tax on hogs? That question is discussed in An Analysis, supra, at page 18, as follows:

"Although it is reasonably clear that the incidence of the processing tax was almost entirely upon hog producers, funds derived largely from the tax were used to make benefit payments to producers for adjusting hog production and corn acreage. Thus the total income of hog producers as a group (income from sales of hogs, plus benefit payments) was approximately the same as it would have been, under the prevailing conditions of supply and demand, if the tax had not been imposed. It should be borne in mind, however, that the supply was substantially modified by the control program, a factor which affected the producer aside from the effects of the tax itself."

Furthermore, only a comparatively few of all hog producers were contract signers. In 1934 and 1935 there were approximately 3,971,122 hog-producing farms in the United States (United States Census, 1935). In 1934 there were 1,155,294 corn-hog contracts "accepted for audit," and in 1935 the number dropped to 989,477 (Agricultural Adjustment, 1933 to 1935, pp. 168–174). It frequently happened that two or more contracts were signed up per farm, covering both landlord and tenants. In 1935 the total number of farms under contract was about 691,942; that is, 17.4 percent of all hog-producing farms. Consequently, 82.6 percent of the hog-producing farms in the United States did not participate in the A. A. A. corn-hog program.

On the other hand, about 85 percent of the hog production marketed for slaughter came from 10 States in the Corn Belt. These States were Illinois, Indiana, Iowa, Kansas, Minnesota, Missouri, Nebraska, Ohio, South Dakota, and Wisconsin. In these 10 States there were, in 1935, approximately 1,342,477 hog-producing farms. In the same year there were 753,421 corn-hog contracts "accepted for audit" from those States. That is, 40.5 percent of the hog-producing farms in the Corn Belt did participate in the corn-hog program, while 59.5 percent, representing 798,042 farmers, did not participate and did not receive benefit payments.

The unjust imposition of the processing tax upon all hog producers, upon noncontract signers as well as upon contract signers, appears clearly to have been doubly unjust as to the noncontract signers, since "* * * the cash farm income from hogs, including benefit payments in the years 1933, 1934, and 1935, when the tax was in effect, was no greater than it would have been without the tax, assuming that supply and demand conditions would have been the same as they actually were." (An Analysis, supra, p. 19.)

Wholly aside from the question whether or not the processing tax was valid or invalid, the Congress of the United States is under heavy moral obligation to provide for the hog producers legal procedure whereby they may file claims and recover restitution from

the Government of the money unjustly exacted from them under the guise of a processing tax which was intended to help rather than to harm the farmers. This harm to the farmers might have been avoided if the Congress had employed its interstate commerce powers to regulate the minimum price which producers should receive and which processors should pay. There can be no doubt that the Congress, in enacting the A. A. A. and in putting processing taxes into effect, honestly intended that the tax should be passed on to the consumer. It can hardly be supposed that the Congress deliberately intended to place this added burden upon the backs of farmers already grievously distressed. That would, indeed, have been a grim joke on the farmers.

But that is just what has happened. Without intending so to do, the Congress has taken money out of the pockets of the farmers whom it was trying to assist. There has been a gross miscarriage of justice. The purpose of the Congress was perverted not so much by what the Supreme Court has had to say about processing taxes as by the inevitable operation of natural economic law.

It has been well said that for every wrong there is a remedy. The Congress of the United States is the only power that can right this wrong that it has inadvertently wrought upon our farmers.

The Clerk resumed reading of the bill, H. R. 7085, as follows:

SEC. 7. Any person who has engaged in the practice of barbering in the District of Columbia for 1 year immediately preceding the date of enactment of this act shall be granted a certificate as a registered barber without practical examination by making application, accompanied by a health certificate showing that he is free from contagious and infectious diseases and issued by a registered licensed physician of the District of Columbia under oath, and paying the required fee within 90 days of enactment of this act; failing to do so, he must take an examination according to the law; and any other person engaged in the practice of barbering in the District of Columbia on the date of enactment of this act shall be granted a certificate as a registered barber apprentice without examination by making application and paying the required fee, and the time spent engaged in the practice of barbering shall be credited to him as a part of the time required to be spent as a registered barber apprentice for the purpose of qualifying as a registered barber, but must be accompanied by a health certificate showing that he is free from contagious and infectious diseases and issued by a registered licensed physician of the District of Columbia under oath.

SEC. 8. The certificate of a registered barber or a registered barber apprentice shall be displayed in a conspicuous place near the work chair of the holder when he is engaged in the practice of barbering.

SEC. 9. Certificates issued by the Board shall be renewed annually upon application to the Board by the holder of the certificate. The Board shall renew or restore certificates which have expired upon application and payment of the required fee, accompanied by a health certificate annually, showing that applicant is free from contagious and infectious diseases.

SEC. 10. The Board may refuse to issue, renew, restore, or may revoke a certificate for habitual drunkenness or habitual addiction to the use of morphine, cocaine, or any other habit-forming drug, or for the violation of any of the provisions of this act, but such action may be taken by the Board only after notice, and an opportunity for a full hearing is given to the person affected thereby.

An appeal may be taken from any action of the Board to the District Court of the United States for the District of Columbia. The judgment of such court shall be final, subject to review by the United States Court of Appeals for the District of Columbia.

SEC. 11. All fees and charges payable under the provisions of this act shall be paid to the secretary-treasurer of the Board. The Board is hereby authorized to refund any license fee or tax, or portion thereof, erroneously paid or collected under this act.

(a) For the examination of an applicant for a certificate as a registered barber, $5.

(b) For the issuance or renewal of such certificate, $5.

(c) For the restoration of an expired certificate as a registered barber, $5.

(d) For the examination of an applicant for a certificate as a registered barber apprentice, $5.

(e) For the issuance or renewal of such certificate, $5.

(f) For the restoration of an expired certificate as a registered barber apprentice, $5.

(g) Fifty dollars for barber school or college, and $25 annual renewal fee.

SEC. 12. The Commissioners are authorized and directed to provide suitable quarters for examinations and equipment to the Board and for the compensation of the members of the Board at the rate of $9 per day for the time actually and necessarily spent in their duties as such members and for the payment of expenses necessarily incurred by the Board in carrying out the provisions of this act and are also authorized and directed to appoint a clerk and three inspectors at such salary as the Commissioners may authorize to assist the Board in carrying out the provisions of this act; said inspectors shall be qualified barbers, each of whom shall have been engaged in the practice of barbering in the District of Columbia for a period of 5 years immediately prior to their appointment, and shall be appointed after a competitive examination held for said positions by the health officer of the District of Columbia: *Provided*, That payments under this section shall not exceed the amount received from the fees provided for in this act; and if at the close of each fiscal year any funds unexpended in excess of the sum of $1,000 shall be paid into the Treasury of the United States to the credit of the District of Columbia: *Provided*, That no expense incurred under this act shall be a charge against the funds of the United States or the District of Columbia.

BARBER SCHOOL OR COLLEGE REQUIREMENTS

SEC. 13. No barber school or college shall be granted a certificate of registration unless it shall attach to its staff, as a consultant, a person licensed by the District of Columbia to practice medicine, and employ and maintain a sufficient number of competent barber instructors registered as such, and shall possess apparatus and equipment sufficient for the proper and full teaching of all subjects of its curriculum, shall keep a daily record of the attendance of each student, shall maintain regular class and instruction hours, shall establish grades and hold examinations before issuance of diplomas, and shall require a school term of training of not less than 1,000 hours within a period of not more than 8 hours a working day, 2 years as apprentice for a complete course of barbering, comprising all or a majority of the practices of cosmetology, as provided by this act, and to include sanitation, sterilization, and the use of antiseptics, cosmetics, and electrical appliances consistent with the practical and theoretical requirements as applicable to barbering or any practice thereof. In no case shall there be less than 1 registered barber instructor to every 10 students. All barber school instructors must be qualified registered barbers, excepting licensed physicians.

SEC. 14. (a) It shall be unlawful—

(1) To engage in the practice of barbering in the District of Columbia without a valid certificate as a registered barber, except that a registered barber apprentice may engage in the practice of barbering under the immediate personal supervision of a registered barber.

(2) To engage in the practice of barbering while knowingly afflicted with an infectious or communicable disease.

(3) To employ any person to engage in the practice of barbering except registered barbers and apprentices.

(4) To operate a barber shop unless it is at all times under the personal supervision of a registered barber.

(5) To obtain or attempt to obtain a certificate from the Board for money other than the required fee, or for any other thing of value, or by fraudulent misrepresentations. Certificates are not transferable to another person.

(6) That hereafter in the District of Columbia it shall be unlawful for a person to maintain 7 days consecutively any establishment wherein the occupation or trade of barbering, hair dressing, or beauty culture is pursued. All such establishments shall be required to remain closed 1 day in every 7 beginning at midnight or at sunset and no person shall maintain his establishment open to serve the public on the day he has selected it to be closed and has so registered the closing day at the Health Department.

(7) To own, manage, operate, or control any barber school or college, part or portion thereof, whether connected therewith or in a separate building, wherein the practice of barbering, as hereinbefore defined, is engaged in or carried on unless all entrances to the place wherein the practice of barbering is so engaged in or carried on shall display a sign indicating that the work therein is done by students exclusively.

(b) Any person violating any of the provisions of this act shall upon conviction be fined not less than $25.

SEC. 15. This act shall take effect 90 days after the date of its enactment.

EXEMPTIONS

SEC. 16. The provisions of this act shall not be construed to apply to—

(a) Persons authorized by law of the District of Columbia to practice medicine and surgery, osteopathy, or chiropractic, or persons holding a drugless-practitioner certificate under the law of the District of Columbia;

(b) Commissioned medical or surgical officers of the United States Army, Navy, or Marine hospital service;

(c) Registered nurses;

(d) Persons employed in beauty parlors; however, the provisions of this section shall not be construed to authorize any of the persons exempted to shave or trim the beard, or cut the hair of any person for cosmetic purposes, except that person included in the subdivision (d) hereof shall be allowed to cut the hair; or

(e) Undertakers and embalmers.

CONSTITUTIONALITY

SEC. 17. Each section, subsection, sentence, clause, and phrase of this act is declared to be an independent section, subsection, sentence, clause, and phrase; and the finding or holding of any section, subsection, sentence, phrase, or clause to be unconstitutional, void, or ineffective for any cause shall not affect any other section, subsection, sentence, or part thereof.

REPEAL OF OTHER LAWS

SEC. 18. The act of Congress of December 19, 1932, and all laws or portions of laws inconsistent with this act are hereby repealed.

SEC. 19. The purpose of this act shall be to prevent the spreading of diseases and promote the general health of the public by promoting sanitary conditions in barber shops and barber schools or colleges in the practice of barbering.

Mr. PALMISANO (interrupting the reading of the bill). Mr. Speaker, I ask unanimous consent that the further reading of the bill may be dispensed with.

Mr. O'MALLEY. Reserving the right to object, Mr. Speaker, for the purpose of making a parliamentary inquiry, I desire to make a point of order against two sections which the Clerk has not yet reached in the reading of the bill. If the further reading of the bill were dispensed with, would I still have an opportunity to make a point of order against such sections?

The SPEAKER. The Chair is of the opinion that if the further reading of the bill were dispensed with the gentleman could make a point of order against those two sections, and the Chair would recognize the gentleman for that purpose.

Mr. O'MALLEY. Then, Mr. Speaker, I will not object.

The SPEAKER. Is there objection to the request of the gentleman from Maryland?

There was no objection.

Mr. O'MALLEY. Mr. Speaker, I make the point of order that sections 11 and 12 provide for an appropriation which the Committee on the District of Columbia, as a legislative committee, is not authorized to do. Section 11 sets up a schedule of fees and section 12 appropriates such fees to the use of the Commissioners, stating that any sums unexpended in excess of a thousand dollars shall revert to the Treasury.

Mr. PALMISANO. Mr. Speaker, this is not an appropriation. This bill simply sets up a board and the board is permitted to collect fees for a particular purpose in connection with the trade covered by this bill. As I understand, the Government has no control over these funds, except that if there is a surplus after the expenses are paid the Government receives the benefit of such surplus. However, as far as an appropriation out of the Federal Treasury is concerned, the Government appropriates not one cent.

The SPEAKER. The Chair may state to the gentleman from Wisconsin the Chair has been unable to find in the section to which the gentleman makes the point of order any direct appropriation of funds out of the Public Treasury. The bill does provide a schedule of fees to be charged the barbers covered by the bill and the manner in which the fees may be used. However, a rather careful reading of the section by the Chair does not disclose there is an appropriation out of the Treasury for any purpose.

Mr. O'MALLEY. Mr. Speaker, the same question occurred in connection with the park-o-meter legislation last year. Section 11 of this bill provides that fees for licenses shall be paid to the Board the bill creates. Section 12 states the Commissioners are authorized and directed to provide suitable quarters and also provide the compensation of the members of the Board at the rate of $9 a day. Section 12 further states that payments under this section shall not exceed the amount received from the fees provided for in this act, and that at the close of each fiscal year any funds unexpended in excess of the sum of $1,000 shall be paid into the Treasury of the United States.

I make the point of order, Mr. Speaker, that the fees to be charged under this bill go to the Commissioners and not to the Treasury, and, therefore, the bill makes an appropriation and provides the manner in which the Commissioners shall expend such sums, yet this does not cover a direct appropriation, and the bill does not come from the Committee on Appropriations.

The SPEAKER. The Chair is ready to rule on the point of order raised by the gentleman from Wisconsin.

The gentleman from Wisconsin makes the point of order against section 12 of the bill that under the terms of the section there is an appropriation of funds out of the Public Treasury.

If, in the opinion of the Chair, the language of the section sustained that position, clearly the point of order of the gentleman from Wisconsin would be good. However, the Chair calls attention to the fact it is stated in a precedent which will be found in the CONGRESSIONAL RECORD, Sixty-seventh Congress, first session, page 3388:

The term "appropriation" in the rule means the payment of funds from the Treasury.

As far as the Chair is able to read the language of section 12, it provides only the payment of funds into the Treasury under certain contingencies, and does not provide for the payment of funds out of the Treasury.

For the reasons stated, the Chair overrules the point of order made by the gentleman from Wisconsin.

The bill was ordered to be engrossed and read the third time, was read the third time, and passed.

On motion of Mr. PALMISANO, a motion to reconsider the vote by which the bill was passed, was laid on the table.

INSPECTION OF MOTOR VEHICLES IN THE DISTRICT OF COLUMBIA

Mr. PALMISANO. Mr. Speaker, I call up the bill (S. 2194) to provide for the semiannual inspection of all motor vehicles in the District of Columbia, and ask unanimous consent that the bill may be considered in the House as in Committee of the Whole.

The Clerk read the title of the bill.

The SPEAKER. Is there objection to the request of the gentleman from Maryland that the bill may be considered in the House as in Committee of the Whole?

There being no objection, the Clerk read the bill, as follows:

Be it enacted, etc., That at the time of the registration of each motor vehicle there shall be levied and collected a fee known as the "inspection fee" of $1 for the calendar year 1938 for each motor vehicle registered in the District of Columbia, including electrics, and that during 1939 and each year thereafter inspection fee thus levied shall be 50 cents on each vehicle.

SEC. 2. The inspection fee shall be paid to the collector of taxes and shall be deposited in the Treasury of the United States to the credit of the revenues of the District of Columbia.

SEC. 3. The annual estimates of appropriations for the government of the District of Columbia for the fiscal year 1938 and succeeding fiscal years shall include estimates of appropriations for the construction and/or rental and/or leasing of ground and buildings, the purchase of equipment and supplies, and the payment of salaries of mechanics, laborers, clerks, and other employees to carry out the semiannual inspection of all motor vehicles in the District of Columbia.

SEC. 4. All motor vehicles owned and officially used by the Government of the United States or by the government of the District of Columbia or by the representatives of foreign governments, shall be subject to semiannual inspection, such inspections to be furnished without charge.

SEC. 5. The Commissioners of the District of Columbia or their designated agent may refuse to register any motor vehicle or trailer which has not been inspected as required, or which is unsafe or improperly equipped, or otherwise unfit to be operated, and for like reason they may revoke or suspend any registration already made: *Provided*, That the provisions of section 13 (e) of the Traffic Acts, District of Columbia, shall be applicable in all cases where registration is refused, revoked, or suspended under the terms of this act.

SEC. 6. Any individual, partnership, firm, or corporation found guilty of using or permitting the use of any unregistered motor vehicle or trailer, or who is found guilty of using or permitting the use of the same during the period for which any such vehicle's registration is revoked or suspended under the terms of this act shall, for each such offense, be fined not more than $300.

SEC. 7. The Commissioners of the District of Columbia shall make such regulations as in their judgment are necessary for the administration of this act, and may affix thereto such reasonable fines and penalties as in their judgment are necessary to enforce such regulations.

Mr. DIRKSEN. Mr. Speaker, I offer two amendments relating to the subject matter of the bill and ask unanimous consent that the amendments may be considered together.

The SPEAKER. The Clerk will report the amendments offered by the gentleman from Illinois.

The Clerk read as follows:

Amendments offered by Mr. DIRKSEN: On page 2, line 7, strike out "semi-", and on page 2, line 13, strike out the word "semiannual" and insert instead the word "annual."

The SPEAKER. Is there objection to the request of the gentleman from Illinois that the amendments be considered en bloc?

There was no objection.

The amendments were agreed to.

The bill was ordered to be read a third time, was read the third time, and passed.

On motion of Mr. PALMISANO, a motion to reconsider the vote by which the bill was passed was laid on the table.

The title was amended to read: "An act to provide for the annual inspection of all motor vehicles in the District of Columbia."

OWNERSHIP OF FEDERAL RESERVE BANKS

Mr. PATMAN. Mr. Speaker, I ask unanimous consent to proceed for 2 minutes.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

There was no objection.

HEARINGS ON H. R. 7230, PROVIDING FOR GOVERNMENT OWNERSHIP OF THE 12 FEDERAL RESERVE BANKS, AND FOR OTHER PURPOSES

Mr. PATMAN. Mr. Speaker, the bill H. R. 7230, which was introduced at the first session of this, the Seventy-fifth Congress, has the support of more than 160 Democratic Members of the House of Representatives, and I believe all the Progressive Members of the House, and a large number of the Republican Members.

The chairman of the Committee on Banking and Currency, the Honorable HENRY B. STEAGALL, has promised us a hearing on this bill. The Committee on Banking and Currency will meet next Monday, January 31, and continue to meet from day to day until the hearings on the Goldsborough bill are concluded. Hearings on this bill commenced July 8, 1937. Immediately after hearings on this bill are finished, our bill, the chairman advised me, will be given next consideration, and that full and complete hearings will be permitted.

This bill, H. R. 7230, provides for Government ownership of the 12 Federal Reserve banks; to prevent injurious expansion and contraction of credit and currency; to stabilize and maintain a dollar of uniform purchasing power; to permit all banks, the deposits of which are insured by the Federal Deposit Insurance Corporation, to receive all rights and privileges from the Federal Reserve System, but not compelling banks that are not members to join, but permitting those that desire to join to do so, and to withdraw at will; and to encourage the sound local bank, recognizing the contribution that the local bank makes to the social and financial betterment of the local community.

AMENDMENTS TO BE CONSIDERED

When this bill is considered by the committee I expect to ask the committee to consider certain amendments that should be given consideration in connection with this proposal. They are as follows:

First. That the Federal Reserve Board be charged with the duty of adjusting the purchasing power of the dollar by the necessary monetary policies and measures to attain within the next 12 months the 1926 price level of wholesale commodities, including farm products. This proposal is embodied in Resolution 397, introduced by me January 7, 1938, and which is now pending before the Banking and Currency Committee.

Second. That after 2 years from the date of enactment of the act it shall be unlawful for any corporation to hold in its own right any of the deferred stock, common stock, or other stock of any bank, the deposits of which are insured under the provisions of section 12B of the Federal Reserve Act. It is possible that the 2-year period should be extended in order to prevent the possibility of deflation through liquidation of the holding companies. (This proposal is now embodied in H. R. 8890, introduced by me January 10, 1938, and is now pending before the Banking and Currency Committee.)

Third. That all insured banks operating branches shall be required to publish a statement of resources and liabilities at each place where the branch bank is operated, which shall include a separate exhibit setting forth the book value of loans and discounts made by and payable at such branch, and the book value of such branch banking house, if owned by the bank, and the value of other real-estate holdings and the total of all demand and time deposits, both public and private, carried on the books of such branch. I believe that we should exempt a bank that has branches only in the county in which it operates from this provision. (This proposal is embodied in H. R. 8891, introduced by me January 10, 1938, and is now pending before the Committee on Banking and Currency.)

NO BANKERS TO BE ON OPEN-MARKET COMMITTEE

If our bill, H. R. 7230, becomes a law, the open-market committee, which is the most powerful monetary policy-making body in the world today, will be composed solely of officials of the United States Government, who will be charged with the duty of conducting the monetary policies in a way that all the people of this Nation will be benefited, and no one will be on the board who can serve his own selfish interest, or the selfish interest of any corporation.

The Board is now composed of seven members of the Federal Reserve Board and five members who are interested in the largest banks in this Nation. It will be recalled that 24 large banks own 30.88 percent of the resources owned by all the 16,000 banks in this Nation. It is not right that these bankers occupy such positions of power and influence in our Government—positions that will enable them to cause the monetary affairs of this Government to be conducted in a way that their banks will be protected. It would be just as reasonable for us to have an Interstate Commerce Commission composed largely of railroad owners to fix the freight rates that the people must pay, or to have the Federal Communications Commission composed of owners of the broadcasting companies, or to have the Federal Trade Commission composed of the biggest businessmen in the country.

Further, if this bill becomes a law, the directors and officers of each of the 12 regional banks will be composed solely of officials of the Government under oath to protect the people's interest, and not have one banker on the Board. This should be done for the reasons I have heretofore given.

CONTENDED BANKERS KNOW MORE ABOUT MONEY

It is contended that bankers know more about money and therefore should control the monetary policies of the Government. It is true, however, that they naturally weigh these questions from the standpoint of their own interest in view of the fact that they are indebted to their own stockholders, their own depositors, their own associates, and are not under oath or obligation of any kind to promote the general welfare in anyway. They feel obligated to their own interests as people normally feel under such circumstances and conditions. Although bankers possess much knowledge on monetary affairs, they do not have a monopoly on such knowledge; many of them are very ignorant on the subject and take pride in parrying off all questions about money with the parrot phrase "money is a mystery." Money is no more of a mystery than transportation or distribution, or any other function that is important in our economic system.

ENCOURAGE LOCAL BANK

We must encourage the locally owned bank as against the absentee-owned bank. Banking is a business that local people can engage in and successfully conduct, and this privilege should be preserved to them. If something is not done in the near future, this great privilege of banking and the use of the Government's credit will be almost wholly owned and controlled by a few of the so-called wise men from the East.

We must not permit this to happen. The way to avoid it is for the Government to own the Federal Reserve Banking System, the 12 Federal Reserve banks, and permit this great System to serve all banks, the 16,000 instead of only 7,000 that they are serving today. A monopoly of credit is more dangerous than any other kind of monopoly. Our bill, if passed, will have a tendency to destroy this monopoly of credit.

WILL PRESERVE DUAL-BANKING SYSTEM

In conclusion I desire to make it plain that this bill is no threat to the dual banking system. Instead of harming the dual banking system it will help to preserve it, as the State banks will be privileged to join and withdraw from the Government-owned System at will. This proposal is not intended to enforce a unified banking system under the control of a Federal agency and is not intended to serve as a possible entering wedge into the field of Government ownership of the entire banking system.

PRESENT ADMINISTRATION COMMENDED

During the year 1932, 1,456 banks were suspended; in 1931 there were 2,294 bank suspensions; in 1930 there were 1,352. President Roosevelt first took the oath of office March 4, 1933. Immediately, under his leadership, bills were proposed and laws were passed having for their purpose the protection of the banks and their depositors. Recently our very able and distinguished Comptroller of the Currency, Mr. J. F. T. O'Connor, tendered his resignation to the President. In the correspondence between Mr. O'Connor and the President the information is disclosed that from the time President Roosevelt took the oath of office until October 31, 1933, there were only three national bank failures; only one such failure for the year ending October 31, 1934; four such failures during the year ending October 31, 1935; no failure of a national bank during the year ending October 31, 1936; and only four for the year ending October 31, 1937. A copy of a letter from Mr. O'Connor to the President and a copy of a letter from the President to Mr. O'Connor are as follows:

THE COMPTROLLER OF THE CURRENCY,
Washington, January 14, 1938.

MY DEAR MR. PRESIDENT: I desire to relinquish the office of Comptroller of the Currency, to which you appointed me in May 1933, and to return to my home in California to take care of pressing matters there.

The banking crisis confronted you immediately upon assuming office. Not in the entire history of the Nation had the country witnessed such a complete disruption of our financial system. With all the banks closed, your voice went into every home in America and replaced fear with confidence. You recommended a banking bill to Congress which was passed unanimously by both Houses giving wide powers to the Secretary of the Treasury, and to the Comptroller of the Currency.

Upon my taking office you outlined several main objectives: First, immediate distribution to depositors in the closed national banks of all possible dividends; second, the strengthening of the capital structures of national banks to insure greater safety to depositors. When you received the approximate valuation of the assets in closed National and State banks you authorized the Government to loan a billion dollars to relieve distressed depositors, and a pledge of the assets of these closed banks as security for the loan. This placed a burden upon the Secretary of the Treasury to secure this money, upon the Reconstruction Finance Corporation to loan it, and upon the Comptroller of the Currency to disburse that part loaned to national banks.

Of the billion dollars loaned, depositors of closed national banks received almost $400,000,000, which, together with cash on hand and the proceeds of securities and other assets liquidated, has enabled the distribution by this office to depositors since the banking holiday of $893,476,548. Of the amount borrowed from the Reconstruction Finance Corporation all except approximately $7,000,000 has been repaid. It is impossible to estimate in any degree the benefits of this policy to a distressed nation. Computing the difference in the rate of interest between what the Government paid and charged, the Government will make a profit of approximately $10,000,000.

With reference to your second objective, namely, the strengthening of the capital structures of our National and State banks, you will recall that upon the recommendation of the Secretary of the Treasury, you approved the purchase of preferred stock in the national banks of approximately $500,000,000. This not only made the banks liquid but relieved the banks of the necessity of pressing debtors, and gave greater security to depositors. The national banks have repaid $220,000,000 and in my judgment there will be a handsome profit to the Government in this transaction.

Your great interest in the depositors of all banks and your desire to avoid a repetition of the tragedy of 1932 and 1933 is again evidenced in your support of Federal deposit insurance. I recall our conversations when the bill was under consideration in Congress, and particularly the conference in your office of leaders of both Houses when you requested their cooperation in passing the bill. Seldom has there been such united opposition as there was against the insurance feature of the Bank Act of 1933.

Immediately after the passage of the act you wrote a personal letter to the Governor of each State suggesting that it might be necessary in some instances for legislative action to take advantage of the benefits of the bill. It was no small task to lay the foundation and set in motion the machinery which would examine some 9,000 State banks which theretofore had never been under the jurisdiction of the Federal Government. Step by step as the details were worked out you suggested changes and approved the plans in general, and when the two other members of the Board were appointed by you in September 1933 the organization was instantly completed, the plans officially approved, and deposit insurance was assured of success.

Only the extraordinary and new duties and work of this Bureau have been mentioned. The regular work has been omitted. As a result of the policies which you outlined and which have been carried out during the past nearly 5 years, the following conclusions are of interest:

First. The highest total deposit figure ever reached in the national banking system has been reached during your administration.

Second. Fewer national banks have closed than in any administration over the same period of time. Beginning with the close of the banking holiday to—

October 31, 1933, failures numbered 3.
For the year ended October 31, 1934, failures numbered 1.
For the year ended October 31, 1935, failures numbered 4.
For the year ended October 31, 1936, failures numbered 0.
For the year ended October 31, 1937, failures numbered 4.

October 31 of each year is used, as that date represents the close of the fiscal year of the Comptroller's Office. In the nine national banks which failed in the years 1934 to 1937, inclusive, 98.7 percent of the depositors were fully protected by Federal deposit insurance.

In conclusion, permit me to say that the banking structure of the Nation was never on a more solid basis than it is today. Our banks have ample funds either on hand or temporarily held under Federal Reserve requirements to meet any and every legitimate demand of business. The results which have been obtained could not have been accomplished without the most cordial cooperation and sympathetic understanding on the part of both of your Secretaries of the Treasury—Mr. Woodin, who served during the banking crisis, and Mr. Morgenthau, who has served during the reconstruction period. These fine public servants are due a debt of gratitude for their earnest and intelligent support of this Bureau in the many involved problems which have confronted it.

It has been a great honor to have served you during this period. Your kindness to me is a memory which I shall cherish in the years to come. With deep gratitude, I am,

Very cordially yours,

J. F. T. O'CONNOR, *Comptroller.*

Hon. FRANKLIN D. ROOSEVELT,
President of the United States,
The White House, Washington, D. C.

J. F. T. O'CONNOR, *Comptroller.*
Washington, January 19, 1938.

MY DEAR JEFTY: Your letter of January 14 requesting me to relieve you of your duties as Comptroller of the Currency of the United States is on my desk.

I must regretfully accede to your request; but, in view of the fact that there remains important unfinished work in connection with the payment of dividends to depositors in closed national banks requiring at least your part-time attention, I shall ask you to withhold your resignation until April 1. In my opinion this course of action will enable you to take care of pressing matters in your home State of California and yet gives you an opportunity to return here as often as necessity requires during the interim.

The review in your letter of the work accomplished since I asked you shortly after the inauguration in 1933 to leave your law practice and come to Washington as Comptroller of the Currency is ample evidence of a job well done. The Nation, as well as you and I, remembers those first days in 1933, but much of their stress and strain has been forgotten, and it is my firm belief a strong contributing cause for forgetting has been the achievement of the objectives outlined in your letter. The strengthening of the capital structure of our banking system is attested by the few failures of national banks in the last 5 years, a record, as you have pointed out, surpassing that of any previous administration.

This record would be a satisfactory achievement for the lifetime of most people, but I know that the same faithful and intelligent service which you have rendered the Nation as Comptroller of the Currency will be cheerfully and successively given to whatever task you may assume.

Although your return to California will bring to an end our pleasant conferences of the past years, I am sure that our friendship is to continue even stronger in the years ahead.

Cordially yours,

(Signed) FRANKLIN D. ROOSEVELT.

Hon. J. F. T. O'CONNOR,
Comptroller of the Currency,
Treasury Building, Washington, D. C.

Mr. PATMAN asked and was given permission to extend his own remarks and include therein a letter from the Comptroller of the Currency, Mr. O'Connor, to the President and the President's reply thereto.

PERMISSION TO ADDRESS THE HOUSE

The SPEAKER. Under the previous order of the House, the gentleman from Michigan [Mr. WOODRUFF] is entitled to recognition for 15 minutes.

Mr. WOODRUFF. Mr. Speaker, I ask unanimous consent that I may proceed for 15 minutes tomorrow, after the legislative program has been disposed of, instead of today.

The SPEAKER. Is there objection to the request of the gentleman from Michigan?

There was no objection.

EXTENSION OF REMARKS

Mr. WHITE of Idaho. Mr. Speaker, I ask unanimous consent to extend my remarks in the RECORD and include therein certain correspondence written by me on the present business and financial condition of the country.

The SPEAKER. Is there objection to the request of the gentleman from Idaho?

There was no objection.

PERMISSION TO ADDRESS THE HOUSE

Mr. HOFFMAN. Mr. Speaker, I ask unanimous consent that at the conclusion of the remarks of the gentleman from Michigan [Mr. WOODRUFF] on tomorrow, I may be permitted to address the House for 10 minutes.

The SPEAKER. Is there objection to the request of the gentleman from Michigan?

There was no objection.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to Mr. FLAHERTY, indefinitely, on account of death in family.

ECONOMY

Mr. WOODRUM. Mr. Speaker, I ask unanimous consent to address the House for 10 minutes.

The SPEAKER. Is there objection?

There was no objection.

Mr. WOODRUM. Mr. Speaker, I did not intend imposing myself on the House again at this particular time, but there is a very intelligent- and agreeable-looking audience present, and as we are about to run out of someone to exhort and regale the Members of it for a little bit, I ask your indulgence while I speak on the usual subject of economy.

Mr. O'CONNELL of Rhode Island. What is that?

Mr. WOODRUM. The gentleman from Rhode Island asks me what that is, and he has asked a very timely question. The other day in one of our committee hearings one of our colleagues was asked whether he believed in the merit system, or civil service. He said yes; I believe in it in theory, but not in practice. I think we believe in economy in government in theory, but not in practice, especially if in putting it into practice it happens to come a little close home. When the party to which I belong, and of which I am proud because of its achievements, came into power in 1932 our platform makers in a moment of enthusiasm and extreme optimism promised the people of America that we would reduce the Government expenses 25 percent. As a party we have been taken on the carpet for that many times. Of course, no party could have reduced Government expenses 25 percent without wrecking the country.

In the first place, conditions arose that could not have been foreseen at that time, and to reduce expenses 25 percent was an impossibility. Regularly since then you and I, my colleagues on this side of the aisle, and our great leader, have promised again and again to try to reduce Government expenses and get the Budget in balance. And just as regularly we come back with increased Government expenses and a continuing deficit. The President tells us that the deficit will be something like $900,000,000 in 1939. I know that he hopes it will not be any more than that, but I equally know that it will be over a billion dollars, and so do you. Why? Because we will continue to do in the future as we have so far in this session, increase Government expenses at every step of the road. Where are we going to quit? Are we of the opinion of several of my colleagues on this side of the aisle? The other day when we were increasing Budget estimates one of them, a distinguished, fine gentleman whom I respect, but with whose philosophy I do not agree, said to me:

> I propose to vote for an increase of every expenditure that I can, and to put the Budget and the public debt in as bad shape as I can, in order to enforce inflation in this country, because that is what we should have.

Do we share that philosophy? Do we really mean what we say when we go home and speak to our constituents about it and promise them to try to do that thing? Let us follow it through for just a moment. Too often when one speaks of trying to balance the Federal Budget we are looked upon as trying to bring about some device that will in some way inure to the benefit of the so-called big taxpayer; we are accused of trying to shield him and help him and prevent the tax collector from knocking on his door and collecting taxes from him.

Too often some feel that if we can have increased spending, just dish it out, projects here and projects there, it is not costing our constituents anything, because it is coming out of the Federal Treasury, and it is helping the workingman. Let us examine that for a moment. We are told that we are having a business recession. I do not care what you call it, but something is happening. Many economists tell us that there is really no great basic reason for it; that, on the other hand, there is every reason why the gradual, healthy advance and expansion of business and industry should have continued on through the fall and this winter, but something happened. As a result of the thing that happened—whatever you choose to call it—relief demands have increased, factories have shut down, added millions have gone into the army of unemployed, all because of this thing that has happened to us. I want to advance this theory to you—and I do not pose as an economist, but I do it as a practical observation. I speak to you, my colleagues, who are so much interested in the workingman, in the laboring man, in seeing him get a job, in seeing him retain his job, in seeing him have the security of regular employment; and I say that there is no one thing that the Congress could do that would make that dream true so quickly and so fast as to make some deliberate, positive, earnest, emphatic gesture toward trying to bring about a balanced Federal Budget.

Mr. TAYLOR of South Carolina. Mr. Speaker, will the gentleman yield?

Mr. WOODRUM. Yes.

Mr. TAYLOR of South Carolina. The gentleman is making an enlightened speech and I am in accord with him. I ask the gentleman if he does not think that the outstanding way to impress on the country what is taking place, and the remedy for relief is to put part of the responsibility for relief back on the local communities.

Mr. WOODRUM. Undoubtedly the gentleman is correct.

Mr. MAY. Mr. Speaker, will the gentleman yield?

Mr. WOODRUM. I yield to the distinguished gentleman from Kentucky.

Mr. MAY. I think the gentleman will agree with me that taxes are always an item to be included in the cost of production?

Mr. WOODRUM. Of course.

Mr. MAY. And that all taxes or most of the taxes, at least a large percentage of the recent corporate-surplus tax paid, is going into the cost of production of business this year, and the consumer pays it.

Mr. WOODRUM. Right. Now, let us follow that thought for a moment. When a man rises in the Well of the House and talks about balancing the Federal Budget or trying to cut expenses, immediately gentlemen who are interested, for instance, in Federal employees, will be on their guard. They will read into his efforts some design or some hidden motive to do something that will hurt Federal employees and their salaries. Usually the net result of it is that instead of cutting expenses they raise the salaries of Federal employees.

Mr. KENNEY. Mr. Speaker, will the gentleman yield?

Mr. WOODRUM. I yield.

Mr. KENNEY. I know where we can get a billion dollars without taxation. [Laughter.]

Mr. WOODRUM. I have been expecting to hear my friend from New Jersey make his famous speech on the method he has to raise money and balance the Budget, and, gentlemen, I am almost coming to the point where I will embrace anything or anybody who will do that. [Applause and laughter.]

Mr. COCHRAN. Mr. Speaker, will the gentleman yield?

Mr. WOODRUM. I yield to the distinguished gentleman from Missouri.

Mr. COCHRAN. The gentleman from South Carolina [Mr. TAYLOR] by his question would leave the inference that

the local communities are not doing much with the relief problem, or that the Government is assuming the entire burden. The gentleman from Virginia knows that is far from being true. For instance, in my own State we first had a 1-cent sales tax. Now we have a 2-cent sales tax. That money is all to go for the social-security program. We put a 10-cent tax on a free city bridge in St. Louis for the purpose of securing money to aid the local relief organization. I do not think anyone who is fully informed can contend the local communities are not doing their share, and some of them, including my own city of St. Louis, are quite badly pinched as a result of the aid being extended to the unfortunate. Of course, we are going to continue to help. It is the duty of the community to help, but they cannot assume the entire burden as it is too great.

The SPEAKER pro tempore (Mr. GINGERY). The time of the gentleman from Virginia has expired.

Mr. WOODRUM. Mr. Speaker, I ask unanimous consent to proceed for 15 additional minutes. We seem to have plenty of time.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Virginia?

Mr. GIFFORD. Mr. Speaker, reserving the right to object, I would ask the gentleman if he will allow me to ask for 15 minutes following his remarks?

Mr. WOODRUM. I yield to the gentleman from Massachusetts to make his request.

Mr. GIFFORD. I ask unanimous consent that after the gentleman's remarks I may be allowed to proceed for 15 minutes.

Mr. O'CONNOR of New York. Mr. Speaker, will the gentleman yield for a moment?

Mr. GIFFORD. I yield.

Mr. O'CONNOR of New York. If the gentleman would permit, I would like to speak for 3 minutes following the gentleman from Virginia [Mr. WOODRUM].

Mr. GIFFORD. The gentleman from New York would like to intervene between the gentleman from Virginia and myself?

Mr. O'CONNOR of New York. Yes.

Mr. GIFFORD. The reason I wanted to follow the gentleman from Virginia is because, being a member of the Committee on Expenditures, I wanted to speak on the same subject.

Mr. O'CONNOR of New York. Mr. Speaker, in view of the gentleman's statement, I shall not press my request.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Virginia?

There was no objection.

Mr. TAYLOR of South Carolina. Mr. Speaker, will the gentleman yield?

Mr. WOODRUM. I yield.

Mr. TAYLOR of South Carolina. I may state for the benefit of the gentleman from Missouri that in my inquiry of the gentleman who now has the floor I did not have any intention of discrediting anything which was being done by any community over the country. I meant merely to emphasize the fact that regardless of what they are doing, it is nothing in comparison to what they will have to do if we do not balance the Federal Budget or get the Federal house in order.

Mr. O'CONNOR of New York. Mr. Speaker, will the gentleman from Virginia yield for an observation?

Mr. WOODRUM. I yield.

Mr. O'CONNOR of New York. Mr. Speaker, the gentleman mentioned the matter of relief, a measure in which a number of us are very much interested, especially those of us from the cities.

The House by this time is, no doubt, tired of hearing me talk about the discharge petition and particularly its direction at the Rules Committee. But one of the strangest anomalies has just happened. You will remember that in the cases of the antilynching bill and the Ludlow petition, attempts were made to discharge the Rules Committee from matters with which they had nothing to do. Now, one of my colleagues, the gentleman from New York [Mr. LANZETTA], who is a very close personal friend of mine and for whom I have an abiding affection, is interested in House Joint Resolution 440, pending before the Appropriations Committee, pertaining to relief funds. Mr. LANZETTA has been most diligent in his efforts to procure adequate funds for relief. In that effort I concur and shall do all I can. Just the other day the gentleman from New York [Mr. LANZETTA] filed a rule with the Rules Committee. If the Rules Committee does not act on that rule within 7 days—and it is, of course, most unlikely that the Rules Committee would reach into the Committee on Appropriations, or any other legislative committee, and yank out a bill that the committee in question has not considered or reported—a petition will undoubtedly be filed at the desk to discharge the Rules Committee and bring on the floor this appropriation bill for relief funds.

The Rules Committee will never have the bill before it. It could not consider the bill if it wanted to.

I therefore hope the Members will consider twice before they sign such a petition, because a new element enters into this particular procedure. Most reports from the Committee on Appropriations are privileged matters anyway, with which the Rules Committee has nothing to do. So to file a rule with the Rules Committee to discharge the Appropriations Committee on an appropriation bill is about the last stretch to which this anomalous parliamentary method can be brought.

I merely wanted to make these few remarks to bring this matter to the attention of the Members, so they may consider before they sign this anomalous petition directed against the Rules Committee.

Mr. ALLEN of Illinois. Mr. Speaker, will the gentleman yield?

Mr. WOODRUM. I yield.

Mr. ALLEN of Illinois. Little business is dependent on big business, because little business buys goods from big business and little business sells goods to big business. Does the gentleman think we can attack big business without hurting little business?

Mr. WOODRUM. It depends on what the gentleman means by attack on big business. I am not sympathetic, of course, with a wholesale attack on every businessman; but we are told that 4 percent of the so-called big business are the ones that come under the condemnation about which we have heard so much, and that perhaps the other 96 percent are controlled by the 4 percent. So you can follow on into a very complicated field. I do not want to go into the ramifications of that question now. I am interested in helping little business and in helping big business; I am interested in helping all business; and by helping all business we help the unfortunate unemployed; and we shall help all business if we get Federal finances straightened out.

Mr. ALLEN of Illinois. Does not the gentleman believe that when an attack is made on big business it hurts the little businessman, because the little businessman buys from big business and sells to big business?

Mr. WOODRUM. I am not attacking business in any way whatever. I want to help all business. Stabilized business means security for the workingman.

Mr. FISH. Mr. Speaker, will the gentleman yield?

Mr. WOODRUM. I yield for a question.

Mr. FISH. The gentleman is always an interesting and entertaining talker and has several good stories about stupefying, argufying, and so forth. Will the gentleman not be specific and tell us wherein we can cut down appropriations so we can balance the Budget?

Mr. WOODRUM. Yes; I will.

Mr. FISH. I thought the gentleman was going to get down to doing that.

Mr. WOODRUM. In the first place, we should certainly cut the appropriations under Budget estimates, which we have not done in the bills so far. The independent offices bill was cut, but some items have been reinstated in the other body. The Treasury-Post Office bill was above Budget

estimates, I think. At least it was above the committee figures. Budget estimates on all bills are $220,000,000 under what the Departments requested. There, of course, you get into the problem of expanded governmental activity. That is the danger—you cannot expand governmental activity on the one hand and cut down expenses; you cannot reduce expenses and still set up new bureaus and new departments.

The President has said that if he can have the power and the authority to do it he can balance the Federal Budget and that he will do so. President Hoover said that if we gave him the power and the authority to reorganize the governmental Departments he would do so in the interest of economy and efficiency.

Congress gave him that power. I voted along with other Members to give him that power. In 1932 we gave the same power to President Roosevelt.

With all deference to my colleagues, and I am one of you and I take my share of all of the blame I put on you, I am of the opinion that Congress will not reduce public expenses for the reason that in late years we have got to the point of measuring the value of a Congressman's service to his constituency by his ability to take back some funds out of the Public Treasury under the misapprehension and under the illusionment you can take money from Washington back to Virginia without Virginians having to pay it back into the Federal Treasury. So far as I am concerned I would rather see my people in Virginia pay the money into the Virginia treasury and spend it in Virginia as it may be needed than take the circuitous route of paying into the Public Treasury, coming up here, getting it, and taking it back again.

With reference to the question of relief, may I say that there is a relief problem that many of the cities and localities cannot cope with themselves. They must have help. On the other hand, there are many localities, many of the States, may I say, that do not need any help at all from the Federal Government. No business concern on the face of the earth would have such a complex organization set up in all the local communities as we have. We were told last year that in one State the relief administrator came to town and inserted his ad in the paper that he was coming there on a certain day and for the people to come into the office. When they did not come in he got mad and lambasted them in the press because, as he said, they did not cooperate with the Federal Government.

A very serious relief problem does exist, perhaps; but I want to hold it down this year, as I wanted to hold it down last year. I think the billion dollars that was appropriated last year could have been stretched a great deal further than it was.

Mr. STARNES. Will the gentleman yield?

Mr. WOODRUM. I yield to the gentleman from Alabama.

Mr. STARNES. I understand full well the gentleman's position on economy in government. Last year the gentleman's subcommittee reported a bill carrying $1,000,000,000 for relief. Where did the pressure come from which added a half billion dollars, which made that much more of an unbalanced Budget?

Mr. WOODRUM. It came from everywhere. Of course, I understand that.

Mr. O'CONNOR of New York. Will the gentleman yield?

Mr. WOODRUM. I yield to the gentleman from New York.

Mr. O'CONNOR of New York. Will the gentleman subscribe to the statement that relief ought to be the last thing in which a cut is made? Why does he start there? Let us assume it is needed.

Mr. WOODRUM. I started there because someone brought up the subject of relief.

The first thing we should do is to view with skepticism any expansion of Federal activities at the present time. You are borrowing the money to do these things. Suppose your wife needed a new fur coat. Would you go out and borrow the money to buy it for her? There are many things we want to do, but every nickel you spend you are borrowing, and every time you borrow a nickel you prejudice and put a stumbling block in the way of these millions of men who are trying to get work and cannot get work, who will not have work and the security of regular employment until business and industry opens up its heart and expands. They will not do it until they have confidence that the Congress is going to leave them alone and that we are back to earth in the matter of public expenditures.

Mr. SHEPPARD. Will the gentleman yield?

Mr. WOODRUM. I yield to the gentleman from California.

Mr. SHEPPARD. I would like to ask the gentleman a question. I appreciate the gentleman has an extensive knowledge of appropriations and the reasons for having appropriations granted by the House. What yardstick is used by the Committee on Appropriations with reference to the respective Departments to justify these appropriations? In other words, is it merely the proposition of taking figures presented to the Bureau of the Budget and then sent up here? What yardstick is used to justify the appropriations that we make?

Mr. WOODRUM. It is the best guess we can make.

Mr. SHEPPARD. Is that a real guess and an honest way to balance the Budget?

Mr. WOODRUM. Sometimes it is a bad guess, but it is the best guess we can make with the facilities available. At the time there was a billion-dollar Budget, there were seven and eight committees handling the appropriations for the various Departments and members could spend days and months figuring the thing out. Let us take the independent offices appropriation bill at the present time. There are involved 39 separate and distinct governmental activities carrying appropriations of over a billion and a half dollars. We do the best we can with such scant facilities. If we can get some smart, sophisticated Budget officer in a corner and get something out if him, maybe we can make an intelligent cut here and there. That does not happen often.

Mr. LUCAS. Will the gentleman yield?

Mr. WOODRUM. I yield to the gentleman from Illinois.

Mr. LUCAS. Has the gentleman any recommendation to make in order to cure this defect?

Mr. WOODRUM. The gentleman has made recommendations but so far without avail.

Mr. ALLEN of Illinois. Will the gentleman yield?

Mr. WOODRUM. I yield to the gentleman from Illinois.

Mr. ALLEN of Illinois. In 1932 the national income was $38,000,000,000, based on 100-cent dollars. In 1936 it was $68,000,000,000, based on 59-cent dollars. Now they talk about a national income of $100,000,000,000. You could have that income by having 39-cent dollars, but would the gentleman be in favor of doing that?

Mr. WOODRUM. I am not in favor of that, of course, as the gentleman knows. I believe the Members of this Congress should do as they promised their constituents they would do. They should try to hold down and cut down public expenditures until business can adjust itself and our financial house gets in order. [Applause.]

I am going to keep on singing that song. I am going to make my record on that proposition, and if I have any influence in the body of which I have the honor to be a humble Member, I shall try to exert it.

Mr. DUNN. Will the gentleman yield?

Mr. WOODRUM. I yield to the gentleman from Pennsylvania.

Mr. DUNN. We speak about putting people to work, but in almost every business establishment when a man attains the age of 45 years he is not considered. How are we going to take care of this situation?

Mr. WOODRUM. The gentleman has asked me a question I cannot answer. I do not know what you are going to do. One solution of it is the social-security program we have put on the statute books, which is another instance of a demand of over a quarter of a billion dollars annually out of the Public Treasury.

Mr. MOTT. Mr. Speaker, will the gentleman yield?

Mr. WOODRUM. I yield to the gentleman from Oregon.

Mr. MOTT. In connection with the matter of relief, does not the gentleman believe it would be an improvement and would make for economy if we should discard our present system and furnish relief to the States and communities which actually need it on a percentage basis, the same as we have done in the matter of Federal aid to highways and Federal aid in connection with old-age pensions?

Mr. WOODRUM. I believe there is quite a good deal of merit in what the gentleman states. I do not subscribe the whole way to his statement that the present system should be discarded. However, I do believe from now on we should put an added responsibility, not only a supervisory but a financial responsibility, upon localities and upon States which can afford to bear it. I know there are many localities in America which, if they had the responsibility of helping to pay the bill out of their own taxpayers' pockets, would take a great many people off the relief rolls who are now on them and who discredit the need of a great many people who really and honestly need help.

Mr. MOTT. Of course, that would make for economy.

Mr. WOODRUM. Of course it would make for economy.

Mr. MOTT. The gentleman will recall that when the last relief appropriation bill was under consideration the Republicans offered a motion to recommit, which had for its object the change of system I have suggested to the gentleman.

Mr. WOODRUM. Yes; I recall it.

Mr. MOTT. However, we received no support from the majority side of the House.

Mr. MAVERICK. Mr. Speaker, will the gentleman yield?

Mr. WOODRUM. I yield to the gentleman from Texas.

Mr. MAVERICK. Since last August there has been an increase in complete unemployment of 3,200,000 persons and in partial unemployment of 3,200,000 persons. We have appropriated sums for the construction of two battleships, and I understand we are going to be asked for funds for three more battleships. Does not the gentleman believe that when we begin to reduce expenditures we must think of the excessive increase in naval appropriations which is desired and also the very large increase in unemployment? What does the gentleman believe we ought to do about the increased unemployment and the desire for increased naval appropriations?

Mr. WOODRUM. I believe the way to help the people in whom the gentleman is interested is not by giving them relief but by letting them build the battleships which we need, because this puts them to work and gives employment to thousands of men, not only the mechanics who build the ships but the men who fabricate the material, and it goes all the way down the line. People are put to work, and it is real, honest employment.

[Here the gavel fell.]

Mr. WOODRUM. Mr. Speaker, I ask unanimous consent to proceed for 10 additional minutes.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Virginia?

There was no objection.

Mr. MAVERICK. The gentleman does not really believe that giving employment in building battleships is either a permanent or a good economic cure?

Mr. WOODRUM. I do not believe this is the ideal way to have public improvement, but we are told the battleships are needed. I voted for building the battleships. I am one who believes America should have an adequate defense, and I voted for the construction of the battleships.

Mr. MAVERICK. Everybody believes in having an adequate national defense.

Mr. WOODRUM. I am not a Navy expert, and I have to take the judgment of the President, the Secretary of State, and the people in the Navy Department. God grant the day may never come when the American flag is hauled down and somebody points his finger at me and says, "You were not willing to give us defense materials when the world was on fire and America was threatened from without." This is the reason I voted for that appropriation, and because I believe that such construction would give men honest employment.

Mr. MAVERICK. The gentleman is not going to follow the President blindly if he comes in here and wants two, three, or five battleships? The gentleman is not going to vote for whatever number of battleships the President wants?

Mr. WOODRUM. Not blindly. I will give the matter every consideration, I may say to the gentleman.

Mr. MAVERICK. The gentleman should give the same consideration to unemployment he gives to battleships.

Mr. WOODRUM. Of course.

Mr. BOLAND of Pennsylvania. Mr. Speaker, will the gentleman yield?

Mr. WOODRUM. I yield to the gentleman from Pennsylvania.

Mr. BOLAND of Pennsylvania. The gentleman is recommending a change in the entire relief set-up and reduction in the relief appropriation. Does not the gentleman understand thoroughly that if the relief appropriations are reduced there will again be bread lines in all the industrial cities of the country?

Mr. WOODRUM. The gentleman has misunderstood me. I was not recommending any change in the relief set-up. The question of relief came in incidentally. I do not know what the budget for relief is going to be.

Mr. BOLAND of Pennsylvania. Would it not be the inevitable result if we do reduce relief appropriations to a minimum that there will again be bread lines in all the industrial cities?

Mr. WOODRUM. We have to take care of the relief situation, I know, but I want to hold down the amount of the appropriation and put more responsibility on localities. I was not offering any suggestion to change the plan, I may say to the gentleman.

Mr. FISH. Mr. Speaker, will the gentleman yield?

Mr. WOODRUM. I yield to the gentleman from New York.

Mr. FISH. I have been listening to the very able remarks of the gentleman on economy. Will not the gentleman get down to brass tacks, as we say, and tell us just what we can cut, where we can cut, and how much we can cut? I want to listen to the gentleman's answer, and I am going to sit here while the gentleman answers this question.

Mr. BUCK. Mr. Speaker, will the gentleman yield?

Mr. WOODRUM. I yield to the gentleman from California.

Mr. BUCK. In the hearings now going on before the Committee on Ways and Means on tax reduction witness after witness has appeared before us and suggested we should take into consideration the question of spending, about which the gentleman is speaking today. The gentleman realizes our committee obviously is not the committee to do this. Does the Committee on Appropriations offer any opportunity for witnesses from the outside to appear before the committee and make concrete suggestions which may be in line with what the gentleman from New York has in mind?

Mr. WOODRUM. There is plenty of opportunity for witnesses from the outside to come before our committee and say just what they say to the gentleman about cutting expenditures, but this does not answer the question the gentleman from New York [Mr. FISH] asked me, Where are you going to cut expenditures? If the gentleman was sufficiently interested to follow the remarks I have made, he understands I do not believe you can hope to get below a $7,000,000,000 Budget in this country. I believe we will have to fight to hold it to seven or eight billion dollars, because of the increased governmental activities which no administration is going to discontinue. No administration is going to wipe social security off the boards.

No administration is going to take away the financial assistance that has been given to home owners, farmers, and agriculture and many other things. These things are here to stay. They are desirable, humanitarian expansions of Government functions. Then how are you going to cut the total Budget?

In the first place, if you can increase taxes a little and pull expenditures the other way somewhat, that is desirable, and I think the President is on absolutely sound ground,

although I notice my friend from Oklahoma is sitting here, listening to me, when he asks us to go back to predepression appropriations for public highways. That is one of the President's proposals.

I have had a great many letters from people in my State who are very much alarmed because they are afraid the Government is going to pull in somewhat on these large expenditures for highway construction, but I think $100,000,000 a year, which I believe is what the Federal Government contributed before the depression, is a very liberal amount for the Federal Government to expend toward the highway construction. I believe such expenditures are justified, but I think you can pull that in a little, and I am absolutely for the President's recommendation in that regard.

Mr. SOUTH. Mr. Speaker, will the gentleman yield?

Mr. WOODRUM. I yield to the gentleman from Texas.

Mr. SOUTH. I will ask my distinguished friend in this connection if careful consideration should not be given to the fact that the motorists in the gas tax and the other taxes on automobiles are now paying more than any other group of our citizens on a similar investment and under similar circumstances?

Mr. WOODRUM. I think, undoubtedly, there is very much merit in what the gentleman says about that.

Mr. CARTWRIGHT. Mr. Speaker, will the gentleman yield?

Mr. WOODRUM. I yield.

Mr. CARTWRIGHT. What the gentleman from Texas [Mr. SOUTH] has said with respect to automobiles is absolutely true. That is one thing that absolutely pays for itself, and it is also a proven fact that 80 percent of the money goes into labor, either directly or indirectly, and is a most substantial form of relief.

Mr. HOOK. Mr. Speaker, will the gentleman yield?

Mr. WOODRUM. I yield to the gentleman from Michigan.

Mr. HOOK. Does the gentleman subscribe, in the matter of national defense, to larger appropriations for more battleships and less highways?

Mr. WOODRUM. The question of national defense is not involved here and I believe I have stated my position on that.

Mr. HOOK. Are not the highways just as necessary to national defense as the battleships?

Mr. WOODRUM. I think so, and I believe $100,000,000 will build a good many miles of roads in the States, and I believe that is a liberal appropriation for that purpose at this time.

Mr. MASON. Mr. Speaker, will the gentleman yield?

Mr. WOODRUM. I yield to the gentleman from Illinois.

Mr. MASON. I want to call the gentleman's attention to the fact that the Government-aid money which is spent in the building of hard roads produces more labor than the Government dollar spent for any other purpose, and that instead of 80 percent going to labor, according to the best opinion of the Federal engineers in charge of this work over a long period of years, 91 cents out of every dollar goes to labor when you spend it for building hard roads.

Mr. MARTIN of Colorado. Mr. Speaker, will the gentleman yield?

Mr. WOODRUM. I yield to the gentleman from Colorado.

Mr. MARTIN of Colorado. I may say to the gentleman that I voted for the battleships and have always voted for every dollar of naval appropriations that has come before the House, but I cannot help feeling that it is a very localized benefit to labor and a very expensive benefit to labor, perhaps, reflecting nothing, for instance, out in the hinterland to speak of, and that it is only through such things as road appropriations and works progress projects that we really get an equitable distribution of Federal funds for work relief purposes.

Mr. WOODRUM. Now, Mr. Speaker, I want to proceed for the remaining 3 minutes without interruption if I may be permitted to do so, because I do not wish to ask for a further extension of time.

I want to say a word about the amendment on the independent offices appropriation bill which is pending in the Senate and which has been so steadfastly and so persistently referred to as the item veto.

In the first place, it is not under any circumstances or by the wildest stretch of the imagination an item veto. It does not in any way seek to enlarge or affect the President's right to veto a bill as set out and described in the Constitution of the United States. All that it does and the sum total of its effect on appropriation bills is this: It enables the President, after he signs the bill, to reduce or to eliminate items in appropriation bills, reporting his action back to Congress, and the Congress has 60 days within which to take action, if it desires to do so. This is not a revolutionary power. Thirty-nine States have given their Governors this power. We voted this specific power to President Hoover, and no later than the 13th day of last August we voted this power to President Roosevelt in the Warren bill that passed the House, in which we not only gave him power to reduce expenditures but regroup and discontinue Federal agencies which had been set up by the enactments of Congress. There is no question on earth about its constitutionality.

My amendment was put in the bill upon my own responsibility with the hope it would help to bring about the result I have spoken of, and which I think Congress should be in favor of—to hold appropriations within the Budget and cut where possible. If the Chief Executive states he can make curtailment of public expenditures, I am going to vote for that wherever I can, because I believe by doing this we will bring more substantial permanent relief, not only to the people I represent but to the people all over the country. I do not believe we can bring about such reduction if we insist on simply cutting something that does not affect us personally. Of course, it is going to hit some propositions we like; it is going to hit some propositions we are devoted to; but unless this Congress becomes conscious of the fact it must balance the Budget, then certainly troublesome days are ahead of this Government. [Applause.]

Mr. MAVERICK. Mr. Speaker, I ask unanimous consent to extend my remarks in the Appendix.

The SPEAKER pro tempore. Is there objection?

There was no objection.

Mr. COX. Mr. Speaker, I ask unanimous consent that following the gentleman from Massachusetts [Mr. GIFFORD] I may address the House for 10 minutes.

The SPEAKER pro tempore. Is there objection?

There was no objection.

The SPEAKER pro tempore. Under special order the gentleman from Massachusetts [Mr. GIFFORD] is recognized for 10 minutes.

Mr. GIFFORD. Mr. Speaker, I ask unanimous consent to extend my remarks, and I ask unanimous consent to proceed for an additional 10 minutes.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

Mr. GIFFORD. Mr. Speaker, I am greatly appreciative of the change of viewpoint on the part of the gentleman from Virginia [Mr. WOODRUM], whom we have appointed to be the watchdog of our Treasury. For 5 long years I have suffered the economy pains by membership on the Committee on Expenditures in the Executive Departments. Often have I taken the floor in criticism of waste and extravagant spending. What a picture we have presented today in comparison with 3 to 5 years ago, when $3,300,000,000 and $4,480,000,000 was appropriated without conditions as to how it should be spent, and done with the entire approval and defense of the gentleman from Virginia.

At that time I was forced to object and received the verbal spankings which naturally would follow such objection. And today we hear from our delightful friend that many municipalities are receiving assistance which should not have it. He must recall that checks were sent, without any inquiry at all as to necessity, to every municipality in the country for one-half its relief fund, and one-half the money to be spent for work relief; Christmas donations without regard to need. At that time the gentleman made no objection to this. It produced fine political results for the Democratic Party.

Now, after 5 long years, we hear that it is time to desist from these pure largesses. They have just learned that certain municipalities really do not need the money.

I intended to ask for just 3 minutes today, because I desired to place in the RECORD a resolution passed at the annual meeting of the town fathers held in my State about a week ago. First, let me call attention to the President's message of this year. He said:

> What present expenditures would you reduce or eliminate?
> The invariable answer has been that "it is not my business. I know nothing of the details, but I am sure it can be done." On only one point do most of them have suggestions. They think that the relief for the unemployed by the giving of work relief is wasteful, and when I pin them down I discover they are in favor of substituting the dole in place of useful work.

And he goes on to say:

> I would not think of it and no legislator would dare suggest it.

He was most emphatic in that assertion, was he not? The selectmen who run our municipalities in the State of Massachusetts held their convention in the statehouse in Boston and passed a resolution on the subject that I shall shortly read into the RECORD. Unemployment insurance is idleness insurance. Substitute those words for "a dole" and the problem is solved.

This made work is getting to be a stench in the nostrils of many citizens who refrain from expressing their real views because the President says even from this rostrum that no legislator would dare suggest direct relief, which he calls a dole in one breath and unemployment insurance at another moment. I deeply appreciate the courage of the chosen officials of the Commonwealth of Massachusetts, for by a large majority these selectmen of practical experience in W. P. A. passed this resolution:

> That the Association of Massachusetts Selectmen in annual meeting assembled do most earnestly recommend that all W. P. A. work in the United States cease as of June 1, 1938, and that a decreasing scale of direct payments to the various States for redistribution to local welfare departments be substituted therefor; said payments for the first year not to exceed in total one-half the sum expended on W. P. A. during 1937, and to cease entirely within a 4-year period.

Often have I made the appeal on the floor that the Committee on Expenditures meet and investigate expenditures. A majority party I presume will never critically examine its own expenditures, but the committee was set up for that purpose. What a difficult job it is to investigate without witnesses. Often have I presented you the conditions, as indicated by the Treasury of the United States in connection with its claims as to recoverables and the lack of proper audit. When you assigned $4,480,000,000 and $3,000,000,000 to the Executive to spend as he pleased we should be interested really to learn what there may be to show for it. I wish to say to the chairman of the Committee on Appropriations that I endeavored to investigate junkets to Europe. As you recall, seven resolutions were presented here and sent to seven different committees. They were thrown back in my face without any particular investigation, as was probably to have been expected. No, they did not want even junkets to Europe investigated.

But by investigating one of these junkets, as you will recall, the Comptroller General, whom some of you wish to dispose of, finally ruled that all expenses of that particular junket were illegal, even though made at the express request of the President of the United States. They took relief money and sent a junket to Europe—a large junket. Clerks and stenographers and our embassies in the foreign countries were put to the trouble of entertaining and watching over them. They probably had a glorious time. The Comptroller was courageous in ruling that the money spent on this junket was illegally expended and in demanding that it be returned to the Treasury and that they pay their own expenses.

I now yield to the gentleman from Virginia, from the Committee on Appropriations, to answer this question which I will ask him: When a bill comes in here to forgive them and reimburse them, will he favor it?

Mr. WOODRUM. Forgive whom, reimburse whom, for what?

Mr. GIFFORD. The people who went on the junket to Europe, who are now ordered to pay back the money. Will the gentleman vote to appropriate money to reimburse them?

Mr. WOODRUM. I do not know what the gentleman is talking about. I do not know the trip he is talking about, or the circumstances.

Mr. GIFFORD. I will explain to the gentleman that it was one Jacob Baker who apparently importuned the President of the United States to send a junket trip to Europe to study cooperative methods, and the President requested the Commodity Credit Corporation to use money for that purpose, which money the gentleman knows could not be used outside the United States. Now, what is the gentleman going to do when the President sends in a message possibly, or if by any other route there comes a request to us to appropriate the amount? Here is one case where a member of the Committee on Expenditures was able to ferret out the facts without any help from the committee. What would the gentleman do in a case like that?

Mr. WOODRUM. I will answer the gentleman, and I hope I will have his cooperation. I think that a serious matter of that kind should be referred to the gentleman's committee, the Committee on Expenditures, to investigate the facts and report them to the House. The gentleman is an intelligent and active member of that committee. I think his committee should look into that.

Mr. GIFFORD. I am very doubtful and perplexed as to whether I may accept the gentleman's compliment. I hope I am active. Intelligent—I do not know. I see so many other people gone mad that I doubt my own mind at times.

Mr. WOODRUM. I can understand how the gentleman feels.

Mr. GIFFORD. However, I am still active; but here is the chairman of the Expenditures Committee. He will answer you.

Mr. COCHRAN. Will the gentleman yield?

Mr. GIFFORD. I yield to the chairman of my committee.

Mr. COCHRAN. Will the gentleman advise the House when he in writing ever asked the Committee on Expenditures to make the investigation to which he refers?

Mr. GIFFORD. Perhaps not this particular one in writing, but, oh, so often in committee, in the presence of the committee, have I begged to have these spendthrifts called in for examination. The gentleman knows that. Oh, the gentleman himself is the best inquisitor and the best examiner we have in the House. [Laughter.] If they would only let him go.

Mr. COCHRAN. Will the gentleman yield further?

Mr. GIFFORD. Yes; I yield.

Mr. COCHRAN. Does the gentleman recall the other day a member of the minority rose here and said there was a scandal in connection with the T. V. A. that was worse than Teapot Dome, and I asked him to please send the information to the committee? I am still waiting. He said he was going to send it. It has not arrived.

Mr. GIFFORD. If I were chairman of that committee and the newspapers and others uncovered wrongdoing, such as that C. C. C. stealing, do you think I should wait for a written request?

I think the gentleman knows me pretty well, and my own leaders surely know that if my party was in power I would not yield to a leadership request not to examine into its expenditures.

Mr. COCHRAN. Does the gentleman know that the man responsible for that theft has gone to the penitentiary, and there is absolutely no one at fault in connection with the steal but the individual who was convicted?

Mr. GIFFORD. A pretty smart individual.

Mr. COCHRAN. Smart in the manner he carried on, but a fool in the penitentiary in the end. I asked the General Accounting Office, I asked the Interior Department, and I asked the War Department if they could recommend any

change in the law that would prevent a recurrence of this affair. They said they could not. We might have occasion to look into that question in the near future.

Mr. GIFFORD. I am glad the gentleman found the whitewash for the lax conditions of accounting in that department.

Mr. HOFFMAN. What would be the use of sending that case to the cemetery?

Mr. GIFFORD. Exactly. It has been a cemetery for 5 long years and it will continue probably to be a cemetery.

Mr. KNUTSON. Would the gentleman call it a cemetery or a receiving vault?

Mr. GIFFORD. We have not had any meetings this year. I do not know how it would smell now—whether it has a vaulty smell or not.

Mr. PATRICK. Mr. Speaker, will the gentleman yield?

Mr. GIFFORD. I yield.

Mr. PATRICK. I am on that committee; I happen to be sitting at the foot of the table and my name is still in green ink; I have not yet got one of those silver plates with my name on it; but what is the purpose of the gentleman's remarks and efforts this morning if this is a cemetery and there is nothing to be gained? What is the purpose of spreading this sort of thing on the RECORD?

Mr. GIFFORD. I have experienced very often the "weariness of futility." [Laughter.]

Mr. PATRICK. The gentleman means that he enjoys that kind of suffering?

Mr. GIFFORD. Futility does not mean that I shall keep silence, does it? The gentleman reminds me of the lady who could not suffer in silence, because that took all the pleasure out of it. [Laughter.]

Mr. PATRICK. So the gentleman is enjoying bad political health today?

Mr. HOFFMAN. The gentleman has hopes of resurrection—a reawakening of the dead?

Mr. GIFFORD. I do not know where hope lies today, in our distressed political condition and leadership.

Mr. KNUTSON. The day of miracles is over.

Mr. GIFFORD. I thank the gentleman from Virginia for speaking of economy. He said the deficit this year undoubtedly will be $1,000,000,000, but we know it will probably be $2,000,000,000. It has been so placidly referred to each year. That little deficit! I saw this jingle the other day:

Hush little deficit, don't you cry,
You'll be a crisis by and by.

[Laughter.]

The gentleman from New Jersey made a remark about his lottery tax this morning and the gentleman from Virginia said, "I do not know but what I will have to come to agree with the gentleman." Perhaps even I may be forced to accept that sort of a revenue measure. We must raise taxes from some source. I have been thinking much about it. We have confiscated and robbed people to the full extent of our ability, and taken now the very capital which is needed to employ men and women. However, we are apparently retracing our steps since whisperings from the Ways and Means Committee "go so." We hear that they now acknowledge the error of their former views on confiscation. This takes me back to the first days of my study of the subject of taxation. The old verities were, "Taxes, like the atmosphere, should press equally on everybody"; and our forefathers used the word "proportional" in the Constitution.

Also that taxes must never be imposed on the evil things of a community lest they take a foothold on such community from the very necessity of securing revenue. That we should not tax rum and similar evils lest the license fees constitute too large a part of the revenue and create toleration of the evil.

But when we have exhausted all reasonable revenues we can think of nothing else. We have drained off most of the forms of indirect taxation; and as we look around we find nothing to fall back on but the so-called cheerful taxpayer, the smoker, the drinker. We could even place more tax on tobacco, for people would still pay. The gasoline taxpayer is fairly cheerful about it, but we have about reached the limit with him. There are some other things that are rather on the border line of evil, which would be freely indulged in if permitted by law merely to obtain revenue.

Mr. PATRICK. Will the gentleman be a little more specific right there?

Mr. GIFFORD. I should not wish to do so.

I leave that to the gentleman's imagination. Has he not an imagination?

Mr. PATRICK. I believe all the gentleman has left us is our imagination.

Mr. GIFFORD. That is all that is left for all of us, and worrisome days are with us. Nonchalance seems to obtain in the Executive offices only.

Mr. KNUTSON. Will the gentleman yield?

Mr. GIFFORD. I yield to the gentleman from Minnesota.

Mr. KNUTSON. When all sources of revenue have been exhausted, we might scrape the gilt off the Library of Congress.

Mr. GIFFORD. I read somewhere that when all was exhausted, we would have to live like the prodigal son, on the food of the swine. But the question was asked, "After the food for the swine is exhausted, what will you live on?" He said, "We will then eat the swine." We shall have to do that. We are living off the capital structure even now.

Mr. PATRICK. The gentleman does not mean to eat crow, does he?

Mr. GIFFORD. Certainly it seems that some of you are eating just that today. Shall we join hands in yielding to that plan of raising taxes from any source where there is a cheerful taxpayer? What do you think?

Mr. WOODRUM. I do not know why the gentleman honors me with his interrogations.

Mr. GIFFORD. The gentleman opened the discussion.

Mr. WOODRUM. I want to reduce expenditures. It is up to the gentleman's Committee on Ways and Means to raise taxes.

Mr. GIFFORD. Anything else?

Mr. WOODRUM. From anywhere we can get it. I will join with the gentleman in cutting down anywhere.

Mr. GIFFORD. The gentleman is the one to start. I will join him.

Mr. WOODRUM. Where would the gentleman suggest we start cutting?

Mr. GIFFORD. Where would you suggest?

Mr. WOODRUM. I suggested roads. How about one from the gentleman?

Mr. GIFFORD. Cut the C. C. C. camps down, as I stated on the floor of the House, and save $100,000 on every $240,000 by having the boys in school 5 days a week, with 20 instructors to every 200. Pay the $25 a month to the family. Have all the work done by a contractor just the same. I showed you where you could save $100,000 out of every $240,000, with far better effects on the young men we wish to save.

Mr. WOODRUM. That would be a dole instead of giving the boys work.

Mr. GIFFORD. Far from it. Train them every day in a school under competent instructors. Do not put them out in the woods pulling stumps, away from their homes where they have but little surveillance.

Mr. WOODRUM. Does the gentleman seriously believe we can make any further cut in the C. C. C.?

Mr. GIFFORD. I showed you a $100,000 cut on every $240,000, and it would do twice as much for the boys as we are doing for them now. But, no, you laugh out of court any suggestions made by any of us on this side.

Mr. CRAWFORD. Will the gentleman yield?

Mr. GIFFORD. I yield to the gentleman from Michigan.

Mr. CRAWFORD. In view of the fact the gentleman is a member of the expenditures committee, I would like to ask this question which has been running through my mind: Let us assume the Government launches into a large program of Government ownership of utilities, including telephones, electric light, railroads, and so forth, thereby gathering from

the people day in and day out millions, tens and hundreds of millions of dollars over a period of months. Under our form of government, what is there which gives the people a check on the expenditure of those incoming funds to see that they are used for the purpose of maintaining plants to render service in the future to the people, and prevent the funds being diverted to purposes other than maintenance of plant and providing for the service of the people?

Mr. GIFFORD. Of course, the answer is the Congress. I think the Congress today could prevent social-security funds being taken and used for current expenses, with the issuance of new I. O. U. paper. The people are waking up to that method of doing business. If the Government would take over all of these instrumentalities which the gentleman has cited, certainly under present methods, without the Appropriations Committee earmarking those funds as it should have done during the last several years, the money could be diverted for any other purpose.

The gentleman rises today and tells us what economies he would pursue, but let us look at the specter of the last 5 years, due to lack of earmarking funds, and at his own approval and defense of the handing out of large sums to spendthrifts.

This may be a tirade, as you suggest, but it seems necessary. Forget the mannerisms in which I sometimes indulge. It is because I feel so intensely our present unfortunate situation. I hold in high regard the gentleman from Virginia. He belongs to a great party which elected a President of the United States by such a tremendous majority that he seemingly assumes that he has absolute authority to do anything he pleases. Behold his pleasure and satisfaction as the army of businessmen parades before him.

I wonder if the gentleman from Virginia still thinks the President of the United States believes he has such authority from the people that he is given the right to do all things as he pleases, and that we do not dare stand against him? I will have to remind the gentleman from Virginia that he stood here one day so enthusiastic to carry out the wishes of his President that he said:

> If you do not vote for it, tomorrow morning do you know what will happen? The RECORD will be read and those who do not stand by the President will be noted down. You know what I mean.

He said that to you boys on this side of the aisle. Do you forget? And you fell in line, too. Can we expect him to attempt economies not approved by the President? I rather doubt it.

Some of us have suffered, as I stated, "the weariness of futility." However, our memories are somewhat green. We had a little period of prosperity. I read only this morning this statement and ask you to ponder it:

> Some people attribute recovery to New Deal reform measures, but actually it was due to only one thing, the spending of borrowed money.

The gentleman from Texas [Mr. MAVERICK] interrupted the gentleman several times. If you have not already read his speech of Saturday, which will be in the RECORD tomorrow, do so. You will find that he advocated on Saturday the spending of many, many billions of dollars more.

[Here the gavel fell.]

Mr. GIFFORD. Mr. Speaker, I ask unanimous consent to proceed for 2 additional minutes.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

Mr. GIFFORD. That gentleman is faithful to the desires of his President, even to rushing to father the Supreme Court rape measure. Much as I appreciate the great ability of the gentleman from Texas, he must not be too liberal. I do think a great deal of him and have been interested in him from the day I saw him, recognizing his ability and patriotism. But, in the recent words of Dr. Santayana, I may say to him and some other liberals here, "Watch your own liberalism lest it be only fanaticism watered down." At this moment, however, conservatism, the attitude of one who counts the cost, is, above all things, greatly to be desired. [Applause.]

Having received permission to extend my remarks, I waive the reading of a most pertinent address delivered at the Massachusetts selectmen's meeting by Mr. Victor F. Adams, of the town of Barnstable, as follows:

> When in 1933 the Federal Government put itself in the welfare and relief business by instituting its C. W. A. program, experienced selectmen all over Massachusetts looked with apprehension on this "noble experiment." Our worst fears have been justified. W. P. A., gentlemen, is a sugar-coated, candy-covered poison. It looks good. The first taste is good. But the result is disastrous. No such painful paradox as W. P. A. and its kindred was ever foisted on the American people. Under the guise of work relief, apparently in itself a worthy program, either intentionally or unintentionally, a tremendous political machine has been built up, countless executives at high salaries have been hired, while the man for whom the program was primarily designed has worked at far less than subsistence wages; countless workmen have been hopelessly spoiled by the inefficiency of this type of work; millions of people, previously self-respecting and honest, have been taught to seek relief and live improvidently during periods of employment; millions have been led to depend upon the supposedly inexhaustible resources of Government to care for them through any and all emergencies; and in 4 years through this and similar programs our national debt has mounted to the point of approximately $300 for every man, woman, and child in our country.
>
> We all well know that as soon as we oppose the W. P. A. openly we are going to be accused of biting the hand that feeds us, of saying one thing and doing another. But no matter how heartily we may disapprove of W. P. A. and its methods, we must in justice to the taxpayers of our towns fight for our share of the money spent. If our Congress and President see fit to throw the taxpayers' money into the street, we must scramble for it with the crowd and salvage what we can. It will be pointed out that countless people have been benefited and saved from complete discouragement by the W. P. A., but you and I know only too well that for every person so saved there have been a half-dozen completely ruined and demoralized. It is going to be many years before the influence of W. P. A. can be removed from the minds of our welfare people and the resulting tax burden removed from the shoulders of the taxpayer.
>
> To explain my attitude regarding direct payments to relief agencies as against work relief, I would like to quote a portion of my 1935 town welfare report, written over 2 years ago, but truer today than ever.
>
> "The E. R. A. and W. P. A. were organized solely to administer relief. This board has long maintained that the Government's method of putting these relief schemes into operation was radically and basically wrong. There is, in every town and city in the Commonwealth, an already established and functioning board of public welfare, whose duty it is to care for those in need of assistance. If the Federal Government wished to aid in administering relief, if they deemed the financial loads on the various municipalities too great for the local taxpayer to directly shoulder, there was but one fundamentally sound way to assist and that was to give each town and city its proportionate share of the money raised, under the condition that it be expended for relief under the direction of the already existing welfare departments. Instead of this, however, Mr. Hopkins and his assistants set up an organization so huge, so complicated, and so hopelessly entangled in red tape and inflexible regulations that it could scarcely function at all. In spite of the immensity of this machinery, it merely paralleled the established welfare departments, and for various self-evident reasons it could not efficiently cope with the local welfare situations. In the first place, it necessarily employed persons who had little or no previous experience with welfare problems. Secondly, many of those in administrative offices were not acquainted with local conditions. Thirdly, whatever good might have been accomplished in spite of other handicaps was further greatly minimized by inflexible regulations which by the very reason of their universal application must necessarily be frequently deficient when applied to local conditions. As compared with this fearsome and complicated administrative machinery set up for the W. P. A., the scheme of direct payment to local welfare boards would have been simple in the extreme and would have required relatively few administrative employees. It would have diverted hundreds of millions now spent for administration into relief channels or into a direct saving to the Federal Government."
>
> Gentlemen, for 4 long years W. P. A. workers and other wards of the Federal Government have received at the expense of the taxpayer an intensive and complete course in "Relief and How to Get It." They have learned their lesson well. Next June when hundreds of thousands are being graduated all over the country, I suggest that all W. P. A. workers be given their diplomas and be sent out into the world to find a job. No disparagement is intended of the honest and earnest worker who has really been benefited by the program but, I repeat, for every one of these there have been a half-dozen demoralized.
>
> I realize that it is quite hopeless to continue to oppose work relief. But when we know we are right, we must "keep on keeping on." Our remarks and our action here may be destined for immediate oblivion, but we must fight although ours is only a voice howling in the wilderness we can't quit. Someone, sometime, somewhere will start the ball rolling in the right direction;

others seeing at last the light will keep it moving until it rolls right through the Halls of Congress, and W. P. A. and its cousins are "thrown out of the window."

When that day comes and not before, in my opinion, you will see the beginning of the revival of American business and, far more important, the beginning of the revival of the American people. It is going to be then our task as local public officials, over a long period of years, to salvage what we can from the wreckage of the welfare situation.

PERMISSION TO ADDRESS THE HOUSE

Mr. COCHRAN. Mr. Speaker, I ask unanimous consent that at the conclusion of the special orders of the day previously entered I may be permitted to address the House for 15 minutes.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Missouri?

There was no objection.

Mr. HOFFMAN. Mr. Speaker, I ask unanimous consent that I may be permitted to address the House for 10 minutes at the conclusion of the remarks of the gentleman from Missouri [Mr. COCHRAN].

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

Mr. WOODRUFF. Mr. Speaker, I ask unanimous consent that at the conclusion of the remarks of the gentleman from Michigan [Mr. HOFFMAN], I may be permitted to address the House for 15 minutes.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

Mr. DICKSTEIN. Mr. Speaker, I ask unanimous consent that, following the special orders for today previously entered, I may address the House for 15 minutes.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

EXTENSION OF REMARKS

Mr. WHITTINGTON. Mr. Speaker, I ask unanimous consent to extend my own remarks in the RECORD and include therein an address delivered by me before the Mississippi Valley Flood Control Association in the city of Washington on last Wednesday, January 19, and also an address delivered by me before the Rivers and Harbors Congress on last Thursday, January 20.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Mississippi?

There was no objection.

Mr. STEFAN. Mr. Speaker, I ask unanimous consent to extend my remarks in the RECORD and include therein a statement on fats and oils by Professor Gramlich, of our State Agricultural College.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Nebraska?

There was no objection.

Mr. BEITER. Mr. Speaker, I ask unanimous consent to extend my remarks in the RECORD on a national long-range planning agency, and include therein an article by Dr. Aikman in the New York Times on the same subject.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

PERMISSION TO ADDRESS THE HOUSE

The SPEAKER pro tempore. Under previous order of the House, the gentleman from Georgia [Mr. COX] is recognized for 10 minutes.

Mr. COX. Mr. Speaker, at Miami, Fla., this week momentous decisions must be taken by the executive council of the American Federation of Labor that will tremendously affect the destiny of the organized labor movement in America. The executive council is to decide whether or not the American Federation of Labor shall yield to the tremendous pressures being exerted upon it to accept into its ranks the C. I. O. and its affiliated unions on the basis of the proposals for amalgamation offered by the spokesmen of the C. I. O., or whether the American Federation of Labor shall continue to insist that the conditions proposed by its spokesmen shall be observed if a coalition between this old and great labor democracy, the American Federation of Labor, and the new labor autocracy, the C. I. O., is to result in one great labor organization.

Mr. Speaker, I have never been the spokesman for any organized minority during my career in the Congress. I do not speak today as the advocate of any organized minority. I speak out of my deep and abiding interest in the welfare of all those in America who labor.

While it is true that I have never been the spokesman in the Congress for any organized minority, I have never hesitated, nor do I now hesitate, to voice my approval and to give my support to the principles advocated by any organized minority which I believe to be true principles of freedom and true principles of Americanism.

The depression which began in 1929 and which has extended to this hour in 1938 has brought forth vast problems concerning industry and labor, which means to say concerning the Nation as a whole. The problems of America, the peace of America, the security of America, the prosperity of America are inseparable from the problems, the peace, the security and the prosperity of both industry and labor in America.

We have seen arise over the period of more than 50 years a great organization known as the American Federation of Labor which, under the guidance of Samuel Gompers, the most unselfish, the most able, and the most brilliant labor statesman the world has ever produced, has become a great democracy of labor. Its officers are elected by the rank and file; its economic and legislative policies rest upon the approval of the rank and file; its financial affairs are dictated by and reported to the rank and file, and its officials are at all times responsible to the rank and file. The American Federation of Labor has established a record over the years for the discipline of its membership, the integrity of its promises, responsibility for its signed contracts, and regard for its pledged word.

Samuel Gompers, for 50 years, preached and demanded not warfare but cooperation between labor and industry, between employers and employees, between labor, industry, and government. Samuel Gompers, for 50 years, stood like a rock in the face of all pressures and under the stress of all persuasions for that type of cooperation.

I had occasion recently, in this Chamber, to raise my voice in a plea for enlightened cooperation between labor and industry and between labor, industry, and government. Samuel Gompers, for 50 years, stood like a rock against all pressures and under the stress of all persuasions to the contrary for that kind of cooperation.

More recently there has arisen in the labor movement a new organization admittedly infiltrated with Communists and other subversive radicals whose philosophy is diametrically opposed to that of Samuel Gompers. Today pressures are being exerted against the American Federation of Labor for an amalgamation with the C. I. O., which will mean not cooperation between these two labor organizations but will mean absorption of the American Federation of Labor by the C. I. O. under the time-honored name of the American Federation of Labor. Those pressures, Mr. Speaker, are greater than we know. The attempt to thus engulf the ideals and principles and the democracy and cooperative philosophy established in the American Federation of Labor by Samuel Gompers into the opposite philosophy of the C. I. O. movement threatens at this hour to be successful.

Samuel Gompers believed "My country 'tis of thee, sweet land of liberty" were more than mere idle words. To him they meant literally "land of liberty." With all the ardor of his intense nature, as his confidential secretary for 25 years before his death, said of him:

> He unremittingly denounced that which savored of unfreedom, of restriction of liberty.
>
> He attacked, opposed, not government but those who in high places would subvert the tremendous power of office to ignoble ends.

I am at this moment reminded of the words spoken after his death by a former Member of this body, who said of him:

Mr. Gompers was a forceful personality, aggressive in his methods and unbending in his allegiance to principle. He had power because he did not attempt to dictate—because he did not attempt to compel. He won cooperation and earned the confident following of the wage earners of the United States. He had power and influence because he was the voluntarily chosen spokesman of millions of independent working men and women of our great Republic. The secret of his power was his unalterable allegiance to the principle of voluntarism. * * * That he could not be tricked or beguiled from allegiance to principle was demonstrated time and again in the most grilling hearings before committees of the Congress and public commissions. Never could he be fooled into accepting a proposal for compulsion, whether compulsory arbitration, compulsory investigation, or laws curtailing the freedom of voluntary organizations by State regulation, State control, or State ownership. To him the principle of voluntarism was the key to human freedom. In his championship of this principle he was a great apostle for a cause fundamental for human welfare.

Mr. Speaker, there has come into the affairs of the labor movement the threat of legislation which will, if passed, introduce the principle of Government control, compulsion and regulation of wages and hours and working conditions of labor—that compulsion which Samuel Gompers for 50 years abhorred, which he for 50 years warned against, and which he for 50 years fought with every ounce of his energy.

That there should be, if not amalgamation, certainly cooperation between the two organized labor movements now existing in this country, is obvious. But a prerequisite of any such amalgamation and cooperation must be, for the safety of the labor movement itself, and for the safety of this Nation, that the taint of communism and subversive radicalism shall be purged from both of these organizations.

Samuel Gompers once said:

I do not know that I am entitled to very great credit, because I am not a Bolshevik. With my understanding of American institutions and American opportunities, I repeat that the man who would not be a patriot in the defense of the institutions of our country would be undeserving of the privilege of living in this country.

Samuel Gompers believed that American organized labor occupied a middle place between extreme capitalistic selfishness and the I. W. W. and kindred movements of what he termed "irresponsibles" and "irreconcilables."

He said:

It is a question of dealing with such a movement as represented by the American trade-unions—the American Federation of Labor—or dealing with a body of irresponsibles or irreconcilables. If we are not on the right track, then those who represent the wildest orgy of destruction with no consideration for the rights of individuals will come to the front. It is a matter of choice between dealing with such elements or dealing with the constructive forces of the organized labor movement in our country.

Those, Mr. Speaker, were the ideals of Samuel Gompers. Those were the principles implanted by him and now deeply imbedded in the American Federation of Labor. Those are the strong ties of American principles which all these years have bound the American Federation of Labor together in a powerful and articulate champion of the rights and welfare of all workers.

It is my hope and my confident belief that those who now control the decisions of the American Federation of Labor will guard well the ideals of their illustrious leader; that they will suffer no abandonment of the principles which his wise counsel and leadership implanted so deeply into the American Federation of Labor. I hope and I am confident that the executive council now sitting amidst the palm groves of Florida will withstand the pressures being brought against them and that they will not permit the results of Samuel Gompers' 50 years of loving labor to be perverted and destroyed by the infiltration of subversive theories and a yielding to dictatorships which would make, for the working men and women of this country, a hollow mockery of those words which were to Samuel Gompers a living ideal, "My country 'tis of thee, sweet land of liberty." [Applause.]

EXTENSION OF REMARKS

Mr. DOCKWEILER. Mr. Speaker, I ask unanimous consent to extend my own remarks in the RECORD in regard to a bill I am introducing today on conservation of forests and the like in California.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

PERMISSION TO ADDRESS THE HOUSE

Mr. VOORHIS. Mr. Speaker, I ask unanimous consent that at the conclusion of the special orders for today heretofore entered I may be permitted to address the House for 10 minutes.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. MAVERICK. Mr. Speaker, I ask unanimous consent that at the conclusion of the special orders for today heretofore entered I may be permitted to address the House for 10 minutes.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

The SPEAKER pro tempore. Under previous special order of the House the gentleman from Missouri [Mr. COCHRAN] is recognized for 15 minutes.

Mr. COCHRAN. Mr. Speaker, under existing law the Secretary of the Treasury is required to report to the Congress a list of all refunds made by the Bureau of Internal Revenue during the fiscal year. As usual, this report came to the Congress at the opening of this session and was referred by the Speaker to the Committee on Expenditures in the Executive Departments. As the chairman of this committee, and acting under a standing order of the committee, I consulted with the standing committee of the press gallery and then announced the information would be released as of January 26.

While the law provides the Secretary of the Treasury must make the refunds public through the Congress, the law prohibits the Secretary of the Treasury from giving out any statement of figures which will offset the refunds the Government is required to make. It so happens, however, the Committee on Appropriations, through the subcommittee on the Treasury appropriation bill, secured this information, and I believe it is only fair the public should know the amount the Bureau of Internal Revenue collected in the way of additional assessments, penalties, and so forth. Therefore I desire to call your attention to the fact that on page 503 of the hearings on the Treasury Appropriation bill you will find the amount of refund of taxes illegally collected during the last fiscal year was $32,253,803, but, in addition to this, credits and abatements were allowed the taxpayers in the amount of $170,442,611, or a total of $202,696,414. Another table found on this same page shows the amount of additional assessments resulting from office audits and field investigations, and this amount is $399,448,703. Using round numbers, the Bureau of Internal Revenue collected during the last fiscal year approximately $200,000,000 more than it refunded or allowed in credits or abatements—in comparison with past years, an excellent report.

If this statement were not made the general public would have a right to believe everything is going out and nothing is coming in.

It is also interesting to note the total receipts for the Bureau of Internal Revenue during the last fiscal year were $4,653,195,315. The hearings further disclosed the administrative expenses were but $58,000,000. If there is one Government agency which I feel should have an increase in force—and you all know I am not strong for voting for increases—it is the Bureau of Internal Revenue, because for every dollar you appropriate they will bring back hundreds into the Treasury before they get through.

I think it is sound business to appropriate one dollar when you can get hundreds in return.

Mr. CROWTHER. Mr. Speaker, will the gentleman yield?

Mr. COCHRAN. I yield to the gentleman from New York, a member of the Ways and Means Committee.

Mr. CROWTHER. I think the gentleman is correct, and the recommendation was made by the collector in his district to the subcommittee of the Ways and Means

Committee having this subject in charge that they are able to go over only a very small portion of their returns due to a lack of experts in their department. I believe the gentleman is correct in stating that one dollar invested in employees of this kind brings a large return to the Government.

I also want to call attention to the criticisms that were leveled a number of years ago at the refunds made under a Republican administration when the amount of money that was collected by the experts in the department, where errors had been made overran the amount that had been paid out in refunds by as large a percentage as the one the gentleman now states they overrun at this time.

Mr. COCHRAN. The figures on page 503 of the hearings, which were not available during the period the gentleman speaks of, disclose that during the big years, for instance take 1929, there were refunds of $190,000,000-plus and credits and abatements amounting to $228,000,000, making a total of over $400,000,000, but the collections during that same period were practically the same amount, according to the table. There are other years where the amount collected far exceeded the refunds and credits.

A number of the refunds are due to decisions of the Supreme Court that revert back to old cases, but the job is being well done, and as the gentleman from New York, who has long been a member of the Ways and Means Committee, well knows, if we will give them a sufficient force there will be more money coming into the Treasury from those who, under the laws that the gentleman's committee is responsible for, should pay more to the Government.

Mr. McCORMACK. Mr. Speaker, will the gentleman yield?

Mr. COCHRAN. Yes, with pleasure, to another member of the Ways and Means Committee.

Mr. McCORMACK. What the gentleman means is that the man who now escapes paying taxes through evasion—not avoidance, but evasion—would have his returns examined if there were additional men in this department, and would be compelled to pay the taxes which under the law he rightly should pay the Government.

Mr. COCHRAN. Absolutely. If they had sufficient trained personnel, which is selected through the civil service, men who are required to show experience in accounting, auditing, and so forth, it is my opinion that many, many people in this country who are evading taxes today would be required to pay the taxes they should pay under existing law. You gentlemen on the Ways and Means Committee study this question with care and when you say the Bureau should have additional personnel I know I am right in advocating it.

You have the intelligence unit in the Bureau of Internal Revenue. I have made several speeches about the intelligence unit. Up to a short time ago this unit received an appropriation of $600,000. It has been gradually increased to one million. For 6 consecutive years this unit averaged $33,000,000 a year to the Government. Remember this is on an appropriation of $600,000, and these were fraud cases where they had to go out and dig up the facts, working on cases for several years before being able to get the necessary information.

Mr. McCORMACK. And where people escape paying the taxes they should pay, a heavier burden is thrown upon the taxpayer who is making a proper return and paying the taxes he should pay.

Mr. COCHRAN. There is no doubt about that. The gentleman is correct. We would be helping those who make an honest return, and we should help them. Many who are well able to pay still escape paying what they should pay, and additional personnel means they will be made to pay.

Mr. McCORMACK. I think the gentleman's argument is absolutely consistent with his firm stand on economy.

Mr. COCHRAN. This is real economy. It is more than that; this expenditure will pay dividends. My main purpose, Mr. Speaker, in rising today was to give the information to the country, so that on January 26, when the returns are announced, the people will likewise know that the Government has received over $200,000,000 more than the amount of the refunds plus the credits and abatements; but I also want to say something about those administering these laws.

Therefore, Mr. Speaker, I want to say a word about the Bureau of Internal Revenue and some of its work, as well as accomplishments. First, let me get back to the Intelligence Unit I was speaking about when interrupted.

This Unit investigates evasions of income-tax applications; also, attorneys and agents to practice before the Treasury Department, and anyone who seeks an appointment in that Department. It is the Unit where the fraud cases are developed. It is the Unit that started the Federal Government's campaign against crime in the United States. It assumed jurisdiction under the income-tax law, and while investigating evasions of income tax developed evidence which was passed along to the local authorities throughout the United States, resulting in thousands of gangsters being placed in the penitentiaries of the country. It was this Unit that destroyed the power of Al Capone and sent him and his henchmen to the penitentiary. This was long before the G-men came into being. We had no kidnaping or extortion laws then.

After I had made several speeches on the floor in support of increased appropriations for this Unit, the amount was gradually raised from $600,000 to $1,000,000. Their average collections for the last 10 years have amounted to $25,000,000. This amount does not reflect the great increase in revenue that comes to the Government by reason of its activities. Wide publicity is given to the prosecution in income-tax cases, and as a result of that prosecution and the conviction of those who evaded their legal income-tax payments residents of that community are more careful in filing their income-tax returns in future years, and there is reflected the great increase in the amount of taxes that comes to the Government as a result of their work.

Eight hundred and forty-four cases were made by this Unit of evasions of income tax in the last fiscal year. Prosecution was recommended in 202 cases where 295 individuals were involved. So far 62 have been convicted and 6 have been acquited, while the other cases are pending. Aside from this it was necessary to investigate 3,934 applications of attorneys and agents who desired to practice before the Treasury Department. Charges were filed against 84 agents and attorneys who had been admitted to practice. Applications of 62 were rejected. Eight were disbarred, four suspended, and six reprimanded. Every case where a charge is placed against an employee of the Internal Revenue Bureau receives the attention of this Unit, and in the last fiscal year 126 cases were looked into. One hundred and three employees were discharged, 11 prosecuted, 10 convicted, and 1 indictment dismissed.

Aside from this, 3,751 cases of a miscellaneous character, which included investigations for the Bureau of Narcotics, Customs Service, Comptroller of the Currency, and the Procurement Division, were investigated. Just think of such activities with an overhead of only $1,000,000, which, of course, includes travel pay and per diem allowance when the agents are sent from their post of duty.

It might be well to mention that last year the expenditure authorized by the Congress of this $1,000,000 resulted in assessments of additional taxes and penalties in the amount of $26,702,728. My contention is if this Unit had another million dollars for additional agents to do nothing but investigate evasions of the income-tax law they would bring in an additional $25,000,000. Due to a lack of sufficient personnel many are now escaping not only the payment of taxes that are due the Government but prosecution which would result when direct fraud is shown in making the returns.

The Intelligence Unit is in charge of Mr. Elmer L. Irey, who has been in the Government service for many years. Due to his efficient work, he is also at the present time Coordinator of the Treasury Law Enforcement Service, which includes the law-enforcement agencies of the various branches of the

Treasury Department, such as the Secret Service, Narcotic Service, Customs Service, Coast Guard, and Federal Alcohol Administration.

The Commissioner of the Bureau of Internal Revenue is Hon. Guy T. Helvering, a former Member of this House. During the years that he has been at the head of this Bureau no criticism has been directed at his management. One of the outstanding reasons for his success was the selection of his assistant, Hon. Charles T. Russell, who is also the Deputy Commissioner in charge of the Income Tax Unit. Russell's service to the Government shows the value of placing career men in responsible positions, especially in the departments where they are trained. For nearly 20 years Mr. Russell has been connected with the Bureau of Internal Revenue, and it so happens that he is a former resident of my State, Missouri, and was for a number of years the revenue agent in charge in St. Louis. He brought to the headquarters a thorough knowledge of income-tax laws, as well as sound suggestions that would assist in improving the administration of those laws. As a result of the recommendations to the Congress, for which he is in a large way responsible, there has been a great increase in the amount of income-tax returns. He took a prominent part in advising the Ways and Means Committee of the House, as well as the Senate, which resulted in the closing of loopholes through which the rich escaped the payment of taxes which were due the Federal Government.

I do hope that Congress will recognize the necessity of giving sufficient personnel to the Intelligence Unit, as well as the various other units under the Internal Revenue Division, and if it does I predict a large increase in the amount of taxes which that Bureau is charged with enforcing. [Applause.]

The SPEAKER pro tempore. Under the previous order of the House, the gentleman from Michigan [Mr. HOFFMAN] is recognized for 10 minutes.

Mr. HOFFMAN. Mr. Speaker, in a case entitled "United States of America, Before the National Labor Relations Board, in the Matter of Clover Fork Coal Company and District 19, United Mine Workers of America, Case No. C-213," decided November 27, 1937, the Board has made an order, the second section of which requires the Clover Fork Coal Co. to—

> Cease and desist from contributing to, cooperating with, or assisting, through membership therein or otherwise, the Harlan County Coal Operators Association or any other organization engaged in interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, as guaranteed in section 7 of the National Labor Relations Act.

While to the uninitiated this order seems fair enough and directed only to the prevention of efforts to interfere with membership in, and activities of, union organizations, if construed with that purpose in mind, construed in the light of the facts as they exist, the order may have a far different effect, one entirely unjustified by any rule of law.

The Harlan County Coal Operators Association was formed about the year 1916 by the coal operators of Harlan County for several purposes, but two of which are pertinent here:

> (b) Securing efficient enforcement of State and Federal laws relating to mines and mining, and encouraging all proper movements having in view the safety and welfare of the men employed in and about the mines.
>
> (h) The establishment and maintenance of cordial and peaceful relations between the employer and employee, but resisting with all its power and influence all movements to force the coal operators to recognize or adopt the so-called closed-shop policy or practices.

For a time practically all of the coal-mining companies of the district were members of the association. At the hearing held by the Board, the Clover Fork Coal Co. established that it was no longer an active member of the association; that it did not pay regular dues, but that it did remit to the organization each month a sum which was designated as a "safety assurance" fee, the payment of which entitled the employees of that company to protection against certain hazards of their occupation and to the service which might be furnished by the safety equipment of the association, in the event of a disaster occurring at the mines of the Clover Fork Coal Co.

While the order of the Board requiring the company to cease and desist from contributing to any organization which interfered with union activities might be perfectly proper, if justified by the facts, there can be absolutely no excuse for preventing the company paying the fee which would secure to the miners employed by it the protection furnished, in the event of disaster, by the Harlan County Coal Operators' Association.

The first major mine disaster in Harlan County occurred in 1928, when eight men lost their lives and an untrained rescue crew became overcome and had to be themselves taken from the mine.

The Harlan County Coal Operators' Association, starting with an initial purchase of some $6,000 worth of safety equipment shortly after the county had partially recovered from the shock of the 1928 disaster, has steadily increased in efficiency and has been actively engaged in the development of a safety program and a safety department which now ranks with the best in the United States.

The association now has on hand thousands of dollars' worth of equipment and supplies. In the last 10 years it has purchased something like $20,000 worth of equipment and replacements. There is some $3,000 worth of equipment in the Harlan General Hospital, which is owned by the association. This consists in part of oxygen tents, special bone-treatment equipment, special beds for mine-accident cases.

Three of the oxygen tents are always available and two smaller ones are ready to be rushed to the mining camps in the event of an emergency. An HH inhaler is used for cases where suffocation is threatened and in cases of drownings. The miners receive first-aid training and the Harlan County Safety Department, under the direction of a safety expert, puts on safety meets each year. In 1930 they won first place in the national safety meet which was held in Louisville, Ky.

Experts in the mining research and safety fields have been brought to Harlan to talk before many first-aid groups, which are functioning in every camp, and regular classes are held by Mr. Bryson, in which he introduces and lectures on new methods and equipment in the safety field.

As all know, an explosion in a mine needs immediate attention. The association maintains an automobile for service. The nearest safety and rescue station is 60 miles from Harlan, which is in isolated and mountainous country, and the loss of life which might occur because of this order of the N. L. R. B. no one can estimate.

Nor is there any way of estimating the damage and the suffering which might result if the Clover Fork Coal Co. had to depend solely upon the safety and rescue station which is 60 miles away.

Mr. DICKSTEIN. Is there any reason why the Board should make an order of that kind? On what authority do they do it?

Mr. HOFFMAN. They assume the authority, and God only knows why they do it, unless they are drunk with power. Some of them lack experience. There is a provision in the law which permits the introduction of all sorts of evidence. I wish more southern Representatives were here at the moment so that they could hear the following excerpt from a letter which I received this morning from the capital of a Southern State. I read:

> I am engaged now in a hearing which will soon enter into the fourth month, with the probability of the hearing extending for many months in the future. The record has now passed the ten-thousandth page, a large portion of it consisting of evidence which has been admitted under the provisions of the act providing that the rules of evidence shall not prevail. Any finding of facts made upon this record will necessarily be largely based upon evidence which, in any court of law in reference to any property rights in any jurisdiction, would be considered illegal and improper. It would be impossible for any reasonably full and fair finding of

facts to disclose as to what part of the findings was based on illegal evidence and what portion was based on legal evidence. When any conclusive presumption is applied to such a finding of facts, the case has been determined on evidence which, at least in part and probably for the greater part, was illegal and improper in the first instance.

There is nothing in the law which would justify the making of a decision which would interfere with the safety-first campaign; which would prevent preparation to meet the needs of disaster in the mines, the treatment of those who might be injured.

The ruling, if so construed, is arbitrary, unjustified by the facts, without warrant of law; it is inhuman. If enforced, it will, in the end, result in the loss of life; most assuredly in unnecessary suffering.

It is another example of duplicity on the part of the Board, of its failure to state clearly and fairly the limits of its decision; of the ambiguity of its orders and of the harmful results which its orders bring.

The amendment which I offered the other day would permit the courts to review the conclusion reached by the Board and which, in far too many instances, may be founded upon improper testimony, upon hearsay, upon rumor, upon conjecture.

There are not 10 men in this House who have given the subject consideration, but who know that the Wagner Act must be amended; that there must be a radical change in the manner of its interpretation, if it is to promote industrial peace. We have been remiss in our duty, in that we have so long permitted this monstrosity to remain unchanged upon the books.

The SPEAKER pro tempore. Under previous order the Chair recognizes the gentleman from Michigan [Mr. WOODRUFF] for 15 minutes.

Mr. MARTIN of Massachusetts. Mr. Speaker, I ask unanimous consent that Mr. WOODRUFF's time be transferred to the gentleman who is to follow him.

The SPEAKER pro tempore. Is there objection?

There was no objection.

The SPEAKER pro tempore. Under special order the Chair recognizes the gentleman from New York [Mr. DICKSTEIN] for 15 minutes.

Mr. DICKSTEIN. Mr. Speaker and my colleagues, last week, I think, I asked you to see the March of Time now being shown in the District of Columbia, dealing with subversive propaganda in the United States.

I am not so much concerned about the part dealing with Germany, but I am concerned with that portion of the film which presents the so-called Nazi Bund in the United States. I am concerned with the movement of fascism that is creeping into almost every section of our country. When you see that film and the living exhibits of that group, you will tell me that I have underestimated my case 50 percent, as compared with what is actually going on in this country. There is no other country in the world that would tolerate any foreign uniforms.

Mr. HOOK. Mr. Speaker, I think the gentleman is making a very important statement, and I am going to make a point of no quorum.

The SPEAKER pro tempore. The Chair will count.

Mr. DICKSTEIN. Mr. Speaker, I do not think the gentleman, under the rules, can take me off my feet in that way.

Mr. HOOK. Mr. Speaker, I will withdraw the point of order.

The SPEAKER pro tempore. The gentleman from New York will proceed.

Mr. DICKSTEIN. As I said a moment ago, Mr. Speaker, I do not like to appear on this floor every day and call attention to what is going on. I do not want to quarrel with my colleagues. I am simply calling attention to these facts because I see them daily and constantly. In the last 4 years I do not believe any steps have been taken by any Member of this body to devise any cure for destroying subversive activities within our borders.

Mr. BREWSTER. Mr. Speaker, will the gentleman yield?

Mr. DICKSTEIN. I yield briefly.

Mr. BREWSTER. Does the gentleman feel that when the President expressed sympathy for the conditions, he failed to use the executive power he possesses for checking the situation?

Mr. DICKSTEIN. I do not know that I want to lay it at the door of the President. I think we are just as much responsible for it as any other administrative body. I think it is the duty of Congress to know who these people are, what they are doing here, how they are being financed, what their purpose is here, and what their reason is for having 26 camps in this country which are foreign to our philosophy of democracy. That goes for all subversive groups. I am not giving any of them a bill of health. They are all bad.

I noticed at the convention of the State Bar Association in New York all the fine lawyers of the country have warned this country about communism. Why did they not warn about all the other "isms"? One is just as bad as the other. The question is, What are we doing to stop it? Nothing at all.

I hope that when the time comes and a report is made by the Department of Justice, which I hope will be very soon, it will cover the whole subject. I do not know what the report will be. I have not made any inquiry, but my investigation definitely shows a very strong organization in this country, which organization is being financed, supported, and aided by foreign governments for the purpose of substituting fascism for democracy.

Only this morning I stated to one of my colleagues that I have underestimated my case, because every day wherever you go you will find the preaching of undemocratic principles right in this country, with the aid and help of foreign money. I have made that charge a number of times. Some of my colleagues try to laugh me out of court, but I do not think they can do it any longer.

You will recall that I made charges about camps creeping into our communities, and you will recall the charges I have made about goose-stepping and drilling and wearing foreign uniforms. Many Members have told me it cannot happen here; that we will not tolerate it. But it is here with us, and we have done nothing by way of action to put the searchlight upon all of these groups, to determine some way by which we can actually rid this country of them by law. It is very easy to say "Introduce a bill to get rid of them," but you cannot do it that way. I had a bill before this Congress a year ago, if you will recall, in which I sought to deport all propagandists who came here as visitors but who, in reality, are seeking to spread propaganda. You will remember that for one whole day we debated the question. The liberals of this House thought it would be a punishment to deport an alien who comes here for the sole purpose of spreading foreign propaganda in this country. If you will remember, I was forced to send that bill back to the committee so as not to hold up the proceedings of this House.

So I warn you, my colleagues, and I do it with all the sincerity of my heart, that we must keep this country free from any and all forms of propaganda, for the safety of our American people. We must stop the smuggling of uniforms, the drilling of men and women in foreign uniforms, who no more believe in the principles of this democracy than I do in the principles of Hitler or Stalin.

We must, once and for all, face the facts; we cannot avoid the responsibility. I say to you right now, as I said to you 4 years ago, that you will see greater damage done to this country unless something is done by which we can focus the spotlight upon subversive activities within the United States.

The statement was made by a few of my colleagues that I was afraid of a bugaboo under the table. Someone else said they cannot do any harm. That is all right for a little bugaboo story, but the fact of the matter is that the problem has been with us now for 4 long years and we have done nothing to clean house. Others, and some of my friends, said that I was trying to have set up an investigating committee with an appropriation of $100,000 to go around the

country and have a good time. If this gentleman were a real colleague he would apologize for that statement.

The Committee on Un-American Activities of 1934 was given an appropriation of $30,000, but it did not even scratch the surface. For the gentleman's information—and I believe you know whom I am talking about—I have not even spent one dollar of that $30,000 for my own hotel bills or any expense—and my associates will bear me out—that we have not even spent a dollar, nor have I a voucher in that particular budget, although I worked at times 20 hours a day in the examination of aliens and spies for the purpose of determining how far they have gone. The committee was not continued for reasons I have explained on the floor heretofore.

Mr. STEFAN. Mr. Speaker, will the gentleman yield?

Mr. DICKSTEIN. I yield.

Mr. STEFAN. Is the gentleman's committee still alive and active?

Mr. DICKSTEIN. Our power terminated in 1935. We did not ask for further power at that time because we—and a similar investigating committee in the other branch of Congress—found that the law we were working under was wrong; in other words, we had to correct the law before we could go on. The only hope I had was on April 8, when I offered a resolution—a constructive resolution—which was voted down by a standing vote.

Mr. STEFAN. Mr. Speaker, will the gentleman yield further?

Mr. DICKSTEIN. I yield.

Mr. STEFAN. The gentleman will recall that he yielded to me sometime ago when he was making a speech on this subject. I asked him at that time whether or not the Department of Justice had power to make this investigation that he desired his committee to make. The gentleman then told me that they did not have that power, but since then an investigation has been made and a report has been made. Will the gentleman state whether that investigation went as far as the investigation he wants to make?

Mr. DICKSTEIN. The Department of Justice has no power to subpena witnesses or to put them under oath. All the power they have is such as the gentleman or myself possesses; for instance, the gentleman might send one of his clerks to my office to find out whether we were having a committee meeting that morning and what we were doing there. They can just report what is actually visible to their eyes as to what is going on in this country. The investigation they made in the last year was simply checking the camps in the country as best they could. I am sure that the Department of Justice could not force Mr. Fritz Kuhn to give testimony, or to give his membership in different organizations, or facts about anything.

I am not asking for any personal power. I do not care whether I am chairman of any committee that might be created; as a matter of fact, I do not care to be on the committee; I do not care who is chairman; but it is the duty of Congress to ferret out the enemies within.

Mr. STEFAN. Mr. Speaker, if the gentleman will yield further I will be a little more specific. I think the gentleman is sincere in what he is doing. A little while ago the gentleman referred to some criticism of himself to the effect that he was calling these things to the attention of Congress because he had some prejudice against some particular race and that he referred more particularly to the German Nazis. I believe the gentleman would be equally willing to investigate all races. The gentleman is not really directing his attack against the German people only, is he?

Mr. DICKSTEIN. No; no. I have nothing against the German people. As I have said on this floor on other occasions, my investigations have disclosed that the German-Americans are 100 percent American. They hate this ideology. I am not talking about these people. I have no hatred against any race, color, or religion. I do not care who they are, if they are doing something wrong we certainly ought to do something about it.

[Here the gavel fell.]

Mr. DICKSTEIN. Mr. Speaker, I ask unanimous consent to proceed for 2 additional minutes.

The SPEAKER. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. JENKINS of Ohio. Mr. Speaker, will the gentleman yield?

Mr. DICKSTEIN. I yield.

Mr. JENKINS of Ohio. I have listened to the gentleman's discussion of this question on several occasions. During the course of one of his statements he was asked by a Member with reference to the participation of the Department of Justice. I was told a few days ago that the Department of Justice had made a report on these things. Does the gentleman know what that report is or who made it?

Mr. DICKSTEIN. All I know is that the report was made by J. Edgar Hoover and the Department of Justice. A 1,000-page report was sent to the Attorney General, including about nine volumes of exhibits of propaganda in this country, including racial questions and others. This report is now being studied by assistants in the Attorney General's office, who will make recommendations to the Attorney General the moment they can.

Mr. JENKINS of Ohio. An article came to me—I do not know from what source—which stated in effect that J. Edgar Hoover had said that there was no such great upheaval in this country.

Mr. DICKSTEIN. Yes; of German aliens. I mean the aliens of Kuhn's type—the Nazis. I am not talking about the German people. They have spread in headlines across the front of their paper, the Deutscher Weckruf und Beobachter:

Department of Justice clears all camps and bunds—

And so forth. Here is what happened.

[Here the gavel fell.]

Mr. DICKSTEIN. Mr. Speaker, I ask unanimous consent to proceed for 5 additional minutes.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. DICKSTEIN. Mr. Speaker, certain Members of Congress had written letters to find out whether ammunition was being smuggled from one camp to the other. I had nothing to do with that. Insofar as the transportation of ammunition or guns from one State to another is concerned, the Attorney General or someone in his office made the statement that they found no such condition to exist. That is as far as that statement that was released from the Department of Justice went. It had nothing to do with the un-American activities, and it has nothing to do with other activities because the report by Mr. McMahon on the report by Mr. Hoover has not been submitted to the Attorney General as yet. I hope one will be made very soon.

Mr. JENKINS of Ohio. The gentleman stated a minute ago that a report had been made to the Attorney General but the Attorney General had not digested it. Is that the status?

Mr. DICKSTEIN. That is right.

Mr. JENKINS of Ohio. Has the gentleman any inside information as to when that report will be made?

Mr. DICKSTEIN. I was informed, after conversation with Mr. McMahon, of the Criminal Division, who is examining the report, that a report for the public and most likely for the Congress, will be made within the next 2 or 3 weeks. This is due to the voluminous record in the matter.

Mr. JENKINS of Ohio. For whom did the Department of Justice assume this task or responsibility of making a report?

Mr. DICKSTEIN. I believe certain letters were written by Members of Congress to the Attorney General.

Mr. BOILEAU. Will the gentleman yield?

Mr. DICKSTEIN. I yield to the gentleman from Wisconsin.

Mr. BOILEAU. The gentleman is talking about subversive propaganda. Does the gentleman mean this investigation

should be only with reference to the activities of aliens or of American citizens too?

Mr. DICKSTEIN. Of all subversive groups in this country.

Mr. BOILEAU. Whether they are American citizens or not?

Mr. DICKSTEIN. If they are carrying on subversive propaganda, or if they are aiding and assisting these alien groups in carrying on this subversive propaganda, we should know something about them.

Mr. BOILEAU. If it should develop that it is American citizens entirely who are responsible, does the gentleman feel we should investigate their activities also?

Mr. DICKSTEIN. If their activities are such that they warrant no criticism, there is nothing wrong.

Mr. BOILEAU. The term "subversive propaganda," of course, is broad. I know people who believe that advocating New Deal policies is subversive to the best interests of this Government.

Mr. DICKSTEIN. I am not going along that line of attack.

Mr. BOILEAU. I know the gentleman is not. I am trying to clarify the issue.

Mr. DICKSTEIN. The gentleman has asked me a number of questions, and I have tried to answer them in the best way possible. I am after these subversive groups, namely, these aliens or persons who are citizens but do not believe in our form of government, some of whom hold certificates of citizenship and carry on propaganda that is not for the best interests of America.

Mr. BOILEAU. Who is going to make the determination as to what is for the best interests of America?

Mr. DICKSTEIN. The committee that may be appointed by the Speaker of this House. This committee may subpena witnesses. There are thousands of witnesses on the list to be subpenaed. These persons are advocating propaganda which is not for the best interests of this country. Some of these people hold citizenship certificates and are carrying on propaganda for a philosophy of dictatorship. They are bringing into this country the teachings of fascism in place of democracy.

Mr. BOILEAU. Does the gentleman recognize the right of an American citizen to freedom of speech and freedom of assembly and the freedom of the press?

Mr. DICKSTEIN. Yes.

Mr. BOILEAU. And that he may advocate any form of government he may desire?

Mr. DICKSTEIN. Yes; but I have a very distinct thought as to what constitutes free speech and freedom of the press.

Mr. BOILEAU. I should not want to put a deadline on the right of an American citizen to speak his views. May I ask the gentleman whether or not this committee would have defined for it by Congress in the resolution what constituted subversive practices? In other words, I respect all of the Members of this House, but there are some Members of this body whom I would not want to have define the jurisdiction of the committee in that respect, some of whom would go in an entirely wrong direction, while there are others in whom I would feel absolutely free to trust their judgement with reference to carrying out this policy. Will the resolution which the gentleman is sponsoring or which he endorses itself define what are subversive practices?

Mr. DICKSTEIN. No.

Mr. BOILEAU. It would be left up to the committee to make this determination.

Mr. DICKSTEIN. The resolution would authorize the Speaker to appoint a committee for the purpose of investigating subversive and un-American activities; in other words, activities that we as Americans do not approve of, something we do not stand for. I mean activities which would destroy our Constitution, or activities which advocate destroying our everyday life. Those are the things I am after.

Mr. BOILEAU. I am opposed to communism and I am opposed to fascism.

[Here the gavel fell.]

Mr. BOILEAU. Mr. Speaker, I ask unanimous consent that the gentleman may proceed for 5 additional minutes.

The SPEAKER. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. BOILEAU. I oppose those forms of government; but I recognize the right of an American citizen, if he wants to take it upon himself to advocate a different form of government than we have, to do so, although I would oppose him politically. I would oppose his views; however, I would defend his right as an American citizen to freedom of speech. Does the gentleman agree with me?

Mr. DICKSTEIN. I agree with the gentleman.

Mr. BREWSTER. Will the gentleman yield?

Mr. DICKSTEIN. I yield to the gentleman from Maine.

Mr. BREWSTER. The gentleman has had a discussion in the last 5 or 10 minutes with the gentleman from Wisconsin, but may I ask him, in giving the committee the definition which the gentleman has laid down, is it going to be possible to distinguish that from an inquisition?

Mr. DICKSTEIN. I think the question answers itself.

Mr. BREWSTER. The gentleman opposes anything which would undermine the Constitution of the United States?

Mr. DICKSTEIN. The gentleman is correct.

Mr. BREWSTER. The gentleman knows millions of Americans thought the Supreme Court proposal was calculated to destroy the Constitution.

Mr. DICKSTEIN. I am not talking at this moment of American citizens.

Mr. BREWSTER. The gentleman asked you about that.

Mr. DICKSTEIN. The gentleman asked me whether I believed in the principle laid down in his question, and I say I believe in that very principle. I believe in every man's having the right of free speech and free press.

Mr. BREWSTER. No; the gentleman stated there were certain limits.

Mr. DICKSTEIN. However, there is a dead line beyond which I would not go. My point is that an alien who comes here as a visitor, who is not a citizen of this country, and who seeks to substitute his ideology for democracy by preaching un-Americanism, has no right to the protection given by the right of free speech.

Mr. BREWSTER. The gentleman's resolution does not confine itself to alien activities.

Mr. DICKSTEIN. In the first place, it is not my resolution. The resolution simply provides for a committee to study any activities which are un-American, that is, all movements, whether directed from within or from without, and to investigate the fact that money is coming into this country for such activities. The gentleman does not want to stop the committee from finding out who is financing these movements?

Mr. BREWSTER. For instance, there are millions of Americans who believe England is having a good deal of influence on our foreign policy right now. Should this committee investigate that question?

Mr. DICKSTEIN. No.

Mr. BREWSTER. Why not?

Mr. DICKSTEIN. It is entirely up to the Members of the House what power the committee is given.

Mr. ENGEL. Mr. Speaker, will the gentleman yield?

Mr. DICKSTEIN. I yield to the gentleman from Michigan.

Mr. ENGEL. The gentleman from New York and the gentleman from Wisconsin, of course, advocate the right of free speech, to the extent of permitting one to advocate the overthrow of this Government by force and violence.

Mr. DICKSTEIN. That is what I am opposed to. The gentleman did not put the question in that way.

Mr. ENGEL. The gentleman from Wisconsin made the statement, but the gentleman did not accept it.

Mr. DICKSTEIN. I agreed with the gentleman as he put the question, and the question was whether I believed in free speech and free press and free assemblage.

Mr. ENGEL. But not to the extent of advocating the overthrow of this Government by force and violence.

Mr. DICKSTEIN. If there are any conspirators, whether they are citizens or aliens, who seek to overthrow this Government by force and violence, they ought to be exposed to the

American people, and adequate laws should be passed to protect this Nation against them.

Mr. ENGEL. The ballot box is the proper place for a change of Government.

Mr. DICKSTEIN. Yes.

Mr. BOILEAU. Mr. Speaker, will the gentleman yield?

Mr. DICKSTEIN. I yield to the gentleman from Wisconsin.

Mr. BOILEAU. I do not know if the gentleman from Michigan was asking me a question or not.

Mr. DICKSTEIN. He incorporated the gentleman's question in his question to me.

Mr. BOILEAU. If the gentleman will permit, I should like to make my position clear. I recognize the right of every American citizen to speak his mind freely on a change of government. As to those who would advocate the overthrow of government by force, I would oppose force on my own part, but I recognize their right to advocate any change in this Government they see fit. The moment we do not permit American citizens to speak their minds freely and fail to protect minority groups in their right to speak their minds freely, we no longer have a democracy.

Mr. DICKSTEIN. I agree with the gentleman. That is exactly what I have been preaching.

Mr. BOILEAU. The way to prevent the encroachment of communism in this country is to make this country such the people will want to preserve democracy, and make democracy effective by carrying out the principles outlined in the Declaration of Independence.

Mr. DICKSTEIN. The gentleman is correct. Let us go a little step further. Would the gentleman give the same protection to one who has a certificate of citizenship, but who conspires with foreign groups to overthrow this Government in one way or another?

Mr. BOILEAU. I would give him the right to advocate a change in our form of government, but not the right to advocate such change by force. I may say to the gentleman that when Congress tries to define "advocating by force" you are destroying democracy.

Mr. DICKSTEIN. We do not disagree on that.

[Here the gave fell.]

The SPEAKER pro tempore (Mr. KENNEY). Under previous order of the House, the gentleman from Michigan [Mr. WOODRUFF] is recognized for 10 minutes.

Mr. ENGEL. Mr. Speaker, the gentleman from Michigan has informed me he does not care to address the House at this time.

EXTENSION OF REMARKS

Mr. BREWSTER. Mr. Speaker, I ask unanimous consent to extend my remarks in the RECORD and include therein an address delivered before the Rivers and Harbors Congress on last Friday.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Maine?

There was no objection.

PERMISSION TO ADDRESS THE HOUSE

Mr. SHANLEY. Mr. Speaker, I ask unanimous consent to address the House for 2 minutes.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Connecticut?

There was no objection.

Mr. SHANLEY. Mr. Speaker, I take this time to call your attention to the fact that in the Buenos Aires Convention of 1935 this Government, along with the other republics in this hemisphere, went on record as opposing interference by any nation in the internal affairs of any other nation. I think everybody takes this for granted. In addition, the nations all agreed in formal language that they would try to eliminate all oppressive barriers in tariff discrimination, and I believe everybody approves of that, too.

Only yesterday I heard with some alarm and apprehension that our sister Republic, Mexico, has erected probably the highest tariff barriers we have ever encountered on the part of any American republic. This action affects us, because 70 percent of their trade is with us. It affects us not because we intend to interfere with the internal policies or philosophy of that country, but because we have a solemn pledge with it.

When we talk about China we are talking about a land that is thousands of miles away, a land in which, in reference to Mexico, I am told, the ratio of investment is as 1 to 6—for every dollar we have in China we have $6 in Mexico. So because we have this understanding I think we should view the situation with alarm.

[Here the gavel fell.]

Mr. SHANLEY. Mr. Speaker, I ask unanimous consent to extend my remarks and include therein the two sections from the Inter-American Congress at Buenos Aires to which I have referred.

The SPEAKER pro tempore (Mr. KENNEY). Is there objection to the request of the gentleman from Connecticut?

There was no objection.

Mr. BREWSTER. Mr. Speaker, I ask unanimous consent that the gentleman may proceed for 2 additional minutes, as I would like to ask him a question.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Maine?

There was no objection.

Mr. BREWSTER. The gentleman stated that 70 percent of our foreign trade is with Mexico——

Mr. SHANLEY. No.

Mr. BREWSTER. The gentleman did not mean to say that. The gentleman meant to state that 70 percent of Mexico's trade is with us.

Mr. SHANLEY. Yes; if I made the other statement, I shall correct it.

Mr. BREWSTER. Did the gentleman read within the last 2 weeks where we had completed an agreement with the Mexican Government by which we would buy very large quantities of silver from them?

Mr. SHANLEY. I certainly did; and I think the very fact we did that out of mutuality or for the concessions they might make us, and because of the philosophy of the Buenos Aires Conference as well as the Montevideo Conference, this ought to make us more apprehensive over the fact they are taking advantage of our good will and our willingness to fulfill our obligations.

Mr. BREWSTER. Does the gentleman understand that this commitment on silver is enduring? Are we bound by it?

Mr. SHANLEY. We are bound, as I understand, mutually, as long as they take no discriminatory action against us in our trade.

Mr. BREWSTER. We are bound by the silver commitment?

Mr. SHANLEY. I understand so.

Mr. BREWSTER. What about this tariff barrier?

Mr. SHANLEY. As I understand it, that tariff barrier would be a repudiation and give us grounds for repudiation of the silver agreement.

Mr. BREWSTER. Would the gentleman agree that if we are committed to this silver policy in spite of this tariff barrier, they are making monkeys out of us?

Mr. SHANLEY. Well, not if we demand our rights in emphatic language. We are not just going to ignore it.

Mr. BREWSTER. Well, what does the gentleman think of such an arrangement, by which we are going ahead and buying $500,000,000 of silver to save Mexico, and then within a week Mexico erects a barrier that it is impossible for us to overcome?

Mr. SHANLEY. I think the gentleman states the reason for my apprehension, though I think we have the means to overcome it. I wish to take advantage of my extension and revision to include the paragraphs from the Inter-American Conference for the Maintenance of Peace, at Buenos Aires, December 1936, which seem most apposite and reflect the opinion of the delegates to that great conference:

Whereas the governments of the American republics meeting in Buenos Aires are convinced that the growth of international trade can serve to strengthen greatly the foundations of peace by improving the material welfare and contentment of nations;

That the governments of the American republics reaffirm the statement enunciated by the Seventh International Conference of

American States that the principles of equality of treatment stands and must continue to stand as the basis of all acceptable commercial policy;

That each government declare its determination to bend every effort, having in mind the different national economies, toward the objective of enforcing in all the phases of its general commercial policy the peaceful and equitable principle of equality of treatment, and recommends that the governments of all countries adopt this principle in their commercial policies, and in accordance therewith suppress as soon as possible all discriminatory practices, including those arising in connection with import license systems, exchange control, and bilateral clearing and compensation agreements.

(With the reservation by El Salvador to the effect that due to its special geographic and economic situation, it cannot comply immediately with the doctrine contained in the above recommendation while the factors obtain which require it to maintain the existing dispositions and organization. See minutes of the fifth committee, meeting of December 17, and published in the Diario of the Conference December 21, 1936.)

I think that the world agrees that we came handsomely to the aid of Mexican finances, which were in a bad plight. Our aid consisted of the purchase of their silver reserves at high prices, and the promise to buy 5,000,000 pounds of silver per month through the present year. It is my understanding that because of this Mexico promised not to raise tariff barriers. I have confidence that the State Department will handle this situation to the satisfaction of every reasonable person in this House. Certainly they are not going to permit this change of attitude on the part of Mexico to wreck or in anyway interfere in our splendid efforts at both Montevideo and Buenos Aires.

ADJOURNMENT

Mr. RAYBURN. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 2 o'clock and 46 minutes p. m.) the House adjourned until tomorrow, Tuesday, January 25, 1938, at 12 o'clock noon.

COMMITTEE HEARINGS

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

There will be a meeting of the Committee on Interstate and Foreign Commerce at 10 a. m., Tuesday, January 25, 1938. Business to be considered: Continuation of hearings on S. 69—train lengths. Mr. J. A. Farquharson, of the Railroad Trainmen, will continue his statement.

COMMITTEE ON MERCHANT MARINE AND FISHERIES

The Committee on Merchant Marine and Fisheries will hold a public hearing in room 219, House Office Building, Tuesday, February 1, 1938, at 10 a. m., on H. R. 8344, a bill relating to the salmon fishery of Alaska.

The Committee on Merchant Marine and Fisheries will hold a public hearing in room 219, House Office Building, Washington, D. C., Wednesday, February 23, 1938, at 10 a. m., on the following bills:

H. R. 8595, relating to vessels engaged in whaling;

H. R. 8627, relating to inspection of fishing vessels; and

H. R. 8778, relating to vessels engaged in the coasting trade and fisheries; H. R. 8906, same subject.

COMMITTEE ON PENSIONS

The Committee on Pensions will start hearings on H. R. 8690, granting a pension to widows and dependent children of World War veterans on Tuesday, January 25, 1938, at 10 a. m.

The Committee on Pensions will hold a hearing at 10 a. m., Friday, January 28, 1938, on H. R. 8690, granting a pension to widows and dependent children of World War veterans.

COMMITTEE ON ROADS

The Committee on Roads will hold public hearings on H. R. 8338, to amend the Federal Aid Highway Act, and related proposals, on Tuesday, January 25, 1938, at 10 a. m.

COMMITTEE ON THE DISTRICT OF COLUMBIA

Mrs. VIRGINIA E. JENCKES' Subcommittee on Public Health, Hospitals, and Charities of the Committee on the District of Columbia, will meet Thursday, January 27, 1938, at 10 a. m., in room 345, House Office Building, to consider H. R. 3890, antivivisection.

COMMITTEE ON PUBLIC BUILDINGS AND GROUNDS

There will be a meeting of the Committee on Public Buildings and Grounds at 10:15 a. m., Tuesday, January 25, 1938, to resume hearings on H. R. 9016, Washington Airport. Caucus room, House Office Building.

COMMITTEE ON MILITARY AFFAIRS

There will be a meeting of the Committee on Military Affairs in room 1310, New House Office Building, at 10:30 a. m., Tuesday, January 25, 1938, for the consideration of H. R. 8453, to provide for a commissioned strength of 14,659 for the Regular Army.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

1013. A communication from the President of the United States, transmitting two supplemental estimates of appropriation for the fiscal year ending June 30, 1938, for the Treasury Department, to provide for payments to Federal land banks and to the Federal Farm Mortgage Corporation on account of reductions in interest rates on mortgages under the provisions of the act of July 22, 1937, amounting to a total of $19,700,000 (H. Doc. No. 486); to the Committee on Appropriations and ordered to be printed.

1014. A letter from the Secretary of War, transmitting a draft of a bill to amend the act of March 9, 1928, authorizing appropriations to be made for the disposition of remains of military personnel and civilian employees of the Army, and for other purposes; to the Committee on Military Affairs.

1015. A communication from the President of the United States, transmitting supplemental estimates of appropriation for the Railroad Retirement Board for the fiscal year 1938, amounting to $500,000 (H. Doc. No. 487); to the Committee on Appropriations and ordered to be printed.

1016. A communication from the President of the United States, transmitting deficiency estimates of appropriations for the fiscal year 1937 and prior years in the sum of $57,996.44, and supplemental estimates of appropriations for the fiscal years 1938 and 1939 in the sum of $9,855, amounting in all to $67,851.44, and draft of a proposed provision to existing appropriations for the Department of Justice (H. Doc. No. 488); to the Committee on Appropriations and ordered to be printed.

1017. A communication from the President of the United States, transmitting a list of judgments rendered by the Court of Claims, which have been submitted by the Attorney General through the Secretary of the Treasury and require an appropriation for their payment, amounting to $4,720,826.44 (H. Doc. No. 489); to the Committee on Appropriations and ordered to be printed.

1018. A communication from the President of the United States, transmitting record of judgments rendered against the Government of the United States district courts, as submitted by the Attorney General through the Secretary of the Treasury, and which require an appropriation for their payment, amounting to $18,112.73 (H. Doc. No. 490); to the Committee on Appropriations and ordered to be printed.

1019. A communication from the President of the United States, transmitting a draft of a proposed provision pertaining to existing appropriations for the National Labor Relations Board for the fiscal year 1938 (H. Doc. No. 491); to the Committee on Appropriations and ordered to be printed.

1020. A communication from the President of the United States, transmitting schedule of claims allowed by the General Accounting Office, as shown by certificates of settlement forwarded to the Treasury Department for payment covering judgments rendered by the United States District Court for the Southern District of New York against the collector of customs, amounting to $14,941.92 (H. Doc. No. 492); to the Committee on Appropriations and ordered to be printed.

1021. A communication from the President of the United States, transmitting a supplemental estimate of appropriation for the legislative establishment, United States Senate, for the fiscal year 1938, in the amount of $30,000 (H. Doc.

No. 493); to the Committee on Appropriations and ordered to be printed.

1022. A communication from the President of the United States, transmitting supplemental estimates of appropriations for the fiscal year 1938 amounting to $99,150, and two drafts of proposed provisions pertaining to existing appropriations, for the Department of State (H. Doc. No. 494); to the Committee on Appropriations and ordered to be printed.

1023. A communication from the President of the United States, transmitting a supplemental estimate of appropriation for the Navy Department for $850 to provide for payment in full of all claims authorized by Private Act No. 355, approved August 25, 1937 (H. Doc. No. 495); to the Committee on Appropriations and ordered to be printed.

1024. A communication from the President of the United States, transmitting a supplemental estimate of appropriation for the War Department, fiscal year 1938, for protective works and measures, Lake of the Woods and Rainy River, Minn., amounting to $73,270.97, and three drafts of proposed provisions affecting existing appropriations of the War Department (H. Doc. No. 496); to the Committee on Appropriations and ordered to be printed.

1025. A letter from the Acting Secretary of the Interior, transmitting a copy of a letter from the Commissioner of the General Land Office dated January 11, 1938, transmitting report of withdrawals and restorations contemplated by the statute; to the Committee on the Public Lands.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII,

Mr. McLAUGHLIN: Committee on the Judiciary. H. R. 9043. A bill to amend an act to provide for the retirement of Justices of the Supreme Court; without amendment (Rept. No. 1709). Referred to the Committee of the Whole House on the state of the Union.

Mr. ROBINSON of Utah: Committee on Irrigation and Reclamation. House Joint Resolution 543. Joint resolution to authorize an appropriation for the survey for the transmountain diversion of waters for irrigation, domestic, and industrial purposes, in the State of Colorado; with amendment (Rept. No. 1710). Referred to the Committee of the Whole House on the state of the Union.

PUBLIC BILLS AND RESOLUTIONS

Under clause 3 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. DOCKWEILER: A bill (H. R. 9121) providing for an appropriation for reforestation and water conservation through the retardation of water flow and the control of erosion on watersheds as contemplated by section 2 of the act of June 22, 1936 (49 Stat. 1570), section 701b, title 33, United States Code, and for other purposes; to the Committee on Appropriations.

By Mr. KRAMER: A bill (H. R. 9122) to amend section 23 (e) (2) of the Revenue Act of 1936, as amended, providing for deduction of loss on account of abandonment of real estate; to the Committee on Ways and Means.

By Mr. ANDREWS: A bill (H. R. 9123) to authorize the Secretary of War to lease to the village of Youngstown, N. Y., a portion of the Fort Niagara Military Reservation, N. Y.; to the Committee on Military Affairs.

By Mr. COSTELLO: A bill (H. R. 9124) to establish a military veterans' retired list; to the Committee on Military Affairs.

By Mr. FULLER: A bill (H. R. 9125) to authorize the erection of additional facilities at the existing Veterans' Administration Facility, Fayetteville, Ark.; to the Committee on World War Veterans' Legislation.

By Mr. LUCKEY of Nebraska: A bill (H. R. 9126) to authorize the erection of an administration building at the Veterans' Administration Facility, Lincoln, Nebr.; to the Committee on World War Veterans' Legislation.

By Mr. WILCOX: A bill (H. R. 9127) to extend the boundaries of the Fort Jefferson National Monument, in the State of Florida, and for other purposes; to the Committee on the Public Lands.

By Mr. PIERCE: A bill (H. R. 9128) authorizing the Secretary of the Interior to pay salaries and expenses of the chairman, secretary, and interpreter of the Klamath General Council, members of the Klamath business committee and other committees appointed by said Klamath General Council, and official delegates of the Klamath Tribe; to the Committee on Indian Affairs.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. ALESHIRE: A bill (H. R. 9129) granting an increase of pension to Sarah E. Ayers; to the Committee on Invalid Pensions.

By Mr. ALLEN of Louisiana: A bill (H. R. 9130) for the relief of Marshall Carver; to the Committee on Claims.

By Mr. BOEHNE: A bill (H. R. 9131) for the relief of Louis Bender; to the Committee on Claims.

By Mr. CASE of South Dokata: A bill (H. R. 9132) for the relief of Celia Koehler; to the Committee on Claims.

Also, a bill (H. R. 9133) for the relief of William Monroe; to the Committee on Claims.

Also, a bill (H. R. 9134) for the relief of the Black Hills Methodist Hospital of Rapid City, S. Dak.; to the Committee on Claims.

Also, a bill (H. R. 9135) for the relief of Emmond Wolfer; to the Committee on Claims.

Also, a bill (H. R. 9136) for the relief of John Quaal; to the Committee on Claims.

By Mr. DREWRY of Virginia: A bill (H. R. 9137) granting a pension to Gordon R. McKinney; to the Committee on Pensions.

By Mr. DUNN: A bill (H. R. 9138) for the relief of George Modran; to the Committee on Military Affairs.

By Mr. HENDRICKS: A bill (H. R. 9139) granting a pension to Augusta I. Hazelwood; to the Committee on Invalid Pensions.

By Mr. McLAUGHLIN: A bill (H. R. 9140) for the relief of Walter Petersen; to the Committee on Claims.

By Mr. MAPES: A bill (H. R. 9141) for the relief of Hubert J. Cuncannan; to the Committee on Claims.

By Mr. O'NEAL of Kentucky: A bill (H. R. 9142) for the relief of J. J. B. Hilliard & Son, of Louisville, Ky.; to the Committee on Claims.

By Mr. ROMJUE: A bill (H. R. 9143) granting a pension to Louise Kerner; to the Committee on Invalid Pensions.

By Mr. RUTHERFORD: A bill (H. R. 9144) granting an increase of pension to Alice A. Tyrrel; to the Committee on Invalid Pensions.

By Mr. WOODRUM: A bill (H. R. 9145) extending patents Nos. 1397600, 1397601, and 1397602; to the Committee on Patents.

PETITIONS, ETC.

Under clause 1 of rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

3866. By Mr. CARTER: Petition of plan of Clay C. Blough, Oakland, Calif., for a Government lottery or sweepstake; to the Committee on Ways and Means.

3867. Also, petition of the Contra Costa County Democratic Central Committee of California, recommending the passage of Senate bill 2403 prohibiting interstate transportation of strikebreakers; to the Committee on the Judiciary.

3868. Also, petition of the Contra Costa County Democratic Central Committee of Martinez, Calif., recommending the enactment of Senate bill 2215 to make permanent the Agricultural Bankruptcy Act; to the Committee on the Judiciary.

3869. Also, petition of the Contra Costa County Democratic Central Committee, recommending the enactment of Senate bill 3055 amending the Housing Act; to the Committee on Banking and Currency.

3870. Also, petition memorializing Congress to provide for the continuance of Federal-aid highway funds by providing that the Highway Act of June 16, 1936, remain unchanged; to the Committee on Roads.

3871. Also, petition of the Oakland Post, No. 5, of the American Legion, endorsing furtherance of Oakland naval supply depot project and pledging cooperation of the post; to the Committee on Naval Affairs.

3872. By Mr. EATON: Resolution of the New Jersey State Planning Board, adopted January 5, 1938, opposing the enactment of House bill 7365 and Senate bill 2555 on regional planning legislation, and suggesting in lieu thereof a national planning board, which would best serve conservation and development needs of the country; to the Committee on Rivers and Harbors.

3873. By Mr. LAMNECK: Resolution of the Franklin County Council, the American Legion, Columbus, Ohio, urging the passage of the Sheppard-Hill universal service bill; to the Committee on Interstate and Foreign Commerce.

3874. By Mr. LUCE: Petition of residents of Massachusetts, urging consideration of House bill 4797, to provide for grants to States for relief of needy incapacitated adults; to the Committee on Ways and Means.

3875. By the SPEAKER: Petition of the Akron Council for Peace Action, Akron, Ohio, petitioning consideration of their resolution dated January 19, 1938, with reference to the Ludlow bill; to the Committee on the Judiciary.

3876. Also, petition of the Regular Veterans Association, Washington, D. C., petitioning consideration of their resolution dated January 5, 1938; to the Committee on Military Affairs.

3877. Also, petition of the National Guard Officers' Association of Alabama, Montgomery, Ala., petitioning consideration of their Resolution No. 3, dated January 16, 1938, regarding the Ludlow amendment; to the Committee on the Judiciary.

SENATE

TUESDAY, JANUARY 25, 1938

(Legislative day of Wednesday, January 5, 1938)

The Senate met at 12 o'clock meridian, on the expiration of the recess.

THE JOURNAL

Mr. BARKLEY. Mr. President, I ask unanimous consent that the Journal of the proceedings of the Senate of yesterday be approved without reading.

Mr. CONNALLY. I object.

The VICE PRESIDENT. Objection is made by the Senator from Texas.

MESSAGES FROM THE PRESIDENT

Messages in writing from the President of the United States, submitting nominations, were communicated to the Senate by Mr. Latta, one of his secretaries.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Chaffee, one of its reading clerks, announced that the House had passed the bill (S. 2194) to provide for the semiannual inspection of all motor vehicles in the District of Columbia, with amendments, in which it requested the concurrence of the Senate.

The message also announced that the House had passed a bill (H. R. 7085) to regulate barbers in the District of Columbia, and for other purposes, in which it requested the concurrence of the Senate.

ENROLLED BILL SIGNED

The message further announced that the Speaker had affixed his signature to the enrolled bill (S. 2463) to authorize an additional number of medical and dental officers for the Army, and it was signed by the President pro tempore.

EXECUTIVE SESSION

Mr. BARKLEY. I move that the Senate proceed to the consideration of executive business.

The motion was agreed to; and the Senate proceeded to the consideration of executive business.

Mr. CONNALLY. I suggest the absence of a quorum.

The VICE PRESIDENT. The clerk will call the roll.

Mr. BARKLEY. Mr. President, a parliamentary inquiry.

The VICE PRESIDENT. The Senator will state it.

Mr. BARKLEY. Having the floor myself, and not having yielded, is it in order to make a point of no quorum?

The VICE PRESIDENT. The Senator from Kentucky made a motion and the motion was agreed to; and, after it was agreed to, the Senator from Texas made the suggestion of the absence of a quorum. If the Senator from Kentucky wishes to follow it up, he may do so.

Mr. BARKLEY. I will not insist on the point.

The VICE PRESIDENT. The clerk will call the roll.

The legislative clerk called the roll, and the following Senators answered to their names:

Adams	Connally	Johnson, Colo.	Pepper
Andrews	Copeland	King	Pittman
Ashurst	Davis	La Follette	Pope
Austin	Dieterich	Lee	Radcliffe
Bailey	Donahey	Lewis	Reynolds
Bankhead	Duffy	Lodge	Russell
Barkley	Ellender	Logan	Schwartz
Berry	Frazier	Lonergan	Schwellenbach
Bilbo	George	Lundeen	Sheppard
Bone	Gerry	McAdoo	Smathers
Borah	Gibson	McCarran	Smith
Bridges	Glass	McGill	Steiwer
Brown, Mich.	Guffey	McKellar	Thomas, Okla.
Brown, N. H.	Hale	McNary	Thomas, Utah
Bulkley	Harrison	Maloney	Townsend
Bulow	Hatch	Miller	Truman
Burke	Hayden	Milton	Vandenberg
Byrd	Herring	Minton	Van Nuys
Byrnes	Hill	Murray	Wagner
Capper	Hitchcock	Neely	Walsh
Caraway	Holt	Norris	Wheeler
Chavez	Hughes	O'Mahoney	
Clark	Johnson, Calif.	Overton	

Mr. LEWIS. I announce that the Senator from Iowa [Mr. GILLETTE] and the Senator from Rhode Island [Mr. GREEN] are absent because of illness.

The Senator from Maryland [Mr. TYDINGS] is detained on important public business.

Mr. AUSTIN. I announce that the Senator from North Dakota [Mr. NYE] and the Senator from Minnesota [Mr. SHIPSTEAD] are unavoidably absent.

The VICE PRESIDENT. Ninety Senators have answered to their names. A quorum is present.

EXECUTIVE MESSAGES REFERRED

The VICE PRESIDENT laid before the Senate messages from the President of the United States submitting the nominations of sundry postmasters, which were referred to the Committee on Post Offices and Post Roads.

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

EXECUTIVE REPORTS OF COMMITTEES

Mr. HARRISON, from the Committee on Finance, reported favorably the nominations of sundry officers for appointment or promotion in the United States Public Health Service.

Mr. HATCH, from the Committee on the Judiciary, reported favorably the nomination of Clinton R. Barry to be United States attorney for the western district of Arkansas.

Mr. NEELY, from the Committee on the Judiciary, reported favorably the nomination of Kinloch Owen, of Mississippi, to be United States marshal for the northern district of Mississippi.

The VICE PRESIDENT. The reports will be placed on the Executive Calendar.

MEMBERS OF BOARD OF DIRECTORS OF THE R. F. C.

Mr. WAGNER. From the Committee on Banking and Currency, I report back favorably the nominations of Jesse H. Jones, of Texas; C. B. Merriam, of Kansas; Charles B. Henderson, of Nevada; Emil Schram, of Illinois; and Howard J. Klossner, of Minnesota, to be members of the Board of Directors of the Reconstruction Finance Corporation for terms of 2 years from January 22, 1938 (reappointments).