SENATE

THURSDAY, JANUARY 27, 1938

(Legislative day of Wednesday, January 5, 1938)

The Senate met at 12 o'clock meridian, on the expiration of the recess.

THE JOURNAL

On request of Mr. BARKLEY, and by unanimous consent, the reading of the Journal of the proceedings of the calendar days Monday, January 24, 1938, Tuesday, January 25, 1938, and Wednesday, January 26, 1938, was dispensed with, and the Journal was approved.

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.

The VICE PRESIDENT. A cloture motion on the pending bill having been filed under the order of the Senate yesterday, the time between now and 1 o'clock will be equally divided between the Senator from New York [Mr. WAGNER] and the Senator from Texas [Mr. CONNALLY]. The Chair does not know which one should first be recognized. They are both standing, and if they have made any arrangement as to how the time shall be divided, the Chair will be glad to know of it.

Mr. CONNALLY. Mr. President, I think that the Senator from New York should use the first half hour. He is the plaintiff, as it were, in this motion, and he ought to make out his case. We ask for the last 30 minutes.

Mr. BARKLEY. Mr. President, under all the rules of debate, the proponents of a motion are entitled to conclude the debate.

The VICE PRESIDENT. That is the usual course.

Mr. BARKLEY. I think that rule ought to be followed and applied in this instance.

Mr. CONNALLY. I think the rule is that the proponents shall open debate as well as close it. We think they should open this debate, as they are the proponents of the motion.

Mr. BARKLEY. I do not know what arrangement the Senator from Texas and the Senator from New York have made about it. I do not want to consume any of the hour in a discussion as to who shall proceed first and who shall come last, but it certainly is a rule, which all Senators will recognize, that the proponents of a motion have a right to conclude the argument.

The VICE PRESIDENT. The usual custom in parliamentary bodies is that those who propose a motion shall open and close the debate. The Senator from New York can open and then reserve the remainder of his time. There is no possible way for the Chair to compel a Senator to take the floor.

Mr. WAGNER. Mr. President, I was trying to enter into an arrangement with the Senator from Texas. I presume in this situation we might be able to agree about the matter, but I think, in view of the time that has been taken up, the proponents should take the last 30 minutes, because last night the understanding was that the senior Senator from Texas [Mr. SHEPPARD] was to proceed in the morning.

Mr. CONNALLY. No.

Mr. WAGNER. And that we would take the last 30 minutes. I had hoped there would be no objection to such an arrangement.

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

Mr. WAGNER. Certainly.

Mr. CONNALLY. There was no agreement about the senior Senator from Texas going on today. He was scheduled to proceed yesterday, but he did not get the floor. There was no agreement about that.

Mr. WAGNER. I do not think I divulge anything which is a secret. I went to the Chair yesterday and asked if I might be recognized immediately after the Senator from Tennessee [Mr. MCKELLAR] concluded his remarks. I was shown a list and was informed that I could not be recognized because the next Senator to be recognized was the senior Senator from Texas, and, with my usual courtesy, I said to the Chair, "Very well; then I will have to give way to the senior Senator from Texas." That was the understanding at that time.

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

The VICE PRESIDENT. Will the Senator permit the Chair to state just how he would interpret this agreement? The Senate authorized the division of time until 1 o'clock between the Senator from New York and the Senator from Texas. The Chair would interpret that to mean that they are to control the time. If the Senator from New York desired to address the Senate for 5 minutes and then yield to some other Senator, he would have a right to do that; and if the Senator from Texas desired 5 minutes and then wished to yield to some other Senator, he would have the right to do that. The time would be divided up equally in that way. The Chair repeats he cannot compel any Senator to take the floor. That is perfectly apparent.

Mr. JOHNSON of California. Mr. President, I am only interested, as a bystander, in the rules of the Senate. Do I understand the Vice President to say now that the Senators mentioned may parcel out the time as they see fit?

The VICE PRESIDENT. That was the order of the Senate last night, that the Senator from New York and the Senator from Texas were to control the time, and if they control the time undoubtedly they can parcel it out. If the Senator will glance at the RECORD, he will see that the Senator from Kentucky made that request and the Senate acquiesced in it.

Mr. JOHNSON of California. I am not questioning it, but that is a change of the rules of the Senate.

The VICE PRESIDENT. It was done by unanimous consent.

Mr. JOHNSON of California. I do not believe it can be done in that way.

Mr. LA FOLLETTE. Mr. President, a parliamentary inquiry——

Mr. MCNARY. Mr. President——

The VICE PRESIDENT. The time is limited and the Senator from New York has the floor at the moment. If he wishes to yield he can do so. What is the parliamentary inquiry of the Senator from Wisconsin?

Mr. LA FOLLETTE. The parliamentary inquiry is based on the fact that already 7 minutes of the hour have been consumed. Against whose time does that count—the time of the proponents or the opponents of the measure?

The VICE PRESIDENT. The time comes from both sides, to be equally divided against them.

The Senator from New York.

Mr. WAGNER. Mr. President, I do not intend to consume the time of the Senate of the United States about this matter, and if the Senator from Texas insists that he shall have time at the end, very well.

Mr. MCNARY. Mr. President, a parliamentary inquiry.

The VICE PRESIDENT. The Senator will state it.

Mr. MCNARY. What is before the Senate?

The VICE PRESIDENT. The Senator from New York has been recognized, and his time is now running.

Mr. WAGNER. Mr. President, before the Senator from West Virginia [Mr. NEELY] takes the floor, I merely wish to read into the RECORD the names of some Senators who in 1933 signed their names to a cloture petition. I wish also to read the names of some of the Senators—there were a great many—who voted in favor of cloture at that time. Among those who signed the cloture petition were the Senator from Virginia [Mr. GLASS], the Senator from North Carolina [Mr. BAILEY], the Senator from South Carolina [Mr. BYRNES], the Senator from South Carolina [Mr. SMITH], the Senator from Mississippi [Mr. HARRISON], the Senator from Tennessee [Mr. MCKELLAR], the Senator from Alabama [Mr. BANKHEAD]. There were some others, but I merely wanted to emphasize those particular names. Among the Senators who voted in favor of cloture were the Senator from North Carolina [Mr. BAILEY], the Senator from Alabama [Mr. BANKHEAD], the Senator from South Carolina

[Mr. BYRNES], the Senator from Texas [Mr. CONNALLY], the Senator from Mississippi [Mr. HARRISON], the Senator from Utah [Mr. KING], the Senator from Tennessee [Mr. MCKELLAR], the Senator from Michigan [Mr. VANDENBERG], the Senator from Oregon [Mr. STEIWER], and the Senator from South Carolina [Mr. SMITH].

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

Mr. WAGNER. I do not wish to consume any more time than is necessary.

Mr. HARRISON. I think, in fairness, the Senator ought to state to the Senate that the cloture motion in that case applied to a banking bill of great importance, and that the bill passed the Senate with only nine votes cast against it.

Mr. WAGNER. That is true. It was upon a banking bill, and the pending motion applies to a bill which I regard as of equal importance, if not of greater importance, because it involves the right of one accused to a trial by his peers before he is penalized for an offense.

I give way now to the senior Senator from West Virginia.

The VICE PRESIDENT. Does the Chair understand the Senator from New York to yield to the Senator from West Virginia the remainder of his time?

Mr. WAGNER. I yield.

Mr. BARKLEY. Mr. President, a parliamentary inquiry.

The VICE PRESIDENT. The Senator will state it.

Mr. BARKLEY. If the Senator from New York yields to the Senator from West Virginia the remainder of his time, can the Senator from West Virginia, if he does not consume it all, yield it to any other Senator?

The VICE PRESIDENT. The Senator from New York controls the time. The Chair should like to ascertain just how much time the Senator from New York desires the Senator from West Virginia to use of his time.

Mr. BARKLEY. He has yielded all his time, and that ends it.

The VICE PRESIDENT. If he has yielded all his time, the Senator from West Virginia controls it.

Mr. WAGNER. Mr. President, I understand the Senator from West Virginia will yield some of his time when he concludes.

The VICE PRESIDENT. The Senator ought to reserve his time; that is the parliamentary method.

Mr. WAGNER. Very well; I will reserve it.

Mr. NEELY. Mr. President, the friends of the antilynching bill are not foes of the South; they are not enemies of the southern people notwithstanding countless charges and innumerable insinuations to the contrary.

My parents and my grandparents were born in Southern States. My eyes first saw the light of day in a State which is situated south of the Mason and Dixon's line. Relatives of mine rode with "Jeb" Stuart at Antietam, followed Lee at Gettysburg, and fought with Stonewall Jackson in both the first and second battles of Manassas. It would be as impossible for me to harbor hatred against the South, or hostility to her chivalrous men or captivating women, as it would be for me to despise my own flesh and blood.

Edward B. Kenna, a famous West Virginia poet, whose father was once an illustrious Member of this body, beautifully expressed my sentiments for the South when he said:

Oh, Southland, thou art fair,
And for all thy beauties rare
Of mountain, vale or meadow, of river, sea or air
I hold thee in my breast—
A flower that is pressed
In the golden book of memory and cherished there as blessed.

But unhappily for the country and the Senate, there is in our southern paradise a serpent as loathsome as the one that contaminated the Garden of Eden, caused the fall of man, and launched against humanity an endless train of woe. This serpent we abhor with all our hearts. It symbolizes lynching—the premeditated maiming, mangling, and burning to death of helpless human beings in flagrant violation of constitutional guaranties and in brazen defiance of the most sacred laws of God and man.

The eradication of this indefensible crime is the object of the bill that is now before us. And what are the blighting provisions of this measure against which able Senators have so vigorously and so successfully filibustered ever since the present Congress convened? Let the bill speak for itself to a candid world.

Section 3 says 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 as such officer or employee to protect persons from lynching and shall have willfully neglected, or refused, or failed to make all diligent efforts to protect such persons from lynching, or 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 the 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.

Does any Senator think that the payment of a fine of not more than $5,000 would be an unreasonable punishment of an officer of the law who had willfully failed to prevent a prisoner in his custody from being burned at the stake? If so, he will, of course, vote against ending the filibuster and if the opportunity becomes available also vote against the bill.

Another of the penal sections provides that—

Every governmental subdivision of a State to which have been delegated functions of police shall be responsible for any lynching occurring within its territorial jurisdiction, and shall also be responsible for any lynching occurring outside its territorial jurisdiction, which follows upon the seizure and abduction of the victim or victims within its territorial jurisdiction. In this case the governmental subdivision in which the lynching or the abduction of the victim prior to the lynching occurs shall be liable to each person injured, or to his next of kin if such injury results in death, for a sum not less than $2,000 and not more than $10,000. But the governmental subdivision may prove as an affirmative defense that the officers thereof charged with the duty of preserving the peace, and citizens thereof when called upon by any such officer, used all diligence and all powers vested in them for the protection of the person lynched.

The excerpts from the bill which have just been read explicitly state the extreme punishment that can be imposed upon an officer or a community for having willfully failed to prevent a lynching by a mob.

Can anyone who opposes this hideous crime successfully argue that the fines provided by the bill are excessive or that the punishments which it specifies are too severe?

It has been charged in debate that this is a political measure. But when those who have made this charge shall have completely recovered from the nerve-racking strain of the long filibuster, which has been carried on both by day and by night, they will, with their habitual generosity, do honor to themselves and justice to the supporters of the bill by admitting that the motives of those who seek to pass it are just as pure as the motives of those who are determined to defeat it.

The horrors of some recent lynchings are beyond the possibility of description by means of any language known to the children of men. Let me read from two reports that were written by prominent members of the white race. The first is that of the ceremonious butchery in the State of Mississippi of two colored men—Roosevelt Townes and "Bootjack" McDaniels.

The crime of which these men were suspected, but of which they were never convicted, was murder. It was entirely free from sexual complications. The alleged criminals never enjoyed the semblance of a trial. They had been arraigned and had pleaded not guilty. The sheriff, accompanied by two deputies, was in the act of taking them from the courthouse in which they had entered their pleas to the nearby jail, when 12 men emerged from the mob, seized the prisoners, who were handcuffed, and threw them into a waiting school bus, in which they were immediately driven away. It is reported that a thousand people can name the 12 men who are guilty of the abduction. It is also reported that the sheriff made no effort to resist the mob, or to follow the departing school bus, which he and everyone else present knew was carrying the prisoners to their funeral pyre. The sheriff did not even

notify the Governor of the abduction until after he knew that the prisoners had been tortured to death.

The report states that the district attorney, who had been in office for two decades, and consequently should have known his duty, quiescently watched the entire kidnaping from a window in the courthouse, but failed to recognize any of the members of the mob.

And how were these alleged criminals put to death? They were dragged from the school bus and with heavy chains securely fastened to sturdy trees. And then—

One of the 12 white men produced a blowtorch, applied a match, and a flame of fire tore into the breast of McDaniels. The blue-white flame leaped into the soft skin and the odor of burned flesh assailed the nostrils of Mississippi's first batch of 1937 lynchers. The piercing screams of the tortured man echoed among the hills and sent some of the wild-eyed children scurrying to their mothers' sides. Mingled with the agonizing cries of the condemned man was the steady purr of the flaming death that issued from the blowtorch. From the wracked body and crazed mind of the victim the mob wrung a confession of guilt. The torch was withdrawn, and a volley of bullets brought welcome death to the tormented prisoner chained to a lonely pine tree.

Roosevelt Townes who had been accused of firing the fatal shot which killed Groceryman Windham had been forced to watch the mob's savage way with his former friend. Now he became the object of the mob's ferocity. The mob's appetite for brutality had now reached a high pitch and the masters of lynchings' newest methods of torture determined to prolong the suffering of the next victim to the last possible moment. Again the hellish blowtorch was lighted and driven into the quivering flesh of Roosevelt Townes. The flaming torch swept into the heaving breast of the terrorized man and was momentarily withdrawn as the mob watched him writhe in agony and pain. After a few minutes had passed the torch was applied to Townes' sweating back and the searing flame produced hideous holes wherever it touched. From breast to back and from back to breast the devilish machine accomplished its horrible task. Fingers and ears were seared from the writhing body. From head to foot the white fire ate livid holes into human flesh.

Swaying and crying but held fast by heavy iron links, this truly strong man fed the mob's insatiable appetite for brutality and blood for one long hideous hour.

Growing weary of the groans of the stricken Townes a few members of the mob gathered wood and threw them down around his helpless feet. As five gallons of gasoline was thrown upon the heaving body, a match was lighted and Townes was covered instantly by a sheet of flaming fire.

Chained to their torture posts the dead men were left to the rain until the following morning although the lynching occurred in the early afternoon. The local county officials refused to remove the bodies. A white minister of a small congregation finally induced a Winona undertaker to secure the bodies and prepare them for burial, and McDaniels and Townes were placed together in a pine coffin and interred in the local cemetery.

The depraved people of four counties who participated in this ghastly affair apparently considered it a circus, and as such enjoyed it to the limit of their capacity.

This monstrous outrage against humanity was perpetrated more than 9 months ago by 12 red-handed murderers, whose identity and criminality could have been instantly and conclusively proved by more than a thousand witnesses. Yet not one of the guilty fiends has been punished; not one of them has been prosecuted; not one of them has been apprehended.

The willful failure of local authorities to enforce the law against mob murderers in this case and countless other cases similar to it demonstrates the necessity for the passage of the pending antilynching bill.

During the course of the filibuster my distinguished beloved friend, the senior Senator from Tennessee [Mr. McKELLAR], emphasized the fact that there had been only eight lynchings during the last year. Is it possible that the Senate would approve eight repetitions yearly of the horrifying crime which we have just considered? Even one lynching like that of Townes and McDaniels in a year, or one in a thousand years, is one too many.

And today the Senate has the opportunity by the adoption of cloture to render it improbable that there will be another lynching of any kind in the United States during the lifetime of anyone who is present on the floor or in the galleries this afternoon.

Let me now invite the attention of the Senate to the description of another lynching in another Southern State—the sickening details of which appear in the Senate report on the Costigan-Wagner antilynching bill, which was before this body in the months of April and May 1935. In this case the victim was accused of murder. But he was never convicted nor tried.

A slight deviation from the letter of the report will be necessary in order to avoid the possibility of offending or embarrassing those who are within the sound of my voice. As much of the narrative as can be appropriately read is as follows:

After taking the nigger to the woods about 4 miles from Greenwood—

They cut off a certain part of his body, compelled him to eat it, and made him say that "he liked it."

Then they sliced his sides and stomach with knives, and every now and then somebody would cut off a finger or toe. Red-hot irons were used on the nigger to burn him from top to bottom. From time to time during the torture a rope would be tied around Neal's neck and he was pulled up over a limb and held there until he almost choked to death, when he would be let down and the torture begin all over again. After several hours of this unspeakable torture "they decided just to kill him."

Neal's body was tied to a rope on the rear of an automobile and dragged over the highway to the Cannidy home. Here a mob estimated to number somewhere between 3,000 and 7,000 people from 11 Southern States was excitedly waiting his arrival. When the car which was dragging Neal's body came in front of the Cannidy home a man who was riding the rear bumper cut the rope.

A woman came out of the Cannidy house and drove a butcher knife into his heart. Then the crowd came by, and some kicked him and some drove their cars over him.

Men, women, and children were numbered in the vast throng that came to witness the lynching. It is reported from reliable sources that the little children, some of them mere tots, who lived in the Greenwood neighborhood, waited with sharpened sticks for the return of Neal's body, and that when it rolled in the dust on the road that awful night these little children drove their weapons deep into the flesh of the dead man.

The body, which by this time was horribly mutilated, was taken by the mob to Marianna, a distance of 10 or 11 miles, where it was hung to a tree on the northeast corner of the courthouse square. Pictures were taken of the mutilated form and hundreds of photographs were sold for 50 cents each. Scores of citizens viewed the body as it hung in the square. The body was perfectly nude until the early morning when someone had the decency to hang a burlap sack over the middle of the body. The body was cut down about 8:30 Saturday morning, October 27, 1934.

Fingers and toes from Neal's body have been exhibited as souvenirs in Marianna where one man offered to divide the finger which he had with a friend as a special favor. Another man has one of the fingers preserved in alcohol.

It is reported that announcements were made by radio to the people of 11 States of the time and place this lynching would be held in order that a vast crowd might be present to witness the elevating spectacle of a mob torturing a human being to death.

Never since the crucifixion of the sinless Savior has a human being expired in greater agony than the writhing bodies of Neal, Townes, and McDaniels endured.

The ghouls who prowl through graveyards at midnight and steal the jewels from the bodies of the defenseless and decaying dead are not as infamous or as loathsome as the monsters who, with flaming fagots and fiendish blowtorches, burned the living flesh from the bodies of these wretched, helpless Negroes for 2 hours before they finally put them to death.

Yet able Members argue that the Congress cannot enact a law that would forever rid the country of the abomination of desolation known as lynching without violating the Constitution of the United States.

At 1 o'clock today Senators will have an opportunity to say with their votes whether mob murder shall perish or continue to flourish as the green bay tree. A vote against the motion to close debate will be a vote against the antilynching bill.

Let no one lay to his soul the flattering unction that he can, upon any conceivable pretext, vote against cloture and thereafter convince the friends of the bill that he ever approved its purpose or favored its passage. Because the Senate knows and the country certainly will know that the opposition can, in existing circumstances, offer unnumbered additional amendments; that every amendment would be subject to endless debate; and that, without cloture, a final vote on the bill could not be had in 50 years.

Mr. President—

Once to every man and nation comes the moment to decide,
In the strife of Truth with Falsehood, for the good or evil side;
Some great cause, God's new Messiah, offering each the bloom or blight,
Parts the goats upon the left hand, and the sheep upon the right,
And the choice goes by forever 'twixt that darkness and that light.
* * * * * * *
Then it is the brave man chooses, while the coward stands aside,
Doubting in his abject spirit, 'till his Lord is crucified,
And the multitude make virtue of the faith they had denied.

To the Members of the Senate will soon come the moment to decide in the strife of law with lynching whether they will be parted with the sheep or the goats; whether they will vote for the right or the wrong; whether they will choose the good or the evil side.

Senators, let us empower the Federal Government to wipe out the most diabolical crime of this country and obliterate the foulest blot on the escutcheon of this Republic. Upon the 1 o'clock roll call let us strike a death blow to lynching and mob murder and proclaim that law and order shall henceforth prevail all over the land.

The VICE PRESIDENT. The time of the Senator from New York has expired.

Mr. CONNALLY. Mr. President, I submit several amendments, and ask that they be printed and lie on the table.

The VICE PRESIDENT. Without objection, the amendments will be received, printed, and lie on the table.

Mr. GEORGE. Mr. President, I submit an amendment to be printed and to lie on the table.

The VICE PRESIDENT. The amendment will be received, printed, and lie on the table.

Mr. BANKHEAD. Mr. President——

The VICE PRESIDENT. Does the Senator from Texas yield to the Senator from Alabama?

Mr. CONNALLY. I yield to the Senator to submit an amendment.

Mr. BANKHEAD. I submit several amendments, and ask that they be printed and lie on the table.

The VICE PRESIDENT. The amendments will be received, printed, and lie on the table.

Mr. CONNALLY. Mr. President, I yield to the senior Senator from Virginia [Mr. GLASS] such time as he may see fit to use, and then I desire to yield 5 minutes to the Senator from Oregon [Mr. MCNARY]. I will reserve such time as may be left, if any.

Mr. GLASS. Mr. President, with the utmost reluctance I shall speak briefly upon the pending bill and the suggested motion for cloture. I am not speaking in order to consume the time of the Senate. I have never believed in filibustering. I would not know how to filibuster should I desire to do so. But the sinister nature of this bill and of the attempt to invoke cloture in its behalf is so transparent that I feel obliged to enter my protest against it.

I wish to say, in the first place, that the suggestion that those of us who oppose this unconstitutional invasion of the police powers of the States are in favor of lynching is not only impertinent, but it is a disgraceful aspersion on the integrity of Senators who oppose the bill.

Although, as I have said, I do not favor filibustering, I recall several occasions when filibustering was fully justified, as on this occasion it would have been had there been a filibuster. I remember when Sam Randall and other real Democrats of his type of the North saved the South by filibustering against legislative measures intended to invade the police powers of the States and to accentuate the horrors of reconstruction; and if they were justified at that period in filibustering against an unconstitutional invasion of State rights, certainly there would be complete justification for anything of the sort with respect to this miserable bill.

The bill itself is saturated with hypocrisy. It is merely for the purpose of aiding Negrophilists to gain Negro votes in the doubtful States. There is not a line or sentence in the bill from its caption to its end that undertakes to punish a lynching. I challenge the proponents of the bill to point to a line or sentence which undertakes to punish a mobster who engages in a lynching. What it does is simply to turn loose the Federal minions upon the State authorities on the assumption that they have not done their sworn duty. And this bill, doing what few other bills have ever undertaken to do, reverses the common practice in criminology and the courts, and assumes that public officials are guilty, and requires them to produce a preponderance of evidence of their innocence, instead of assuming that they are innocent and undertaking to prove they are guilty.

Virginia has a horror of lynching, and long ago it enacted a severe statute against lynching. More than a year ago I challenged one of the proponents of this bill, the Senator from New York [Mr. WAGNER] to point to one sentence in the criminal code of his own State against lynching. His State not only has no law against lynching, but the Senator comes here and seeks to exempt his mobsters from punishment.

I have before me the statute of Virginia against lynching. It provides:

> The "lynching" of any person within this State by a "mob" shall be deemed murder, and any and every person composing a mob and any and every accessory thereto by which any person is lynched shall be guilty of murder, and upon conviction shall be punished as provided in chapter 178 of the Code of Virginia.

Not only that, but the statute of my State is opposed to mob violence of all descriptions. Section 3 of the Virginia act provides:

> Any and every person composing a "mob", which shall commit an assault or battery upon any person without authority of law, shall be guilty of a felony, and upon conviction shall be confined in the penitentiary for not less than 1 year nor more than 10 years. * * *

Yet the Senator from New York, without a sentence being on the statute books of his State against lynching, comes here and seeks by this Federal invasion of State rights not only to send Federal minions into the various States of the Union—not merely into the Southern States of the Union, but into West Virginia, which has had its lynchings, and into other States in which recently lynchings have occurred and which, if I desired to be disagreeable, I could mention—but to exempt mobs which assault people who want to work. Three months ago the State of Virginia sent three men to the penitentiary for their murderous assaults upon people who wanted to work and who had been guilty of no other offense than wanting to work. Yet the Senator from New York presents to the Senate a bill which would practically supersede the law of Virginia against mob violence; for, as I understand, when there is a Federal law on the subject it supersedes State law.

As to the question of cloture. The Senator from New York read out my name as one who voted for cloture under given circumstances. There is no analogy between the two situations. In the instance mentioned by him there had been before the Senate for a period of nearly 6 months a most important banking bill that affected the entire business community of this country, and it was attempted to filibuster it to death. There were only 9 votes of the 96 Senators against the bill when the roll was called. With the utmost patience we endured the situation which then confronted us. The banking bill was not discussed as this bill has been discussed. Every conceivable parliamentary maneuver that could be indulged in was applied to defeat that banking bill, and it was only a few days before the adjournment of the Congress itself, when it was almost inevitable that no action would be taken, that we at last availed ourselves of the Senate provision for cloture under certain circumstances.

That is not the case here now. There has not been a speech made on this bill that did not apply to its merits. Many Senators want to speak against the bill on its merits. There is no justification whatsoever for this move for cloture, and the attempt to draw an analogy between the banking bill which was made subject to cloture and the pending bill—I was about to say is as disgraceful as this bill itself is disgraceful.

I have not wanted to speak at all, Mr. President, because I knew that I could not speak with my customary attempt at diplomacy. I am so infernally indignant at an attempt of this sort, directed by a Negro lobbyist who has dictated the procedure of the Senate of the United States, that I find it difficult to speak without giving offense to those who have lent themselves to a thing of this description. Therefore, I hope the Senate will not be deceived, either by the pretense that this is an antilynching bill—for there is not a sentence in it that provides punishment for a lyncher—or by the pretense that it is necessary to apply cloture when we discuss the infernal provisions of this infernal bill.

I think it is not necessary for me further to occupy the attention of the Senate. I have spoken reluctantly. However, I wanted to go on record as directing against the measure and against some of its proponents my indignant protest at their scheme, merely to get Negro votes. Had I come to the Senate of the United States through any expedient of that sort, I would rather myself go to jail than to occupy a seat upon this floor.

Mr. McNARY. Mr. President, I appreciate the thoughtful consideration of the able Senator from Texas in giving me a few moments to express my views concerning the proposition of cloture and its application. I had thought, because of the limitation of time, that no one on this side would be permitted to speak.

The entire Republican membership of the Senate, save two, sincerely desire to see the antilynching bill passed.

I shall not discuss the merits of the bill. The Republican Senators are willing, and have been willing, to remain here from sunrise to evening star and from evening star to sunrise in order to have the bill passed. It is my deliberate judgment that if the bill had been handled with more aggressiveness, if so much timidity had not been shown in pushing it forward, if night sessions had been held as expected, the bill by this time would have been enacted into law.

But, Mr. President, I am not willing to give up the right of free speech and full, untrammeled opportunity for argument. That right is the last Palladium; it is the last impregnable trench for those who may be oppressed or who are about to be oppressed; it may be the last barrier to tyranny. From that position of safety I shall not retreat. That right I shall not resign. This occasion does not call for a sacrifice of that nature.

My opposition to cloture being invoked against the right of a small minority has nothing to do with the merits of the bill. It is only a guise or alibi for those who are not willing to press forward to say that those who vote against cloture are not in favor of the bill. The responsibility for the failure to pass this bill lies with the Democratic administration. There are 77 Democrats enlisted under the banner of Democracy, 1 Independent, 1 Farmer-Labor, and 1 Progressive.

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

Mr. McNARY. Just for a question. I have only 2 minutes left.

Mr. BARKLEY. The Senator will recall that his own platform says——

Mr. McNARY. Mr. President, I do not yield for a discussion of platforms. I am going forward now.

Mr. BARKLEY. I am not asking the Senator to yield for that purpose. I want to ask the Senator a question based on that.

Mr. McNARY. I will not yield at this time.

Mr. BARKLEY. Not even for a question?

Mr. McNARY. I do not yield at this time. I have only 2 minutes left.

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

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

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

Mr. McNARY. With 77 Democrats in the Senate, with a popular President in the White House, and with an adorable Vice President presiding over this body, one who knows all the complexities and intricacies of legislation, the proponents of the bill should not look to the attenuated minority of 16 Republicans to pass it, or blame that slender minority for the present situation. It is not good sportsmanship for the 77 Democrats to try to place the blame on the 16 Republicans here, all of whom, I repeat, are in favor of the bill save 2.

Mr. President, my time is up. I cannot take more of the time of the Senate, except to say that I would be unmindful of the rights guaranteed to us under the Constitution and under the rules of the Senate if I should join even an overwhelming majority in this body to suppress free speech and debate.

For the reasons I have stated, Mr. President, I shall vote against cloture.

Mr. CONNALLY. Mr. President, the issue here today is not the antilynching bill or an antilynching bill. The question before the Senate now is the fundamental question of the freedom of debate in this forum of the people of the United States.

Freedom of debate goes to the very heart of parliamentary government. When parliamentary government and the processes of constitutional government and institutions are being attacked all over the earth, it is no time for the Senate of the United States to attempt to smother debate in the Senate, the last free forum not only in this Government but in the world today.

Mr. SCHWELLENBACH. Will the Senator yield?

Mr. CONNALLY. I will yield for a question. I will not yield for a speech.

Mr. SCHWELLENBACH. Does the Senator contend that the right to freedom of debate carries with it the license to obstruct?

Mr. CONNALLY. That, of course, is not a question; but I shall answer the Senator. There are Senators on this floor who are anxious to debate this bill, who have not as yet had an opportunity to do so. The Senator from Virginia [Mr. GLASS] comes here today for the first time under serious handicaps to raise his voice in protest against the bill. He has been anxious and ready for some time to debate the bill at length. The senior Senator from Texas—my colleague [Mr. SHEPPARD]—has been in the Senate for 30 years. He has been anxious, during the pendency of the bill, to discuss it, but he has not as yet had opportunity to do so. The Senator from Alabama [Mr. BANKHEAD] has been engaged in the business of the Senate in connection with a conference report. He has been anxious to debate it and has not had the opportunity. The Senator from Florida [Mr. ANDREWS], a great lawyer, formerly a judge of the supreme court of his State, has not as yet had an opportunity to discuss the bill. The senior Senator from Idaho [Mr. BORAH] is prepared, when the opportunity presents itself, to make a constitutional argument—and we know it will be a great one—on the pending measure. Other Senators whom I might mention are also anxious and ready to debate the bill.

Is the Senate willing now to say that it will put on the gag rule and smother debate? The Senators to whom I have referred may not have the privilege of speaking on the merits of the bill. I do not believe that the Senate of the United States is as yet ready to pursue a course that involves suppression of debate.

Let me remind the Senators that the Senate of the United States is distinctive in its characteristics. Unlike the House of Representatives, the Senate is an assembly of representatives of the States. So jealous were the framers of the Constitution that each Senator should have his own right to speak on the floor of the Senate in behalf of his State that a special provision was inserted in the Constitution to the effect that no State, without its consent, should be deprived of its equal representation in the Senate. In other words, the little State of Delaware is entitled to two Senators in this body, a representation equal to that enjoyed by the great Commonwealth of New York.

Let me repeat, Mr. President, that this contest is over cloture. This contest is over the question whether we shall have debate on legislation pending before this body. If debate can be shut off after an hour or a month or a week, it can be shut off after a minute.

The other day we had the remarkable spectacle of a Senator stating upon the floor that he advocated a change in the Senate rules so that by a majority of one vote the Senate could smother and silence and squelch the voices of Senators who want to discuss legislation. Let each Senator remember that it may be his turn next to be shut off. He may be on his feet tomorrow, and be shut off, if we should adopt that sort of rule.

When Edward Gibbon came to write his great work on the fall and decline of the Roman Empire, he conceived it as he sat in the ruins of the Roman Forum. He did not envisage it when he looked at the Roman triumphal arches or other memorials of conquest; he did not conceive it when he looked at the tumbling ruins of their aqueducts, but, standing in the Roman Forum, Edward Gibbon envisioned that when it fell, freedom fell, and Rome fell.

The VICE PRESIDENT. The hour of 1 o'clock having arrived, under rule XXII the Chair lays before the Senate the motion for cloture, signed by the requisite number of Senators, and directs the Secretary to read it.

The legislative clerk read as follows:

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate upon 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.

Signed by Messrs. NEELY, LA FOLLETTE, WAGNER, CLARK, VAN NUYS, MINTON, BROWN of New Hampshire, MCGILL, SCHWELLENBACH, TRUMAN, BONE, BULKLEY, HITCHCOCK, COPELAND, THOMAS of Utah, GUFFEY, and MCADOO.

The VICE PRESIDENT. The clerk will call the roll to ascertain the presence of a quorum.

The legislative clerk called the roll, and the following Senators answered to their names:

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

The VICE PRESIDENT. Eighty-nine Senators have answered to their names. A quorum is present.

Is it the sense of the Senate that the debate shall be brought to a close? Those in favor will answer "yea" when their names are called and those opposed will answer "nay." The clerk will call the roll.

The Chief Clerk called the roll.

Mr. DAVIS. The Senator from Nevada [Mr. MCCARRAN] and I would vote "yea" on this question. We are paired with the Senator from North Dakota [Mr. NYE], who, if present, would vote "nay."

Mr. LEWIS. I announce that the Senator from Rhode Island [Mr. GREEN], the Senator from Delaware [Mr. HUGHES], and the Senator from Maryland [Mr. TYDINGS] are absent from the Senate because of illness.

The Senator from Nevada [Mr. MCCARRAN] is detained on official business.

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

The roll call resulted—yeas 37, nays 51, not voting 8, as follows:

YEAS—37

Adams	Dieterich	Lonergan	Smathers
Barkley	Donahey	McAdoo	Thomas, Okla.
Bone	Duffy	McGill	Thomas, Utah
Brown, Mich.	Guffey	Maloney	Truman
Brown, N. H.	Hatch	Minton	Van Nuys
Bulkley	Hitchcock	Murray	Wagner
Capper	Johnson, Colo.	Neely	Walsh
Chavez	La Follette	Pope	
Clark	Lee	Schwartz	
Copeland	Logan	Schwellenbach	

NAYS—51

Andrews	Caraway	Hill	Overton
Ashurst	Connally	Holt	Pepper
Austin	Ellender	Johnson, Calif.	Pittman
Bailey	Frazier	King	Radcliffe
Bankhead	George	Lewis	Reynolds
Berry	Gerry	Lodge	Russell
Bilbo	Gibson	Lundeen	Sheppard
Borah	Gillette	McKellar	Smith
Bridges	Glass	McNary	Steiwer
Bulow	Hale	Miller	Townsend
Burke	Harrison	Milton	Vandenberg
Byrd	Hayden	Norris	Wheeler
Byrnes	Herring	O'Mahoney	

NOT VOTING—8

Davis	Hughes	Nye	Tydings
Green	McCarran	Shipstead	White

The VICE PRESIDENT. On this motion the yeas are 37, the nays 51. Two-thirds not having voted in the affirmative, the motion is not agreed to.

Mr. LA FOLLETTE. Mr. President, I ask unanimous consent that the provisions of the rule may be inserted in the RECORD at this point.

The VICE PRESIDENT. Without objection, it is so ordered.

The rule is as follows:

RULE XXII

* * * * * * *

If at any time a motion, signed by 16 Senators, to bring to a close the debate upon any pending measure is presented to the Senate, the Presiding Officer shall at once state the motion to the Senate, and 1 hour after the Senate meets on the following calendar day but one he shall lay the motion before the Senate and direct that the Secretary call the roll, and, upon the ascertainment that a quorum is present, the Presiding Officer shall, without debate, submit to the Senate by an aye-and-nay vote the question:

"Is it the sense of the Senate that the debate shall be brought to a close?"

And if that question shall be decided in the affirmative by a two-thirds vote of those voting, then said measure shall be the unfinished business to the exclusion of all other business until disposed of.

Thereafter no Senator shall be entitled to speak in all more than 1 hour on the pending measure, the amendments thereto, and motions affecting the same, and it shall be the duty of the Presiding Officer to keep the time of each Senator who speaks. Except by unanimous consent, no amendment shall be in order after the vote to bring the debate to a close, unless the same has been presented and read prior to that time. No dilatory motion, or dilatory amendment, or amendment not germane, shall be in order. Points of order, including questions of relevancy and appeals from the decision of the Presiding Officer, shall be decided without debate.

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.

SIMPLIFICATION OF ACCOUNTS OF THE TREASURER

The VICE PRESIDENT laid before the Senate a letter from the Acting Secretary of the Treasury, transmitting a draft of proposed legislation to simplify the accounts of the Treasurer of the United States, and for other purposes, which, with the accompanying paper, was referred to the Committee on Banking and Currency.

EXTENSION OF TIME FOR FILING APPLICATION FOR PAYMENT OF CERTAIN CLAIMS

The VICE PRESIDENT laid before the Senate a letter from the Acting Secretary of the Treasury, transmitting a draft of proposed legislation extending for 2 years the time within which American claimants may make application for payment, under the Settlement of War Claims Act of 1928,

of awards of the Mixed Claims Commission and the Tripartite Claims Commission, and extending until March 10, 1940, the time within which Hungarian claimants may make application for payment, under the Settlement of War Claims Act of 1928, of awards of the war claims arbiter, which, with the accompanying paper, was referred to the Committee on Finance.

APPROPRIATIONS AND MISCELLANEOUS FEES, NATIONAL PARK SERVICE

The VICE PRESIDENT laid before the Senate a letter from the Acting Secretary of the Interior, transmitting a draft of proposed legislation to repeal the provision of the act of March 4, 1929, relating to the availability of appropriations made for the National Park Service; to authorize the collection of certain miscellaneous fees in the national parks and other areas under the jurisdiction of the National Park Service; and for other purposes, which, with the accompanying paper, was referred to the Committee on Public Lands and Surveys.

ISSUANCE OF CERTIFICATES BY INSPECTORS OR ASSISTANT INSPECTORS OF HULLS AND BOILERS

The VICE PRESIDENT laid before the Senate a letter from the Secretary of Commerce, transmitting a draft of proposed legislation to amend the act of March 4, 1915, as amended, the act of June 23, 1936, section 4551 of the Revised Statutes of the United States as amended, and for other purposes, which, with the accompanying paper, was referred to the Committee on Commerce.

CLAIMS ARBITRATED OR SETTLED, UNITED STATES MARITIME COMMISSION

The VICE PRESIDENT laid before the Senate a letter from the Chairman of the United States Maritime Commission, transmitting, pursuant to law, a report of claims arbitrated or settled by agreement from October 16, 1936, to October 15, 1937, as required by section 12 of the Suits in Admiralty Act (41 Stat. L. 525), which, with the accompanying report, was referred to the Committee on Commerce.

PETITIONS AND MEMORIALS

Mr. LODGE presented a resolution adopted by the Home Owners and Taxpayers Association, of Chelsea, Mass., favoring the reduction of taxes and the balancing of the Budget through retrenchment rather than increased taxation, which was referred to the Committee on Appropriations.

He also presented a petition of sundry citizens of Greenfield and vicinity, Massachusetts, praying for the enactment of legislation to abolish the Federal Reserve System as at present constituted and to restore the congressional function of coining and issuing money and regulating the value thereof, which was referred to the Committee on Banking and Currency.

Mr. COPELAND presented resolutions adopted by Local Union No. 86, United Association of Journeymen Plumbers and Steam Fitters, of Mount Vernon, N. Y., favoring the enactment of legislation to encourage private initiative in the construction industry, which were referred to the Committee on Banking and Currency.

He also presented a petition of sundry citizens of New York City and vicinity, New York, praying for the passage of the joint resolution (S. J. Res. 192) to repeal certain powers of the President and the Secretary of the Treasury relating to the issuing of $3,000,000,000 of greenbacks, which was referred to the Committee on Banking and Currency.

He also presented a resolution adopted by the Cayuga County Petroleum Industrial Committee, at Auburn, N. Y., favoring the repeal of Federal gasoline and lubricating oil taxes, which was referred to the Committee on Finance.

He also presented a resolution adopted by the Social Justice Study Council, of Yonkers, N. Y., favoring the adoption of measures looking to the preservation of peace, which was referred to the Committee on Foreign Relations.

He also presented a resolution adopted by Stanley B. Pennock Post, No. 2893, Veterans of Foreign Wars of the United States, of Solvay, N. Y., favoring a congressional inquiry relative to secret treaties and agreements and a full investigation of all forms of propaganda, particularly in connection with the Carnegie Foundation, which was referred to the Committee on Foreign Relations.

He also presented a resolution adopted by the Larchmont (N. Y.) League of Women Voters, protesting against the enactment of the bill (S. 3022) to amend the law relating to appointment of postmasters, which was ordered to lie on the table.

REPORT OF COMMITTEE ON INDIAN AFFAIRS

Mr. LA FOLLETTE, from the Committee on Indian Affairs, to which was referred the bill (S. 2853) to amend an act entitled "An act to refer the claim of the Menominee Tribe of Indians to the Court of Claims with the absolute right of appeal to the Supreme Court of the United States," approved September 3, 1935, reported it with amendments and submitted a report (No. 1315) thereon.

ENROLLED BILL PRESENTED

Mrs. CARAWAY, from the Committee on Enrolled Bills, reported that on January 25, 1938, that committee presented to the President of the United States the enrolled bill (S. 2463) to authorize an additional number of medical and dental officers for the Army.

EXECUTIVE REPORTS OF COMMITTEES

As in executive session,

Mr. McKELLAR, from the Committee on Post Offices and Post Roads, reported favorably the nominations of several postmasters.

Mr. WHEELER, from the Committee on Interstate Commerce, reported favorably the nomination of Otto S. Beyer, of Virginia, to be a member of the National Mediation Board for the term expiring February 1, 1941 (reappointment).

Mr. AUSTIN, from the Committee on the Judiciary, reported favorably the nomination of John D. Clifford, of Maine, to be United States attorney for the district of Maine.

Mr. KING, from the Committee on the Judiciary, reported favorably the nomination of Robert A. Cooper, of South Carolina, to be United States district judge for the district of Puerto Rico.

The VICE PRESIDENT. The reports will be placed on the Executive Calendar.

BILLS INTRODUCED

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

By Mr. MILLER and Mr. McADOO:

A bill (S. 3325) to amend section 36 of the Emergency Farm Mortgage Act of 1933, as amended; to the Committee on Banking and Currency.

By Mr. WALSH:

A bill (S. 3326) for the relief of J. Aristide Lefevre; to the Committee on Claims.

By Mr. LUNDEEN:

A bill (S. 3327) to authorize the erection of a domiciliary building and to provide appurtenances thereto at the existing Veterans' Administration Facility, Fort Snelling, Minn.; to the Committee on Finance.

By Mr. ANDREWS:

A bill (S. 3328) relating to the retirement of the justices of the Supreme Court of the Territory of Hawaii, judges of the circuit courts of the Territory of Hawaii, and judges of the United States District Court for the Territory of Hawaii; to the Committee on the Judiciary.

By Mr. GLASS:

A bill (S. 3329) granting a pension to Mary Merrill Scott; ordered to lie on the table.

By Mr. COPELAND:

A bill (S. 3330) to amend section 3 of the act of May 27, 1936 (49 Stat. 1381), entitled "An act to provide for a change in the designation of the Bureau of Navigation and Steamboat Inspection, to create a Marine Casualty Investigation Board and increase efficiency in administration of the steamboat-inspection laws, and for other purposes"; to the Committee on Commerce.

By Mr. BYRNES:

A bill (S. 3331) to provide for reorganizing agencies of the Government, extending the classified civil service, establishing a General Auditing Office and a Department of Welfare, and for other purposes; to the Select Committee on Government Organization.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Calloway, one of its reading clerks, communicated to the Senate the intelligence of the death of Hon. EDWARD A. KENNEY, late a Representative from the State of New Jersey, and transmitted the resolutions of the House thereon; and also informed the Senate that the Speaker of the House had appointed Mr. SUTPHIN, Mr. HART, Mr. TOWEY, and Mr. SEGER members of a committee on the part of the House, together with such Members of the Senate as may be joined, to attend the funeral of the deceased Representative.

The message announced that the House had disagreed to the amendments of the Senate to 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, asked a conference with the Senate on the disagreeing votes of the two Houses thereon, and that Mr. TAYLOR of Colorado, Mr. CANNON of Missouri, Mr. WOODRUM, and Mr. TABER were appointed managers on the part of the House at the conference.

The message also announced that the House had passed a bill (H. R. 2890) fixing annual compensation for postmasters of the fourth class, in which it requested the concurrence of the Senate.

HOUSE BILL REFERRED

The bill (H. R. 2890) fixing annual compensation for postmasters of the fourth class was read twice by its title and referred to the Committee on Post Offices and Post Roads.

PARTY TENDENCIES IN THE UNITED STATES—ADDRESS BY SENATOR PEPPER

[Mr. HERRING asked and obtained leave to have printed in the RECORD an address entitled "Party Tendencies in the United States," delivered by Senator PEPPER on December 27, 1937, before the American Political Science Association in Philadelphia, which appears in the Appendix.]

ROOSEVELT RECESSION—ADDRESS BY SENATOR HOLT

[Mr. HOLT asked and obtained leave to have printed in the RECORD a radio address delivered by him on Tuesday, January 25, 1938, on Roosevelt's Recession, 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.

Mr. SHEPPARD. Mr. President, the bill before us is unique.

Mr. BARKLEY. Mr. President, I ask the Senator from Texas to yield to me for just a moment.

The VICE PRESIDENT. Does the Senator from Texas yield to the Senator from Kentucky?

Mr. SHEPPARD. I yield.

The VICE PRESIDENT. Under the technical ruling the Chair thinks he ought to say to the Senator from Texas that his remarks up to this time constitute one speech.

Mr. BARKLEY. I ask unanimous consent that the Senator from Texas may yield to me without that rule being invoked.

The VICE PRESIDENT. Is there objection? The Chair hears none.

Mr. BARKLEY. Mr. President, inasmuch as a majority of the Senate has just voted against bringing to a close debate on this measure, has voted against the proposal presented to make it possible to vote on the bill, I wish to call the attention of the proponents of the measure to the fact that in the very near future the Senate will be called upon to determine how much longer it proposes to consume the time of the Senate in considering this measure.

I have done everything I could, as I thought it my duty to do, to bring to the Senate the consideration of this measure, just as I think it my duty to do that with respect to any other bill of importance which is reported to the Senate by a committee of the Senate. This measure now has been under discussion since August. It was put over from August to November, and from November to January. Now it is almost February; and in the very near future the Senate must pass upon the question whether it desires to consume any more of the time of this session in considering the bill.

I am going to put it up to the Senate in the very near future to decide whether it will continue the consideration of this bill without any prospect of a vote, or will take up for consideration other legislation which is on the calendar.

In view of the vote which has just been cast, I feel that I ought to make that statement to the Senate and to the proponents of the measure in order that they may govern themselves accordingly.

Mr. HARRISON. Mr. President, will the Senator who has the floor permit me to interrupt him?

Mr. SHEPPARD. With the same understanding, Mr. President.

Mr. CONNALLY. My colleague [Mr. SHEPPARD] has the floor.

Mr. HARRISON. I desire to say to the Senator from Kentucky, so far as a great many of us are concerned, that we thoroughly agree with the Senator; and the stand that he takes is a very courageous, manly, and statesmanlike one.

Mr. WAGNER. Mr. President——

Mr. CONNALLY. Mr. President, my colleague [Mr. SHEPPARD] has the floor. Unless he can yield without losing the floor, I shall object to his being interrupted.

Mr. SHEPPARD. Mr. President, I yield only on the condition that it does not cause me to lose the floor.

Mr. WAGNER. I ask unanimous consent that the Senator may yield without losing the floor, in order that I may make a brief statement.

The PRESIDENT pro tempore. The Senator from New York asks unanimous consent that he may make a brief statement in the time of the Senator from Texas without the Senator from Texas losing the floor or having his rights impaired. Is there objection. The Chair hears none. The Senator from New York will make his statement.

Mr. WAGNER. Mr. President, so far as I am concerned—I cannot speak for my colleagues who favor this bill, but I think I know their sentiments—I shall stand firmly for the passage of this measure, which I regard as important and in which I believe, so long as a majority of the Senators who likewise believe in it will stand with me.

Mr. BYRNES. Mr. President, will the Senator from Texas yield to me?

The PRESIDENT pro tempore. Does the Senator from Texas yield to the Senator from South Carolina in the same manner in which he has yielded to other Senators?

Mr. BYRNES. I rise to a parliamentary inquiry?

The PRESIDENT pro tempore. The Senator will state it.

Mr. BYRNES. When conferees are appointed by the Senate, and the House of Representatives has acted upon the conference report, is there any way in which the Senate can have presented to the Presiding Officer the conference report agreed upon by the conferees and acted upon by the House of Representatives?

The PRESIDENT pro tempore. The Senator having the conference report in hand may present the report at any time.

Mr. BYRNES. Mr. President, then the question I desire to ask is, Can any Member of the Senate take the conference report and keep the Senate from acting upon the papers?

The PRESIDENT pro tempore. No; he cannot.

Mr. BYRNES. Mr. President, I ask whether or not the conference report on the housing bill is upon the desk of the Presiding Officer.

The PRESIDENT pro tempore. The Chair is informed that the House report has been filed with the Senate, but that the Senate conferees have not filed any report, as is required under the rules.

Mr. KING. Mr. President, a parliamentary inquiry.

The PRESIDENT pro tempore. The Senator from Utah will state it.

Mr. KING. May the chairman or representative of the conferees of the Senate put the conference report in his pocket, or lock it up in his desk indefinitely, and thus preclude the Senate from taking action upon it?

The PRESIDENT pro tempore. That is a matter which the Senate will have to decide for itself.

Mr. BARKLEY. Mr. President, a parliamentary inquiry.

The PRESIDENT pro tempore. The Senator from Kentucky will state it.

Mr. BARKLEY. The Senator realizes that yesterday I made an unsuccessful effort to get up the conference report to which reference has been made, but the parliamentary inquiry is this:

When a conference report has been agreed upon by conferees, and has been signed by all of them, and the report has been taken to the House which must first act upon it—which in this case was the House of Representatives—and they have acted upon it, and have reported their action to the Senate, does not that itself lay the matter before the Senate, or, at least, on the desk of the Vice President, subject to a motion that it may be taken up at any time, it being a privileged matter?

The PRESIDENT pro tempore. The Chair does not so understand. The report must be made by the Senate conferees.

The Senator from Texas is entitled to the floor.

Mr. SHEPPARD. Mr. President, this bill is of an exceptional and startling nature. If enacted into law it would differ radically from any other measure on the Federal statutes. It would present the spectacle of a Federal statute denouncing as a Federal crime and punishing in a Federal court the failure of State officers and employees to enforce a State criminal statute. It would also create a right of action against cities and counties in the State in which the crime had been committed, with provision for a judgment recoverable in a Federal court in an action to be instituted by the Attorney General of the United States.

Under section 3 of the bill the crime could be committed by willful neglect, refusal, or failure to protect from a mob either a person in the custody of the officer or a person not in custody, but suspected of or charged with a crime, or by wilful neglect, refusal, or failure to apprehend or keep in custody or prosecute the members or any member of a lynching mob. The crime is designated a felony, and would be punishable by a fine not exceeding $5,000, or by imprisonment for not exceeding 5 years, or by fine and imprisonment.

Section 5 (1) makes the governmental subdivision either in which a lynching has taken place or in which a victim has been seized by the mob, although lynched elsewhere, liable to the victim, if he has survived, or to his next of kin if he has died, for a sum not less than $2,000 and not more than $10,000. Such amount is to be awarded, in the words of the bill, "as monetary compensation for such injury or death." The bill states that the governmental subdivision "shall be responsible" for any lynching occurring within its territorial jurisdiction and for any lynching occurring outside its territorial jurisdiction if the victim has been seized within the jurisdiction. However, a proviso permits a governmental subdivision to avoid liability if it can prove by a preponderance of the evidence as an affirmative defense that its officers charged with the duty of preserving the peace, and citizens of the subdivision when called upon by any such officer, used—I quote from the bill—"all diligence and all powers vested in them for the protection of the person lynched." It is assumed by this bill that the city or county or other governmental subdivision within which a person is lynched, or seized by a mob and lynched elsewhere, was at fault. The bill not only destroys the usual strong presumption at law of official performance of duty, but raises a presumption that the officers failed to perform their duty to do everything they could to protect the victim from the mob.

The right of action given the victim or next of kin is novel. The amount of the award is not a penalty. It is described in the bill as compensation for the injury or death. The amount recoverable is not fixed, but may vary between $2,000 and $10,000. Although the theory is that the city or county is at fault for failure to protect the victim from the mob, there is no requirement of proof of damages.

The bill provides for the prosecution of the civil action by and in the name of the Attorney General of the United States. It further provides that the Attorney General shall cause an investigation to be made to determine whether there has been a violation of the act on submission to him of information on oath that an officer or employee of a State or governmental subdivision has willfully neglected, refused, or failed to protect a person from a lynching mob, or to apprehend, keep in custody, or prosecute the members or any member of such a mob.

Is this unique, novel, and unprecedented bill constitutional? Can the Federal Government constitutionally prosecute a State law-enforcement officer for failure to discharge a duty created by the State? Can the Congress constitutionally subject a division of a State to liability for failure of an employee to discharge his duty as such? Is there any justification under the fourteenth amendment for this obvious invasion of State sovereignty?

It is my belief that the bill is violative of the Constitution. It is in my judgment an unjustified interference by the Federal Government with the exercise by the various States of their sovereign powers. It is an unconstitutional effort to convert a State law-enforcement problem into a national problem under the guise of the fourteenth amendment. It is arbitrary, unreasonable, and capricious, and it goes counter to the due-process clause of the fifth amendment. As a criminal statute it is ambiguous and indefinite. It makes the Attorney General a censor of the State law-enforcement activities of sheriffs, constables, city police officers, and local prosecuting attorneys. It disregards the boundaries between Federal power and State power. It is inconsistent with local self-government, which is the foundation of our form of government. The theory that the Federal Government may penalize State local units for dereliction of duty of their employees is repugnant both to the letter and the spirit of our Constitution.

The status of the several States as separate sovereignties, except as to those portions of sovereignty granted by the States to the Federal Government, is implicit in the constitution. This basic principle of our constitutional law has frequently been emphasized by the Supreme Court John Marshall expounded the doctrine at length in the historic case of *McCulloch* v. *Maryland* (4 Wheat. 316) in which he announced the rule that, since both the United States and a State are sovereigns, neither can tax the other, because to hold otherwise would permit one sovereign to destroy another.

The same result would follow if one government had the right to punish the officials of another in connection with the performance of their duties prescribed by that other government. Clearly it would be equally destructive for one sovereignty to control the conduct of the other.

Chief Justice Marshall said further, in McCulloch against Maryland:

> The people of the United States have seen fit to divide sovereignty, and to establish a complex system. They have conferred certain powers on the State governments, and certain other powers on the National Government.

This dual sovereignty, or divided sovereignty, as it is sometimes called, is the result of the character of the Constitution of the United States as a grant of power to the Federal Government and a reservation to the States of powers not so granted. I quote again from McCulloch against Maryland:

> We admit, as all must admit, that the powers of the Government are limited, and that its limits are not to be transcended.

The Supreme Court of the United States, in *Collector* v. *Day* (11 Wall. 124), discussed this question of sovereignty as follows:

It is a familiar rule of construction of the Constitution of the Union that the sovereign powers vested in the State governments by their respective constitutions remained unaltered and unimpaired, except so far as they were granted to the Government of the United States. That the intention of the framers of the Constitution in this respect might not be misunderstood, this rule of interpretation is expressly declared in the tenth article of the amendments.

This principle of dual sovereignty is so well established that further citation is perhaps unnecessary, but because of the importance in the consideration of the antilynching bill of keeping clearly in mind the nature of State crimes as a subject of State sovereignty, as distinguished from Federal crimes as a subject of Federal sovereignty, I quote the following significant statement by the Supreme Court of the United States in *United States* v. *Tarble* (13 Wall. 397):

There are within the territorial limits of each State two governments restricted in their spheres of action, but independent of each other and supreme within their respective spheres. Each has its separate departments, each has its distinct laws, and each has its own tribunals for their enforcement. Neither government can intrude within the jurisdiction or authorize any interference therein by its judicial officers with the action of the others. * * *

The pending bill would be an interference on the part of the Federal Government with State officers acting under State laws and under State authority.

Continuing, the Court says further in the Tarble case:

In their laws and mode of enforcement neither is responsible to the other. How their respective laws shall be enacted; how they shall be carried into execution, and in what tribunals, or by what officers; and how much discretion, or whether any at all shall be vested in their officers are matters subject to their own control, and in the regulation of which neither can interfere with the other.

Dual sovereignty is fundamental in our American system of government. The doctrine that the National Government may exercise only those powers which it has been authorized by the States to exercise, and that the States have reserved to themselves the right to exercise powers not granted by them to the Federal Government, and that in the exercise of the reserved powers the States act as independent sovereigns is so firmly embedded in our constitutional system as to require neither argument nor citation.

We are told that Congress has been empowered to enact this legislation by the fourteenth amendment. It is pointed out that persons who are lynched are denied the benefit of the equal protection and due-process clauses of the fourteenth amendment, and it is urged that Congress, acting under section 5 of that amendment, can protect them in these respects through the enactment of the pending bill. Section 5 reads as follows:

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Now, is the pending bill appropriate in a constitutional sense for the enforcement of the provisions of the fourteenth amendment on which the bill is predicated? So unusual is the proposal embodied in the bill that there is no precedent in law or in decision. Under general principles enunciated by the Supreme Court of the United States, however, there is no constitutional basis in the fourteenth amendment for this legislation.

The decision of the United States Supreme Court in the case of *United States* v. *Cruickshank* (92 U. S. 542) is significant. The Court clearly indicated that it deemed unconstitutional a Federal statute making it a Federal crime to engage in a conspiracy to injure, oppress, threaten, or intimidate any citizen with intent to prevent or hinder his free exercise and enjoyment of any right or privilege granted or secured to him by the Constitution of the United States. The case involved a conspiracy to deprive certain Negroes of the free enjoyment of their rights under the Federal Constitution. One of the counts charged conspiracy to commit false imprisonment or murder.

The Court restated the doctrine of dual sovereignty in the following words:

The people of the United States resident within any State are subject to two governments—one a State government, the other a National Government—but there need be no conflict between the two. The powers which one possesses, the other does not. They are different purposes, and have different jurisdictions.

And later in the opinion, the Court says:

The Government of the United States is one of delegated powers alone. Its authority is defined and limited by the Constitution. All powers not granted to it by that instrument are reserved to the States or the people. No rights can be acquired under the Constitution or laws of the United States except such as the Government of the United States has the authority to grant or secure. All that cannot be so granted or secured are left under the protection of the States.

The Court applied the doctrine to the facts of the particular case in the following words:

The rights of life and personal liberty are natural rights of man. To secure these rights, says the Declaration of Independence, "Governments were established among men, deriving their just powers from the consent of the governed." The very highest duty of the States, when they entered into the Union under the Constitution, was to protect all persons in their jurisdiction in the enjoyment of these "inalienable rights with which they are endowed by their Creator." Sovereignty for this purpose rests alone with the States.

Because of its very significant bearing on the question before us, I repeat the last sentence of the quotation. "Sovereignty for this purpose," the Supreme Court declared, "rests alone with the States." Sovereignty for the purpose of protecting the rights of life and personal liberty is State sovereignty and not national sovereignty.

Therefore, not only the duty to protect persons from lynching, but likewise the power to do so, are the duty and the power not of the National Government but of State governments. Carrying its reasoning to its logical conclusion, the Court said, in effect, that it is neither the duty nor within the power of the United States to punish persons engaging in a conspiracy to falsely imprison or murder other persons within the territorial jurisdiction of a State.

The pending bill does not punish the members of a lynching mob. Its purpose, however, is to protect persons threatened with lynching in the free enjoyment of constitutional rights under the fourteenth amendment. This, the Supreme Court states in the Cruikshank case, is not within the scope of Federal power where the prevention of the offenses by which persons will be deprived of their constitutional rights is a State function, a duty which the State alone can perform, and a power which the State alone can exercise.

The United States Supreme Court considered section 5, fourteenth amendment, at length in the civil rights cases (109 U. S. 3). The case involved the constitutionality under the fourteenth amendment of a Federal statute making it a Federal crime to deny to any citizen, except for reasons by law applicable to citizens of every race and color, the full enjoyment of any of the accommodations, advantages, facilities, or privileges of inns, public conveyances, and theaters and other places of public amusement. The Court held the statute unconstitutional because it was not within the scope of Federal power. In rejecting the contention that the statute was a valid exercise of the power of Congress, under section 5 of the fourteenth amendment, to enforce the amendment by appropriate legislation, the Court emphasized the character of the amendment as a prohibition of State action and not a restriction on the action of individuals, and discussed section 5, as follows:

The last section of the amendment invests Congress with power to enforce it by appropriate legislation. To enforce what? To enforce the prohibition. To adopt appropriate legislation for correcting the effects of such prohibited State laws and State acts, and thus to render them effectually null, void, and inocuous. This is the legislative power conferred upon Congress, and this is the whole of it. It does not invest Congress with power to legislate upon subjects which are within the domain of State legislation or State action, of the kind referred to. It does not authorize Congress to create a code of municipal law for the regulation of private rights.

Also significant is the following statement:

If this legislation is appropriate for enforcing the prohibitions of the amendment, it is difficult to see where it is to stop. Why may not Congress with equal show of authority enact a code of laws

for the enforcement and vindication of all rights of life, liberty, and property? If it is supposable that the States may deprive persons of life, liberty, and property without due process of law, and the amendment itself does suppose this, why should not Congress proceed at once to prescribe due process of law for the protection of every one of these fundamental rights, in every case, as well as to prescribe equal privileges in inns, public conveyances, and theaters?

The truth is, that the implication of a power to legislate in this manner is based upon the assumption that if the States are forbidden to legislate or act in a particular way on a particular subject, and power is conferred upon Congress to enforce the prohibition, this gives Congress power to legislate generally upon that subject, and not merely power to provide modes of redress against such State legislation or action. This assumption is certainly unsound. It is repugnant to the tenth amendment of the Constitution.

Let it be remembered in connection with the antilynching bill that the terms of no State law are shown to be in violation of the rights, privileges, immunities, and protections of the fourteenth amendment.

I desire at this point to refer at some length to the famous case of *United States* v. *Harris*, in 106 U. S. 629, which came before the Supreme Court of the United States in 1882, involving the constitutionality of section 5519 of the Revised Statutes, which reads as follows:

If two or more persons in any State or Territory conspire or go in disguise upon the highway or on the premises of another for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws or of equal privileges or immunities under the laws, or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws, each of said persons shall be punished by a fine of not less than $500 nor more than $5,000, or by imprisonment, with or without hard labor, not less than 6 months nor more than 6 years, or by both such fine and imprisonment.

This section was originally a part of section 2 of the act of April 20, 1871, chapter 22.

The facts as presented to the court in the Harris case showed as follows:

At the November term, 1876, of the Circuit Court of the United States for the Western District of Tennessee an indictment, based on section 5519 of the Revised Statutes, was returned by the grand jury against one R. G. Harris and 19 others. The indictment contained four counts. The first count charged as follows:

"That R. G. Harris" (and 19 others, naming them), "yeomen, of the county of Crockett, in the State of Tennessee, and all late of the county and district aforesaid, on, to wit, the 14th day of August, A. D. 1876, in the county of Crockett, in said State and district, and within the jurisdiction of this court, unlawfully, with force and arms, did conspire together with certain other persons whose names are to the grand jurors aforesaid unknown, then and there, for the purpose of depriving Robert R. Smith, William J. Overton, George W. Wells, Jr., and P. M. Wells, then and there being citizens of the United States and of said State, of the equal protection of the laws in this, to wit, that theretofore, to wit, on the day and year aforesaid, in said county, the said Robert R. Smith, William J. Overton, George W. Wells, Jr., and P. M. Wells, having been charged with the commission of certain criminal offenses, the nature of which said criminal offenses being to the grand jurors aforesaid unknown, and having upon such charges then and there been duly arrested by the lawful and constituted authorities of said State, to wit, by one William A. Tucker, the said William A. Tucker then and there being a deputy sheriff of said county, and then and there acting as such; and having been so arrested as aforesaid, and being then and there so under arrest and in the custody of said deputy sheriff as aforesaid, they, the said Robert R. Smith, William J. Overton, George W. Wells, Jr., and P. M. Wells, were then and there by the laws of said State entitled to the due and equal protection of the laws thereof, and were then and there entitled under the said laws to have their persons protected from violence when so then and there under arrest as aforesaid. And the grand jurors aforesaid, upon their oaths aforesaid, do further present that the said R. G. Harris" (and 19 others, naming them), "with certain other persons whose names are to the said grand jurors unknown, did then and there with force and arms unlawfully conspire together as aforesaid then and there for the purpose of depriving them, the said Robert R. Smith, William J. Overton, George W. Wells, Jr., and P. M. Wells, of their rights to the due and equal protection of the laws of said State and of their rights to be protected in their persons from violence while so then and there under arrest as aforesaid and while so then and there in the custody of the said deputy sheriff, and did then and there deprive them, the said Robert R. Smith, William J. Overton, George W. Wells, Jr., and P. M. Wells, of such rights and protection and of the due and equal protection of the laws of the said State by then and there, while so under arrest as aforesaid, and while so then and there in the custody of the said deputy sheriff as aforesaid, beating, bruising, wounding, and otherwise ill-treating them, the said Robert R. Smith, William J. Overton, George W. Wells, Jr., and P. M. Wells, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States."

The second count charged that the defendants, with force and arms, unlawfully did conspire together for the purpose of preventing and hindering the constituted authorities of the State of Tennessee, to wit, the said William A. Tucker, deputy sheriff of said county, from giving and securing to the said Robert R. Smith and others, naming them, the due and equal protection of the laws of said State, in this, to wit, that at and before the entering into said conspiracy, the said Robert R. Smith and others, naming them, were held in the custody of said deputy sheriff by virtue of certain warrants duly issued against them to answer certain criminal charges, and it thereby became and was the duty of said deputy sheriff to safely keep in his custody the said Robert R. Smith and others while so under arrest, and then and there give and secure to them the equal protection of the laws of the State of Tennessee; and that the defendants did then and there conspire together for the purpose of preventing and hindering the said deputy sheriff from then and there safely keeping, while under arrest and in his custody, the said Robert R. Smith and others, and giving and securing to them the equal protection of the laws of said State.

The third count was identical with the second, except that the conspiracy was charged to have been with the purpose of hindering and preventing said William A. Tucker, deputy sheriff, from giving and securing to Robert R. Smith alone the due and equal protection of the laws of the State.

The fourth count charged that the defendants did conspire together for the purpose of depriving said P. M. Wells, who was then and there a citizen of the United States and the State of Tennessee, of the equal protection of the laws, in this, to wit: Said Wells having been charged with an offense against the laws of said State, was duly arrested by said Tucker, deputy sheriff, and so being under arrest was entitled to the due and equal protection of said laws, and to have his person protected from violence while so under arrest; and the said defendants did then and there unlawfully conspire together for the purpose of depriving said Wells of his right to the equal protection of the laws, and of his right to be protected in person from violence while so under arrest, and—

Did then and there deprive him of such rights and protection, and of the due and equal protection of the laws of the State of Tennessee, by then and there, and while he, the said P. M. Wells, was so then and there under arrest as aforesaid, unlawfully beating, bruising, wounding, and killing him, the said P. M. Wells, contrary to the form of the statute in such case made and provided—

And so forth.

The Supreme Court in this decision on the basis of these allegations which I have carefully set out in order that the issue might be plain, declared the Federal statute involved unconstitutional, and in passing on the constitutionality of the statutes stated in part as follows:

It is, however, strenuously insisted that the legislation under consideration finds its warrant in the first and fifth sections of the fourteenth amendment.

In this case the man in the custody of a State officer was killed by private parties, and the Federal statute under which these parties were tried was declared to be unconstitutional, and it was decided by the United States Supreme Court that no proceedings could be brought under this statute, because under our constitutional system of government it involved a matter resting with the State alone to handle. Here is what the Supreme Court of the United States said:

The first section declares "all persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law nor deny to any person within its jurisdiction the equal protection of the laws."

Thus the Supreme Court sets out in terms the first section of the fourteenth amendment in proceeding to pass upon the case now under consideration.

The Court continued:

The fifth section declares "The Congress shall have power to enforce by appropriate legislation the provisions of this amendment.

It is perfectly clear from the language of the first section that its purpose also was to place restraint upon the action of the States, but, as we have seen, in a certain way.

In *Slaughterhouse cases* (16 Wall., p. 36), it was held by the majority of the Court, speaking by Mr. Justice Miller, that the object of the second clause of the first section of the fourteenth amendment was to protect from the hostile legislation of the States the privileges and immunities of citizens of the United States; and this was conceded by Mr. Justice Field, who expressed the views of the dissenting Justices in that case. In the same case the Court, referring to the fourteenth amendment, said that—

If the States do not conform their laws to its requirements, then by the fifth section of the article of amendments Congress was authorized to enforce it by suitable legislation.

The purpose and effect of the two sections of the fourteenth amendment just quoted were clearly defined by Mr. Justice Bradley in the case of *United States* v. *Cruikshank* (1 Woods 308), 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.

When the case of *United States* v. *Cruikshank* came to this Court the same view was taken here. The Chief Justice, delivering the opinion of the Court in that case, said:

"The fourteenth amendment prohibits a State from depriving any person of life, liberty, or property without due process of law, or from denying to any person the equal protection of the laws; but this provision does not add anything to the rights of one citizen as against another. It simply furnishes an additional guaranty against any encroachment by the States upon the fundamental rights which belong to every citizen as a member of society. The duty of protecting all its citizens in the enjoyment of an equality of rights was originally assumed by the States, and it remains there. The only obligation resting upon the United States is to see that the States do not deny the right. This the amendment guarantees, and no more. The power of the National Government is limited to this guaranty" (92 U. S. 542).

So in *Virginia* v. *Rives* (100 Id. 313), it was declared by this Court, speaking by Mr. Justice Strong, that—

"These provisions of the fourteenth amendment have reference to State action exclusively and not to any action of private individuals."

These authorities show conclusively that the legislation under consideration finds no warrant for its enactment in the fourteenth amendment.

The language of the amendment does not leave this subject in doubt. When the State has been guilty of no violation of its provisions; when it has not made or enforced any law abridging the privileges or immunities of citizens of the United States; when no one of its departments has deprived any person of life, liberty, or property without due process of law, or denied to any person within its jurisdiction the equal protection of the laws; when, on the contrary, the laws of the State, as enacted by its legislative and construed by its judicial and administered by its executive departments, recognize and protect the rights of all persons, the amendment imposes no duty and confers no power upon Congress.

In declaring this section of the statute unconstitutional, the Supreme Court also said:

There is another view which strengthens this conclusion. If the Congress has constitutional authority under the thirteenth amendment to punish a conspiracy between two persons to do an unlawful act, it can punish the act itself, whether done by one or more persons.

A private person cannot make constitutions or laws, nor can he with authority construe them, nor can he administer or execute them. The only way, therefore, in which one private person can deprive another of the equal protection of the laws is by the commission of some offense against the laws which protect the rights of persons, as by theft, burglary, arson, libel, assault, or murder. If, therefore, we hold that section 5519 is warranted by the thirteenth amendment, we should, by virtue of that amendment, accord to Congress the power to punish every crime by which the right of any person to life, property, or reputation is invaded. Thus, under a provision of the Constitution which simply abolished slavery and involuntary servitude, we should, with few exceptions, invest Congress with power over the whole catalog of crimes. A construction of the amendment which leads to such a result is clearly unsound.

There is only one other clause in the Constitution of the United States which can, in any degree, be supposed to sustain the section under consideration; namely, the second section of article 4, which declares that "the citizens of each State shall be entitled to all the privileges and immunities of citizens of the several States." But this section, like the fourteenth amendment, is directed against State action. Its object is to place the citizens of each State upon the same footing with citizens of other States, and inhibit discriminative legislation against them by other States (*Paul* v. *Virginia*, 8 Wall. 168).

Obviously, disregard of a State law by a sheriff or a constable or a city police officer is not State action against which the prohibition of the fourteenth amendment applies. The failure to protect a person suspected of a crime from a mob is not State action. The release of a person in custody is not State action. The failure to apprehend or to prosecute the members of a lynching mob is not State action. No exercise of State authority is involved. On the other hand, misconduct and dereliction of duty are matters of vital concern to the State. Punishment is a duty of the State and is solely within the power of the State.

The bill is objectionable from a constitutional standpoint in other respects. It does not satisfy the requirements of due process of law under the fifth amendment.

Mr. CONNALLY. Mr. President, would my colleague mind yielding for a question?

Mr. SHEPPARD. I am glad to yield.

Mr. CONNALLY. I desire to ask the Senator a question in connection with his very able and illuminating discussion of the matter upon which he has just touched in relation to the fourteenth amendment as being merely a prohibition on State action. I wish to emphasize the fact that the language of the fourteenth amendment to which he has adverted is as follows:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.

Is not that language in itself so plain that there can be no doubt that what is prohibited must be State action, and must be in the form of a law; not the action of some individual sheriff or some county judge; but what is prohibited here is the passage by a State, through its legislative machinery, of a law which seeks to abridge the privileges or immunities of citizens?

Mr. SHEPPARD. My colleague is correct.

Mr. CONNALLY. I thank the Senator.

Mr. SHEPPARD. I thank my colleague for his interruption.

It may be interesting to observe here that express authority to deal with the following crimes exist in the Constitution, namely, treason, felonies and piracies on the high seas, counterfeiting, crimes against international law, and the crimes and misdemeanors for which a Federal official may be impeached. All the other hundreds of Federal criminal offenses are handled as the result of an implied power essential to carry out the powers granted in the Constitution to the Federal Government.

It might be interesting to read the list of Federal criminal laws, to show that they relate to and are grouped around specific Federal powers and functions.

THE CRIMINAL CODE OF THE FEDERAL GOVERNMENT

PART 1. CRIMES

OFFENSES AGAINST EXISTENCE OF GOVERNMENT

Treason.
Same; punishment.
Misprision of treason; punishment.
Inciting rebellion or insurrection.
Criminal correspondence with foreign governments; redress of private injuries excepted.
Seditious conspiracy.
Recruiting for service against United States.
Enlisting to serve against United States.

OFFENSES AGAINST NEUTRALITY

Accepting commission to serve against friendly power.
Enlisting in foreign service; exceptions.
Arming vessels against friendly powers; forfeiture of vessel.
Augmenting force of foreign armed vessel.
Organizing military expedition against friendly power.
Enforcement by courts; employment of land or naval forces.
Compelling foreign vessels to depart.
Bonds from armed vessels on clearing.
Detention by collectors of customs.
Construction of chapter; transient aliens; prosecutions for treason or piracy.
Enforcement of neutrality; withholding clearance papers from vessels.
Same; detention of armed vessels.
Same; sending out armed vessel with intent to deliver to belligerent nation.
Same; statement from master that cargo will not be delivered to other vessels.
Same; forbidding departure of vessels.
Same; unlawful taking of vessel out of port.
Same; internment of person belonging to armed land or naval forces of belligerent nation; arrest; punishment for aiding escape.
Same; enforcement of sections 25, 27, and 31 to 37, of this title.
Same; United States defined; jurisdiction of offenses; prior offenses; partial invalidity of provisions.

OFFENSES AGAINST ELECTIVE FRANCHISE AND CIVIL RIGHTS OF CITIZENS

Conspiracy to injure persons in exercise of civil rights.
Depriving citizens of civil rights under color of State laws.
Searches without search warrant; punishment.
Conspiring to prevent officer from performing duties.
Unlawful presence of troops at polls.
Intimidating voters by officers or other persons of the Army or Navy.
Army or Navy officers prescribing qualifications of voters.
Interfering with election officers by officers or other persons of the Army or Navy.
Additional punishment.

OFFENSES AGAINST OPERATIONS OF GOVERNMENT

Making, forging, counterfeiting, or altering letters patent.
Making, forging, counterfeiting, or altering bonds, bids, or public records; transmitting such papers.
Making, forging, counterfeiting, or altering deeds or powers of attorney; transmitting such papers.
Possession of false papers.
Officer making false acknowledgments.
Falsely pretending to be United States officer.
Illegal possession, etc., of official badge or other insignia.
Same; punishment.
Falsely representing to be officer, agent, or employee.
False personation of holder of public stocks or pensioner.
False demand on fraudulent power of attorney, etc.

OFFENSES RELATING TO OFFICIAL DUTIES

Such as—
Extortion.
Requiring receipts for larger sums than are paid.
Disbursing officers unlawfully using public money.
Failure of depositaries to safely keep public deposits, etc.

OFFENSES AGAINST PUBLIC JUSTICE

Such as—
Perjury.
Subornation of perjury.
Stealing or altering process; procuring false bail.
Destroying public records, etc.

OFFENSES AGAINST CURRENCY, COINAGE, ETC.

Such as—
"Obligation or other security of the United States" defined.
Counterfeiting securities.
Counterfeiting national-bank notes.
Using plates to print notes without authority; distinctive paper, etc.

OFFENSES AGAINST POSTAL SERVICE

Such as—
Definition.
Conducting post office without authority.
Illegal carrying of mail by officials.
Conveying mail by private express; delivery to post office allowed; etc.

OFFENSES AGAINST FOREIGN AND INTERSTATE COMMERCE

Such as—
Violent interference with foreign commerce.
Carrying explosives; on vessels or vehicles with passengers for hire; explosives permitted; restrictions; military transportation.
Same; regulations for transporting made by Interstate Commerce Commission; effect; etc.

OFFENSES WITHIN ADMIRALTY, MARITIME, AND TERRITORIAL JURISDICTION OF UNITED STATES

Such as—
Places and waters applicable; on board American vessels on high seas or Great Lakes; on land under exclusive control of United States; guano islands.
Murder; first degree; second degree.
Manslaughter; voluntary; involuntary.
Punishment; murder; manslaughter; etc.

PIRACY AND OTHER OFFENSES UPON SEAS

Such as—
Piracy; punishment.
Mistreatment of crew by officers of vessel; flogging.
Inciting revolt or mutiny on shipboard.
Revolt or mutiny on shipboard, etc.

Mr. President, I think it will be interesting to have this list in the RECORD, because it will be found by one carefully reading it that every criminal offense under Federal statute is foreign to anything contained in the pending bill.

Mr. President, there is no reasonable relationship between the provisions of this bill and the evil of lynching against which it is directed. Again I say that lynchers themselves are not punished by the measure. Lynching, nowadays, is a rare occurrence. Without the drastic punishment which this bill would inflict on law-enforcement officers, and without the penalty which it would impose on governmental subdivisions, the number of persons lynched has fallen from 52 in 1914 to 8 in 1937.

Mr. MINTON. Mr. President——

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

Mr. SHEPPARD. I shall be glad to yield, if it does not take me from the floor. With that understanding, I yield.

Mr. MINTON. A great deal has been said about the eight lynchings last year. Was anyone prosecuted for participating in any of those lynchings?

Mr. SHEPPARD. I am not sufficiently familiar with the circumstances to answer the Senator.

Mr. MINTON. Is it not a fact that no one was prosecuted?

Mr. SHEPPARD. I would not say that; and we do not know how many lynchings have been prevented by the diligence of peace officers.

Mr. MINTON. Is it not a fact that no one was prosecuted in any of these eight cases of lynching, about which we have heard so much in the last few days, and no one was convicted, and enforcement was just a thousand percent nil?

Mr. SHEPPARD. I repeat that I do not have the desired information. I may say to the Senator from Indiana that the number of persons protected from lynch mobs has increased from 24 in 1914 to 79 in 1936. I did not recall that I had these figures a few moments ago. The ratio of persons lynched to the number protected from lynching has decreased from 2.17 in 1914 to 0.11 in 1936. These figures have been compiled by the Tuskegee Institute and are undoubtedly accurate. The decrease in lynching is the result of public sentiment against lynching in the communities in which lynching was formerly more prevalent, and the result also of greater protection afforded by police officers to persons threatened with lynching. The theory that the proposed legislation is necessary to prevent lynching is wholly unwarranted. Therefore, if the Congress had power to enact the legislation, the bill would not be a desirable exercise of such power.

The provision creating a presumption that cities and counties are responsible for lynching which occurs within their borders is particularly arbitrary. There is a presumption—a very strong presumption—that public officers perform their duty. The destuction of that presumption and the substitution of a presumption of nonperformance of duty are unreasonable.

The presumption that sheriffs, police officers, and other peace officers have neglected, refused, or failed to use diligence in protecting a person from a mob is without basis in reason. It is, in the words of the Supreme Court, "a purely arbitrary mandate."

The criminal provisions of the bill are in conflict with the sixth amendment. They are ambiguous and indefinite, and, therefore, unconstitutional under the provisions of the sixth amendment, which provide that an accused is entitled to be informed of the nature and cause of the accusation. Under this provision of the Constitution, the language of a criminal statute must be free from ambiguity and definite and certain in order that a person may know without speculation whether a certain act will be a crime under

the statute. A leading case in this connection is *United States* v. *Cohen Grocery Co.* (254 U. S. 81). The case involved the constitutionality of certain provisions of the Lever Act of 1917. The Court held the statute unconstitutional for failure to fix an ascertainable standard of guilt.

Likewise, in the pending bill there is an absence of an ascertainable standard of guilt. What constitutes "diligent efforts" to prevent lynching? What constitutes "willful neglect" as distinguished from refusal or willful failure to protect a person from lynching? When is a person "suspected" of having committed a crime within the meaning of provisions making unlawful the failure to protect such a person from lynching, although not in the custody of the officer? What must an officer do to protect such a person? What constitutes "diligent efforts to apprehend" or to "prosecute" a member of a lynching mob? I repeat that the indefiniteness of this language would make the bill, if enacted, unconstitutional under the sixth amendment.

This bill, as I have said, is contrary to both the spirit and the letter of the Constitution. It is manifestly unconstitutional. It invades the sovereign powers of the States. It ought never to become law.

Its passage would inflict a wound on our form of government which would outweigh the dangers of a crime problem now rapidly diminishing.

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

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

The legislative clerk called the roll, and the following Senators answered to their names:

Adams	Duffy	Hitchcock	Pepper
Andrews	Frazier	Johnson, Colo.	Pittman
Barkley	George	La Follette	Radcliffe
Brown, N. H.	Gerry	Lodge	Reynolds
Bulkley	Gibson	Lundeen	Schwellenbach
Bulow	Guffey	McNary	Sheppard
Byrd	Hale	Maloney	Townsend
Byrnes	Harrison	Miller	Truman
Capper	Hatch	Milton	Vandenberg
Caraway	Hayden	Minton	Wagner
Clark	Herring	Norris	
Connally	Hill	O'Mahoney	

The PRESIDING OFFICER. Forty-six Senators having answered to their names, there is not a quorum present.

The clerk will call the names of the absent Senators.

The legislative clerk called the names of the absent Senators, and Mr. ASHURST, Mr. AUSTIN, Mr. BAILEY, Mr. BANKHEAD, Mr. BERRY, Mr. BILBO, Mr. BONE, Mr. BORAH, Mr. BRIDGES, Mr. BROWN of Michigan, Mr. BURKE, Mr. CHAVEZ, Mr. COPELAND, Mr. DAVIS, Mr. DIETERICH, Mr. DONAHEY, Mr. ELLENDER, Mr. GILLETTE, Mr. GLASS, Mr. HOLT, Mr. JOHNSON of California, Mr. KING, Mr. LEE, Mr. LEWIS, Mr. LOGAN, Mr. LONERGAN, Mr. MCADOO, Mr. MCGILL, Mr. MCKELLAR, Mr. MURRAY, Mr. NEELY, Mr. OVERTON, Mr. POPE, Mr. RUSSELL, Mr. SCHWARTZ, Mr. SMATHERS, Mr. SMITH, Mr. STEIWER, Mr. THOMAS of Oklahoma, Mr. THOMAS of Utah, Mr. VAN NUYS, Mr. WALSH, and Mr. WHEELER answered to their names when called.

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

APPROPRIATIONS FOR SUGAR CONTROL ACT AND CROP PRODUCTION AND HARVESTING LOANS

The PRESIDING OFFICER laid before the Senate the action of the House of Representatives disagreeing to the amendments of the Senate to 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, and requesting a conference with the Senate on the disagreeing votes of the two Houses thereon.

Mr. ADAMS. I move that the Senate insist upon its amendments, agree to the request of the House for a conference, and that the Chair appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Mr. ADAMS, Mr. GLASS, and Mr. HALE conferees on the part of the Senate.

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. ANDREWS obtained the floor.

Mr. CAPPER. Mr. President, will the Senator yield to me?

The PRESIDING OFFICER. Does the Senator from Florida yield to the Senator from Kansas?

Mr. ANDREWS. I will yield with the understanding that it will not take me from the floor.

Mr. CAPPER. I wish to have printed in the RECORD an address delivered last night.

Mr. CONNALLY. Mr. President, unless there is unanimous consent, that cannot be done, because under the ruling Senators cannot have matters inserted in the RECORD unless the Senator having the floor yields the floor. It cannot be done unless the Senator from Kansas asks and obtains unanimous consent.

Mr. CAPPER. I have asked unanimous consent.

Mr. MINTON. A parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. MINTON. If unanimous consent is given, will it constitute the transaction of business, after the recognition of the Senator from Florida?

Mr. CAPPER. I ask also that my request shall not take the Senator from Florida from the floor.

The PRESIDING OFFICER. The only way by which the Senator from Kansas can have inserted in the RECORD the article to which he has referred is by unanimous consent. Does the Senator from Kansas ask for unanimous consent?

Mr. MCNARY. Mr. President, the Senator from Kansas has asked unanimous consent to have the article inserted in the RECORD, and has coupled with the request a further request that no rights be lost by the Senator from Florida; and that covers the whole matter.

The PRESIDING OFFICER. That was the understanding of the Chair. Is there objection to the request of the Senator from Kansas?

Mr. MINTON. If we can have the further reservation that the address of the Senator from Florida will constitute one speech, it will be all right; otherwise I shall object.

The PRESIDING OFFICER. Is there objection?

Mr. MINTON. I object.

Mr. ANDREWS. Mr. President, no one realizes more than I do at this time how difficult it is to try to present one's views on the question of the constitutionality of the pending bill.

I was very anxious, indeed, that I should follow some proponent of the pending measure who would attempt to maintain its constitutionality, and I held back in making any address to the Senate on this subject in the hope that such an attempt would be made. So far that has not been done. I am anxious to hear that kind of a speech. Those who are opposing this bill are opposing it on the ground of its unconstitutionality. That is the main question before the Senate. What has been said and what may be said are merely incidental to that important subject. Before I conclude I trust I shall be able to convince everyone who has an open mind upon the subject that this bill is a tacit invasion of State rights, which is the most important legislative subject that has been discussed in the past, that may be discussed at present, or that may be discussed in the future on the floors of the Houses of Congress.

This so-called antilynching bill, according to its preamble, bases its claim for constitutionality—and I say there is none—upon the "due process" and the "equal protection" clauses of the fourteenth amendment. Those clauses are usually invoked for what some have termed "window dressing," or to give the proposed act as much respectability as possible in the face of the States' rights features of the Constitution.

The second section of the bill 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.

There is no legal objection to that definition; it may be legally sound; in fact, as I view it, it is the only constitutional sentence in the entire bill.

The same section, however, specifically exempts from the provisions of the bill all mob violence committed by gangsters and racketeers, even when innocent victims are murdered. The question naturally presents itself, Why exempt gangsters and racketeers when there are 10 times more homicides of that violent type—and the number is constantly increasing—committed by those criminal pirates in other parts of the United States than there are homicides caused by the horrible offense of lynching? That question has not been answered by the sponsors of this bill.

The third section imposes a severe penalty, fine, and imprisonment upon any peace officer "or employee of a State government or any governmental subdivision thereof."

That means any county or municipality of any State—

Who * * * shall have willfully neglected, refused, or failed to make all diligent efforts to protect such person.

The fourth section of the bill authorizes the Attorney General of the United States, upon the ex parte affidavit of any person stating that some State peace officer having custody of such person accused of crime "has willfully neglected, refused, or failed to make all diligent efforts to protect such person" or "failed to make all diligent efforts to apprehend, keep in custody, or prosecute the members" of such mob, "shall cause an investigation to be made to determine whether there has been any violation of this act."

The provisions of the third and fourth sections of the bill propose to authorize the National Government to enter into any State and take charge of and prosecute as criminals duly elected peace officers of the State, from the Governor down to constable. It should not be necessary to say anything in regard to those provisions. Such a power has never been attempted to be placed in the hands of the Federal Government, and I presume that it never will be unless we decide to throw the Constitution of the United States onto the scrap heap; and we trust there are sufficient loyal Americans in this country to make sure that that is not done.

The third and fourth sections even provide that the Federal Government shall be the sole judge of the guilt or innocence of State officers. No power, either by words or by implication, has ever been granted by the States to the Federal Government to enact such iniquitous provisions.

The fifth section provides that every governmental subdivision of a State—and that includes counties and municipalities—shall be held penally responsible for any lynchings occurring "within its territorial jurisdiction" or "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", and that any such governmental subdivision so failing shall be liable to each person injured, or to his next of kin if death occurs, in the sum of not less than $2,000 nor more than $10,000, as compensation. In other words, it is an insurance policy guaranteed by the Government to pay the principal of the policy over to the wife or next of kin of the rapist or murderer who is mobbed or lynched.

Section 5 also provides that the governmental subdivision shall bear the burden of proof to show affirmatively that the officers used all diligence and all the power vested in them to protect the person lynched, and that liability for compensation under the section may be enforced in a civil action in the United States district court for the use of the wife or next of kin of the person mobbed or lynched without prepaying the cost in any event. That reverses the order of proof in all civil cases by providing that the burden of proof shall be placed upon the defendant.

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

Mr. ANDREWS. I yield for a question.

Mr. McKELLAR. Does the Senator know of a single State in the Union where in any instance the burden of proof has ever been attempted thus to be changed and placed on the defendant?

Mr. ANDREWS. It never has, so far as I know, in a criminal case or in a case where a penalty is involved.

The fifth section further provides that if 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," and that "any judgment or award under this act shall be exempt from all claims of creditors." It is sacred money under this bill.

There is no sentence or clause in this bill that attempts to authorize the arrest or prosecution of any member of any mob or any person who engages in any lynching, even if the victim is murdered. It is not, therefore, an antilynching bill and cannot properly be so labeled.

So far as the discussion of this bill is concerned, I might as well stop at this point, because it seems to be an "antilynching bill" that we have been discussing and talking about. The pending bill cannot by any stretch of the imagination be called an antilynching bill any more than an ordinary statute providing punishment for murder can be called an antimurder bill, or a statute providing punishment for larceny can be called an antilarceny bill, or statutes providing punishment for a thousand and one other crimes may be called anticrime bills.

To bring it down to everyday language, the fifth section of this bill provides that every governmental subdivision of a State where any lynching occurs shall be held penally liable in a sum of from $2,000 to $10,000 as compensation for the wife or next of kin of the person killed, not only when the lynching occurs within a State but when it occurs outside the jurisdiction of a State. The section also places the burden of proof upon the governmental subdivision to show that it is not guilty.

This is the most brazen attempt to evade constitutional State rights that has ever been drafted or presented to any legislative body in this country. I challenge any Senator to refute that statement.

If this bill should be held valid by our Court of last resort it would sound the death knell of State rights and establish a precedent for the United States Government to enact criminal laws, and provide for their enforcement, to cover every known offense in every State from murder down to petty larceny. No one will refute that statement. If we turn over the prosecution of this crime to the Federal Government by the enactment of the pending bill, we shall have a right to expect that the prosecution of all crimes may be turned over to it. Every law touches the right to life, liberty, or property; and if this law be valid on that subject, the whole scope of the criminal law can be turned over to the Federal Government, which then can enforce it as efficiently as was done in the case of prohibition.

One of the reasons why prohibition was not a success was because the local State officials who had the responsibility formerly of enforcing prohibition under State law were so confused by Federal interruption that the local authorities gave up in despair and said, "Let them run this thing from Washington."

The national civil rights bill—or, as it is sometimes called, the force bill—enacted in 1875, during the reconstruction period, is so strikingly similar in its language to that used in the present bill that one wonders if the authors of the pending bill had the civil rights bill before them when they drafted the instant bill. In order to show the similarity of the two measures, I shall read the first and second sections of the so-called Civil Rights Act, sometimes referred to as the force bill. By the way, the Civil Rights Act was declared unconstitutional by a court sitting in the city of Washington during the reconstruction period; so, if that could happen, we need not be in any serious doubt as to what would happen to a similar law if it should go before a court more experienced on States' rights questions than even the learned Justices of those days.

The Civil Rights Act, among other things, provides as follows:

SECTION 1. That all persons within the jurisdiction of the United States shall be entitled to the full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns, public conveyances on land or water, theaters, and other places of public amusement; subject only to the conditions and limitations established by law, and applicable alike to citizens of every race and color, regardless of any previous condition of servitude.

SEC. 2. That any person who shall violate the foregoing section by denying to any citizen, except for reasons by law applicable to citizens of every race and color, and regardless of any previous condition of servitude, the full enjoyment of any of the accommodations, advantages, facilities, or privileges in said section enumerated, or by aiding or inciting such denial, shall for every such offense forfeit and pay the sum of $500 to the person aggrieved thereby, to be recovered in an action of debt, with full costs; and shall also for every such offense be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five hundred nor more than one thousand dollars, or shall be imprisoned not less than 30 days nor more than 1 year.

In 1875, when the constitutionality of the Civil Rights Act—which contained language very similar to that of the present bill we are discussing—was being tested before the Supreme Court of the United States, that Court explained, answered, and overruled so completely every contention that can possibly be made in behalf of the constitutionality of the present bill that I think it necessary now to call attention to only a few extracts from that decision in proof of my assertion.

In view of the statement which was made earlier in the day, and especially in view of the statement made by the distinguished and honored senior Senator from Virginia [Mr. GLASS], I feel impelled to call attention more specifically to this opinion, because I believe it is one of the most historic opinions ever written by the Supreme Court of the United States. Mr. Justice Bradley wrote the opinion, and it was concurred in by all the Justices of the Supreme Court save one, Mr. Justice Harlan.

After quoting the section of the Civil Rights Act which I have just quoted, Mr. Justice Bradley said:

Are these sections constitutional? The first section, which is the principal one, cannot be fairly understood without attending to the last clause, which qualifies the preceding part.

The essence of the law is not to declare broadly that all persons shall be entitled to the full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns, public conveyances, and theaters; but that such enjoyment shall not be subject to any conditions applicable only to citizens of a particular race or color, or who had been in a previous condition of servitude. In other words, it is the purpose of the law to declare that, in the enjoyment of the accommodations and privileges of inns, public conveyances, theaters, and other places of public amusement, no distinction shall be made between citizens of different race or color, or between those who have, and those who have not, been slaves.

Its effect is to declare, that in all inns, public conveyances, and places of amusement, colored citizens, whether formerly slaves or not, and citizens of other races shall have the same accommodations and privileges in all inns, public conveyances, and places of amusement as are enjoyed by white citizens; and vice versa. The second section makes it a penal offense for any person to deny to any citizen of any race or color, regardless of previous servitude, any of the accommodations or privileges mentioned in the first section.

Has Congress constitutional power to make such a law? Of course, no one will contend that the power to pass it was contained in the Constitution before the adoption of the last three amendments. The power is sought, first, in the fourteenth amendment, and the views and arguments of distinguished Senators, advanced whilst the law was under consideration, claiming authority to pass it by virtue of that amendment, are the principal arguments adduced in favor of the power. We have carefully considered those arguments, as was due to the eminent ability of those who put them forward, and have felt, in all its force, the weight of authority which always invests a law that Congress deems itself competent to pass. But the responsibility of an independent judgment is now thrown upon this court; and we are bound to exercise it according to the best lights we have.

The first section of the fourteenth amendment, which is the one relied on by those favoring this so-called antilynching bill, 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.

Mr. President, that portion of the fourteenth amendment on which the constitutionality of the pending bill would have to be based, if it is to be based on the Constitution in any sense, reads as follows:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The prohibition is against the State and officers acting affirmatively under the authority of the State. It is easy to see that the prohibition has nothing to do with the individual or a group of individuals acting without State authority. Congress cannot regulate individuals in a State as between each other. The State laws cover that, and the States have never surrendered that right to the General Government.

I quote again from the decision, the Court speaking of the fourteenth amendment:

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.

No one has ever heard of a State or the officials of a State or of a county or of a municipality undertaking to lynch or mob anyone. They do exactly the opposite.

Mr. CONNALLY. Mr. President——

The PRESIDING OFFICER (Mr. LEWIS in the chair). Does the Senator from Florida yield to the Senator from Texas?

Mr. ANDREWS. I yield for a question to the able Senator from Texas.

Mr. CONNALLY. Is it not true, from a constitutional and legal standpoint, that if, under the pretense of going into a State and preserving the rights of individuals under the fourteenth amendment, it were possible, under a law embodying the provisions of the pending bill, an officer, sheriff, governor, or judge could be held responsible for acts which they did in carrying out their duties to the State and performing their functions under State law, why could not the Federal Government go in and regulate every activity of the State? Every act of a State affects either a man's person, or liberty, or property, and they are all covered in the fourteenth amendment, and if the Federal Government could exercise this kind of authority, why could it not go into every controversy between citizens and say, "The State did not give the defendant due process of law, or equality of treatment, in this case" and step in and supervise the conduct of all officials of the State with respect to practically every activity which they perform, and thus effectually destroy entirely State sovereignty and State power?

Mr. ANDREWS. That would certainly be possible if this bill can be considered constitutional, because there would be no way to prohibit the Federal Government taking charge of every crime and every infringement of life, liberty, or property. Not only that but the Governor of a State or the supreme court of a State could be investigated upon the ex parte affidavit of the sorriest citizen in the United States, under the pending measure. What a pitiful indictment of a sovereign State!

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

Mr. ANDREWS. I yield for a question.

Mr. McKELLAR. Is it not somewhat like Japan going into China to supervise China and to give China liberty?

Mr. ANDREWS. It would be just as constitutional. I have serious doubts as to whether or not Japan really wants to give China "liberty"—but the comparison to this bill is well put. I read further from the Court's opinion:

It not only does this but in order that the national will, thus declared, may not be a mere brutum fulmen, the last section of the amendment invests Congress with power to enforce it by appropriate legislation. To enforce what? To enforce the prohibition. To adopt appropriate legislation for correcting the effects of such prohibited State laws and State acts—

That is what the fourteenth amendment provides, prohibitions upon State laws and State acts—

and thus to render them effectually null, void, and innocuous. This is the legislative power conferred upon Congress, and this is the whole of it. It does not invest Congress with power to

legislate upon subjects which are within the domain of State legislation, but to provide modes of relief against State legislation, or State action, of the kind referred to. It does not authorize Congress to create a code of municipal law for the regulation of private rights; but to provide modes of redress against the operation of State laws, and the action of State officers, executive or judicial, when these are subversive of the fundamental rights specified in the amendment. Positive rights and privileges are undoubtedly secured by the fourteenth amendment; but they are secured by way of prohibition against State laws and State proceedings affecting those rights and privileges, and by power given to Congress to legislate for the purpose of carrying such prohibitions into effect, and such legislation must necessarily be predicated upon such supposed State laws or State proceedings, and be directed to the correction of their operation and effect.

The pending bill undertakes to operate directly upon individuals within a State as between themselves, as citizens or officers of the State, so the bill cannot be hung upon the provisions of the fourteenth amendment. It is certainly unconstitutional. We have a right to presume that the Supreme Court of the United States will hold as it always has held on this particular subject.

An apt illustration of this distinction may be found in some of the provisions of the Constitution. Take the subject of contracts, for example. The Constitution prohibits the States from passing any law impairing the obligation of contracts. This does not give the Congress the power to provide laws for the general enforcement of contracts nor power to invest the courts of the United States with jurisdiction over contracts so as to enable parties to sue upon them in those courts. It does, however, give the power to provide remedies by which the impairment of contracts by State legislation might be counteracted and corrected, and this power has been exercised.

Until some State law has been passed, or some State action, through its officers or agents, has been taken under the authority of the State adverse to the rights of citizens, no legislation of the United States under the fourteenth amendment, nor any proceeding under such legislation, can be called into activity for the enforcement of the amendment.

Lynching is not done under the authority of the State. Mob violence is not committed under the authority of the State.

There were 160 cases of mob violence, for instance, in one of the largest northern cities last year. In only one case, as I understand the record to show, was the guilty party prosecuted and sentence passed upon him.

When an innocent man, unconnected with any gangsters, is shot down on the streets of Chicago or New York, I wonder if the effect is not as harmful to society and to the man's family as would be the case where a man is unlawfully shot down after having committed the crime of rape or having taken the life of an officer while performing his duty. Those are the two offenses which we southerners know inflame to the highest point the feelings of the people affected. Lynching usually occurs, if at all, following the murder or assassination of an officer in the discharge of his duty, or for that hideous crime that we even dread to mention.

Earlier today, while the distinguished Senator from West Virginia [Mr. NEELY] was making his appeal, and drawing such terrible pictures of what had occurred to persons who had committed such offenses, I wondered how he would feel if he had to view some little girl 15 or 16 years of age who was found dead in the woods, after having been violated three or four times before she breathed her last.

Mr. President, I am as thoroughly and deeply and consistently opposed to lynching as is any other Senator. I am not speaking from theory. I speak as one who has had to sit on the bench in the highest trial courts of my State. I have presided in courts to assure to men charged with crime a fair trial, when the sheriff, standing to my right, had to keep his eyes on the crowd in front. He protected the defendant and the court. Many sheriffs have lost their lives trying to protect a man whom a mob threatened to lynch.

Of course, legislation may and should be provided, but it should be adapted to the mischief and wrong which the fourteenth amendment was intended to provide against, namely, a State law or State action adverse to the right of the citizen secured by that amendment. Such legislation cannot properly cover the whole domain of rights pertaining to life, liberty, and property, by defining them and providing for their vindication. It would require the establishment of a code, regulative of all private rights between man and man in society. It would require Congress to take the place of the State legislatures of 48 States.

That is exactly what this bill would ultimately lead to if passed by Congress and held to be constitutional.

Mr. President, it is absurd to contend that the right of life, liberty, and property, which includes all civil rights that men have, are by the fourteenth amendment sought to be protected against invasion on the part of the State.

In fact, the legislation which Congress is authorized to adopt in this behalf is not general legislation with respect to the right of the citizen, but corrective legislation; that is, as much as may be necessary and proper only for counteracting such laws as the State may adopt or enforce and which by the amendment they are prohibited from making or enforcing, or such acts and proceedings as a State may commit or take and which by the amendment they are prohibited from committing or taking. It is not necessary for us to state, if we could, what legislation would be proper for Congress to adopt under the provisions of the fourteenth amendment. It is sufficient for us to examine whether the law in question is of such prohibited character. That is in conformity with the decision I read to the Senate a few moments ago. The Court said—that is a different part of that same law; that is the fourth section of the Civil Rights Act:

In *Ex parte Virginia* (100 U. S., 339), it was held that an indictment against a State officer under this section for excluding persons of color from the jury list is sustainable. But a moment's attention to its terms will show that the section is entirely corrective in its character. Disqualifications for service on juries are only created by the law, and the first part of the section is aimed at certain disqualifying laws, namely, those which make mere race or color a disqualification; and the second clause is directed against those who, assuming to use the authority of the State government, carry into effect such a rule of disqualification. In the Virginia case, the State, through its officer, enforced a rule of disqualification which the law was intended to abrogate and counteract. Whether the statute book of the State actually laid down any such rule of disqualification, or not, the State, through its officer, enforced such a rule. And it is against such State action, through its officers and agents, that the last clause of the section is directed.

That is the last clause of the fourteenth amendment.

This aspect of the law was deemed sufficient to divest it of any unconstitutional character, and makes it differ widely from the first and second sections of the same act which we are now considering.

If the principles of interpretation which we have laid down are correct, as we deem them to be (and they are in accord with the principles laid down in the cases before referred to, as well as in the recent case of *United States* v. *Harris* (106 U. S. 629)), it is clear that the law in question cannot be sustained by any grant of legislative power made to Congress by the fourteenth amendment. That amendment prohibits the States from denying to any person the equal protection of the laws, and declares that Congress shall have power to enforce, by appropriate legislation, the provisions of the amendment. The Civil Rights Act in question, without any reference to State legislation on the subject, provided that all persons shall be entitled to equal accommodations and the privileges of inns, public conveyances, and places of public amusement, and imposed a penalty upon any individual who denied to any citizen such equal accommodations and privileges. This is not corrective legislation—it is primary and direct; it takes immediate and absolute possession of the subject of the right of admission to inns, public conveyances, and places of amusement. It supersedes and displaces State legislation on the same subject, or only allows it permissive force. It ignores such legislation and assumes that the matter is one that belongs to the domain of national regulation. Whether it would not have been a more effective protection of the rights of citizens to have clothed Congress with plenary power over the whole subject is not now the question. What we have to decide is whether such plenary power has been conferred upon Congress by the fourteenth amendment; and, in our judgment, it has not.

We have also discussed the validity of the law in reference to cases arising in the States only; and not in reference to cases arising in the Territories or the District of Columbia, which are subject to the plenary legislation of Congress in every branch of municipal regulation.

If Congress desires to test an act of this kind, let it be applied to the District of Columbia or any Territory of the

United States, and it will then be seen how it works. There is nothing in the Constitution which prohibits the passage of the measure as applicable to the District of Columbia.

Whether the law would be a valid one as applied to the Territories and the District is not a question for consideration in the cases before us, they all being cases arising within the limits of States.

It was not a question in that case, because it arose in a State.

And whether Congress, in the exercise of its power to regulate commerce amongst the several States, might or might not pass a law regulating rights in public conveyances passing from one State to another, is also a question which is not now before us, as the sections in question are not conceived in any such view.

Discussing further the fourteenth amendment, this amendment has been interpreted, construed, and applied in many cases since this Government was founded, and our courts have again and again held that this reservation to the States—that is, under the tenth amendment—means the reservation of the rights of sovereignty which they respectively possessed before the adoption of the Constitution of the United States, and which they had not parted from by the terms of that instrument; and also, that any legislation by Congress beyond the limits of the power delegated by the States would be trespassing upon the rights of the States, and thus could not be the supreme law of the land, but would be null and void.

Later, in order to make it perfectly plain, the Supreme Court, in One Hundred and Ninety-fourth United States Reports, page 295, again held that—

The powers the people have given to the General Government are named in the Constitution, and all not there named, either expressly or by implication, are reserved to the people and can be exercised only by them.

One may search in vain to find any article, clause, sentence, or phrase in the Constitution which, by direct language or by implication, would permit Congress to legislate concerning individual actions or the rights of citizens as between themselves and the States in which they live.

That is the crux of the whole situation. The General Government and the States, although both exist within the same territorial limits, are separate and distinct sovereignties, acting separately and independently of each other within their respective spheres. The Federal Government, in its appropriate sphere, is supreme; but the States, within the limits of their powers not granted to the General Government—or, in the language of the tenth amendment, reserved—are as independent of the General Government as the General Government, within its sphere, is independent of the States.

At this point I desire to invite the attention of the Senate to the fact that every State in the Union has in its constitution an important provision which, in substance, provides that every person accused of crime shall have the right to a trial by a jury of his own peers in the county in which the offense was committed. Not only that, but the State constitution prohibits the grand jury of any other county, except that in which the offense was committed, from indicting the offender. Of the 67 counties in my native State of Florida, there are only 8 in which Federal courts are held.

Lynching is defined and punished as murder by all the States. It is so defined and punished in the State of Florida. All death caused by mob violence is murder, the penalty for which is death unless the jury recommends mercy. Our Federal courts have held that except as limited by the Constitution of the United States and the laws made in accordance therewith, it is within the powers of a State to determine the rights to be recognized or conferred by the State constitution, and to determine how and when and under what circumstances these rights may be asserted.

RECESS—VISIT OF LADY ASTOR

Mr. CONNALLY. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER (Mr. SCHWARTZ in the chair). The Senator will state it.

Mr. CONNALLY. If it be in order I should like to propound a unanimous-consent request that, without taking the Senator from Florida from the floor or interfering with his rights, the Senate take a recess for 5 minutes in order that the Members of the Senate may greet Lady Astor, who honors us with her presence today.

The PRESIDING OFFICER. In the absence of objection, the Senate will take a recess for 5 minutes, without taking the Senator from Florida from the floor. The Chair hears no objection.

Thereupon (at 3 o'clock and 58 minutes p. m.) the Senate took a recess for 5 minutes. On the expiration of the recess the Senate reassembled, and Mr. LEWIS took the chair.

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. ANDREWS. Mr. President, as to the offense named in this bill, the States, by appropriate legislation, have determined the rights of their citizens, under the powers reserved to the States, in all cases of mob violence. In other words, every State whose constitution and laws I have examined has passed laws, and they are on the statute books, protecting every right which could be protected under this bill if it should be enacted and held constitutional. As a matter of fact, there is no Federal statute now in existence which undertakes or purports to authorize the Federal Government to legislate concerning anything which relates to individual action, or to the rights of citizens as between themselves and the State.

For example, what is generally known as the Mann Act defines and punishes a certain crime only when committed in passing from one State to another, solely under the power delegated to Congress by the interstate commerce clause of the Constitution.

A few years ago Congress passed what is known as the Kidnaping Act. However, they did not call it the "anti-kidnaping act." Kidnaping has continued, and indeed has increased. That act is constitutional because it provides punishment for an interstate crime. It does not apply to kidnaping committed and consummated wholly within one State.

Mr. CONNALLY. Mr. President, will the Senator from Florida yield to me for a question?

The PRESIDING OFFICER (Mr. LODGE in the chair). Does the Senator from Florida yield to the Senator from Texas?

Mr. ANDREWS. I yield for a question.

Mr. CONNALLY. Let me ask the Senator why that act did not apply to kidnaping wholly within a State. Was it not because the authors of the act recognized that they had no constitutional power to apply it to a kidnaping wholly within a State, and is it not a fact that the same principle would negative and overcome this measure?

Mr. ANDREWS. That is true. There is no question that this measure, if it applied only to interstate mob violence, would be constitutional.

As I stated, the kidnaping act is constitutional because it provides punishment for an "interstate" crime. I am going to listen not only with attention but with much interest to the person who undertakes to defend this bill if it remains in its present form which applies wholly to offenses committed within States, between citizens of the same State.

The essential provisions of the Federal kidnaping act read as follows:

Whoever shall knowingly transport or cause to be transported, or aid or abet in transporting, in interstate or foreign commerce, any person who shall have been unlawfully seized, confined, inveigled, decoyed, kidnaped, abducted, or carried away by any means whatsoever and held for ransom or reward or otherwise—

Shall be punished by death, and so forth.

It bases its constitutionality upon the fact that it defines it as an interstate crime—and that only!

In 1934 an act was passed by Congress defining and punishing the larceny of any goods stolen and carried across State lines; also, an act which defined and punished all persons who should transport, or cause to be transported, in interstate or foreign commerce, stolen motor vehicles. The Federal courts and the Federal authorities obtained jurisdiction of those offenses because, and only because, the kidnaped person or the stolen goods, the motor vehicle or the victim of the white-slave traffic, was carried across State or Territorial lines.

This antilynching measure does not mention interstate movement or the carrying of persons across a State or Territorial line; and, as a result, it is not worth the paper upon which it is written so far as its constitutionality is concerned. In my judgment, there is not a lawyer on this floor who would undertake to say it is and sustain it by proof.

The bill now before us undertakes for the first time in history to define and punish by act of Congress an alleged offense committed wholly within a State. If that is true, we might just as well stop this discussion right here, because in no instance have the States granted to Congress the right to pass any act which would take jurisdiction of crime as between citizens or groups of citizens within the confines of a State.

The General Government, unlike that of the States, possesses no inherent power in respect of the internal affairs of any State—that is the language of the Supreme Court of the United States—and emphatically not with regard to legislation. Indeed, the language is so clear and convincing that it ought to settle here and now the question as to whether Congress has power to enact such a law as proposed by this bill.

I have read this afternoon from the decision in the Civil Rights case, in which it is several times stated that under the fourteenth amendment Congress can legislate only to the extent of prohibiting State legislation which would deprive persons of life, liberty, or property without due process of law. Assuming that by some stretch of the imagination this bill might be held constitutional if enacted, those persons having first-hand knowledge of conditions in the States at which the bill is aimed believe that it would have exactly the opposite effect, and, therefore, a tendency seriously to cripple and handicap the well-established efforts of the State peace officers in their determination to reduce and wipe out the crime of lynching.

Here are some of the reasons why we fear that this bill, if it should be passed, would have such a serious adverse effect upon the States which are using their efforts finally to eliminate that terrible crime from their States:

First, assuming that a sheriff or other peace officer has information that a rapist, for instance, is being pursued by a mob. Such officer would be less likely to take all of the immediate risk imposed by this bill on him and his county in taking the person into custody, for the reason that, for instance, if he is overpowered by the mob he may be liable to imprisonment or fine, or both. Furthermore, his county would be liable to the lynchee's wife or family in an amount of from two to ten thousand dollars in the event a lynching occurs. The tendency, then, might be to let the person remain at large.

"What would you do if you were sheriff?" My answer to that question is that if I had a reasonable chance to protect such an offender, I would go ahead and protect him at the risk of my own life, and many a man has done so; but I am talking about the tendency that might arise among a thousand sheriffs, or a thousand deputy sheriffs. I am afraid that this bill, if enacted, would have a tendency to put them in fear because they would, under this bill, be subject to prosecution for a felony, and their county or city would be liable to a fine or an indemnity up to $10,000.

Incidentally, no provision whatever is made in this bill for the payment of damages in any amount to the family of the little girl who has been violated or possibly killed.

We all know that when the Federal Government practically took over the enforcement of prohibition conflicts often arose between local State and county officers, on the one hand, and Federal enforcement officers on the other. The result was that prohibition failed, mainly for the reason that it could not be successfully enforced at long range from Washington. Neither can this bill be so enforced. Experience over many years has taught us that the enforcement of local criminal laws as between individuals can be best effected by local authorities and that enforcement seems to be doomed to failure when transferred to others outside the county or the State.

It is self-evident that a mob has no conscience. It is not guided by any rule of law, reason, or sentiment, except a desire for immediate violence. This bill, if passed, instead of lessening the crime of lynching, would have exactly the opposite effect. A mob would have no more fear of peace officers of the Federal Government hundreds of miles away than they would have of local sheriffs or peace officers, backed up by the State militia under orders of the Governor. The National Guard has very often been called out by the Governors of all the States of the South to assist sheriffs in enforcing the law against mob violence.

Many also believe that the sheriffs or local peace officers would have little opportunity to even arrest a rapist as the mob would very likely act stealthily, and before peace officers and the National Guard would have a chance to intervene. In this way the county might be relieved of paying an indemnity up to $10,000 to the family of the victim, as authorized by section 5 of the bill, if seized before the sheriff arrived.

The fifth serious reason why the bill should not be enacted is that officers of States, counties, and municipalities in the States against which the bill seems to be specifically aimed would, no doubt, seriously resent the Federal Government stepping in and solemnly informing them that they were not capable of governing themselves.

While debating this bill we cannot overlook the fact that, of the many terrible classes of crime committed in the United States daily, lynching is the only one that has continued to decrease in numbers year by year. The recession of the crime of lynching has been so perceptible and steady that it deserves the expressed admiration of all persons who are interested in seeing all horrible crimes reduced to a minimum. This bill is an insult to all those States which have been successful in their efforts to blot out this crime. Conscientious efforts of law-abiding citizens and officials are bringing about the eventual obliteration of the crime of lynching, and will, no doubt, continue those efforts—if let alone.

While lynchings were being reduced to only eight last year, there has been a steady increase in one of the most horrible crimes of the century. I have reference to the increase in the number of kidnapings to 20 last year.

No crime has ever been committed in this country over which more tears have been shed than when the little baby of Colonel Lindbergh was kidnaped. We all know that the parents of that little boy feel that they are not protected even now in this country; otherwise, they would not have moved to England. It is a serious indictment of law enforcement in this country.

Here, in the city of Washington, there were 75 hold-ups and robberies in one recent period of 24 hours—and the District of Columbia is governed directly by the Congress. That certainly does not encourage us to feel that the Government would be any more successful in executing a law like that proposed. Certainly it belies any assertion that the General Government can better enforce the law than the States can.

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

Mr. ANDREWS. I yield.

Mr. CONNALLY. Is not that theory exploded by our experience with the eighteenth amendment? Federal laws were passed to enforce that amendment, and the theory that if Congress pass a law crime will vanish it seems to me was demonstrated to be a fallacy by our experience with the eighteenth amendment. That amendment was repealed because the Government could not enforce it throughout the States, and the subject was turned back to the States to handle, on

the theory that they could enforce any law when and if there was public sentiment behind it. Is not that a graphic illustration of the fact that the Federal Government cannot successfully impose its will when State power ought to be exerted?

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

Mr. ANDREWS. I should like to answer the question of the Senator from Texas, but I yield for a question.

Mr. MINTON. Would the Senator be willing then to vote for repeal of the Federal law against kidnaping, or the Mann Act, or the Narcotics Act?

Mr. ANDREWS. The kidnaping law is not the measure before us.

Mr. MINTON. I did not say it was.

Mr. ANDREWS. I certainly would not vote to repeal those laws. As quickly as a crime crosses State lines there are many complications. I know of a lynching which occurred when a man was carried across the State line, and there was much confusion as to which State had jurisdiction over the offense.

Mr. MINTON. Will the Senator yield further?

Mr. ANDREWS. I yield for a question.

Mr. MINTON. Does a kidnaping become any more a kidnaping because the kidnapers cross a State line?

Mr. ANDREWS. Not at all.

Mr. MINTON. Or the stealing of an automobile?

Mr. ANDREWS. Certainly not; but we intend to require that every law passed by the Congress shall respect State rights. If a crime is interstate, the Federal Government has power to define and punish. There are many laws on our statute books like that.

Mr. SMATHERS. Mr. President, as a matter of fact, what little enforcing there was of the eighteenth amendment was by the Federal courts under the Federal law, was it not?

Mr. ANDREWS. Yes; what little enforcement there was.

During the past year there have been hundreds of gangster hold-ups, robberies, and an enormous increase in sex crimes against white children. It has gotten so that a white female child over the age of 10 is not absolutely safe in this land of boasted freedom unless she has an armed bodyguard. It is unnecessary for me to mention the number of cases that have recently occurred right here in the District of Columbia, where Federal laws govern. While we were debating this bill last year, a beautiful widowed mother of two small children was murdered by a Negro yardman in the basement of her home, almost in the shadow of this Capitol.

Scarcely a day passes that some fiend does not assault and rob some white woman right here in Washington.

We all know that law enforcement against all crimes in the District of Columbia is under statutes enacted by Congress. There are many astounding figures illustrative of the fact that the Federal Government is less efficient in enforcing local laws against crime than the States and counties of the various States, except, possibly, when the crime is interstate in character.

About twice the number of Negroes were arrested in Washington than were arrested in New Orleans last year, although the Negro population in both cities is about equal. There is an apparent reason for this great difference. In fact, the colored people of the 15 Southern States as a whole rank among the most law-abiding people in the world.

No race ever made greater progress toward a higher civilization and the emulation of the teachings of the Christian faith, which is one of the principal bases of all good citizenship, than the Negroes of the South. There can be no question that they, with the aid of the white people of the South, have made greater progress toward good citizenship than could ever be shown under any similar racial conditions throughout the history of man. Brought from darkest Africa about a century and a half ago, unschooled, ignorant, and naked, they were sold into slavery, where they came under the supervision and tutelage of the Anglo-Saxons, which constituted mainly the white people of the South.

They not only had to learn the language of those whom they served but to conform to the ways and sentiments of a civilization to which they were not accustomed. Many of them received their training in stately homes, where they associated daily with the wives and children of their owners. Others were in the fields under the supervision, training, and environment of the owners of the plantations or their supervisors. It was natural that economically the Negroes would be more serviceable to their masters down in the warm South if they had sound bodies and clean minds. So it was that they had the best doctors to be procured in those days. The majority of them were required to attend church on Sunday, where the teachings of the Holy Bible were constantly dinned into their ears. So it was when the Civil War came on, and so it is today that there is a far greater percentage of churchmen of the Christian faith of both races in the 15 Southern States than in any other portion of the civilized world.

How some were led by a horde of carpetbaggers into a philosophy of disrespect and contempt of the few masters who returned from the battlefields at the close of the Civil War constitutes one of the blackest pages not only in American history but in the history of civilized man. It was years after reconstruction until even the more intelligent among our colored people were disillusioned and learned that the Government had never undertaken to reward them with the mythical "40 acres of land and a mule."

While struggling with these problems, there arose at Tuskegee, Ala., in the late nineties a Moses of their race who dedicated his life to the welfare of not only the Negro race but to the white people of the South as well. It so happened that his name was Booker T. Washington. Indeed, he is the Washington of his race. He taught them that social equality with the whites was not contemplated under our system of government nor by nature.

As an apostle of his race, he endeavored to induce his people to think little about questions relating to social and political equality.

It so happens that I knew Booker T. Washington, and I am prepared to say that he was one of the greatest men of his race and was a credit to the colored people and to the white people of the South. As to social equality, he said:

> The wisest among my race understand that the agitation of questions of social equality is the extremest folly, and that progress in the enjoyment of the privileges that will come to us must be the result of severe and constant struggle rather than of artificial forcing. No race that has anything to contribute to the markets of the world is long in any degree ostracized. It is important and right that all privileges of the law be ours; but * * * vastly more important that we be prepared for the exercise of these privileges. The opportunity to earn a dollar * * * just now is worth infinitely more than the opportunity to spend a dollar. (Dabney's Universal Education in the South, p. 501.)

Those were his own words. I continue to quote from his address at the Atlanta Exposition in 1896:

> As we have proved our loyalty to you in the past in nursing your children, watching by the sickbed of your mothers and fathers, and often following them with tear-dimmed eyes to their graves, so in the future, in our humble way, we shall stand by you, with a devotion that no foreigner can approach, ready to lay down our lives, if need be, in defense of yours, interlacing our industrial, commercial, civil, and religious life with yours in a way that shall make the interests of both races one. In all things that are purely social we can be as separate as the fingers, yet one as the hand in all things essential to mutual progress (Id., p. 504).

As to the political future of his race, he said:

> I am often asked to express myself * * * upon the political condition and future of my race * * *. My belief is, although I have never before said it in so many words, that the time will come when the Negro in the South will be accorded all the political rights which his ability, character, and material possessions entitle him to. I think, though, that the opportunity to freely exercise such political rights will not come in any large degree through outside or artificial forcing, but will be accorded to the Negro by the southern white people themselves, and that they will protect him in the exercise of his rights (Id., p. 501).

He also taught them that they should maintain their race integrity by refusing to amalgamate with any other race, otherwise they would become a mongrel race.

It is deplorable to compare the physical condition of the colored men preceding the Civil War, when they had become thoroughbreds of their race, with what it was at the

time of our entry into the World War. They had added much to their physical stature, their intellect, and their manners during the hundred years of tutelage and supervision of those who were directly interested in their health and welfare. Compare that record with the statistics compiled by those who examined many thousands of colored men for their entry into the World War in 1917. The records show, I am told, that a majority of those examined for World War service were found to be defective because of venereal diseases.

Judging from the recent efforts which have been put forth by the American Medical Association and the social welfare organizations of the United States and the States to deal with this dreaded scourge, little progress has been made since the World War.

In speaking on this bill during the recent special session, I pointed out, among other things, that the assumption that hatred existed as between the better class of the native whites and colored people of the South is a fallacy. I now repeat that statement. No two radically different races of men could ever live together with such harmony and understanding, nor with more genuine kindness toward each other, than have the white race and the colored race in the South. It must be remembered that the Civil War left thousands of the leading citizens of the South on the battlefields. The remaining population consisted of about 5,000,000 whites and 3,500,000 Negroes. The soldiers who returned from the battlefields found their homes destroyed or dilapidated, their farms grown up in weeds, and their families hungry and in rags. Without any money, livestock, or source of income remaining, they had to try to reestablish themselves in one of the most devastated regions ever ravaged by war.

That was not the worst of it, for those who had participated in the war on the side of the Confederacy were, under the fourteenth amendment, prohibited from holding any county, State, or Federal office. So it was that many of the State and county governments were turned over to an illiterate class of people who knew nothing of the intricate problems of administering government under a democracy. With little or no funds in their State and county treasuries, many of the best people of the new generation grew up without any education, except what they absorbed at home, as there were but few, if any, public schools or schoolbooks.

A more intricate problem followed. Citizenship was also thrust upon an illiterate and ignorant people; and the only salvation for the more intelligent race was the hope that the Negroes could be trained to understand something of their new duties and responsibilities. At the close of the Civil War the carpetbaggers, like vultures, swarmed over the South, organizing the colored people along with a very low class of white camp followers. In many instances they not only encouraged and spread dissension but took charge of most of the State and county governments. Gradually, year after year, the South began to chisel its way out of what seemed to be an almost impossible situation. The colored people had been set free with political rights, while the whites had been enslaved and their civil rights taken away by the fourteenth amendment.

It must be remembered that in many of the legislatures, including that of my own native State of Florida, illiterate Negroes were in the majority. Such a form of government, forced on a highly cultured white southern people, who the great Lincoln said should be considered as never having left the Union, brands the carpetbag period as the blackest page in American history. It was during this period that many helpless female white children and widows of Confederate soldiers were ravished and slain. That is history. It cannot be denied. It was done by those who were misled, not by the better element of the colored race. So it was that many hundreds of the best southern families migrated to Central and South America, never to return.

Then 3,500,000 illiterate colored people and their prolific offspring were to be educated by some magic process that no one could divine.

Northern critics continue to point out that in the South there are more illiterates than in any other section of the United States; and they have kept up that slogan so long that in many instances those of the present generation seem to feel that a great wrong is being perpetrated in Dixie by those now in charge of government in those States.

If the Federal pension money had been distributed over the South by billions—as it was distributed over the States of the North—no doubt we could long ago have provided a little red schoolhouse with an able teacher in every township for both races. Perhaps some superman, by some magic not yet revealed to us, could have led us out of this illiteracy wilderness under like circumstances; but it is obvious that no ordinary human being could have done so. Lynching and like crimes have almost disappeared in the South and the crimes which result in lynchings have diminished as education of both the white and colored races has increased. No one will deny that.

There can be no question that there is a better feeling between the colored people and the white people of the South than exists in other States of the Union. We have no race riots such as occurred at Springfield, Ill. In our section of the country we encourage the colored man to work out his own salvation. We help him to do so if he is honest and wants to earn an honest living. We understand each other and observe our respective places in the community. As a result, there is less crime in the South than is found among communities of comparable population in Northern States.

The pages of history record that the race question, whenever confounded with the social or political status, has always been one of the most serious in any land. Even Abe Lincoln recognized this to its fullest extent when, in a debate in Congress, he made this statement:

> There is a physical difference between the white and the black races which I believe will forever forbid the two races living together on terms of social and political equality.

Prior to that time, Thomas Jefferson had said:

> Nothing is more certainly written in the book of fate than that these people are to be free; nor is it less certain that the two races, equally free, cannot live in the same government.

In discussing the same question, the great European historian, De Tocqueville, said:

> There are two alternatives for the future: The Negroes and the whites must either wholly part or wholly mingle.

In more recent years, one of our greatest genealogical authorities, Madison Grant, said:

> If the purity of the two races is to be maintained, they cannot continue to live side by side, and this is a problem from which there can be no escape.

Over a century has passed since Abraham Lincoln, Thomas Jefferson, and De Tocqueville made the statements which I have read, and the two races are still living together politically under practically the same government, although no one of these great men ever dreamed that a fourteenth or fifteenth amendment would be placed in our Constitution. Some of the conditions which they termed impossible have been found possible. Much progress has been made toward participation in governmental activities; but it must be noted that political equality has been found troublesome and even impossible in instances where it has been used directly or indirectly to force social equality.

There are 15 States in the Union which by law encourage social equality of the races to the extent of permitting the intermarriage of whites and Negroes. Of course, none of those States is in the South. The laws of nature, like those of the Medes and the Persians, change not; and the experience of the ages and the history of man show that where the white and black races amalgamate such amalgamation tends adversely to affect both, but naturally more perceptibly the white race.

No one will successfully dispute these facts. The type of Anglo-Saxon race which inhabits the South will not now, tomorrow, or hereafter countenance amalgamation of the two races. It has been estimated that three-fourths of the colored people inhabiting some of the Northern States show

evidence of amalgamation, while only 1 in 100 of the colored inhabitants of the States of the South shows such evidence.

Those who have amalgamated deserve every thoughtful consideration. I am willing to help them in any way I can. That is one reason why I am opposed to this so-called antilynching bill. It will not help the colored man. It will create hatred and strife as the years go by; for if this bill is passed, I fear that the next one that will be brought forward by the paid propagandists to trade for votes will be a bill to encourage intermarriage between the races.

It has been pointed out by some that the apparent cause of the ever-recurring race question is the attempt to force social equality.

The Civil Rights Act, which provided that no discrimination should be made between the races at hotels, inns, or in railway cars, was held unconstitutional under the fourteenth amendment on the ground that the amendment applied to State laws, and regulations thereunder, and not to individuals.

If the Senators who are in favor of this measure succeed in reducing gangsterism, racketeering, kidnaping, and the unpunished violations of their women and children down to the minimum to which we in the South have brought lynching in recent years, we will gladly help them celebrate, and raise monuments in memory of their efforts. Certainly we will not hold them up before the world as incapable of enforcing their local State laws, as they are doing toward us who have the honor now to represent the South.

In a former speech on this subject I referred to the conditions existing at the close of the Civil War, which shows the cordial relations between the best class of colored people of the South and the best class of white people, and they constitute at least 90 percent of the total.

While the masters were away at the front fighting, the old black mammy and Uncle Joe remained at home, faithful to their charges, throughout that terrible conflict of 4 years. No story in history is more beautiful than that regarding the loyal old black mammy who shared the tender care incident to the bringing up of the children of the South, not only during the years preceding the Civil War but to a large extent down to the present time. No law will ever cause any true southerner to hate, mistreat, or turn his back upon the good colored people who looked after his welfare when a child.

During the 4 long dismal years of the War between the States, Aunt Mandy would place her cot between the front door of her master's home and the chambers where her mistress and the children lay, and no intruder—not even Federal soldiers—dared molest her charges without first passing over her dead body. It was the black mammy who had the care of the children of the South as nursemaid, and almost without exception she took her responsibilities seriously; and, being by nature religious, she was constantly found instructing the children in her charge that they should be clean in body, language, and soul. So it was, and so it is, that being constantly in her care, she not only had much influence over their lives but it was very largely from her that the southern girl and boy derived their southern accent.

Recently, Mr. President, you may have observed over the radio and on the stage that there has been an effort to make fun of persons who have what is termed the "southern accent." The quiet, smooth, subdued voice is largely the results of the constant, soft, mellow voice the southerners heard from the black mammy in their childhood.

I should like to see her statue placed on the public square of every capitol of the South. It should be fashioned in bronze, so that it could never rust or decay. It should be in the image of the typical old black mammy, with a snow-white kerchief crowning her brow, and a little boy and a little girl leaning upon her knee. I would have inscribed upon that monument: "The Black Mammy of the South."

Such a statute, to me and to the other white people of the South—and, for that matter, I believe, to the millions of white people of the North who do not understand the repercussions of this antilynching bill—would be more beautiful, more lasting, more symbolic of the true spirit of the people of the South, both colored and white, than the one which will be pictured in the heart and mind of every true southerner as the years go by, namely, States' rights being legislatively lynched by congressional representatives of their sister Northern States who, we fear, are trading the integrity of the loyal South and their own birthrights for a mess of pottage—namely, a few votes at election time.

Before I close, I desire to refer to something about which I fear not many people have as yet thought.

One of England's greatest statesmen once said, "If you will let me write the songs of a nation, I care not who shall write its laws." The people of the South sing as their folk songs Carry Me Back to Old Virginia, My Old Kentucky Home, Old Black Joe, and the State song of Florida, the Suwannee River. Those songs are sung not only by the white people of the South but by the white people of the North. They are sung in every civilized tongue. They are written in the dialect of the colored people, and they are our folk songs. No people ever sing the heart songs of their nation in the language of those they hated.

Reference has been made to the "Jim Crow" laws of the South. The Supreme Court has held that such laws do not violate any provision of the fourteenth amendment. Under those laws special cars are attached to every train, in which the colored people of our part of the country travel; and if any of the white people think they can ride in those cars, let them try it. The conductor has police power, and he will say to the white people, "This is a special car, a car set aside for the colored people, and you cannot ride in it." The result is that the worst element of the whites and the worst element of the colored people do not come in conflict and cause trouble or race riots, as was the case in East St. Louis, for instance.

Mr. President, there are 12,000,000 colored people in this country, which is equal to one-tenth of our population, and I should like to see one-tenth of the galleries of the Senate set aside for them, where they can come and feel perfectly at home, without the least embarrassment or inconvenience.

Mr. President, I had hoped to discuss—more in detail—the constitutionality of the pending measure, but I have not entirely confined my remarks to that feature because, as I stated in the beginning, I want to hear some Senator endeavor to demonstrate that the bill is constitutional. After such an argument has been made, I shall proceed to answer it fully in the RECORD. I thank the Senate for its attention.

APPROPRIATIONS FOR SUGAR CONTROL ACT AND CROP-PRODUCTION AND HARVESTING LOANS—CONFERENCE REPORT

Mr. ADAMS submitted the following report:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to 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, having met, after full and free conference have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendments of the Senate numbered 1, 3, 4, and 5, and agree to the same.

Amendment numbered 2: That the House recede from its disagreement to the amendment of the Senate numbered 2, and agree to the same with an amendment, as follows: In lieu of the matter proposed to be inserted by such amendment insert the following:

"SENATE

"That the following sums are hereby appropriated, out of any money in the Treasury not otherwise appropriated, for expenses of the Senate, namely:"

And the Senate agree to the same.

ALVA B. ADAMS,
CARTER GLASS,
FREDERICK HALE,
Managers on the part of the Senate.

EDWARD T. TAYLOR,
C. A. WOODRUM,
CLARENCE CANNON,
JOHN TABER,
Managers on the part of the House.

Mr. ADAMS. I move that the report be agreed to.

Mr. CONNALLY. A parliamentary inquiry.

The PRESIDING OFFICER (Mr. McKELLAR in the chair). The Senator will state it.

Mr. CONNALLY. Is the motion debatable?

The PRESIDING OFFICER. The question of agreeing to the report is debatable.

Mr. ADAMS. Mr. President, I wish to say a word in explanation of the report. The amendment to Senate amendment numbered 2 is to correct a verbal inaccuracy in the joint resolution as it passed the Senate. In the amendment, in reference to the appropriation for the use of committees of the Senate, there was an omission, and it is being cured through the medium of this report.

Mr. CONNALLY. Cannot the Senator withhold this until tomorrow? I ask him to do that.

Mr. ADAMS. I have no objection.

Mr. CONNALLY. I prefer to have action deferred until tomorrow.

The PRESIDING OFFICER. Is the Chair to understand that the Senator from Colorado will not insist upon action this evening?

Mr. ADAMS. If the Senator from Texas would like to have the report go over, I consent. It is a privileged matter and will come up immediately tomorrow?

The PRESIDING OFFICER. Yes. The report will go over, by consent, until tomorrow.

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.)

DEATH OF REPRESENTATIVE KENNEY, OF NEW JERSEY

The PRESIDING OFFICER. The Chair lays before the Senate resolutions from the House of Representatives, which will be read.

The legislative clerk read as follows:

IN THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES,
January 27, 1938.

Resolved, That the House has heard with profound sorrow of the death of Hon. EDWARD A. KENNEY, a Representative from the State of New Jersey.

Resolved, That a committee of four Members of the House, with such Members of the Senate as may be joined, be appointed to attend the funeral.

Resolved, That the Sergeant at Arms of the House be authorized and directed to take such steps as may be necessary for carrying out the provisions of these resolutions and that the necessary expenses in connection therewith be paid out of the contingent fund of the House.

Resolved, That the Clerk communicate these resolutions to the Senate and transmit a copy thereof to the family of the deceased.

Resolved, That as a further mark of respect the House do now adjourn.

Mr. SMATHERS. Mr. President, lamenting the untimely death of New Jersey's distinguished citizen, EDWARD A. KENNEY, representing the Ninth Congressional District of the State of New Jersey, I send to the desk resolutions, which I ask to have read and immediately considered.

The resolutions (S. Res. 227) were read, considered by unanimous consent, and unanimously agreed to, as follows:

Resolved, That the Senate has heard with profound sorrow the announcement of the death of Hon. EDWARD A. KENNEY, late a Representative from the State of New Jersey.

Resolved, That a committee of two Senators be appointed by the Presiding Officer to join the committee appointed on the part of the House of Representatives to attend the funeral of the deceased Representative.

Resolved, That the Secretary communicate these resolutions to the House of Representatives and transmit a copy thereof to the family of the deceased.

The PRESIDING OFFICER. The Chair appoints the senior Senator from New Jersey [Mr. SMATHERS] and the junior Senator from New Jersey [Mr. MILTON] as the committee provided for in the second resolution.

Mr. SMATHERS. Mr. President, as a further mark of respect to the memory of the late Representative KENNEY, whose death this morning has caused a distinct loss to the Congress of the United States, as well as to the State of New Jersey, I move that the Senate take a recess until 12 o'clock noon tomorrow.

The motion was unanimously agreed to; and (at 5 o'clock and 18 minutes p. m.) the Senate took a recess until tomorrow, Friday, January, 28, 1938, at 12 o'clock meridian.

NOMINATIONS

Executive nominations received by the Senate January 27 (legislative day of January 5), 1938

DIPLOMATIC AND FOREIGN SERVICE

The following-named persons for promotion in the Foreign Service of the United States, effective as of January 3, 1938, as follows:

From Foreign Service officer of class 3 to Foreign Service officer of class 2:

Maynard B. Barnes, of Iowa.
William C. Burdett, of Tennessee.
Nathaniel P. Davis, of New Jersey.
John G. Erhardt, of New York.
Carol H. Foster, of Maryland.
Charles Bridgham Hosmer, of Maine.
Paul R. Josselyn, of Iowa.
Joseph F. McGurk, of New Jersey.
Robert D. Murphy, of Wisconsin.
Myrl S. Myers, of Pennsylvania.
Harold H. Tittmann, Jr., of Missouri.
Avra M. Warren, of Maryland.
Orme Wilson, of New York.

From Foreign Service officer of class 4 to Foreign Service officer of class 3:

Willard L. Beaulac, of Rhode Island.
William P. Blocker, of Texas.
Howard Bucknell, Jr., of Georgia.
Richard P. Butrick, of New York.
Cecil M. P. Cross, of Rhode Island.
Hugh S. Fullerton, of Ohio.
Edward M. Groth, of New York.
George D. Hopper, of Kentucky.
H. Freeman Matthews, of Maryland.
Rudolf E. Schoenfeld, of the District of Columbia.
George P. Shaw, of California.
Howard K. Travers, of New York.

From Foreign Service officer of class 5 to Foreign Service officer of class 4:

Hiram A. Boucher, of Minnesota.
Herbert S. Bursley, of the District of Columbia.
Curtis T. Everett, of Tennessee.
Raymond H. Geist, of Ohio.
Stuart E. Grummon, of New Jersey.
Loy W. Henderson, of Colorado.
Laurence E. Salisbury, of Illinois.
Lester L. Schnare, of Georgia.
Edwin F. Stanton, of California.
Fletcher Warren, of Texas.
Samuel H. Wiley, of North Carolina.

From Foreign Service officer of class 6 to Foreign Service officer of class 5:

John H. Bruins, of New York.
Selden Chapin, of Pennsylvania.
Herndon W. Goforth, of North Carolina.
George F. Kennan, of Wisconsin.
Marcel E. Malige, of Idaho.
Samuel Reber, of New York.
Frederik van den Arend, of North Carolina.
Angus I. Ward, of Michigan.

SOLICITOR GENERAL

Robert H. Jackson, of New York, to be Solicitor General, vice Stanley Reed, resigned.

UNITED STATES MARSHAL

Benjamin B. Mozee, of Alaska, to be United States marshall for the second division, district of Alaska. (He is now serving under an appointment by order of the court.)

APPOINTMENT, BY TRANSFER, IN THE REGULAR ARMY

TO FINANCE DEPARTMENT

Capt. Frank Richards, Coast Artillery Corps, with rank from November 18, 1928.

PROMOTIONS IN THE REGULAR ARMY

To be lieutenant colonel

Maj. Marvin Randolph Baer, Infantry, from January 21, 1938.

To be major

Capt. Lewis Morrell Van Gieson, Ordnance Department, from January 21, 1938.

MEDICAL CORPS

To be lieutenant colonels

Maj. Joseph Francis Gallagher, Medical Corps, from February 8, 1938.

Maj. John Murray Welch, Medical Corps, from February 9, 1938.

Maj. Harry Aloysius Bishop, Medical Corps, from February 9, 1938.

Maj. Luther Remi Moore, Medical Corps, from February 27, 1938.

To be major

Capt. James Ogilvie Gillespie, Medical Corps, from February 1, 1938.

To be captains

First Lt. Ronald Fisher Kirk, Medical Corps, from February 5, 1938.

First Lt. David Fisher, Medical Corps, from February 21, 1938.

DENTAL CORPS

To be lieutenant colonels

Maj. Thomas Floyd Davis, Dental Corps, from February 4, 1938.

Maj. John Nelson White, Dental Corps, from February 7, 1938.

Maj. William Ferdinand Scheumann, Dental Corps, from February 7, 1938.

Maj. Campbell Hopson Glascock, Dental Corps, from February 7, 1938.

Maj. William Frederic Wieck, Dental Corps, from February 7, 1938.

To be captain

First Lt. Arthur Julian Hemberger, Dental Corps, from February 17, 1938.

CHAPLAINS

To be chaplains with the rank of lieutenant colonel

Chaplain (Maj.) Albert Leslie Evans, United States Army, from February 18, 1938.

Chaplain (Maj.) Frank Pearson MacKenzie, United States Army, from February 28, 1938.

HOUSE OF REPRESENTATIVES

THURSDAY, JANUARY 27, 1938

The House met at 12 o'clock noon.

The Chaplain, Rev. James Shera Montgomery, D. D., offered the following prayer:

Holy, holy, holy, Lord God Almighty, heaven and earth are filled with Thy goodness; glory be to Thy holy name! Let us call to mind the grace of our Lord Jesus Christ, that though He was rich, yet for our sakes He became poor; that we, through His poverty, might become rich. O God, by whom the meek are guided in judgment and the light riseth up in darkness for the godly, grant us in all our doubts and uncertainties the spirit of wisdom. Save us from all false choices, and in Thy light may we see light and in Thy straight path may we not stumble. Heavenly Father, the muffled silence of death hovers about a fireside. The dense quiet of the night has come down; a Member of ability, zealous in performance of duty, has fallen. Oh, comfort the stricken loved ones; help them with Thy great peace to look forward to a higher and a better life. Through Christ. Amen.

The Journal of the proceedings of yesterday was read and approved.

MESSAGE FROM THE SENATE

A message from the Senate, by Mr. Frazier, its legislative clerk, announced that the Senate had passed, with amendments in which the concurrence of the House is requested, a joint resolution of the House of the following title:

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

ADMINISTRATION OF SUGAR ACT, 1937

Mr. TAYLOR of Colorado. Mr. Speaker, I ask unanimous consent to take from the Speaker's table House Joint Resolution 571, making appropriations available for administration of the Sugar Act of 1937, and for crop production and harvesting loans, and agree to the conference asked by the Senate.

The SPEAKER. The gentleman from Colorado asks unanimous consent to take from the Speaker's table House Joint Resolution 571, and agree to the conference asked by the Senate. Is there objection?

There was no objection.

The Chair appointed the following conferees: Mr. TAYLOR of Colorado, Mr. CANNON of Missouri, Mr. WOODRUM, and Mr. TABER.

RESIGNATION FROM COMMITTEES

The SPEAKER laid before the House the following communication, which was read:

JANUARY 27, 1938.

Hon. W. B. BANKHEAD,

Speaker of the House of Representatives, Washington, D. C.

MY DEAR MR. SPEAKER: I hereby tender my resignation as a member of the following standing committees of the House of Representatives: Committee on Accounts, Committee on Civil Service, Committee on Immigration and Naturalization, and Committee on Roads.

Very truly yours,

JOHN SPARKMAN.

The SPEAKER. Without objection, the resignation will be accepted.

There was no objection.

HOUR OF MEETING TOMORROW

Mr. RAYBURN. Mr. Speaker, I ask unanimous consent that when the House adjourns today it adjourn to meet at 11 a. m. tomorrow.

The SPEAKER. Is there objection?

There was no objection.

DEATH OF REPRESENTATIVE EDWARD A. KENNEY

Mr. SUTPHIN. Mr. Speaker, it is with sincere regret that I announce the accidental death of my friend and colleague, Hon. EDWARD A. KENNEY, a Representative from the Ninth District of New Jersey. Mr. KENNEY's death is a severe shock to me as well as to the other Members of the House. For three terms he represented his district in this body. He was well known for his untiring efforts in behalf of his district, his State, and the Nation, and he will be sorely missed by all who knew him.

The district which Mr. KENNEY represented is in the heart of a commercial and industrial area, and our late colleague devoted much of his time and energy to the interests of industry and commerce and its employees. As an active member of the Committee on Interstate and Foreign Commerce, he served ably and well.

An indefatigable worker, tireless in the service of his country, our late colleague endeared himself to his fellow Members and to the constituency he served so well. His loss will