SENATE

WEDNESDAY, APRIL 8, 1964

(Legislative day of Monday, March 30, 1964)

The Senate met at 10 o'clock a.m., on the expiration of the recess, and was called to order by Hon. PAUL H. DOUGLAS, a Senator from the State of Illinois.

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

O Thou Master of all good workmen, with the passing from this mortal stage of a dedicated servant of Thine and of the Nation, Douglas MacArthur, we now praise famous men—men renowned for their power, giving counsel by their understanding, leaders of the people, wise and eloquent in their instruction.

Such leave a name behind them, that their praises might be reported. We give thanks that in human personalities there are so often made flesh Thine eternal principles of righteousness, which the contaminating evils of the world cannot tarnish or erode.

Especially this day we thank Thee, our God, and take courage from the uncorrupted and uncompromising record of this great captain of our time, in whose undaunted faith across all the years of his pilgrimage there ever sang—

"Then conquer we must,
For our cause it is just;
And this be our motto—
In God is our trust."

And now that he has gone on from our physical sight and side, may he return to our troubled times in a renewed determination of the Republic to face any foe, to pay any price, not that America may conquer, but that the starry ideals that give luster to freedom's banners may come to their coronation under all skies. For the fulfillment of all our fallen hero's dreams, as his brave soul goes marching on, we commend his conquering spirit into Thy hands.

We ask it in the dear Redeemer's name. Amen.

DESIGNATION OF ACTING PRESIDENT PRO TEMPORE

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., April 8, 1964.

To the Senate:

Being temporarily absent from the Senate, I appoint Hon. PAUL H. DOUGLAS, a Senator from the State of Illinois, to perform the duties of the Chair during my absence.

LEE METCALF,
Acting President pro tempore.

Mr. DOUGLAS thereupon took the chair as Acting President pro tempore.

THE JOURNAL

On request of Mr. MANSFIELD, and by unanimous consent, the reading of the Journal of the proceedings of Tuesday, April 7, 1964, was dispensed with.

AMENDMENT OF FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT

Mr. RIBICOFF. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on Senate bill 1605.

The ACTING PRESIDENT pro tempore laid before the Senate the amendment of the House of Representatives to the bill (S. 1605) to amend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, to provide for labeling of economic poisons with registration numbers, to eliminate registration under protest, and for other purposes, which was to strike out all after the enacting clause and insert:

That section 2.z.(2)(b) of the Federal Insecticide, Fungicide, and Rodenticide Act (61 Stat. 163, as amended; 7 U.S.C., 1958 ed., Supp. III, 135(z)(2)(b)) is hereby amended by inserting before the semicolon at the end thereof the following phrase: "other than the registration number assigned to the economic poison".

SEC. 2. Section 3 of said Act (61 Stat. 166; 7 U.S.C. 135a) is hereby amended by deleting the word "and" at the end of section 3.a.(2)(b), deleting the period at the end of section 3.a.(2)(c) and inserting in lieu thereof a semicolon and the word "and", and adding after section 3.a.(2)(c), a new provision reading as follows: "(d) when required by regulation of the Secretary to effectuate the purposes of this Act, the registration number assigned to the article under this Act."

SEC. 3. Section 4 of said Act (61 Stat. 167; 7 U.S.C. 135b) is hereby amended by changing the word "registrant" wherever it appears in subsection a. and in the first sentence of subsection c. to "applicant for registration" and by deleting the remainder of subsection c. and inserting in lieu thereof the following:

"If, upon receipt of such notice, the applicant for registration does not make the corrections, the Secretary shall refuse to register the article. The Secretary, in accordance with the procedures specified herein, may suspend or cancel the registration of an economic poison whenever it does not appear that the article or its labeling or other material required to be submitted complies with the provisions of this Act. Whenever the Secretary refuses registration of an economic poison or determines that registration of an economic poison should be canceled, he shall notify the applicant for registration or the registrant of his action and the reasons therefor. Whenever an application for registration is refused, the applicant, within thirty days after service of notice of such refusal, may file a petition requesting that the matter be referred to an advisory committee or file objections and request a public hearing in accordance with this section. A cancellation of registration shall be effective thirty days after service of the foregoing notice unless within such time the registrant (1) makes the necessary corrections; (2) files a petition requesting that the matter be referred to an advisory committee; or (3) files objections and requests a public hearing. Each advisory committee shall be composed of experts, qualified in the subject matter and of adequately diversified professional background selected by the National Academy of Sciences and shall include one or more representatives from land-grant colleges. The size of the committee shall be determined by the Secretary. Members of an advisory committee shall receive as compensation for their services a reasonable per diem, which the Secretary shall by rules and regulations prescribe, for time actually spent in the work of the committee, and shall in addition be reimbursed for their necessary traveling and subsistence expenses while so serving away from their places of residence, all of which costs may be assessed against the petitioner, unless the committee shall recommend in favor of the petitioner or unless the matter was referred to the advisory committee by the Secretary. The members shall not be subject to any other provisions of law regarding the appointment and compensation of employees of the United States. The Secretary shall furnish the committee with adequate clerical and other assistance, and shall by rules and regulations prescribe the procedures to be followed by the committee. The Secretary shall forthwith submit to such committee the application for registration of the article and all relevant data before him. The petitioner, as well as representatives of the United States Department of Agriculture, shall have the right to consult with the advisory committee. As soon as practicable after any such submission, but not later than sixty days thereafter, unless extended by the Secretary for an additional sixty days, the committee shall, after independent study of the data submitted by the Secretary and all other pertinent information available to it, submit a report and recommendation to the Secretary as to the registration of the article, together with all underlying data and a statement of the reasons or basis for the recommendations. After due consideration of the views of the committee and all other data before him, the Secretary shall, within ninety days after receipt of the report and recommendations of the advisory committee, make his determination and issue an order, with findings of fact, with respect to registration of the article and notify the applicant for registration or registrant. The applicant for registration, or registrant, may, within sixty days from the date of the order of the Secretary, file objections thereto and request a public hearing thereon. In the event a hearing is requested, the Secretary shall, after due notice, hold such public hearing for the purpose of receiving evidence relevant and material to the issues raised by such objections. Any report, recommendations, underlying data, and reasons certified to the Secretary by an advisory committee shall be made a part of the record of the hearing, if relevant and material, subject to the provisions of section 7(c) of the Administrative Procedure Act (5 U.S.C. 1006(c)). The National Academy of Sciences shall designate a member of the advisory committee to appear and testify at any such hearing with respect to the report and recommendations of such committee upon request of the Secretary, the petitioner, or the officer conducting the hearing: *Provided*, That this shall not preclude any other member of the advisory committee from appearing and testifying at such hearing. As soon as practicable after completion of the hearing, but not later than ninety days, the Secretary shall evaluate the data and reports before him, act upon such objections and issue an order granting, denying, or canceling the registration or requiring modification of the claims or the labeling. Such order shall be based only on substantial evidence of record at such hearing, including any report, recommendations, underlying data, and reason certified to the Secretary by an advisory committee, and shall set forth detailed findings of fact upon which the order is based. In connection with consideration of any registration or application for registration under this section, the Secretary may consult with any other Federal agency or with an advisory committee appointed as herein provided. Notwithstanding the provisions of section 3.c.(4), information relative to formulas of products

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acquired by authority of this section may be revealed, when necessary under this section, to an advisory committee, or to any Federal agency consulted, or at a public hearing, or in findings of fact issued by the Secretary. All data submitted to the Secretary or to an advisory committee in support of a petition under this section shall be considered confidential by the Secretary and by such advisory committee. Notwithstanding any other provision of this section, the Secretary may, when he finds that such action is necessary to prevent an imminent hazard to the public, by order, suspend the registration of an economic poison immediately. In such case, he shall give the registrant prompt notice of such action and afford the registrant the opportunity to have the matter submitted to an advisory committee and for an expedited hearing under this section. Final orders of the Secretary under this section shall be subject to judicial review, in accordance with the provisions of subsection d. In no event shall registration of an article be construed as a defense for the commission of any offense prohibited under section 3 of this Act."

SEC. 4. Section 4 of said Act (61 Stat. 167; 7 U.S.C. 135b) is hereby further amended by redesignating subsections d. and e. as subsections e. and f., and by adding a new subsection d., as follows:

"d. In a case of actual controversy as to the validity of any order under this section, any person who will be adversely affected by such order may obtain judicial review by filing in the United States court of appeals for the circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit, within sixty days after the entry of such order, a petition praying that the order be set aside in whole or in part. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary, or any officer designated by him for that purpose, and thereupon the Secretary shall file in the court the record of the proceedings on which he based his order, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition the court shall have exclusive jurisdiction to affirm or set aside the order complained of in whole or in part. The findings of the Secretary with respect to questions of fact shall be sustained if supported by substantial evidence when considered on the record as a whole, including any report and recommendation of an advisory committee. If application is made to the court for leave to adduce additional evidence, the court may order such additional evidence to be taken before the Secretary, and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper, if such evidence is material and there were reasonable grounds for failure to adduce such evidence in the proceedings below. The Secretary may modify his findings as to the facts and order by reason of the additional evidence so taken, and shall file with the court such modified findings and order. The judgment of the court affirming or setting aside, in whole or in part, any order under this section shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 18 of the United States Code. The commencement of proceedings under this section shall not, unless specifically ordered by the court to the contrary, operate as a stay of an order. The court shall advance on the docket and expedite the disposition of all causes filed therein pursuant to this section."

SEC. 5. The first sentence of section 8.b. of said Act (61 Stat. 170; 7 U.S.C. 135f.(b)) is hereby amended by deleting that part beginning with the second proviso therein down to, but not including, the period at the end thereof.

SEC. 6. Section 3.a.(1) and section 9.a. (1)(b) of said Act (61 Stat. 166, 170; 7 U.S.C. 135a.(a)(1), 135g.(a)(1)(b)) are hereby amended by changing the phrase "has not been registered" wherever it appears therein, to read "is not registered".

SEC. 7. This Act and the amendments made hereby shall become effective upon enactment, and all existing registrations under protest issued under said Federal Insecticide, Fungicide, and Rodenticide Act shall thereupon terminate.

Mr. RIBICOFF. Mr. President, I move that the Senate concur in the amendment of the House, with an amendment which I offer on behalf of myself, the Senator from Rhode Island [Mr. PELL], the Senator from New York [Mr. JAVITS], and the Senator from Kansas [Mr. PEARSON].

The ACTING PRESIDENT pro tempore. The amendment submitted by the Senator from Connecticut will be stated.

The LEGISLATIVE CLERK. On page 6, beginning in line 9, it is proposed to strike out the following language:

All data submitted to the Secretary or to an advisory committee in support of a petition under this section shall be considered confidential by the Secretary and by such advisory committee.

And in lieu thereof insert the following:

All data submitted to an Advisory Committee in support of a petition under this section shall be considered confidential by such Advisory Committee: *Provided*, That this provision shall not be construed as prohibiting the use of such data by the Committee in connection with its consultation with the petitioner or representatives of the United States Department of Agriculture, as provided for herein, and in connection with its report and recommendations to the Secretary.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the motion of the Senator from Connecticut.

Mr. RIBICOFF. Mr. President, I ask unanimous consent that an explanation of our amendment be printed at this point in the RECORD.

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

STATEMENT BY SENATOR RIBICOFF ON S. 1605

The effect of pesticide chemicals upon plant, animal, and human life has been the subject of widespread public discussion for the last several years.

In the fall of 1962 Rachel Carson's "Silent Spring" heightened public interest and concern. Her book was followed by a critical review of the problem by the President's Science Advisory Committee and its report of a year ago. Since last May, the Subcommittee on Reorganization and International Organizations has been reviewing the subject from the point of view of the adequacy of Federal programs and laws dealing with pesticide research and regulation.

Early in our hearings the problem of "protest registration" was pinpointed. Up to that point it was widely thought that a pesticide could be marketed only after the Department of Agriculture was satisfied as to its safety and effectiveness. As a matter of fact, the law now permits a manufacturer to "register" a doubtful pesticide with the Secretary of Agriculture and proceed to market it. If the Secretary questions the product's safety or effectiveness, he still must register the pesticide "under protest." He then has the burden of establishing that it does not comply with the safety or effectiveness standards prescribed by the act. While the Secretary gathers his proof, a pesticide can be sold on the market and be causing injury.

On May 27, 1963, to close the loophole of "protest registration," this bill would prohibit the marketing of any pesticide until the Government was satisfied as to its safety and effectiveness and empower the Secretary of Agriculture to withdraw a dangerous product from the market without the delay of a long hearing. I was joined in this effort by the Senator from Kansas [Mr. PEARSON], the Senator from Rhode Island, [Mr. PELL] and the Senator from New York [Mr. JAVITS].

On October 25, 1963, the bill passed the Senate. On February 17, 1964, it passed the House with amendments. That is its present status.

Most of the House amendments are technical in nature and should be accepted by the Senate. One, however, causes some difficulty.

In an effort to make certain that the Advisory Committee established under S. 1605 would be covered by confidentiality prohibitions of existing law, the House added language on page 6, lines 14–17 of the bill, as follows:

"All data submitted to the Secretary or to an advisory committee in support of a petition under this section shall be considered confidential by the Secretary and by such advisory committee."

According to the House Committee on Agriculture in its report on the bill—

"This language was added in order to further protect secret information concerning formulas and packaging methods from disclosure to unauthorized sources by the advisory committee appointed by the Secretary in connection with carrying out the provisions of this bill."

Obviously, the amendment goes beyond "formulas and packaging methods" and applies not only to the Advisory Committee but to the Secretary and all officials of the Department of Agriculture as well, who are already covered by confidentiality restrictions in the law.

I am fearful that the House amendment is not only unnecessarily restrictive but in conflict with other provisions of the bill as well. It should not be accepted by the Senate for three main reasons:

First, it would result in "all data" being considered confidential rather than trade secrets, such as formulas, which are so well deserving of such treatment. In its report on the use of pesticides, the President's Science Advisory Committee expressed the belief that all data used as a basis for granting registration and establishing tolerances should be published, thus allowing the hypotheses and the validity and reliability of the data to be subjected to critical review by the public and the scientific community. The House amendment goes contrary to this proposal.

Second, the scope of this provision, covering "all data" and being applicable to the Secretary of Agriculture as well as the advisory committee, appears to be in direct conflict with the preceding sentence in the bill, starting at line 9 on page 6, which specifically authorizes the disclosure of data when it is necessary.

Finally, it is not necessary to have a further restriction on the Secretary or employees of the Agriculture Department as the act presently prohibits them from revealing information relating to formulas. Furthermore, section 1905 of title 18 of the United States Code is applicable to the officers and employees of the Department and this too

makes unlawful the disclosure of confidential information.

I will offer an amendment to delete this provision from the bill and substitute in its stead a provision designed to protect actual trade secrets against disclosure by the advisory committee.

I want to emphasize that passage of this bill takes on a new urgency since the recent announcement by the Department of Agriculture that it will hold public hearings on April 9 on the question of removing three highly toxic pesticides from the market.

The Department of Agriculture is obviously considering either removing the pesticides aldrin, dieldrin and endrin from the market altogether or drastically restricting their use. If the evidence supports them this will be accomplished by a change in registration. But as we have already seen, under existing law the manufacturer can still continue to market these products as before until the Department has gathered massive evidence that they are harmful.

The burden of proof should be on the manufacturer to show his product safe rather than on the Government to prove it harmful. This is the essence of adequate consumer protection law. Without it we are back in the dark ages of "let the buyer beware."

What a cruel hoax it would be to crank up the massive machinery of Government—hold a public hearing—reach a conclusion that the three products are at least of doubtful safety—and then watch them continue to appear on the market until a higher degree of proof is gathered by the Government. That higher degree of proof will not be dead fish. We already know about them. It will be injury to people. That is not how the law should work.

If the Department of Agriculture hearings are to have any meaning, S. 1605 must become the law of the land.

I urge approval of the amendment.

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

Mr. RIBICOFF. I am pleased to yield.

Mr. ELLENDER. Will the Senator from Connecticut state the effect of the amendment?

Mr. RIBICOFF. Yes. This amendment has been cleared with the chairman of the Committee on Agriculture and Forestry [Mr. ELLENDER], the ranking minority member of the committee [Mr. AIKEN], the majority leader, the minority leader, and other Senators. It concerns a bill that will make it possible for the Department of Agriculture, when it acts in regard to the advisability of the use of a pesticide, to end the practice of "protest registration," and make sure that when the Department disapproves an application to register a pesticide, the manufacturer will not be able to put the pesticide on the market as he can today.

The difference between the amendment I offer and the amendment of the House is that the House amendment would keep secret all information submitted in support of the application, while my amendment makes sure data on health and safety is available to the public. We felt that while the formula itself and any trade secret should be kept confidential, it would be against the beneficial interest of the public and against freedom of information to deny to the public and to the various Departments and to the Senate the information, for example, on side effects of the pesticide.

Mr. DIRKSEN. Mr. President, on a number of occasions I have discussed the amendment with the Senator from Connecticut. I think the amendment is acceptable, and I believe that the bill with this amendment will be more acceptable than it would have been without it.

Mr. RIBICOFF. That is true.

In submitting the amendment, I repeat that its cosponsors are the Senator from Rhode Island [Mr. PELL], the Senator from New York [Mr. JAVITS], and the Senator from Kansas [Mr. PEARSON].

The Committee on Agriculture and Forestry spent considerable time on this matter; and I am grateful to the chairman of the committee [Mr. ELLENDER] and to its ranking minority member [Mr. AIKEN] for their consideration of both the amendment and the bill.

I think the bill with this amendment will close a very decided gap in connection with one of the potential dangers the country faces from pesticides.

Mr. DIRKSEN. Mr. President, this matter is very much before the public; and there always is a danger that too narrow an interpretation can do a great deal of damage to the entire agricultural economy of the country.

When all is said and done, there is a continuing and unremitting struggle against insect life; and there is only one way to wage that struggle—namely, by the use of pesticides and fungicides that American industry has developed. The industry tries to exercise the utmost of caution and care in establishing careful tolerances in every case.

So I hope particular caution will be exercised, so that we do not get too narrow an interpretation and construction, and thereby do damage to the industrial side of the economy, while doing good on the other side.

Mr. RIBICOFF. I thank the Senator from Illinois for his contribution.

I think it only fair to state that responsible manufacturers have not opposed this provision; and when the Department of Agriculture has raised a question concerning the dangers involved in the use of a particular pesticide, there has invariably been cooperation by most of the manufacturers of the country. However, there is a definite loophole in the law; and from time to time there have been manufacturers who have not acted in so responsible a manner; and even though a particular pesticide has been disapproved, they have continued to sell it on the market.

So I thank the distinguished minority leader for his contributions.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the motion of the Senator from Connecticut [Mr. RIBICOFF].

The motion was agreed to.

CALL OF THE ROLL

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

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

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

[No. 123 Leg.]

Aiken	Hart	Morse
Allott	Hayden	Morton
Anderson	Hickenlooper	Mundt
Bartlett	Holland	Muskie
Bayh	Hruska	Nelson
Beall	Humphrey	Neuberger
Bennett	Inouye	Pastore
Bible	Javits	Pearson
Boggs	Johnston	Pell
Burdick	Jordan, Idaho	Proxmire
Cannon	Keating	Ribicoff
Carlson	Kennedy	Saltonstall
Case	Kuchel	Scott
Church	Lausche	Simpson
Clark	Long, Mo.	Smith
Cotton	Mansfield	Sparkman
Curtis	McCarthy	Symington
Dirksen	McClellan	Talmadge
Dominick	McGovern	Walters
Douglas	McIntyre	Williams, N.J.
Ellender	McNamara	Williams, Del.
Fong	Metcalf	Yarborough
Gore	Miller	Young, Ohio
Gruening	Monroney	

Mr. HUMPHREY. I announce that the Senator from Virginia [Mr. BYRD], the Senator from Connecticut [Mr. DODD], the Senator from North Carolina [Mr. ERVIN], the Senator from Arkansas [Mr. FULBRIGHT], the Senator from North Carolina [Mr. JORDAN], the Senator from Wyoming [Mr. MCGEE], the Senator from Utah [Mr. MOSS], the Senator from Virginia [Mr. ROBERTSON], and the Senator from Georgia [Mr. RUSSELL], are absent on official business.

I also announce that the Senator from Maryland [Mr. BREWSTER], the Senator from West Virginia [Mr. BYRD], the Senator from Mississippi [Mr. EASTLAND], the Senator from Oklahoma [Mr. EDMONDSON], the Senator from California [Mr. ENGLE], the Senator from Indiana [Mr. HARTKE], the Senator from Alabama [Mr. HILL], the Senator from Washington [Mr. JACKSON], the Senator from Louisiana [Mr. LONG], the Senator from Washington [Mr. MAGNUSON], the Senator from Florida [Mr. SMATHERS], the Senator from Mississippi [Mr. STENNIS], and the Senator from South Carolina [Mr. THURMOND], are necessarily absent.

I further announce that the Senator from West Virginia [Mr. RANDOLPH] is necessarily absent.

Mr. KUCHEL. I announce that the Senator from Kentucky [Mr. COOPER], the Senator from Arizona [Mr. GOLDWATER], the Senator from New Mexico [Mr. MECHEM], the Senator from Vermont [Mr. PROUTY], and the Senator from Texas [Mr. TOWER], are detained on official business.

The Senator from North Dakota [Mr. YOUNG] is necessarily absent.

The PRESIDING OFFICER (Mr. RIBICOFF in the chair). A quorum is present.

The Chair lays before the Senate the unfinished business.

CIVIL RIGHTS ACT OF 1963

The Senate resumed the consideration of the bill (H.R. 7152) to enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States to provide injunctive relief against discrimination in public ac-

commodations, to authorize the Attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes.

Mr. CLARK. Mr. President——

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

ORDER OF BUSINESS

Mr. CHURCH. Mr. President, will the Senator from Pennsylvania yield to me?

The PRESIDING OFFICER. The Senator from Pennsylvania has been recognized.

Mr. CLARK. Mr. President, may I state that several of my colleagues have asked me to yield to them before I begin my speech on title VII. I shall be happy to do so, calling the attention of each Senator to the rule of germaneness which is now in effect and the necessity of obtaining unanimous consent to speak on other subjects for the next 3 hours.

I yield to the Senator from Idaho.

THE MAILBAG IS NOT AN INFALLIBLE GUIDE

Mr. CHURCH. Mr. President, I believe it is fair to say, in the highly charged political atmosphere of Washington, that we sometimes lose a sense of perspective about what the rest of the Nation is thinking. To compensate for this, we often make impossible demands on our mailbag. In the absence of accurate indicators, we tend to let letters loom as the key to the thinking of our citizens.

To be sure, we need mail; we need the additional insight into State problems and national issues that only mail can give us. But the mailbag—as many Senators are finding out during the current civil rights debate—is not an infallible guide. Indeed, many groups are organizing letterwriting campaigns to defeat the civil rights bill. As a result, the current deluge of mail against this important and vital piece of legislation is giving us a distorted picture of what all the people of our States are, in fact, thinking.

Thus, it is a relief to receive a letter which puts things back into better perspective.

Mr. President, I invite the attention of the Senate to such a letter, one which I recently received from a constituent, Mr. Perry Swisher, a Republican State senator in Idaho. Mr. Swisher reminds us:

> But a Senator who realizes what a barrage of misrepresentation is reaching his constituents will not panic.

He very wisely adds that—

> The absence of any letters whatever from the overwhelming majority of Idahoans is the voice of calm and decency, the consent-giving silence of the informed and the unafraid.

Mr. President, I ask unanimous consent to have Mr. Swisher's letter printed in the RECORD.

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

IDAHO STATE SENATE,
CAPITOL BUILDING,
Boise, March 18, 1964.

U.S. Senator FRANK CHURCH,
Senate Office Building,
Washington, D.C.

DEAR FRANK: It's reported that the mail to Idaho's congressional delegation is running 10 to 1 against the civil rights bill. But thousands of dollars, upon thousands, are being spent to solicit Idaho objections. Each dollar ought to be worth a letter. Are you receiving thousands upon thousands, or a few hundred?

I don't really blame the recipient of a letter telling him the Federal Congress is about to deprive him of his rights and place us all under a dictatorship, if he writes to you in alarm.

But a Senator who realizes what a barrage of misrepresentation is reaching his constituents will not panic. His constituents are asking him not to vote to place them under dictatorship. Because the civil rights effort is a move in another direction—away from the practice of discrimination which is more consonant with dictatorship than with the ambitions of a free society—he has no problem. He can vote for the civil rights bill as he knows it and satisfy his petitioners.

This is once I can't bring myself to promoting a countermovement—fighting fire with fire. The absence of any letters whatever from the overwhelming majority of Idahoans is the voice of calm and decency, the consent-giving silence of the informed and the unafraid.

In the polls, those who give the poll-taker no indication of their stand enter the totals as "no opinion," a massive misnomer for such of them as choose not to venture their opinion. It is an even greater misnomer when there is no poll. In the language of the pollsters the Idaho total on civil rights legislation would probably read at least 97 percent "no opinion." Interpreted more accurately as "it's up to you. Vote your conscience."

Vote your conscience. The prediction was freely made in 1961 that if Idaho adopted a strong civil rights law, racial unrest and loss of personal rights would result. The act passed. In Idaho race relations were never better than they are today. We're making important progress against thoughtless cruelty, we are brothers to a degree we were not before the Idaho act passed.

It would be a victory for panic and fear if the barrage of misrepresentation changes a single Senate vote. I don't worry for an instant about your vote. You can use some reassurance and I'm only writing to reassure you.

Best personal regards.

PERRY SWISHER.

Mr. CLARK. Mr. President, I ask unanimous consent that without losing my right to the floor I may yield in turn, first to the Senator from Ohio [Mr. LAUSCHE], next to the Senator from Missouri [Mr. LONG], next to the Senator from New York [Mr. JAVITS], and finally to the Senator from Hawaii [Mr. FONG].

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

STRIP COAL MINING

Mr. LAUSCHE. Mr. President, I ask unanimous consent that, notwithstanding the rule of germaneness, I may be permitted to make a statement.

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

Mr. LAUSCHE. Mr. President, several months ago, I introduced a bill asking for the study of the strip coal mining operations.

Today, I should like to make a brief comment on that bill.

Mr. President, how irresponsible can governments in our country get in dealing with the rights and dollars of the taxpayers?

Are our governments competing in a contest to determine which particular government can reach the highest level of folly?

On the one hand State governments are allowing the strip miners of coal to butcher the land, inflict irreparable scars, and render it barren of wildlife and vegetation. The strip miners of coal have been permitted by the States to remove the coverage of land consisting of trees, grasses, shrubs, and topsoil; and with their 200-foot booms picking up 70 cubic yards—100 tons—of earth at one time to bring to the surface nothing but shale and rock on which nothing will grow. Barren slate banks and acid poisoned holes unfriendly to anything are the remains of strip mining operations. Pennsylvania, West Virginia, Ohio, Tennessee, Indiana, Illinois, and other places have been the victims of these operations.

Recently Mr. Godfrey Sperling, Jr., of the Christian Science Monitor, after visiting areas in Hazleton, Pa., and its proximity, wrote an article on this subject. The title of his piece was: "Would Federal Aid Lift Appalachia?"

"Are the marginal towns capable of being saved by presidential intervention?" he asked.

He pointed out that in the area which he visited strip mining machines have a 200-foot boom and a bucket holding 30 cubic yards was "gulping big bites out of the earth"; and that this monster machine and others like it have destroyed the landscape over an area that is roughly 80 by 40 miles in dimension.

What Mr. Sperling described to be the situation in Pennsylvania would likewise apply, and even more so, to the counties in mideastern and southeastern Ohio, the foothills of the Appalachian Mountains.

There are in operation in ordinary strip mine coal-producing States earthmoving draglines and other devices which have a shovel capacity of 35 cubic yards of earth weighing approximately 50 tons per bite. There is one earthmoving machine now operating in the Kentucky strip mine coalfields that has a per bite capacity of 115 cubic yards weighing 150 tons. I am informed by reliable sources that soon there is to be built an earthmoving machine which will have a per bite capacity of 200 cubic yards of earth.

Mr. Sperling spoke about Hazelton, Shenandoah, Frackville, Mahanoy City, Tamaqua, Lansford, Jeansville, and other towns that have been made ghostlike by the strip mining operations.

How irresponsible can we get in the spending of the taxpayers' money?

It is now proposed that the taxpayers of the United States, under the "war against poverty," should provide the moneys to rehabilitate these lands. It is suggested that with taxpayers' moneys the scars and pits and holes and poisons of strip mining should be rehabilitated. Federal dollars are suggested to be sent into these communities to level the land, provide for it a coverage of vegetation so that it will retain the waters that come from the rain and will bring back to the area not only wildlife but also human life.

What I have said above about Pennsylvania applies equally in Ohio, especially to the counties of Guernsey, Muskingum, Harrison, Belmont, Jefferson, Morgan, Washington, Columbiana, Carroll, Mahoning, and Stark and in a measure to Holmes.

The operators of the coal strip mines have fought every effort against the adoption of laws that would require them to restore the land with some semblance of levelness and coverage with tree and grass growth.

At present I have pending in the Senate a bill that would authorize a study of this paradoxical situation in which on the one hand Government is permitting strip miners to butcher the land, and on the other hand it is talking about spending money to rehabilitate and remedy the butchering initially permitted.

Information has come to me that the strip miners are opposing the adoption of this bill by the Congress. They are acting true to form, completely indifferent to their civic responsibilities. Unless the citizens who are familiar with the damage that is being done by the strip mining process contact their Senators and Congressmen, I labor under the fear that my bill will die. I, therefore, appeal to all citizens who are familiar with this problem to contact their Congressmen pressing them for some type of Federal action to deal with this wrong.

Mr. HUMPHREY. Mr. President——

The PRESIDING OFFICER. The Senator from Pennsylvania [Mr. CLARK] has the floor, and has yielded to the Senator from Missouri [Mr. LONG].

THE OUTCOME OF THE PUBLIC ACCOMMODATIONS REFERENDUM IN KANSAS CITY

Mr. LONG of Missouri. Mr. President, yesterday the voters of Kansas City approved a public accommodations ordinance by referendum. Some time ago, the City Council of Kansas City enacted a public accommodations ordinance covering hotels, motels, and restaurants. Then, some months ago, the city council approved another ordinance extending the coverage to include taverns, amusement places, sports and recreational establishments, stores, auditoriums, public transportation, and trade and commercial schools. This second ordinance was petitioned to referendum. The question before the voters at yesterday's referendum was whether the city would have a comprehensive public accommodations law or a limited law. It is with satisfaction that I report to the Senate that in a heavy vote for a special election the comprehensive ordinance was upheld by a margin of almost 2,000 votes.

Many have raised questions as to the views of the majority of the American people on the subject of public accommodations. Yesterday, we heard the voice of the people who live in the heartland of our Nation. This voice spoke out for full freedom for all Americans.

Mr. President, I have long believed that the people of my State support the enactment of needed legislation to advance the cause of equal rights for all Americans. My belief has been fully confirmed.

Mr. JAVITS. Mr. President, I ask unanimous consent that I may make a brief statement.

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

Mr. JAVITS. I have heard with deep satisfaction what the Senator from Missouri [Mr. LONG] has just reported. It bears out the comments I have been making on the floor of the Senate in connection with civil rights.

Mr. President, there has been a surprising vote for Governor Wallace in the primary in Wisconsin. Those of us who are for civil rights legislation must draw some serious lessons from the vote.

The vote as it now stands is 508,597 for Reynolds, 270,148 for Byrnes, and 249,724 for Wallace. There appears to have been, roughly, a million-plus votes cast, with Governor Wallace receiving about 20 percent-plus of the vote.

First, if the 20-percent-plus vote should be taken as symptomatic of sympathy for the segregationist position of Governor Wallace, then at the same time we must take into account that an overwhelming majority—namely, about 80 percent—shows clear support for civil rights. What is demonstrated is the dangers of complacency among civil rights proponents.

The 20-percent-plus vote for Governor Wallace does indicate what will happen when extremists spread false fears and phony rumors among susceptible people.

Mr. President, the outcome may be embarrassing to the Democratic Party, but it is also a challenge to the leadership of both parties to work more vigorously to be sure the people of the North, as well as of the South, understand the grave moral and constitutional crisis we face—a crisis which has such far-reaching implications to our role as a nation committed to freedom and opportunity.

I am confident that the 80 percent in Wisconsin is just as important as the 20 percent. For those of us who are with the 80 percent it is a lesson written large on the wall, that should teach us how important is the struggle in which we are engaged, and to realize that we must continue to throw all the ardor and dedication into this struggle.

ANALYSIS OF THE PROBLEMS IN PANAMA BY THE REPUBLICAN CITIZENS COMMITTEE'S CRITICAL ISSUES COUNCIL

Mr. JAVITS. Mr. President, it is with great pride that I report to the Senate the work of the Republican Citizens Committee's Critical Issues Council. I am sure I shall be pardoned for dealing with what might be a partisan matter. The critical issues council, headed by Dr. Milton S. Eisenhower, has issued the first of a series of papers. This first paper presents an excellent alternative program for dealing with the Panama issue.

In my judgment, it expresses the very finest contribution of the opposition party to a bipartisan foreign policy. I ask unanimous consent that the report may be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. JAVITS. Mr. President, I should like to read a brief excerpt from the report, which I commend to the Nation. Dr. Eisenhower says:

> An administration in power has positions on this and other issues, but thoughtful citizens need to consider informed and well-reasoned alternatives to these positions and to sharpen their judgments on how best to deal with these national problems. We hope to offer these alternatives in our papers. We plan to issue additional papers at approximately 1-week intervals concluding shortly before the National Republican Convention in July.

To this, Mr. President, I say "Amen," and I believe the American people, both Democrat and Republican, will hail this development. This is a most intelligent and constructive program for Panama, and the study of which I strongly urge upon the administration.

EXHIBIT 1

NEWS FROM REPUBLICAN CITIZENS [1]

WASHINGTON, D.C.—In the first of a series of "critical issues papers," which will examine and suggest possible solutions to important foreign and domestic problems facing the United States, the Republican Citizens Committee's Critical Issues Council, headed by Dr. Milton S. Eisenhower, recommended a seven-point program to deal with immediate and long-range problems in Panama.

"Any realistic approach to the Panamanian problem," the council declares, "must begin with the recognition that the construction of a new sea level canal within 25 years is imperative; earlier construction is preferable. Disputes over sovereignty, wage scales and profits are all attendant upon the inescapable need for a new canal."

The council also recommended that the United States agree now to negotiate amendments to existing treaties with Panama and to negotiate an entirely new treaty within 25 years.

Pointing out that the present crisis in Panama is the "predictable result of an explosive situation that has been building openly for many years," the council states: "It should now be clear * * * that further concessions at this time will not in themselves end our difficulties in Panama. Only by reconciling the basic difference in interest between the two nations through a mutually acceptable and long-range policy can we hope to find a lasting solution to the Panamanian problem."

[1] NOTE TO EDITORS.—A press conference with Dr. Milton Eisenhower, other members of the council, and former Ambassador to Panama, Joseph S. Farland, will be held on April 7 at 2:30 p.m., in the Lorraine Room of the Hotel Lafayette, 16th and I Streets, Washington, D.C.

"A heritage of malice and misunderstanding" will make this task difficult, according to the council paper. It sites Panama's belief that the United States is making great profit from the canal and the United States belief that we have sovereignty in the Canal Zone as glaring examples of misunderstanding. The United States not only has never made a penny of profit, the council explains, but it actually subsidizes the operation of the canal to the extent of about $6 million yearly. And the treaty of 1903, which permitted the United States to build the Panama Canal, makes clear that titular sovereignty remains with Panama.

Since the best site for a new canal appears to be Panama, the council argues that it is clearly in the best interests of the United States and Panama to settle the current difficulties and to begin building the good relations which would assure the successful construction and operation of a new sea level canal in Panama.

The council recommends that the existing treaties with Panama be amended to incorporate the following:

1. Canal improvements costing approximately $75 million should be made promptly to assure the continued operation of the Panama Canal for another 25 years.

2. Canal tolls should be raised by 30 percent and Panama's annuity (now $1,930,000) should be increased to $15 million.

3. During the period preceding a completely new treaty, the canal company should repay the existing $460 million debt to the American taxpayers. This can be accomplished by allocating a portion of the income from a toll increase and the $16 million normally spent in recent years on canal improvements.

4. To the degree that it is possible without hampering the operation of the canal, the United States should rotate its civilian personnel in the Canal Zone.

5. Panamanians should be trained as rapidly as possible to fill the higher paying positions in the canal operation and to handle the complicated technical operation of the canal.

6. The United States should make clear to Panama that when reforms promised under the Alliance for Progress are carried out, U.S. aid will be available in substantial amounts to improve Panama's agricultural and industrial capacity, and in general raise the living standards of the masses.

7. The two Governments should agree to negotiate within 25 years a new treaty which will specify how a sea-level canal is to be financed, constructed, and operated.

Apart from treaty revisions, when an ambassador is appointed he should be given full authority to speak for the United States in Panama. The Governor of the Canal Zone should be forbidden to negotiate with Panamanian officials on major issues.

"The leaders of the United States and Panama must keep in mind that a primary goal is to maintain the Panama Canal for about another 25 years," the council continues, "and then to replace it with a new sea-level canal. Misunderstandings or stubbornness or false nationalistic pride must not divert us from this goal. Panama must consider carefully its actions during the next 25 years and must assess the future realistically * * *. If the two nations can join together in solving the problems that have plagued them for half a century, there is every likelihood that a new Panama Canal will be built and it will symbolize inter-American cooperation and progress."

Commenting on the purpose of the Critical Issues Council and its papers, Dr. Eisenhower said: "An administration in power has positions on this and other issues, but thoughtful citizens need to consider informed and well reasoned alternatives to these positions and to sharpen their own judgments on how best to deal with these national problems. We hope to offer these alternatives in our papers. We plan to issue additional papers at approximately 1-week intervals concluding shortly before the Republican National Convention in July."

Dr. Eisenhower stated that the Critical Issues Council is cooperating with the Republican National Committee and elected Republican officials, but that the positions taken will be those of a citizens' organization and do not represent official Republican policy.

Members of the Critical Issues Council are well-known Republican-oriented citizens with expert competence in one or more fields. None is a political officeholder or candidate for public office. Besides the council members, many other citizen experts are being consulted in the preparation of the papers.

The council members are:

Dr. Milton S. Eisenhower, chairman, president, the Johns Hopkins University.

Elliott V. Bell, chairman of the executive committee, McGraw-Hill Publishing Co.; editor and publisher, Business Week.

Adm. Arleigh A. Burke, U.S. Navy (retired), Chief of Naval Operations, 1955–61.

Arthur F. Burns, Chairman, President's Council of Economic Advisers, 1953–56; professor of economics, Columbia University.

Albert L. Cole, general manager, the Reader's Digest Association.

James H. Douglas, Secretary of the Air Force, 1957–59; Deputy Secretary of Defense, 1959–61.

Marion B. Folsom, Under Secretary of the Treasury, 1953–55; Secretary of Health, Education, and Welfare, 1955–58.

Thomas S. Gates, Secretary of the Navy, 1957–59; Secretary of Defense, 1959–61.

T. Keith Glennan, member of the Atomic Energy Commission, 1950–52; Administrator of NASA, 1958–61; president, Case Institute of Technology.

Oveta Culp Hobby, Secretary of Health, Education, and Welfare, 1953–55; president, Houston Post Publishing Co.

Walter H. Judd, Member of 78th–87th Congress as Representative from the Fifth District of Minnesota.

Mary P. Lord, U.S. alternate representative to the U.N. General Assembly, 1953–59; U.S. delegate to the General Assembly, 1958–60.

Clare Boothe Luce, Member of the 78th and 79th Congresses from the Fourth District of Connecticut; U.S. Ambassador to Italy, 1953–57.

Deane W. Malott, president, Cornell University, 1951–63.

James P. Mitchell, Secretary of Labor, 1953–61.

Gen. Lauris Norstad, U.S. Air Force (retired), Supreme Allied Commander, SHAPE, 1956–62.

Don Paarlberg, Assistant Secretary of Agriculture, 1957–58; Special Assistant to the President and Food-for-Peace Coordinator, 1958–61; professor of economics, Purdue University.

C. Wrede Petersmeyer, president, Corinthian Broadcasting Co.; trustee, Committee for Economic Development.

Samuel R. Pierce, Jr., judge, New York Court of General Sessions, 1959–60.

Charles S. Rhyne, president, American Bar Association, 1957–58.

Raymond J. Saulnier, Chairman, President's Council of Economic Advisers, 1957–61; professor of economics, Columbia University.

Lewis L. Strauss, Chairman, Atomic Energy Commission, 1953–58; Secretary of Commerce, 1958–59.

Walter N. Thayer, president, New York Herald Tribune.

Henry C. Wallich, member, President's Council of Economic Advisers, 1959–60; professor of economics, Yale University.

PANAMA: A REALISTIC APPRAISAL

(Critical issues paper No. 1)

If there is any Latin American nation with which the United States should have exemplary relations, it is surely Panama. The canal which we built there at great expense and sacrifice is of vital economic and strategic importance to the United States and of great economic importance to Panama, this hemisphere, and the world. For half a century, we have maintained the canal as an efficient world trade route, as much for the benefit of other nations as for our own. Panama's periodic complaints notwithstanding, the canal has been the most important single factor in the development of the isthmus.

Panama should occupy a unique and intimate position in U.S. foreign affairs. Its importance is far out of proportion to its size. Both the United States and Panama have had compelling reasons for wanting to be on the best of terms with each other. But relations between the two nations have deteriorated steadily over the years. In August 1963 our Ambassador to Panama, Joseph Farland, resigned his post to protest both the misuse of foreign aid funds and the administration's indifference to the basic problems in United States-Panamanian relations, an indifference which was increasing Panamanian hostility toward the United States. Upon his departure, Ambassador Farland, one of the most popular U.S. ambassadors in Panamanian history, was invited neither to the White House nor before the House Foreign Affairs Committee to express his concern about Panama. He was not even given customary debriefing by the State Department. Washington's course of drift continued, and 5 months after Ambassador Farland's resignation, when the riots broke out in Panama, no new U.S. ambassador had been appointed.

However, the mishandling and neglect in the last year, which culminated in the January riots, 25 deaths, and hundreds of injuries, merely inflamed an already smoldering situation. Indeed, the roots of the present crisis are embedded in a 61-year failure of Panama and the United States to build the good will and genuine understanding essential to a fruitful partnership.

Panama today is demanding a new treaty which would at once increase substantially the income it receives from canal traffic and would ultimately establish its complete sovereignty over the Canal Zone. The United States, on the other hand, cannot yield to pressure alone and insists upon maintaining the complete jurisdiction in the Canal Zone granted to it by treaty.

How is it that in all of these years of living and working together the United States and Panama have been unable to resolve their differences and build a harmonious relationship? The answer to this question should suggest a course for future action.

President Johnson recently said of the Panamanian problem that "No purpose is served by rehashing either recent or ancient events." But the complex situation must be viewed in its historical context.

II

THE ROOTS OF THE PROBLEM

The difficulties in Panama did not begin with the violence that erupted there on January 9, 1964. That conflict was the predictable result of an explosive situation that has been building openly for many years. In fact, our troubles in Panama began with the Hay-Bunau Varilla Treaty of 1903, which permitted the construction of the canal and granted the United States "in perpetuity the use, occupation, and control of a zone of land" across the isthmus "as if it were sovereign." This treaty, signed almost immediately after Panama had won its independence from Colombia through U.S. intervention, virtually made Panama a protectorate of the United States.

After signing the 1903 treaty, Panamanians had second thoughts and trouble began. From that time forward there has been a fundamental difference of interests between Panama and the United States. Our primary aim has been to operate as efficiently as possible an international waterway of economic and strategic significance. Convinced that Panama could not do this, and that we could do so only if we were free of all external interference, we have insisted on complete jurisdiction in the Canal Zone and complete control of the canal itself. But Panama has viewed the canal as its greatest national resource and has sought to extract greater advantage from it. Convinced that the United States has been exploiting and profiting from this national asset, Panama has claimed sovereignty over the zone and has vigorously insisted on an increasing share of the benefits.

The crux of the problem in Panama is this "fundamental difference of interests." The difficulties that have arisen over the years have developed because each nation has vigorously pursued its own interest without sufficient regard for the other's, and because the two nations failed to recognize that their interests were not as mutually exclusive as they appeared to be.

Some of the specific points of dispute—such as the displaying of the Panamanian flag in the zone, equal wage scales for Panamanians and Americans, and the existence of commercial enterprises in the zone—have been largely symptomatic of the basic disagreement.

In 1936, at Panama's urging, an additional treaty was drafted. Among other things, it abrogated the United States guarantee of Panama's independence, canceled our right to unilateral intervention in the Republic, and forbade certain kinds of commercial enterprises in the zone, long an irritant to Panamanian merchants. Thus for the first time Panama became a truly independent nation.

Again in 1955, Panama's discontent reached the danger point and a third treaty was signed. It established the principle of "one basic wage scale for all * * * employees of the Canal Zone," and stipulated that all supplies for the zone be purchased, if feasible, from either Panama or the United States. It also provided that the United States would construct, at our expense, a bridge connecting the two sections of the isthmus.

But these concessions and others made from time to time—have served only to delay the conflict that results from the basic disagreement between the two nations. It should now be clear, therefore, that further concessions at this time will not in themselves end our difficulties in Panama. Only by reconciling the basic difference in interest between the two nations through a mutually acceptable and long-range policy can we hope to find a lasting solution to the problem.

III

ALTERNATIVES TO THE STATUS QUO

The task will not be easy, for there is no simple right or wrong answer. We must abandon black and white approaches and search the great gray area for reasonable and honorable compromises. To illustrate the complexity of the problems of sovereignty and control, consider the alternatives to the status quo.

President Truman, Ambassador Stevenson, and others have suggested that the canal be placed under international or inter-American control. In theory, this suggestion may have merit, but it seems highly unlikely that Panama would agree to this, and, of course, the United States cannot unilaterally take such action. To Panama, international control might be worse than U.S. control, for benefits to Panama probably would not increase, and the readymade yanqui whipping boy would be replaced by an impersonal international organization. Further, for the time being, the United States must be skeptical of internationalization, for we consider the canal too important to our military and economic welfare to entrust it to the United Nations where Communist pettifogging, interference, and delay might endanger it. And the Organization of American States has not yet demonstrated convincingly that it can consistently act in concert and place hemispheric interests above national interests.

Another alternative would transfer control and operation to Panama. This does not seem feasible at present, for, unlike the sea-level Suez Canal, the Panama Canal, with its locks, is a miracle of engineering and timing, calling for skills not possessed today by many Panamanians. Further, while most Panamanians would not believe it, such a transfer might well reduce the benefits to the Republic. The United States subsidizes the canal at present and this would cease. Our military expenditures would dwindle or disappear. Operating inefficiencies and breakdowns might drastically reduce income. As a condition of the transfer we would surely insist that the $460 million of debt owed by the Canal Company to the U.S. Treasury, and thus to U.S. citizens, be assumed and repaid by the Panamian Government. Just to do this, Panama would have to raise tolls substantially; to reap anything approaching the kind of benefits Panama envisions, tolls would have to be increased enormously. Hence, other users of the canal—including the west coast countries of Central and South America and all maritime nations—would vigorously oppose the transfer and would blame the United States for putting Panama in a position to charge exorbitant tolls.

Still another alternative sometimes mentioned is the possibility of creating a joint United States-Panamanian corporation to control and operate the canal; by treaty what is now the Canal Zone would come under the same jurisdiction of the Panamanian Government as the free zone, but the corporation would control and operate the canal, with rates fixed by the treaty and the net income, if any, being divided by treaty formula. This alternative is unacceptable to the United States for the present; U.S. citizens must be responsible for the technical, engineering and related jobs; they insist on good housing, schools, hospitals, and other services equal to those in the United States; they also insist upon living by U.S. laws, fairly administered. These needs and desires can be met only under the present arrangement.

IV

A MAZE OF MISUNDERSTANDING

A heritage of malice and misunderstanding makes the problems even more formidable. Most of our citizens and too many of our leaders, for example, believe that the United States has complete sovereignty in the Canal Zone. They therefore wish to tolerate no interference, are hostile to the appearance of the Panamanian flags in the zone, and would maintain the status quo with guns if necessary. A U.S. Congressman advocated during the January crisis that we tear down the flagpoles from which the Panamanian flags fly in the zone. But the United States is not sovereign in the zone. The organic treaty gave the United States jurisdiction over the zone as if it were sovereign, making quite clear that titular sovereignty remained with Panama, as has been acknowledged over the years by three U.S. Presidents.

Panamanians, on the other hand, believe that the United States is exploiting their only national asset and is making vast sums of money from it. This is patently false. Despite its authority to do so, the United States has not raised canal tolls since they were established in 1914 (except for adjustments on certain items) and has operated the canal on a no-profit basis. The gross revenue in the Canal Zone in 1962, for instance, amounted to about $100 million, of which $60 million was from canal tolls, but after operation and maintenance costs were met, and essential canal improvements were made, there was not a single penny of profit for the United States. Indeed, the United States not only has never made a profit, but actually has subsidized the operation of the canal in the amount of some $6 million a year. The debt of about $460 million is not being amortized. The Canal Company now pays only 2.82 percent interest on about $330 million of that debt (a subsidized rate in view of the interest paid by our Treasury on its total debt), and pays no interest whatsoever on about $130 million of the debt. Further, $1.5 million of the $1,930,000 annuity to Panama is paid not from canal revenues but from State Department appropriations. Unfortunately, the annual report of the Canal Company, written to impress the Congress with the Company's skillful management, gives the unsophisticated reader the impression that a net profit is realized, thus feeding this serious misunderstanding. Only by careful study of many complicated financial statements does one see that every cent of this so-called "profit" is spent on necessary canal improvements.

Nor is it accurate to assume, as so many in Panama do, that the $1,930,000 annuity is the only financial benefit to the Republic of Panama. In 1962, 17 percent of Panama's national income—some $85 million—was generated directly by the canal. And to that must be added millions of dollars spent by tourists attracted to Panama because of the canal.

But the truth is buried by the misunderstandings, and the myths are perpetuated by many Panamanian leaders and mass media as they use the United States as a scapegoat to divert attention away from the anachronistic class inequities in Panama. Hate and hostility come easily to the masses who, in the midst of abject poverty, see the affluent living conditions of the U.S. citizens in the zone.

Communism flourishes in such an atmosphere of confusion and discontent, and Castro's agents fan the fires of anger. In typical fashion they infiltrate student groups, labor unions, and other organizations; they spread lies and rumors; they undermine the efforts of moderate men to solve the problems; and they incite violence. It is now clear, for example, that Cuban-trained Communists infiltrated the protest marches in January and whipped them into a frenzied mob. Positive photographic proof of this exists.

V

A REALISTIC POLICY

In the face of such obstacles and complexities, what course of action should the United States pursue?

One thing is clear: Any realistic approach to the Panamanian problem must begin with the recognition that the construction of a new sea-level canal within about 25 years is imperative; earlier construction is preferable. Disputes over sovereignty, wage scales, and profits are all attendant upon the inescapable need for a new canal.

Some advocate construction of a new canal as soon as physical and political problems are solved. Such a view overlooks the desirability of amortizing the debt of the present canal.

By operating 18 hours a day, the Panama Canal is now barely able to handle current traffic. In its present condition, it will rapidly become obsolete, and if nothing were done a maritime traffic jam would result. Even now, some aircraft carriers and tankers are too big to pass through the locks. This is incorrectible. But by spending some $75 million to widen the Gaillard cut, improve locks, build a new dam to increase the water

supply needed in lock operations, and provide new lighting for 24-hour operation, the present canal could handle most traffic, other than the largest ships, for about another 25 years.

The Panama Canal Company, the Defense Department, the Maritime Administration, and other Government agencies have been reevaluating our canal requirements and studying sites for a new sea level canal. Two preferred routes have emerged—one in Panama, 125 miles east of the present zone, and one in Colombia near the Panamanian border. By using nuclear explosives (which apparently would require permission of the signatories to the nuclear test ban treaty, including the Soviet Union), a new Panama Canal would cost about $520 million, and a canal in Colombia would cost about $100 million more.

It would devastate the economy of Panama if a sea level canal were built in Colombia or elsewhere, such as Mexico, for the present lock canal will be useless the moment a sea level waterway is opened. It is patently to Panama's interest to cooperate in solving present difficulties so that it will be politically as well as economically feasible to build the new canal within the Republic. And, assuming the resolution of current disputes and assurance of future good relations, we should favor the Panamanian route for several reasons. It is shorter and less costly. Ships will traverse it faster. And we must consider the hurt to Panama if the new canal is located elsewhere. Despite the difficulties between the United States and Panama, the two nations have cooperated for half a century to their mutual benefit, and they should recognize moral obligations to each other.

It is to Panana's interest not only to assure construction of the new canal in the Republic, but also to keep the present canal functioning for as long as possible, for it seems inevitable that the economic benefits to Panama from the operation of a sea level waterway will be less, at least for many years, than they are now from the lock canal, and still lower than herein proposed for the next 20 to 25 years. More than 13,650 persons are employed in the operation of the present facility and the Canal Zone Government activities. About 9,850 of these are Panamanians; most of the 3,800 U.S. citizens have families which increase the total. Wages for this large number, plus supply purchases, result, as previously indicated, in the expenditure of about $85 million in the Republic. A sea level canal can be operated efficiently by 500 to 1,000 persons. Even if cash payments to Panama from the new canal were increased to the maximum feasible, it seems doubtful that these would equal current expenditures.

On all counts, therefore, it is clearly to Panama's interest and ours to settle current difficulties, to maintain the present canal for a reasonable period, and to agree now to a new undertaking subsequently.

Once this is recognized, the United States and Panama should formulate a realistic, sustainable long-range policy and should amend the existing treaties to incorporate the following:

1. The United States should agree to complete canal improvements costing a total of $75 million, thus enabling the canal to handle most traffic for another 25 years or more. The United States has spent nearly half this sum on the required improvements and hence should complete them within the next 2 years.

2. The canal tolls should be raised and Panama's annuity should be substantially increased. Present tolls are slightly less than those of the Suez Canal, a sea-level waterway. An increase of 100 percent would not drive traffic away, for it would still be cheaper for ships to traverse the canal than to take the long route around the tip of South America. But such a radical increase would do irreparable harm to our relations with many nations and, in any event, is not needed. A 30-percent increase is justified and would raise income by about $20 million a year now, and more as traffic increased. This would enable us to increase the annuity to Panama to $15 million a year and still permit us to take another indispensable action.

3. The Canal Company should begin a program to amortize the $460 million debt to U.S. taxpayers. This can be accomplished in a 25-year period by allocating a portion of the income from the toll increase and, after the canal improvements indicated in (1) above have been completed, assigning to the amortization account the $16 million spent annually in recent years on canal improvements.

4. To the degree that it is possible without hampering the operation of the canal, the United States should rotate its civilian personnel in the Canal Zone. Many of the present zonians have lived in the zone most of their lives and they and their children consider it as much a part of the United States as is Texas. The more deeply entrenched U.S. citizens become in Canal Zone life the greater the danger that incidents like those instigated by 17-year-old school boys last January will recur.

5. The present program to train Panamanians for more responsible and higher paying positions in the canal operation should be intensified. The wages of unskilled, semiskilled, and related positions in the zone are from 30 to 100 percent higher than wages of identical work in the Republic, but even so the rates are very low compared to U.S. wages; about 95 percent of these low-paying jobs are filled by Panamanians, only 5 percent by others.

The professional and related posts carry U.S. rates, many times greater than those of Panama. In April 1960 President Eisenhower ordered that the apprenticeship program for Panamanians be stepped up, for only 5 percent of the high posts were filled by Panamanians, 95 percent by Americans. Since then, the number of Panamanians being paid at U.S. base rates has tripled. Insofar as possible, the United States rapidly should train Panamanians to handle the technical operating tasks on the canal, thus eliminating the charge of discrimination.

6. The United States should agree that if Panama will vigorously and promptly pursue the reforms agreed to in the Act of Bogota of 1960 and the Charter of Punta del Este of 1961, the United States will undertake a very generous aid program within the Alliance for Progress to improve Panama's agricultural and industrial capacity, its schools, hospitals, and highways, and in general to raise the living standards not of the elite but of the masses. It should be clearly understood that we will abide by the promises made by the American nations in the Alliance for Progress, and that hence public and private loans and technical assistance will not be forthcoming if the land reform, tax reform, honest tax collection, and emphasis on self-help projects in education, health, and low-cost housing are not vigorously fostered. For aid that merely strengthens the prevailing order is grist for the Communists, maddening to the masses, and unhelpful to mutual relationships.

Considering that the Republic of Panama is only half as large as the State of Florida with about the same number of people as the city of Cleveland, it is difficult for many to understand why Panama, with U.S. assistance, has not been able to overcome its economic and social problems. The answer, at least in part, is that Panama—like other Latin American nations—suffers the evils of oligarchy. A few families own most of the resources and control the Republic politically and economically. This has resulted in gross neglect of the Republic's natural and human resources. While arable land lies uncultivated, Panama imports food and its people are hungry. Although many areas of Panama are without electricity, less than 2 percent of the nation's rich hydroelectric potentiality has been developed. Industry has been slow to develop and is characterized by monopolistic practices, low output, and a tendency to seek quick and excessive profit. Low income tax rates and laxity in collections contribute to the Government's declining financial position; the public debt is rising, as is the balance-of-payments deficit.

On the other hand, the United States has given only limited aid to Panama and that has been poorly administered. While our aid to Panama was increased under the Alliance for Progress, a House Foreign Affairs subcommittee in a report issued last December sharply criticized the entire aid program to Panama and charged U.S. agencies with poor planning, lack of coordination, and unwise use of funds.

Panama recently has taken the first commendable steps in laying the legal base for agricultural and tax reform. The United States should support the implementation of these measures and encourage the development of other reforms as a prerequisite to substantial U.S. aid. In addition, we should do everything possible to promote private investment in Panama, provided Panama enacts legislation which will assure it of nondiscriminatory treatment. U.S. private investment in Panama today amounts to half of the total private capital invested in Panama.

A stepped up aid program, keyed to social reform, added to increased income which Panama will obtain from the operation of the canal as herein suggested, will help overcome the poverty, injustice, illiteracy, and unemployment, that now stand in stark contrast to the prosperity enjoyed by U.S. citizens, who live on a strip bisecting their country. To the degree Panama improves its production, social justice, and living conditions and reduces relatively its economic dependence on the present canal, current hostilities in Panama will wane and thus gradually will be laid the groundwork for the construction and success of a new canal.

7. If the foregoing changes are mutually acceptable, the United States and Panama should agree that a wholly new treaty replacing all existing ones, will be negotiated in good faith not later than 25 years hence or sooner by mutual consent. By then, the canal debt should be approaching full amortization, and years of experience under the new arrangements proposed here will serve as a guide. The major points to be negotiated at that time will be the conditions under which a new sea level canal is to be built and operated. Should it be operated by the United States? By Panama? By a joint corporation? By an inter-American or international agency? Should financing be private or public? If any type of joint or international agency is agreed to, how shall financing costs be shared? What will be the rates of the sea level canal? How should the profits be divided?

When a new canal has been built, when the present treaties have been abrogated, and thereafter when Panama assumes control over the present Canal Zone, the United States might well donate the homes, schools, hospitals, and other facilities in the zone to the Republic, perhaps as a center for education, research, and medical services.

Quite apart from treaty amendments, after the United States has appointed an Ambassador, he should be given sole authority to speak for the United States in Panama. Our difficulties in Panama have been greatly aggravated by having a duality of representation in the Republic. The Governor of the Canal Zone, who is also President of the

Canal Company, reports through the Secretary of the Army to the President, but feels his greatest obligation to be to the Congress. He has greatly influenced U.S. affairs by dealing directly with the Government and people of Panama on major policy issues. Sometimes he and our Ambassador have disagreed, and have carried their disagreements to the highest levels of the Panamanian Government. The United States desperately needs a single voice in Panama, and it should be the voice of the Ambassador, speaking for the President of the United States. The Governor of the zone should confine his activities to the administration of the zone and the operation of the canal; if his presence in negotiations with Panama is needed he should serve only as a technical adviser to the Ambassador.

VI

THE GROUNDWORK FOR COOPERATION

These, then are specific steps which the United States and Panama can take to build good relations. They reflect the belief that the interests of Panama and the United States can be harmonious; both nations have a common and predominant interest in maintaining an international waterway and must cooperate in every way to insure success. The actions proposed here are the key elements of a policy which recognizes that the status quo is ultimately impractical and indefensible. An unyielding adherence to agreements made in earlier times under different circumstances can only lead to more difficulties and probably to irreconcilable trouble. If the changes proposed here are to be made, however, it must be clearly understood that they will be made not because the treaties are illegal, but because we believe that such changes are in the best interest of the United States, Panama, and the free world.

The leaders and the people of both nations must keep in mind that the common goal is to maintain the Panama Canal for a mutually agreeable number of years and then to replace it with a new sea level canal. Misunderstanding or stubbornness or false nationalistic pride must not divert us from this goal. During the years preceding the negotiation of a new treaty, the United States can do much to help solve the immediate problems in Panama, and to build the reservoir of good will so essential to future progress. Panama, too, must consider carefully its actions during the intervening years and must assess the future realistically. She must live up to her Alliance for Progress commitments and build a modern democracy free of both communism and oligarchic control. If the two nations can join together in solving the problems that have plagued them for half a century, there is every likelihood that a new Panama Canal will be built and it will symbolize inter-American cooperation and progress.

(Not every member of the Critical Issues Council or Republican Citizens Committee necessarily subscribes in every detail to all the views expressed. The council endorses its papers as a substantial contribution to public awareness of current critical issues and to the presentation of positive solutions.)

DEATH OF EZRA J. CRANE

Mr. FONG. Mr. President, I ask unanimous consent that I may make a brief statement to the Senate, notwithstanding the germaneness rule.

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

Mr. FONG. Mr. President, a strong clear voice in Hawaiian journalism has been stilled. The passing of Ezra Jennings Crane on March 29 on his beloved Island of Maui is mourned by the hosts of friends he made during an active, productive lifetime of service to country and community.

At the time of his death, he was vice president and general manager of the Maui Publishing Co., Ltd., and editor of the Maui News. He had only recently been elected the first president of the newly formed Hawaii Newspaper Publishers Association and was director of the west coast region for the National Editorial Association. His newspaper was a longtime member of the California Newspaper Publishers Association.

Ez Crane's interests and talents encompassed much more than the field of newspaper publishing. Editorials in the two leading Honolulu dailies, eulogizing him, give some idea of the scope of his wide-ranging activities. Hawaii has indeed lost a most valuable citizen and an outstanding newspaperman.

I ask unanimous consent to have printed in the RECORD, following my remarks, the text of the two editorials from the Honolulu Star-Bulletin and the Honolulu Advertiser.

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

[From the Honolulu Star-Bulletin]

EZRA J. CRANE

If ever a man had a lust for life, Ezra J. Crane did.

Enthusiasm and energy, coupled with native ability, carried him to success as a newspaperman and into many areas of community service.

Ebullient and outgoing, he enjoyed being with people, and inspired them to join with him in countless enterprises, ranging from a boisterous noonday cribbage session to the organization of Maui's first Rotary Club and campaigns for the Polio Foundation.

When he became interested in purebred dogs, it was natural that he should specialize in wire-haired fox terriers, a breed characterized by cockiness, pugnacity, and restless energy.

Many worlds knew Ez Crane. Communications, as a writer, editor, manager, and radio announcer. Sports, as a player, coach, official, and commentator. Politics, as a representative and as a behind the scenes mover.

Ez Crane wasn't one for doing things by halves. As a Boy Scout he made Eagle, and went to the first world jamboree. As an adopted son of Maui, he shamed the natives with the fire of his no ka oi spirit. In whatever he did, he sooner or later got to be president or chairman.

There was nothing very complicated about Ez Crane. When he had something on his mind, he said it, clearly and without equivocation, and let the chips fall where they may.

No one who met Ez Crane ever forgot him. In a career as turbulent as his, there were bound to be critics and detractors, usually found among those who had felt the sting of his trenchant editorials, but even they were forced to admire the power of his convictions and the forthright, honest way he had of expressing them.

Perhaps it is a cliche to say that Ez Crane became an institution during his lifetime. Nevertheless, the statement is true.

Others will move in to do the jobs that Ez Crane did, but none will do them with his inimitable style.

A part of Hawaii slipped into the past when Ez Crane's heart stopped beating on Easter Sunday morning.

[From the Honolulu Advertiser]

EZRA J. CRANE

The vital statistics are simple enough: Ez Crane was born in Honolulu, spent 40 years in the newspaper business, was a prodigious joiner and organizer and believed with all his heart that his adopted island of Maui, was, in truth, the promised land of milk and honey.

Yet that barely scratches the surface of this combination editor, politician, sports fan, civic spirit, and one-man fife and drum corps for the greater glory of Maui.

For Ez Crane gradually got to be an institution, and when you thought of Maui, chances are you thought of Ez. Between them, he and "Mayor" Eddie Tam pretty much personified the Valley Isle.

Two things stood out most about Ez. One was his vitality, his enormous energy. He poured his strength into many causes and organizations, yet always had something left over for the next thing to come along. He made you think a little of Teddy Roosevelt; he had some of T.R.'s boyish enthusiasm and rambunctiousness.

The other thing about him was his delightful capacity for laying it on the line. He could be as blunt as a blow from a billy club. You always knew where you stood with Ez. When he had something to say—which was usually—he said it, and at the top of his voice.

This, with his sometimes head-down stubbornness, landed him in fights and arguments that might have been avoided by a little diplomacy. But Ez wasn't really happy unless he was in the middle of a scrap. He loved it.

We've had a few run-ins with him ourselves. On more than one occasion Ez was overwhelmed by the compulsion to give Honolulu journalism an editorial dressing down in the Maui News. While we didn't agree with what he said on these occasions, we certainly were enchanted by the way he said it: loudly, forcefully, uncompromisingly.

Ez started in journalism in 1926 on this newspaper. He wrote sports and politics for the Advertiser for 12 years, and while he was still a staff member in 1933 he was elected to the Territorial Legislature. (His father, Charles, was mayor of Honolulu.)

Three years later he moved to Maui as general manager of the twice-weekly Maui News, and for more than a quarter of a century he was Maui's devoted flag waver. He made an art form out of boosterism. He elevated local pride to a sort of religion.

Once, when the Kaanapali resort development was still in the planning stage, someone suggested it be called a second Waikiki.

Ez exploded. "I'm going to write an editorial," he snorted. "Let's call it the first Kaanapali. We don't want another Waikiki here. This is Maui."

The list of Ez Crane's good works is long. He was a skilled and devoted newspaperman who won national recognition for his paper. He was active in politics. He was one of Hawaii's first Eagle Scouts and all his adult years he worked hard for scouting. He founded Maui Rotary. He was a director of Maui County Fair. He reared a son and a daughter. That's just a start on the things that kept Ez Crane busy every day of his life.

Through it all he went clamorously along the way, shouting and laughing and fighting, having himself just one whale of a time—and making life interesting for everyone around him. Now he's dead. Hawaii has lost a good newspaperman, a good citizen, a good man.

ORDER OF BUSINESS

Mr. CLARK. Mr. President, without losing my right to the floor I ask unani-

mous consent that I may yield, first, to the senior Senator from Minnesota.

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

Mr. HUMPHREY. I ask unanimous consent that the rule of germaneness may be waived in connection with what I am about to say.

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

THE PRESENCE IN THE CHAMBER OF SENATORS McGEE, BREWSTER, AND JACKSON

Mr. HUMPHREY. Mr. President, first I wish to note the fact that the Senator from Wyoming [Mr. McGEE], the Senator from Maryland [Mr. BREWSTER], and the Senator from Washington [Mr. JACKSON] entered the Chamber immediately following the tabulation and announcement of the quorum.

THE PUBLIC ACCOMMODATIONS ISSUE IN MISSOURI AND THE PRIMARY RESULT IN WISCONSIN

Mr. HUMPHREY. Mr. President, I commend the able Senator from Missouri [Mr. LONG] for his statement today. It gives reassurance to all of us who are involved in the national battle over the civil rights issue. It is heartening to note that a city in Missouri of the size of Kansas City has taken action to broaden its civil rights ordinance and its civil rights program.

We always hear a great deal when there is some defeat along the way, but we did not notice any headlines this morning that told us about the amazing victory that took place in Kansas City.

A plane had some trouble and skidded off the runway at Kennedy Airport in New York City, and that fact was duly noted in the newspapers. I did not notice, however, in the same newspapers the fact that several hundred planes landed and took off safely.

Good news is rarely reported, but tragedies are always reported. The good news in Kansas City did not receive the space it ought to have received. When there is a defeat somewhere along the line, however, there seems to be a kind of sadistic pleasure in reporting that fact.

Mr. President, I wish to make a brief comment about Wisconsin. Having been there and knowing the difference between victory and defeat, I should like to speak very briefly on that subject. I notice that Mr. Wallace has claimed that he achieved some kind of victory in Wisconsin. I have counted votes in Wisconsin before. So far as Mr. Wallace is concerned, his effort was a flop: F-L-O-P. His campaign was a fizzle: F-I-Z-Z-L-E. He received less than 25 percent of the vote.

In every State where the voters take an interest in an issue, one can always count on a vote of 25 percent of the people who wish to register some kind of protest about something. Every politician knows it.

If a man who makes a sizable campaign effort, with some national attention being given to his campaign, cannot register more than a 25-percent vote, he should climb into the tomb and seal it.

What happened in Wisconsin was an overwhelming affirmation of civil rights. What happened in Wisconsin was an overwhelming victory for people who believe in the implementation of the Constitution of the United States. If anyone can make a 23-percent vote look like a victory, we have lost representative government.

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

Mr. HUMPHREY. I yield.

Mr. PASTORE. I believe a very interesting and emphatic point should be brought out, with respect to the percentage of whites as against the percentage of colored who went to the polls and scored this victory for the civil rights cause in the State of Wisconsin.

Fundamentally, we must bear in mind that this is not an issue that the colored were deciding for themselves. This is an issue in connection with which the white must yield in order to bring about equal opportunity. If we gage the number of colored people who participate in a primary, as against the number of white people, and the fact that 80 percent of the people said, "Let us have civil rights," I believe we get the true story.

Mr. HUMPHREY. The Senator from Rhode Island, in his inimitable fashion, has analyzed the situation to such a degree that no one can deny its validity. The simple truth is that what happened in Wisconsin is what we frequently see happening in many parts of the world: Civil rights, si; Wallace, no. It is that simple.

I commend the people of Wisconsin. I congratulate the people of Wisconsin. I congratulate Republicans and Democrats alike for standing up and letting themselves be counted. I congratulate them because, Democrat and Republican alike, in the face of unlimited propaganda they stood their ground and gave their vote for constitutional government and for civil rights and civil liberties, by better than a 4-to-1 margin.

Any time I can get a 4-to-1 margin, I do not mind if the opponent claims he has had a victory. I know that he will never get into office.

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

Mr. HUMPHREY. I yield.

Mr. DOUGLAS. The victory in Kansas City is all the more impressive in view of the fact that Missouri is, in a sense, a border State. At the time of the Civil War there was some doubt as to whether it would go with the Confederacy or stay with the Union. I believe that the achievement in Missouri is especially noteworthy in view of this fact.

Mr. HUMPHREY. The Senator's recitation of historical facts about our country is true and impressive. There was an amazing victory in Kansas City. It is one that should be heralded throughout the Nation. It is only a portent of things to come.

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

Mr. HUMPHREY. I yield.

Mr. MORSE. I was born and raised in Wisconsin. I lived through that great progressive era. I am glad to see that the spirit in Wisconsin is clearly reviving. I am glad that the impressive philosophy has again come to represent the point of view of an overwhelming majority of the American people.

I wish to take a moment to say to the Senator from Minnesota [Mr. HUMPHREY], the floor leader of the bill, that I am greatly concerned today. I hope there is no justification for my concern and my feeling of depression about the procedure in connection with the bill as I read it in the press.

I am concerned about what I have been reading in the press relating to possible amendments to the bill in the field of fair employment practices and in the field of public accommodations. These articles are to the effect that perhaps there will be an acceptance of some of these watered-down amendments on the part of the administration.

The amendments I have read are certainly watered-down amendments, some of them cleverly worded, in terms of procedure. However, as Senators know, procedure determines substance.

I think we ought to say to the administration, "You need liberal votes, too." The votes of the liberals in the Senate who bled, figuratively speaking, for civil rights had better be taken note of by the administration.

I now propose, at a much earlier date than I thought I would, to read to the Senate the great speech at Gettysburg, Pa., by a President of the United States. I thought I might wait until Memorial Day. But I am not going to wait that long. When I read the speech, I said it was the greatest speech made on the subject of civil rights in the past 100 years. I want to refresh the memory of the Senate and the Nation about that great speech.

I say to the Senate this morning that there cannot be any justification of any compromise in a civil rights bill that gives to the Negroes of this country less than complete deliverance of the Constitution of the United States. The amendments we have been reading about in the press, concerning the watering down of the fair employment practices section of the bill and the public accommodations section of the bill, would not result in a full deliverance of the Constitution of the United States to the Negroes.

If that is the type of bill that is presented for a final vote in the Senate, count the Senator from Oregon out. I do not intend to vote for anything less than what the Negroes of this country are entitled to—full deliverance of the Constitution of the United States at long last to the Negroes of America.

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

Mr. MORSE. I yield.

Mr. HUMPHREY. I should like to complete my statement. I assure the Senator from Oregon that he is a little premature in his concern. There is no intent on the part of the Senator from Minnesota to have a watering down of the bill.

Mr. CASE. Mr. President, I concur entirely in what the Senator from Oregon has said. I have not studied the specific amendments, and I do not comment on them at this time; but I do say—and I know the Senator from Oregon feels the same way, and I am sure many other Senators feel the same way—that I am tired of having the initiative in connection with the civil rights bill in the hands of those who are opposed to civil rights.

Therefore, if it is necessary—as it may be—for those of us who favor a strong civil rights bill to take the position, from now until kingdom come, that we will not go along with cloture or with anything else other than an effective bill, I believe we should make that position clear.

Mr. JAVITS. Mr. President, I thank the Senator from New Jersey for his statement of policy, which I believe is characteristic of the proponents of civil rights.

Mr. CASE. I thank the Senator from New York.

ORDER OF BUSINESS

Mr. HUMPHREY. So that there may be an understanding of our procedure today, I have been asked by a number of Senators about the possibility of a quorum call between the hours of 12 and 1. A number of Senators have accepted the privilege of escorting the cherry blossom princesses from their States to the traditional function in the Nation's Capital. It is a part of the community life of the Nation's Capital.

There will be no quorum call between the hours of 12 and 1 if it can possibly be avoided. We shall all cooperate. The Senator from Louisiana [Mr. ELLENDER], to whom I have spoken, has indicated his desire to cooperate. Therefore, Senators should be free to fulfill their engagements during that time.

Second, there will be a recess from 2 until 4, to pay our respects to the late and beloved General MacArthur.

The Armed Services Committee will gather in the Chamber at 2:45. I hope that every Senator will come to the Chamber, at about that same hour. I ask that the staff of the Senate notify Senators to that effect.

We shall march as a body to the rotunda and pay our respects and honor to the great general at the services in the rotunda. The Senate will return to its Chamber, not later than 4 o'clock, at which time the Senate will reconvene under a previous order.

The entire table of events or the program is listed on page 7118 of the CONGRESSIONAL RECORD. I urge that Senators be informed so that they may comply with the schedule as printed in the RECORD.

I thank the able Senator from Pennsylvania for yielding to me.

Mr. CLARK. I yield to the Senator from Louisiana.

THE PRIMARY RESULT IN WISCONSIN

Mr. ELLENDER. Mr. President, I cannot say that I am surprised at the statements that have been made in regard to the election in Wisconsin. But if Senators were honest with themselves, none of them expected that Wallace would get as much as 25 percent of the vote in Wisconsin.

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

Mr. ELLENDER. I yield.

Mr. HUMPHREY. I said yesterday that I expected Mr. Wallace to get 30 percent of the votes. I have been in enough elections in the Midwest to know that when one puts one's name on a party label, he gets 30 percent, dead or alive.

Mr. ELLENDER. If the present trend continues throughout the United States, the Democrats may be in for trouble this coming November.

Mr. MUSKIE. Mr. President, I suggest that the way to get a Wallace-type victory is to make statements for weeks that one does not expect to get more than 1 percent of the vote. Then, if a person gets 2 percent, he has a magnificent victory.

In the State of Maine, where it is difficult for a Democrat to win, a candidate still must get 50 percent of the vote, even though our enrollment is less than one-third.

Mr. President, I ask unanimous consent that I may speak briefly at this point.

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

VIEWS ON FOREIGN AID BY FRANK M. COFFIN, U.S. REPRESENTATIVE TO THE DEVELOPMENT ASSISTANCE COMMITTEE

Mr. MUSKIE. Mr. President, the President has submitted to Congress his annual message on our international assistance program, commonly referred to as foreign aid. One of the certainties of the year will be the inevitable attack on the aid program, the controversy over its desirability, and the relentless effort to reduce a program already pared to the bones.

Much of the debate over the aid program is shrouded in confusion and doubt. Public understanding of its objectives, its methods, and its contributions to our foreign policy is limited. Too often the discussions of foreign aid shed more heat than light.

This year, fortunately, we have an opportunity to learn more about international assistance from one of its most articulate advocates. Our U.S. Representative to the Development Assistance Committee, Frank M. Coffin, of Maine, has written a wise and perceptive guide to the intricacies of this vital element in our national policy. In his book, "Witness for Aid," to be published tomorrow by Houghton Mifflin, Frank Coffin has opened the way for a more adequate understanding of oversea development and, hopefully, for more adequate support of the Agency for International Development.

Frank Coffin has a unique combination of talent and experience from which to write this book. Trained as a lawyer and schooled in the hard ways of political campaigns as a State committee chairman and candidate, he was elected and reelected to the House of Representatives from Maine's Second District in 1956 and 1958. In the House he served as a member of the Foreign Affairs Committee and the Joint Economic Committee. He made a mark as an authority on United States-Canadian relations, the European Economic Community, and the mutual assistance program.

In 1961, President Kennedy appointed him as Director of the Development Loan Fund. Following the reorganization of the mutual assistance program he was appointed Deputy Administrator of the Agency for International Development. President Johnson appointed him to his present post where his responsibilities will include an effort to encourage other nations to increase their contributions to the development of the less favored countries of Africa, the Middle East, and Asia.

I have known Frank Coffin for over a decade. Our formal political association began just 10 years ago today when I announced my candidacy for the Governorship of the State of Maine. Frank had just accepted the post of State chairman of the Democratic Party of Maine. He was then, as he is today, a persuasive, thoughtful idealist with a sense of the practical limitations of life and a determination to overcome those limitations wherever possible. In 10 years his powers have grown, his perceptions have deepened. His is a voice worth heeding.

In Frank Coffin's words:

> "Witness for Aid" is not a book about the dark side of the moon. It is a book about a relatively unknown side of the United States—a side far more visible to two-thirds of the world than to its citizens at home. For this is about our already historic and bold venture in helping the peoples of the developing nations.

Our development assistance program is too important to be shaped in the half-light of suspicion, misunderstanding, and uninformed debate. I hope all Senators will, before the debate on aid begins, read Frank Coffin's book. They will enjoy its style and will remember its message.

CIVIL RIGHTS ACT OF 1963

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

Mr. CLARK. Mr. President, before discussing title VII and making one of the two major speeches in support of that title for the proponents—the other one will be made later today by the Senator from New Jersey [Mr. CASE], I wish to discuss briefly the procedural morass into which the Senate has wandered; and I shall point out how difficult it is to have meaningful and expedi-

tious debate on the vitally important subject of civil rights.

In an editorial entitled "Helpless Senate," published on March 19 of this year in the Washington Post, it was stated:

> The archaic nature of the Senate's rules has seldom been more pointedly demonstrated than by the current civil rights debate.

That statement is, of course, true; but I should like to point out that we have not been engaged in a debate at all. A debate, in the ordinary sense of that word, involves the clash of opinions, back and forth, on the provisions of a bill, on issues, and on principles. To be sure, there has been some such mild debate from time to time, since we indulged ourselves in the fiction—for the first time, on March 9—that time did not run; that, in fact, for the Senate, time stood still.

What I have just said is clearly indicated by today's Senate Calendar, which indulges in the fiction that this is still the legislative day of March 30; and on March 29 we were indulging in the legislative fiction that that was the legislative day of March 9.

All that is merely a symptom of a deeper malaise which affects the Senate. We have not been engaged in debate—except for a very few hours of our sessions—since March 9. The rest of the time has been devoted to the delivery of long and, I fear, quite dull speeches, such as this one will soon turn out to be, and in placing in the RECORD, by unanimous consent, a great mass of even duller material. These speeches have been made to a practically empty Senate Chamber, because of our ridiculous quorum-call rule.

I shall illustrate what I mean by that statement: Shortly after 10 o'clock this morning, the absence of a quorum was suggested. Under the rule, the clerk was required to call the roll. He called the roll once, but 51 Senators did not answer to their names. So three bells were rung; and then the clerk called the roll a second time. Largely because of the exhortations delivered by the majority leader and the minority leader, as a result of the spectacle the Senate made of itself on Saturday, when it could not obtain a quorum, by the time the roll had been called the second time, the clerk was able to tell the Presiding Officer, "Mr. President, a quorum is present."

Of course, a quorum was not present; but that was part of the polite legislative lie in which we indulge ourselves—more or less like ostriches with our heads in the sand, denying the truth. At the time when the Presiding Officer announced—incorrectly, but, of course, sincerely and in accordance with one of our most hallowed traditions—"A quorum is present," there were in the neighborhood of 25, rather than 51, Senators on the floor.

I am now speaking at a time when, in the Senate Chamber, there are 11 Senators—an unusually large number of Senators to be present, I may say, during the civil rights debate. Three of those Senators are what might be termed "captive Senators." First, we must have a Presiding Officer present; so the able and distinguished junior Senator from Connecticut [Mr. RIBICOFF], complying with his obligation as one of the more recently elected Members of this body, although the fact that he was more recently elected has nothing to do with his high ability—has to be here, although I know he wishes he did not have to be here. Next, the junior Senator from Missouri [Mr. LONG] is also a "captive Member"; he is the acting majority leader. I know he wishes he did not have to be here, but he has to be.

The Senator who probably wishes more than anyone else now in the Chamber that he did not have to be here is my very able friend, the senior Senator from North Carolina [Mr. ERVIN], who has to be here to help the opponents of the bill be sure that the proponents do not "pull any parliamentary tricks."

Mr. ELLENDER. Mr. President, I shall be here, too.

Mr. CLARK. The Senator from North Carolina [Mr. ERVIN] is ably abetted by one experienced in the ways of the filibuster—the able senior Senator from Louisiana [Mr. ELLENDER], my good friend, in whose State I pay taxes. However, he had arranged to go off in due time to the Cherry Blossom Festival with the understanding on the part of the proponents of the bill that we would not ask for a quorum call while he and many other Senators were absent.

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

Mr. CLARK. I yield.

Mr. ELLENDER. I did that to please others, not to please myself, because I shall be in the Senate Chamber.

Mr. CLARK. I am sure that the Cherry Blossom Queen from Louisiana will be greatly disappointed if the Senator from Louisiana is not present at the festival. I know that she will not be much pleased if the distinguished Senator from Louisiana is not present to give her the customary salutation.

Mr. ELLENDER. I have sent a good substitute—a nice looking young fellow.

Mr. CLARK. No one could be better looking or more handsome than my friend from Louisiana.

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

Mr. CLARK. I yield to the distinguished Senator from North Carolina with the understanding that I do not lose my right to the floor. I shall not even require that the Senator ask me a question.

Mr. ERVIN. I shall ask a question. Am I to construe the remarks of the Senator from Pennsylvania to indicate that he deplores the apparent boycott of the Senate by Members of the Senate?

Mr. CLARK. No. What I deplore is the existence of quorum calls. They are one of the most ridiculous monstrosities, among many, which afflict us in this body and make it impossible for us to do our work.

Mr. ERVIN. Does the Senator from Pennsylvania not think there is something in the nature of a boycott in that Senators do not come to the Chamber to hear him speak or to hear me speak?

Mr. CLARK. I should like to think that the seats in the Senate would be crowded by Senators who would identify my friend from North Carolina as the spiritual descendant of John C. Calhoun and me as the spiritual descendant, not of Simon Cameron or Daniel Webster, but perhaps some learned Senator from the North who stood up to vote for civil rights—perhaps Charles Sumner would be a good prototype. But I fear that the Senator from North Carolina and I would be deluding ourselves if we indulged ourselves in that type of euphoria.

Mr. ERVIN. Does the Senator from Pennsylvania not feel that perhaps some Senators, particularly the proponents of the bill, are reluctant to come to the Senate Chamber and hear those of us who oppose the bill express the truth in connection with the bill, for fear that receiving the truth might cause them to change their minds?

Mr. CLARK. Senatorial courtesy prevents me from making a candid answer to the Senator's question.

Mr. ERVIN. If I could obtain unanimous consent to suspend rule XIX of the Senate, would the Senator answer my question?

Mr. CLARK. I should be strongly tempted to do so, but I would not yield for that purpose.

Mr. ERVIN. Will the Senator permit me to observe that I believe a boycott is at least as reprehensible as a filibuster, and in no sense approaches the dignity or sanctity of an educational debate?

I thank the Senator.

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

Mr. CLARK. I am happy to yield to the Senator from Maine. I shudder to think what is coming.

Mr. MUSKIE. The RECORD should reflect the fact that the southern colleagues of my good friends from North Carolina and Louisiana are not present in the Chamber to hear the speech of the distinguished Senator from Pennsylvania. I wonder if, by the same reasoning, we could conclude that they fear they might be persuaded by the distinguished Senator that his views are correct.

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

Mr. CLARK. I yield.

Mr. ERVIN. I should like to point out that they are absent for an entirely different reason. They already have possession of the truth, and they are now pondering some way in which to express the truth more eloquently in the hope that the Senator from Maine and the Senator from Pennsylvania will be converted to the right side of the debate.

Mr. CLARK. I suspect that their absence may be due more to the interest of a large number of our colleagues from the Southern States in saluting the cherry blossom queen than from any distaste about listening to the profound truths which the Senator from Pennsylvania is about to elucidate.

Mr. President, I proceed to the procedural morass in which we find ourselves.

I remind Senators how absurd it is to have quorum calls, and express the hope

that after this "debate" is over and the bill disposed of one way or the other, we can turn our minds to the procedural reform which, in my judgment, is so essential to enable not only the Senate but also the House of Representatives to perform their appropriate constitutional functions—functions which I fear we have been singularly inept at performing for many years.

I know it is rather radical to suggest the elimination of quorum calls, but I ask Senators whose minds are not frozen in the past—and, of course, that includes all 99 of my colleagues—to take a look and ask, What useful purpose does a quorum call serve? Why not get rid of it? Why do we not merely do business prior to a vote? Of course, when there is a vote, there must be 51 Senators voting. We do business all the time with 3 or 4 Senators on the floor. All a quorum call does is to annoy Senators, and bring them to the Chamber, if it is a live quorum, when we could be spending our time to better effect elsewhere. I suggest that it serves no useful legislative purpose, and that we would be well advised to get rid of it in the interest, first of the more expeditious conduct of the business of the Senate without sacrificing in any way the desirability of meaningful debate; and, second, to enable Senators to get a few more minutes, and occasionally a few more hours, of useful service into their already crowded days, which useful service tends to be conducted, not on, but off the floor, in a great majority of cases.

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

Mr. CLARK. I am happy to yield to my good friend from Texas for a question.

Mr. TOWER. Does the Senator from Pennsylvania contend that the quorum call serves absolutely no useful purpose?

Mr. CLARK. I do.

Mr. TOWER. What sort of device could be used for delaying proceedings, for the change of speakers, or for warning the Senate that some business is about to be considered? What other device would be used?

Mr. CLARK. I suggest that the Senate get into the habit of having short recesses when the majority leader and the minority leader wish to consult, when it is desirable to call a Senator to the floor of the Senate to make a speech, or when, for any other reason, it is not a good idea to continue the Senate in session.

Such a procedure would be more candid. It would be more frank. The Senate could continue to have the bells rung twice. That would give notice to Senators either that some Senator was about to make a relatively important announcement on the floor of the Senate and that Senators had better come forward—then after a 5-minute recess the statement could be made—or that perhaps a premonitory warning has been given of a vote about to come, so Senators would not be rushed into a rollcall vote.

Perhaps a request for the yeas and nays would result in the ringing of the bells. I have no doubt that there are many procedures by which we could provide for the necessities which the Senator from Texas has quite properly stated, without going through the utter nonsense of calling the roll twice, then pretending that the Sergeant at Arms is leaving his office to request the attendance of absent Senators, when everyone knows he is not, and finally coming to the conclusion on Saturday morning—which we knew Friday night—there were only 41 Senators in the city; so what was the use of continuing the farce any longer?

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

Mr. CLARK. I am happy to yield to my friend from Rhode Island. The Senator is one of the imaginative Members of the Senate who saw the desirability of having some kind of rule of germaneness.

Mr. PASTORE. I did not rise for the purpose of receiving a compliment. But I am grateful for it. I rose for the purpose of trying to assist in the expression of these very imaginative ideas. They ought to be considered very seriously.

We ought to strive diligently in the Senate to eliminate all the procedures which have been instituted purely for the purpose of harassment and for the purpose of delay, because, as the Senator has brought out, I believe they impede the functioning of the Senate.

The idea of the Senator from Pennsylvania has merit. I would not be willing to go quite as far as he has suggested, for the reasons that have been pointed out by the distinguished Senator from Texas. But one thing we should consider is that the second call of the roll, which is now known as the live quorum, ought to be subject to cancellation by unanimous consent. We have sometimes actually worked ourselves into the position in which a quorum call has become "live," and we have not been able to bring 51 Senators to the Chamber. Sometimes we have waited for 3 or 4 hours to obtain a quorum. I remember at one time I was called in Providence to return to Washington by plane. I came in the door of the Senate Chamber, and I constituted, I believe, the 50th Senator to respond to the quorum call. Then my colleague, who was on the same plane, constituted the 51st Senator to respond. The only reason why the Senate needed a quorum was in order to recess. The Senate waited 4 hours to get enough Senators here merely to recess. How ridiculous can we be?

Mr. CLARK. Pretty ridiculous.

Mr. PASTORE. How ridiculous can we be? All I am saying is that even the second call, on a live quorum, ought to be subject to being called off by unanimous consent. It may be impossible, either because of the time of day or the time of week, to obtain the presence of 51 Senators. The leader of the party should be able to say, "I ask unanimous consent to cancel further proceedings under the quorum call." That is one point that should be given serious consideration, because once the quorum call becomes "live," it becomes an instrument of harassment.

Mr. CLARK. I thank the Senator for his comment. I agree with what he has said. If there were such a change, we would get out of the "batter's box" and perhaps take a step in the direction of first base. I would like to go all the way around the bases and score a run.

I ask the Senator, although I know he is pretty busy, as we all are, if he will not, before he is through with this cogitation, think through whether a quorum call serves any useful legislative purpose or whether we are not merely kidding ourselves.

Mr. PASTORE. The only argument I make is that there would have to be some other substitute to accomplish the purpose of a quorum call.

Mr. CLARK. Of course there would.

Mr. PASTORE. There might be a recess, but a recess might involve delay. I see no objection to a quorum call provided it is subject to revocation by unanimous consent, rather than the idea that once the clerk has gone through the roster of names once, and begins to call the names from the list again, it becomes a "live" quorum call which can go on ad infinitum until 51 Members come to the Chamber. Such a call cannot be canceled even by unanimous consent. That is where the harassment comes into the picture.

Mr. CLARK. Before we complete this discussion, let me ask the Senator what useful purpose there is in having the Senator from Rhode Island, the Senator from Pennsylvania, and perhaps other Senators leave their dinners, as happened last night, in order to walk in the Chamber door, hold up their hands so that the recording clerk may acknowledge their presence by nodding, and then walk out the same door and go back to dinner. This enables our southern friends, acting within their rights, to put us to harassment day after day and night after night, hoping to wear us down. They do it in a charming way and with fine manners and we, being good natured, do not become angry at them; but I think it is a ridiculous procedure to go through.

Mr. PASTORE. I agree with the point the Senator has made. Our friends ought not to be permitted to harass us. If any Senator wants to object to calling off a quorum call, he should be present in the Chamber to do so. But where there were three or four of the opposition, they would have to object if it took 4 hours. The minute they moved out the door, I would again ask unanimous consent. I would harass them as they are harassing me. If there is to be harassment, it ought to work both ways. I like to play a little, too.

Mr. CLARK. I hope my friend from North Carolina [Mr. ERVIN] will not be affronted if I say it requires only one of them to bring 51 of us back from our wives and children. It is the necessity for bringing 51 of us back that I object to.

Mr. PASTORE. If we are to suffer, let us all experience a little of it.

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

Mr. CLARK. I am glad to yield to the Senator from Illinois.

Mr. DOUGLAS. Is it not true that we have not seen anything yet so far as calling of quorums is concerned?

Mr. CLARK. I quite agree.

Now, Mr. President, in accordance with the ridiculous procedure under which we operate, I ask unanimous consent that, without losing my right to the floor, and in violation of the rule of germaneness, I may briefly yield to the Senator from Wisconsin [Mr. PROXMIRE].

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

Mr. PROXMIRE. I thank the Senator from Pennsylvania. What I am about to say is very germane to the subject matter under discussion.

Mr. CLARK. I am glad.

THE WISCONSIN PRIMARY

Mr. PROXMIRE. Mr. President, as is well known, my State had a very significant primary election yesterday. Some claimed the primary was a referendum on the civil rights bill. I think it was not; but the Wallace showing should not be a surprise to anyone who has followed the Wallace campaign in Wisconsin. It was heavily financed. Governor Wallace was on virtually every television station in the State making very persuasive and effective half-hour speeches. He had full-page advertisements in every newspaper in the State. He conducted a very strong campaign. Governor Wallace has an attractive personality. He campaigned not only against the civil rights bill but against strong central government. He made an appeal to many Republicans.

There is an easier crossover system in Wisconsin than there is in any State. Every voter is given two ballots, one a Democratic ballot and one a Republican ballot. He marks one ballot and throws the other one away. Nobody knows which one he marks. But the crossover was conspicuously evident. In what is probably the strongest Republican district in Wisconsin, the new Ninth Congressional District, which consists primarily of wealthy Republican suburban Milwaukee, and Waukesha, 52,000 voted for Democrat John Reynolds, 45,000 for Democrat George Wallace and only 33,000 for Republican John Byrnes, chairman of the Republican policy committee in the House and a very fine Republican.

This pattern was followed throughout Wisconsin. I estimate 80 percent of the Wallace vote was Republican.

In spite of the crossover, in spite of the very obvious invitation to vote against Governor Reynolds, the fact is that more than 3 out of 4 Wisconsin voters did not vote for Wallace. They voted for Republican JOHN BYRNES, who voted for the civil rights bill in the House, and they voted for Governor Reynolds, who forthrightly supported the civil rights bill.

I think it can be clearly shown that the vote against Governor Reynolds was not entirely a vote against the civil rights bill. In the same election, one of the questions on which the people of Wisconsin voted was whether or not there should be an increase in the gasoline tax to support a new highway program. The Governor spoke almost as much in favor of a "yes" vote on this referendum as he did on civil rights in his campaign. Yet that referendum, supported by Reynolds, was defeated by more than 6 to 1. This is only one indication of a number of tough, courageous, and very unpopular decisions that Governor Reynolds had the statesmanship to make.

I have been among the people of Wisconsin as much as anyone else. I was there last week. There was a protest that had nothing to do with civil rights by many Republicans and even by some Democrats against the Governor in this election.

I repeat, Governor Reynolds is a good Governor, a fine and courageous Governor, but he had made some very tough and unpopular decisions.

Mr. President, if the object of an election is to win elections, the object of primaries is to win delegates. There were delegates at stake in every one of the 10 congressional districts of Wisconsin. There were delegates at large at stake. Governor Wallace won not a single delegate, not one. He was defeated in every congressional district. He was defeated Statewide overwhelmingly by Governor Reynolds. Wallace got less than 1 out of 4 votes.

It seems to me that when a Governor comes into a State to run for delegates to a national convention, gets front-page news publicity, is on every television station, buys big newspaper advertisements, and then gets only 1 out of every 4 votes, his defeat in the primary is a big and emphatic defeat. That vote, in view of the controversial candidacy of Governor Reynolds, can be viewed as an affirmation and support for the civil rights bill, and not a defeat for it.

Governor Wallace did not just happen to enter in Wisconsin. He picked it very shrewdly indeed, knowing of the crossover system in Wisconsin and Governor Reynolds' problems.

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

Mr. PROXMIRE. I will with the permission of the Senator from Pennsylvania, who has the floor.

Mr. CLARK. Mr. President, I shall not object to yielding briefly to the Senator from North Carolina and the Senator from Wisconsin, but I should like to get on with my speech. I obtained the floor at 10:27. I have been fairly indulgent with my colleagues in yielding to them. But I will say that after a brief colloquy between the Senator from Wisconsin and the Senator from North Carolina, I shall not yield until I complete my speech, after which time I shall be glad to yield.

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

Mr. CLARK. I yield to the Senator from New Jersey as the acting minority leader.

Mr. CASE. If the Senator from Pennsylvania had not decided to do as he has just stated, I would have insisted on its being done by objecting to further yielding except for the current colloquy.

Mr. ERVIN. Mr. President, I should like to inquire if the Senator from Pennsylvania has agreed that I may ask one or two questions, for my enlightenment, of the Senator from Wisconsin.

Mr. CLARK. Would the Senator be willing to confine his questions to the old 3-minute limitation?

Mr. ERVIN. I think perhaps I can do that.

I should like to ask the Senator from Wisconsin if he did not see many statements in the newspapers to the effect that the vote in Wisconsin as between Governor Wallace and Governor Reynolds would be a vote on the civil rights bill—in effect, a referendum on the civil rights bill?

Mr. PROXMIRE. Many such statements were made. The Senator is correct. In part, it was. A part of the vote for Governor Wallace had nothing to do with the civil rights bill, however. I believe that is a significant point.

Mr. ERVIN. Did not Governor Wallace state over the television and other media of communications to the people of Wisconsin that his purpose was to provide a referendum on the civil rights bill, rather than to get the delegates from Wisconsin on his side for the presidential nomination?

Mr. PROXMIRE. Governor Wallace said that his purpose was to show opposition to the civil rights bill, but he also said—and he emphasized it strongly—that he was against central government and for States rights. In the primary campaign, he said the issue was not the civil rights bill, but States rights against big, central government. This has strong appeal in my State.

Mr. ERVIN. I should like to inquire of the Senator from Wisconsin if, in times past, the political leaders in Wisconsin have not been advocates of a civil rights bill, and if this is not the first time that the people of Wisconsin have had any opportunity to express any opinion respecting a civil rights bill.

Mr. PROXMIRE. No, indeed. Civil rights legislation has been at issue in the State for a long time. We have a stronger public accommodations law than is provided in the bill now before the Senate. We have a stronger FEPC than is now provided in the bill before the Senate. All of that was debated and discussed long ago. They were issues in the election when they passed. The public accommodations law was enacted in 1895, at which time the people of the State of Wisconsin had an opportunity to discuss the issue. FEPC was passed in 1945, and I recall that was discussed in Wisconsin.

Mr. ERVIN. My question was, Have not the political leaders in both the two major political parties in the State of Wisconsin been advocates of civil rights on a Federal level?

Mr. PROXMIRE. That is correct, with the exception of the Representative from the Sixth District, who strongly opposed the civil rights bill in the House, and voted against it and made it an issue in his district. Notwithstanding that fact, Governor Reynolds carried that district substantially. The combined vote of Governor Reynolds and Representative Byrnes was far more than that for Governor Wallace.

Mr. ERVIN. With the exception of that congressional district, is this not the first time in our generation that the people of Wisconsin have been given the opportunity to vote, either directly or indirectly, on the question of the desirability of having a civil rights bill at the Federal level?

Mr. PROXMIRE. I deny that the people of Wisconsin were voting directly on the civil rights bill. It might be said that they were voting indirectly. I say that they were not. I say that a great deal more is involved in the Governor Wallace vote besides the civil rights bill. This was not a simple and pure referendum on the civil rights bill. But if it were, civil rights won a resounding 3-to-1 victory and that is a respectable victory any time, any place, any where.

Mr. CLARK. Mr. President, I am afraid I shall have to——

Mr. ERVIN. May I ask the indulgence of the Senator from Pennsylvania to allow me to ask one more question? I shall then subside for the time being.

Does the Senator from Wisconsin contend that those who voted for Governor Wallace were people who favored the passage of the civil rights bill?

Mr. PROXMIRE. I say that some of those who voted for Governor Wallace were not very much concerned about the civil rights bill. They were protesting Governor Reynolds' other stands. They were Republicans who had crossed over. Some of those who voted against Governor Reynolds voted against the civil rights bill on the basis of a fantastic misunderstanding and misrepresentation, because Governor Wallace in his television campaign on the civil rights bill was making one misstatement and one inaccuracy after another. The people did not understand the bill. I am positive that if they had had an opportunity to have an equal opportunity to have the "pro" side of the civil rights bill presented, in full, in detail, Governor Wallace's vote would have been much smaller than it was.

Mr. ERVIN. I have always held the belief that the people of the State of Wisconsin were among the most intelligent people in the United States. I regret to hear the Senator from Wisconsin now indicate that they did not understand the proposal on which they were voting.

Mr. PROXMIRE. The people of Wisconsin are indeed the most intelligent people in the United States; and I am glad to hear a North Carolina Senator concede that but, at the same time, this is a complicated and lengthy bill which has been misrepresented in my State, on the floor of the Senate, and elsewhere. It is no miracle that there are many people in the State of Wisconsin who still misunderstand the bill. I shall quote one very brief example.

Governor Wallace erroneously said over and over again that if the bill should pass, students would be transported by bus out of white schools into areas where they would have to attend schools overwhelmingly Negro.

The bill specifically provides that this will not be considered a part of desegregation. But Governor Wallace repeated this misstatement over and over again, and it had its effect in the city of Milwaukee and elsewhere where this is a most controversial and a most serious issue.

Mr. ERVIN. I wonder, Mr. President, if the Senator from Pennsylvania will yield to me——

Mr. CLARK. Thirty seconds.

Mr. ERVIN. To quote from Shakespeare, "Methinks the Senator from Wisconsin doth protest too much."

Mr. CLARK. That is a good note on which to end this colloquy. It indicates the great erudition of all Members of this body.

UNLIMITED DEBATE IN THE SENATE

Mr. CLARK. Mr. President, I should like to say a word about the filibuster.

The Senate of the United States is the only legislative body in the civilized world which permits unlimited debate. It did not always do so. For a while, Jefferson's motion for the previous question was a part of the procedural rules of the Senate. How that was eliminated is a subject of some controversy. To what extent it was used is also to some extent controversial, but there was such a rule.

It was not until 1840 that the filibuster raised its ugly head for the first time. At that time, the House of Representatives also had devices by which a filibuster could be conducted. Under the strong and somewhat arbitrary leadership of Speaker Thomas B. Reed in the House in 1890, Reed's rules were adopted, which made it impossible to filibuster further in the House.

A filibuster is not permitted in any State legislature—senate or house. It is not permitted in the House of Commons in England. It is not permitted in Scandinavian legislative bodies, or in the low countries.

Sometimes the prohibition is merely good manners and tradition. Sometimes it is a definite rule.

The filibuster is an affront to the American people, and an affront to the dignity of the Senate, which is held in contempt by the civilized world.

I believe that the opponents of the civil rights bill are playing with fire in using the filibuster against it.

This filibuster is like the sting of the wasp. It is said of the wasp that it stings once and dies. A filibuster can kill this bill, make no mistake about it, if our friends persist, and if we are unable to invoke cloture—and we do not have the votes for cloture at the present time. A filibuster can kill the pending bill. But if a filibuster does kill the bill, I am rash enough to predict that it will be the last filibuster in the Senate, because the American people will rise up in anger and frustration and find ways and means—which I hope will not be violent—to get rid of this archaic, unjustifiable method of preventing the will of the majority from prevailing.

Let me point out that while the filibuster continues—and it has continued without interruption since the morning of March 9—the orderly process of legislation grinds to a halt. The actions of various Senators—and perhaps I must take some share of the blame—have gradually strangled the right of committees to meet, as the hours of our assembling and adjourning have become earlier and later. The program of the President has ground to a halt except for a few minor gestures, more typical of rigor mortis than of life.

Even the appropriation bills have been stopped. If the filibuster continues—as it well may—until the Republican National Convention meets on the 13th of July, we may find such frustrations as have never been seen since those in Poland in the 18th century, where the imperial veto allowed one Member of the Polish Diet to prevent any measure from ever becoming law by his sole objection, which resulted in the dissolution of the Republic of Poland and its absorption by Russia, Prussia, and Austria.

I hope we shall have the good sense in this body to follow the difficult course pursued by the British House of Commons when, at long last, in 1834, it broke up the Rotten Borough system of the unrepresentative composition of the House of Commons, making it possible for that great legislative body, the Mother of Parliaments, to again perform its important function in the history of Great Britain in the middle of the 19th century, thus saving, at a very late hour in the day, parliamentary democracy from going down the same drain that the Legislature of Poland had descended some years earlier

Worse yet, Mr. President, in addition to the problems of quorum calls, and the filibuster, and the fact that committees cannot sit while the Senate is in session, we find ourselves stuck with the requirement that we abandon normal parliamentary procedure in order to bring this bill, hopefully, some time to a vote.

Those of us who are in favor of civil rights did not dare refer the bill to the Committee on the Judiciary. Why? Because the Judiciary Committee has no normal rules of orderly committee procedure. In the Judiciary Committee there is no way in which a majority of the members of the committee can require a meeting to be called. There is no way in which a majority of the members of the committee can determine the agenda in the committee, the order of debate, how the debate can be terminated, or how many meetings should be held.

There is no orderly procedure in the Judiciary Committee; and therefore the minority of that committee can prevent expeditious and orderly consideration of a bill.

I call attention to Senate Resolution 39, submitted by me on January 15, 1963, which would have provided a committee "bill of rights" for all Senate committees. I ask unanimous consent that a copy of that resolution may be printed in the RECORD at this point in my remarks.

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

Resolved, That section 134 of the Legislative Reorganization Act of 1946 (2 U.S.C. 190b(b)), enacted by the Congress in the exercise of the rulemaking power of the Senate and the House of Representatives, be amended to add the following new subsec-

tions at the end thereof, which shall be applicable with respect to the Senate only:

"(d) Each standing committee of the Senate shall meet at such time as it may prescribe by rule, upon the call of the chairman thereof, and at such other time as may be fixed by written notice signed by a majority of the members of the committee and filed with the committee clerk.

"(e) The business to be considered at any meeting of a standing committee of the Senate shall be determined in accordance with its rules, and any other measure, motion, or matter within the jurisdiction of the committee shall be considered at such meeting that a majority of the members of the committee indicate their desire to consider by votes or by presentation of written notice filed with the committee clerk.

"(f) Whenever any measure, motion, or other matter pending before a standing committee of the Senate has received consideration in executive session or sessions of the committee for a total of not less than five hours, any Senator may move the previous question with respect thereto. When such a motion is made and seconded, or a petition signed by a majority of the committee is presented to the chairman, and a quorum is present, it shall be submitted immediately to the committee by the chairman, and shall be determined without debate by yea-and-nay vote. A previous question may be asked and ordered with respect to one or more pending measures, motions, or matters, and may embrace one or more pending amendments to any pending measure, motion, or matter described therein and final action by the committee on the pending bill or resolution. If the previous question is so ordered as to any measure, motion, or matter, that measure, motion, or matter shall be presented immediately to the committee for determination. Each member of the committee desiring to be heard on one or more of the measures, motions, or other matters on which the previous question has been ordered shall be allowed to speak thereon for a total of thirty minutes."

Mr. CLARK. Mr. President, we are under another limitation. Because the bill cannot be referred to the Judiciary Committee with any hope of getting a meaningful report back from that committee, with its recommendations, we must attempt to defend 9 of the 11 titles of the bill on the floor without benefit of committee hearing. This is an unfortunate result of the foolish and archaic procedures in the Senate.

There have been hearings on FEPC, which is the subject of title VII. There have been hearings on title II, the public accommodations title. There have been no meaningful hearings on the other titles. Therefore, we are compelled by the corner into which we have painted ourselves to engage in a procedure which I and, I believe, a majority of the Senate, deplore. We are required to do this because majority rule does not prevail in this body with respect to the committee system, any more than it does on the floor, so far as the Judiciary Committee is concerned.

It is even worse than that, because those of us who want to see the bill passed do not dare tinker with the House bill. We know that if we do tinker with the House bill and change it, and send our version of the bill back to the House, there will be, perhaps, an almost indefinite delay in the House Rules Committee before a rule permitting the bill to go to conference is agreed to. When the conference report is agreed upon, if it is agreed upon, and it comes back to the Senate, it will be subject to another filibuster. No Senator thinks that this bill can stand two filibusters and still be passed.

Therefore, any amendment which we might wish to accept or make in our own good judgment in the Senate must follow this rather humiliating course. We must go to the civil rights leader of the minority party in the House, Mr. McCULLOCH, and say to him, on bended knee, "If we make this amendment, will you agree to accept it without going to conference?" If he says, "Yes," then perhaps we will not be taking an undue chance if we make such an amendment. If he says, "No," we dare not make the change.

Similarly, an amendment which might be objectionable to the majority side in the House would have to be cleared with the Speaker and with the chairman of the Judiciary Committee. We would have to be sure that they would accept the amendment; else we would not dare make it. It is a derogation of the legislative process which, I say, again brings the Senate, and the House, too, into contempt as an effective legislative body across the entire civilized world.

I should like to deal next with title VII of the bill. First let me say that the primary reason why I support it and why a majority of the Senate, I am confident, support it, is that it raises a vitally important moral issue. The bill raises as clearly as any piece of legislation which has come before the Senate since I have joined it—has raised the clear issue of right and wrong. This is particularly true with respect to title VII. FEPC was the subject of extensive hearing before a subcommittee of the Committee on Labor and Public Welfare of the Senate, the Subcommittee on Employment and Manpower, of which I am the chairman. We took 578 pages of testimony from 24 witnesses. A number of statements were introduced into the record. Seven days were consumed in hearings. One of the most important statements made by witnesses at that hearing was on behalf of the churches and synagogues of America, represented by the National Catholic Welfare Conference, the Synagogue Council of America, and the National Council of Churches of Christ in the United States of America. The statement appears in the hearings beginning at page 180. I quote from the statement, at page 180:

> The religious conscience of America condemns racism as blasphemy against God. It recognizes that the racial segregation and discrimination that flow from it are a denial of the worth which God has given to all persons. We hold that God is the Father of all men. Consequently in every person there is an innate dignity which is the basis of human rights. These rights constitute a moral claim which must be honored both by all persons and by the state. Denial of such rights is immoral.

I quote further from the statement, at page 182 of the hearings:

> We hope that this committee will report favorably on the proposals for guaranteeing full and fair employment without regard to race, color, religion, or national origin. We hope also that Congress will enact them into legislation as a necessary step in the process of securing for all people the opportunity to exercise the rights guaranteed by the Constitution of the United States.

Mr. President, I ask unanimous consent to have printed in the RECORD at this point in my remarks the list of religious institutions, Catholic, Protestant, and Jewish, which endorsed the statement which I have just read.

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

APPENDIX

This statement has been endorsed by the following denominations and religious organizations:

American Baptist Convention.

Board of Social Concerns and the Department of Christian Social Relations of the Woman's Division of Christian Service of the Methodist Church.

Christian Methodist Episcopal Church.

Church of the Brethren.

Disciples of Christ.

Moravian Church in America.

The Right Reverend Arthur C. Lichtenberger, presiding bishop, Protestant Episcopal Church.

United Church of Christ.

United Presbyterian Church, U.S.A.

The National Catholic Conference for Interracial Justice.

Southern Field Service of National Catholic Conference for Interracial Justice.

National Catholic Social Action Conference.

National Council of Catholic Men.

National Council of Catholic Women.

The National Council of Catholic Youth.

The National Federation of Catholic College Students.

The Newman Club Federation.

National Federation of Temple Sisterhoods, Union of American Hebrew Congregations.

National Federation of Temple Brotherhoods, Union of American Hebrew Congregations.

National Federation of Temple Youth, Union of American Hebrew Congregations.

Union of American Hebrew Congregations.

National Women's League, United Synagogue of America.

United Synagogue Youth, United Synagogue of America.

United Synagogue of America.

Rabbinical Assembly.

Rabbinical Council of America.

Union of Orthodox Jewish Congregations of America.

Women's Branch, Union of Orthodox Jewish Congregations of America.

National Conference of Synagogue Youth, Union of Orthodox Jewish Congregations of America.

Central Conference of American Rabbis.

Reformed Church in America.

National Student Christian Federation.

Mr. CLARK. Mr. President, there is much more of the same material in the record before the Senate committee. On page 189, Rabbi Blank testified in response to a query from me as follows:

> The major points of our statement, Mr. Chairman, have to do without concern for the immorality of discrimination in the area of employment. And the basis for our statement is the fact that when men are deprived of employment on the basis of discrimination, whether that discrimination has to do with race or religion, creed or national origin, or ancestry, that this is, indeed, an immoral situation which we cannot countenance and about which we cannot possibly remain silent.

Our statement contains an affirmation of the fact that we believe that this kind of discrimination is blasphemous, it is an affront to our religious commitment and to our religious convictions, believing as we do that man is created in the image of God, and this is an affront not only to man, but certainly to God as the creator of all mankind.

I hold myself to be the guardian of no other Senator's conscious. I do not intend to delve into the motivations of any Senators—all of whom I know are sincere. I speak only for myself when I say that if I opposed this bill, I would find it very difficult indeed at the next public meeting I attended to pledge allegiance to the flag of the United States of America and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

Mr. ERVIN. Mr. President, I wish to ask the Senator a question, but I do not wish to interrupt his speech.

Mr. CLARK. I would much prefer that the Senator wait until I finish. I shall give him time then.

Mr. ERVIN. I thought the Senator wished to do that, which is logical and reasonable. I will withhold my questions until that time.

Mr. CLARK. I thank the Senator from North Carolina.

I now turn to the history of the fair employment practices legislation in Congress. This subject is not new. In fact, it has been studied almost to death during the past 20 years.

Since 1944, Congress—both Houses included—has taken more than 5,000 printed pages of testimony and statements on fair employment practices legislation; 481 witnesses have been heard; 85 days of hearings have been held. As I pointed out in connection with this particular title, the Subcommittee on Employment and Manpower held 7 days of hearings; 24 witnesses testified and there were numerous additional statements; 578 pages of testimony and statements being taken. So it cannot be said that Congress has not had an opportunity over the past 20 years to inform itself fully of the need and desirability of legislation dealing with fair employment practices.

I turn now to the background of racial discrimination in the job market, which is the basis for the need for this legislation. I suggest that economics is at the heart of racial bias. The Negro has been condemned to poverty because of lack of equal job opportunities. This poverty has kept the Negro out of the mainstream of American life. I do not say that the inferior position of the Negro is entirely due to lack of job opportunity. A great deal of it is due to lack of educational opportunity. No doubt a substantial amount of it is due to the inferior environment which has resulted over the years from the lack of both educational and equal job opportunities. But no one can look at the basic statistics which are set forth in charts in graphic form without concluding that inadequate job opportunity is a major cause for the inequality from which the Negro race suffers in America, as do other minority groups with which Senators are familiar.

Figure 1 is entitled "Median wage or salary income in 1939, 1947, and 1962 of white and nonwhite males, 14 years and over."

I point out that in 1939, the median wage or salary income of a white man was $1,112, and that of the Negro was $460. Over the years, the gap between the two races has continued. In 1947, the median wage or salary income of the white citizen was $2,357, and that of the Negro citizen was a little more than half of that, or $1,279.

The situation had improved in 1962 with regard to both the white and the Negro race in terms of median income. By that time the median income of the white citizen was $5,462, and that of the Negro citizen had crept up a little percentagewise; it was $3,023. However, it was still hardly 60 percent of the median income received from wages and salary by the white worker.

We turn now to estimated lifetime earnings of white and nonwhite males, in terms of the number of school years completed.

For white workers who had completed no more than 8 years of elementary school education—and the figures which I interpolate come from the Bureau of Census, compiled in connection with the 1960 census—the lifetime earnings received from age 18 to 64 are $191,000; for a Negro, the figure is $123,000. For those who had completed 4 years of high school, a white high school graduate over his working lifetime, received earnings of $253,000; a Negro received earnings of $151,000.

When we come to the higher level, the discrepancy is even greater. For white workers who had completed 4 years of college in addition to high school, the lifetime earnings were $395,000 whereas a Negro college graduate could anticipate only $185,000, or less than half the earnings of the white man.

I now turn to the chart which shows the unemployment rates of white and nonwhite workers during the 15-year period from 1947 to 1963. The curve indicates that starting in 1947, which was a year of high employment, the percentage of white workers unable to secure employment was slightly in excess of 3 percent; the percentage of Negro workers in the same category was slightly in excess of 5 percent.

For the following 15 years the two lines on the graph fluctuate more or less in unison, corresponding to the changing economic conditions. The rate of unemployment for both groups goes down when times are good, and goes up when times are bad, until we find a situation which is quite unique and very different from that which existed in 1947. Times are good now; we have the greatest gross national product the country has ever experienced; we are unquestionably the richest nation in the world. Yet we suffer from chronic and persistent unemployment; and one should note carefully how the scourge of unemployment for those who are looking for work they cannot find falls unjustly, depending on the color of the skin of the worker. The unemployment rate among whites in 1963 was approximately 5 percent; at the same time, the unemployment rate among Negroes was 11 percent—or more than twice as great. So the situation has been getting worse, not better. From the beginning of the period, the rate of unemployment for whites was approximately 60 percent of the Negro rate; but by now the rate of unemployment for Negroes is more than twice that for the whites. This should be a good indication to us of the discrimination which exists by reason of inadequate employment opportunity and discrimination; and such unemployment should be a strong argument in support of the proposed enactment of the pending bill.

Another sardonic fact worth mentioning is that, as the chart shows, a Negro college graduate would, during his working lifetime, that is to say, from age 18 to age 64, earn $185,000; a white high school dropout who got no farther than the eighth grade would earn, during his working lifetime, $191,000, or $6,000 more for a white graduate of an elementary school than the lifetime earnings of a Negro college graduate.

In 1947, nonwhite unemployment was only 64 percent higher than that for the whites; in 1962, it was 124 percent higher than that for the whites.

What is the reason for this condition? Of course, to a substantial extent it is discrimination; to a very substantial extent it is lack of education; and to a rather substantial extent it is the difference in environment.

But what is happening is that automation and cybernation—which is roughly defined as the marriage of the computer and the assembly line—are wiping out the nonskilled jobs which Negroes have traditionally held; and discrimination has kept Negroes out of the jobs which have a future.

One example is the field of selling. I quote now from the testimony given by Dr. Eli Ginzberg, professor of economics at Columbia University, when he appeared before our subcommittee:

Now, there has been no argument that serious discrimination exists in the job arena. I recently saw some figures which indicated that of the 200,000 people employed in selling jobs by a group of major employers, there were 200 Negroes. This indicates something of the magnitude of the discrimination which prevails on the job front.

His testimony appears at page 311 of the hearings.

Think of that, Mr. President. With 200,000 people engaged in selling, only 200 of them were Negroes.

Of course education is needed; but education without equal job opportunity can become meaningless.

At pages 379 and 380 of our hearings, Mr. Herman Miller, Special Assistant in the Office of the Director of the Bureau of the Census, gave the following testimony:

One important point that shows up in the census data is that even when the Negro has received a high school education, he cannot find a well-paying job. One-third of Negro males who are high school graduates work either as laborers or service workers—two very low paying jobs.

• • • • •

The Negro has a dual handicap. He works at far lower paid jobs than the whites and even when he works at the same kind of job he is paid far less. As a result, the figures show that the Negro college graduate makes less than the white who has had only 8 years of elementary school. These figures are shocking to me because they show the serious dilemma the average Negro family faces. Why spend 4 years going to college if all you are going to be when you get through is a teacher or a mailman and earn less money than the white who did not even have to go beyond elementary school?

I quote now from the testimony given before our subcommittee by Mr. James Farmer, National Director of CORE; this testimony appears at page 220:

Nothing produces alienation from society and a lack of motivation among Negroes more than [not] being able to get a job in keeping with their training and ability. Nothing produces school dropouts more than that. If the lad in high school sees his father, who is a high school graduate, pushing a broom in town, then what motivation is there for him to go ahead and finish high school?

He can push a broom without finishing high school and so on; there is a great tendency for him, then to drop out.

I quote now from the testimony given by a businessman, Mr. Joseph Ross, president of Davidson Bros., Inc., a department store chain in Michigan, Ohio, and New York. He gave this testimony before our subcommittee:

I have read a lot in the newspapers recently about the shortage of skilled, qualified Negro personnel. And I want to voice my disagreement with that fact, Mr. Chairman.

Unfortunately, it is true that qualified skilled Negroes are invisible, but they are there, [they] are invisible for a whole number of historical reasons, but in the past 10 years there has been a tremendous increase of Negroes attending not only Negro colleges in the South, but State and city universities in the North.

This has resulted in a large number of Negro college graduates available for work, but they are invisible because they have studied by and large to be ministers, doctors, lawyers, teachers, nurses, social workers. These areas have been the only avenues of employment open to them.

I stress the following:

Many of the Negro postmen who deliver our mail are college graduates; the Post Office is the largest employer of Negro college graduates in the United States.

I interpolate to say that most of them are letter carriers.

I quote further from his testimony:

Negroes have not studied in business schools to any significant extent because the opportunities in business have been historically closed to them. And, therefore, in looking for qualified, skilled Negroes you have to look in different places than you would look for qualified white people and I think you have to establish not a lower criteria, but a different criteria in determining who a qualified Negro person is.

You can look for them, for instance, in the Post Office. You will find them in a substitute Negro teacher in the local school board waiting list or an underpaid social worker.

Many Negro college graduates are hiding their lights under a bushel of mediocre and unskilled jobs because they have no other employment opportunity.

Those quotations are from pages 319 and 320 of the Senate subcommittee's hearings.

With respect to female high school graduates, among the whites, only 2 out of each 100 have to take jobs as domestic servants or maids; whereas, among the Negroes, 20 out of each 100 cannot find any better paying jobs than employment in domestic service.

I should like to say a word now about the economic costs of racial discrimination in the Nation in the area of employment. The Council of Economic Advisers sent a memorandum to our subcommittee, which is printed in the RECORD. It states that we could add $13 billion to our gross national product if Negroes could fully utilize the skills they already have in the job markets.

If Negroes were also given equal educational opportunity, the figure of additional gross national product would be $17 billion.

I submit that the existence of racial discrimination against our Negro citizens in the job market has been abundantly proved by testimony from qualified individuals in the record of the Senate hearings.

I turn now to the need for a Federal Fair Employment Practices Act. It is true that in 28 States and a large number of cities—some 48 of them, I believe—there are State fair employment practices legislation or ordinances. I call attention to the map which appears behind the last row of chairs on the Democratic side of the aisle of the Senate to indicate where those States are.

Every single State east of the Mississippi and north of the Ohio, except Maine and New Hampshire, has fair employment practices legislation. West Virginia, Kansas, Oklahoma, Colorado, and New Mexico also have such legislation.

The three Pacific Coast States, in addition to Idaho and Nevada, have fair employment practices legislation.

Not a single State of the Old Confederacy has such a law. That is perhaps the most cogent argument in support of title VII. Roughly 60 percent of the nonwhite population lives in 22 States where there are no FEPC laws. More than that, State and local FEPC laws vary widely in effectiveness. In many areas effective enforcement is hampered by inadequate legislation, inadequate procedures, or an inadequate budget. Big interstate industry cannot effectively be handled by the States. Interstate commerce is the primary responsibility of the Federal Government.

Mr. President, the States which have the best FEPC laws are those which most articulately demand and request a Federal law to assist them. Five very able men testified before the Senate Subcommittee on Employment and Manpower, which held hearings; they are the men who administer the fair employment practices laws in New York, New Jersey, Missouri, Minnesota, and California. Those five men were unanimous in their support of a Federal fair employment practices legislation.

Mr. President, I ask unanimous consent that a list of 15 Governors and representatives of Governors on record as supporting a Federal FEPC law, which appears on page 287 of the Senate hearings, be printed in full in the RECORD at this point in my remarks.

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

GOVERNORS AND REPRESENTATIVES OF GOVERNORS PARTICIPATING IN THIRD ANNUAL CONFERENCE

Hon. William G. Stratton, Governor, Illinois.

Hon. Herschel C. Loveless, Governor, Iowa.

Roy Shapiro, State controller, Kansas.

Kermit S. Nickerson, deputy commissioner of education, Maine.

Walter Carrington, Massachusetts Commission Against Discrimination, Massachusetts.

Hon. G. Mennen Williams, Governor, Michigan.

Hon. Orville L. Freeman, Governor, Minnesota.

Milton Litvak, Missouri Human Rights Commission, Missouri.

Dr. John P. Milligan, assistant commissioner of education, New Jersey.

Elmer A. Carter, chairman, New York State Committee Against Discrimination, New York.

Frank W. Baldau, executive director, Ohio Civil Rights Committee, Ohio.

Normal O. Nilsen, commissioner of labor, Oregon.

Senator C. George DeStefano, Rhode Island.

Mark Litchman, Washington State representative, Washington.

Hon. Gaylord A. Nelson, Governor, Wisconsin.

Mr. CLARK. It is important to note that title VII is so drafted that the States and the Federal Government can work together. When the bill is enacted, the State and the municipal agencies will continue to operate, and State laws will continue in force, except where they are inconsistent with title VII. The Federal Commission can agree under title VII not to bring any suits in cases in a particular State or locality where the State or locality has adequate power under its own laws or ordinances to carry out the purposes of the act and it is effectively exercising that power.

In addition, the Federal Commission can make arrangements to use and pay for the services of State and local agencies in carrying out its duties under the Federal law if the State agencies are willing.

So, I take it that title VII meshes nicely, logically, and coherently with the State and city legislation already in existence in a number of the States and a number of our cities, small as well as large. The Federal Government and the State governments could cooperate effectively and, to some extent at least, there would be a saving in the Federal budget in those areas where State laws are effective, discrimination is outlawed, and discriminators are prosecuted.

But in wide areas of the country where there is no State or local law, a Federal law is essential. I take it that the economic and social background which I have attempted to summarize in my speech bears pertinent witness to the correctness of that statement.

I now turn to the fact, clearly established in the hearings, that both organized labor and business want title VII. Strong support for Federal legislation was expressed by the following leaders in organized labor:

George Meany, president of the AFL-CIO; A. Philip Randolph, president of the

Negro America Labor Council and also the Brotherhood of Sleeping Car Porters; David J. McDonald, president of the United Steel Workers of America; Walter P. Reuther, president of United Automobile Workers of America; C. J. Haggerty, president of the Building and Construction Trades Department, AFL–CIO; Carl J. Megel, president of the American Federation of Teachers.

Not all of those gentlemen testified. They either testified or submitted statements.

Nor is labor afraid of title VII. On January 15 of this year, before the bill now under consideration had passed the House, my esteemed colleague the Senator from Alabama [Mr. HILL], made a speech on the floor of the Senate in which he undertook to raise the argument that FEPC legislation was a threat to organized labor. Under date of February 11, 1964, Mr. Walter P. Reuther, the president of the United Automobile Workers, wrote a letter to the Senator from Alabama rebutting the Senator's position. I shall not take the time of Senators to read that cogently argued rebuttal of the position of the Senator from Alabama. I ask unanimous consent that a copy of Mr. Reuther's letter to the Senator from Alabama [Mr. HILL] be printed in the RECORD at this point in my remarks.

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

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA-UAW,
Detroit, Mich., February 11, 1964.

Hon. LISTER HILL,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HILL: Your speech on the floor of the Senate on January 15 regarding the civil rights bill and the rights of organized labor has been received and studied with interest. As you are aware, we hold you in the highest respect for your dedication to the rights of organized labor, exemplified by your years of work as the chairman of the Senate Committee on Labor and Public Welfare. Nevertheless, in this instance we do not share your fears that the pending civil rights bill will undermine the rights of unions and working people. On the contrary, our union and the leadership of the AFL–CIO have testified on behalf of the provisions of the pending civil rights bill. These are intended to assure equality of employment opportunity without discrimination on the basis of race, color, religion or national origin, and will strengthen the fundamental rights of laboring people throughout the United States and add to the vitality and integrity of the labor movement.

Before dealing with the particular concerns expressed in your Senate speech, let me say that our faith in the workability of a Federal FEPC is based on more than 20 years of experience with FEPC laws in many of our States, as well as Presidential Executive orders going back to the early 1940's which require nondiscrimination on Federal jobs and on Federal contract employment. None of the numerous State FEPC laws and none of the Presidential regulations covering millions of employees, have undermined the rights of organized labor or resulted in the kind of chaos and disruption which you predict as the result of the pending Federal law. Of course, we do not mean to say that existing State and Federal regulations are adequate. As long as millions of workers in many of our States remain subject to denial of opportunity to work and earn a livelihood solely because of race or color, though they are ready, willing, and anxious to work, there exists a need for a Federal FEPC. But two decades of experience with existing laws give us confidence that FEPC does not weaken but rather strengthens the rights of working people and the labor movement.

Turning to your specific points regarding the pending legislation, we would urge you to reexamine each of your objections.

First, your principal concern appears to be that the pending law will require a mathematical apportionment of jobs on a "one white"—"one Negro" or other similarly rigid basis. This, however, is not the construction of FEPC which has been employed heretofore, and we do not believe it to be the import of the pending Federal measure. The preponderance of cases involve a 100-percent-white situation, where employers have refused to hire or promote a single Negro worker, or unions have barred Negroes from entering a craft or achieving apprenticeship training. In other cases there has been token integration only, to provide the pretense rather than the reality of nondiscrimination. It is these situations which are the principal focus of the pending law. We find no evidence that a mechanistic numbers game such as you suggest is intended by the pending measure.

Second, you state that under the bill qualified white workers would be laid off to make room for unqualified Negroes. This is certainly not the letter or intention of the law, which provides only that qualified Americans shall not be denied jobs or necessary training for jobs merely because of their race or color. Moreover, where clear racial discrimination exists and has been proved, the remedy applied under existing laws is not the dismissal of qualified white workers but the requirement that future opportunities for employment be made available to racial minorities previously discriminated against. If the Congress adopts some of the enlightened measures proposed by your Senate committee for reducing unemployment and promoting a more dynamic and expanding economy, there should exist in the near future the conditions of rising employment which will provide jobs for every American, for both the white and Negro worker.

Third, you urge that where racial discrimination is being practiced, Federal contracts will be canceled and workers will lose jobs. But here again the experience under the Federal contract nondiscrimination orders of Presidents Truman, Eisenhower, and Kennedy, shows that contract cancellation was not used for enforcement. In almost every instance of proven discrimination, employers made adjustments in their practices to end discrimination. Indeed, under both titles VI and VII of the pending civil rights bill no other action may be taken against one who violates by continued racial discrimination, until it is clear that compliance cannot be secured by voluntary means. Finally, it is a fundamental purpose of the pending law precisely to avoid the necessity of canceling contracts and forcing loss of jobs. Today, under the controling legal authorities, a Federal contract employer who continues to discriminate may leave no option but the cancellation of his contract since other remedies are not expressly provided by the Congress. Similarly, a union which continues to discriminate is presently subject to the loss of its Labor Board certification. Far from resulting in such ineffective and disruptive remedies available today, the pending law is intended to permit direct achievement of compliance against those who discriminate, instead of divesting employers of contracts or unions of their right to represent the worker. In short, the direct remedies provided in the pending bill will avoid rather than result in those ineffective and indirect measures of contract cancellation or union decertification which give you concern.

Fourth, you suggest that the pending law would threaten the rights of union workers by requiring the recruiting of nonunion employees. Here again the intention as we see it is just the contrary. The time has long passed when responsible labor unions continue to exclude Negro workers from membership. Every AFL–CIO union is signatory to the constitution of the federation, which promises the right to membership without racial discrimination in every constituent union. Even the most recalcitrant affiliate of the federation barring Negroes from joining the union now has changed its constitution and opened its membership to Negroes. In any event, the pending law will directly require equal access to union membership for Negroes, rather than create any competition between union and nonunion workers.

Finally, let me say with all the earnestness I can command that the strength and vitality of organized labor is materially increased rather than threatened by the guarantee of fair employment practices. During the years when organized labor and particularly industrial unions won their strength and status in this country, the principal weapon of hostile employers was to divide the workers into embattled union and antiunion factions. By this means strikes were broken, job security was threatened, and wages and working conditions kept below humane and decent standards.

Today, antiunion employers seek the same results by a new division of the workers in which they would play off white against Negro to perpetuate fear, to depress wages, and to create tension and hostility between working groups. Throughout the South, and regretfully at times even in areas of the North and West as well, employers are playing the racial discrimination game to break the strength of labor and prevent organization. It is our primary hope that fair employment practices requirements will end this vicious game of divide-and-conquer. Under the pending law, every Negro worker will have a fair opportunity for a job if he is qualified, and every white worker will know that he cannot be laid off or refused employment for a racial reason because discrimination against a white worker is just as forbidden as discrimination against the Negro.

The passage of the civil rights bill by an overwhelming bipartisan majority in the House of Representatives on February 10, which includes a strong fair employment practices provision, reinforces the principles expressed herein and provides further testimony that the temper of our times is consonant with the struggle for equal opportunity.

I am sorry that in this instance our union and the leadership of the labor movement are generally in disagreement with you about a matter of high national policy and importance. We would be most pleased if, after reviewing the points in this communication, you could join the progressive forces in the national community to support the administration's fair employment practices proposals which we believe to be both sound national policy and morally right and fully consistent with democratic values.

Sincerely yours,

WALTER P. REUTHER,
President, International Union, UAW.

Mr. CLARK. I have also had prepared by the Department of Justice a summary statement in rebuttal to the argument made by the Senator from Alabama [Mr. HILL] to the effect that title VII would undermine the vested rights of seniority; that it would deny to unions their representation rights under the National Labor Relations Act and the Railway Labor Act; that the operation of title VI would in some way affect adversely the

rights of organized labor; and that title VII would impose the requirement of racial balance.

I submit that those assertions of the able senior Senator from Alabama are untenable.

Mr. President, I ask unanimous consent that the rebuttal to the argument prepared at my request by the Department of Justice be printed in full in the RECORD at this point in my remarks.

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

REPLY TO ARGUMENTS MADE BY SENATOR HILL

First, it has been asserted that title VII would undermine vested rights of seniority. This is not correct. Title VII would have no effect on seniority rights existing at the time it takes effect. If, for example, a collective bargaining contract provides that in the event of layoffs, those who were hired last must be laid off first, such a provision would not be affected in the least by title VII. This would be true even in the case where owing to discrimination prior to the effective date of the title, white workers had more seniority than Negroes. Title VII is directed at discrimination based on race, color, religion, sex, or national origin. It is perfectly clear that when a worker is laid off or denied a chance for promotion because under established seniority rules he is "low man on the totem pole" he is not being discriminated against because of his race. Of course, if the seniority rule itself is discriminatory, it would be unlawful under title VII. If a rule were to state that all Negroes must be laid off before any white man, such a rule could not serve as the basis for a discharge subsequent to the effective date of the title. I do not know how anyone could quarrel with such a result. But, in the ordinary case, assuming that seniority rights were built up over a period of time during which Negroes were not hired, these rights would not be set aside by the taking effect of title VII. Employers and labor organizations would simply be under a duty not to discriminate against Negroes because of their race. Any differences in treatment based on established seniority rights would not be based on race and would not be forbidden by the title.

Second, it has been asserted that it would be possible to deny unions their representation rights under the National Labor Relations Act and the Railway Labor Act. This is not correct. Nothing in title VII or anywhere else in this bill affects rights and obligations under the NLRA and the Railway Labor Act. The procedures set up in title VII are the exclusive means of relief against those practices of discrimination which are forbidden as unlawful employment practices by sections 704 and 705. Of course, title VII is not intended to and does not deny to any individual, rights and remedies which he may pursue under other Federal and State statutes. If a given action should violate both title VII and the National Labor Relations Act, the National Labor Relations Board would not be deprived of jurisdiction. To what extent racial discrimination is covered by the NLRA is not entirely clear. I understand that the National Labor Relations Board has presently under consideration a case involving the duties of a labor organization with respect to discrimination because of race. At any rate, title VII would have no effect on the duties of any employer or labor organization under the NLRA or under the Railway Labor Act, and these duties would continue to be enforced as they are now. On the other hand, where the procedures of title VII are invoked, the remedies available are those set out in section 707(e), injunctive relief against continued discrimination, plus appropriate affirmative action including the payment of backpay. No court order issued under title VII could affect the status of a labor organization under the National Labor Relations Act or the Railway Labor Act, or deny to any union the benefits to which it is entitled under those statutes.

Third, it has been asserted that the operation of title VI will in some way affect the rights of organized labor. This is incorrect. Title VI deals with programs of Federal financial assistance. I know of no financial assistance rendered to lagor organizations under the National Labor Relations Act or the Railway Labor Act, the Davis-Bacon Act, or the Walsh-Healey Act. These organizations benefit, as do all American workers, from the beneficent policies of these statutes, but there is no flow of cash, goods, or credit from the Federal Government to these organizations and it is to such assistance that title VI is directed. Title VI would no more authorize the suspension of a union's status as a collective bargaining agent because of discrimination than it would authorize the Bureau of Customs to stop collecting duty on goods competing with those produced by an employer who discriminates. There is simply no such authority anywhere in the bill.

Finally, it has been asserted title VII would impose a requirement for "racial balance." This is incorrect. There is no provision, either in title VII or in any other part of this bill, that requires or authorizes any Federal agency or Federal court to require preferential treatment for any individual or any group for the purpose of achieving racial balance. No employer is required to hire an individual because that individual is a Negro. No employer is required to maintain any ratio of Negroes to whites, Jews to gentiles, Italians to English, or women to men. The same is true of labor organizations. On the contrary, any deliberate attempt to maintain a given balance would almost certainly run afoul of title VII because it would involve a failure or refusal to hire some individual because of his race, color, religion, sex, or national origin. What title VII seeks to accomplish, what the civil rights bill seeks to accomplish is equal treatment for all.

Mr. CLARK. Mr. President, it is clear that the bill would not affect seniority at all. It would not affect the present operation of any part of the National Labor Relations Act or rights under existing labor laws. The suggestion that racial balance or quota systems would be imposed by this proposed legislation is entirely inaccurate.

With respect to the American businessman, there was cogent testimony from the following executives of corporations:

The chairman of the board of Pitney-Bowes, Inc., which manufactures office equipment; a high executive of Minneapolis Honeywell Corp., which manufactures electronics and control systems; and the president of Davidson Bros., Inc., a department store chain.

Perhaps the best way to give a summary of their testimony is to quote from the testimony of the chairman of the board of Pitney-Bowes, which appears at page 210 of the Senate hearings:

No dramatic upheaval has followed the enactment of FEP legislation in Connecticut—

Which is where the principal office of the corporation is—

The businessman's personnel problems have not swollen to mammoth proportions, nor has he been forced to spend the best part of his time in court as an alternative to hiring every minority group member who presents himself for employment. His freedom is not restricted except for his freedom to be biased in his personnel policies. He is not hounded unjustly, as evidenced by the fact that discrimination actually has been found in about half the cases investigated.

Actual experience under State FEPC laws shows that very few cases result in court actions.

A survey of 12 States, from date of enactment of an FEPC law in each State through December 31, 1961, shows that in almost 20,000 cases—actually 19,439—there were only 18 court actions.

Mr. President, I ask unanimous consent that a table on that point which appears in the hearings at page 134 may be printed in full in the RECORD at this point in my remarks.

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

Comparative complaint experience under State fair employment practice laws

[From date of law until Dec. 31, 1961]

State	Cases	Hearings	Cease and desist orders	Court actions
California	1,014	2	2	2
Colorado	251	4	3	1
Connecticut	900	4	3	3
Massachusetts	3,559	2	2	0
Michigan	1,459	8	6	4
Minnesota [1]	184	1	1	1
Missouri [2]	45	0	0	0
New Jersey	1,735	2	2	2
New York	7,497	18	[3] 6	5
Ohio	985	2	1	0
Oregon	286	0	0	0
Pennsylvania	1,238	19	0	0
Rhode Island	286	0	0	0
Total	19,439	62	26	18

[1] The Minnesota figures do not cover cases arising in Duluth, Minneapolis, or St. Paul, where local antidiscrimination laws apply.

[2] The Missouri law became effective on Oct. 13, 1961. Of the 45 complaints received by July 23, 1963, 26 have been settled informally and 19 are still under investigation.

[3] The figure given is that of the House committee survey. Testimony of the general counsel of the New York State Commission for Human Rights suggests that only 4 complaints have resulted in the issuance of cease and desist orders. See statement of Henry Spitz before Subcommittee on Employment and Manpower, Senate Committee on Labor and Public Welfare, July 29, 1963.

Mr. CLARK. Mr. President, I turn now, but only briefly, to the averment which has been made by some opponents of the bill that title VII—and, for that matter, any of the other 10 titles of the bill—is unconstitutional. This contention, in my opinion, is entirely erroneous.

I ask unanimous consent that there may be printed in full in the RECORD at this point in my remarks so much of a legal opinion, written under date of March 30, 1964, sent jointly to the Senator from Minnesota [Mr. HUMPHREY] and the Senator from California [Mr. KUCHEL], and signed by a number of eminent lawyers, as pertains to title VII. I may say parenthetically that I have stricken out the irrelevant parts, which do not pertain to title VII.

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

PHILADELPHIA, PA.,
March 30, 1964.

HON. HUBERT H. HUMPHREY,
HON. THOMAS H. KUCHEL,
U.S. Senate, Washington, D.C.

DEAR SENATORS HUMPHREY AND KUCHEL: We have received your letter addressed

separately to each of us, in which you request our views regarding the constitutionality of two parts of H.R. 7152, the proposed Civil Rights Act of 1963, now pending in the Congress, specifically title II, prohibiting discrimination in places of public accommodation, and title VII, providing for equal employment practices by certain employers, employment agencies and labor unions.

Your inquiry requests our opinion either as cochairmen of the Lawyers' Committee for Civil Rights Under Law or in our individual capacities. We are replying in the latter role, and, in accordance with one of the suggestions in your letter, we have asked a number of other lawyers to consider the questions which you have raised and to join with us in formulating this statement. We want to make it clear that we are expressing our views solely on the constitutional issues raised in your letters and not on the merits of the bill.

Upon careful consideration of the established judicial precedents in this area of constitutional law, and in full recognition of the vital importance of the legal issues which are the subject of this letter, we conclude that title II and title VII are within the framework of the powers granted to Congress under the Constitution.

With respect to title II, the congressional authority for its enactment is expressly stated in the bill to rest on the commerce clause of the Constitution and on the 14th amendment. The reliance upon both of these powers to accomplish the stated purpose of title II is sound. Discriminatory practices, though free from any State compulsion, support, or encouragement, may so burden the channels of interstate commerce as to justify, legally, congressional regulation under the commerce clause. On the other hand, conduct having an insufficient bearing on interstate commerce to warrant action under the commerce clause may be regulated by the Congress where the conduct is so attributable to the State as to come within the concept of State action under the 14th amendment.

The grounding of the public accommodations title on the commerce clause is in keeping with a long tradition of Federal legislation, validated in many judicial decisions, and is not today open to substantial legal dispute. In exercising its power to regulate commerce among the States, Congress has enacted laws, encompassing the widest range of commercial transactions, similar to the regulatory scheme of title II of H.R. 7152.

It is also clear that the discrimination or segregation prohibited by title II is subject to regulation by the Congress under its power to enact laws to enforce the equal protection clause of the 14th amendment where there is participation and involvement by State or local public agencies in the unlawful conduct. The decision of the Supreme Court in the *Civil Rights Cases*, 109 U.S. 3 (1883), in no way prevents the Congress from barring discrimination in those factual circumstances constituting State action under the 14th amendment.

With respect to the equal employment opportunity provisions of title VII, there are many decisions of the Federal courts upholding under the commerce clause similar laws regulating employment relationships which in some fashion impinge on interstate commerce.

Powers which Congress can exercise under one part of the Constitution may be limited by guarantees found elsewhere in the Constitution. In our opinion, neither title II nor title VII imposes such arbitrary restrictions upon private property or on the operation of private business as to conflict with due process requirements. In the development of congressional authority under the commerce clause and other express grants of power, statutes designed to enhance individual rights and to ameliorate working conditions have been regularly upheld by the courts even though they have in some measure affected property or contract rights.

For your convenience, we are attaching a brief legal memorandum reviewing the applicable authorities.

The lawyers who join in this reply to your request for an opinion, are listed below.

Sincerely,

HARRISON TWEED.

NEW YORK, N.Y.

BERNARD G. SEGAL.

PHILADELPHIA, PA.

Other lawyers joining in this opinion: Joseph A. Ball, Long Beach, Calif.; Francis Biddle, Washington, D.C.; Herbert Brownell, New York City; Homer D. Grotty, Los Angeles, Calif.; Lloyd N. Cutler, Washington, D.C.; Norris Darrell, New York City; James C. Dezendorf, Portland, Oreg.; Erwin N. Griswold, Cambridge, Mass.; Albert E. Jenner, Jr., Chicago, Ill.; William B. Lockhart, Minneapolis, Minn.; William L. Marbury, Baltimore, Md.; David F. Maxwell, Philadelphia, Pa.; John D. Randall, Cedar Rapids, Iowa; Charles S. Rhyne, Washington, D.C.; William P. Rogers, Washington, D.C.; Samuel I. Rosenman, New York City; Eugene V. Rostow, New Haven, Conn.; Whitney North Seymour, New York City; Charles P. Taft, Cincinnati, Ohio; John W. Wade, Nashville, Tenn.

IDENTIFICATION OF SIGNERS OF LETTER

Joseph A. Ball: Ball, Hunt & Hart, Long Beach, Calif.; past president, State Bar of California.

Francis Biddle: Washington, D.C.; former Attorney General of the United States.

Herbert Brownell: Lord, Day & Lord, New York City; former Attorney General of the United States; president, Association of the Bar of the City of New York.

Homer D. Crotty: Gibson, Dunn & Crutcher, Los Angeles, Calif.; past president, State Bar of California; member of council, American Law Institute.

Lloyd N. Cutler: Wilmer, Cutler & Pickering, Washington, D.C.; president, Yale Law School Association.

Norris Darrell: Sullivan & Cromwell, New York City; president, American Law Institute.

James C. Dezendorf: Koerner, Young, McColloch & Dezendorf, Portland, Oreg.; past president, National Conference of Commissioners on Uniform State Laws; vice president, American Judicature Society.

Erwin N. Griswold: Cambridge, Mass.; dean, Harvard Law School.

Albert E. Jenner, Jr.: Thompson, Raymond, Mayer & Jenner, Chicago, Ill.; past president, American Judicature Society; past president, American College of Trial Lawyers.

William B. Lockhart, Minneapolis, Minn.; dean, University of Minnesota School of Law.

William L. Marbury: Piper & Marbury, Baltimore, Md.; member of council, American Law Institute.

David F. Maxwell: Obermayer, Rebmann, Maxwell & Hippel, Philadelphia, Pa.; past president, American Bar Association; former chairman of house of delegates, American Bar Association.

John D. Randall, Cedar Rapids, Iowa: past president, American Bar Association, former chairman of house of delegates, American Bar Association.

Charles S. Rhyne: Rhyne & Rhyne, Washington, D.C.; past president, American Bar Association; former chairman of house of delegates, American Bar Association.

William P. Rogers: Royall, Koegal & Rogers, Washington, D.C., and New York City; former Attorney General of the United States.

Samuel I. Rosenman: Rosenman, Colin, Kaye, Petchek & Freund, New York City; former Special Counsel to President Franklin D. Roosevelt and President Harry S. Truman.

Eugene V. Rostow, New Haven, Conn.; dean, Yale University Law School.

Bernard G. Segal: Schnader, Harrison, Segal & Lewis, Philadelphia, Pa.; president-elect, American College of Trial Lawyers; former chairman of the board, American Judicature Society.

Whitney North Seymour: Simpson, Thacher & Bartlett, New York City; president, American College of Trial Lawyers; past president, American Bar Association.

Charles P. Taft: Taft, Lavercome & Fox, Cincinnati, Ohio; former mayor of Cincinnati.

Harrison Tweed: Milbank, Tweed, Hadley & McGloy, New York City; chairman of council and past president, American Law Institute; chairman, Joint Committee on Continuing Legal Education (ALI and ABA).

John W. Wade, Nashville, Tenn.; dean, Vanderbilt University School of Law.

MEMORANDUM

TITLE VII

Title VII of the proposed Civil Rights Act of 1963 enunciates a national policy of equal opportunity for employment free from discrimination. The equal employment title is based expressly upon the commerce clause. Section 701(b) also declares it to be the purpose of Congress to insure the full "enjoyment by all persons of the rights, privileges and immunities secured and protected by the Constitution of the United States."

The employers covered by the proposed legislation would ultimately be those having 25 or more employees. For the first 3 years after its effective date, title VII would cover those employers having a greater number of employees as prescribed in section 702(b). Also subject to this title would be employment agencies and labor organizations.

In the customary pattern of State and local fair employment legislation, title VII sets forth certain unlawful employment practices by employers, employment agencies and labor organizations. Generally, these practices relate to discrimination, segregation, and other types of unequal treatment or withholding of privileges because of race, color, religion, sex, or national origin.

A procedure is established for the implementation of the purposes of the title by an Equal Employment Opportunity Commission and for resort to the courts when allegedly unlawful employment practices cannot be voluntarily eliminated.

The same considerations which support the conclusion that the public accommodations title is valid under the commerce clause, particularly the landmark Jones and Laughlin and Darby cases, are equally applicable here. Many of the prior statutes regulating labor relations under the commerce clause upheld by the Supreme Court are directly analogous to the provisions of title VII.

Starting with the National Labor Relations Act and continuing through the Labor Management Reporting and Disclosure Act of 1959, Congress has enacted comprehensive legislation regulating labor and management practices. The Fair Labor Standards Act and similar statutes, which have as their purpose the improvement of the condition of persons whose work affects interstate or foreign commerce, furnish ample authority for the attempt in title VII to prohibit discrimination in employment practices. It is but a short step to proceed from a statute which prevents the discharge of workers for union activity to one which seeks to outlaw discrimination in employment on account of race. In a case involving the applicability of the Norris-LaGuardia Anti-Injunction Act to the picketing of a store denying equal employment opportunities to Negroes, Justice Roberts, speaking for the Court, said, with somewhat prophetic insight:

"The desire for fair and equitable conditions of employment on the part of persons of any race, color or persuasion, and the re-

moval of discriminations against them by reason of their race or religious beliefs is quite as important to those concerned as fairness and equity in terms and conditions of employment can be to trade or craft unions or any force of labor organization or association. Race discrimination by an employer may reasonably be deemed more unfair and less excusable than discrimination against workers on the ground of union affiliation * * *" *New Negro Alliance* v. *Sanitary Grocery Co.*, 303 U.S. 552, 561 (1938).

Employers, employment agencies as well as labor organizations whose business or activities affect interstate or foreign commerce are clearly subject to congressional legislative authority.

The decisions which have upheld statutes adopted under the commerce clause or other powers contained in the Constitution recognize that congressional authority is restricted by the due process of law guarantee of the fifth amendment. It is evident that most Federal regulatory statutes constitute a limitation to some extent on the use of private property or the exercise of private rights.

The National Labor Relations Act is an example of the type of Federal legislation upheld by the courts against the charge of interference with property rights. *N.L.R.B.* v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1, 43 (1937). The courts have dealt in the same manner with State legislation enacted under local police powers which has been challenged under the due process clause of the 14th amendment. In meeting this attack, the Supreme Court said in *Nebbia* v. *New York*, 391 U.S. 502, 538 (1934):

"The Constitution does not secure to anyone liberty to conduct his business in such fashion as to inflict injury upon the public at large, or upon any substantial group of the people."

Nebbia and cases of like import are relevant because the power of Congress to deal with interstate commerce is similar to the authority of the States to regulate activities within the State. Titles II and VII do not seem to involve any greater interference with private rights than many of the Federal regulatory statutes to which we have referred or similar State legislation. The Supreme Court has upheld State and local antidiscrimination measures in *Railway Mail Association* v. *Corsi*, 326 U.S. 88 (1945), a New York statute barring racial discrimination by labor unions, and *District of Columbia* v. *Thompson Co.*, 346 U.S. 100 (1953), a local law prohibiting discrimination on account of race in eating places.

We have not tried to provide in this memorandum an exhaustive discussion of the legal authorities in support of our views. From a review of the leading decisions of the courts, we have sought to cull out the fundamental principles governing congressional power under the Constitution and to refer specifically to a few cases which contain important holdings.

We are mindful of the heavy responsibility which each Member of Congress bears in acting upon this legislative proposal, and we hope that the above analysis will be of some assistance in discharging that responsibility. We are honored by the opportunity to be of help in attempting to clarify some of the legal issues involved in H.R. 7152.

Mr. CLARK. Mr. President, this letter, as will appear from its being printed in the RECORD immediately above what I am now saying, was joined in by some 22 lawyers, including some of the most eminent lawyers in the country, three former Attorneys General of the United States, four former presidents of the American Bar Association, and the deans of the law schools of Harvard, Yale, Minnesota, and Vanderbilt Universities.

I shall not pause to discuss the basis of their opinion, for it is quite short. Their reasoning, which is quite clearly based upon pertinent cases of the Supreme Court, shows ample precedent for the constitutionality of title VII under the interstate commerce clause of article I of the Constitution.

Mr. President, I also ask unanimous consent that a copy of an opinion rendered to me, as the chairman of the subcommittee on Employment and Manpower, by the Deputy Attorney General of the United States, Nicholas deB. Katzenbach, written at my request, under date of August 15, 1963, may be printed in full in the RECORD at this point in my remarks.

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

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF THE
DEPUTY ATTORNEY GENERAL,
Washington, D.C., August 15, 1963.

Hon. JOSEPH S. CLARK,
U.S. Senate,
Washington, D.C.

DEAR SENATOR CLARK: This is in response to your letter of July 25, 1963, in which you request the views of the Department of Justice on the constitutionality of certain fair employment practices bills pending before the Subcommittee on Employment and Manpower.

We believe that the commerce clause of the Constitution (art. I, sec. 8) provides authority for Congress to enact fair employment practices legislation.

The courts have repeatedly upheld the power of Congress to regulate employment relations affecting interstate and foreign commerce. *Texas and New Orleans Railroad Co.* v. *Brotherhood of Railway Clerks*, 281 U.S. 543 (1930); *N.L.R.B.* v. *Jones and Laughlin Steel Corp.*, 301 U.S. 1 (1937); see also *N.L.R.B.* v. *Fainblatt*, 306 U.S. 601 (1939); *Polish National Alliance* v. *N.L.R.B.*, 322 U.S. 643 (1944). Thus, in *Jones and Laughlin, supra*, the court said (301 U.S. at 33):

"Discrimination and coercion to prevent the free exercise of the right of employees to self-organization and representation is a proper subject for condemnation by competent legislative authority."

The Supreme Court has spoken in similar terms of race discrimination which infringes upon the right to work free from racial discrimination. Justice Roberts, speaking for the unanimous Court in *New Negro Alliance* v. *Sanitary Grocery Co.*, 303 U.S. 552 (1938) at p. 561 said:

"The desire for fair and equitable conditions of employment on the part of persons of any race, color, or persuasion, and the removal of discriminations against them by reason of their race or religious beliefs is quite as important to those concerned as fairness and equity in terms and conditions of employment can be to trade or craft union or any force of labor organization or association. Race discrimination by an employer may reasonably be deemed more unfair and less excusable than discrimination against workers on the ground of union affiliation."

In connection with the general civil rights legislation now pending before Congress, we have taken the position that discrimination in places of public accommodation which affects interstate commerce may be prohibited by Federal legislation under the commerce clause. For your convenience, we are attaching a copy of a memorandum sustaining this contention. Similarly, we believe that legislation may be enacted safeguarding the right to work free from discrimination because of race, color, religion, or national origin, where interstate commerce would be affected.

Nor would such legislation impose arbitrary restraints upon the conduct of private business in contravention of the due process clause. It is now clear that appropriate regulation of the hire and discharge of employees is not an unconstitutional abridgment of the contract right. *Phelps Dodge Corporation* v. *N.L.R.B.*, 313 U.S. 177 (1941); *N.L.R.B.* v. *Jones and Laughlin Corp., supra;* see also *Morgan* v. *Atlantic Coast Line Railway Co.*, 32 F. Supp. 617 (1940). The freedom of contract is not absolute, and is subject to reasonable regulations and prohibitions pursuant to valid governmental powers. See *Nebbia* v. *New York*, 291 U.S. 502, 527–528 (1934).

It is clear, too, that labor organizations may be covered by fair employment practices legislation. Labor unions have been accorded the statutory right to act as exclusive bargaining agents for nonmembers as well as members under Congress' power over interstate commerce. Similarly, there is no question but that the Federal Government may, in exercise of the same power, impose necessary restrictions to prohibit labor unions from discriminating because of race, religion, or national origin. Cf. *United States* v. *Classic*, 313 U.S. 297, 326 (1941); *Smith* v. *Allwright*, 321 U.S. 649, 664 (1944). The essence of free government requires that power must be accompanied by responsibility.

Indeed, the Supreme Court in *Steele* v. *Louisville and Nashville Railway Company*, 323 U.S. 192 (1944), held in a unanimous opinion that a Negro railway foreman who was discriminated against because of color by a union chosen by the majority to represent the craft under the Federal Railway Labor Act could enjoin the union, notwithstanding that such discrimination was buttressed by the contract between the union and the employer. The Court said (323 U.S. at 199, 203):

"But we think that Congress, in enacting the Railway Labor Act and authorizing a labor union, chosen by a majority of a craft, to represent the craft, did not intend to confer plenary power upon the union to sacrifice, for the benefit of its members, rights of the minority of the craft, without imposing on it any duty to protect the minority."

* * * * *

[I]t is enough for present purposes to say that the statutory power to represent a craft and to make contracts as to wages, hours, and working conditions does not include the authority to make among members of the craft discriminations not based on such relevant differences. Here the discriminations based on race alone are obviously irrelevant and invidious. Congress plainly did not undertake to authorize the bargaining representative to make such discriminations. Cf. *Yick Wo* v. *Hopkins*, 118 U.S. 356; *Yu Cong Eng* v. *Trinidad*, 271 U.S. 500; *Missouri ex rel. Gaines* v. *Canada*, 305 U.S. 337; *Hill* v. *Texas*, 316 U.S. 400.

To the same effect is *Tunstall* v. *Brotherhood*, 323 U.S. 210 (1946); see also *Morgan* v. *Virginia*, 328 U.S. 373, and *Railway Mail Association* v. *Corsi*, 326 U.S. 83 (1945).

State courts have also held that unions could not discriminate among their members because of race. *Carroll* v. *Local 269*, 133 N.J. Eq. 144, 31 Atl. (2d) 223, 225 (1943) and *James* v. *Marinship Corp.*, 25 Calif. (2d) 721 155 P. (2d) 329 (1945), noted in 160 A.L.R. 900; see also *Betts* v. *Beasley*, 161 Kan. 459, 169 P. (2d) 831 (1946).

In short, it is our view that the fair employment practices bills pending before your subcommittee are constitutional.

Sincerely,

NICHOLAS DEB. KATZENBACH,
Deputy Attorney General.

Mr. CLARK. Mr. President, this cogent opinion covers pretty much the same ground as the latter opinion of eminent counsel outside the Government, and again makes it clear that the commerce clause is ample constitutional authority for title VII.

I also ask unanimous consent to have printed in the RECORD a memorandum forwarded to me by W. Willard Wirtz, Secretary of Labor, at my request, under date of August 17, 1963, and prepared by the Solicitor's Office of the Department of Labor, "Constitutional Basis for Legislation Before the 88th Congress To Prohibit Discrimination in Employment Because of Race, Color, etc."

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

CONSTITUTIONAL BASIS FOR LEGISLATION BEFORE THE 88TH CONGRESS TO PROHIBIT DISCRIMINATION IN EMPLOYMENT BECAUSE OF RACE, COLOR, ETC.

This memorandum is addressed to the question of the constitutionality, under the commerce clause, of legislative proposals pending before the Senate Committee on Labor and Public Welfare, 88th Congress, to prohibit discrimination in employment because of race, religion, color, national origin, and ancestry. It is concluded that the constitutionality of such proposals is abundantly clear. There can be no doubt as to the power of the Congress to enact this type of legislation. The purpose of this memorandum is to point out the principal factors involved in a consideration of the question.

I. THE POWER OF CONGRESS TO PROHIBIT DISCRIMINATION IN EMPLOYMENT UNDER THE COMMERCE CLAUSE

The constitutional authority of the Congress, in the exercise of the commerce power to enact legislation of this nature is plain beyond doubt. The Supreme Court has repeatedly upheld regulation of employment relationships based on this power.

A. The extent, in general, of congressional power under the commerce clause

It has long been settled that the commerce clause extends not only to the movement of goods in commerce, but also to those related activities preceding or following such movements. Thus, in *United States* v. *Darby*, 312 U.S. 100, the Supreme Court in upholding the validity of the Fair Labor Standards Act stated that "the power of Congress to regulate interstate commerce extends to the regulations through legislative action of activities intrastate which have a substantial effect on the commerce or the exercise of the congressional power over it." In addition, the Court pointed out that this power "extends to those activities intrastate which so affect interstate commerce or the exercise of the power over it so as to make the regulation of them appropriate means to the attainment of a legitimate end, the exercise of the granted power to regulate interstate commerce. * * * The Sherman Act and the National Labor Relations Act are familiar examples of the exertion of the commerce power to prohibit or control activities wholly intrastate because of their effect on interstate commerce."

Moreover, it must be borne in mind with reference to the constitutional basis of the Fair Labor Standards Act, which rests on "commerce" and the "production of goods for commerce," that the Supreme Court has several times emphasized that the Congress in providing this coverage stopped considerably short of the full reach of its constitutional power under the commerce clause (*Kirschbaum* v. *Walling*, 316 U.S. 516; *Higgins* v. *Carr Bros. Co.*, 316 U.S. 564; *Mitchell* v. *H. B. Zachry Co.*, 362 U.S. 310). In answer to the contention that an employer in an industry alleged to be "purely local in nature" should not be compelled to comply with the Fair Labor Standards Act, the Court declared that to the extent that his employees are engaged in commerce or in the production of goods for commerce, the employer is himself so engaged (*Kirschbaum* v. *Walling*, 316 U.S. 516; and see *Mabee* v. *White Plains Publishing Co.*, 327 U S. 178).

It can therefore be authoritatively said that it is now well settled that the constitutional power extends to activities affecting commerce in any amount or volume not so minimal or sporadic as to fall within the doctrine of de minimis non curat lex. As the Supreme Court said in a National Labor Relations Act case, *NLRB* v. *Fainblatt*, 306 U.S. 1, the "power of Congress to regulate interstate commerce is plenary and extends to all such commerce be it great or small," because "commerce may be affected in the same manner and to the same extent in proportion to its volume, whether it be great or small." See also *NLRB* v. *Denver Bldg. & Constr. Tr. Council*, 341 U.S. 675; *Carpenters Union* v. *NLRB*, 341 U.S. 707. And in *NLRB* v. *Stoller*, 207 F. 2d 305 (C.A. 9), certiorari denied, 347 U.S. 919, the National Labor Relations Act was held applicable to a local dry cleaner who purchased $12,000 worth of supplies from outside the State, the Court holding that this amount "was not so insignificant as to come within the rule de minimis non curat lex."

Further, it must be borne in mind that the congressional power to regulate conditions of employment is not limited to those situations where the producer, seller, or furnisher of goods or services himself places the goods or services which he produces, sells, or furnishes in the channels of interstate commerce. This power also extends, for example, to the retail distribution of goods which have moved across State lines before they reach the retailer. Thus the National Labor Relations Act has exclusive jurisdiction with respect to labor relations problems of retailers handling such goods, even though all their sales are local. See *Amalgamated Meat Cutters and Butcher Workmen of America* v. *Fairlawn Meats, Inc.*, 353 U.S. 20 (three retail meat markets, all of whose sales were intrastate but whose out-of-State purchases totaled slightly over one-ninth of total purchases); *San Diego Building Trades Council* v. *Garmon*, 353 U.S. 26 (two retail lumber yards whose out-of-State purchases totaled $250,000); *Howell Chevrolet Co.* v. *NLRB*, 346 U.S. 482 (retail car dealer purchasing from local General Motors warehouse autos and parts manufactured out of State).

The authority of Congress to exercise power with respect to articles which "have completed an interstate shipment and are being held for future sales in purely local or intrastate commerce" is also settled. In *United States* v. *Sullivan*, 332 U.S. 689, a druggist was convicted of failure to comply with labeling requirements for sulfathiazole which was sold to customers after it had moved in commerce. A recent exercise by Congress of this authority is Public Law 85-506 requiring certain information for prospective purchasers to be kept posted on new automobiles prior to their sale to the ultimate consumer.

And, of course, another major example of the exercise of this power was the extension of Fair Labor Standards Act coverage, by the amendments of 1961, to certain retail establishments.

Finally, it is also thoroughly settled that the question whether "the conduct of an enterprise affects commerce among the States is a matter of practical judgment," and that the "exercise of this practical judgment the Constitution entrusts primarily and very largely to the Congress" (*Polish Alliance* v. *Labor Board*, 322 U.S. 643). Under these principles, there is no doubt that a practical judgment by the Congress that discrimination in employment because of race or color has a substantial impact on commerce would be upheld by the courts. Such findings are, of course, contained in the pending bills on this subject.

B. Congressional power under the commerce clause in the field of employment relations

The areas in which the Congress has taken legislative action under the commerce clause by regulatory and/or criminal laws are legion. Any attempt to list them would unduly lengthen this memorandum. Attention should be directed, however, to some of the statutes most closely akin to the proposal here involved; namely, those which deal with employer-employee relationships.

The courts have often and consistently upheld the power of Congress to regulate activities in this area which affect interstate or foreign commerce. Thus in *NLRB* v. *Jones & Laughlin Steel Corporation*, 301 U.S. 1, the Court said (at p. 33):

"Discrimination and coercion to prevent the free exercise of the right of employees to self-organization and representation is a proper subject for condemnation by competent legislative authority. * * *"

In similar vein, the Court spoke as follows respecting discrimination which infringes on the right to work free from racial discrimination in *New Negro Alliance* v. *Sanitary Grocery Co.*, 303 U.S. 552 (at p. 561):

"The desire for fair and equitable conditions of employment on the part of persons of any race, color, or persuasion, and the removal of discrimination against them by reason of their race or religious beliefs is quite as important to those concerned as fairness and equity in terms and conditions of employment can be to trade or craft unions or any form of labor organization or association. Race discrimination by an employer may reasonably be deemed more unfair and less excusable than discrimination against workers on the ground of union affiliation. * * *

The Fair Labor Standards Act, of course, was enacted for the purpose of regulating various conditions of work such as wages, hours, child labor and the employment of learners and handicapped persons. This regulation is permitted because of the effect on interstate commerce of labor conditions in the production of goods for such commerce (*United States* v. *Darby, supra*).

The National Labor Relations Act was enacted to prohibit engaging in unfair labor practices as therein defined. This statute relies on the term "affecting commerce" (as applied to unfair labor practices) to define the reach of Federal regulation, and it too has been held constitutional (*NLRB* v. *Jones & Laughlin Steel Corporation, supra*). There the Court stated that the actions covered by this law are not immune from regulation because they grow out of labor disputes since "it is the effect on commerce, not the source of the injury, which is the criterion" (at p. 32). This principle is, of course, equally applicable to the proposed legislation here under consideration.

Relying upon the commerce clause, the Congress has also enacted the Railway Labor Act, regulating labor relations between the railroads and their employees. The Supreme Court upheld the constitutionality of this law in *Texas & New Orleans R.R. Co.* v. *Brotherhood of Railway Clerks*, 281 U.S. 548.

In *Steele* v. *Louisville and Nashville R.R. Co.*, 323 U.S. 192, the Court further ruled that a union which is the exclusive bargaining representative under the Railway Labor Act has an obligation not to discriminate on the basis of race, notwithstanding a collective bargaining contract providing for

such discrimination. There the Court stated the point to be decided as follows (at p. 193):

"The question is whether the Railway Labor Act imposes on a labor organization, acting by authority of the State as the exclusive bargaining representative of a craft or class of railway employees, the duty to represent all the employees in the craft without discrimination because of their race, and, if so, whether the courts have jurisdiction to protect the minority of the craft or class from the violation of such obligation."

Under the Railway Labor Act the Brotherhood of Locomotive Firemen and Enginemen was the exclusive representative of the craft for purposes of bargaining. Negroes were excluded from membership in agreements with the railway company providing that vacancies as they occurred should be filled by white men, and restricting the seniority rights of Negro firemen. As a result Steele, who was a Negro fireman, lost a substantial amount of time, and was assigned to harder and less remunerative work. He sought injunctive relief which the Alabama courts denied. In reversing, the Supreme Court held that the agreements were violative of the terms of the act, which were held to require that the labor organization, chosen as provided in the act "to be the representative of the craft or class of employees is thus chosen to represent all of its members, regardless of their union affiliations or want of them * * *. Unless the labor union representing a craft owes some duty to represent nonunion members of the craft, at least to the extent of not discriminating against them as such in contracts which it makes as representative, the minority would be left with no means of protecting their interests, or, indeed, their right to earn a livelihood by pursuing the occupation in which they are employed. * * * Without attempting to mark the allowable limits of differences in the terms of contracts based on differences of conditions to which they apply, it is enough for present purposes to say that the statutory power to represent a craft and to make contracts as to wages, hours, and working conditions does not include the authority to make among members of the craft discriminations not based on such relevant differences. Here the discriminations based on race alone are obviously irrelevant and invidious."

In a concurring opinion Mr. Justice Murphy went somewhat further: "The economic discrimination against Negroes practiced by the brotherhood and the railroad under color of congressional authority raises a grave constitutional question which should be squarely faced. The utter disregard for the dignity and the well-being of colored citizens shown by this record is so pronounced as to demand the invocation of constitutional condemnation. To decide the case and analyze the statute solely upon the basis of legal niceties, while remaining mute and placid as to the obvious and oppressive deprivation of constitutional guarantees, is to make the judicial function something less than it should be. The constitutional problem inherent in this instance is clear * * *. But it cannot be assumed that Congress meant to authorize the representative to act so as to ignore the rights guaranteed by the Constitution. Otherwise the act would bear the stigma of unconstitutionality under the fifth amendment in this respect. For that reason I am willing to read the statute as not permitting or allowing any action by the bargaining representative in the exercise of its delegated powers which would in effect violate the constitutional rights of individuals. If the Court's construction of the statute rests upon this basis, I agree. But I am not sure that such is the basis. * * * The Constitution voices its disapproval whenever economic discrimination is applied under authority of law against any race, creed, or color. A sound democracy cannot allow such discrimination to go unchallenged. Racism is far too virulent today to permit the slightest refusal, in the light of a Constitution that abhors it, to expose and condemn it wherever it appears in the course of a statutory interpretation."

Another extremely important case is *Railway Mail Assn.* v. *Corsi*, 326 U.S. 88, which it appears should logically be considered at this point even though it did not involve the commerce clause. There the Supreme Court unanimously upheld a New York law which forbade labor organizations from denying membership or equal protection to any person because of race, creed, or color. The association was an organization of postal clerks which limited its membership to persons of the Caucasian race and native American Indians. It claimed that it was not a labor organization under the law and that if it was, the sections involved violated the due process and equal protection clauses of the 14th amendment and were in conflict with the Federal power over post offices and post roads. Both issues in question were decided against the association.

The opinion, written by Mr. Justice Reed, states that: "We have here a prohibition of discrimination in membership or union services on account of race, creed, or color. A judicial determination that such legislation violated the 14th amendment would be a distortion of the policy manifested in that amendment which was adopted to prevent State legislation designed to perpetuate discrimination on the basis of race or color. We see no constitutional basis for the contention that a State cannot protect workers from exclusion solely on the basis of race, color, or creed by an organization functioning under the protection of the State, which holds itself out to represent the general business needs of the employees."

Mr. Justice Frankfurter, in a concurring opinion, used broader and more emphatic language: "* * * it is urged that the due process clause of the 14th amendment precludes the State of New York from prohibiting racial and religious discrimination against those seeking employment. Elaborately to argue against this contention is to dignify a claim devoid of constitutional substance. Of course a State may leave abstention from such discriminations to the conscience of individuals. On the other hand, a State may choose to put its authority behind one of the cherished aims of American feeling by forbidding indulgence in racial or religious prejudice to another's hurt. To use the 14th amendment as a sword against such State power would stultify the amendment. Certainly the insistence by individuals on their private prejudices as to race, color, or creed, in relations like those now before us, ought not to have a higher constitutional sanction than the determination of the State to extend the area of nondiscrimination beyond that which the Constitution itself exacts."[1]

And in *Syres* v. *Workers International Union*, 350 U.S. 892, the Court extended the doctrine which it had enunciated under the Railway Labor Act to the National Labor Relations Act; i.e., that a bargaining representative certified under the latter act cannot, with respect to its representation, discriminate on the ground of race or color. There the Court, on the authority of the *Steele* case, supra, as well as *Tunstall* v. *Brotherhood of Locomotive Firemen and Enginemen*, 323 U.S. 210, and *Brotherhood of R.R. Trainmen* v. *Howard*, 343 U.S. 768 (see preceding footnote), reversed per curiam the judgment of the Court of Appeals for the Fifth Circuit in a case where the lower court had held (223 F. 2d 739) that no interpretation of the National Labor Relations Act or any other Federal law was involved in a class action by members of a Negro local union which "amalgamated" with a white local so that both would be represented by a single bargaining committee, and the all-white committee negotiated a contract providing for two lines of seniority based solely on race.

If a union acting under authority of an act of Congress has a duty not to discriminate because of race, it seems plain that the Congress has power to prohibit such discrimination. As the Supreme Court stated in *Nebbia* v. *New York*, 291 U.S. 502, 527, "the Constitution does not guarantee the unrestricted privilege to engage in business or conduct it as one pleases." Certainly Congress has had no hesitancy whatever in passing laws which prohibit various types of discriminatory or retaliatory practices.

C. Discriminatory practices expressly prohibited by the Fair Labor Standards Act and the National Labor Relations Act

Section 15(a)(3) of the Fair Labor Standards Act makes it unlawful for any person to discharge or in any way discriminate against any employee because the latter has filed any complaint or instituted any proceeding under or related to the act, or has testified or is about to testify in such a proceeding, or has served or is about to serve on an industry committee. Many cases have been successfully prosecuted for violations of this subsection and it has not been successfully challenged. See, e.g., *Goldberg* v. *Bama Mfg. Corp.*, 302 F. 2d 152 (C.A. 5); *Mitchell* v. *Goodyear Tire and Rubber Co.*, 278 F. 2d 562 (C.A. 8).

Paragraphs (3) and (4) of section 8 of the National Labor Relations Act make it an unfair labor practice either to encourage or discourage membership in a union by discrimination in regard to hire or tenure of employment or any term or condition of employment, or to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under the law.

There are innumerable cases under these two paragraphs. No doubt was cast upon their validity even before 1941 when the Supreme Court in *Phelps-Dodge Corp.* v. *N.L.R.B.*, 313 U.S. 177, held that this is not an unconstitutional interference with the conduct of a private employer's business.

Since Congress, in the exercise of its power over interstate commerce, can make it unlawful to discriminate because of union membership and because of filing complaints or giving testimony under the foregoing labor laws, it is clear that the Congress also has power to prevent discrimination on the basis of race, color, religion, or national origin.

II. THE SUPREME COURT'S DECISION IN THE CONTINENTAL AIR LINES CASE

This recent decision, *Colorado Anti-Discrimination Com'n* v. *Continental Air Lines*, 372 U.S. 714, decided April 22, 1963, upholding the constitutionality of Colorado's antidiscrimination-in-employment statute, is of much interest in connection with the matter under consideration.

A number of States have antidiscrimination-in-employment laws, and the Colorado statute makes it an unfair employment practice for an employer "to refuse to hire, to discharge, promote, or demote, or to discriminate in matters of compensation against any person otherwise qualified because of race, creed, color, national origin, or ancestry" (Colo. Rev. Stat. Ann. (Supp. 1960) sec. 80-24-6).

Petitioner, a Negro, applied for a job as a pilot with Continental Air Lines, Inc., an interstate air carrier. His application was rejected at the carrier's Denver headquarters. Pursuant to the Colorado law he then filed

[1] See also *Tunstall* v. *Brotherhood of Locomotive Firemen and Enginemen*, 323 U.S. 210; *Brotherhood of R.R. Trainmen* v. *Howard*, 343 U.S. 768.

a complaint with the Colorado Antidiscrimination Commission which, after investigation and extensive hearings, found as a fact that the only reason he was not selected for pilot training school was because of his race. The commission ordered Continental to cease and desist from such discrimination practices and to give petitioner the first opportunity to enroll at the next course in its training school.

The State district court for Denver County set aside the commission's findings and dismissed petitioner's complaint. It held that the State antidiscrimination law could not constitutionally be extended to cover the hiring of flight crew personnel of an interstate air carrier because to do so would constitute an undue burden upon interstate commerce in violation of the commerce clause of the Constitution, and because the field of law concerning racial discrimination in the interstate operation of carriers is preempted by the Railway Labor Act, the Civil Aeronautics Act, and Federal Executive orders.

On appeal to the Supreme Court of Colorado, that court affirmed the judgment of dismissal but discussed only the question whether the statute as applied in this case placed an undue burden on commerce, concluding that it did (368 P. 2d 970 (1962)). The U.S. Supreme Court granted certiorari because of the "obvious importance of even partial invalidation of a State law designed to prevent the discriminatory denial of job opportunities." (See 372 U.S. at p. 717.)

On the merits, the Supreme Court reversed the judgment of the Colorado tribunal.

The Court held that the Colorado statute involved, as applied in this case, did not impose a constitutionally prohibited burden on interstate commerce and that the field in question has not been so covered or preempted by Federal laws as to prevent Colorado from applying its Antidiscrimination Act under the circumstances of the case.

The Court said that under its more recent decisions any State or Federal law requiring applicants for any job to be turned away because of their color would be invalid under the due process clause of the fifth amendment and the due process and equal protection clauses of the 14th amendment.

On the question of preemption, the Court noted that the Civil Aeronautics Act of 1938, now the Federal Aviation Act of 1958, forbids air carriers to subject any particular person to "any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever," and requires "the promotion of adequate, economical, and efficient service, by air carriers at reasonable charges, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices."

While stating that the foregoing is a familiar type of regulation aimed primarily at rate discrimination injurious to shippers, competitors, and localities (like the similar provision of the Interstate Commerce Act), the Court said that it might assume for present purposes that these provisions prohibit racial discrimination against passengers and other customers and protect job applicants or employees from discrimination because of race. However, although the act gives broad authority to the administering executive agency over flight crews of carriers, much of which has been exercised by regulations, the Court was satisfied that Congress had no express or implied intent to bar State legislation in this field. Hence the Colorado statute, at least so long as any power the administering agency may have remains "dormant and unexercised," will not frustrate any part of the purpose of the Federal legislation.

Similarly, the Court concluded that neither the Railway Labor Act nor the Executive orders show an intention to regulate air carrier discrimination on account of race so persuasively as to preempt the field and bar State legislation, and, like the Civil Aeronautics Act, they have never been used by the Federal Government for that purpose.

By concluding that the Federal Government has not preempted the field in the case of carriers by air, there seems to be implicit in the Court's decision the proposition that the Government could do so should it so desire. Otherwise there would have been no occasion to consider this question. In order to preempt a field, such field must of course be one in which the Congress may validly legislate.

If the Congress may regulate this form of discrimination in one industry—that of carriage by air—it may do the same thing in other industries, or indeed in all industries to which its power under the commerce clause extends.

III. CONCLUSION

The measures which are the subject of this memorandum are solidly based on the power given by the commerce clause to the Congress. This authority is very broad, extending not only to the movement of goods in commerce, but also to those related activities preceding or following such movements. The power of Congress to regulate interstate commerce extends to the regulation by law of intrastate activities which have a substantial effect on the commerce or the exercise of the congressional power over it. Moreover, the question whether the conduct of an enterprise affects interstate commerce is a matter of practical judgment, the exercise of which is primarily vested in Congress by the Constitution.

It is thus readily apparent that antidiscrimination-in-employment legislation which would apply to virtually all types of employers could be validly enacted.

Mr. CLARK. I conclude by saying that objection to the constitutionality of title VII can be nothing other than frivolous and not worthy of serious consideration.

I turn now to the provisions of the title.

The Senator from New Jersey [Mr. CASE], who will follow me, and I have had prepared an interpretive memorandum of title VII which we are jointly submitting to our colleagues in the Senate.

I ask unanimous consent that the memorandum may be printed in full at this point in my remarks.

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

INTERPRETATIVE MEMORANDUM OF TITLE VII OF H.R. 7152 SUBMITTED JOINTLY BY SENATOR JOSEPH S. CLARK AND SENATOR CLIFFORD P. CASE, FLOOR MANAGERS

GENERAL

Title VII deals with discrimination in employment. It would make it an unlawful employment practice for employers of more than 25 persons, employment agencies, or labor organizations with more than 25 members to discriminate on account of race, color, religion, sex, or national origin in connection with employment, referral for employment, membership in labor organizations, or participation in apprenticeship or other training programs. An Equal Employment Opportunity Commission would be created to enforce the title through investigation of complaints of discrimination, conciliation of disputes, and where necessary, suits in Federal court to compel compliance with the provisions of the title.

COVERAGE

Title VII covers discriminatory practices by employers engaged in industries affecting commerce, as defined in the title, by employment agencies which procure employees for such employers, and by labor organizations in industries affecting commerce. "Commerce" is, generally speaking, interstate commerce, but includes commerce within U.S. possessions and the District of Columbia. It is, in short, that commerce to which the regulatory power of Congress extends under the Constitution, a familiar concept which has been employed in other Federal statutes. The term "affecting commerce" is also familiar, since this is the standard of coverage employed in the National Labor Relations Act, 29 United States Code 152 (6), (7), and the Labor-Management Reporting and Disclosure Act of 1959, 29 United States Code 402(c).

Employers and labor organizations are not covered, however, if their employees or membership fall below certain minimum figures. When title VII is fully effective it will cover employers engaged in industries affecting commerce who have 25 or more employees, and labor organizations with 25 or more members. This coverage will not be reached until 4 years after the enactment of the title. During the first year after enactment the prohibitions of the title are not in effect. During the second year the title will cover employers and labor organizations with 100 or more employees or members, during the third year employers and labor organizations with 75 or more employees or members, and during the fourth year employers and labor organizations with 50 or more employees or members. An employer or labor organization is covered while its employment or membership is above the applicable minimum figure and ceases to be covered when employment or membership drops below the applicable minimum. This means that where employment fluctuates, an employer may be under a duty to avoid discriminating at some times but not at others. Since the principal purpose of the Commission's processing complaints is to obtain future compliance, it may be assumed that in the case of an employer who is intermittently subject to the title the Commission would seek compliance only where there was a prospect for meaningful relief.

There are specific exemptions for the Federal Government and for any State or political subdivision thereof, including governmental agencies, such as civil service commissions establishing standards and conditions for employment, promotion, and retirement but excluding the U.S. employment services and those State and local employment services which receive Federal assistance. There are also exemptions for tax exempt, bona fide private membership clubs, religious corporations, associations and societies, and for employers with respect to the employment of aliens abroad.

DISCRIMINATION

Sections 704 and 705 defined the employment practices prohibited by the title. It would be an unlawful employment practice for an employer to refuse to hire or to discharge any individual or otherwise to discriminate against him with respect to compensation or terms or conditions of employment because of such individual's race, color, religion, sex, or national origin, or to segregate or classify employees in any way on the basis of race, color, religion, sex, or national origin in such a way as to deprive them of employment opportunities or otherwise affect adversely their employment status. Employment agencies would be forbidden to classify, to refer for employment or to refuse to refer for employment, or otherwise to discriminate against any individual because of race, color, religion, sex. or national origin. Labor organizations would be forbidden to deny membership to any individual on the basis of his race, color, religion, sex, or national origin, or to segregate or classify its membership in any way

which would deprive any individual of employment opportunities or adversely affect his status as an employee or an applicant for employment on the basis of that individual's race, color, religion, sex, or national origin. In addition, labor organizations would be forbidden to cause or to attempt to cause an employer to violate the section. Finally, it would be an unlawful employment practice for employers, labor organizations, or joint labor-management committees controlling apprenticeship or other training programs to discriminate against any individual in connection with admission to apprenticeship or other training on the basis of that individual's race, color, religion, sex, or national origin.

Those are the basic prohibitions of the title, but section 704 creates certain limited exceptions from these prohibitions. First, it would not be an unlawful employment practice to hire or employ employees of a particular religion, sex, or national origin in those situations where religion, sex, or national origin is a bona fide occupational qualification for the job. This exception must not be confused with the right which all employers would have to hire and fire on the basis of general qualifications for the job, such as skill or intelligence. This exception is a limited right to discriminate on the basis of religion, sex, or national origin where the reason for the discrimination is a bona fide occupational qualification. Examples of such legitimate discrimination would be the preference of a French restaurant for a French cook, the preference of a professional baseball team for male players, and the preference of a business which seeks the patronage of members of particular religious groups for a salesman of that religion. A second exception would permit religiously affiliated educational institutions to discriminate in employment on grounds of religion. The bill would also permit an employer to discriminate against an individual because of the individual's atheistic practices and beliefs. While this provision appears to us of doubtful constitutionality, it is clearly severable from the rest of the title (sec. 716), and if it is held invalid, it would not affect the broad obligation not to discriminate on religious grounds.

The House also provided an exception (sec. 704(g)) for actions taken with respect to an individual who is a member of the Communist Party or another Communist organization. Since discrimination on the basis of political beliefs or affiliations is not prohibited by the title, this subsection has no substantive effect.

With the exception noted above, therefore, section 704 prohibits discrimination in employment because of race, color, religion, sex, or national origin. It has been suggested that the concept of discrimination is vague. In fact it is clear and simple and has no hidden meanings. To discriminate is to make a distinction, to make a difference in treatment or favor, and those distinctions or differences in treatment or favor which are prohibited by section 704 are those which are based on any five of the forbidden criteria: race, color, religion, sex, and national origin. Any other criterion or qualification for employment is not affected by this title.

There is no requirement in title VII that an employer maintain a racial balance in his work force. On the contrary, any deliberate attempt to maintain a racial balance, whatever such a balance may be, would involve a violation of title VII because maintaining such a balance would require an employer to hire or to refuse to hire on the basis of race. It must be emphasized that discrimination is prohibited as to any individual. While the presence or absence of other members of the same minority group in the work force may be a relevant factor in determining whether in a given case a decision to hire or to refuse to hire was based on race, color, etc., it is only one factor, and the question in each case would be whether that individual was discriminated against.

There is no requirement in title VII that employers abandon bona fide qualification tests where, because of differences in background and education, members of some groups are able to perform better on these tests than members of other groups. An employer may set his qualifications as high as he likes, he may test to determine which applicants have these qualifications, and he may hire, assign, and promote on the basis of test performance.

Title VII would have no effect on established seniority rights. Its effect is prospective and not retrospective. Thus, for example, if a business has been discriminating in the past and as a result has an all-white working force, when the title comes into effect the employer's obligation would be simply to fill future vacancies on a nondiscriminatory basis. He would not be obliged—or indeed, permitted—to fire whites in order to hire Negroes, or to prefer Negroes for future vacancies, or, once Negroes are hired, to give them special seniority rights at the expense of the white workers hired earlier. (However, where waiting lists for employment or training are, prior to the effective date of the title, maintained on a discriminatory basis, the use of such lists after the title takes effect may be held an unlawful subterfuge to accomplish discrimination.)

In addition to the discrimination forbidden by section 704, there are ancillary prohibitions in section 705. Section 705(a) prohibits discrimination by an employer or labor organization against persons for opposing discriminatory practices, and for bringing charges before the Commission or otherwise participating in proceedings under the title. Section 705(b) prohibits discriminatory advertising by employers, employment agencies and labor organizations. There is an appropriate exception where the discrimination is based on a bona fide occupational qualification. It should be noted that the prohibition does not extend to the newspaper or other publication printing the advertisement. It runs solely to the sponsoring firm or organization.

ORGANIZATION OF THE COMMISSION

Section 706 creates an Equal Employment Opportunity Commission of five members, appointed by the President with the advice and the consent of the Senate for staggered 5-year terms. Not more than three members of the Commission shall be members of the same political party.

The Commission will have power to cooperate with and utilize regional, State, and other agencies, both public and private, and individuals. It will also be authorized to furnish technical assistance to persons subject to the title who request it to further their compliance therewith and to furnish conciliation services at the request of an employer whose employees refuse to cooperate in effectuating the provisions of the title. The Commission may also make appropriate technical studies. It may appoint attorneys to appear for and represent the Commission in court. It shall in its educational or promotional activities cooperate with other departments and agencies.

ENFORCEMENT PROCEDURE

An enforcement proceeding under title VII is initiated by the filing with the Commission of a written charge under oath by or on behalf of the person claiming to be aggrieved. A charge may also be filed by a member of the Commission where he has reasonable cause to believe that a violation of the title has occurred: Upon receipt of the charge the Commission will furnish a copy to the person accused of an unlawful employment practice and will proceed to investigate the charge. In the course of such an investigation, Commission representatives would presumably employ their investigatory authority under sections 709 and 710 in interviewing witnesses and examining records and other documents. Obviously, the Commission and its representatives must have considerable discretionary authority to determine how extensive an investigation is warranted under the circumstances of any case.

When the investigation is completed, a preliminary determination must be made as to whether there is reasonable cause to believe that an unlawful employment practice has occurred. If two or more members so determine, the Commission will endeavor to obtain compliance through voluntary methods of persuasion and conciliation. If at this stage two or more members do not conclude that such reasonable cause exists, the charge will be dropped. It should be noted that Commission procedures are intended to be flexible, and it is not necessary for this preliminary determination that all five members of the Commission pass on the case.

The conciliation proceedings are voluntary, and the respondent is not required to participate. In seeking relief through voluntary methods, the Commission must consider both the interests of the complaining party and the public interest to be served, but the principal goal should be to insure future compliance with the title.

If the complaint cannot be resolved through voluntary means, the case must be referred to the full Commission for a determination whether on all the evidence available reasonable cause exists to believe that the respondent engaged in an unlawful employment practice and whether a suit should be brought to compel compliance. If a majority of the Commission determine that reasonable cause exists, ordinarily a suit will be brought in a Federal district court in the judicial district in which the unlawful employment practice allegedly occurred or in the judicial district in which the respondent has his principal office. However, the Commission members may, by an affirmative vote, decide not to bring suit in a given case. Such a decision might be based on any of several considerations, such as the fact the discrimination was an isolated occurrence or related to an insubstantial matter or the difficulty of proving a particular case.

If the Commission decides not to sue, or if at any earlier stage it terminates the proceeding for any reason, the party allegedly discriminated against may, with the written permission of one member of the Commission, bring his own suit in Federal court. If he does so, he would conduct the litigation and bear his own costs, just like any other private plaintiff in a civil action.

The suit, whether brought by the Commission or by the private party, would have to be based on an unlawful employment practice occurring within 6 months prior to the filing of the charge with the Commission. (This 6-month period is tolled while the person aggrieved is in military service.) This limitation will avoid the pressing of stale claims.

Once a majority of the Commission has determined that reasonable cause exists, the Commission must bring suit within 90 days or determine not to bring suit.

The suit against the respondent, whether brought by the Commission or by the complaining party, would proceed in the usual manner for litigation in the Federal courts. It would be a trial de novo and not, in any sense, a suit for judicial review of a Commission determination. In fact, the Commission never makes any determination that respondent committed an unlawful employment practice; it merely ascertains whether or not there is reasonable cause to believe that he did.) The respondent, now

the defendant, would have a full opportunity to make his defense, and the plaintiff, as in any civil case, would have the burden of proving that discrimination had occurred. The suit would ordinarily be heard by the judge sitting without a jury in accordance with the customary practice for suits for injunctive relief.

The relief sought in such a suit would be an injunction against future acts or practices of discrimination, but the court could order appropriate affirmative relief, such as hiring or reinstatement of employees and the payment of back pay. This relief is similar to that available under the National Labor Relations Act in connection with unfair labor practices, 29 United States Code 160(b). No court order can require hiring, reinstatement, admission to membership, or payment of back pay for anyone who was not discriminated against in violation of this title. This is stated expressly in the last sentence of section 707(e) which makes clear what is implicit throughout the whole title; that employers may hire and fire, promote and refuse to promote for any reason, good or bad, provided only that individuals may not be discriminated against because of race, color, religion, sex, or national origin.

If a defendant refuses to obey a court order issued under title VII, he would be subject to punishment for contempt of court. There is no special provision in title VII dealing with contempt of court proceedings, and the ordinary rules apply. A jury trial would not be available in a proceeding for civil contempt, and would be available in a proceeding for criminal contempt only if the original suit were brought by the aggrieved party rather than by the Commission and if the act complained of also constituted a crime under State or Federal law, 18 United States Code 3691.

FEDERAL-STATE COOPERATION

Title VII specifically provides for the continued effectiveness of State and local laws and procedures for dealing with discrimination in employment. Where State remedies are available, an aggrieved person would always be free to take advantage of them. Furthermore, the Commission is authorized to cooperate with State and local agencies, and where it concludes that such agencies are effectively handling any class of cases, the Commission is directed by section 708(b) to enter into agreements with these agencies whereby such cases would be handled exclusively by the State agencies.

It has been suggested that this direction to the Commission is not enough, that there should be some provision automatically providing for exclusive State jurisdiction where adequate State remedies for discrimination in employment exist. Such a proposal is unworkable. Congress cannot determine nor can we devise a formula for determining which State laws and procedures are adequate. The State fair employment practices laws differ in coverage. They differ in enforcement machinery. Several have been enacted within the past 2 or 3 years, and it would be impossible to judge their effectiveness. Other States may adopt such laws after this bill is passed, and it obviously would be impossible to predict what standards and procedures such future State laws would provide. An antidiscrimination law cannot be evaluated simply by an examination of its provisions, "for the letter killeth, but the spirit giveth life." The Commission must have authority to determine in which States and in which classes of cases it will refrain from exercising its jurisdiction.

In point of fact, the task we are assigning to the Commission is so immense, there can be little doubt that the Commission will from sheer necessity avail itself to the fullest of the provisions of section 708(b).

Objection has been raised to title VII on the ground that with nondiscrimination laws in effect in 28 States, including all the major industrial States, there is little need for a Federal law. This is not a valid objection, first, because the State laws have experienced difficulty in dealing with large, multiphased operations of business in interstate commerce. Third, and most important, 22 States do not have general legislation in this area, among them States with large Negro populations. Indeed, roughly 60 percent of American Negroes live in States with no legislation against discrimination in employment, and these are precisely the people who need this protection the most. In the hearings that have been held by Senate and House committees on equal employment opportunity legislation, testimony was heard from representatives of several agencies administering State FEP laws, and all agreed that there was a definite need for Federal legislation.

INVESTIGATION, INSPECTIONS, RECORDS

The investigatory duties and powers of the Equal Employment Commission are set out in sections 709 and 710. Section 710, in turn, incorporates by reference the provisions of sections 9 and 10 of the Federal Trade Commission Act, 15 U.S.C. 49, 50, in support of the Commission's investigatory powers.

Section 709(a) provides that in connection with any investigation of a charge filed under section 707, the Commission or its representatives shall at all reasonable times have access, for the purposes of examination and copying, to any evidence in the possession of a person being investigated that relates to the subject of the investigation. The language of this subsection was amended in the House to bring it into line with the provisions of the Federal Trade Commission Act incorporated by reference. It is important to note that the Commission's power to conduct an investigation can be exercised only after a specific charge has been filed in writing. In this respect the Commission's investigatory power is significantly narrower than that of the Federal Trade Commission, 15 U.S.C. 43, 46, or of the Wage and Hour Administrator, 29 U.S.C. 211, who are authorized to conduct investigations, inspect records, and issue subpenas, whether or not there has been any complaint of wrongdoing. See *Oklahoma Press Publishing Co.* v. *Walling*, 327 U.S. 186 (1946); *Hunt Foods and Industries, Inc.*, v. *Federal Trade Commission*, 286 F. 2d 803, 806–807 (C.A. 9, 1961), cert. denied, 356 U.S. 877 (1961).

Section 709(c) authorizes the Commission to require employers, employment agencies, and labor organizations subject to the title to make and keep records, and to make reports therefrom to the Commission. Records are also to be required in connection with the administration of apprenticeship and other training programs. Fears have been expressed that these recordkeeping and reporting requirements may prove unreasonable and onerous.

Requirements for the keeping of records are a customary and necessary part of a regulatory statute. They are particularly essential in title VII because whether or not a certain action is discriminatory will turn on the motives of the respondent, which will usually be best evidenced by his pattern of conduct on similar occasions. The provisions of section 709(c) have been carefully drawn to prevent the imposition of unreasonable burdens on business and there are more than the customary safeguards against arbitrary action by the Commission.

The requirements to be imposed by the Commission under section 709(c) must be "reasonable, necessary, or appropriate" for the enforcement of the title. Such requirements cannot be adopted without a public hearing at which the persons to be affected would have an opportunity to make their views known to the Commission. Most of the persons covered by the title are already required by law or by practical necessity to keep records similar to those which will be required under this title. The Wage and Hour Administrator imposes recordkeeping requirements on employers subject to the Fair Labor Standards Act with respect to the persons employed and wages, hours, and other conditions and practices of employment (29 U.S.C. 211(c)). Other employment records must be kept for Federal tax purposes (26 U.S.C. 6001), and for normal business purposes. Labor organizations are required to maintain certain records under the Labor-Management Reporting and Disclosure Act (29 U.S.C. 431, 436). Any recordkeeping requirements imposed by the Commission could be worked into existing requirements and practices so as to result in a minimum additional burden. Furthermore, the Federal Reports Act of 1942, 5 United States Code 139–139f. gives the Director of the Bureau of the Budget authority to coordinate the information-gathering activities of Federal agencies, and he can refuse to approve a general recordkeeping or reporting requirement which is too onerous or poorly coordinated with other requirements.

Finally, there is express provision in section 709(c) for an application either to the Commission or directly to the courts for appropriate relief from any recordkeeping or reporting requirements which would impose an undue hardship. We know of no other statute which provides such comprehensive safeguards around an authorization to require the keeping of records.

GRANTS OF IMMUNITY

Section 710 incorporates by reference in support of the investigatory powers of the Equal Employment Opportunity Commission the provisions of sections 9 and 10 of the Federal Trade Commission Act, as amended (15 U.S.C. 49, 50), except that the provisions of section 307 of the Federal Power Commission Act (more properly cited as the Federal Power Act, 16 U.S.C. 791a) (16 U.S.C. 825f), shall apply with respect to grants of immunity. A question has been raised as to the purpose of this exception.

Section 9 of the Federal Trade Commission Act provides, in part:

"No person shall be excused from attending and testifying * * * before the commission * * * for the reason that the testimony or evidence, documentary, or otherwise, required of him may tend to criminate him or subject him to a penalty or forfeiture. But no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any * * * matter * * * concerning which he may testify, or produce evidence * * * before the commission in obedience to a subpena issued by it."

This language has been held to grant immunity to a witness testifying in obedience to a subpena even though the witness does not claim the benefit of the privilege against self-incrimination. See *United States* v. *Pardue*, 294 F. 543 (S.D. Texas, 1923); *United States* v. *Frontier Asthma Co.*, 69 F. Supp. 994 (W.D. N.Y., 1947); see *United States* v. *Monia*, 317 U.S. 424 (1954). In such a situation an interrogator is not placed on notice that a given line of inquiry will result in a grant of immunity to the witness.

Consequently, since the enactment of the Securities Act of 1933, it has been the usual practice for Congress, in drafting an immunity provision, to require that a witness does not obtain immunity unless he is compelled to answer after having claimed his privilege against self-incrimination. The assertion of the privilege affords the interrogator an opportunity to decide whether or not to persist with his questioning and grant immunity thereby. Section 307 of the Federal Power Act is typical of such provisions. It states:

"No person shall be excused from attending and testifying or from producing * * * records and documents before the Commis-

sion * * * on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled to testify or produce evidence, documentary or otherwise, after having claimed his privilege against self-incrimination."

Provisions substantially identical to section 307 may be found in the Securities Exchange Act of 1934, 15 United States Code 78u, the Public Utility Holding Company Act of 1935, 15 United States Code 79r, and the National Labor Relations Act, 29 United States Code 161.

CRIMINAL PROVISIONS

Title VII does not make it a criminal offense to commit an unlawful employment practice. The only remedy is a civil action. However, if a person who is under a court order not to discriminate should persist in doing so, he would be subject to normal judicial procedings for contempt of court, which have already been described.

The only new offense created by title VII is willful failure to post notices as required by section 711, which would be punishable by a fine up to $500.

However, certain existing criminal statutes are made applicable to the activities of the Equal Employment Opportunity Commission. Thus, 18 United States Code 111, which makes it a crime forcibly to assault, resist, impede, or interfere with certain Federal officers in the performance of their duty is by section 714 of the bill made applicable to officers, agents, and employees of the Commission.

Section 10, as applied to title VII, would also penalize unauthorized disclosure of information by an officer or employee of the Commission.

PRESIDENTIAL AUTHORITY

The President's Committee on Equal Employment Opportunity was created by Executive Order 10925, March 6, 1961, and its authority was extended by Executive Order 11114, June 22, 1963. It presently supervises the administration of an equal employment opportunity program with respect to employment by the Federal Government, by contractors and subcontractors on contracts with the Federal Government, and by contractors and subcontractors on construction financed with Federal financial assistance. Title VII, in its present form, has no effect on the responsibilities of the committee or on the authority possessed by the President or Federal agencies under existing law to deal with racial discrimination in the areas of Federal Government employment and Federal contracts. (See CONGRESSIONAL RECORD, Feb. 8, 1964, pp. 2574–2575.)

The President is directed by section 718(c) of the bill to convene one or more conferences of Government representatives and representatives of groups whose members would be affected by the provisions of title VII, to familiarize the latter with the provisions of the title and to make plans for the fair and effective administration of the title. The members of the President's Committee will participate in such conferences, and the scope of the continued and future responsibilities of the President's Committee would be an appropriate topic for consideration at that time.

STUDY ON DISCRIMINATION BASED ON AGE

Section 717 directs the Secretary of Labor to make a full and complete study of the factors which might tend to result in discrimination because of age and of the consequences of such discrimination on the economy and on the individuals affected.

Mr. CLARK. Mr. President, those who are interested in the details will wish to refer to the memorandum. I briefly summarize title VII, as follows:

It deals with discrimination in employment, and would make it an unlawful employment practice for those who employ more than 25 persons and for employment agencies or labor organizations with more than 25 members, to discriminate on account of race, color, religion, sex, or national origin, in connection with employment, referral for employment, membership in labor organizations, or participation in apprenticeship or training or retraining programs.

The title would create an Equal Employment Opportunity Commission, which would be charged with the duty of enforcing the title, investigation of complaints of discrimination, conciliation of disputes, and, where necessary, suits in the Federal courts, to compel compliance with the title.

There are certain obvious exemptions to the coverage, including religious organizations.

I shall not deal with the exemptions in any detail, although I shall be happy to answer any questions which any of my colleagues may desire to ask me in that regard.

The size of coverage starts with employers and labor unions having 100 or more members.

The second year coverage is increased to include those having 75 or more members; the third year 50; and the fourth year 25. The remainder of the memorandum, in my judgment, meets the desirability of having in the RECORD a detailed explanation of each section of the bill, and of those subsections the meaning of which might appear obscure to the casual reader.

I shall not extend this talk further by dealing with the details of the legislation.

Mr. President, some time ago the able minority leader, the Senator from Illinois [Mr. DIRKSEN], expressed some concern on the floor of the Senate with respect to title VII. I understand that yesterday the Senator from Illinois had available—but I was unable to obtain a copy—the detailed language of amendments which he has in mind submitting to title VII. Since I have not had the opportunity to read the text, and since in a matter as complicated as this it is important that we should refer specifically to a detailed, legal text, I shall not undertake to comment on the newspaper articles which were published this morning with respect to the burden of the amendments of the Senator from Illinois. I am confident that, to the extent they do no more than to perfect language, they will be received on this side of the aisle with an open mind. To the extent that they water down the bill—and I do not say that they do—I am sure they will be opposed on this side of the aisle. I am also sure that the Senator from Illinois [Mr. DIRKSEN] will have the legislative good sense to clear any amendments which he seriously desires the Senate to adopt, with his Republican colleague, Representative MCCULLOCH, of Ohio, who, as I stated earlier in these remarks, has become to some extent the "czar" of the Senate, since we are in a parliamentary situation where we do not dare adopt any amendment which has not received the categorical approval of Representative MCCULLOCH.

If we should do so, we might be forced to go to conference. If the House would not accept the Senate amendments, and if the bill went to conference—that is, if the House should let it go there, we would then be faced with the threat of a second filibuster.

I should like to respond at this time to some of the questions asked by the Senator from Illinois [Mr. DIRKSEN] when he was debating the Morse motion to refer the pending bill to the Judiciary Committee.

At that time, the Senator caused a large number of eyebrows to be raised. He suggested dire consequences if drastic amendments were not made to title VII as well as many of the other titles. One cannot be sure—at least I cannot be sure—how strongly the junior Senator from Illinois will press the position he then took. I can speak only for myself. Some of the suggestions he made appear to be immaterial and quite unimportant; some would seem to make drastic and unacceptable changes in the bill—that is, they would if they were adopted. Some would interject into the House bill some wise provisions in the Senate bill—the FEPC bill which is now on the calendar—provisions which, unhappily, we are not in a parliamentary situation to approve, because of the danger which I have already indicated over on the House side.

In my opinion, as chairman of the subcommittee which conducted the hearings and brought the bill to the floor by a vote of 12 to 3 in the Committee on Labor and Public Welfare, the Senate bill is infinitely preferable to the House bill because it is a stronger bill.

But there is some doubt as to whether the House, or even the Senate, would be ready to adopt such strong medicine—I would hope they would. Again, there is the problem of the parliamentary situation with respect to conference and the position which the House holds over us of primacy in determining what shall go into the final bill. Therefore, I do not believe there will be a practical opportunity to accept the suggestions of the Senator from Illinois which would strengthen title VII by increasing its coverage, and perhaps in other matters.

During his speech, the Senator from Illinois asked a number of questions. I am sure they were asked in all sincerity. Their phraseology indicates grave concern as to the feasibility and the wisdom of a large part of title VII. I have undertaken to have those questions answered in brief compass; and in my opinion they are answered rather convincingly.

I conclude from the questions and answers that most of the objections of the Senator from Illinois to title VII, as evidenced at that time, are untenable.

Mr. President, I ask unanimous consent that a copy of the memorandum, giving the questions of the Senator from Illinois and the answers I have caused

to be prepared thereto, may be printed in full in the RECORD at this point in my remarks.

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

RESPONSE TO DIRKSEN MEMORANDUM

Question. What records are employers required to keep by title VII?

Answer. Employers will be required to keep such relevant records as the Commission prescribes after public hearing.

Question. Employers voluntarily participating in the program of the President's Commission on Equal Opportunity are apprised in detail of the records which they must keep—and the records are, I believe, more comprehensive than are those that would be required by title VII. Are we to superimpose another set of records on the employer in addition to a third set that he may be keeping for a State FEPC?

Answer. There will not be a layering of recordkeeping requirements. The President's Committee does not require that records be kept, and none of the State FEPC laws contain recordkeeping requirements.

Question. What of the conflict between State and Federal record requirements? Illinois prohibits any reference to color or religion in employers' records. Title VII would require this information to be kept. Are we now to force an employer to violate a State law in order to comply with a Federal statute, each of which has the same purpose?

Answer. No State has a law which would prohibit disclosure of racial or religious information on employees. Some States do have laws which prohibit disclosure on employment application forms. These laws would yield to the supremacy of the Federal law, since it is necessary to have this data to determine if a pattern of discrimination exists.

Question. Every employer is required to make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed and shall preserve such records for such periods as the Commission shall require. In the wage and hour laws we clearly set forth the records to be kept and prescribed the periods for which they should be preserved. Why not do the same in this legislation? Is there any compelling reason why this cannot be done? I know of no such restriction on the Senate or on the Judiciary Committee, where in fact it should be done.

Answer. Congress cannot set definite recordkeeping requirements, and should not try to write them in the statute, because it is not yet known what records will be needed. The Commission should do it, after full public hearing, and subject to appropriate judicial review.

Question. Who is to determine what are essential and what are nonessential records? Without adequate statutory direction an employer may well risk severe penalties if he destroys records relevant to the determination of whether unlawful employment practices have been or are being committed. Who is to determine what is relevant, certainly not the employer unless he is willing to risk prosecution.

Answer. The Commission will make the initial determination, after public hearing, as to what records are "reasonable, necessary, or appropriate for the enforcement of this title or the regulations or orders thereunder" and will issue regulations specifying those records. Of course, these regulations are subject to appropriate court review. An employer will have ample notice of what records he must keep, because they will be specified in the regulations. He can only be punished if he willfully destroys or fails to keep records; not if he inadvertently does so. He need not wait to be prosecuted to have a court determination of what records are relevant. A subpena is not self-enforcing; it can be enforced only after a court has heard his arguments and disagreed with them. Of course, if he disobeys the court's order, then he would be in contempt of court.

Question. What protection is afforded to an employer from fishing expeditions by investigators in their zeal to enforce title VII? Examine section 709(a) on page 44. The Commission or its designated representative shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. Can there be a greater grant of investigatory authority? I can recall none. Should the Commission be permitted to copy evidence? Should an employer be permitted to request a detailed list of the records to be examined by the Commission? Should the employer be permitted to go before a competent court in order to determine what records relate to any matter under investigation or in question? Or are we to allow the Commission carte blanche authority in its examination, in its copying of evidence, in its inquiry? Should this examination be limited to specified documents? How broad can such inquiry be? It will be limited only by determination of the Commission. No private rights will remain.

Answer. The Commission should have the power to copy information from the records which it requires to be kept. It will specify by regulation what records must be kept, and notify the employer which of these records it wishes to see. The employer is entitled to a day in court before the Commission inspects any records; he can contest the subpena. Private rights will be amply protected by the courts.

Question. On page 41 section 707 provides for relieving the Commission of any obligation to bring a civil action where the Commission has determined that the bringing of such action would not serve the public interest. I feel the public interest should be more clearly defined for the purposes of this bill and that the language should be changed to read "which would serve the interest of this title."

Answer. The term "public interest" in section 707(b) means "public interest" within the purpose of this title. It is not necessary to amend it.

Question. Section 708 of this title vests in this Commission the authority to determine the effectiveness of State or local action in the field of fair employment. I do not feel such language is appropriate. The people of the State should have the right to determine the effectiveness of their agencies consistent with the expressed purpose of this section.

Answer. Title VII leaves State and local FEPC laws untouched, except where they are in conflict with it. Title VII does permit the Federal Commission to agree to refrain from bringing any civil actions in any cases or classes of cases in a particular State or locality, where it determines that the State or local agency has effective power to implement the purposes of title VII, and is effectively exercising it. But it does not repeal any consistent State or local laws. Of course, neither does any State or local law cancel out the Federal law. If this were true, some States might be encouraged to enact sham laws in order to prevent enforcement of the Federal law.

Question. Now let's take the case of the operator of an establishment who has been determined to be in violation of one or another of the provisions of title VII and who has been so ungracious as to refuse the gentle persuasive efforts to the Commission or perhaps the not-too-gentle arm twisting of the Commission, toward conciliation. The bill provides that within 90 days the Commission shall, and I emphasize the mandatory nature of the verb, bring a civil action to prevent the respondent from engaging in such unlawful employment practice unless by affirmative vote the Commission shall determine that the bringing of such an action would not serve the public interest. So he finds himself in the Federal district court.

Now, if he operates in a State which has a fair employment practice statute, such as my State of Illinois does, he is likely to have been the respondent in an administrative proceeding by the State commission and the subject of an order requiring him to cease and desist from the unemployment practice complained of and to take such further affirmative or other actions as will eliminate the effect of the practice complained of. And, if he does not comply, the commission shall, that is the word, commence an action in the name of the people of the State of Illinois for the issuance of an order directing such person to comply with the commission's order. For violation of that order he may be punished as in the case of civil contempt. What a layering upon layer of enforcement. What if the court orders differ in their terms or requirements? There is no assurance that they will be identical. Shall we have the Federal forces of justice pulling on the one arm and the State forces of justice tugging on the other? Shall we draw and quarter the victim? If he has violated a valid law, he must be brought into line, but should we not give consideration to the overlapping of jurisdiction and multiple suits against the same defendant arising out of the same discrimination? I know there is a provision, as I have mentioned, for the Federal agency, at its discretion, to enter into agreements with a State or local agency to refrain from bringing a civil action in classes of cases to which they can agree. But, if that agreement does not come to pass, where are we under the provisions of overlapping Federal and State statutes?

Answer. The Federal law will apply in all the States, but it will not override any State law or municipal ordinance which is not inconsistent. However, the Federal authorities will stay out of any State or locality which has an adequate law and is effectively enforcing it. This provision has two beneficial effects: (1) it will induce the States to enact good laws and enforce them, so as to have the field to themselves; and (2) it will permit the Federal FEPC to concentrate its efforts in the States which do not cooperate. In any event, there cannot be contrary and conflicting orders from State and Federal agencies, because of the doctrine of Federal supremacy.

Question. Who is an employer within the meaning of title VII? I am not sure, the bill is indefinite, we have no committee hearings, no report. Can an employer readily ascertain from the language of the bill whether or not he is included? Employers with a large number of employees will have no difficulty, but what of the small businessman?

Answer. The term "employer" is intended to have its common dictionary meaning, except as expressly qualified by the act.

Question. Most statutes in defining an employer in relation to the number of employees he has are rather specific. Contrast the language on page 28 of this bill: "The term 'employer' means a person engaged in an industry affecting commerce who has 25 or more employees" with the language from the Illinois FEP Act:

(d) "Employer" includes and means all persons, including any labor organization, labor unions, or labor association employing more than 100 persons within the State within each of 20 or more calendar weeks, within either the current or proceeding calendar year prior to January 1, 1963; assume if you will the operation of a medium-size orchard. For 11½ months of the year the employer has no employees. But during 2 weeks of the year he employs 100 pickers. Is he to be

subjected to the provisions of this title? What of summer or winter resort operations where employment is only for 2 or 3 months at the most. Are they to be covered by this title? Certainly we have no clear statement by which an employer can be guided. Is this the way to legislate?

Answer. Employers whose staffs fluctuate seasonally are covered by the act at times when the number of employees exceeds the minimum figure; they are not covered when it is below the minimum.

Question. If an employer obtains his employees from a union hiring hall through operation of his labor contract, is he in fact the true employer from the standpoint of discrimination because of race, color, religion, or national origin when he exercises no choice in their selection? If the hiring hall sends only white males, is the employer guilty of discrimination within the meaning of this title? If he is not, then further safeguards must be provided to protect him from endless prosecution under the authority of this title.

Answer. An employer who obtains his employees from a union hiring hall through operation of a labor contract is still an employer. If the hiring hall discriminates against Negroes, and sends him only whites, he is not guilty of discrimination—but the union hiring hall would be.

Question. Would the same situation prevail in respect to promotions, when that management function is governed by a labor contract calling for promotions on the basis of seniority? What of dismissals? Normally, labor contracts call for "last hired, first fired." If the last hired are Negroes, is the employer discriminating if his contract requires they be first fired and the remaining employees are white?

Answer. Seniority rights are in no way affected by the bill. If under a "last hired, first fired" agreement a Negro happens to be the "last hired," he can still be "first fired" as long as it is done because of his status as "last hired" and not because of his race.

Question. If an employer is directed to abolish his employment list because of discrimination what happens to seniority?

Answer. The bill is not retroactive, and it will not require an employer to change existing seniority lists.

Question. Does an unfair practice arise as a result of the operation of this discrimination provision in title VII?

Answer. Nothing in this act affects the determination of what an "unfair labor practice" would be under the National Labor Relations Act.

Question. Now I turn to discrimination on account of sex. Frankly, I always like to discriminate in favor of the fairer sex. I hope that the might of the Federal Government will not enjoin me from such discrimination. But let us look further at this provision. Historically, discrimination because of sex has been a protective discrimination because we do not believe that women should do heavy manual labor of the sort which falls to the lot of some men. This is not true, of course, in some other countries where we see pictures of women working on the roads and in the mines. Then, too, we discriminate in favor of women because of nimble abilities in many fields, such as the assembly of radios and delicate instruments and machines. Where the discrimination is not in the best interest of the fairer sex we have approached the problem by specific prohibitions such as the requirement of equal pay for women doing the same work as men.

Answer. Wherever sex is a bona fide qualification or disqualification for a particular job, title VII does not require that equal job opportunity be given to both sexes.

Question. Section 704 provides that it shall be unlawful employment practices for an employer * * * to fail or refuse to hire * * * any individual * * * because of such individuals * * * national origin. This as well as other restrictions on employers under this title would tend to create difficulties for the defense contractors, for example, who are required by reason of security clearance regulations to practice what amounts to discrimination because such discrimination in security matters is both vital and necessary.

Answer. Title VII creates no problems for defense contractors who must require a security clearance for employees. National origin alone is never a basis for the denial of a security clearance; there must always be some other factor, such as the presence of a close relative in a hostile country. Consequently the security program does not conflict with title VII, since it never requires discrimination on the ground of mere national origin.

Question. Section 704 describes the employment practices which are made unlawful by this bill. Subsection (e) of that section provides certain exceptions—namely: "where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise" or where a religious educational institution wishes to hire only employees of its particular religion. But what of other reasonable occupational qualifications? The Harlem Globe Trotters may well wish to preserve their racial identity. A movie company making an extravaganza on Africa may well decide to have hundreds of extras of a particular race or color to make the movie as authentic as possible. A religious institution which operates a hospital may have as great a desire to employ people of its own religious persuasion in the hospital as it would in its educational institution.

Answer. Although there is no exemption in title VII for occupations in which race might be deemed a bona fide job qualification, a director of a play or movie who wished to cast an actor in the role of a Negro, could specify that he wished to hire someone with the physical appearance of a Negro—but such a person might actually be a non-Negro. Therefore, the act would not limit the director's freedom of choice. With regard to the Harlem Globe Trotters, it is probably true that they have less than 25 employees—and so they would not be covered by the act in any case. A hospital which is owned and operated by a religious order would be exempt under section 703.

Question. Section 707 of this title provides for action to be taken by the Commission on behalf of a person when it has received information on behalf of a person who is claiming to be aggrieved. I feel that action taken under this title should be by complaint of an individual and not initiated on his behalf by others.

Answer. It is essential that the act permit a complaint to be filed on behalf of a person since persons suffering discrimination, either by ignorance of their rights or lack of sophistication to pursue them, may be unable to initiate the complaint procedure. This would enable a union to act on behalf of one of its members, for example.

Question. Section 704(f) of this title reads as follows: Notwithstanding any other provision of this title, it shall not be an unlawful employment practice for an employer to refuse to hire and employ any person because of said person's atheistic practices and beliefs. This language was added to the bill in the House of Representatives and would, if passed, be in my opinion, the subject of review by the Supreme Court. I have some doubt, in view of recent decisions of the Supreme Court, that this section would be sustained.

Answer. The atheist proviso appears to be unconstitutional. However, it is clearly severable, and the fact that it is void does not impair the rest of the act. (The Communist proviso may be unconstitutional—but in any case is irrelevant, since there is nothing in the act about discrimination on the ground of political belief.)

Mr. CLARK. Mr. President, during the course of this debate, a number of objections have been raised to various provisions of title VII. I believe, rather than to deal with them seriatim, and to an empty Chamber, it would be wiser to have them printed in the RECORD, where they can be perused at leisure by Senators—there may be one or two who still read this debate in the CONGRESSIONAL RECORD. Accordingly, I ask unanimous consent that a series of objections which have been raised by opponents of the bill, either on or off the floor, to title VII, and the answers to these objections may be printed in full in the RECORD at this point in my remarks.

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

Objection: The Federal law is only needed because State laws have not worked but the Federal law will not be any more effective than the State laws.

Answer: Much progress has been made under State FEPC laws but they cover less than half of the Negro working population. The Federal law will provide remedies in the 25 States which do not have laws. It will be an important supplement in the States which do, both by bringing additional resources into play, but also because it will be effective in dealing with large interstate employers.

Objection: Title VII was tacked on to the bill. It was not in the original package, it was never taken seriously and was not the subject of careful Committee deliberation in the House of Representatives.

Answer: President Kennedy in his civil rights message on June 19, 1963, specifically recommended the enactment of fair employment practice legislation. Hearings were held before the House Labor Committee, and before the Senate Labor Committee on numerous bills covering this entire field. Indeed, the Senate Labor Committee in its consideration of S. 1937, studied the provisions of title VII with great care, and incorporated some of them into the Senate bill.

Objection: The sex antidiscrimination provisions of the bill duplicate the coverage of the Equal Pay Act of 1963. But more than this, they extend far beyond the scope and coverage of the Equal Pay Act. They do not include the limitations in that act with respect to equal work on jobs requiring equal skills in the same establishments, and thus, cut across different jobs.

Answer: The Equal Pay Act is a part of the wage hour law, with different coverage and with numerous exemptions unlike title VII. Furthermore, under title VII, jobs can no longer be classified as to sex, except where there is a rational basis for discrimination on the ground of bona fide occupational qualification. The standards in the Equal Pay Act for determining discrimination as to wages, of course, are applicable to the comparable situation under title VII.

Objection: Section 707(c) provides for private civil actions in all cases, including those in which the board has dismissed for want of merit. All the charging party requires is permission of a single member, and having this, he may harass employers by filing actions in the Federal courts.

Answer: Private actions have been permitted under the Fair Labor Standards Act

for a quarter century. In the fair labor standards cases, permission is not required. There is no record of harassment under this statute. Indeed, efforts to authorize backpay actions by the wage hour administrator through enactment of Fair Labor Standards Act amendments were resisted for many years.

Objection: Many employers will lean over backwards to avoid discrimination, and as a result will discriminate against other employees, thereby increasing case volume.

Answer: The Presidential conferences under section 718, should result in a broad understanding of the equal pay opportunity program. In addition, the Commission has a clear mandate to engage in widespread educational and promotional activities to encourage understanding and acceptance of the policy of the act, including the obligation not to discriminate against whites.

Objection: It is arguable that the bill apply to the election of the Board of Directors by stockholders.

Answer: It will not. Board members are not employees nor are stockholders employers.

Objection: Practically every small business is subject to this title.

Answer: The bill would cover only those employers with 100 or more employees during the second year after its enactment, and would gradually be stepped-up until its fifth year when it would reach employers with 25 or more employees. In its second year following enactment, it would cover 56,000 employers, and would expand to this number gradually until it would reach the figure approximately of 257,000 employers in its fifth year.

Objection: The language of the statute is vague and unclear. It may interfere with the employers' right to select on the basis of qualifications.

Answer: Discrimination is a word which has been used in State FEPC statutes for at least 20 years, and has been used in Federal statutes, such as the National Labor Relations Act and the Fair Labor Standards Act, for even a longer period. To discriminate is to make distinctions or differences in the treatment of employees, and are prohibited only if they are based on any of the five forbidden criteria (race, color, religion, sex or national origin); any other criteria or qualification is untouched by this bill.

Objection: A defense contractor working on secret materials will not be able to comply with security regulations because he would have to hire persons from behind the Iron Curtain.

Answer: The title does not affect the employers right to refuse to hire an applicant because he does not meet security requirements. In any event, discrimination on the basis of national origin is permitted where it is a bona fide.

Objection: The bill would make it unlawful for an employer to use qualification tests based upon verbal skills and other factors which may relate to the environmental conditioning of the applicant. In other words, all applicants must be treated as if they came from low-income, deprived communities in order to equate environmental inequalities of the culturally deprived group.

Answer: The employer may set his qualifications as high as he likes, and may hire, assign, and promote on the basis of test performance.

Objection: Under the bill, employers will no longer be able to hire or promote on the basis of merit and performance.

Answer: Nothing in the bill will interfere with merit, hiring, or merit promotion. The bill simply eliminates consideration of color from the decision to hire or promote.

Objection: If the employer discharges a Negro, he must prove that the dismissal has nothing to do with race. When an employer promotes or increases the pay of a white employee, he must show that he was not biased against the Negro worker who was not promoted.

Answer: The Commission must prove by a preponderance that the discharge or other personnel action was because of race.

Objection: The bill would require employers to establish quotas for nonwhites in proportion to the percentage of nonwhites in the labor market area.

Answer: Quotas are themselves discriminatory.

Mr. CLARK. Mr. President, a question has been raised as to how much title VII of the bill would cost, and how many new Federal employees would be required to administer it.

I have requested the Department of Justice to answer those questions for me to the best of its ability. I am told that 190 new employees would be required to enforce title VII.

I note, parenthetically, that, before sex raised its ugly head in the bill, the number was 150. Apparently, it requires 40 more employees to take care of the discriminatory charges against members of the fair sex.

In response to my question as to how much the bill would cost, the Department of Justice tells me the average cost would be $4,750,000 over a 5-year period. Had we not been dealing with sex, that sum would be reduced to $3,800,000.

I also asked how much the study of employment discrimination on the grounds of age, which is called for by the bill, would cost, and how many employees would be required. I was told that 5 employees would be required, at a cost of $75,000.

I conclude as I began. The overwhelming reason for the passage of the proposed legislation is that when we pass it we answer a moral question in the right way. We do our share as a legislative body in assuring that rights secured, as our forefathers then thought, by the 14th and 15th amendments to the Constitution of the United States shall become living rights, and enforcible rights, rights of all American citizens regardless of race, creed, color, national origin, or sex.

We have a grave responsibility in the Senate, to measure up, for the first time in almost 100 years, to the simple challenge of justice, to see that in Congress we hold this truth to be self-evident, that all men are created equal, and that the phrase above the temple of justice of the Supreme Court of the United States, a few short steps across the park from here, "Equal Justice Under Law" shall become at long last a meaningful reality in the richest, greatest, and freest country the world has ever known; and that we shall have at long last removed the blot on our escutcheon which for so long has resulted in the hypocrisy of our holding forth to the world that we profess ideals which we are unwilling to put into practice.

Unless Senators desire to question me, I am prepared to yield the floor.

Mr. JOHNSTON. Mr. President, I should like to ask a few questions of the Senator. Who prepared the charts in the rear of the Chamber?

Mr. CLARK. Chart No. 1, showing the median wage or salary income in 1939, 1947, and 1962, is based on published U.S. Census Bureau data. Chart No. 2, the estimated lifetime earnings, is based on Bureau of Census figures. Chart No. 3, which shows rates of unemployment, was prepared by the Bureau of Labor Statistics of the Department of Labor. The fourth one, which is the map, is based on information obtained from the Library of Congress, furnished to me at my request.

Mr. JOHNSTON. The first chart shows the white and nonwhite males, 14 years of age and over. The Senator calls attention to the fact that the earnings of the colored are about 50 percent of the white, on the average; is that correct?

Mr. CLARK. It was less than 50 percent in 1939. By 1947 it was a little better than 50 percent.

Mr. JOHNSTON. Fifty-five percent.

Mr. CLARK. Fifty-five percent. By 1962, it was close to 60 percent.

Mr. JOHNSTON. At least 50 percent of the colored people live in the South; is that correct?

Mr. CLARK. I believe so.

Mr. JOHNSTON. About 50 percent.

Mr. CLARK. States which do not have fair employment practices acts, which includes only the South and several States with very small populations, have roughly 60 percent. Therefore, I would not quarrel with the Senator on that point.

Mr. JOHNSTON. I invite the Senator's attention to the reason for that situation. What is the per capita income in States where the ratio of colored to white is very low—for example, in New York and Pennsylvania? I refer particularly to the Senator's State of Pennsylvania.

Mr. CLARK. I am ashamed to admit that I do not know. It is probably a little higher than in South Carolina.

Mr. JOHNSTON. It is almost double, I am sorry to say. That is where the colored people live. We should bear that in mind in examining the chart. Now then, another thing——

Mr. CLARK. Before the Senator goes on——

Mr. JOHNSTON. Just a moment.

Mr. CLARK. I have the floor. I am required to yield only for a question. I wish to extend to my friend from South Carolina every courtesy. I do wish to have the opportunity, however, to interrupt him before he goes on with another thought, so that my reply to his argument can be read consecutively in the RECORD. What I am pointing out is that while it is true that the income in my State of Pennsylvania is higher than it is in the State of South Carolina, that is true for Negroes as well as whites, and does not in any way impugn the validity of the showing made by the chart.

Mr. JOHNSTON. It does. Let me go a step further. The Senator will find that the colored people live on the farms. That means that their income is much

less than the income of people who live in municipalities. Even in my State, that is true. That is another thing that cuts into the argument, is it not?

Mr. CLARK. No; that is not true. There is another chart.

Mr. JOHNSTON. What is the income on the farms in South Carolina?

Mr. CLARK. I would prefer to answer my friend's question before taking up another question. In my State the overwhelming majority of Negroes live in the cities of Pittsburgh and Philadelphia. They came to my State from the Senator's State because they did not like conditions down there.

Mr. JOHNSTON. In South Carolina most of the people are leaving the farms.

Mr. CLARK. They leave the South because they believe they are unjustly treated.

Mr. JOHNSTON. That is true of farms everywhere.

Mr. CLARK. That applies to white people, too. The migration from farm to city has been irrespective of race. The number of people who have left farms in Pennsylvania and moved into cities has become a disturbing social phenomenon. It is not a racial problem.

Mr. JOHNSTON. In my State a great many colored people live on farms.

Mr. CLARK. I am sure that is correct.

Mr. JOHNSTON. A great many have moved into towns in my State, and they have moved into the Senator's State and into other States, mostly into cities.

Mr. CLARK. That is correct.

Mr. JOHNSTON. Those who made up that chart did not take into account the chickens and cows and hogs and everything else. When the per capita income is shown, it looks very low indeed.

Mr. CLARK. They do the same thing with the whites on the farms in the Senator's State, who have very low income, as they have in Appalachia, a part of which is in my State. The income of farmers all over the United States is very low. These statistics take into account both Negroes and whites.

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

Mr. JOHNSTON. They did not count them in making up that kind of statistics.

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

Mr. CLARK. Will my friend from South Carolina permit me to yield to my friend from New Jersey?

Mr. JOHNSTON. Yes.

Mr. CASE. I point out to the Senator from South Carolina that what the Senator from Pennsylvania is saying is correct. The figure for the median income of Negroes in South Carolina is 35 percent of the median income of whites in the whole State, taking into account both farm and nonfarm population.

Mr. JOHNSTON. I can explain that, too. The industries in my State are in the upper part of the State.

Mr. CLARK. Mr. President, I ask unanimous consent that a table which appears at pages 349 and 370 of the subcommittee hearing to which I have earlier referred, entitled "Table 1, estimated lifetime earnings for males in the experienced civilian labor force, by years of school completed, color, and region for selected occupations," one of which is agriculture, may be printed at this point in the RECORD.

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

TABLE 1.—*Estimated lifetime earnings for males in the experienced civilian labor force, by years of school completed, color, and region, for selected occupations*

[Earnings from age 18 to 64 years. Thousands of dollars. These data are from Herman P. Miller, "Trends in Income Distribution in the United States"; 1960 census monograph being prepared under the joint sponsorship of the Bureau of the Census and the Social Science Research Council]

Occupation and years of school completed	United States				North and West				South			
	Total	White	Nonwhite	Ratio of nonwhite to white	Total	White	Nonwhite	Ratio of nonwhite to white	Total	White	Nonwhite	Ratio of nonwhite to white
FARMERS AND FARM MANAGERS												
Total	140	147	59	40	156	157	166	106	114	129	41	32
Elementary:												
Less than 8 years	84	97	42	43	128	130			68	80	39	49
8 years	126	129	70	54	136	137			100	106	45	42
High school:												
1 to 3 years	147	151	93	62	159	160			130	138	49	36
4 years	168	169	147	87	168	169			166	171		
College:												
1 to 3 years	213	215			200	200			243	250		
4 years or more	267	272			240	243			344	353		
4 years	271	276			243	246			337	345		
5 years or more	269	252			240	244						
FARM LABORERS AND FOREMEN												
Total	80	91	49	54	100	102	84	82	58	71	42	59
Elementary:												
Less than 8 years	62	70	45	64	81	82	74	90	50	58	40	69
8 years	90	96	56	58	100	102	76	75	67	75	46	61
High school:												
1 to 3 years	103	111	62	56	115	117	90	77	81	95	47	49
4 years	128	134	86	64	134	136			113	130		
College:												
1 to 3 years	151	155			150	152						
4 years or more	192	200										
4 years												
5 years or more												
FARM LABORERS, WAGE WORKERS												
Total	76	87	49	56	96	98	79	81	55	65	42	65
Elementary:												
Less than 8 years	60	68	45	66	79	80	73	91	49	57	40	70
8 years	88	93	55	59	98	100	73	73	63	70	45	64
High school:												
1 to 3 years	97	105	59	56	110	113	83	73	72	84	47	56
4 years	117	121	77	64	123	125			96	110		
College:												
1 to 3 years	138	141			142	144						
4 years or more	167											
4 years												
5 years or more												

Mr. CLARK. Mr. President, I yield to the Senator from South Carolina.

Mr. JOHNSTON. In South Carolina there are approximately 800,000 colored people. About 33 percent of the people in South Carolina are colored, and about 67 percent of them are white.

Most of the 800,000 colored people live on the farms in South Carolina. That cannot be said of the white people. The majority of the white people live in the cities or work in industry. Those white people draw higher salaries. Is that not true? I know it is true in South Carolina.

Mr. CLARK. The Senator will recall that he and I had a colloquy on the subject a week or two ago. At that time, we discussed the absence of voting in the Senator's State in certain rural counties where Negroes outnumber the white people. The Senator stated at that time that those are only a few counties with very small population.

I concluded from the statement of the Senator that that was not typical of the situation in South Carolina. I am now interested at being enlightened by the Senator on this situation when the Senator states that there is a much higher percentage of Negroes in the rural areas than in the cities. This would be a good reason for the Senator to vote for title I.

Mr. JOHNSTON. For the information of the Senator, what the Senator is discussing today does not bear on the question. The bill would eliminate everyone who has less than 25 employees. Is that not true?

Mr. CLARK. I am talking about voting. The Senator is talking about employment.

Mr. JOHNSTON. In South Carolina, not only are the colored people voting, but there are more colored people running for office than we are given credit for permitting to vote.

Mr. CLARK. That is a refreshing statement to hear in the Senate. I am afraid the statistics will not stand up.

Mr. JOHNSTON. Eight colored people are running for the legislature today in Richland County in South Carolina. There are other colored people running for office all over the State. I have not checked the other counties, but colored people are running for office.

Mr. CLARK. I think this is a wonderful example of how persistent and enlightening statesmen are making splendid progress in this matter in the State of South Carolina for the first time in almost 100 years.

Mr. JOHNSTON. If the Senator were to investigate the matter, he would discover that, on the whole, South Carolina has been permitting some of them to vote for a long time. However, a great many of them do not care to vote.

Mr. CLARK. I believe a great many of them are afraid to vote.

Mr. JOHNSTON. They are not. I have not heard of anyone who was afraid to vote. The Senator has not heard of any report from the committee which was appointed to go out and investigate, to the effect that they were intimidated.

Mr. CLARK. I am not on that committee.

Mr. JOHNSTON. I know the Senator is not on the committee, but the Senator has the committee report. He has read it. The Senator tried to bring to our attention the claim that they are mistreated. He has not discovered this to be true in South Carolina. Is that correct?

Mr. CLARK. Does the Senator desire to ask me another question?

Mr. JOHNSTON. Yes. I want to ask the Senator a question about the chart on unemployment which the Senator referred to. It will be found that there is migration from the farms to the towns.

Mr. CLARK. The Senator is correct.

Mr. JOHNSTON. That is correct. It will also be found that in South Carolina a great many of the migrants are colored people. I think the same is true in regard to other Southern States.

Mr. CLARK. The Senator is correct.

Mr. JOHNSTON. That being so, those colored people come into the cities unprepared to be carpenters, unprepared to be electricians, unprepared for special jobs of that kind. This situation results in a larger percentage of the colored people being unemployed. Is that not so?

Mr. CLARK. The Senator is in part correct. It is true that lack of educational opportunities and the unfortunate parental environment do make a great many of them unemployable when they leave the farm and come to the cities. But in addition, there has been great discrimination in regard to employment in the Senator's State.

I say there was some discrimination in regard to employment in Pennsylvania until we had the good sense to adopt the statewide FEPC law some time ago.

Mr. JOHNSTON. Does the Senator know that in the State of South Carolina, white and colored teachers are paid the same salary?

Mr. CLARK. I did not know it.

Mr. JOHNSTON. The law was enacted a long time ago, while I was Governor. The teachers are given examinations. The examination papers are graded just as they are under Federal civil service regulations.

The papers are not graded in South Carolina. They are sent to Princeton University. This is done so that the northern people will not criticize us. The papers are graded at Princeton University and the people who grade the papers do not know whether the teachers are colored or white. The papers are given numbers, and the teachers are paid in accordance with the result of the examinations.

Mr. CLARK. As a graduate of Harvard, I would not want to make an invidious comment about Princeton. However, I would be inclined to pay more attention to the results if an IBM computer were used.

Mr. JOHNSTON. In South Carolina we are doing everything we can to avoid criticism.

Mr. CLARK. The rate of Negro unemployment has gone up consistently as compared with white unemployment for the past 15 years. This is a social malaise and a social situation which we should not tolerate. That is one of the principal reasons why the bill should pass.

Mr. JOHNSTON. Returning to the chart, it was stated that educated people earn much more money. Where did the Senator obtain the statistics showing that this one teacher was receiving such a low salary?

Mr. CLARK. I do not know what State the Senator is referring to.

Mr. JOHNSTON. The Senator stated in his speech that a colored college graduate received only a very small salary.

Mr. CLARK. The Senator has reference to chart 2, which shows that the lifetime earnings of a white man in the labor force who has completed only the elementary school would be more during his lifetime than the lifetime earnings of a Negro who had completed 4 years of college.

I obtained those figures from the Census Bureau.

Mr. JOHNSTON. But in addition, the Senator has again taken into consideration the employment situation which they face, and whether the salaries paid are lower in the particular locality where they happen to be born and reared than they are at the present time.

Mr. CLARK. That is why the bill is here, so that we can open up areas of employment for Negroes to which they have been denied access for the past 100 years. That having been made clear, I hope that the Senator will vote for the bill.

Mr. JOHNSTON. I will not vote for the bill. The Senator is stirring up more headaches than have ever existed before in the life of the Senator. All of the disturbances will not be in South Carolina. Many of them will be in Philadelphia.

Mr. CLARK. Does the Senator desire to ask me any further questions?

Mr. JOHNSTON. No.

Mr. CASE. Mr. President, will the Senator yield for an inquiry on procedure?

Mr. CLARK. I yield.

Mr. CASE. I suggest that the Senator from Pennsylvania and I might complete our statements, and then submit ourselves jointly or individually to questions. The questions might be numerous and lengthy. It would be of some help to the Senator from New Jersey if he might now make his statement, which would require perhaps three-fourths of an hour. It would then be time for the services for General MacArthur. After the services, we could return and devote the remainder of the day, if necessary, to this discussion.

Mr. CLARK. The Senator from New Jersey has a good point.

Mr. ERVIN. If there is to be a debate, it would be better to have the debate proceed as the speeches are made, rather than to have all the speeches on one side made at one time.

Mr. CLARK. The Senator from North Carolina is correct. I am quite hungry, but I will indulge the Senator.

Mr. CASE. How long does the Senator from North Carolina estimate that it would take?

Mr. ERVIN. I have some questions. However, I cannot predict the length of the answers of the Senator from Pennsylvania.

Mr. CLARK. Can the Senator predict the length of the questions?

Mr. ERVIN. I cannot predict the questions which I may ask, since some answer may provoke a question I do not now have in mind.

Mr. CASE. Would the Senator say it would require at least a half hour?

Mr. ERVIN. Like the Senator from Pennsylvania, I have not had lunch, but I have some surplus calories stored up.

Mr. CLARK. I would like to help the Senator from New Jersey, but I am unable to help him.

Mr. CASE. The Senator from New Jersey is quite willing to leave this matter in the hands of the Senator from Pennsylvania.

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

Mr. CLARK. I yield.

Mr. ELLENDER. I notice that figure 1 on the chart shows the median wage or salary income in 1939, 1947, and 1962 for people of a certain age, whites and nonwhites.

The second chart shows the estimated lifetime earnings of whites and nonwhites. The third chart shows unemployment rates for whites and for nonwhites. Can the Senator from Pennsylvania tell us what effect, if any, in his State or in any other State in which FEPC legislation has been enacted, such legislation has had on those figures?

Mr. CLARK. That would be a matter of empirical judgment; and I do not think one can answer the question categorically, other than to say that, in my opinion, as a former mayor of Philadelphia and as a chief executive charged with supervision of enforcement of our own ordinance on employment practices, beginning shortly after World War II, and continuing to the present time, the effectiveness of our Human Relations Commission, as it is called, which has employment practices as one of its objectives, has been significant, and that areas of employment have been opened to Negroes, whereas never before were they open to them. Department stores constitute a very good example. Our police force is another one. All of the municipal employees constitute a third. I have no hesitation in saying that if we had not had our fair employment ordinance under the direction of our Human Relations Commission, I am confident that in Philadelphia there would, today, be much more Negro unemployment than there is.

Furthermore, based on the visits I have made to Pittsburgh—Pittsburgh is where the other significant number of Negroes in our State live—my observations there would tend to lead to the same conclusion.

Although the Pennsylvania State law is good and is effective, generally it has not demonstrated as great an effect as that demonstrated by the ordinances of Philadelphia and Pittsburgh, because the overwhelming majority of the Negroes in Pennsylvania reside in those two cities.

Mr. ELLENDER. I was going to ask about the situation in Pittsburgh and the situation in Philadelphia. They are really the only two areas in Pennsylvania where FEPC ordinances or legislation are effective; and that is because the great majority of the Negroes in Pennsylvania live in those two cities. Is not that true?

Mr. CLARK. No, I would not say so. I would say the majority of the impact has been in those two cities; but the State law has been enforced throughout the State. For example, I refer to the city of Erie, which has a population of approximately 138,000, and has a total of approximately 8,000 Negroes; and, generally speaking, they are fairly well protected from job discrimination.

However, it is to be noted that the school dropout rate for Negroes is much higher than that for whites.

Mr. ELLENDER. That is generally true throughout the country, is it not?

Mr. CLARK. Yes, and that has an effect on the figures.

Mr. ELLENDER. Does the Senator from Pennsylvania have information on the situation shown by chart 4, in contrast to the situation before the adoption of the FEPC ordinances?

Mr. CLARK. I must give an empirical answer, because the question cannot be answered on the basis of statistical proof; but I will say that as the legislation was enacted, it did take hold and did open job opportunities to Negroes in areas where they had not had them before; but that was occurring in a time of great change and flux, when enormous numbers of relatively uneducated Negroes were moving from the South to the North, so that employment discrimination—based, as I have said, in part on lack of education—was getting worse until action was taken by the city commission, under the city FEPC laws, and more recently under the State FEPC law.

Mr. ELLENDER. I thank the Senator from Pennsylvania.

Mr. ERVIN. Mr. President, I ask unanimous consent that the Senator from Pennsylvania may yield to me, to permit me to ask some questions and make some observations, without losing his right to the floor, and also without having his subsequent remarks counted as a second speech by him on the question before the Senate.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. CLARK. Mr. President, I also ask unanimous consent that from time to time, I may take my seat, without losing my right to the floor.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. CLARK. Mr. President, let me say that I shall not insist that the Senator from North Carolina comply with the rule which requires that a Senator who has the floor can yield only for questions. I am prepared to waive that requirement.

Mr. ERVIN. I understand.

First, let me ask this question: Does not the Senator from Pennsylvania agree with me that in the great majority of States, there are child labor laws which prohibit children below 16 from working—and in some States, children below age 18—except in some isolated cases, such as carrying newspapers?

Mr. CLARK. I think I can smell somewhat of a rat in the Senator's question; but in my State, as well as in North Carolina, many young people, despite the child labor laws, do go to work—often on farms, and sometimes in businesses—earlier than age 18. So the answer to the Senator's question is "Yes, surely."

Mr. ERVIN. Does not the Senator from Pennsylvania agree with me that in many States it would be unlawful for young people 14 or 15 or 16 years of age to work, except in some isolated cases, such as carrying newspapers?

Mr. CLARK. Largely in hazardous occupations, the employment of such young people would be prohibited. Of course, generally speaking, I do not agree with the Senator from North Carolina, although I think there is some truth in what he says.

Mr. ERVIN. North Carolina has a law which prohibits child labor below age 16, as I recall. So does not the Senator from Pennsylvania think that unemployment figures are unreliable if they begin with age 14, for States in which young people of that age are forbidden to work?

Mr. CLARK. If the Senator from North Carolina is attempting to throw some doubt on the validity of the charts prepared by the Census Bureau, I must say that I cannot agree, by any Socratic method, that there is any substantial justice in his point of view.

Mr. ERVIN. Does not the Senator from Pennsylvania think that even when some persons of the ages of 14, 15, or 16 are employed, even though they are forbidden by State law to work, calculations based on their employment are unreliable?

Mr. CLARK. The answer to the Senator's question is that the chart does not deal at all with unemployment; it deals only with wage income.

Mr. ERVIN. But the third chart deals with unemployment.

Mr. CLARK. Yes; but the first two do not. Therefore, I think the Senator from North Carolina is not being logical or sound when he attempts to take a position based on proceeding from the unemployment aspects of chart No. 3 to the income aspects of chart 1 and chart 2.

Mr. ERVIN. Frankly, I think I am being more sound than the Department of Labor has been in making calculations on the basis of statistics for young people 14 years of age and upward, whereas the laws of many of the States prevent young people of ages 14, 15, and 16 from working.

Mr. CLARK. The Senator is quite entitled to his opinion. I shall not argue with him.

Mr. ERVIN. Will the Senator agree that, as a matter of mathematics, if we should add the income earned by people starting at the age of 14 and those not working and divide by the total number, we would arrive at a figure having about as much reliability as we would if we should take my poverty, and add that to the wealth of Nelson Rockefeller, then divide the sum total by 2, and say that each one of us had an average worth of a couple of hundred million dollars?

Mr. CLARK. Nothing that the Senator has said, and I do not believe anything which the Senator could say—although I would be happy to listen to him patiently—would raise in my mind any doubt as to the validity of the statistical information set forth in the charts prepared by the Department of Labor and the Bureau of the Census. I have complete confidence in the objectivity of their statistics.

Mr. ERVIN. At one time I tried to obtain from the Bureau of the Census the figure for the population of my State. I found that their figure was 24,000 people short. So I do not accept all of their figures as reliable.

Mr. CLARK. How did the Senator know that the figure was 24,000 short?

Mr. ERVIN. I knew the overall figures. When I examined the figures according to the races of people, as they were classified, I discovered that they had forgotten 24,000 Indians residing in Robeson County, N.C.

Mr. CLARK. I am not here to defend the statistical methods of the Bureau of the Census. I am here to defend title VII of the bill, and I would be happy if we could move to that subject.

Mr. ERVIN. I ask the Senator the following question: In the ultimate analysis, is it not the theory of the proponents of the bill that there are not enough jobs in the United States to go around among the people; therefore it is proposed to set up a Commission which would see to it that such jobs as are available are given to nonwhites rather than whites?

Mr. CLARK. No, of course not. That is an entirely fallacious statement of everything we have said. There are not enough jobs to go around. I deplore it and I believe the Senator from North Carolina does, too. I say that when available jobs are filled, they ought to be filled without regard to race, color, creed, or national origin of any American citizen who applies for an available job. I believe that is simple justice under the law.

Perhaps my friend from North Carolina agrees with me.

Mr. ERVIN. Does the Senator from Pennsylvania claim that whites are discriminated against in employment on account of their race?

Mr. CLARK. That is a pretty loaded question. I must think that over. I believe I can safely say "no."

Mr. ERVIN. Very well, then. I shall cite some figures I have received from the Department of Labor. According to the figures the Department gave me a few days ago, in the month of February 1964, there were 3,629,000 whites in the United States without jobs.

Mr. CLARK. I believe that figure is about right. It sounds about right.

Mr. ERVIN. In the light of the answer of the Senator from Pennsylvania to my previous question, would he agree that those 3,629,000 whites are not out of jobs on account of discrimination exerted toward them in relation to job opportunities?

Mr. CLARK. I believe that is correct. I am surprised that the figure is not higher, because the Negro population is only 10 percent of the total. There are approximately 4,500,000 individuals looking for work that they cannot now find, and, according to the best figures that I can obtain, 900,000 of them are Negroes. So percentagewise in the country the rate of unemployment among Negroes is about twice that among whites. Considering that the Negroes constitute 10 percent of the population of the country and that the overall unemployment is 4,500,000, we would expect that unemployed Negroes would number about 450,000. But the number is twice that, which I think is pretty good evidence of job discrimination as well as inadequate education and experience.

Mr. ERVIN. Is it not true that today there are four unemployed white persons for every nonwhite unemployed person?

Mr. CLARK. A little more than that.

Mr. ERVIN. Not according to the figures given me for February 1964 by the Department of Labor. According to the Department of Labor, in February 1964 the number of unemployed white people totaled 3,629,000, in round numbers.

Mr. CLARK. I believe that is correct. Twenty percent. I stand corrected. The Senator is correct.

Mr. ERVIN. The nonwhites totaled 895,000.

Mr. CLARK. The Senator is correct.

Mr. ERVIN So there were four white people out of employment for every nonwhite person out of employment.

Mr. CLARK. Where do we go from there?

Mr. ERVIN. I am trying to show where we go. The Senator might draw the inference that the 895,000 Negroes, or a substantial part of that number, are out of work because of discrimination against them on account of their race, but the 3,629,000 white persons are out of employment on account of economic conditions.

Mr. CLARK. I shall tell the Senator why. The uncontroverted testimony before the subcommittee, of which I am chairman, established that without sensible dispute. In my speech I tried briefly to make the point. I am sorry that I have not convinced the Senator.

Mr. ERVIN. I cannot understand why the Senator draws the inference that the lack of jobs for nonwhites is due to discrimination against them on account of race, but the lack of jobs for white people, which is four times as great, is due to economic conditions.

Mr. CLARK. I should think that point would be self-evident to a normal high school graduate. To be sure, the 900,000 Negroes who are out of work could not all get jobs. In my opinion, the majority of them could not get jobs if we had a fair employment practices title at the Federal level. But it would help a great deal.

Mr. ERVIN. The fact remains that today in the United States there are four white persons out of employment for every nonwhite out of employment.

Mr. CLARK. Yes; but the fact remains that the unemployment rate in the country today is 5.1 percent for white people and 10.9 percent for Negroes.

Mr. ERVIN. Does not the Senator from Pennsylvania agree with the Senator from North Carolina that, as a general rule, high skills are more often possessed by white people than by Negroes?

Mr. CLARK. I do.

Mr. ERVIN. Does not the Senator from Pennsylvania agree with the Senator from North Carolina that higher educational attainments are possessed by more white people than nonwhites, taking them on the average?

Mr. CLARK. For the time being; yes.

Mr. ERVIN. Does not the Senator from Pennsylvania believe that perhaps the discrepancy in employment of whites and nonwhites is due, in part, to the lack of skill among nonwhites and the lack of educational attainments among nonwhites?

Mr. CLARK. The Senator may have some logic on his side.

Mr. ERVIN. Does not the Senator from Pennsylvania know that during recent years there has been a great development of automation in America, which has resulted in the unemployment of many people of all races?

Mr. CLARK. As chairman of the Subcommittee on Unemployment and Manpower it has been my task, since May of last year, to investigate extensively the causes and possibles cures of unemployment. The comprehensive report of the subcommittee is now in galley proof. I shall be glad to see that the Senator gets a copy when it comes out next week. The answer to his question is "Yes."

Mr. ERVIN. That is particularly true with reference to those who work upon farms, is it not? Does not the Senator from Pennsylvania know that in recent years there has been great development of automation on farms, in that there has been a substitution of tractors for mulepower?

Mr. CLARK. That is true on farms; it is also true in banks and automobile assembly lines. This is a national phenomenon affecting practically every employable skill.

Mr. ERVIN. Is it not also true that more people, who might be numbered among those who have the least skills and the least education are deprived of jobs by automation?

Mr. CLARK. The Senator is correct.

Mr. ERVIN. So many factors enter into the problem other than discrimination; is that not true?

Mr. CLARK. That is correct. However, discrimination is a major factor, as the testimony before the subcommittee, of which I am chairman, amply demonstrated, and as I have attempted to illustrate in my remarks this morning.

Mr. ERVIN. I ask the Senator from Pennsylvania if any member of his subcommittee was opposed to the FEPC bill which the subcommittee had under consideration?

Mr. CLARK. Not of the subcommittee. Three members of the full committee were opposed.

Mr. ERVIN. Which committee conducted the hearings?

Mr. CLARK. The subcommittee.

Mr. ERVIN. Does not the Senator from Pennsylvania acknowledge the fact that when all the members of a subcommittee agree on a question, the evidence which tends to disprove their position is not likely to be produced?

Mr. CLARK. On the basis of the history of the Judiciary Committee, on which the Senator serves, he is eminently correct.

Mr. ERVIN. Does not the same situation apply with reference to the subcommittee of which the Senator from Pennsylvania is chairman?

Mr. CLARK. I do not believe so. I invited all members of the full committee to join in the hearings and asked the opponents to come forward. None came

forward. I am sure we would have treated them as courteously as the Senator from North Carolina treated the Attorney General when the latter appeared before the Judiciary Committee. I do not believe the bill received any different treatment in the Committee on Labor and Public Welfare, on the positive side, from the treatment the bill received in the Judiciary Committee on the negative side. I trust I am not violating rule XIX, section 2, by saying that I believe we searched for the truth, but the Judiciary Committee did not.

Mr. ERVIN. I am not casting aspersions on any member of the subcommittee.

Mr. CLARK. Nor am I casting reflections on the Judiciary Committee.

Mr. ERVIN. But I have noticed, from long experience in the courthouse, that when evidence is taken on only one side of a case, the only evidence before the court will be the evidence to sustain that side of the case.

Mr. CLARK. It makes me wonder a little why the Senator from North Carolina did not appear before the subcommittee and make the eloquent argument he is now making, and why he did not bring up the hosts of witnesses from North Carolina to show us that we are engaging in dangerous radicalism, and why he did not make a record thereon. I am sure he would agree that he would have been received courteously, and perhaps with an open mind.

Mr. ERVIN. I know I would have been received with the utmost courtesy and consideration; but, to be perfectly frank, I do not have any lively hope that I can convert the Senator from Pennsylvania to a sound position in dealing with this matter.

Mr. CLARK. And, I suspect, vice versa.

Mr. ERVIN. Let me explain that one reason why I did not appear was that, somehow or other, I overlooked the facts that the subcommittee was considering the matter.

The statement was made by the Senator that religious organizations came before the committee and endorsed the bill. Does not the bill exempt religious organizations from certain sections of the bill?

Mr. CLARK. There is a section which deals with it. What page does the Senator refer to?

Mr. ERVIN. The language appears on page 34, beginning at line 14, and running through line 6 on page 35. Is that language not virtually an exemption of religious organizations from the coverage of the bill?

Mr. CLARK. And some educational institutions, also.

Mr. ERVIN. It seems to me that, if they think the bill is so good, religious organizations would want to be included under its coverage.

Mr. CLARK. If the Senator will excuse me for saying so, I think that argument is a tenuous one.

Mr. ERVIN. If it is good enough for Paul and Silas, and if it is good enough for everybody else, it ought to be good enough for them.

Mr. CLARK. I respectfully disagree with the Senator.

Mr. ERVIN. I invite your attention to page 35 of the bill, starting on line 7, and going to line 10:

> Notwithstanding any other provision of this title, it shall not be an unlawful employment practice for an employer to refuse to hire and employ any person because of said person's atheistic practices and beliefs.

Does the Senator believe that is a good provision?

Mr. CLARK. My answer to that question is, categorically, "No." It is, in my judgment, an unconstitutional provision, which was written on the floor of the House. I deplore it. I would like to see it stricken out. But since it is clearly and patently unconstitutional, it does not make any difference.

Mr. ERVIN. It seems to me the Senator ought to allow one amendment to strike out the provision which he says is unconstitutional. I think we would be in agreement on that.

Mr. CLARK. It is pleasant to be together on this point.

Mr. ERVIN. Under the first amendment to the Constitution, a man has a right to accept any religious belief, or to reject some or all religious beliefs. It seems to me that some of the religious organizations ought to be opposed to this section of the bill, which is calculated to starve a poor atheist to death before his soul can be saved.

Mr. CLARK. I trust the Senator will excuse a little Latin when I say that the provision is so obviously constitutional that the principle of "de minimis non curat lex" would apply.

Mr. ERVIN. I do not favor any part of a bill that is unconstitutional.

Mr. CLARK. Neither do I. I shall be glad to support an amendment, if the Senator wishes to offer one to strike it out.

Mr. ERVIN. I am glad to hear that. I think everybody is entitled to have a job in order to sustain his body long enough to enable him to see the light and save his soul.

Mr. CLARK. The Senator makes a powerful argument.

Mr. ERVIN. The Senator from Pennsylvania told us that the Council of Economic Advisers estimated that the gross national product of America would be increased by $13 billion if Negroes could utilize the skills they now have.

Mr. CLARK. That is correct.

Mr. ERVIN. Can the Senator tell us to what extent the Council estimated the gross national product would be increased if the 3,600,000 whites who are out of employment were permitted to use the skills they now possess?

Mr. CLARK. I do not know if the Council had that figure in its memorandum, but my general recollection is—and I believe I am correct—that if we were able to put all idle hands on all idle machines, the gross national product would be increased by about $30 billion. That would be under conditions of full employment.

Mr. ERVIN. Does not the Senator believe that the President's Council of Economic Advisers ought to have enough concern for the 3,600,000 whites who are out of employment, to ascertain by what figure the gross national product would be increased if they were able to use their skills?

Mr. CLARK. I can assure the Senator from my personal knowledge that the Council of Economic Advisers has a very deep and abiding concern in that connection. I can endeavor to persuade the Council to provide the figure the Senator wants. If he insists on it, I shall be very glad to get it for him. I did not know that this kind of inquiry would be pursued.

The basic fact is that there is absolutely untenable unemployment in this country, which affects whites as well as Negroes. It is a great shame that we have not been able to devise ways, in our free economy, with the aid of the Government, to eliminate unemployment. Unfortunately, we have not. The Council of Economic Advisers is made up of a group of brilliant men, who are doing a fine job under great difficulties. If the Senator would like the figure to which he referred, I shall be glad to get it.

Mr. ERVIN. It gives me some misgivings to see that those who assist the proponents of the bill by supplying them with information to justify the passage of the bill manifest no concern about getting figures which show that most unemployment is due to conditions other than the alleged discrimination. If they had done what they ought to have done, they would have advised the Congress how much the gross national product would be increased if those 3,600,000 white persons were employed.

Mr. CLARK. If the Senator will permit an observation, while not admitting the validity of the Senator's charge, my experience has been that there has been a conspicuous lack of interest on the part of opponents of the bill in facts which would be favorable to the passage of the bill.

Mr. ERVIN. I do not agree. It is my conviction that the best way to increase employment is to allow the free enterprise system to work rather than to have the Government come in and take control of private employment. The employer should have the right without Government interference, to select the persons he thinks he should hire, the persons he thinks he should promote, and the persons he thinks he should lay off in times of economic adversity. I think this bill, instead of making more jobs, is going to result in decreasing jobs.

Mr. CLARK. The only things that stand in the way of the validity of the Senator's contention are the 14th amendment to the Constitution of the United States and the conscience of the American people.

Mr. ERVIN. The 14th amendment does not stand in the way. The fifth amendment provides that the Federal Government shall not deprive any man of life, liberty, or property without due process of law. Yet it is being proposed that the Government shall dictate how an employer shall use his own property, whom he shall hire, and who shall be allowed to work for him to protect the investment which he made with his own money, and not with the money of the Government.

Mr. CLARK. The Senator has long been an eloquent advocate of the days which have gone.

Mr. ERVIN. I admit to the Senator from Pennsylvania that this country is now in a better state than it will be if this bill is passed. This is true because the bill will rob all American citizens of some of their most basic, economic, legal, personal, and property rights.

I believe in liberty. Liberty is the greatest value of civilization.

The men who drafted the Constitution—which some now say is outworn—agreed with me. When they inserted in the preamble to the Constitution the reason why they created the United States of America and wrote the Constitution, they said it was to "secure the blessings of liberty to ourselves and our posterity."

This bill, if enacted into law, would rob the people of the right to determine the use of their own property, the right to determine who shall be their customers, and the right to determine whom they wish to hire, whom they should discharge, whom they should promote, whom they can lay off in time of adversity, and what the just wages shall be as between one man and another.

I will agree that if this bill were passed, that the America I have known and loved, the America that believes in liberty rather than Government by regimentation, would be supplanted by a police state.

Mr. CLARK. Mr. President, will the Senator from North Carolina permit a question?

Mr. ERVIN. Certainly.

Mr. CLARK. I wonder whether the Senator's zeal in defense of liberty is not confined to liberty for the white man and no liberty for the Negro.

Mr. ERVIN. No. My zeal for liberty is for all men to enjoy. Every man should have liberty; but if this bill should pass we would not only rob whites of liberty, but we would rob nonwhites of liberty to an equal extent.

Mr. CLARK. Does the Senator not believe that a man should be entitled to a job on the basis of his own qualifications, and not because of race, color, sex or national origin?

Mr. ERVIN. I believe a man is entitled to a job if he satisfies an employer from whom he seeks employment that he is the one who can best perform the services which the employer wishes to have performed.

I believe that the man who has invested his money in a business, and who seeks to be successful in that business, is the best man to determine who possesses the skills which he needs for his business. This bill would take that power away from him and give it to some Government agent who could come in and tell him whom he must hire to operate some intricate piece of machinery, when the Government agent might not know the top from the bottom of the machinery.

Mr. CLARK. Does the Senator believe that in the modern world, in the light of the agitation which has gone on for some years for equal justice under the law for our Negro citizens, it is the right of an employer to deny a job to a man solely because of his race or color?

Mr. ERVIN. I say that a man should be permitted——

Mr. CLARK. How about answering my question?

Mr. ERVIN. I do not believe the unemployment figures indicate that to be true. They indicate that 3,629,000 whites are out of employment, as contrasted with 895,000 nonwhites.

Mr. CLARK. I commend to the distinguished Senator from North Carolina a careful perusal of the equal employment opportunities hearings held before the subcommittee, of which I am chairman.

Mr. ERVIN. It was the kind of hearing an old justice of the peace down in North Carolina would have loved to preside over. He was presiding over a civil case. When the plaintiff had finished his evidence, the justice of the peace looked at defendant's counsel and said, "I hope you will not offer any evidence. When I hear the evidence on both sides of a case I become confused. When I hear only one side I have no trouble reaching a judgment."

The Senator's subcommittee already had its mind made up; no witnesses appeared before it except those whose views harmonized with those of the subcommittee. In consequence, the committee could reach only one conclusion under those circumstances.

Mr. CLARK. The Senator will recall that long before the justice of the peace in North Carolina took that position, King James I of England did. I believe that as a magistrate in the days of the Stuarts he refused to hear defendants, for the same reason the magistrate down South did. I am sure the Senator would not accuse me, as chairman of the subcommittee, of refusing to hear anyone who wished to come before the subcommittee and make the eloquent but unsound argument which the Senator has just advanced on the floor of the Senate.

Mr. ERVIN. I was not accusing the Senator of anything.

Mr. CLARK. I am glad to hear it.

Mr. ERVIN. I was merely stating that the North Carolina justice of the peace wanted to hear only one side of the case. He would have been delighted by the proceedings before the subcommittee, which heard only one side of the case.

Mr. CLARK. If I had been content to hear only one side of the case, I would have yielded the floor about an hour ago.

Mr. ERVIN. I thank the Senator for listening to another side of the case.

I believe the Senator from Pennsylvania mentioned the fact that Pennsylvania has had an FEPC law for some time. When was that law enacted?

Mr. CLARK. I am ashamed to say that I do not know—and I should. I will undertake to get that information for the Senator in the near future.

Mr. ERVIN. Has it been in existence for a considerable period of time?

Mr. CLARK. The parent ordinance was the Philadelphia fair employment practices ordinance which was adopted during the time of my predecessor as mayor. That must have been shortly after World War II.

My staff assistants tell me that the FEPC State act was enacted in 1955.

Mr. ERVIN. I take it that under that act, all the problems in this field have been resolved and settled in the State of Pennsylvania?

Mr. CLARK. Certainly not.

Mr. ERVIN. I was wondering, because——

Mr. CLARK. I went into that question at some length with the Senator from Louisiana [Mr. ELLENDER] a few moments ago.

Mr. ERVIN. I am not attempting to cast any aspersions on the State of Pennsylvania, but I have a distinct recollection that during the past months I saw a great many events on television which allegedly came from the city of Philadelphia. They were concerned with employment in connection with the construction of public schools. They indicated there was great protest arising out of discrimination in Philadelphia with respect to hiring Negroes to work on public buildings.

Mr. CLARK. The Senator is quite correct. There are employment conditions in Philadelphia and elsewhere in Pennsylvania which I deeply deplore. There has been racial agitation within the past couple of years which, in my judgment, is most unfortunate, and has brought tension not only to Philadelphia, but also to surrounding territories such as the community of Folcroft, in Delaware County, where a disgraceful near-lynching took place. I would be the first to admit that Pennsylvania needs this law, too.

Mr. ERVIN. It seems to me that if Pennsylvania has an FEPC law, and the FEPC law has not worked, the Senator would be reluctant to impose one on a national basis

Mr. CLARK. No. I say most candidly to the Senator from North Carolina that in my opinion—and I have tried to become informed on this subject—the condition would be far worse throughout Pennsylvania in general today, and in Philadelphia and Pittsburgh in particular, if it were not for the fair employment practice ordinances and laws which have helped significantly. It is the unanimous opinion of those charged with enforcing such laws, that it would be helpful to them to be supported by a Federal Government provision.

Mr. ERVIN. I would be reluctant to take the doctor's medicine when the doctor's medicine had not cured other people suffering from the same ailment I had. I would have doubts about its efficacy.

Mr. CLARK. I thank the Senator from North Carolina. I believe the Senator from Louisiana and I went into that question earlier. I shall adhere to the answers I gave to him in response to the almost identical question of the Senator from North Carolina.

Mr. ELLENDER. Mr. President, will the Senator from North Carolina yield?

Mr. ERVIN. I am glad to yield to the Senator from Louisiana.

Mr. ELLENDER. Since we are talking about the State of Pennsylvania, I

have obtained from one of the assistants of the Senator from Pennsylvania [Mr. CLARK] some unemployment figures showing the percentage of civilian labor force by color in various States during April of 1960. In Pennsylvania the unemployment of nonwhites was 11.3 percent.

Mr. CLARK. It is worse today.

Mr. ELLENDER. It is worse today, and the FEPC law is in effect in Pennsylvania.

Mr. CLARK. The Senator is correct.

Mr. ELLENDER. No State in the South has as high a percentage as 11.3 at the moment.

Mr. CLARK. The Senator is correct. Of course, Pennsylvania is an industrial State, which has suffered very much from the departure of the textile industry, the drying up of the coal industry, and the conversion of the railroads from coal-fired engines to diesel engines. There are areas of chronic and persistent unemployment which are in serious need. With the exception of West Virginia and Kentucky, Pennsylvania probably is the third State in the country suffering from massive unemployment, white as well as Negro—but Negro substantially more than white.

Mr. ELLENDER. Take the case of Michigan. The total for that State, for unemployment is 6.9: White, 6 percent; nonwhite 16.3 percent. There is an FEPC law in that State. If the Senator will permit me to do so, I should like to place this table in the RECORD at this point.

Mr. CLARK. I am happy to have the Senator do so.

The PRESIDING OFFICER. Is there objection?

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

Unemployment as percent of civilian labor force, by color, by States, 1960—April

State	Total	White	Nonwhite
United States	5.1	4.7	8.7
Alabama [1]	5.7	4.7	8.4
Alaska [2]	12.8	10.5	25.4
Arizona	5.3	4.7	13.2
Arkansas [1]	6.0	5.3	9.1
California [2 3]	6.1	5.8	10.0
Colorado [2 3]	4.0	3.9	6.6
Connecticut [2 3]	4.6	4.4	8.9
Delaware [3]	4.6	3.8	9.2
District of Columbia	4.1	2.5	5.7
Florida [1]	5.0	4.6	6.7
Georgia [1]	4.5	3.8	6.3
Hawaii	4.2	4.8	4.0
Idaho [3]	5.7	5.6	8.6
Illinois [3]	4.5	3.8	11.5
Indiana [3]	4.2	4.0	8.5
Iowa	3.2	3.1	9.3
Kansas [3]	3.7	3.4	8.5
Kentucky [1]	6.0	5.9	8.1
Louisiana [1]	6.1	4.7	9.5
Maine	6.5	6.4	17.8
Maryland	4.8	3.8	9.5
Massachusetts [2 3]	4.2	4.1	7.8
Michigan [2 3]	6.9	6.0	16.3
Minnesota [2]	5.0	5.0	12.8
Mississippi [1]	5.4	4.5	7.1
Missouri [3]	4.1	3.7	8.6
Montana	6.8	6.4	24.8
Nebraska	3.1	3.0	7.7
Nevada [3]	6.2	5.9	10.1
New Hampshire	4.3	4.2	10.2
New Jersey [2 3]	4.6	4.1	9.5
New Mexico [2 3]	5.9	5.5	13.6
New York [2 3]	5.2	4.9	7.4
North Carolina [1]	4.5	3.6	7.4
North Dakota	5.6	5.4	25.2
Ohio [2 3]	5.5	4.9	11.9
Oklahoma [3]	4.4	4.0	9.0

See footnotes at end of table.

Unemployment as percent of civilian labor force, by color, by States, 1960—April—Con.

State	Total	White	Nonwhite
Oregon [2 3]	6.0	5.9	9.5
Pennsylvania [2 3]	6.2	5.8	11.3
Rhode Island [2 3]	5.3	5.2	10.0
South Carolina [1]	4.1	3.4	5.7
South Dakota	4.1	3.7	23.8
Tennessee [1]	5.2	5.0	6.5
Texas [1]	4.5	4.1	7.1
Utah	4.1	4.1	5.7
Vermont [3]	4.5	4.5	10.6
Virginia [1]	4.2	3.5	7.1
Washington [3]	6.6	6.4	13.4
West Virginia [3]	8.3	8.2	11.4
Wisconsin [2 3]	3.9	3.7	11.4
Wyoming	5.1	5.0	10.1

[1] Southern States.
[2] States with effective fair employment practice commission laws in 1960, as classified by the U.S. Department of Labor.
[3] States with fair employment practice commission laws.

Source: U.S. Bureau of the Census, 1960 Census of Population, PC(1)C series, table 53, 83.

Mr. ERVIN. Mr. President, does the Senator from Pennsylvania know when New York adopted its so-called FEPC law?

Mr. CLARK. In 1940.

Mr. ERVIN. So it has had an experience of about 23 years with it.

Mr. CLARK. That is correct.

Mr. ERVIN. Does not the Senator recall seeing on TV, within the past 10 or 11 months, some demonstrations in New York, in which Negroes chained themselves together and lay down in the streets in protest against their unemployment in New York?

Mr. CLARK. I did not see it on television, but I saw pictures of it in the newspaper.

Mr. ERVIN. Therefore, the FEPC law, although it has been in effect in New York State for almost a quarter of a century, has not cured the situation there in respect to these matters, has it?

Mr. CLARK. All I can say is that I know where the Senator is going. Without any intention to be rude—and I wish to be as patient as I can—I believe that the basis of the Senator's argument is entirely unsound. Having disagreed with his premise, I could not possibly agree with his conclusion.

Mr. ERVIN. I do not understand why the Senator says that my position is unsound. The law advocated to cure these ills has been in effect for approximately a quarter of a century in New York. Demonstrations are still being held there because of unemployment of Negroes. The demonstrations almost reach the point of riots. I believe there is soundness in my position.

Mr. CLARK. The fallacy of the Senator's argument in reference to New York and Pennsylvania is not that the FEPC law is a cure-all. Far from it. I have no doubt that discrimination will continue throughout the remainder of this century. Without regard to whether a law is enacted or not. We say that such a law helps. It helped in New York. It has helped in Pennsylvania. It is helping now. If the State of North Carolina had such a law, the State would be a great deal better off.

Mr. ERVIN. No; it would not. I say that because we have much better conditions so far as employment is concerned. I have seen no demonstrations of this character in North Carolina. I have read of none. I have not heard of any demonstrations of the kind that Philadelphia and New York have had.

I was struck by the Senator's reference to the States of the old Confederacy. I believe the Senator said, in effect, that the bill was being passed largely in order to have it applied to the Southern States, the States of the old Confederacy.

Mr. CLARK. I am sorry, but I did not hear the Senator's question.

Mr. ERVIN. I understood the Senator to say, or at least to intimate, that one of the major purposes behind the demand for the passage of the bill is to make it apply to the South rather than to other areas of the country.

Mr. CLARK. No; I do not agree to that statement.

Mr. ERVIN. I am glad to hear the Senator say that. I had quite a colloquy with the Senators from New York, who, it developed, did not agree with the racial imbalance school theory. They wanted to abolish segregation in the South, but wished to have de facto segregation in New York. I am glad the Senator does not take that position.

Mr. CLARK. We need the law to help in Pennsylvania.

Mr. ERVIN. What does the Senator think of the action of the House in striking out the racial imbalance school theory?

Mr. CLARK. I am not familiar with what the Senator is speaking about.

Mr. ERVIN. Has Pennsylvania had any experience with the transportation of children from neighborhood schools across town to other areas for the purpose of obtaining what is called a racial balance?

Mr. CLARK. Does the Senator refer to the transportation by bus of children?

Mr. ERVIN. Yes.

Mr. CLARK. I do not know. That is a highly controversial subject in my State. Personally I believe the part of wisdom is not to do it. I believe it would be wiser to attempt judiciously to redraw school district boundaries, without gerrymandering, so that there would be a number of Negroes as well as whites within each school district. In Philadelphia the boundaries are being redrawn in 38 school districts.

Mr. ERVIN. Mr. President, the majority leader would like to have us suspend for a quorum call in connection with the MacArthur ceremonies. I hope the Senator will be rested and refreshed when we return.

Mr. CLARK. I will yield the floor so that the Senator from New Jersey may, in due course, obtain the floor to make his speech. I shall be happy to be present when he makes that speech. If the Senator from North Carolina then wishes to engage in any more marathon debate, I shall be available.

Mr. ERVIN. I have one more thought on this point. The Senator from Pennsylvania gave an estimate of what the Department of Justice expects with reference to how many additional employees would be required to enforce title VII. I

do not recall what figure the Senator gave. Was it 130?

Mr. CLARK. It is 190, if sex is included; 150 without sex.

Mr. ERWIN. Does the Senator not fear that that prophecy will be like the prophecy about the National Labor Relations Board? When it started it was expected that it would need 189 employees and an appropriation of only $659,000. Last year they had 2,056 employees and an appropriation of $21 million.

Mr. CLARK. I have no such fear. I have confidence in the estimates of the Department of Justice.

Mr. ERVIN. I thank the Senator.

Mr. CLARK. I yield the floor.

Mr. CASE obtained the floor.

Mr. CASE. Mr. President, I ask unanimous consent that I may yield to the Senator from South Carolina [Mr. THURMOND] without losing my right to the floor, and without having it counted as a second speech when I resume, waiving the rule of germaneness, and anything else that is required.

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

THE COMMUNIST AND THE DEMONSTRATOR

Mr. THURMOND. Mr. President, the Jefferson Standard Broadcasting Co., which operates stations WBT and WBTV in Charlotte, N.C., is noted for its outstanding broadcast editorials. I have been very impressed with a broadcast editorial of April 6, 1964, entitled "The Communist and the Demonstrator." This editorial points up the role of Communists behind the scene in stirring up student and other demonstrations, particularly on college campuses across the country.

In view of the advice offered to college students and the public in general, Mr. President, I ask unanimous consent that this editorial be printed in the RECORD so that it might receive the appropriate attention it merits.

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

THE COMMUNIST AND THE DEMONSTRATOR

One of the areas in which American college students and their elders seem to be permanently naive is that of understanding just what the role of the Communist is in student demonstrations.

It is seldom that a demonstration is Communist-inspired, as many people seem to think. It is quite frequently true that such an activity may be Communist-exploited. At least the attempt is made on every possible occasion, to create divisions within a society, without any real concern as to the original nature of the complaint.

Because of this new element it is regretfully true that the headstrong and relatively unrestricted tradition of collegiate outbursts in such activities as demonstrations must be more soberly considered as a part of the pattern of international conflict. The Communists have made it that way, by launching a concerted campaign to exploit and utilize college groups and causes.

Most people would feel a little sheepish if some of their student escapades were recalled, but for the most part youthful outbursts of the past were relatively harmless. These days, they often turn out more seriously, as did the student riots in San Francisco in 1960.

In that case, the judge dropped riot charges against 62 students. He pointed out that there were ample grounds for conviction, but that most of the defendants were "clean-cut American college students" who would be haunted for the rest of their lives by the stigma of a court conviction.

In what began as student demonstrations in Panama, 21 persons were killed and hundreds wounded. Seventy known Communists, all of them armed, helped spark hundreds of demonstrators into acts of violence they never intended when they began to demonstrate. In many Latin American universities, there are students in their thirties and forties who have been planted by Communist Parties to be ready to take advantage of such disorders when they occur.

For several years now, the Communist Party in this country has been conducting an intensive campaign to set up the same kind of situation on American campuses. Between October and June of last year, 43,000 persons heard 48 speeches by Communists before college audiences, more than in the preceding 10 years put together.

The leading American Communist theorist wrote that never in 25 years of visiting colleges had he "experienced anything so fruitful * * * audiences were not only large—that is not new; they were genuinely interested and clearly cordial, and that is new." These speakers do not try to win members of the Communist Party primarily, but to open the mind a little to Marxist philosophy, and to represent the Communist Party as a small and persecuted minority, on the political scene.

We recommend to American students a more sophisticated study of what the Communists' plans are for them, and leave them with this warning from Attorney General Robert Kennedy: "American Communists are a small but dedicated group posing as a political party, but dedicated to advancing the aims of those who would destroy the free world."

EMPLOYMENT PRACTICES AT THE CHARLESTON NAVAL SHIPYARD

Mr. THURMOND. Mr. President, there has come to my attention a report of action by the Secretary of the Navy which illustrates better than any words precisely what will be the circumstances should H.R. 7152 be passed by the Congress.

Yesterday, I received a letter from Mr. Harry A. Crosby, president of Local 366, International Union of Operating Engineers of Charleston, S.C. Mr. Crosby advised me as follows:

It is understood that the Secretary of the Navy has directed the Charleston Naval Shipyard to train Oliver K. Perry and Hezekiah Brown, Jr., for the position of engineman H. & P. Both Perry and Brown lack approximately 6 months experience to qualify. It is further understood that this training will cost the taxpayers approximately $7,000. It does not seem fair to select these two employees for training while there are numerous other employees who have had some experience in operating equipment who have as much right to receive training as Perry and Brown. Also it does not make sense to train two particular individuals at a time when most shipyards are having reductions in force and are making every effort to make cost reductions.

Since there is no training program for this job, it does not seem logical to set up a program to train new employees when there are at least 45 applicants who have been qualified by the Board of U.S. Civil Service Examiners in an open competitive examination.

If this is allowed to happen, the jobs of enginemen that have been in the Charleston Naval Shipyard since World War II would be in jeopardy.

Now, Mr. President, it just so happens that Oliver K. Perry and Hezekiah Brown, Jr., are Negroes. In view of the fact that the naval shipyard is now experiencing reductions in force, and further, in view of the fact that there are reported to be at least 45 applicants who have been qualified by the Board of U.S. Civil Service Examiners in open competitive examination for these positions, the two named individuals are clearly being trained to fill these positions, not without regard to race, but specifically because they are Negroes.

Nor, Mr. President, is this action designed just to integrate the races in this particular job position. I am advised that among those now working in this position, there are already several persons of the Negro race.

On the face of it, there can be but one explanation. The Secretary of Navy has determined to achieve some type of racial balance in the employment of persons for the position of engineman H. & P. In so doing, the Secretary of Navy is bypassing the normal rules of procedure of the Civil Service Commission and is making a farce of a system which has legally and traditionally operated on the basis of qualifications and seniority without regard to race, color, or creed.

I have sent a telegram to the Secretary of Navy requesting confirmation of the facts and an explanation of the action which has been taken. The text of that telegram is as follows:

I have been advised you have directed the Charleston Naval Shipyard to inaugurate a program of training for two individuals, Oliver K. Perry and Hezekiah Brown, Jr., for the position of engineman H. & P. Have also been advised that there are approximately 45 applicants who have been qualified by the Board of U.S. Civil Service Examiners in open competitive examination for this job and that there is at present no training program in operation. Would you please verify whether these facts are correct, and if so, whether the training of these two individuals is a part of an effort to achieve a racial balance among employees at the Charleston Naval Shipyard.

If the facts as reported are accurate, then it is my intention to do everything in my power to see that this decision is reversed and that the civil service regulations are followed to the letter in this case and in others.

Preferential treatment in hiring and firing because of race, as is apparently the situation in this instance, will surely destroy the entire civil service system. There is a great deal of difference between hiring and promoting without regard to race, and in hiring and promoting specifically because of race in an effort to achieve a racial balance.

Mr. President, enactment of the bill before us would extend this same approach to private businesses across the country. Those who enforce the FEPC section of this bill will have two alternatives. Discrimination is not defined in the bill, so those charged with enforcement will either have to use a statistical approach, which is nothing more or less

than racial balance; or else they will have to apply their own discretion in each individual case, which in my opinion would be even worse, for it would be the substitution of the rule of man for the rule of law.

Such practices as these, whether undertaken among Government employment or private businesses, are reprehensible and will surely lead to the destruction of our society as we now know it.

Mr. CASE. Mr. President, I yield to the Senator from Montana with the same understanding as before.

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

RECESS UNTIL 4 O'CLOCK

Mr. MANSFIELD. Mr. President, before I ask unanimous consent that the time of the recess be advanced by a few minutes, I should like to ask unanimous consent that the attendants notify Senators that at a quarter to 3, the clerk will be allowed to ring the bells twice so that Senators may be on notice to come to the Chamber. Senators will then proceed to the bier of the late Gen. Douglas MacArthur.

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

Mr. MANSFIELD. Mr. President, I now ask unanimous consent that the Senate stand in recess until 4 o'clock p.m., with the proviso that the Senator from New Jersey [Mr. CASE] has the floor.

The motion was agreed to; and at 1 o'clock and 54 minutes p.m., the Senate took a recess until 4 o'clock p.m. the same day.

At 4 o'clock p.m., the Senate reassembled, and was called to order by the Presiding Officer (Mr. INOUYE in the chair).

CIVIL RIGHTS ACT OF 1963

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

The PRESIDING OFFICER. The Senator from New Jersey has the floor.

Mr. HUMPHREY. Mr. President, will the Senator from New Jersey yield to me, so that I may suggest the absence of a quorum?

Mr. CASE. Mr. President, I am happy to yield for that purpose to the acting majority leader, with the understanding that I shall not lose the floor, and that my subsequent remarks will not be counted as a second speech by me.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. CASE. Very well, Mr. President; I yield to the Senator from Minnesota.

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

The PRESIDING OFFICER. The clerk will call the roll.

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

[No. 124 Leg.]

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

The PRESIDING OFFICER. A quorum is present.

The Senator from New Jersey has the floor.

Mr. CASE. Mr. President, I ask unanimous consent that I may yield for brief remarks and an insertion by the Senator from Colorado [Mr. ALLOTT], without losing my right to the floor or having it counted as a speech.

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

MOHOLE REGRESS REPORT

Mr. ALLOTT. Mr. President, I ask unanimous consent to have printed in the RECORD an editorial entitled "Mohole Regress Report" from the April issue of Fortune magazine. I shall comment on this subject at another time during this debate.

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

MOHOLE REGRESS REPORT

Discussing one big science project last year ("How NSF Got Lost in Mohole"), Fortune pointed out that the United States has no sound program for handling federally financed science projects of massive size and basic nature. The humming bureaucracies of NASA and the AEC perform reasonably well on the applied level, but basic science, which comes under the wing of the National Science Foundation, is something else again. NSF fosters much fine research on the basic level when it distributes money, without strings, to applicants whose projects are certified by outside specialists. But when NSF undertakes a project on its own, it runs afoul of Dr. Vannevar Bush's warning of a dozen years ago—that a publicly aided basic science is to flower, it must be shielded from operational interference by any sustaining governmental agency. Once again the case in point is Mohole, which looks more and more like a bottomless mess.

Mohole, readers will recall, is a basic science program to drill in deep ocean into the earth's crust and down to the mantle. The project is already more than 2 years behind NSF's schedule, with no hole drilled since tests in 1961. A fortnight ago Dr. Leland J. Haworth, NSF's Director, asked a House appropriations subcommittee for $25 million for Mohole in fiscal 1965.

Dr. Haworth's overall Mohole cost estimate is $72 million but it need not be taken too seriously. NSF's chief Mohole man, Gordon Lill, once forecast $5 million. Brown & Root, a Houston construction firm, when successfully bidding for the job of designing, building, and operating NSF's Mohole hardware, estimated $35 million. Dr. Haworth has omitted some essentials, major hardware designs are being restudied, a contract reopening involving an increased fee is in prospect, and the cost may progress to $100 million. At any rate, that was the estimate last July of a committee set up in NSF at White House prompting and headed by Dr. Emanuel Piore, IBM's research vice president.

Even this last figure might be acceptable for the project if Mohole were going in the right direction. But is it? Over the years NSF advisers had proposed that, before launching a seagoing platform capable, in theory, of going straight to the mantle there should be a flexible shallow (crustal) drilling program run from a much smaller and more cheaply operable experimental-exploratory ship. The E-E ship could help select an optimum site for the final effort and otherwise safeguard and enrich the program. As recently as July, the Piore committee lined up unanimously with earlier advisers from the National Academy of Sciences for the two-vessel approach. Dr. Haworth scrapped the E-E ship. There is to be just one vehicle.

The appropriations subcommittee of the House will doubtless give Dr. Haworth its blessing and the money he asks; its chairman, Representative ALBERT THOMAS, of Houston, is a longtime political ally of Brown & Root. The fact remains that, in the recently published words of Science, organ of the American Association for the Advancement of Science, Mohole "is a classic case of how not to run a big research program."

The worst of the mess is that NSF ignored Dr. Bush's wisdom and Congress' deliberate denial of statutory authority for scientific operations. It went ahead to call the shots in the Mobile program. Clearly we still have no formula for sound handling of a big science project financed by Government. Before we get one, NSF and Mohole may be in a deeper mess than ever.

THE WISCONSIN PRIMARY

Mr. CASE. Mr. President, I make the request, that I may yield to the Senator from Kentucky [Mr. MORTON] with the same understanding.

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

Mr. MORTON. Mr. President, much has been said today on the floor of the Senate concerning the Wisconsin primary. Many read significance into this vote one way or the other. I should like to report a few facts without commenting on their significance.

It has been said that Governor Wallace's 25 percent of the total or 35 percent of the Democratic vote was the result of Republican crossovers. It is interesting to note that in the six counties that Mr. Nixon carried by more than 65 percent in 1960, Governor Wallace's vote ranged from 18 to 23 percent, far below his State average.

It is also interesting to note that in the 14th ward in Milwaukee, where the late President John F. Kennedy received

84 percent of the vote in the 1960 election, Governor Wallace received 30 percent of the primary vote yesterday. In other words, in this overwhelmingly Democratic district the Governor ran his best race.

TEN-YEAR REPORT OF CONSERVATION COMMITTEE OF BACK OF THE YARDS NEIGHBORHOOD COUNCIL

Mr. CASE. Mr. President, I ask unanimous consent that I may yield to the Senator from Illinois [Mr. DOUGLAS] under the same conditions.

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

Mr. DOUGLAS. Mr. President, 10 years ago local leaders from Chicago's stockyards area met to project a conservation plan for their community.

For 10 years the conservation committee of the Back of the Yards Neighborhood Council has been working, with the cooperation of the residents, clergy, local businesses, savings and loan institutions, labor unions and Mayor Daley's municipal government, to revitalize their section of the city. The results have been so impressive that they merit national recognition.

For example, 556 new homes have been built and more than 8,000 existing houses have been remodeled. But this is only part of the story, and I would like to draw my colleagues' attention to the entire 10-year record.

I ask unanimous consent that the Back of the Yards Council's 10-year report be inserted at this point in the RECORD.

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

Ten years ago in this very same room in the Stock Yards Inn, leaders of our community attended a similar luncheon meeting to discuss community conservation. Present at that meeting were many of you who are here today.

Our clergymen, representatives of local savings institutions, realtors, business and industrial leaders and public officials met then for the purpose of organizing a committee to plan and carry out a program of positive action on community conservation.

At that time we asked ourselves the question, why move away? Where else were there 28 churches, 32 schools, 5 parks, 7 playgrounds, and 20 church social centers?

We talked about our nearby places to work, good transportation, 34 places to save, low taxes, shopping areas and clean streets and alleys. We all agreed there was no place better to raise children.

The committee representing all the forces in the community went to work. The results of their efforts are nationally known.

MAJOR ACHIEVEMENTS

Some of the major achievements of the Back of the Yards Council conservation program during the past 10 years will be mentioned briefly.

More than 600 vacant pieces of property were purchased for new construction. An individual tax search showed 85 percent of the property distressed, making it necessary to secure the lots by means of friendly and adverse tax foreclosure suits.

Thanks to Mayor Daley and our local aldermen, the city council approved an ordinance permitting new construction on 24- and 25-foot lots which is about all we had available in our area.

Five hundred and fifty-six new homes were constructed east of Western and west of Racine Avenues, from 32d to 58th Streets.

Beauty can spread as well as blight. More than 8,000 of our 10,516 older homes were remodeled in the past 10 years. One hundred and fifty store fronts were legally converted into living quarters.

Our community participated in an all-Chicago better block contest sponsored by the Chicago Real Estate Board. In Chicago, 189 blocks actually participated in the contest of which 143 came from our community. Back of the Yards won most of the $20,000 offered in prize money.

Nearly $11 million was spent in construction of new churches, schools, and social centers as well as rehabilitating and modernizing existing parish facilities.

New shopping centers were constructed, new stores and business establishments were built, and more than 100 stores were renovated and remodeled.

Through the cooperation of the central manufacturing district, a great number of new industries located in Back of the Yards and presently a great number of plants are under construction in various sections of our community.

What was once the stock yards area, from 43d to 45th Racine to Ashland, is virtually all demolished and is now being cleared for new construction. The last of 78 buildings is now being razed by the Charles Ringer Co.

AVAILABLE MONEY

During the past 10 years, conservation specialists have asked us where did the money come from for this vast community conservation program? The answer is clear and simple. The money came from the people themselves and from you who are here present representing our 34 local savings institutions.

Our savings and loan associations and banks put back into the community local depositors' funds by approving home and business mortgages.

Our local savings institutions also set a good example for the rest of the area. A great number of them constructed new buildings and additions and many underwent a complete modernization. Our savings institutions are very attractive and indeed a credit to the community.

While this work was going on, the city of Chicago contributed immeasurably to public improvements. Under the capable administration of Mayor Daley new lights were installed on every lamppost in our community; a $10½ million skyway and viaduct was constructed on Damen Avenue from 47th to 37th Streets; a new railroad underpass was constructed at 41st Street and Ashland Avenue. At two former bottleneck intersections on Archer at Ashland, and at 39th Street on Ashland Avenue, overpasses were constructed.

The Dan Ryan Expressway, constructed by the city, county, State, and Federal funds within a short period of time now provides seven entrances and exits on the periphery of Back of the Yards.

In our community, the new Southwest Expressway with a cloverleaf at 33d and Damen will be completed by next October. This will connect Harlem Avenue and the southwest side of Chicago and Cook County with the downtown area.

Thanks to Mayor Daley and all other public officials who were responsible for these great expressways, Back of the Yards is strategically located.

THE FUTURE

Having reviewed the record of our community conservation program for the past 10 years let us look toward the future of Back of the Yards. For that purpose we are here today to plan for tomorrow.

Now that the stockyards is finally cleared of old and obsolete buildings we must leave nothing undone to attract new industry into the yards area. Mayor Daley, Assessor Cullerton, we need and ask your help and direction on this great project.

Industry is the lifeblood of our community and we will do everything we can to cooperate with you to bring new industry to our community. We have the stability and manpower to assure industry of a good day's work for a living wage. Our past record bears out that our people are good workers.

We have good news to announce today as we plan for the future conservation of our residential and business sections of our community.

"There will be no increase in taxes for homeowners and businessmen who improve their property with normal upkeep and repairs."

This statement was made by P. J. Cullerton, assessor of Cook County, and concurred in by Mayor Richard J. Daley. This announcement is indeed a godsend to all homeowners and owners of rental properties as well as to business property owners.

Now we can continue with renewed confidence, enthusiasm, and vigor in our self-help residential and business conservation program. Homeowners and owners of rental properties and businessmen who feared to make normal property improvements because of possible excessive tax increases now can remodel, repair, and rehabilitate in order to protect their investments.

Owners of business, rental, and residential property may also deduct from their income taxes 10 percent of remodeling costs for a continuous period of 10 years.

SPECIAL INSPECTION PROGRAM

Today we also have good news for those in our community who are contemplating buying older homes and rental residential units. Mayor Daley, through the cooperation of acting Building Commissioner Sydney Smith has arranged a building department inspection program and aimed at protecting prospective buyers of Chicago homes and apartments.

Under this program the building department will inspect a building for an owner and give him a certificate detailing its conditions and listing any building or zoning violations.

Any prospective buyer, trustee, or mortgage holder can and should ask the owner for a certificate of inspection before buying, taking the property in trust, or mortgaging it.

The building department makes the inspection at no cost to the owner for single dwelling homes or for buildings with four flats or less. The fee for inspection of more than four flats is $10.

The object of the program is to stop sales of substandard homes or apartments to innocent buyers. It is really a service to the buyer to protect him from unknowingly buying a building which is in violation of the city building codes.

Today we have for you a booklet compiled by the Back of the Yards Council specifically giving in detail a complete outline of Assessor Cullerton's proposal to assist property owners in making normal upkeep and repairs to improve their property without increases in taxes.

We also have a detailed description of Mayor Daley's plan for the inspection of older homes for potential buyers who may ask for a certificate of inspection from present owners before they complete the sale. In order to carry out an effective overall community remodeling program we need the help and assistance of everyone here today.

Before specifically relating how you can help, permit me to tell you what the Back of

the Yards Council had done already and is doing to reach every property owner and encourage him to upkeep his property.

MOTHERS HELP

The Back of the Yards Council Mothers' Club, who are represented here today, conducted a house-to-house inspection of the outside of every home and rental unit in the community. With the approbation of Mayor Daley, Commissioner Smith, Fire Commissioner Quinn a form was devised giving a complete description of what to look for on the outside of each home and apartment.

We now have in our office a complete description of the outside physical description of every home and rental unit in the Back of the Yards. There are 10,600 recorded by street and number.

But that isn't all. We have a complete title search of every home, its address and owner on file by street and number in book form on 10,600 homes. We are now in the process of placing the volume and item number on the file for all of our homes.

All this information, which I am told has never been compiled by a community group before, was made possible through the cooperation of the Map Department of the City of Chicago, the Recorder's Office, the Assessor's Office, and the Bureau of Central Service Office of Cook County.

BYNC BOOKLET

We will distribute through direct mail the booklet you have before you outlining home improvements without tax increases and the building department inspection of old homes for owners. We will ask the daily papers, the Back of the Yards Journal and the Southtown Economist to publicize improvement stories and to publish before and after remodeling pictures.

We will stimulate the program by more home improvements contests. The council will appeal to all owners of homes and apartments; especially outside landlords, to upgrade their property. We will ask the mayor and building and fire commissioners to assist by continued enforcement of the building codes on homes not meeting minimum requirements.

Now, here is how the rest of you can help. The clergy can stimulate their parishioners by printed articles in parish bulletins and by public announcements from the pulpit. The week after Easter would be a good time to start.

We trust you will arrange for the distribution of thousands of booklets to your parishioners at church following Sunday services. You can encourage your parishioners to make repairs and modernize their homes.

Clergymen can assist in many ways. Last week a local pastor served as an interpreter at the building department for a parishioner who wanted information about building regulations. Clergymen have also assisted parishioners in obtaining loans at institutions where parish funds were banked. All of these efforts help the entire community.

SAVINGS INSTITUTIONS

The owners of savings institutions can continue to help immeasurably in home repairs and remodeling. Most have helped. I personally know that some are hedging.

Permit me to explain. Let's take a quick look at the neighborhood. For the most part our homes are neat, clean, and in good condition. Most of the homes from 33d to 39th and from 48th to 58th Streets are single or double dwellings. From 43d to 48th most homes are multiple dwellings having two or more flats.

Even though most of our homes are in good condition, some need major repairs and and a few, in various sections, are in dangerous conditions.

These drag down the property values of adjacent homes.

A few homes in deplorable condition serve as rotten apples in the barrel. Every avenue must be explored to repair these sore points and prevent the infection from spreading.

PROVIDING CAPITAL

If the owners have agreed to repair but were stopped by lack of finances, then arrangements must be made to provide a flow of capital for this purpose.

We have a situation where many property owners are anxious to repair their buildings, install new fronts and sidings, but have received little encouragement in borrowing money for this purpose. This has been particularly true of area residents between 43d and 47th and from Loomis to Damen.

Yet, in this same area and in other parts of the community buildings and loan associations are now remodeling and rebuilding their own structures. If the directors of the building and loan associations have sufficient faith in the future of the area to rebuild their own buildings then they should have faith to lend their money to the resident landlords and encourage them to repair their property.

The welfare of local banks and savings and loan associations largely depends upon the welfare of the present local residents. The future of our savings institutions is inseparable from the future of the entire community, and not just any one section of it. It is strongly urged that our local finance institutions review their relationship with the neighborhood and work out the means whereby our community will be improved.

SPECIAL REQUEST

I have a special request to make to the representatives of our savings institutions here today. Please take the booklet with the good news from your assessor and your mayor back to your offices and read it. Please give favorable consideration to reprint it in whole or part and distribute it by direct mail to your membership.

Your depositors will be glad to see you putting their money to work in the community. Your lenders will be pleased to know money is available for remodeling and that all owners of residential and income properties can maintain their property by normal repairs without tax increases.

Your cooperation to release this information will aid in improving the economy by releasing surplus funds, thereby increasing employment and buying and saving power. You can reprint this booklet in whole or part, specifically mentioning that your institution will provide remodeling loans.

GETTING JOB DONE

If you wish our help, we will gladly assist you in editing the book and in obtaining low printing costs. You will also be given permission to delete the council's name. We do not care who gets the credit as long as the job is done.

Please help get this message across to your membership, by direct mail, newspaper ads, radio and television, and by outdoor billboard and electric signs.

Mayor Daley and Assessor Cullerton will be most happy to learn of your cooperation in disseminating this information.

The responsibility is not just that of savings and loan associations and banks, but of all people and agencies in the community. A permanent conservation program can only come from the constant efforts by all people in this community project. The community has the resources and the power or organization. But the responsibility belongs to each and everyone.

Take the real estate agencies. They have played, and continue to play an extremely important role in maintaining our community standards. They can discourage real estate transactions where there is suspicion of illegal conversions or intended roominghouse operations. They can warn prospective purchasers that illegal conversions, or zoning, health, and fire code violations will be stopped by the full and unremitting power of our organized community.

The Back of the Yards community is so structured that it will fight violations through every court and every hearing. It will not permit a situation of illegal conversions.

BUSINESSMEN'S ROLE

Every businessman in our neighborhood has his responsibility too. This is the community of his economic livelihood. It is sound business for him to invest in his community just as it is for a farmer to improve his farm.

The responsibility falls upon our labor unions. They have played a magnificent role in the raising of the economic standards of our people and have thereby made a profound contribution to the economic welfare of the area.

Now these same unions should encourage their members to repair and remodel their homes, observing all those codes pertaining to health, housing, sanitation, electrical and zoning laws. All violations or possible illegal conversions should be strongly discouraged. Our major industries also have their responsibility.

The outward appearance of the stockyards area has a great bearing on the community. We hope that cyclone fences will be erected on the sidewalk area bordering the yards, vacant areas owned by the industries will be kept free of weeds and debris, and that new buildings will be constructed and old ones modernized in keeping with the tone of the community.

STOCKYARDS AREA

The stockyards industry is reminded of the unfavorable odors coming from the yards. The stockyards smell has become a byword in the discussion of the community. We believe that in these modern times it is inexcusable for the continuance of this nuisance and that those responsible should be required to eliminate it not in the future but now.

The main reason new industry shies away from the yards is because of the odors emanating from three or four refineries which perpetuate this nuisance.

Builders and reliable contractors should encourage homebuilding and repair work by advertising in the local newspapers. Pictures of homes before and after being repaired should be featured in advertising.

The local newspapers should continue to feature pictures and articles showing what can be done to improve and remodel homes.

Property owners confronted with the issue of whether property improvements will pay off should remember that such repairs help to protect the original investment in the home.

"WE THE PEOPLE * * *"

Unquestionably, living accommodations providing such things as hot water, proper insulation, new bathrooms, and attractive outside coverings will result in a better rental income. Rental increase will provide a substantial part of the monthly payments for improvements.

There are also other savings. Ten percent of the price of remodeling may be deducted from income taxes for a period of 10 years.

In conclusion, the bright future of the back of the yards requires the wholehearted cooperation of everyone here today. All of us must rededicate ourselves to continue in a joint effort to make our community a better place to live, work, worship, and play.

Remember our slogan: "We the people will work out our destiny." With the help of all of you and God we will.

CIVIL RIGHTS ACT OF 1963

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

Mr. CASE. Mr. President, I ask unanimous consent that I may yield to the distinguished minority leader [Mr. DIRKSEN] on the same basis as before.

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

DESIGNATION OF SENATOR ALLOTT TO REPLACE SENATOR COTTON ON CERTAIN ASPECTS OF THE CIVIL RIGHTS BILL

Mr. DIRKSEN. Mr. President, when the debate began on the motion to consider the pending bill, both sides appointed monitor captains, so to speak. I forget how they were designated on the majority side, but I named seven and made them all "captains," corresponding to seven major titles of the bill.

The distinguished Senator from New Hampshire [Mr. COTTON] is so beset with extraordinary work that it is somewhat difficult for him to serve; so I would substitute for him the distinguished Senator from Colorado [Mr. ALLOTT].

I take occasion now to announce that, because of their fidelity to duty and the rare way in which they have discharged their responsibilities, as of this moment I would like to elevate all of them from the rank of captain to the rank of major, with a major's pay, whatever that pay is.

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

Mr. DIRKSEN. I yield.

Mr. HUMPHREY. If the Senator does that without prior consultation, there will be insurrection in the ranks. In order to make this a bipartisan promotion, I should like to join the minority leader. We will elevate all such captains, as of today and yesterday, to the honored title of major. It may be, if this debate continues much longer, there will be opportunity for further promotion.

Mr. RUSSELL. Mr. President, will the Senator yield for one observation?

Mr. DIRKSEN. I yield.

Mr. CASE. I yield with the same understanding.

Mr. RUSSELL. I am very much interested in the climate of promotion. Our adversaries on this bill are coming more and more to resemble the old-time Mexican Army, in which there were vast hordes of generals but only one private. I was wondering who would finally assume the onus of private, when one is promoted each time he succeeds in speaking on the floor for 2 hours.

Mr. HUMPHREY. This may be rather difficult.

Mr. DIRKSEN. Mr. President, to show how kindly disposed we are in this debate, let me point out that Captain KUCHEL has now been promoted to Major KUCHEL. So we now have, in addition, Major KEATING, Major HRUSKA, Major JAVITS, Major COOPER, Major SCOTT, and Major ALLOTT. They all deserve promotion, so what else can I do?

Mr. RUSSELL. If the Senator wishes to make them all generals, I shall not complain.

ORDER FOR RECESS TO 10 A.M. TOMORROW

Mr. HUMPHREY. Mr. President, will the Senator from New Jersey yield to me for an announcement?

Mr. CASE. Mr. President, I yield to the Senator from Minnesota under the same understanding.

Mr. HUMPHREY. Mr. President, I ask unanimous consent that when the Senate concludes its business today, it stand in recess until 10 a.m. tomorrow.

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

CIVIL RIGHTS ACT OF 1963

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

NEGRO VOTING

Mr. RUSSELL. Mr. President, will the Senator from New Jersey yield to me for one moment? He has been so gracious in yielding to our colleagues that I hope he will be kind enough to yield to me briefly.

Mr. CASE. I yield under the same conditions.

Mr. RUSSELL. Mr. President, we have heard a great deal from time to time on the question of whether Negro citizens are more apathetic than other citizens in the exercise of the franchise. I have heard the generalissimo of the proponents of the bill make statements on this matter. As I have said on other occasions, we do not have large groups of tax paid statisticians and mathematicians and expert "guesstimaters" to compile all these figures. We have to depend on what we can pick up here and there. But I did notice in the New York Times for Sunday, April 5, an article headed "Apathy in Voting Laid to Negroes."

Of all places where this situation is said to exist, we read that it is in the city where everything is done for minority groups—the city of Chicago, Ill. We hear from time to time that this city is the very epitome of perfection and that it is the wish of all minority groups to go there because they know they will be well received. But even in that city voting apathy has been demonstrated.

This is not an unfriendly survey, but one that was made by the Chicago Urban League, which is a somewhat glorified National Association for the Advancement of Colored People, but of a higher caste and more exclusive. The survey made by that league shows that 68 percent of eligible Negroes registered to vote, as against 78 percent of the whites. In the actual voting, however, the spread was much larger—only 47 percent for colored as against 64 percent for whites.

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

Mr. RUSSELL. Yes, inasmuch as I mentioned the Senator's State.

Mr. CASE. Mr. President, I yield under the same conditions.

Mr. DIRKSEN. As soon as a Republican Governor of Illinois and a Republican mayor of Chicago are elected, this apathy will blow away like the bloom off the silkweed before the fresh morning breeze.

Mr. RUSSELL. Does the Senator refer to the latent hostility to Mayor Daley, as evidenced by his being booed by a large public gathering on July 4, 1963?

Mr. DIRKSEN. I will never be so unkind as to pinpoint a particular reason, except to say what the remedy will be.

Mr. RUSSELL. In order that the Senator from Illinois and others interested may be advised as to these statistics—and I am sure no proponent of the bill will question the source, the Urban League—I ask unanimous consent that the article to which I have referred be printed in the RECORD.

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

APATHY IN VOTING LAID TO NEGROES—CHICAGO STUDY SAYS PART OF REASON MAY BE PROTEST

(By Austin C. Wehrwein)

CHICAGO, April 4.—The Chicago Urban League says that despite the absence of racial barriers to voting here, Negroes are indifferent about going to the polls.

A league survey showed this week that the rate of Negro registration was comparable with that of whites. Sixty-eight percent of eligible Negroes registered to vote in the 1962 election, against 78 percent of whites.

In the actual voting, however, the spread was larger: only 47 percent against 64 percent.

"Much of the abstention can be explained by indifference," the league report said. It sugested that the abstention could also have been a form of political protest.

Nonwhites (mostly Negroes) make up 27 percent of Chicago's population.

The report emphasized that "the great civil rights rebellion" had drawn attention to the Negro voting problem.

* * * * *

"Chicago Negroes have shown a certain amount of latent hostility to the local Democratic Party, as evidenced by the July 4, 1963, booing of the mayor (Richard J. Daley), and in the February 25, 1964, defiance of the Negro alderman by the mass support of the second school boycott," the report commented.

"However, this feeling has not been manifest by balloting against the Democratic Party.

"But there is a lower percentage of Negro registered voters actually voting. This percentage tended to be the lowest in the wards in which there was already Negro representation, and dropped off more heavily than expected in the 1963 election."

In the national election, the report added, there was a strong identification among Negroes with the liberal economic position of the Democratic Party.

That identification may not carry over as strongly to the local Democrat Party, it went on, because of the Daley machine's identification with the national party. Negroes did not want to vote against it.

In last April's election for mayor and aldermen, only 61 percent of the registered nonwhites went to the polls, against 77 percent of the registered whites.

The six wards with Negro aldermen had a higher registration rate than others with statistically significant Negro populations. But the difference almost vanished when it came to voting in the 1963 election.

The league said it could only speculate that some Negroes had registered to show they were politically involved, but had not voted because they were not stirred by the issues or candidates.

Mr. HUMPHREY. Mr. President, will the Senator from New Jersey yield?

Mr. CASE. I yield to the Senator from Minnesota, provided that in doing so I shall not lose my right to the floor.

Mr. HUMPHREY. I appreciate the information I have just received, both as to the statistical evidence and what seems to be the obvious motivation for voter apathy. The difference between the voter apathy of the proponents of the bill and the voter apathy of the opponents is that we are perfectly willing to give the voters the opportunity and the choice whether they wish to be active or apathetic, but in some sections of the country it makes no difference whether they are active or apathetic because they are obviously denied the right to vote; so I believe that the situation clarifies itself.

I am sure that the Urban League in Chicago will be able to engender considerable interest among the voting members of the Negro group. There are many areas in the United States where white citizens have not demonstrated too great an interest in voting in a general election, or even in a primary.

So I welcome this information. All I can say is that in Chicago one has the right to vote. I might add that some who have come to Chicago from other areas of the country have been denied the right to vote for so long that perhaps they have forgotten how to vote.

Mr. CASE. Mr. President, I suggest that perhaps this debate should not continue any longer on my own time, and that Senators should speak on their own time.

Mr. RUSSELL. I regret that the Senator cuts off my hope of replying to the generalization just made by the Senator from Minnesota, which he has made before, without a single substantiating fact.

Mr. CASE. I am sorry, but I do not wish to lose my right to the floor by continuing to yield to Senators for this colloquy, which has been continuing for some time. I am sure that I shall take approximately only an hour for my speech, and then perhaps Senators will have an opportunity for extended discussion with the Senator from Georgia.

Mr. RUSSELL. I hope the Senator from New Jersey is not afraid that he will be demoted if he takes only an hour.

Mr. CASE. Of course, it is a matter of the quality of one's subject, not how long one talks about it.

RECONSTRUCTION OF THE STATE OF ALASKA

Mr. CASE. Mr. President, I yield at this time to the distinguished Senator from Washington [Mr. JACKSON].

Mr. JACKSON. Mr. President, on behalf of Senators MAGNUSON, BARTLETT, GRUENING, KUCHEL, ENGLE, MORSE, NEUBERGER, FONG, INOUYE, BIBLE, MOSS, and myself, I send to the desk for appropriate reference, a bill authorizing an Office of Alaska Reconstruction which will provide, through earthquake insurance, reasonable protection to the people of that State against loss of or damage to their real and personal property.

In order to provide assistance to Alaskan property owners and businessmen for damage caused by the recent earthquake and related disasters, benefits under this proposed Federal insurance and reinsurance program would be retroactive to the date of Alaska statehood, January 3, 1959. The program's terms of insurance would be determined by the Office of Alaska Reconstruction on a responsible fiscal basis.

We are submitting our proposal in recognition of the compelling and immediate need to assist the private sector of the Alaska economy.

First, we must forestall any exodus of private business persons and interests from that State during this important initial phase of Alaska's rehabilitation.

Second, we must provide a secure climate for future business activity in Alaska.

Third, we must encourage, through appropriate Federal technical standards for insurance eligibility, the development of an economy whose physical plant would suffer minimal losses should such a natural disaster recur.

Some informed estimates of the replacement cost of damaged property in Alaska exceed $500 million. In considering this figure, the facts that Alaska has an extremely short construction season and probably has the highest cost of construction in the world should be borne carefully in mind.

The industries most seriously affected by the earthquake included those most basic and important to the area—transportation, lumbering, fisheries, and the mineral industries.

As a recent Office of Emergency Planning report said, these businesses were "indigenous to the area, largely unsupported by public funds, and the foundation of any future private enterprise economic base."

Two additional facts testify to the uniqueness of the Alaskan tragedy:

No other State has, in any such disaster, suffered such a proportionate loss of its net worth.

Alaska is not contiguous with the continental United States. Thus redevelopment from surrounding areas is far less easily facilitated.

Our bill will provide the executive departments an opportunity to offer the Interior and Insular Affairs Committee useful suggestions and refinements. The bill contemplates, of course, full participation by private insurance companies under appropriate standards. Wide sale of reasonably priced earthquake insurance is an area into which private insurance companies have not ventured and probably will not be able to afford to without a Federal program of reinsurance.

Ample legislative precedent exists for this legislation. The 1942 War Damages Corporation authorization—56 Stat. 174, 175—provided for constructive, or so-called retroactive, insurance to cover loss of or damage to tangible real and personal property suffered from enemy attack during the opening days of our participation in the Second World War.

Indeed, the Congress has already gone so far, in principle, as to approve a national Federal flood insurance program through the Federal Flood Insurance Act of 1956—79 Stat. 1078.

This bill will be a working document enabling the Interior Committee to hold broad hearings on all aspects of this disaster. As you know, damages from the Alaska earthquake extend to Washington, Oregon, and California. The Senator from California [Mr. KUCHEL], who is a cosponsor of this present bill, has already done much useful spadework in the problem of earthquake insurance. As far back as 1956, he made sound recommendations on this problem to the Senate Banking and Currency Committee.

The Senator from New Mexico [Mr. ANDERSON], ranking member of the Interior Committee, has been appointed by the President as Chairman of the special Commission charged with responsibility for coordinating measures to help Alaska reconstruction.

I am designating the Senator from New Mexico [Mr. ANDERSON] to conduct hearings before the Interior and Insular Affairs Committee on the bill introduced today, and on such other measures as may be related to the Alaska disaster.

We must match the courage of Alaskans in the face of this terrible tragedy with prompt and responsive action.

The PRESIDING OFFICER. Without objection, the bill will be received and appropriately referred.

The bill (S. 2719) to amend the Alaska Statehood Act (act of July 7, 1958; 72 Stat. 339) and for other purposes, introduced by Mr. JACKSON (for himself and other Senators), was received, read twice by its title, and referred to the Committee on Interior and Insular Affairs.

Mr. JACKSON. Mr. President, with the permission of the Senator from New Jersey [Mr. CASE], I yield now to the Senator from Alaska [Mr. BARTLETT].

Mr. BARTLETT. Mr. President, on April 2, President Johnson established the Federal Reconstruction Development and Planning Commission for the State of Alaska. He did this by Executive order and then promptly appointed the Senator from New Mexico [Mr. ANDERSON] to be Chairman of the Commission.

A corresponding group has been appointed on behalf of the State of Alaska

by Gov. William A. Egan. The Governor, those whom he appointed and others from Alaska are now in Washington conferring with members of the Federal Commission, and conferring with others. Today, Governor Egan met with President Johnson on the Alaskan disaster.

The Federal Commission in addition to the Chairman, is composed of the Secretary of Defense, the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Labor, the Secretary of Health, Education, and Welfare, the Administrator of the Federal Aviation Agency, the Administrator of the Housing and Home Finance Agency, the Administrator of the Small Business Administration, the Chairman of the Federal Power Commission, and the Director of the Office of Emergency Planning.

This body, under the leadership of the Senator from New Mexico [Mr. ANDERSON], is already actively and constructively at work. Several meetings have been held. Data are being assembled, proposals are being discussed and soon concrete recommendations for the rehabilitation of Alaska will be submitted to Congress.

I am sure that the author of the bill introduced today—the Senator from Washington [Mr. JACKSON]—would not claim on behalf of himself or any of his cosponsors that it is necessarily the ideal vehicle for the purpose for which it is introduced. It does offer a constructive approach to the great problem which is ours in Alaska. As such, it is greatly welcome.

It is my understanding from the Senator from Washington [Mr. JACKSON] that he intends promptly to call for hearings in the Committee on Interior and Insular Affairs, the committee to which the bill has been referred.

I applaud his action, in which he has been joined in full measure by the Senator from Washington [Mr. MAGNUSON], who together with his colleague, the Senator from Washington [Mr. JACKSON] was in attendance at a meeting in Seattle, Wash., last Thursday. Over 500 persons interested in the welfare of Alaska were present. The bill which is introduced today comes in part as a result of this most helpful meeting.

As the evidence is presented in hearings it may well be, as the Senator from Washington [Mr. MAGNUSON] has stated, that the damage from the catastrophe is so great an outright Federal grant will be required to put Alaska on its feet.

We will know the whole story at the conclusion of the hearings which will be held on the bill just introduced.

On behalf of Alaska and Alaskans, I wish to thank the two Senators from Washington and all other Senators from the Pacific rim, in addition to the Senator from Nevada [Mr. BIBLE], and the Senator from Utah [Mr. MOSS], who have joined in cosponsoring this proposed legislation. I am sure that soon, even before the day is out, there will be many other names added as cosponsors.

Mr. CASE. Mr. President, I yield now to the Senator from Alaska [Mr. GRUENING].

Mr. GRUENING. Mr. President, I am pleased to join with the able and distinguished junior Senator from Washington [Mr. JACKSON] in cosponsoring, with him and all our Pacific States colleagues and others, the bill he has introduced to amend the Alaska Statehood Act to begin to make some provision for the reconstruction, development, and assistance to the people of Alaska in the wake of the disaster which struck Alaska March 27 last.

Both Senators from Washington [Mr. MAGNUSON and Mr. JACKSON] are to be highly commended for the able leadership they have shown in these troubled times—troubled not alone for the State and people of Alaska but troubled as well for the entire Nation and its people. For what happened on Good Friday in Alaska was truly a national disaster and affects the Nation as a whole.

We in Alaska have not yet had the means or time to assess fully the total damage to our State. It is my opinion that when such assessment has been made the total damage in the State will approach $1 billion. No matter how great the willingness of the people of Alaska and of the State of Alaska to pitch in and devote all their energies and means to rebuilding the State—and they are more than willing to do so—they just have not the necessary means to do the entire job. Assistance must come from the Federal Government.

The earthquake that struck Alaska on March 27 was unequalled in intensity and extent of terrain on this continent. The damage done to the State in dollar terms is, proportionately to the total assets of the State, vast and far greater than in any other disaster in relation to the State in which it occurred. Rehabilitation must be carried out on a large and imaginative scale.

The time has come, Mr. President, to demonstrate that this country is composed of States which are united in every sense of the word. A tragedy striking one State ultimately will affect the prosperity of all States unless all States react as one to go to the aid of the stricken State. This is the true meaning of unity. This is the significance of our national motto, E Pluribus Unum. We have never operated on the principle that each State goes its own way and the "devil take the hindmost." We have in the past recognized the all-for-one and one-for-all principle in the United States through a score of grant-in-aid programs that operate in a wide segment of human endeavor without any geographical limitations. Those programs are designed to meet needs wherever they exist.

With respect to the disaster which has befallen Alaska, we must do the same with imagination and on a scale commensurate with the scope of the need that exists.

The bill introduced by the able and distinguished junior Senator from Washington [Mr. JACKSON] is a beacon leading the way. It must serve but as a token of the aid on a far greater scale that should be given.

We must make provision in some manner for the tremendous burden of debt with which the private citizens and businessmen in Alaska find themselves saddled. These are debts for houses, stores, merchandise, and so forth, which have been smashed or which have literally sunk into the water or into the earth. These people, burdened with this intolerable debt burden, cannot practically be expected to incur additional indebtedness in order to rebuild.

To rebuild, there will also be needed a sizable direct grant to the State of Alaska.

I hope that before the Committee on Interior and Insular Affairs finally reports this bill, amendments to take care of both these needs—as well as other needs—will be added. I shall press for such amendments in committee.

I have in the past often alluded to what we have done for foreign nations abroad. I now say, in view of the magnitude of the disaster which has struck Alaska, we must use our actions abroad as a clear and distinct precedent for doing the same here at home. What we have done abroad we have done without the occurrence of a major disaster but only in the normal course of building the economies of underdeveloped countries.

The United States has given budget support in the amount of over $29 billion. This assistance has gone to 89 countries throughout the world.

Budget support to a foreign country means the grant of U.S. dollars to that country to make up a deficit in its budget—a payment to the country of the difference between its expenditures and its income. In many of the countries aided by budget support lower taxes are often given to private industries. In other countries, public funds are used to establish and support industries and businesses. In both these cases, when the United States meets the budgetary deficit, it enables the country aided to help business and thus U.S. dollars are indirectly being used to aid foreign businesses and industries.

Under the AID program of technical cooperation and development grants the total sum of over $1.9 billion has been expended since 1946 in 92 countries. Under this program, technical assistance is provided to public and private businesses and industries in many countries of the world. But the AID program goes further and provides industry and agriculture with grants with which to purchase machinery and supplies. In other words our foreign aid program aids both the public and the private sector. It is essential we do as much for our own in Alaska.

One of Alaska's greatest losses as a result of the disastrous earthquake and resulting tidal waves was to its canneries and fishing fleet. This is vitally important to Alaska's total economy—it is a major industry. Without its rebuilding there will be high economic losses and even higher unemployment.

Yet abroad we have been generous in developing the fisheries resources of a multitude of countries. Thus in fiscal year 1955, for example, we gave—not loaned—to China the sum of $204,000 to improve its ocean fisheries. That sum is exactly the sum needed now in sorely stricken Kodiak, Alaska, to rebuild and to provide immediate employment to 600 men and women in the one cannery which was not swept into the sea although badly damaged. I hope that

when the question is considered in the committee and on the floor in connection with this bill and amendments to it as to making grants freely available to rebuild Alaska this example will be before my colleagues.

I ask unanimous consent that tables which I have prepared on certain aspects of our foreign aid program dealing with the development of foreign fisheries be printed at the conclusion of my remarks.

In closing, Mr. President, I urge that this legislation be considered with the greatest possible speed. Time is truly of the essence. President Johnson has acted with highly commendable speed so far in coming to the aid of his stricken countrymen. We have done as much for those similarly stricken, for example in Yugoslavia and Chile. Let us do not less and as speedily for the people of Alaska.

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

Specific grants made for development of fisheries in foreign countries under the aid program—fiscal years 1955–62

CHINA

Ocean fisheries improvement, fiscal year 1955	$204,000
Fishing fleet rehabilitation, fiscal year 1956	5,000
Fish propagation, fiscal year 1956	8,000
Fishing fleet rehabilitation program, fiscal year 1957	17,000
Fisheries, fiscal year 1957	13,000
Tuna long liners, fiscal year 1957	530,000
Fisheries development:	
Fiscal year 1958	11,000
Fiscal year 1959	13,000
Fiscal year 1960	26,000
Fiscal year 1961	21,000
Total	848,000

CAMBODIA

Fisheries conservation:	
Fiscal year 1958	35,000
Fiscal year 1959	41,000
Fiscal year 1960	31,000
Fiscal year 1961	24,000
Fiscal year 1962	28,000
Total	159,000

INDONESIA

Expansion and modernization of marine fisheries, fiscal year 1955	224,000
Expansion of inland fisheries, fiscal year 1955	51,000
Expansion and modernization of marine and inland fisheries:	
Fiscal year 1956	150,498
Fiscal year 1957	149,000
Fiscal year 1958	68,000
Fiscal year 1959	84,000
Fiscal year 1960	77,000
Fiscal year 1961	70,000
Fiscal year 1962	33,000
Total	907,198

KOREA

Fishing boat construction, fiscal year 1956	1,000,000
Fisheries development:	
Fiscal year 1957	2,314,000
Fiscal year 1958	160,000
Fiscal year 1959	475,000
Fisheries development (typhoon rehabilitation):	
Fiscal year 1960	409,000
Fiscal year 1961	131,000
Total	5,351,000

Specific grants made for development of fisheries in foreign countries under the aid program—fiscal years 1955–62—Continued

INDIA

Project for modernization and expansion of marine and inland fisheries and exploratory fishing:	
Fiscal year 1955	$278,100
Fiscal year 1956	437,520
Fiscal year 1957	93,000
Fiscal year 1958	134,000
Fiscal year 1959	106,000
Fiscal year 1960	40,000
Fiscal year 1961	40,000
Total	1,128,620

VIETNAM

Development of inland fisheries, fiscal year 1955	3,000
Development of marine fisheries, fiscal year 1955	95,000
Development of inland fisheries, fiscal year 1956	13,500
Development of marine fisheries, fiscal year 1956	46,000
Development of inland fisheries, fiscal year 1957	7,000
Development of marine fisheries, fiscal year 1957	160,000
General fisheries development, fiscal year 1958	192,000
Fisheries development:	
Fiscal year 1959	898,000
Fiscal year 1960	409,000
Total	1,823,500
Fisheries resources, fiscal year 1962	85,000
Total	1,908,500

PAKISTAN

Karachi Fish Harbor, fiscal year 1955	364,000
Fisheries development:	
West Pakistan, fiscal year 1956	371,375
East Pakistan, fiscal year 1956	129,295
Fisheries Development:	
West Pakistan	45,000
East Pakistan, fiscal year 1957	46,000
West Pakistan, fiscal year 1958	116,000
East Pakistan, fiscal year 1958	56,000
West Pakistan, fiscal year 1959	91,000
East Pakistan, fiscal year 1959	32,000
Fiscal year 1960	74,000
Fiscal year 1961	15,000
Fiscal year 1962	16,000
Total	1,355,670

SOMALI

Fisheries:	
Fiscal year 1958	121,000
Fiscal year 1959	18,000
Fisheries improvement:	
Fiscal year 1960	61,000
Fiscal year 1961	30,000
Fiscal year 1962	107,000
Total	337,000

Grants made under the aid program to foreign countries for development and rehabilitation of fisheries, fiscal years 1955–62

China	$848,000
Cambodia	159,000
Indonesia	907,178
Philippines	82,000
Thailand	147,000
Vietnam	1,908,500
Korea	5,351,000
Laos	13,450
Ethiopia	43,200
India	1,128,620
Liberia	167,280
Pakistan	1,355,670
Turkey	18,500

Grants made under the aid program to foreign countries for development and rehabilitation of fisheries, fiscal years 1955–62—Continued

Tunisia	$147,000
Somali	337,000
Ghana, fiscal year 1962	66,000
Ivory Coast, fiscal year 1962	200,000
Nigeria, fiscal year 1962	195,000
Iceland	14,600
Spain	2,000
Yugoslavia	100,000
South America:	
Chile, fiscal year 1962	26,000
El Salvador	23,055
Peru	151,971
British Guiana	8,000
Marine research in South China Sea and Gulf of Thailand	960,000
Total grants for fiscal years 1955–62	14,363,024

Mr. CASE. Mr. President, I ask unanimous consent that, on the same basis as previously, I may yield briefly to the senior Senator from Washington.

Mr. MAGNUSON. Mr. President, my colleague from Washington pointed out earlier today that several Senators have joined in the introduction of a bill which has been discussed among all of us as one approach to the terrible tragedy and the rehabilitation of Alaska.

I wish it to be clearly understood—and I am sure that all Senators who have participated in drawing up this proposal wish it to be clearly understood—that we do not know whether this is the complete answer to the problem. We believe it is a good approach, and that it is certainly one to be explored, perhaps, to the extent of applying the idea to other national catastrophes. I wish it clearly understood, so far as I am concerned, that it may be that we shall come to Congress and ask for some other things that are necessary and right and just in the rehabilitation of the State of Alaska.

Time is of the essence. The reason why my colleague and I and the two Senators from Alaska were so eager to pursue this matter today, to introduce the bill, and to have hearings started was that we might pursue many of the other suggestions that have been made.

I believe that before the damage is assessed several approaches may well be made to the problem.

The Federal Government's participation can be taken care of. The various agencies of Government are proceeding, so far as railroads and docks and other Federal property are concerned. They are moving quickly. The President moved quickly. I shall place in the RECORD, following my remarks, the Executive order issued by the White House on April 2.

The Federal agencies, of course, will come before us, and will make some recommendations, I am sure. Some of the suggestions may be carried out administratively; others the Congress will have to consider. I believe that we may have to make some direct grants after reviewing the problem.

The extent of such grants, in addition to legislation, will be very carefully determined by this Commission and by the Counter-Commission, which the Governor of Alaska appointed, and which will meet with the other Commission.

On page 2 of the Executive order there appears this language:

SEC. 2. FUNCTIONS OF THE COMMISSION. (a) The Commission shall develop coordinated plans for Federal programs which contribute to reconstruction and to economic and resources development in Alaska and shall recommend appropriate action by the Federal Government to carry out such plans.

That means that the Commission may examine the serious damage that occurred in the private sector, and it is directed to make recommendations.

I wish to compliment, as my colleague did, all Senators who have joined us. Time is of the essence. The junior Senator from Washington has already arranged to begin hearings as soon as possible, at which time we shall review the entire subject.

The bill we have introduced is one of the plans that have been suggested. There are others. I hope we can proceed with due diligence and patience in connection with this tragedy.

The distinguished occupant of the chair, the Senator from Hawaii [Mr. INOUYE] has joined us in the introduction of the bill. We know that this kind of tragedy can happen anywhere along the Pacific rim. We hope it will not, but we want to be prepared.

I ask unanimous consent that the Executive order be printed in the RECORD at this point in my remarks.

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

EXECUTIVE ORDER ESTABLISHING THE FEDERAL RECONSTRUCTION AND DEVELOPMENT PLANNING COMMISSION FOR ALASKA

Whereas the people of the State of Alaska have experienced death, injury, and property loss and damage of staggering proportions as a result of the earthquake of March 27, 1964; and

Whereas the President, acting pursuant to authority granted in the act of September 30, 1950, as amended (42 U.S.C. 1855–1855g), has declared a major disaster in those areas of Alaska adversely affected by the earthquake beginning on March 27, 1964; and

Whereas the Federal Government and the State of Alaska desire to cooperate in the prompt reconstruction of the damaged Alaska communities; and

Whereas the Federal and State governments have a common interest in assuring the most effective use of Federal and State programs and funds in advancing reconstruction and the long-range development of the State; and

Whereas such effective use is dependent upon coordination of Federal and State programs, including emergency reconstruction activities, which affect general economic development of the State and the long-range conservation and use of natural resources; and

Whereas the Governor of Alaska has declared his intention to establish a State commission for reconstruction and development planning: Now, therefore, by virtue of the authority vested in me as President of the United States, it is ordered as follows:

SECTION 1. Establishment of Commission: (a) There is hereby established the Federal Reconstruction and Development Planning Commission for Alaska (hereinafter referred to as the Commission).

(b) The Commission shall be composed of a Chairman, who shall be designated by the President, the Secretary of Defense, the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Labor, the Secretary of Health, Education, and Welfare, the Administrator of the Federal Aviation Agency, the Housing and Home Finance Administrator, the Administrator of the Small Business Administration, the Chairman of the Federal Power Commission, and, so long as the President's declaration of a major disaster is in effect, the Director of the Office of Emergency Planning. Each agency head may designate an alternate to represent him at meetings of the Commission which he is unable to attend.

(c) The Chairman may request the head of any Federal executive department or agency who is not a member of the Commission under the provisions of subsection (b), above, to participate in meetings of the Commission concerned with matters of substantial interests to such department or agency head.

(d) The President shall designate an Executive Director of the Commission, whose compensation shall be fixed in accordance with the standards and procedures of the Classification Act of 1949, as amended.

SEC. 2. Functions of the Commission: (a) The Commission shall develop coordinated plans for Federal programs which contribute to reconstruction and to economic and resources development in Alaska and shall recommend appropriate action by the Federal Government to carry out such plans.

(b) When the Governor of Alaska has designated representatives of the State of Alaska for purposes related to this order, the Commission shall cooperate with such representatives in accomplishing the following:

1. Making or arranging for surveys and studies to provide data for the development of plans and programs for reconstruction and for economic and resources development in Alaska.

2. Preparing coordinated plans for reconstruction and economic and resources development in Alaska deemed appropriate to carry out existing statutory responsibilities of Federal, State, and local agencies. Such plans shall be designed to promote optimum benefits from the expenditure of Federal, State, and local funds for consistent objectives and purposes.

3. Preparing recommendations to the President and to the Governor of Alaska with respect to both short-range and long-range programs and projects to be carried out by Federal, State, or local agencies, including recommendations for such additional Federal or State legislation as may be deemed necessary and appropriate to meet reconstruction and development needs.

SEC. 3. Commission procedures: (a). The Commission shall meet at the call of the Chairman.

(b) The Commission may prescribe such regulations as it deems necessary for the conduct of its affairs, and may establish such field committees in Alaska as may be appropriate.

(c) Personnel assigned to the Commission shall be directed and supervised by the Executive Director of the Commission. Activities of the staff shall be carried out, under the general direction and supervision of the Chairman, in accordance with such policies and programs as may be approved by the Commission.

(d) The Chairman of the Commission shall report to the President from time to time on progress and accomplishments.

SEC. 4. Agency cooperation: (a) Each Federal agency represented on the Commission shall, consonant with law, cooperate with the Commission to expedite and facilitate its work. Each such agency shall, as may be necessary, furnish assistance to the Commission in accordance with the provisions of section 214 of the Act of May 3, 1945 (59 Stat. 134; 31 U.S.C. 691).

(b) Other Federal agencies shall, to the extent permitted by law, furnish the Commission such information or advice bearing upon the work of the Commission as the Chairman may from time to request.

SEC. 5. Construction: Nothing in this order shall be construed as subjecting any Federal agency or officer, or any function vested by law in, or assigned pursuant to law to, any Federal agency or officer, to the authority of the Commission or of any other agency or officer, or as abrogating any such function in any manner.

LYNDON B. JOHNSON.

THE WHITE HOUSE, *April 2, 1964.*

Mr. CASE. Mr. President, under the same conditions, I now yield to the Senator from Alaska for another brief statement.

Mr. BARTLETT. Mr. President, I hesitate to detain the Senator from New Jersey longer. But I know he will be sympathetic, because in this case also we are discussing human rights and needs.

Since I spoke last—and this is really the only reason why I beg the indulgence of the Senator again—I have been handed many messages from heads of state which have been sent to President Johnson, to Secretary Rusk, and to Governor Egan, expressing sympathy to the people of Alaska for the disaster which befell them.

I ask unanimous consent to have printed in the RECORD, following my remarks, the text of these messages of condolence.

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

(See exhibit 1.)

Mr. BARTLETT. Mr. President, I should not want to conclude without making two further observations.

First I wish to express most sincere admiration for the aggressive and helpful action which has been taken in this emergency by President Johnson. From the outset, he expressed concern, sympathetic interest, and determination to do that which needed to be done. He was in constant touch night and day with Alaska, as emergency relief measures were ordered into effect.

Since that time many high Government officials have gone to Alaska in order to survey the damage and see how they could help. Mr. Foley, Administrator of the Small Business Administration, was in Alaska over the weekend. Under Secretary of the Interior Carr is there now.

We do not mean by the introduction of the bill to usurp in any way the authority of the Commission or the executive department as delineated in the Executive order to which reference has been made. We merely wish to help, to cooperate, and to expedite this matter.

EXHIBIT 1

LISBON, PORTUGAL,
March 30, 1964.

HON. DEAN RUSK,
Secretary of State,
Department of State,
Washington, D.C.:

Having heard of the tragic events in the State of Alaska, I ask you to accept the expression of my deep sorrow and sincere sympathy.

FRANCO NOGUEIRA,
Foreign Minister of Portugal.

SANTIAGO, CHILE,
March 30, 1964.

His Excellency DEAN RUSK,
Secretary of State,
Washington, D.C.:

Accept, Excellency, my deepest sympathy on the occasion of the terrible catastrophe in Alaska.

JULIO PHILIPPI IZQUIERDO,
Minister of Foreign Affairs of Chile.

PORT OF SPAIN,
March 30, 1964.

From: American Embassy,
To: Secretary of State:

Acting Prime Minister Solomon called Sunday to express his condolences for Alaskan earthquake disaster and sympathy for its victims.

MINER.

LISBON,
March 31, 1964.

From: American Embassy.
To: Secretary of State, Washington, D.C.:

I have just received from Foreign Minister Franco Nogueira personal letter expressing his and Portuguese Government's sympathy over Alaska earthquake disaster and asking that most sincere condolences be conveyed to families of victims.

Text pouched.

ANDERSON.

WASHINGTON, D.C.,
March 31, 1964.

Hon. DEAN RUSK,
The Secretary of State,
Washington, D.C.

DEAR MR. SECRETARY: On the occasion of the disastrous earthquake which has struck Alaska and has caused the loss of human life and inflicted heavy damages in Alaska and other parts of the United States, please accept our most sincere sympathy.

While sending our heartfelt sympathy to the families of those who have lost their lives and to the people of Alaska and of other parts of the United States who have suffered due to this tragedy, we recall with gratitude the expressions of solidarity and the help extended by the American Government and American people to the Yugoslav city of Skopje which was a victim of a similar catastrophe in July, last year.

With high regards,

VELJKO MICUNOVIC.

ROME.

His Excellency DEAN RUSK,
Secretary of State,
Washington, D.C.:

Deeply grieved by the terrible disaster suffered by the noble American Nation, I beg you to accept the assurances of my sincere sympathy.

GIUSEPPE SARAGAT,
Minister of Foreign Affairs.

ROMA.

Sua Eccellenza DEAN RUSK,
Secretario di Stato per gil Affari Esteri,
Washington, D.C.:

Profondamente addolorato per spaventosa sciagura che ha colpito nobile Nazione Americana pregola accogliere commossa espressione miei sentimenti sincera solidarieta.

GIUSEPPE SARGAT,
Ministro Affari Esteri.

GENEVA,
April 1, 1964.

At opening plenary session this morning President Kaissouni expressed the great sympathy of the Conference to the people of the United States over tragedy in Alaska and asked that American delegation relay this expression to U.S. Government.

TUBBY.

WASHINGTON, D.C.,
March 28, 1964.

Hon. DEAN RUSK,
The Secretary of State,
Department of State,
Washington, D.C.:

On behalf of the Chinese Government and people I wish to convey to you the expressions of their deep sympathy and condolence in the disastrous earthquake which had just visited upon Alaska and in its resultant heavy loss of life and property in that State. It is heartening to see that all necessary emergency measures are already being taken to alleviate the suffering of those affected by this natural calamity and to repair the untold damage in its wake.

TINGFU F. TSIANG,
Ambassador of China.

BAGHDAD, IRAQ,
March 30, 1964.

His Excellency DEAN RUSK,
Secretary of State,
State Department,
Washington, D.C.:

I have heard with deep sorrow of the tragic news concerning the earthquake which hit Alaska and should like to express my profound regret for the great losses suffered in life and property and to convey my sincere sympathy with the bereaved.

ABDUL-KERIM FARHAN,
Acting Minister of Foreign Affairs.

MARCH 30, 1964.

His Excellency Mr. DEAN RUSK,
Secretary of State,
Washington, D.C.:

I convey my deep sympathies to the victims and sufferers of the Alaska earthquake disaster.

KIRTINIDHI BISTA,
Foreign Minister, Nepal.

WASHINGTON, D.C.,
March 28, 1964.

His Excellency DEAN RUSK,
Secretary of State,
Department of State, Washington, D.C.:

The sad news of the earthquake in Alaska has moved me deeply. Please accept the expression of my profound sympathy and the assurance that with our American friends we feel close to the people in the stricken area.

Sincerely yours,

HENRY KNAPPSTEIN.

BANGKOK,
April 1, 1964.

THE PRESIDENT,
The White House:

I have learned with deep regret the news of loss of lives and vast damage as a result of the earthquakes at Anchorage March 29. Please accept the heartfelt sympathy of His Majesty's government and the Thai people as well as of my own for the victims of this national calamity.

Field Marshal THANOM KITTIKACHORN,
Prime Minister of Thailand.

KABUL,
April 1, 1964.

His Excellency LYNDON B. JOHNSON,
President of the United States of America,
Washington, D.C.:

I convey to Your Excellency and the American people my sincere sympathy on the devastating damages and loss of life caused by the recent earthquakes in Alaska.

MOHAMMAD ZAHER.

ATHENS,
April 1, 1964.

The PRESIDENT,
The White House:

Very much aggrieved by the terrible news of Alaska's earthquake. Would like to request Your Excellency to accept and kindly convey to the afflicted inhabitants of the State of Alaska the Greek peoples' and my own deepest sympathy.

GEORGE PAPANDREOU,
Prime Minister of Greece.

SANTIAGO, CHILE,
March 30, 1964.

His Excellency DEAN RUSK,
Secretary of State of the United States of America, Washington, D.C.:

Accept, Excellency, our most heartfelt condolences on the occasion of the deplorable catastrophe in Alaska.

JULIO PHILIPPI IZQUIERDO,
Minister of Foreign Affairs of Chile.

Beirut,
March 31, 1964.

THE PRESIDENT,
The White House,
Washington, D.C.:

Deeply shocked at the number of victims and the great damage caused by the earthquake in Alaska, I express to your Excellency, on this very distressing occasion, the sorrow and sympathy of Lebanon.

FOUAD CHEHAB.

PAN AMERICAN UNION,
Washington, March 30, 1964.

THE PRESIDENT OF THE UNITED STATES OF AMERICA,
Washington, D.C.

MY DEAR MR. PRESIDENT: Allow me to voice, both in my own name and in that of the Organization of American States, the deepest of consternation at the catastrophe which has stricken Alaska and, in lesser degree, other States of the Pacific coast.

While no reparation can be made for the loss of life which has occurred, I am confident that, with the fortitude and energy which have characterized the people of the United States from earliest times, the inhabitants of the devastated regions will be able to initiate the work of reconstruction promptly and carry it to rapid and successful conclusion.

Please accept the expression of my most profound regret and sympathy in this moment of national sorrow, and believe me to be,

Sincerely yours,

JOSÉ A. MORA,
Secretary General.

AUSTRALIAN EMBASSY,
Washington, D.C.

The Australian Ambassador presents his compliments to the Honorable the Secretary of State and has the honor to request the Secretary to convey the following message from His Excellency the Right Honourable Viscount De L'Isle, V.C. P.C. G.C.M.G. G.C.V.O. K.St.J., Governor-General of Australia to the President:

"I would be most grateful if the following message could be conveyed to the Governor and the people of Alaska—

"'All Australians are deeply distressed at the loss of life and the suffering which the recent disastrous earthquake has inflicted on Alaska and other parts of the Pacific seaboard of the U.S.A.

"'Please accept this expression of sincere sympathy with all those who have suffered loss in this catastrophe'."

The Australian Ambassador takes this opportunity of renewing to the Secretary of State the assurances of his highest consideration.

EMBASSY OF PAKISTAN,
Washington, D.C., March 30, 1964.

The Honorable DEAN RUSK,
The Secretary of State,
Washington, D.C.

MY DEAR MR. SECRETARY: My Government has asked me to convey to you, on behalf of the people of Pakistan, their profound

sense of grief and sympathy over the calamity that struck Alaska recently.

I would like to add an expression of sympathy on my own behalf and on behalf of the members of my embassy.

Yours sincerely,

G. AHMED.

DJAKARTA, *April 2, 1964.*

THE PRESIDENT,
The White House:

I was shocked to read news of national disaster which struck Alaska in which hundreds of innocent people lost their lives and belongings. On behalf of people and Government of Republic of Indonesia and myself I wish to convey our condolences and deepest sympathy. Please convey to representatives and people of Alaska.

SUKARNO,
President of the Republic of Indonesia.

VIENNA, *April 1, 1964.*

THE PRESIDENT,
The White House:

Moved by the shocking news of the disastrous earthquake which visited your counttry, I would like to ask Your Excellency, personally as well as on behalf of the Federal Government, to accept the expression of our warmest sympathy for the suffering of the victims of this tragic event.

ALFONS GORBACH,
Chancellor of the Republic of Austria.

WARSAW, *April 1, 1964.*

THE PRESIDENT,
The White House,
Washington, D.C.:

Moved by news of the tragic consequences of the earthquake that struck Alaska and particularly the city of Anchorage, I send you, Mr. President, on behalf of the Council of State of the Polish Peoples Republic and on my own behalf expressions of profound sympathy.

ALEKSANDER ZAWADZKI,
Chairman of the Council of State of the Polish Peoples Republic.

BERN, *March 31, 1964.*

THE PRESIDENT,
White House,
Washington, D.C.:

Because of the great extent of the disaster recently suffered by your country I beg Your Excellency to accept the sentiments of heartfelt sympathy expressed by the Federal Council and the Swiss people.

LUDWIG VON MOOS,
President of the Swiss Confederation.

WASHINGTON, *March 31, 1964.*

The Honorable DEAN RUSK,
Secretary of State,
Washington, D.C.

DEAR MR. RUSK: I wish to express to you in my name and that of my government our deepest sympathy for the unfortunate victims of the earthquake in Alaska. The magnitude of this tragedy has affected the whole world and the people of my country have been greatly saddened by this sudden and immense catastrophe.

Please accept, Mr. Secretary, the assurances of my highest consideration.

EZEQUIEL F. PEREYRA,
Minister, Chargé d'Affaires a.i.

LAGOS, *March 31, 1964.*

THE PRESIDENT,
The White House,
Washington, D.C.:

I was deeply shocked to hear of the disaster caused by the earthquake in Alaska and I wish to convey to you, Mr. President, the sincere condolences of the Government and people of Nigeria.

ABUBAKAR TAFAWA BALEWA,
Prime Minister of the Federal Republic of Nigeria.

SAIGON, *April 1, 1964.*

THE PRESIDENT,
The White House:

I am deeply moved in learning of the disastrous earthquake in Alaska which has greatly shocked the people of Vietnam. On behalf of the people of the Republic of Vietnam and my own, I beg Your Excellency to receive our heartfelt sympathy toward the State of Alaska and our best wishes for its very early recovery.

Gen. DUONG VAN MINH,
Chief of State of Vietnam.

TEGUCIGALPA, HONDURAS.

His Excellency LYNDON B. JOHNSON,
President of the United States,
Washington, D.C.:

I wish to express to Your Excellency, in my own name and that of the Government and people of Honduras, condolences and heartfelt sympathy in connection with recent occurrences in Alaska and ask that you convey our sympathy to the people of the United States, especially the people of Alaska.

OSWALDO LOPEZ A.,
Chief of Government.

His Excellency LYNDON JOHNSON,
President of the United States,
Washington, D.C.:

We express our condolences to the families of the victims of the earthquake that struck the city of Anchorage and the entire State of Alaska.

HASSAN II.

THE PRESIDENT,
The White House.

MY DEAR MR. PRESIDENT: The following cable has been received from Belgrade to be forwarded to you:

"THE PRESIDENT OF THE UNITED STATES,
"The White House,
"Washington, D.C.:

"I was saddened to learn of the tragedy which befell Anchorage and Alaska. We feel deeply for your citizens who suffered the losses in human life and property. Please convey to the American people the profound sympathy of the people of Yugoslavia and that of my own.

"JOSIP BROZ TITO."

VELJKO MICUNOVIC,
The Ambassador of Yugoslavia.

THE ROYAL THAI EMBASSY,
Washington, D.C., March 30, 1964.

His Excellency DEAN RUSK,
Secretary of State,
Department of State,
Washington, D.C.

EXCELLENCY: I have the honor to convey to Your Excellency the following telegraphic message received by this Embassy from Bangkok:

"I learn with deep regret the news of the earthquake at Anchorage on March 29. Please accept our sincere sympathy for the victims of this natural calamity.

"THANAT KHOMAN,
"Minister of Foreign Affairs of Thailand."

Accept, Excellency, the renewed assurance of my highest consideration.

SUKICH NIMMANHEMINDA,
Ambassador.

MARCH 28, 1964.

The Honorable WILLIAM A. EGAN,
Governor of Alaska,
Juneau, Alaska:

Through his Embassy in Washington, Prime Minister Pearson has expressed the Canadian Government's concern about the earthquake in Alaska. He has requested information on the extent and seriousness of the disaster, and would welcome information on needs in order to offer all possible help, perhaps by flying in supplies from nearby areas. I would appreciate a reply as soon as possible in order to be able to respond to the Prime Minister's request for information.

DEAN RUSK,
Secretary of State, Washington, D.C.

CANADIAN EMBASSY,
Washington, D.C., March 30, 1964.

THE PRESIDENT,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: On Saturday, March 28, I asked the State Department by telephone to convey to you a message from Prime Minister Pearson on the earthquake disaster in Alaska. I am writing now to confirm the text of the Prime Minister's message, a copy of which is attached.

Yours sincerely,

C. S. A. RITCHIE,
Ambassador.

TEXT OF A MESSAGE FROM PRIME MINISTER PEARSON TO PRESIDENT JOHNSON DATED MARCH 28, 1964

On behalf of the Government and the people of Canada I wish to express our great distress over the tragedy which occurred in many communities in Alaska last night. I should be grateful if you would convey our deep sympathy to those in Alaska who have suffered such heavy and painful loss. Since early this morning officers of the Canadian Government have been in close touch with agencies of the U.S. Government to determine what help we might best be able to supply and have been making preparatory arrangements in the event our assistance is called for. I know that I speak for all Canadians when I assure you that we stand ready to do whatever we can to assist the people of Alaska at this tragic time.

L. B. PEARSON.

THE PRESIDENT,
The White House:

We were deeply shocked to learn of the recent earthquake in Alaska. In the name of the people and Government of Guinea and on behalf of President Sekou Toure, who at present is not in Conakry, we express our deep sympathy to the American people whose sorrow we share and ask that you convey to the families of the victims our heartfelt condolences.

Very high consideration.

ELHADJI DIALLO SAIFOULAYE.

MARCH 30, 1964.

THE PRESIDENT,
The White House,
Washington, D.C.:

Please accept our profound sympathy on the occasion of the terrible tragedy in the State of Alaska and along the Pacific coast. The Government and people of Ecuador share the sorrow of the great nation to which they are bound by indissoluble ties of American brotherhood.

Respectfully,

Rear Adm. RAMON CASTRO JIJON,
Maj. Gen. MARCOS SANDARA ENRIQUEZ,
Col. GUILLERMO FREILE POSSO,
Air Force General Staff.
Dr. HERNAN DONOSO VELASCO,
Secretary General of Government.

BRUSSELS, *March 31, 1964.*

THE PRESIDENT,
The White House,
Washington, D.C.:

The Queen and I, as well as all our fellow countrymen, have followed with deep emotion and anxiety the news of the catastrophe that has occurred in Alaska and has affected other parts of the United States. We express our deepest sympathy for the families that have so tragically suffered. We are particularly concerned about the fate of those living at Elmendorf, where we recently were received so cordially.

BAUDOUIN.

MARCH 31.

Mr. LYNDON B. JOHNSON,
President of the U.S.A.
White House,
Washington:

In connection with the severe national calamity which struck our neighbor Alaska, I request you, Mr. President, to accept our deep sympathy and to transmit to the people of the suffering State the sincere condolences of the Soviet people.

With respect,

KRUSHCHEV,
Moscow, The Kremlin.

THE PRESIDENT,
The White House:

I wish to express to you, Mr. President, the sincere and heartfelt sympathy of the French people over the disaster that has struck the State of Alaska.

Please accept the personal assurances of my very high consideration.

C. DE GAULLE.

LA PAZ, BOLIVIA, *March 30, 1964.*

His Excellency LYNDON B. JOHNSON,
President of the United States,
Washington, D.C.:

Accept, Mr. President, the sympathy of the people and Government of Bolivia and my own on the Alaska tragedy, which has grieved the entire American Nation.

VICTOR PAZ ESTENSSORO,
President of Bolivia.

SANTIAGO, CHILE, *March 30, 1964.*

His Excellency LYNDON B. JOHNSON,
President of the United States of America,
Washington, D.C.:

Accept, Excellency, the sincere condolences of the people of Chile and my own on the terrible Alaskan catastrophe.

JORGE ALESSANDRI RODRIGUEZ,
President of the Republic of Chile.

MARCH 28, 1964.

THE PRESIDENT,
The White House:

I am most distressed at this disaster. Please accept deepest sympathy from my Government and the people of Jamaica.

PRIME MINISTER.

MEXICO, *March 30, 1964.*

THE PRESIDENT,
The White House,
Washington, D.C.:

I assure to you that I am suffering with deepest sympathy for Alaska's tragedy.

EVA SAMANO DE LOPEZ MATEOS.

CARACAS, *March 29, 1964.*

THE PRESIDENT,
The White House,
Washington, D.C.:

In the name of the people and Government of Venezuela and in my own name, I express to your Excellency and the people and Government of the United States our deep sorrow at the calamity that has struck the noble people of Alaska, and the hope that the work of reconstruction will be accomplished quickly.

Sincerely,

RAUL LEONI,
President of Venezuela.

LONDON, *March 31, 1964.*

THE PRESIDENT,
The White House,
Washington, D.C.:

Please accept expression of our deepest sympathy for deaths and destruction caused by appalling Alaskan earthquake.

J. D. BERNAL,
Chairman, Presidential Committee World Council of Peace.

LISBON, *March 30, 1964.*

THE PRESIDENT,
The White House,
Washington, D.C.:

I have the honor to convey to your Excellency the expression of my deep sympathy on the occasion of the great earthquake which occurred in Alaska and which resulted in such tragic loss of life and property. Our sympathy goes also to those who have suffered so much from this terrible disaster.

AMERICO THOMAZ,
President of the Portuguese Republic.

DUBLIN, *March 29, 1964.*

THE PRESIDENT,
The White House:

On behalf of the Irish people and on my own behalf I wish to convey to you our deepest sympathy on the disaster which has occurred in Alaska.

EAMON DE VALERA,
President of Ireland.

SGRAVENHOPE, *March 28, 1964.*

THE PRESIDENT,
The White House, Washington:

We are deeply moved by the terrible disaster which the State of Alaska has suffered. Please accept our feelings of sincere sympathy with all the bereaved families.

JULIANA R. BERNHARD.

ROME, *March 28, 1964.*

THE PRESIDENT,
The White House:

The news of the violent earthquake in Alaska has deeply grieved me. In the name of the Italian Government and in my own name I wish to convey our sentiments of friendly solidarity to the people of the devastated areas.

ALDO MORO,
President of the Council of Ministers.

WASHINGTON, *D.C.,*
March 28, 1964.

THE PRESIDENT,
The White House:

The President of the Federal Republic of Germany has asked me to transmit to you the following message:

"The German people are following with great sympathy the terrible news of the severe earthquake in Alaska, which is constantly adding evidence of the extent of the catastrophe. The immense damage caused thereby * * * and above all the loss of so many lives. I would like to express my deep sympathy to you and the American people with whom we are united in friendship. We Germans think of and feel for the injured, the families of the victims, and all those who have lost their homes and possessions.

"HEINRICH LUEBKE,
"President of the Federal Republic of Germany."

Please allow me to add my own expression of deep-felt sympathy.

HEINRICH KNAPPSTEIN,
German Ambassador.

ROME,
March 28.

The PRESIDENT,
The White House:

The disaster that the United States has suffered, resulting in the loss of so many human lives, has caused deep sorrow to the Italian people and to me personally. On this sad occasion I want you to know, Mr. President, that the entire Italian Nation feels particularly close to the people of the devastated areas and, in a fraternal spirit, shares their grief.

Accept, Mr. President, the assurances of my sincere sympathy.

ANTONIO SEGNI.

ROMA,
March 21, 1964.

The PRESIDENT,
The White House:

La grave sciagura che ha colpito gli Stati Uniti causando la perdita di tante vite umane ha profondamente rattristato il popolo Italiano e me personalmente. In tale circostanza desidero che lei sappia, Signor Presidente, che l'intera Nazione Italiana e particolarmente vicina alla popolazione delle zone colpite e partecipa fraternamente al suo dolore. Voglia gradiren Signore Presidente, l'esperssione del mio sincero cordoglio.

ANTONIO SEGNI.

VIENNA,
March 28, 1964.

His Excellency LYNDON JOHNSON,
President of the United States of America:

Moved by the news of the disastrous earthquake in Alaska, I beg your excellency to accept the assurance of sincere sympathy, on my own part as well as on behalf of the Austrian people, who at this moment feel bound by especially close ties to the people of the United States.

Dr. ADOLF SCHAERF,
Federal President of the Republic of Austria.

MARCH 28, 1964.

Seiner Exzellenz Herrn LYNDON JOHNSON,
President der Vereinigten Staaten von Amerika, Washington, D.C.:

Unter dem Eindruck der verheerenden erdbebenkatastrophe in Alaska bitte ich Euer Exzellenz im eigenen Namen und im Namen des oesterreichischen Volkes, das sich in diesen Stunden mit dem Volk der Vereinigten Staaten besonders verbunden fuehlt, die Versicherung aufrichtiger anteilnahme entgegenzunehmen.

Dr. ADOLF SCHAERF,
Bundes Praesident,
Der Republik Oesterreich.

HELSINSKI,
March 31, 1964.

The PRESIDENT,
The White House:

On behalf of the people of Finland, I wish to express to your excellency my deeply felt sympathy on the disastrous calamity befallen the American Nation through the earthquake in Alaska.

URHO KEKKONEN,
President of the Republic of Finland.

WASHINGTON, *D.C.,*
March 28, 1964.

The PRESIDENT,
The White House:

The following message was sent today to the President at his home in Texas:

"His Excellency LYNDON B. JOHNSON,
"President of the United States," Washington, D.C.:

"The news of the frightful earthquake in Alaska which cost so many human lives has profoundly shocked me. On behalf of the Federal Government I wish to express to you and the American people my deep-felt sympathy. In this hour we feel bound to you by especially close ties and grieve with you over the victims of this disaster.

"Yours,

"LUDWIG ERHARD,
"Chancellor of the Federal Republic of Germany."

HEINRICH KNAPPSTEIN,
German Ambassador.

WASHINGTON, D.C.,
March 28, 1964.

The PRESIDENT,
The White House:

The following message was sent today to the President at his home in Texas:

"Se. Exzellenz dem Praesidenten der Vereinigten Staaten. Herrn LYNDON B. JOHNSON.

The White House,
Washington, D.C.:

"Die Nachricht von dem furchtbaren erdbeben in Alaska, das so viele Menschenleben gekostet hat, hat mich tief bewegt. Im Namen der Bundesregierung spreche ich Ihnen und dem amerikanischen Volk mein tiefempfundenes Beileid aus. Wir fuehlen uns mit ihnen in dieser Stunde besonders verbunden und trauern mit Ihnen um die Opfer der Katastrophe.

"LUDWIG ERHARD,
"Bundeskanzler der Bundesrepublik Deutschland."

Unofficial translation:

"His Excellency the President of the United States of America, Mr. LYNDON B. JOHNSON,

The White House,
Washington, D.C.:

"The news of the terrible earthquake in Alaska which cost so many lives has moved me deeply. Let me express to you on behalf of the Federal Government my personal sympathies. In this hour we feel particularly close to you and mourn with you the victims of the catastrophe.

"Sincerely yours,

"LUDWIG ERHARD,
"Chancellor of the Federal Republic of Germany."

HEINRICH KNAPPSTEIN,
German Ambassador.

TURKISH EMBASSY,
Washington, D.C., March 30, 1964.

Hon. the SECRETARY OF STATE,
The Department of State,
Washington, D.C.

DEAR MR. SECRETARY: I have the honor to enclose herewith the text of a telegram received from the President of the Turkish Republic and addressed to the President of the United States of America, on the tragic occasion of the recent earthquake disaster in Alaska.

I would greatly appreciate if the said message were forwarded to its high destination.

Please accept, Mr. Secretary, the renewed assurances of my highest consideration.

TURGUT MENEMENCIOGLU,
Ambassador.

The PRESIDENT OF THE UNITED STATES OF AMERICA,
The White House,
Washington, D.C.:

I wish to express my profound sorrow for the disastrous earthquake which occurred in Alaska. On behalf of the Turkish people and in my own behalf I extend to you and through you to all who have been bereaved my deepest sympathy.

CEMAL GÜRSEL.

KOREAN EMBASSY,
Washington, D.C., March 30, 1964.

His Excellency DEAN RUSK,
Secretary of State,
Washington, D.C.

EXCELLENCY: I have the honor to transmit the following cable message, addressed to His Excellency Lyndon B. Johnson, President of the United States of America, from His Excellency Chung Hee Park, President of the Republic of Korea:

"The Government and people of the Republic of Korea join me in expressing our deepest concern and sympathy to Your Excellency and the American people upon learning the tragic news of the earthquake along the Pacific coast which has caused great damage, involving loss of human lives, particularly in the city of Anchorage.

"We sincerely hope for a speedy rehabilitation of the city and the many homes destroyed by the disaster through the courageous efforts of your people.

"CHUNG HEE PARK,
"President of the Republic of Korea."

I have the further honor to request that this message be forwarded to its high destination.

Please accept, Excellency, the renewed assurances of my highest consideration.

CHUNG YUL KIM.

CHINESE EMBASSY,
Washington, March 31, 1964.

The PRESIDENT,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: I have the honor to transmit to Your Excellency a cable message just received from President Chiang Kai-shek, which reads as follows:

"I am much distressed to learn of the disastrous earthquake in Alaska which has taken so many lives and caused so much property damage. On behalf of the Government and the people of the Republic of China, I wish to express to Your Excellency my deepest sympathy and concern and the sincere hope for a speedy recovery and rehabilitation.

"CHIANG KAI-SHEK,
President, Republic of China."

With highest esteem,

Respectfully yours,

TINGFU F. TSIANG,
Ambassador of China.

WASHINGTON, D.C.

The PRESIDENT,
The White House:

The Prime Minister of New Zealand has asked me to convey to you the following message:

"We in New Zealand have been deeply shocked to learn of the disastrous earthquake that has occurred in Alaska. I should be grateful if you would convey to the people in the stricken areas the deep sympathy that all New Zealanders feel.

"KEITH HOLYOAKE."

May I also express my own deep sympathy.

G. R. LAKING,
Ambassador for New Zealand.

LUANG PRABANG, *March 30, 1964.*

His Excellency LYNDON B. JOHNSON,
President of the United States of America,
Washington, D.C.:

I was deeply shocked by the news of the earthquake that has caused a great disaster in Alaska. Please accept, Excellency, my sympathy and condolences and please convey my sympathy to the families of the victims of this catastrophe.

SRI SAVANG VATTHANA,
King of Laos.

EMBASSY OF INDIA,
Washington, D.C., March 30, 1964.

The PRESIDENT,
The White House,
Washington, D.C.

MY DEAR MR. PRESIDENT: I have the honor to transmit the following message to you from the Prime Minister of India:

"We have learned with deep distress about the disastrous earthquake in Alaska which has caused widespread damage and the loss of many valuable lives, especially in the city of Anchorage. On behalf of the Government and people of India, and on my own behalf, I send you, Mr. President, and to the bereaved families, our deepest sympathy.

"JAWAHARLAL NEHRU."

May I add, Mr. President, my own grief at the tragedy that has befallen the people of Alaska and my admiration for the valiant efforts that are being made for their relief.

With my high esteem and regard,

Yours sincerely,

B. K. NEHRU,
Ambassador of India.

JERUSALEM, ISRAEL,
March 29, 1964.

His Excellency LYNDON B. JOHNSON,
President of the United States of America,
Washington, D.C.:

Deeply shocked by the disaster which befell Alaska and the Pacific coastline of the United States in which so many human lives were lost. I ask Your Excellency to accept the expression of my profound sympathy and my most sincere condolences.

ZALMAN SHAZAR,
President of Israel.

NEW DELHI, INDIA,
March 29, 1964.

THE PRESIDENT,
The White House:

I am extremely grieved to hear of the serious earthquake in Alaska resulting in such a heavy loss of life and property. Kindly convey my deepest sympathy to all those affected by this disaster.

RADHA KRISHNAN.

AMMAN,
March 29, 1964.

THE PRESIDENT,
The White House:

Mr. President, it was with deep grief that I received news of the disaster which has befallen the State of Alaska. I wish to extend to you, Mr. President, to the citizens of Alaska, and to the American people my condolences and those of the people of Jordan on this tragedy. I wish also, Mr. President, to convey our sympathy to the families of the victims and the bereaved.

AL HUSSEIN.

NEW YORK, N.Y.,
March 30, 1964.

THE PRESIDENT,
White House,
Washington, D.C.:

I was greatly shocked to learn of the earthquake in Alaska and the great suffering it has brought to the people of Alaska.

I wish to convey to you, and through you to the people of Alaska, my profound sorrow and sympathy.

U-THANT,
Secretary-General, U.N.

NAIROBI,
March 30, 1964.

THE PRESIDENT,
The White House,
Washington, D.C.:

I am distressed to learn of the earthquake disaster which has caused destruction of lives and property in Alaska. Please accept, Mr. President, sympathies of the people of Kenya and myself at this tragic moment.

JOMO KENYATTA,
Prime Minister.

TEHERAN,
March 29, 1964.

THE PRESIDENT,
The White House,
Washington, D.C.:

Deeply moved by the tragic loss of life which the recent devastating earthquake has caused to the State of Alaska, I hasten to express to you my sincere sympathy together with condolence to the families of the victims of this calamity.

MOHAMMED REZA PAHLA I.

NEPAL,
March 29, 1964.

His Excellency President LYNDON B. JOHNSON,
The White House:

We are deeply distressed to learn about the heavy loss of human life and property due to earthquake in Alaska. We convey our heartfelt sympathies to the victims and the sufferers.

MAHENDRA R.

THE PRESIDENT,
The White House:

We were deeply shocked to learn of the recent earthquake in Alaska. In the name of the people and Government of Guinea and on behalf of President Sekou Toure, who at present is not in Conakry, we express our deep sympathy to the American people whose sorrow we share and ask that you convey to the families of the victims our heartfelt condolences. Very high consideration.

ELHADJI DIALLO SAIFOULAYE.

CAPE PALMAS,
March 30, 1964.

THE PRESIDENT,
The White House,
Washington, D.C.:

Reports of the devastating earthquake that caused enormous damage of property installation and lives of many of your fellow citizens in the great State of Alaska have been received in Liberia with profound regrets and great distress. On behalf of the Government, people of Liberia, and myself, I hasten to assure Your Excellency that we deeply deplore and regret this violent phenomenon and associate ourselves with you, the Government, and people of the United States in this great catastrophe. With assurances of my highest esteem and best wishes.

W. V. S. TUBMAN.

NAIROBI,
March 30, 1964.

For Ambassador Attwood:

Kenya's Prime Minister has asked that following message be transmitted to the the President at the White House:

"To President JOHNSON:

"I am distressed to learn of the earthquake disaster which has caused destruction of life and property in Alaska. Please accept, Mr. President, the sympathies of the people of Kenya and myself at this tragic moment.

Signed: Jomo Kenyatta."

VASS.

TUNIS,
March 29, 1964.

THE PRESIDENT,
The White House,
Washington, D.C.:

I was deeply shocked at the news of the earthquake that struck certain cities in the United States. I share your deep sorrow and extend sympathy to Your Excellency, with the request that you convey my sincere compassion to the families affected.

HABIB BOURGUIBA,
President of the Republic of Tunisia.

TUNIS, *March 29, 1964.*

THE PRESIDENT,
The White House,
Washington, D.C.:

Je suis profondement consterne par les nouvelles du seisme qui a frappe certaines villes des Etats-Unis d'Amérique. Je partage votre immense peine at prie votre excellence de bien vouloir agreer ma vive sympathie et de transmettre aux familles eprouvées l'expression de ma sincere compassion.

HABIB BOURGUIBA,
President de la Republique Tunisienne.

EMBASSY OF GHANA,
Washington, D.C., March 31, 1964.

The Ambassador of the Republic of Ghana presents his compliments to the Secretary of State and has the honor to transmit the following message to the President of the United States of America:

"I am deeply distressed by the news of the disaster and loss of life following the earthquake in Alaska and along the west coast of the United States. Please accept the sincere sympathy of myself and Government and people of Ghana for the victims of this disaster.

"KWAME NKRUMAH."

The Ambassador also has the honor to express his sympathy and that of the members of his mission for the sad loss of life and property.

The Ambassador of the Republic of Ghana avails himself of this opportunity to renew to the Secretary of State the assurance of his highest consideration.

ALASKA THANKS RED CROSS, SALVATION ARMY

Mr. BARTLETT. Mr. President, I do not need to tell the Senate of the food and clothing and comfort the National Red Cross and the Salvation Army have brought to the victims of the Alaska earthquake.

Both the Red Cross and the Salvation Army have a long history of helping others. I am sure that never have they done a better job of this than they have in Alaska.

Alaskans are grateful for their help and for the generous donations of Americans across the country which have made this help possible.

Mr. President, I ask unanimous consent to have printed at this point in the RECORD, two letters with enclosures, one on contributions for Alaska received by the Red Cross, the other on the activities of the Salvation Army.

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

THE AMERICAN NATIONAL RED CROSS,
Washington, D.C., April 3, 1964.

Hon. E. L. BARTLETT,
U.S. Senate,
Washington, D.C.

DEAR BOB: I am giving below a list of contributions reported to our national headquarters for the families requiring the help of the American Red Cross in connection with the devastating earthquake in Alaska:

United Brotherhood of Carpenters and Joiners of America, AFL–CIO	$50,000
National headquarters (individual gifts)	383
Eastern area, Alexandria (individual gifts)	2,344
Southeastern area, Atlanta (individual gifts)	137
Midwestern area, St. Louis (individual gifts)	1,333
Total to date	54,197

These reports are only preliminary and do not include many voluntary gifts which have been received by local Red Cross chapters all over the United States, but not yet reported by these chapters to their respective area headquarters.

We will keep you currently advised of the amount of contributions received.

Yours very sincerely,

ROBERT F. SHEA,
Vice President.

THE SALVATION ARMY,
NATIONAL CAPITAL DIVISION,
Washington, D.C., April 6, 1964.

Hon. E. L. BARTLETT,
U.S. Senate,
Washington, D.C.

DEAR SENATOR BARTLETT: I am attaching some further information concerning Salvation Army services in Alaska which will be of interest to you.

Please feel free to call me at Executive 3–1881 if you need any further information.

Sincerely,

Brig. ERNEST W. HOLZ,
Divisional Commander.

THE SALVATION ARMY,
April 2, 1964.

The following message was relayed to Seattle offices of the Associated Press and United Press International, Wednesday evening, April 1:

"In a telephone conversation with Commissioner Glenn Ryan, territorial commander of the Salvation Army western territory, Lt. Col. Daniel G. Rody, divisional commander of the Alaska division, advised that Gov. William Egan of Alaska, requested the Salvation Army give him immediate detailed report relative to the Salvation Army welfare services provided since the earthquake Friday evening.

"The following statistical information was included in the special report:

"1. One thousand, two hundred sitdown meals are being served in the Salvation Army center daily.

"2. Four thousand, eight hundred meals are being served at eight other points in and around Anchorage.

"3. Approximately 500 families have been placed in homes by the Salvation Army.

"4. Eight hundred garments distributed to families.

"5. Seventy-five families were provided with bedding.

"6. Over 612 cases of canned and frozen foods distributed to about 500 families.

"7. Ten Salvation Army mobile units have used 2,200 pounds of meat, 100 dozen eggs, 75 cases of coffee, 7,500 dozen assorted pastries, 60 gallons of milk, 4 cases of soap.

"Salvation Army centers have been operating 24 hours a day.

"It was further reported that the Governor has appointed Miss Eloise Lamb, a staff member of the Department of Welfare in Anchorage, to work with Mrs. Rody in coordinating all data dealing with missing person reports coming from police and fire departments, civil defense, and other municipal offices.

"The Salavation Army is recognized as the official information center in Anchorage relating to missing persons and the needs of people."

THE SALVATION ARMY,
March 31, 1964.

To: National headquarters, territorial public relations secretaries, all territories, all western territory divisional commanders, department heads, corps, and institutions.

MORE ON SALVATION ARMY DISASTER OPERATIONS, ALASKA EARTHQUAKE

Following yesterday's release, telephone communication was again established with Lt. Col. Daniel Rody, divisional commander, and associates in Anchorage.

As a result of this conversation arrangements have been made for Capt. Lincoln Upton, divisional secretary, Oregon and Southern Idaho division (World War II fighter pilot and currently a licensed pilot) to report immediately to Anchorage. Captain Upton will make contact with areas now inaccessible except by air.

Capt. William McHarg, divisional financial secretary, northwest division, formerly stationed in Alaska, has also been sent to Anchorage.

Commissioner Wycliffe Booth, territorial commander for Canada, has offered the services of Brig. Stanley Jackson, divisional officer for British Columbia north, who will make his way to Valdez, and make direct report to Lieutenant Colonel Rody in Anchorage.

As of this date, the Salvation Army maintains desks in the offices of State civil defense, Anchorage civil defense, and city manager. We are in constant liaison with all official disaster groups in Alaska.

As an indication of the fact that "life must go on," Maj. Marie Anderson, superintendent of the Salvation Army Booth Memorial Home, reported an interesting incident. One of the expectant mothers, giving signs of being ready to deliver, was "walked, between two adults" (road conditions made automobile travel impossible) about 7 miles to the Alaska Native Service Hospital, where her child was delivered.

Over 6,000 people are being fed daily and food is being distributed at eight different locations in and around Anchorage.

Approximately 800 ham radio operators are forwarding requests for information to two operators housed in the divisional headquarters building. Salvation Army runners are constantly engaged in securing desired information and reporting to our radio operators. One hundred Boy Scout runners are active in Anchorage and 10 of these have been assigned to the Salvation Army.

To support these disaster services, checks may be made payable to the Salvation Army Alaska disaster fund and sent to the nearest divisional headquarters.

Brig. LAWRENCE R. SMITH,
Public Relations Secretary.

CIVIL RIGHTS ACT OF 1963

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

TITLE VII

Mr. CASE. Mr. President, my assignment this afternoon is title VII of the civil rights bill, the fair employment practices title.

Before I make my rather brief remarks on that subject specifically, I should like to make two points. One, I made earlier today. I wish to be counted among those who are not afraid to stand for a strong bill, in the fair employment practices section, and in all other parts. I am unwilling to be a party to compromises which I believe would seriously weaken the bill, and I shall not be willing to give my support and voice to either cloture or passage of such a bill.

The Senator from Oregon and I discussed this question briefly this morning. On the same point, I know the Senator from New York [Mr. JAVITS] joins us. There are other Senators who, if they had been present at the time, would have done so.

I am tired of having the opponents of civil rights become the proponents of weakening any civil rights legislation that is brought before the Senate, and take the initiative in these matters.

I do not believe that we have to kowtow to 6, 8, or 10 votes which may be marginal.

The mood of the country and the mood of the Senate call for the passage of strong civil rights legislation. There is no one in a strategic position who can force the majority of the Senate to bend its will to theirs.

I say this without any threatening or admonitory intention whatever, but merely as a simple statement of fact, to make clear that we who believe in the need for civil rights legislation feel concern in no sense that we do not have the strength to pass the bill in substantial, effective form.

On the second point I wish to make, I disagree to whatever extent may be necessary with other Senators who have spoken, including perhaps the Senator from Pennsylvania [Mr. CLARK] who shared the task with me today of dealing with title VII.

I do not believe that the Senate is obliged, in order to pass a bill this session, to accept what the House sent it. We must make very clear our intention to consider the bill on its merits.

I believe the House—a body in which I had the honor to serve for almost 9 years—is entitled to the presumption that its action is based upon sound wisdom. This is the manner in which I approach any product that comes to the Senate from the House. But I believe that the Senate has its own job to do. As Senators, we ought to consider this proposal on its merits. If the bill needs strengthening, we ought to strengthen it. If it needs changing in other respects, we ought to change it. We ought not to be afraid of regular legislative processes, including sending the bill to conference and passed again in both the House and the Senate.

There is a great task for us to perform. Is the Senate under our democratic system in this country so lacking in strength that we cannot pass legislation on the most important subject which has come before us in this century? I do not think so.

I turn to the subject which is my particular assignment today, the matter of fair employment practices legislation.

It will be recalled that last summer 200,000 or more people joined in the stirring march on Washington. They marched under the banner, "Jobs and Freedom."

A fair chance for a decent job—who cannot understand this—for freedom without the means of utilizing and enjoying it is an empty thing. Of what good is the right to enter a restaurant if one does not have the money to pay for a meal? How much meaning can the right to vote have to the man with an empty stomach? What could be more disheartening, more destructive of the urge to achieve, than the experience of those who have climbed the educational stairs, and climbed them with great difficulty and many obstacles, only to find the doors to employment slammed in their faces?

In the affluence that marks so much of our society, there has been a comfortable assumption that, relatively speaking, almost everybody has been doing better, that the economic situation of all the various components of our society has improved in more or less equal degree.

But overall statistics conceal a bitter fact of which our nonwhite citizens are painfully aware. The nonwhite American, who is in most instances a Negro, has not shared equally in the general progress. In fact, the economic gap between Negro and white citizens has been widening in the last decade. The growing difference is starkly evident in a breakdown of unemployment figures.

According to the 1964 Manpower Report of the President, in 1958 the unemployment rate for nonwhites was 107 percent higher than the jobless rate for whites; in 1961, it was 108 percent higher; in 1962, it reached a peak of 124 percent. Although in 1963, a prosperous year, it dropped to 114 percent, the disparity between nonwhite, 11 percent, and white, 5 percent, unemployment since 1955 has grown much greater than it was between 1947 and 1955.

Mr. President, the first chart on the left, which I think is identical with and to the same effect as the third chart on the other side of the aisle, shows the figures. I do not think we need to go into this point too deeply. Even at this great a distance, it is obvious that the unemployment rate of the Negro as compared with the white is far different. It is obvious from the chart itself.

Nonwhite married men and heads of family were especially hard hit in 1963. They had an unemployment rate of almost 7 percent, as contrasted with 3 percent for the comparable white group. This situation has forced many Negro married women to work, even when they have young children.

So far as our Negro youth are concerned, the unemployment rate has been so great as to constitute a major social problem. One out of every four nonwhite boys, aged 14 to 19, seeking jobs was unemployed in 1963. That is 25 percent. Among nonwhite girls the unemployment rate was still higher, rising to 33 percent.

Further, as the President's Manpower Report points out, long-term unemployment is also more prevalent among Negroes than whites. Truly, they are the last hired and the first fired. In 1963, for example, about one-third of all Negro unemployed were out of work for 15 or more weeks. This contrasts with about one-quarter of the white unemployed. About 18 percent of Negro unemployed were jobless for more than half a year, as compared with 12 percent of the whites.

Finally, compared with white workers, Negro workers are more often employed only part time. The number of Negroes who can find only part-time employment has been increasing. This is not true among whites.

All of these facts and figures add up to lower earnings for the nonwhite. During World War II and the Korean war, so the Manpower Report points out, the earning differentials between Negro and white workers were reduced. But since then, increases in wages have been relatively greater in the high-wage occupations and industries, in which whites are concentrated, than in the lower wage

ones, where most nonwhites find employment.

The first chart on the right shows, relatively, the situation in that respect. Almost one-half of the white employees of the country are in white-collar jobs, whereas farm workers and blue-collar workers, together, make up slightly more than the half which is the remainder, whereas among nonwhites the situation is quite different; among that group, service workers and blue-collar workers constitute approximately three-fourths of the total number of nonwhites who are employed; those engaged in farming constitute almost one-eighth of the total number of nonwhites employed; and the white-collar workers comprise slightly more than one-eighth.

Even the rise in the Federal minimum wage and its extension since 1961 have failed to modify the growing differential between earnings of nonwhite and white workers. The median wage and salary income in 1962 of nonwhite male workers was $3,023 or 55 percent of that of white male workers. This is a most significant figure.

The second chart on the left shows that in graph form, and also shows that the discrepancy between the median earnings of white workers and those of nonwhite workers has been increasing in recent years, as I have already indicated; and this difference is much more pronounced—as is stated in the report—in the South than in other parts of the country.

Mr. President, I ask unanimous consent to have printed at this point in the RECORD a table prepared by the U.S. Department of Commerce, Bureau of the Census, showing the median income in 1949 and in 1959 of white and of nonwhite males for each of the States of the United States and also for the United States as a whole.

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

Median income in 1949 and 1959, of white and Negro males, for the United States, by States

	1949			1959		
	White	Negro		White	Negro	
		Amount	Percent of white		Amount	Percent of white
United States	$2,582	$1,356	53	$4,337	$2,254	52
Alabama	1,809	957	53	3,409	1,446	42
Alaska				4,707	2,721	58
Arizona	2,411	1,344	56	4,273	2,324	54
Arkansas	1,423	759	53	2,553	990	39
California	2,966	2,121	72	5,109	3,553	70
Colorado	2,351	1,820	77	4,241	3,195	75
Connecticut	2,809	2,023	72	5,033	3,545	70
Delaware	2,813	1,568	56	4,889	2,458	50
District of Columbia	3,242	2,182	67	4,694	3,376	72
Florida	2,239	1,185	53	3,769	2,080	55
Georgia	1,870	919	49	3,420	1,510	44
Hawaii				3,679	1,982	54
Idaho	2,397	2,054	86	3,871	2,130	55
Illinois	3,030	2,260	75	5,056	3,651	72
Indiana	2,696	2,211	82	4,483	3,520	79
Iowa	2,477	2,005	81	3,731	3,214	86
Kansas	2,343	1,792	76	3,970	2,704	68
Kentucky	1,701	1,197	70	2,938	1,787	61
Louisiana	2,228	997	45	4,001	1,609	40
Maine	2,048	1,650	81	3,299	2,042	62
Maryland	2,782	1,601	58	4,880	2,769	57
Massachusetts	2,630	1,944	74	4,452	3,063	69
Michigan	3,039	2,659	87	4,983	3,768	76
Minnesota	2,438	2,134	88	4,012	3,321	83
Mississippi	1,462	605	41	2,796	904	32
Missouri	2,224	1,611	72	3,863	2,616	68
Montana	2,578	1,215	47	3,993	2,367	59
Nebraska	2,277	2,026	89	3,548	3,124	88
Nevada	3,004	2,069	69	5,075	3,379	67
New Hampshire	2,224	2,080	94	3,848	2,526	66
New Jersey	3,033	1,977	65	5,172	3,375	65
New Mexico	2,224	1,452	65	4,110	2,449	60
New York	2,929	2,097	72	4,812	3,372	70
North Carolina	1,872	1,002	54	3,040	1,318	43
North Dakota	2,213			3,151	1,904	60
Ohio	2,852	2,146	75	4,903	3,492	71
Oklahoma	2,041	992	49	3,489	1,704	49
Oregon	2,707	2,010	74	4,466	3,166	71
Pennsylvania	2,638	2,073	79	4,369	3,246	74
Rhode Island	2,367	1,525	64	3,851	2,578	67
South Carolina	2,043	801	39	3,224	1,140	35
South Dakota	2,214			3,047	2,214	73
Tennessee	1,685	1,141	68	2,939	1,637	56
Texas	2,272	1,202	53	3,756	1,916	51
Utah	2,688	2,365	88	4,551	3,515	77
Vermont	1,970			3,333	2,286	69
Virginia	2,255	1,220	54	3,758	1,907	51
Washington	2,788	1,923	62	4,682	3,008	64
West Virginia	2,264	2,068	91	3,503	2,114	60
Wisconsin	2,601	2,410	93	4,424	4,013	91
Wyoming	2,710	1,242	46	4,456	2,721	61
Puerto Rico						

Source: U.S. Census of Population, 1960, detailed characteristics, table 133; and U.S. Census of Population, 1950, vol. II, table 87.

Mr. CASE. The difference in earnings between white and Negro men continues, according to the report, to be much more pronounced in the South than in other parts of the country.

It is striking that analysis of the figures shows that nonwhite high school graduates earn less on the average than white workers in the same occupation who have completed only the eighth grade—in some instances as much as a one-third less. The Manpower Report estimates on the basis of the 1960 census—today the Senator from Pennsylvania [Mr. CLARK] emphasized the point—that the average nonwhite man who has completed college can expect to earn less over a lifetime than the white man who did not go beyond the eighth grade.

Of course, discriminatory hiring practices are not in themselves the whole explanation for the deprivation of the Negro. The Negro American is shortchanged all along the line.

Discrimination in employment is the culmination of a whole set of discriminatory forces—forces which start even before birth. In health care, in housing, in education, the Negro is at a disadvantage. A whole complex of social institutions has effectively isolated the Negro community from the mainstream of American life, its institutions and its aspirations. For this isolation, not only the Negro, but also the Nation pays a high price.

But while discriminatory employment practices are only one facet of the overall problem, they are a vital aspect. Whatever is done in other fields—especially education, public accommodations, in apprenticeship, and retraining programs—is reduced in value, if not set at nought, if there is not a fair chance for a decent job. That is why title VII is such a crucial part of the pending bill.

Mr. President, I have talked generally of the economic circumstances in which so many of our citizens are trapped. Let me illustrate concretely with some examples taken from various parts of the country, starting with New Jersey.

The New Jersey Advisory Committee reported to the U.S. Civil Rights Commission, in January, 1964:

> Despite the fact that the unions, the employers, the State of New Jersey, and the Federal Government all have impressive clauses barring discrimination in any section of the apprentice training program with which they are concerned, it is obvious that apprenticeship training is almost entirely closed to Negroes in this State.
>
> The flagrant injustice of virtual Negro exclusion cannot be allowed to continue, especially since apprenticeship training offers an important, even if limited, avenue of escape from the ranks of the unskilled, to which so many Negroes are currently confined.

The Maryland Advisory Committee to the Civil Rights Commission report is in a similar vein. In discussing the relative paucity of Negro applicants for apprenticeship programs, the committee said:

> Discrimination is often times subtly and deviously applied, but it is nonetheless apparent and discouraging to the potential nonwhite trainee.
>
> Public schools have fostered segregation practices in apprenticeship and training programs by permitting the use of classrooms and shop facilities by organizations practicing discrimination, although such practices have now been eliminated in Baltimore.
>
> For a time this summer it seemed that threatened demonstrations were the only way to get action from the city, the unions, and the employers. The city has been derelict in the enforcement of its prevailing wage schedules and has allowed nonunion contractors to pay workers less than

the scales established. With the overwhelming preponderance of city financed work awarded to nonunion contractors, the Associated Builders & Contractors have a special obligation to live up to their declarations of nondiscrimination.

But even where there is possession of the requisite skills, there is little assurance of their employment. The Florida Advisory Committee reported this all too typical case:

An example of the frustration faced by Negro skilled job applicants is presented by the story of Robert Lee Smith, who had been a jet engine specialist with the Army, and has been applying for employment with Eastern Airlines as an aviation mechanic every 6 or 8 months since his discharge from the Army in 1956. He reported to the subcommittee that he had also sought guidance from the Florida State Employment Service with no success.

Employment discrimination against Negroes is serious throughout the Nation; but it is particularly severe in the South, where State fair employment laws are notably lacking. In 1961, the Southern Regional Council undertook a study of the employment opportunities in southern cities.

The first of these studies was on Houston, where a survey was carried out under the direction of Art Gallaher, Jr., associate professor of the University of Houston. I quote now some excerpts from that report; here is a case cited as typical:

A [Negro] student lacking 18 hours of graduating with a degree in chemistry dropped out of school in order to earn tuition money. Hearing that a major oil company did not discriminate in its hiring practices, he applied for a temporary job as a laboratory assistant. In his first contact he was advised that there was such a vacancy. The personnel manager was not in, however, and he returned the following day for an interview. He was then informed that the job had been filled, and he was advised to go into teaching.

The report comments:

The picture that emerges from this brief survey is clearly delineated. Discriminatory conditions which materially affect occupational opportunity begin early for Houston Negroes. They are barred from the city's only full-time vocational high school, and vocational courses offered in their own schools are limited to skills which the school system defines as appropriate for them as adults. Industry, for its part, feels little obligation either to employ Negroes at jobs for which they have training or to provide inservice training.

If by considerable personal sacrifice or, perhaps, fortuitous circumstances a Houston Negro is motivated to acquire vocational skills, achieve a college education and professional status, he is likely to be rejected because of local custom. Consequently, to be employed on equal status with whites in any capacity becomes a major breakthrough.

Another telling paragraph of the report:

A Negro youth discovers in Houston that white employers place little premium on his high school diploma. Without it, he may find a job as a porter, a grocery carryout boy, or a drugstore delivery clerk; with it, he may have to go to work as a truck driver or stock clerk. In either event, there is little opportunity for advancement. In view of this, Negro students often feel little incentive to finish school. "Why go to school?" one asked a vocational counselor. "You have to go through the back door anyway."

As for the chances of on-the-job training, the report notes:

Some major employers were reluctant to reply. One expressed the fear that he might one day "pick up one of those New York newspapers and find the store's name splashed all over it." However, he indicated that his store does have a training program, primarily for buyers and other store executives, from which Negroes are excluded. As for labor union activity, he says, "We just don't permit that kind of thing."

Under the heading, "Education May Get You Nowhere," the report states:

There is a cliche in the segregationist's creed to the effect that a Negro must earn equality. It is an argument that many, even moderate southerners, accept as a basic premise. When this earning process is complete, so the reasoning goes, the problem of racial discrimination will be solved. There is thus no need to push the issue now. The limitations now placed on Negro professional men and women in Houston—who, one supposes, have now earned their right to equal opportunity—establish a less optimistic but far sounder premise: Few industries voluntarily remove discriminatory barriers in the local employment of Negroes, even of those well qualified.

Some white employers are suspicious of Negroes who have been to college, and refuse to hire them. This has caused Negroes with college degrees in chemistry, mathematics, and the liberal arts to admit, when questioned by a prospective employer as to educational background, to having only a high school diploma.

A large supermarket recently hired as a checker a Negro girl with a degree from Texas Southern University. This example of a Negro's working in a job for which she is overtrained merits comment, for her employment in this capacity is generally regarded as a breakthrough in the Negro employment picture.

The underutilization of Negro ability begins in the classroom and reaches out into all other areas of work experience.

I have quoted at length from this report, not to single out Houston but because the report presents so ably the question confronting not only Houston but the Nation. To paraphrase its concluding statement: How long can the United States continue to undertrain a sizable segment of its young people, limit their opportunities for entry into the labor market, hamper and restrict their employment advance, underutilize their professional skills, deprive them of job security, without serious consequences to the Nation's own economic and social advance?

Title VII would begin to answer that question by providing a fair chance for a decent job. That is the simple purpose of the title. It is a modest proposal. Indeed, compared with many of the State statutes on the subject, it is weak. I, for one, would like to see it stronger. Nonetheless, enactment of title VII would at least begin to redeem the promise of the Constitution and of the new birth of freedom promised by President Abraham Lincoln.

Both the Republican and the Democratic Parties have repeatedly acknowledged their obligation to act in this area. In 1944, in 1948, in 1952, in 1956, and again in 1960, the party platforms pledged action to bring about equal opportunity in employment.

The Fair Employment Practices Commission approach, which is embodied in title VII, was specifically endorsed by the Republican platform as early as 1944. In 1960, we Republicans renewed our commitment. We pledged:

Continued support for legislation to establish a Commission on Equal Job Opportunity to make permanent and to expand with legislative backing the excellent work being performed by the President's Committee on Government Contracts.

Appropriate legislation to end the discriminatory membership practices of some labor union locals, unless such practices are eradicated promptly by the labor unions themselves.

Use of the full-scale review of existing State laws, and of prior proposals for Federal legislation, to eliminate discrimination in employment now being conducted by the Civil Rights Commission, for guidance in our objective of developing a Federal-State program in the employment area.

Special consideration of training programs aimed at developing the skills of those now working in marginal agricultural employment so that they can obtain employment in industry, notably in the new industries moving into the South.

What are the provisions of title VII?

UNLAWFUL EMPLOYMENT PRACTICES

Title VII would make it an unlawful employment practice, in industries affecting interstate commerce, for employers of more than 25 persons, employment agencies, or labor organizations with more than 25 members to discriminate on account of race, color, religion, sex, or national origin in connection with employment, referral for employment, membership in labor organizations, or participation in apprenticeship or other training programs—sections 702, 704. Exemptions are provided for governmental bodies, bona fide membership clubs, and religious organizations and for situations in which religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to normal business operation, or in which a church-affiliated educational institution employs persons of a particular religion—sections 702 (b), (c), 704(e). Employers may refuse to hire atheists—section 704(f).

THE COMMISSION

An Equal Employment Opportunity Commission made up of five members appointed for staggered 5-year terms by the President, with the advice and consent of the Senate, would be created to administer the law. No more than three members of the Commission would be members of the same political party—section 706(a). The Commission would be empowered to receive and investigate charges of discrimination, and to attempt through conciliation and persuasion to resolve disputes involving such charges—section 707. The Commission will have no power to issue enforcement orders. Enforcement will be left to the courts. The experience of the State and local commissions indicates that much may be accomplished in achieving fair employment opportunities through the wise and imaginative exercise of persuasion, mediation, and conciliation.

ENFORCEMENT

If efforts to secure voluntary compliance fail, the Commission may seek relief in a Federal district court—section 707(b). If the Commission fails or declines to bring suit within a specified period, the individual claiming to be aggrieved may, with the written consent of any one member of the Commission, bring a civil action to obtain relief—section 707(c). In either case, a full judicial trial would be held. Relief available upon suit either by the Commission or an individual would include injunctions against future violations, and orders for reinstatement and, in appropriate cases, the payment of back pay—section 707(e). In order to avoid the pressing of "stale" claims, the title provides that no suit may be brought with respect to any practice occurring more than 6 months prior to the filing of a charge with the Commission—section 707(d).

CONTINUED VITALITY OF STATE LAW

Ample provision has been made in title VII for the utilization of existing State fair employment laws and procedures to the maximum extent possible—section 708. Present State laws would remain in effect except to the extent that they conflict directly with Federal law. Furthermore, where the Commission determines that a State or local agency has and is exercising effective power to prevent discrimination in employment in cases covered by the title, the Commission is directed to seek agreements with that agency whereby the Commission would refrain from prosecuting any such cases. The Commission is also authorized to use the services and employees of State and local agencies in the carrying out of its statutory duties, and to reimburse the agencies accordingly. Thus, the bill envisions the closest cooperation of Federal, State, and local agencies in attacking this national problem.

EFFECTIVE DATE

In order to enable employers, employment agencies, and labor organizations to bring their policies and procedures into line with the requirements of the title, and to avoid a multitude of claims arising while such adjustments are being made, the provisions prohibiting unlawful employment practices and providing relief therefrom are not to take effect until 1 year after the date of enactment of the title—section 718—and then will apply initially only to employers of 100 or more employees and labor organizations of 100 or more members. With respect to employers of 75 to 99 employees and labor organizations of 75 to 99 members, title VII would become applicable 2 years after enactment; with respect to employers of 50 to 74 employees and labor organizations of 50 to 74 members, 3 years after enactment, and with respect to employers of 25 to 49 employees and labor organizations of 25 to 49 members, 4 years after enactment—sections 702 (b), (e), 718.

INVESTIGATIONS

The Commission is granted appropriate powers to conduct investigations, subpena witnesses, and require the keeping of records relevant to determinations of whether unlawful employment practices have been committed—sections 709, 710.

PRESIDENTIAL ACTION

The President is directed to convene one or more conferences of Government representatives and representatives of groups whose members would be affected by the provisions of the title, in order to familiarize the latter with the provisions and in order to make plans for the fair and effective administration of the title—section 718(c).

STUDY ON DISCRIMINATION BASED ON AGE

The Secretary of Labor is directed to make a study of the problem of discrimination in employment because of age and to make a report thereon to Congress—section 717.

Even this brief description makes it apparent that title VII carefully defines the power of the Commission. The first stage in the enforcement process is the filing of a charge in writing under oath by or on behalf of a person claiming to be aggrieved or the filing of a written charge by a member of the Commission, alleging that an employer, employment agency, or labor organization has engaged in an unlawful employment practice. When the Commission receives such a charge it will furnish the employer, employment agency, or labor organization against whom the charge is made a copy of the charge and shall make an investigation of that charge. If two or more members of the Commission believe, after such investigation, that there is reasonable cause for believing the charge, the Commission must endeavor to eliminate any such unlawful employment practice by informal methods of conference, conciliation, and persuasion, and, if appropriate, to obtain from the charged party a written agreement describing particular practices which he agrees to refrain from committing. Nothing said or done during and as a part of these endeavors may be used as evidence in a subsequent proceeding—section 707(a).

Section 707(b) provides that, if through these informal methods, the Commission has failed to effect the elimination of an unlawful employment practice, it shall, if it determines there is reasonable cause to believe that the charged party has engaged in or is engaging in an unlawful employment practice, bring a civil action within 90 days to prevent the charged party from engaging in such unlawful employment practice, except that the Commission is to be relieved of any obligation to bring a civil action in any case in which it has by affirmative vote determined that the bringing of such action would not serve the public interest.

Section 707(c) provides that if the Commission has failed or declined to bring a civil action within the time required, the person claiming to be aggrieved may, if one member of the Commission gives his permission in writing, bring a civil action himself to obtain relief.

Section 707(d) provides that the district courts of the United States—including each U.S. court of places subject to the jurisdiction of the United States—are given jurisdiction of actions brought under this title. These actions will be brought either in the judicial district where the unlawful employment practice is alleged to have been committed or in the judicial district in which the charged party has his principal office. No civil action may be based on an unlawful employment practice occurring more than 6 months prior to the filing of a charge with the Commission, except in cases in which the party aggrieved was prevented from filing the charge within the prescribed time by reason of service in the Armed Forces.

Section 707(e) provides that if the court finds that the charged party has engaged or is engaging in an unlawful employment practice as charged in the complaint, it may enjoin him from engaging in such practice and shall order him to take such affirmative action as may be appropriate. This affirmative action may include the reinstatement or the hiring of employees with or without backpay—payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice. In a case in which the payment of backpay is ordered, interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against will reduce the backpay otherwise allowable. No order of the court under this title may require the admission or reinstatement of an individual as a member of the union or the hiring, reinstatement, or promotion of an individual as an employee or payment of any backpay if the individual was refused admission, suspended, or separated, or was refused employment or advancement, or was suspended or discharged for any reason other than the discrimination prohibited by this title.

It is hard to recognize these modest provisions in the welter of extravagant complaints that have been made about title VII. There is nothing novel in the Commission approach. My colleague, the Senator from Pennsylvania [Mr. CLARK], has already pointed out the extensive consideration given FEPC proposals in both Houses. Much of title VII, specifically the enforcement provisions, is derived from the bill reported to the House in the last Congress. That bill was sponsored by Representatives GRIFFIN, of Michigan, and FRELINGHUYSEN, of New Jersey.

Many of our States have already established commissions. I am proud to say my own State of New Jersey has had a statute covering discrimination not only in employment, but in public accommodations, for many years—a statute considerably broader than the one we are now considering.

The background of the New Jersey statute is, I believe, relevant to this discussion. As long ago as 1903, the New Jersey Commissioner of Labor and Industry devoted about half of his annual report to the problem of discrimination in employment. In 1938, the State legislature acted to establish a commission with powers of persuasion and conciliation. A few years of experience convinced the legislature that stronger

measures were necessary, and in 1945 it acted to set up a division against discrimination in the State department of education. In the past year, the division on civil rights, as it is now called, became a part of our department of law and public safety in a move to strengthen enforcement of the civil rights statutes.

Under the 1945 act, either the commissioner of education or the commissioner of labor of the State could, on his own motion, initiate complaints rather than wait for an aggrieved individual to file a complaint. In 1947, the State constitution was revised. The revised constitution, which was adopted by vote of the people of New Jersey in 1947 provides in article I, paragraph 5:

No person shall be denied the enjoyment of any civilian or military right, nor be discriminated against in the exercise of any civilian or military right, nor be segregated in the militia or in the public schools, because of religious principles, race, color, ancestry or national origin.

For from feeling that enactment of a Federal law would weaken the State in its effort to root out discrimination in employment, our commissioner of labor and industry speaking for the Governor strongly supported Federal legislation in the hearings held last year by the Subcommittee on Employment and Manpower of the Senate Labor and Public Welfare Committee, of which the Senator from Pennsylvania [Mr. CLARK] is chairman. He was testifying in behalf of a far stronger measure than the one presently before us, for, the bill reported out, S. 1937, would, among other things, have provided initial administrative enforcement powers similar to those given a number of other agencies. For myself, I am disappointed that we do not have such a bill before us.

The memorandum introduced by the Senator from Pennsylvania [Mr. CLARK], for himself and me, discusses in detail the workings of title VII. There are, however, several points which have been raised that I would like to discuss here.

INVESTIGATORY POWERS OF EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Much has been made of the alleged onerous burden that title VII would impose with regard to recordkeeping and the unwarranted intrusion represented by the investigatory powers of the Commission. I have gone exhaustively into this matter, and I do not believe the charge is justified.

Mr. President, I ask unanimous consent to have printed at this point in the RECORD, a memorandum on the investigatory power of the Commission under title VII.

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

MEMORANDUM: INVESTIGATORY POWERS OF EQUAL EMPLOYMENT OPPORTUNITY COMMISSION UNDER TITLE VII

The investigatory duties and powers of the Equal Employment Opportunity Commission are set out in sections 709(a), 709(c), and 710 of title VII. Section 709(a) relates to access to records and other evidence; section 709(c) relates to recordkeeping and reports; and section 710 relates to compulsory process for obtaining testimony and other evidence and incorporates by reference the provisions of sections 9 and 10 of the Federal Trade Commission Act, 15 U.S.C. 49, 50.

Section 709(a) provides that in connection with an investigation of a charge filed under section 707, the Commission or its representatives shall at all reasonable times have access, for the purposes of examination and copying, to any evidence in the possession of a person being investigated that relates to the subject of the investigation. This language is also substantially similar to language contained in section 9 of the Federal Trade Commission Act. As reported by the House Judiciary Committee, the language of section 709(a) followed that of section 11 of the Fair Labor Standards Act, 29 U.S.C. 211, which grants to the Wage and Hour Administrator the power to "enter and inspect such places and such records (and make such transcriptions thereof), question such employees, and investigate such facts, conditions, practices, or matters as he may deem necessary or appropriate to determine whether any person has violated" the act. Because this language seemed somewhat broader than the analogous provision of the Federal Trade Commission Act incorporated by reference in section 710, section 709(a) was amended by the House to bring it into line with the language of section 9 of the Federal Trade Commission Act.

First, it must be emphasized that this power granted to the Commission to gain access to places of business for the purpose of inspecting records is in no respect unusual. As has been stated, the language of section 709(a) is taken from section 9 of the Federal Trade Commission Act.[1] Similar language may be found in the Labor Management Relations Act, 29 U.S.C. 161(1). The Secretary of Labor's powers of inspection under the Labor-Management Reporting and Disclosure Act, 29 U.S.C. 521, are patterned on those of the Wage and Hour Administrator previously cited and are at least as broad as those contained in section 709(a).[2] Powers of entry for the purpose of inspecting premises or records are also possessed by other agencies, including the Bureau of Mines, 30 U.S.C. 453; the Interstate Commerce Commission, 49 U.S.C. 320(d); the Food and Drug Administration, 21 U.S.C. 373, 374; the Secretary of Agriculture, 7 U.S.C. 222; the Securities and Exchange Commission, 15 U.S.C. 78q, 79o(f); and the Internal Revenue Service, 26 U.S.C. 7606.

Second, the Commission's power to conduct an investigation under section 709(a) can be exercised only after a specific charge has been filed in writing. In this respect the Commission's investigatory power is significantly narrower than that of the Federal Trade Commission, 15 U.S.C. 43, 46, the Wage and Hour Administrator, 29 U.S.C. 211, or the Secretary of Labor, 29 U.S.C. 521, who are empowered to conduct investigations, inspect records, and issue subpenas, whether or not there has been any complaint of wrongdoing, see *Oklahoma Press Publishing Co.* v. *Walling*, 327 U.S. 186 (1946); *Hunt Foods & Industries, Inc.*, v. *Federal Trade Commission*, 286 F. 2d 803, 806–07 (C.A. 9, 1961) cert. denied, 365 U.S. 877 (1961); *Goldberg* v. *Truck Drivers Local Union No. 299*, 293 F. 2d 807, 809–12 (C.A. 6, 1961), cert. denied, 368 U.S. 938 (1961).

Third, it has been suggested that section 709(a) would authorize Commission representatives to break into places of business for the purpose of conducting inspections of records. This is not true. The right to inspect records does not include the right to obtain access to them by force in the face of the owner's protest, *Davis* v. *United States*, 328 U.S. 582, 591 (1946); *Hughes* v. *Johnson*, 305 F. 2d 67 (C.A. 9, 1962). If access is refused the Commission's remedy is not to attempt to enter by force but rather to employ the remedies made available by section 9 of the Federal Trade Commission Act, incorporated by reference into section 710 of title VII. Under section 9 the Commission can either seek a writ of mandamus, *Federal Trade Commission* v. *Harrell*, 313 F. 2d 854, 855 (C.A. 7, 1963), or obtain the records in question by a subpena, see, e.g., *Provenzano* v. *Porter*, 159 F. 2d 47, 48 (C.A. 9, 1946), cert. denied, 331 U.S. 816 (1947); *Durkin* v. *Fisher*, 204 F. 2d 930 (C.A. 7, 1953) cert. denied, 346 U.S. 897 (1953). Indeed, there is no significant difference between a power to enter for the purpose of examining and copying records, and the power to compel their production by the use of subpena duces tecum, as was pointed out in *Porter* v. *Gantner & Mattern Co.*, 156 F. 2d 886, 889–90 (C.A. 9, 1946), and in *Westside Ford, Inc.* v. *United States*, 206 F. 2d 627, 630, 634 (C.A. 9, 1953); both rights are enforced in substantially the same manner and under either procedure the party investigated is able to seek a judicial determination of the reasonableness of the demand of the investigating agency, *Westside Ford* v. *United States*, *supra*.

Section 709(c) authorizes the Commission to require employers, employment agencies, and labor organizations subject to the title to make and keep records to be prescribed by the Commission, to preserve these records, and to make reports therefrom to the Commission. Records are also to be required in connection with the administration of apprenticeship and other training programs. Fear has been expressed that these recordkeeping and reporting requirements may prove unreasonable and onerous.

Requirements for the keeping of records are a customary and necessary part of a regulatory statute. For a partial list of such statutes, see *Shapiro* v. *United States*, 335 U.S. 1, 6–7 (1948). "Virtually every

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[1] Sec. 709(a) is to some extent redundant because sec. 9 of the Federal Trade Commission Act is incorporated by reference into title VII in sec. 710. However, sec. 709(a) makes clear that the right of access for the purposes of examination, which under sec. 9 is applicable only to corporations, will apply to any person being investigated or proceeded against.

[2] Sec. 601 of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. 521, provides: "The Secretary [of Labor] shall have power when he believes it necessary to determine whether any person has violated or is about to violate any provision of this act * * * to make an investigation and in connection therewith he may enter such places and inspect such records and accounts and question such persons as he may deem necessary to enable him to determine the facts relative thereto. * * *" The provisions of the act enforced by the Secretary apply to both employers and labor organizations engaged in industries affecting commerce. This act, in its final form, was passed by the Senate by a vote of 95 to 2 on Sept. 3, 1959, in the CONGRESSIONAL RECORD, vol. 105, pt. 14, pp. 17919–17920, receiving the votes of the following Senators from the 11 Southern States who are presently Members of the Senate: BYRD of Virginia, EASTLAND, ELLENDER, ERVIN, FULBRIGHT, GORE, HILL, HOLLAND, JOHNSTON, JORDAN, LONG of Louisiana, MCCLELLAN, ROBERTSON, RUSSELL, SMATHERS, SPARKMAN, STENNIS, TALMADGE, THURMOND, YARBOROUGH.

The portion of sec. 601 quoted above is substantially identical to sec. 106(c) of S. 1555, the so-called Kennedy-Ervin bill, which was the basis for the act. This bill was passed by the Senate on Apr. 25, 1959, by a vote of 90 to 1, in the CONGRESSIONAL RECORD, vol. 105, pt. 5, p. 6745, and received the vote of all the Senators named above, except Senator BYRD of Virginia, who was absent on official business. We have examined the Senate debate on the Kennedy-Ervin bill and have found no criticism of this provision.

major public law enactment—to say nothing of State and local legislation—has recordkeeping provisions." Ibid at 51 (dissenting opinion). They are particularly essential in title VII because whether or not a certain action is discriminatory will turn on the motives of the respondent, which will usually be best evidenced by his pattern of conduct on similar occasions.

It is not, at this point, possible to compare the recordkeeping requirements of section 709(c) with those imposed pursuant to other statutes, because, like many other statutes,[3] section 709(c) merely confers authority to prescribe records requirements. No comparison can be made until the requirements are actually imposed. Nevertheless, the provisions of section 709(c) have been carefully drawn to prevent the imposition of unreasonable burdens on business, and there are more than the customary safeguards against arbitrary action by the Commission.

The requirements to be imposed by the Commission under section 709(c) must be "reasonable, necessary, or appropriate" for the enforcement of the title. Such requirements cannot be adopted without a public hearing at which the persons to be affected would have an opportunity to make their views known to the Commission. Most of the persons covered by the title are already required by law or by practical necessity to keep records similar to those which will be required under this title. The Wage and Hour Administrator imposes recordkeeping requirements on employers subject to the Fair Labor Standards Act with respect to the persons employed and wages, hours, and other conditions and practices of employment, 29 U.S.C. 211(c); other employment records must be kept for Federal tax purposes, 26 U.S.C. 6001, and for normal business purposes; labor organizations are required to maintain certain records under the Labor-Management Reporting and Disclosure Act, 29 U.S.C. 431, 436. Any recordkeeping requirements imposed by the Commission could be worked into existing requirements and practices so as to result in a minimum additional burden. Furthermore, the Federal Reports Act of 1942, 5 U.S.C. 139–139f, gives the Director of the Bureau of the Budget authority to coordinate the information-gathering activities of Federal agencies, and he can refuse to approve a general recordkeeping or reporting requirement which is too onerous or poorly coordinated with other requirements.

Finally, there is express provision in section 709(c) for an application either to the Commission or directly to the courts for appropriate relief from any recordkeeping or reporting requirement which would impose an undue hardship.

The provisions of section 709(c) include safeguards not generally available in other statutes authorizing recordkeeping requirements. Bureau of the Budget clearance is ordinarily required for such requirements, although not for the Internal Revenue Service, 5 U.S.C. 139a(e). A public hearing is not ordinarily required, although section 4 of the Administrative Procedure Act, 5 U.S.C. 1003, would require in most instances an opportunity for interested parties to participate in rulemaking by submitting written data. Most significant is the special provision in section 709(c) for judicial review. It may be conceded that parties would ordinarily be entitled to challenge the legality of any recordkeeping requirement, either by a suit for a declaratory judgment or in defending a suit to compel compliance with the requirement, but assuming a given recordkeeping requirement to be within the agency's statutory authority, we know of no other statute which affords to affected parties recourse to the courts to seek exemption on the grounds of undue hardship. Under the Fair Labor Standards Act, for example, the feasibility or practicality of complying with the Administrator's regulations regarding recordkeeping is immaterial, *Walling* v. *Panther Creek Mines*, 148 F. 2d 604, 607 (C.A. 7, 1945); *Walling* v. *Lippold*, 72 F. Supp. 339, 351 (D. Neb., 1947).

As has been stated, section 710 incorporates by reference into title VII the provisions of sections 9 and 10 of the Federal Trade Commission Act, in support of the Commission's investigatory powers. Sections 9 and 10 have been similarly incorporated by reference into the Packers and Stockyards Act, 7 U.S.C. 222, the Fair Labor Standards Act, 29 U.S.C. 209, and the Labor-Management Reporting and Disclosure Act, 29 U.S.C. 521(b). The effect of the incorporation of section 9 into the title is to give the Commission the power to issue subpenas, to obtain access to evidence, to take testimony by deposition, and to invoke the aid of Federal courts for enforcement of its subpenas and other orders. However, section 710 incorporates the provisions of section 307 of the Federal Power Act, 16 U.S.C. 825f, instead of those of section 9, with respect to grants of immunity to witnesses. Under section 9 a witness need not claim his privilege against self-incrimination in order to obtain immunity, *United States* v. *Frontier-Asthma Co.*, 69 F. Supp. 994, 997 (W.D. N.Y., 1947); see *United States* v. *Monia*, 317 U.S. 424 (1943). Under section 307 there is no immunity obtained unless the witness has claimed his privilege and has nevertheless been directed to testify as to the matter in question. This is the more usual form of immunity provision, see e.g., Securities Exchange Act of 1934, 15 U.S.C. 78u; Public Utility Holding Company Act, 15 U.S.C. 79r; Labor Management Relations Act, 29 U.S.C. 161.

It is important to note that section 9 is incorporated by section 710 "for the purposes of any investigation provided for in this title." Consequently, it does not constitute an independent authority for investigations by the Commission. The Commission's investigatory authority arises from section 709(a), where an investigation must be based on a written charge filed with the Commission, and from section 709(c), which authorizes the Commission to require certain reports whether or not a charge has been filed.

The incorporation by reference of section 10 of the Federal Trade Commission Act, makes applicable to the title penal provisions for disobedience to a subpena, for falsification or destruction of documentary evidence, for denying to the Commission access to such evidence, and it also provides a forfeiture for failure to file required reports.

While in both sections 9 and 10 of the Federal Trade Commission Act there are references to evidence and records kept by a corporation and reports required of a corporation, it is clear that in applying these sections to title VII, these provisions should be applicable to employers, employment agencies, and labor organizations subject to the title, whether or not a corporation.

Constitutionality: As has been demonstrated, the provisions of sections 709 and 710 relating to the investigatory powers of the Equal Employment Opportunities Commission are based on other statutes and, consequently, present few, if any, novel features. Those constitutional questions which might arise are common to most regulatory statutes and have been fairly well resolved.

Constitutional objections to the exercise of investigatory powers are generally based on the fourth amendment's prohibition of unreasonable searches and seizures and the fifth amendment privilege against self-incrimination. As the Supreme Court pointed out in *Boyd* v. *United States*, 116 U.S. 616, 630 (1886), in cases involving the obtaining of documentary evidence by compulsory process, "the fourth and fifth amendments run almost into each other."

The obtaining of evidence through the use of a subpena duces tecum is not literally a search and seizure, but there is authority that "an order for the production of books and papers may constitute an unreasonable search and seizure within the fourth amendment," *Hale* v. *Henkel*, 201 U.S. 43, 76 (1906). However, more recent decisions make it very clear that an administrative subpena does not violate the fourth amendment if it is issued pursuant to and is relevant to a lawfully authorized investigation. In the leading case, *Oklahoma Press Publishing Co.* v. *Walling*, 327 U.S. 186, 208–09 (1946) the Supreme Court, granting enforcement of subpenas duces tecum issued by the Wage and Hour Administrator under the Fair Labor Standards Act, said:

"It is not necessary, as in the case of a warrant, that a specific charge or complaint of violation of law be pending or that the order be made pursuant to one. It is enough that the investigation be for a lawfully authorized purpose, within the power of Congress to command. * * * The [fourth amendment's] requirement of 'probable cause, supported by oath or affirmation,' literally applicable in the case of a warrant, is satisfied in that of an order for production by the court's determination that the investigation is authorized by Congress, is for a purpose Congress can order, and the documents sought are relevant to the inquiry. Beyond this the requirement of reasonableness, including particularity in 'describing the place to be searched, and the persons or things to be seized,' also literally applicable to warrants, comes down to specification of the documents to be produced adequate, but not excessive, for the purposes of the relevant inquiry. Necessarily, * * * this cannot be reduced to a formula; for relevancy and adequacy or excess in the breadth of the subpena are matters variable in relation to the nature, purposes and scope of the inquiry."

As we have pointed out above, the Equal Employment Opportunity Commission can initiate an investigation only after receipt of a written charge pursuant to section 707 (a). In this respect, its powers are significantly narrower than those of the Wage and Hour Administrator which the Court upheld in the Oklahoma Press Publishing Co. case.

The constitutionality of the requirements for keeping records authorized by section 709(c) is also clear. In *United States* v. *Darby*, 312 U.S. 100, 125 (1941) the Supreme Court, in upholding the records requirements of the Fair Labor Standards Act, said:

"Since * * * Congress may require production for interstate commerce to conform to those conditions, it may require the employer, as a means of enforcing the valid law, to keep a record showing whether he has in fact complied with it. The requirement for records even of the intrastate transaction is an appropriate means to the legitimate end."

See, also, *Bowles* v. *Beatrice Creamery Co.*, 146 F. 2d 774, 779 (C.A. 10, 1944).

Furthermore, "records required by law to be kept in order that there may be suitable information of transactions which are the appropriate subjects of governmental regulation" are quasi-public documents and may be obtained by compulsory process and used as evidence notwithstanding the assertion of the fifth amendment's privilege against self-incrimination, *Shapiro* v. *United States*,

[3] See, e.g., Securities Exchange Act of 1934, sec. 17, 15 U.S.C. 78q; Public Utility Holding Company Act of 1935, sec. 15, 15 U.S.C. 78o; Internal Revenue Code, 26 U.S.C. 6001; Merchant Marine Act, 1936, 46 U.S.C. 1211.

355 U.S. 1, 32–35 (1948).[4] Consequently, neither the fourth nor the fifth amendments present any obstacle to the enforcement of the commission's powers under sections 709 and 710.

THE MOTOROLA CASE

Mr. CASE. Much has also been made of the case of Myart against Motorola, Inc. It has been repeatedly and erroneously cited as an example of the lengths to which the employment commission might be expected to go.

The decision is merely an initial or preliminary decision by a part-time hearing examiner. The Illinois commission, according to its chairman, "has not taken any stand of any kind at any time on the issue of the use of tests in employment." The commission "has issued no orders and has taken no position on the hearing examiner's finding."

Whatever the final action on the case, the citation of the examiner's finding has no application to title VII. First, as the subsections of section 707 which I have just described make clear, the Equal Employment Opportunity Commission, to be created by title VII of this bill, unlike the Illinois commission, would have no adjudicative functions. Only a Federal court would have authority to determine whether there had been a violation of the act, and only the court could enforce compliance. Second, under title VII, even a Federal court could not order an employer to lower or change job qualifications simply because proportionately fewer Negroes than white are able to meet them. Title VII says only that covered employers cannot refuse to hire someone simply because of his color. This is completely different from the law which the commission in Illinois was asked to administer, and from the decision adopted by the hearing examiner in the Motorola case. But it expressly protects the employer's right to insist that any applicant meet the applicable job qualifications. That is expressly provided for in the provision of title VII.

In this connection, Mr. President, I ask unanimous consent that the letter of the Illinois FEPC chairman, Charles W. Gray, which was published in the New York Times under date of March 13, and a memorandum on the case may be printed in the RECORD at this point in my remarks.

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

[From the New York Times, Mar. 25, 1964]

ILLINOIS' F.E.P.C.: COMMISSIONER DENIES TAKING STAND ON USE OF TESTS IN HIRING

To the EDITOR:

Arthur Krock, writing in the Times of March 13, states that the Illinois Fair Employment Practices Commission has ruled on an issue involving the use of preemployment tests by Motorola.

The facts are these. The law establishing the Illinois Fair Employment Practices Commission provides that in the event a private conciliation conference between a respondent and a complainant fails to produce a mutually acceptable settlement, it shall be set for a public hearing.

The public hearing is conducted by a hearing examiner, who must be a lawyer. The hearing examiner is appointed by the commission, but is in no way an employee of the commission, and, therefore, certainly not a political appointee.

The findings of the hearing examiner are just that—not a ruling of the commission, nor are they necessarily the opinion or judgment of the commission.

NO POSITION ON FINDING

The Illinois Fair Employment Practices Commission has not acted on the Motorola finding, has issued no orders and has taken no position on whether the hearing examiner's finding will be the order of the commission.

The protection of both parties that our law provides is such that it is highly unlikely that this commission, or any other commission so constituted, could seize the kind of "autocratic control" of which Mr. Krock writes.

The hearing examiner's finding will be carefully considered by the commission. It will then issue an order which may or may not include the recommended conclusion of the hearing examiner. Once the commission rules on the matter, the ruling can be appealed directly to the courts under the Administrative Review Act in the Statutes of the State of Illinois.

This commission has not taken any stand of any kind at any time on the issue of the use of tests in employment. Until we do so, it is totally inappropriate for anyone or any publication to make assumptions about the outcome of this matter.

CHARLES W. GRAY,
Chairman, State of Illinois Fair Employment Practices Commission.

CHICAGO, *March 17, 1964.*

MYART *v.* MOTOROLA, INC.

The decision of a hearing examiner in *Myart* v. *Motorola, Inc.*, a case under the Illinois Fair Employment Practices Act (CONGRESSIONAL RECORD, Mar. 19, 1964, pp. 5662–5664), has been the subject of some recent discussion.

In that case, the hearing examiner found that an employment test administered by respondent Motorola to a Negro job applicant was "obsolete" because "its norm was derived from standardization on advantaged groups," apparently meaning that persons coming from underprivileged or less well educated groups were less likely to be able to pass the test. He said that "in the light of current circumstances and the objectives of the spirit as well as the letter of the law, this test does not lend itself to equal opportunity to qualify for the hitherto culturally deprived and the disadvantaged groups." Accordingly, in addition to the relief he directed for the complainant, the hearing examiner ordered that Motorola cease to employ the test in question, and that if it chose to use any test, it should adopt one "which shall reflect and equate inequalities and environmental factors among the disadvantaged and culturally deprived groups." There is no description of the test in the hearing examiner's report, and no further discussion of why the test was considered unfair.

Of course, it should be noted, and indeed emphasized, that the decision in the Motorola case was merely an initial or preliminary decision of a part-time hearing examiner,[1] that this decision is subject to review by the full Illinois Fair Employment Practices Commission, and that any commission decision is subject to review by the Illinois courts. Consequently, no one can say with any degree of certainty at this time that the examiner's decision is a correct interpretation of the Illinois law.

It has been suggested, nevertheless, that the decision by the hearing examiner should be taken as indicative of the kinds of decisions which might be expected to be made by Federal "bureaucrats" if title VII of the pending civil rights bill were enacted. Of course, this is completely wrong. It would definitely not be possible for a decision like Motorola to be entered by a Federal agency against an employer under title VII. This is so for two very basic reasons.

First, unlike the Illinois commission, the Equal Employment Opportunities Commission established by title VII would have no adjudicative functions and no authority to issue enforcement orders. Its duties would be to receive and investigate complaints, to attempt to resolve disputes and to achieve compliance with the act through voluntary methods, and, where conciliation fails, to bring suit to obtain compliance in Federal court. Only a Federal court would have the authority to determine whether or not a practice is in violation of the act and only the court could enforce compliance. The Commission not only could issue no enforcement orders, it could make no determination as to whether or not the act has been violated. Thus, enactment of title VII would not allow a Federal admistrative agency to issue any compliance orders, much less one paralleling that of the Illinois hearing examiner.

Second, it is perfectly clear that title VII would not permit even a Federal court to rule out the use of particular tests by employers because they do not "equate inequalities and environmental factors among the disadvantaged and culturally deprived groups." Of course, it is not appropriate to comment here on whether the Motorola decision is correct as a matter of Illinois law. This is for the State commission and the State courts to determine. It is enough to note that the result seems questionable. There is no doubt, however, that such a result would be unmistakably improper under the proposed Federal law. The Illinois case is based on the apparent premise that the State law is designed to provide equal opportunity to Negroes, whether or not as well qualified as white job applicants.

The hearing examiner in the Motorola case wrote:

"The task (of personnel executives) is one of adapting procedures within a policy framework to fit the requirements of finding and employing workers heretofore deprived because of race, color, religion, national origin, or ancestry. Selection techniques may have to be modified at the outset in the light of experience, education, or attitudes of the group * * *. The employer may have to establish inplant training programs and employ the heretofore culturally deprived and disadvantaged persons as learners, placing them under such supervision that will enable them to achieve job success."

Whatever its merit as a socially desirable objective, title VII would not require, and no court could read title VII as requiring, an employer to lower or change the occupa-

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[4] It might be noted that title VII, unlike the Emergency Price Control Act involved in the Shapiro case, is not a criminal statute, so that the maintenance and compulsory disclosure of records of discrimination in employment would involve self-incrimination only where there was a court order already in effect disobedience to which might constitute a criminal contempt. See *United States* v. *Hoffman*, 335 U.S. 77 (1948).

[1] Hearing examiners are apparently not full-time employees of the commission. A panel of attorneys residing throughout the State, including at least two from each of the five supreme court districts, are designated as hearing examiners. Article VIII, Rules and Regulations of Procedure of the Illinois Fair Employment Practices Commission.

tional qualifications he sets for his employees simply because proportionately fewer Negroes than whites are able to meet them. Thus, it would be ridiculous, indeed, in addition to being contrary to title VII, for a court to order an employer who wanted to hire electronics engineers with Ph. D.'s to lower his requirements because there were very few Negroes with such degrees or because prior cultural or educational deprivation of Negroes prevented them from qualifying. And, unlike the hearing examiner's interpretation of the Illinois law in the Motorola case, title VII most certainly would not authorize any requirement that an employer accept an unqualified applicant or a less qualified applicant and undertake to give him any additional training which might be necessary to enable him to fill the job.

Title VII says merely that a covered employer cannot refuse to hire someone simply because of his color; that is, because he is a Negro. But it expressly protects the employer's right to insist that any prospective applicant, Negro or white, must meet the applicable job qualifications. Indeed, the very purpose of title VII is to promote hiring on the basis of job qualifications, rather than on the basis of race or color. Title VII would in no way interfere with the right of an employer to fix job qualifications, and any citation of the Motorola case to the contrary as precedent for title VII is wholly wrong and misleading.

Mr. CASE. Mr. President, although the full text of the memorandum appears in the RECORD of some days ago, it contained an inadvertent error in that in the sixth paragraph the word "premise" was misprinted as "promise."

Mr. President, I ask unanimous consent to have printed in the RECORD at this point in my remarks a copy of a further statement by Mr. Gray, chairman of the Illinois Commission, which was sent by him to the Illinois State Chamber of Commerce in regard to the Motorola case on April 1 of this year.

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

STATEMENT BY CHARLES W. GRAY, CHAIRMAN, ILLINOIS FAIR EMPLOYMENT PRACTICES COMMISSION (ENCLOSED IN LETTER OF APRIL 1, 1964, TO ILLINOIS STATE CHAMBER OF COMMERCE)

Although it is well known that the Illinois State chamber has proposed FEP legislation, it is also a fact that it has cooperated in a positive and helpful way with our commission since the day it was born. Therefore, we feel we owe to you and your members a full statement of the commission's position on this matter (the "Motorola case") and on the important principle of merit employment in the State of Illinois.

The first opportunity that our commission had to communicate with the business community in Illinois was afforded to us by the Illinois State Chamber of Commerce when you sponsored the statewide conference on merit employment in 1961. This was the largest, most extensive meeting ever held on that subject in this State, and there was no mistaking the chamber's stand on this important issue.

The first statewide publication on the Illinois Fair Employment Practices Act was issued by the Illinois State Chamber of Commerce. Your organization has done more in publicizing merit employment than any other organization in the State, business or otherwise. I know you have future plans in this area.

We appreciate this opportunity to tell the story of an important issue—important to your members, important to every businessman in the State of Illinois, important to every citizen in the State, and important to the cause of merit employment.

The commission operates under these basic principles:

1. The right of any employer to establish standards of employment, to establish testing and screening devices in employment, and to employ persons of their own choice, is an absolute right as long as the decision is not made on the basis of race, religion, or national origin.

2. We believe that every employer in the State wants to abide by the law, because we cannot believe that any employer would deliberately circumvent this, or any other, law. Therefore, our attitude is not one of considering employers as being devious lawbreakers bent on discrimination.

3. We believe that the procedures outlined in the Illinois Fair Employment Practices Act are fair and equitable for all parties coming before the commission, and that it is the commission's responsibility to administer this law in rigorous accord with its provisions.

4. We believe that more progress toward merit employment can be achieved through cooperation, education, and voluntarism under the auspices of this law than could ever be achieved by any autocratic procedure.

5. We believe that the protection of the individual against acts of discrimination is the most important function of this law and of the commission, and that this can be achieved without harassment, without arbitrary procedure, and with the full protection of the freedom of all citizens.

In the matter of the Motorola case, several points need to be clarified.

1. The Motorola Co. has not been ordered by the Fair Employment Practices Commission to do or not do anything.

2. The law states that the recommendation of the hearing examiner which comes out of a public hearing shall be called an order, but this does not become an order until the Commission has determined that the hearing examiner's order is supported by substantial evidence and has made the hearing examiner's order the order of the Commission. This has not happened in the Motorola case.

3. The law provides for a private conciliation conference to be held between both parties after a complaint has been filed and an investigation made. In the second Motorola case, representatives of Motorola refused to come to a conciliation conference. In an earlier case, Motorola representatives had refused to enter into a conciliation conference because Commission rules forbid a record being made of the proceedings. Therefore, it was imperative under the law that a public hearing be held. This hearing was held on January 27, 1964, by Hearing Examiner Robert Bryant.

4. An important piece of information in this case is the test which the complainant himself took at the Motorola Co., and the score that he achieved on that test. The Motorola Co. failed to bring this forward, stating that it was not available.

5. The Motorola Co. has now appealed this hearing examiner's opinion and it is expected that the complainant's attorneys will appeal on his behalf. When petitions for appeal from both parties have been received by the commission, a date will be set for a hearing before the full commission, as the law provides. This will be done as rapidly as possible.

6. When the commission's order is ultimately handed down, either party may appeal it directly to the courts under the Administrative Review Act of the State of Illinois.

The procedures established by the law provide full protection for both parties and the law does not, in any way, permit the commission to hand down arbitrary orders of any kind. Any orders that come from the commission must be supported by the preponderance of evidence.

More than 80 percent of the cases in which the commission has found substantial evidence have been settled at the conciliation conference stage. The commission finds that this wise provision of the law provides for a most fruitful means of settling matters privately between men of good will. We are sorry that the respondent in this case did not take advantage of this step.

EXEMPTION OF ATHEISTS

Mr. CASE. Mr. President, considerable attention has also been given to the exemption of atheists inserted in the bill on the House floor. This provision—section 704, subsection (f)—seems to me patently unconstitutional, and I have no doubt it will be so held by the courts if we do not delete it. It is important to note in this connection that should the provision be stricken down, it would not affect the validity of other provisions in the title. Under the provisions for separability in sections 716 and 1104 of the bill, it is clearly severable from the rest of the title.

When all the talk on this and other titles of the bill is done, we come at last face to face with a great moral issue.

I find it hard to believe that anyone in his heart of hearts can deny that injustice and suppression have been the lot of generations of Negro Americans. As a nation, we have stood and fought—indeed, we are still fighting right now—for freedom in many lands. Can we continue to falter in our stance at home?

As a nation, we have denounced the practices of colonialism abroad. Can we view such practices with complacency at home? The pukka sahib lines may not be as distinctly drawn, but they infect our system and almost all our social institutions.

The tide of history is moving. Through the centuries injustice and oppression have sooner or later brought the downfall of their perpetrators. Let us not forget the wisdom compressed into one sentence by George Santayana in his "Life of Reason":

> Those who cannot remember the past are doomed to repeat it.

Our responsibility is, I believe, clear. There is no room for delay or evasion. Let us act affirmatively—and soon.

Mr. ELLENDER. Mr. President, will the Senator from New Jersey yield for a question?

Mr. CASE. I am glad to yield to the Senator from Louisiana.

Mr. ELLENDER. Did I correctly understand the Senator from New Jersey to say a while ago that the FEPC law in New Jersey may be as strong as the FEPC provision in the pending bill, if not stronger?

Mr. CASE. As I pointed out in the course of my remarks, it is indeed stronger, in the sense that the commission has the authority to make investigations, as our commission would, but that the commission in New Jersey has the power itself to make findings. It has followed the universal practice in almost all cases of endeavoring to solve through conciliation and mediation a violation of law which it finds exists,

but it does have the power, in the end, to make orders which are, however, enforceable with the aid of the court.

Mr. ELLENDER. I hold in my hand a statement that was furnished to me by the Senator from Pennsylvania [Mr. CLARK] during the course of his remarks today. It shows the percentage of unemployment in the civilian labor force, by color, in the various States. I notice under "New Jersey," which has an FEPC law on the books, that the rate of nonwhite is 9.5 percent in contrast to 4.1 percent for the white. Will the Senator tell us why there is such a discrepancy between nonwhite and white rate of unemployment? An FEPC law is on the books. The Senator states it is stronger than the one in the bill we are now considering?

Mr. CASE. The Senator from Louisiana has very properly made this point. I believe it might not be a bad idea for the Senator to insert the entire table in the RECORD for all Senators to read.

Mr. ELLENDER. I have already placed it in the RECORD.

Mr. CASE. I am glad the Senator has done so.

Mr. ELLENDER. I should also like to ask the Senator an explanation for the situation existing in the State of Michigan, where an FEPC law has been in effect for some time, and, where the white unemployment rate is 6 percent whereas the nonwhite rate is 16.3 percent. Are those figures correct?

Mr. CASE. The Senator is correct.

Mr. ELLENDER. Can the Senator give us an idea as to why that situation prevails?

Mr. CASE. There are even greater discrepancies in other States where there are fewer Negroes, such as North Dakota, where unemployment for whites is 5.4 percent and for nonwhites almost five times as much, or 25.2 percent. We are not trying to pull the wool over anyone's eyes, but there are a number of reasons for this. In New Jersey there is not the same amount of agriculture as there is in the South. Negroes are not in agriculture in any great number, as is the case in the South. Negroes are drawn to the cities. They come from many places in the South in great numbers, one and a half million in the 1950's, seeking employment. They have largely settled in northern cities such as the New York-New Jersey metropolitan area. They compete with workers who have had higher educational opportunities to train for jobs, for which these farmworkers lack skills.

Notwithstanding our strong and, on the whole, fairly well administered fair employment practices law, we have high unemployment. I am sure that if it were not for our Commission, the discrepancy between Negro and white unemployment would be much greater in New Jersey than it is.

Mr. ELLENDER. It may be necessary to have an FEPC law in New Jersey, Michigan, and Minnesota. In Minnesota, where the Negro population is less than 1 percent, as I recall, and concentrated in St. Paul and Minneapolis, the nonwhite unemployment rate is 12.8 percent, as compared with 5 percent for the whites. It is something I cannot understand.

Let us take the case of North Carolina. There the nonwhite unemployment rate is 7.4 percent. And it appears that in none of the Southern States, where the Senator from New Jersey and his associates are trying to impose an FEPC law, do we find a percentage for nonwhite unemployment in excess of 9½ percent, which is the figure for Louisiana. Of course I can account for that.

Mr. CASE. I should be very glad to have any illumination the Senator from Louisiana cares to provide as to what the figures actually show for the Southern States. The Senator, with his usual fairness, I am sure would be glad to tell us about his State and other parts of the country. In my State of New Jersey there are various kinds of employment and various kinds of activities, but we do not have farmwork of the type and extent found in the South. I am sure the reason why there is a difference between the Negro unemployment rate in the South and some Northern States is that in the South the Negroes live largely on farms and are not in the labor market looking for jobs of the kind which are the chief source of their employment in the North. For example, it is my understanding that white collar jobs in the South represent only 8.3 percent.

Mr. ELLENDER. The point I wish to emphasize is that where FEPC laws exist and where attempts are made to prevent discrimination by law, the table shows that in most of such States the rate of nonwhite unemployment is greater than in the Southern States. But if we are to judge by the speeches that have been made in the Senate during the past 5 or 6 weeks, we might expect the exact opposite to be true.

Mr. CASE. Including, I hope, the speech that was made just before this colloquy began. The fact is that there is discrimination, and the fact is that in many parts of the country it is worse than it is in New Jersey. We are trying to get rid of it. The answer to the question as to why, in many Southern States, there is less of a difference in unemployment as between Negroes and whites is that basically Negroes do not even try to get the kind of jobs they would try to get in New Jersey, for example.

Mr. ELLENDER. I do not understand the last part of the Senator's statement.

Mr. CASE. They do not try to get the jobs in the South that they would try to get in Northern States, where there is no reservoir of agricultural jobs, as is the case in the South.

Mr. ELLENDER. I am asking these questions in an effort to demonstrate, so far as possible, that in the South there is no need for an FEPC law of the type the Senator from New Jersey and his associates would impose on us. I go back to the proposition that the Senator cannot cite one Southern State which has a nonwhite unemployment rate in excess of 9½ percent, according to the table. Yet in the Northern States, even agricultural States, the reverse is true.

Let us take North Dakota, for example. The nonwhite unemployment rate is 25.2 percent. Certainly there must be a great deal of discrimination there.

Let us take Montana, where as I remember, the Negro population is about 0.2 percent. There, nonwhite unemployment rate is 24.8 percent, as compared with 6.4 rate of white unemployment.

Mr. CASE. The Senator is reciting some figures from a table with which I have no desire to quarrel. The facts are as stated. Of course, we are not dealing, primarily, with unemployment, although it is a part of the whole picture. We are discussing the question of whether there is discrimination in the Senator's State, in my State, and in other parts of the country as between whites and Negroes in employment.

I believe that the fact that there is a discrepancy as between whites and Negroes has little, if any, bearing, if consideration is not given to the reason for the discrepancy, which I believe the Senator from Louisiana and I understand.

Mr. ELLENDER. Let us take the State of Washington. In the State of Washington an FEPC law has been in effect for some time. In that State the white unemployment rate is 6.4 percent, in contrast with a 13.4 rate for nonwhite. It would seem to me that there is more discrimination there than in North Carolina, where the percentage is 7.4.

Let us consider the State of Mississippi. There the rate is 7.1 percent.

Mr. CASE. I do not agree with the Senator's premise. What is happening in the State of Washington and in other States in the North is that hundreds of Negroes flock in from the South. They pour into the cities, because there is no agricultural employment, which is the only kind of employment that they are fitted for. Neither is there the service type of employment which is available in other parts of the country. The only thing they can do is put themselves on the labor market, which is constantly decreasing, because of automation, in the blue collar area. They have no other skills. That is the reason for the high unemployment rate.

I am sorry it exists. I am not proud of it, or happy about it. However, it does not indicate that there is more discrimination in North Dakota or Montana or New Jersey or New York than there is in Louisiana. I am certain the facts would not justify any such conclusion.

Mr. ELLENDER. The table to which we have been referring would indicate that since there is more nonwhite unemployment, percentagewise, than white unemployment, there must be more discrimination. One cannot reach any other conclusion.

Mr. CASE. I believe it depends on who does the reaching. I am sure the Senator and I could stand here enjoying ourselves in a friendly discussion until kingdom come, without agreeing with each other.

Seventy-five percent of the Negroes, as I pointed out in my remarks in chief, have jobs in the unskilled area and blue collars jobs and in service, and only 25 percent in white collar jobs and on farms.

They are not qualified to take the other jobs, which are the only jobs which, in the northern States, might be available to them. The number of such jobs is limited. That is clearly the reason. I do not say we do not discriminate in the North. We have our problems with respect to seniority in jobs and employment rules, and everything else. I believe the Senator understands the situation.

Mr. ELLENDER. Yes; I understand it only too well.

I should like to have this table inserted at this point in my remarks. It will mean that the table will be in the RECORD twice, but it will do no harm to have it printed twice, because it was discussed on two occasions.

Mr. CASE. I have no objection.

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

Unemployment as percent of civilian labor force, by color, by States, 1960—April

State	Total	White	Nonwhite
United States	5.1	4.7	8.7
Alabama [1]	5.7	4.7	8.4
Alaska [2]	12.8	10.5	25.4
Arizona	5.3	4.7	13.2
Arkansas [1]	6.0	5.3	9.1
California [2 3]	6.1	5.8	10.0
Colorado [2 3]	4.0	3.9	6.6
Connecticut [2 3]	4.6	4.4	8.9
Delaware [3]	4.6	3.8	9.2
District of Columbia	4.1	2.5	5.7
Florida [1]	5.0	4.6	6.7
Georgia [1]	4.5	3.8	6.3
Hawaii	4.2	4.8	4.0
Idaho [3]	5.7	5.6	8.6
Illinois [3]	4.5	3.8	11.5
Indiana [3]	4.2	4.0	8.5
Iowa	3.2	3.1	9.3
Kansas [3]	3.7	3.4	8.5
Kentucky [1]	6.0	5.9	8.1
Louisiana [1]	6.1	4.7	9.5
Maine	6.5	6.4	17.8
Maryland	4.8	3.8	9.5
Massachusetts [2 3]	4.2	4.1	7.8
Michigan [2 3]	6.9	6.0	16.3
Minnesota [2]	5.0	5.0	12.8
Mississippi [1]	5.4	4.5	7.1
Missouri [3]	4.1	3.7	8.6
Montana	6.8	6.4	24.8
Nebraska	3.1	3.0	7.7
Nevada [3]	6.2	5.9	10.1
New Hampshire	4.3	4.2	10.2
New Jersey [2 3]	4.6	4.1	9.5
New Mexico [2 3]	5.9	5.5	13.6
New York [2 3]	5.2	4.9	7.4
North Carolina [1]	4.5	3.6	7.4
North Dakota	5.6	5.4	25.2
Ohio [2 3]	5.5	4.9	11.9
Oklahoma [3]	4.4	4.0	9.0
Oregon [2 3]	6.0	5.9	9.5
Pennsylvania [2 3]	6.2	5.8	11.3
Rhode Island [2 3]	5.3	5.2	10.0
South Carolina [1]	4.1	3.4	5.7
South Dakota	4.1	3.7	23.8
Tennessee [1]	5.2	5.0	6.5
Texas [1]	4.5	4.1	7.1
Utah	4.1	4.1	5.7
Vermont [3]	4.5	4.5	10.6
Virginia [1]	4.2	3.5	7.1
Washington [3]	6.6	6.4	13.4
West Virginia [2]	8.3	8.2	11.4
Wisconsin [2 3]	3.9	3.7	11.4
Wyoming	5.1	5.0	10.1

[1] Southern States.
[2] States with effective fair employment practice commission laws in 1960, as classified by the U.S. Department of Labor.
[3] States with FEPC laws.

Source: U.S. Bureau of the Census, 1960 Census of Population, PC(1)C series table 53, 83.

Mr. ERVIN. Mr. President, I am at a total loss to understand——

Mr. CASE. Does the Senator wish to ask me a question?

Mr. ERVIN. Yes.

Mr. CASE. Then the Senator wishes me to retain the floor and yield to him; is that correct?

Mr. ERVIN. Mr. President, I ask unanimous consent that the Senator from New Jersey may yield to me for questions and observations without losing his privilege to the floor and without his remarks counting as a second speech on this subject.

Mr. CASE. Reserving the right to object—and of course I do not intend to object—has the Senator included in his request that it will not count as a second speech on my part?

Mr. ERVIN. Yes.

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

Mr. CASE. I yield.

Mr. NELSON. I wonder if I might make an inquiry of the Senator. Does the Senator have a series of questions to ask?

Mr. ERVIN. Yes. I do.

Mr. NELSON. Does anyone object to my obtaining the floor?

Mr. ERVIN. I have no objection. However, I do not have the floor.

Mr. CASE. If I may yield to the Senator from Wisconsin on the usual basis, for whatever brief purpose he has in mind, I should be glad to do so.

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

STATEMENT ON WISCONSIN PRESIDENTIAL PRIMARY

Mr. NELSON. The Wisconsin presidential primary was held yesterday. It is not possible to make a definitive analysis at this time. But I think it is important to public understanding to have some basic facts on hand to interpret that election.

First, let us look at the statewide returns. Here is a table showing Tuesday's vote by congressional districts. Column 3 shows how many of the voters chose the Democratic column in this primary, and column 4 shows, by contrast, how many voters chose the Democratic column in November 1962, when our Democratic Governor Reynolds was elected.

This table shows that Governor Reynolds won decisively Tuesday in every congressional district and in several of them he outpolled both Governor Wallace and Congressman BYRNES combined. The table also shows dramatically that there was a tremendous crossover of Republican voters to vote in the Democratic primary.

Mr. President, I ask unanimous consent to have printed in the RECORD at this point a tabulation showing the results of the primary.

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

District	Tuesday vote		Percentage voting Democratic	Governor Reynolds, Democrat, percentage in 1962
1	Reynolds	46,855	70	48
	Wallace	23,966		
	Byrnes	28,720		
2	Reynolds	53,440	70	48
	Wallace	22,483		
	Byrnes	34,392		
3	Reynolds	42,953	66	42
	Wallace	18,167		
	Byrnes	30,801		
4	Reynolds	68,454	80	60
	Wallace	38,633		
	Byrnes	17,751		
5	Reynolds	55,318	80	55
	Wallace	30,581		
	Byrnes	15,094		
6	Reynolds	49,953	70	45
	Wallace	25,169		
	Byrnes	32,485		
7	Reynolds	48,800	64	47
	Wallace	17,941		
	Byrnes	37,015		
8	Reynolds	44,492	62	49
	Wallace	22,009		
	Byrnes	40,294		
9	Reynolds	52,600	75	(1)
	Wallace	45,300		
	Byrnes	33,600		
10	Reynolds	45,732	64	53
	Wallace	16,828		
	Byrnes	24,562		

[1] New district.

	Statewide total	Percent of total
Governor Reynolds	508,597	48
Governor Wallace	261,148	24
Congressman Byrnes	294,724	28
Total	[1] 1,064,469	100

[1] 63 precincts out.

Mr. NELSON. Now what do these figures mean?

Governor Wallace said that he entered the Wisconsin primary to get a clear-cut expression of public opinion on the civil rights bill. Both of his opponents strongly supported the civil rights bill, and this became the only issue.

If Governor Wallace wants to treat this as a kind of Gallup poll on the civil rights bill, with a sample of more than 1 million voters, then the results show that 76 percent favored the civil rights bill.

Actually, the issue is too complicated to draw any such simple conclusions. Governor Reynolds has been under bitter attack from Republicans as well as from Governor Wallace. His major highway program was voted down in a referendum Tuesday by a margin of 6 to 1. So Wallace did not win even his 24 percent of the vote by his opposition to civil rights. Many of those votes were cast by Republicans to hurt Governor Reynolds.

But if anyone does want to treat this as a poll on the civil rights bill, the overwhelming public vote of approval is there for all to see. No one should expect the civil rights bill to receive 100 percent endorsement in any State at any time.

The support of 76 percent of the voters on any specific issue would be treated as an overwhelming mandate.

Governor Wallace got more votes than any citizen familiar with Wisconsin traditions would want him to get. But a study of voting returns fairly closely shows how and where he got a substantial portion of these votes.

These are the basic conclusions on the Wisconsin primary:

Democratic Governor Reynolds won decisively in every congressional district, including the much talked about "Milwaukee Fourth District," where opposition to civil rights legislation was supposed to be so strong.

Reynolds won this victory despite serious political troubles of his own in Wisconsin.

There was a tremendous crossover of Republican voters into the Democratic primary. Democratic candidates polled 72 percent of the total vote Tuesday, whereas President Kennedy polled only 48 percent in the 1962 general election.

Many of these Republican voters voted for Wallace—possibly because of his opposition to civil rights; but also because of their opposition to Governor Reynolds and conceivably President Johnson.

Wallace, although decisively defeated everywhere, did best in the strongest Republican districts. The only district where he was even in contention was the new Ninth District—the prosperous Republican suburbs of Milwaukee.

However, many of the Republicans who crossed over to the Democratic primary actually voted for Democratic Governor Reynolds—a man under relentless attack by their own party. The only possible conclusion is that many regular Republicans voted for Reynolds merely to show their support for civil rights legislation.

Thus, the highly respected Milwaukee Journal made the tremendously significant point today that in this election, Governor Reynolds, sorely beset with his own political troubles, polled the highest vote ever cast for any presidential candidate in a Wisconsin presidential primary—more than John F. Kennedy got in the historic 1960 primary. Thus, there was a great rallying of both Democrats and Republicans to support Reynolds in order to support civil rights.

This points up the obvious fact that while many people are preoccupied with the 261,000 votes which Wallace got—and I regret that he got that many—we must not lose sight of the fact that his opponents polled 802,000 votes. We must remember the 508,000 votes which Governor Reynolds got and the 294,000 votes which Republican JOHN BYRNES got.

Let us look at the vote in some specific districts.

Governor Wallace had his largest and most enthusiastic reception of the campaign in the Fourth Congressional District on Milwaukee's South Side. Yet Governor Reynolds—already under fire for supporting a controversial open-occupany bill in the legislature—swept this district Tuesday. He outpolled both Wallace and BYRNES combined, and carried 55 percent of the total Fourth District vote despite a large Republican crossover.

Based on the party division in 1962, the Republican candidate Tuesday should have gotten about 50,000 votes in this district. Instead, he got only about 18,000, indicating a crossover of close to 32,000 Republican votes in this district alone.

Next, let us look at the overwhelmingly Republican Sixth District in the prosperous Fox River Valley. This is the home of Congressman VAN PELT, the only Wisconsin Congressman to vote against the civil rights bill. VAN PELT has sent throughout his district a newsletter bitterly attacking the civil rights bill. Governor Wallace and his aids have been passing out this same literature. Several newspapers in the area have editorially supported VAN PELT and his charges.

What happened in this overwhelmingly Republican district Tuesday? Governor Reynolds won decisively, beating Governor Wallace almost 2 to 1 and outpolling BYRNES by over 17,000 votes.

Reynolds' percentage of the vote in this Republican Sixth District on Tuesday—when the sole issue was civil rights—was actually better than in the 1962 election when he won the governorship.

Let us look at the home district of Representative BYRNES, the Republican favorite son. This is also an overwhelmingly Republican district. JOHN BYRNES' name is a household word.

Again, what happened there Tuesday, in Byrnes' home district? Governor Reynolds won decisively, defeating Wallace by more than 2 to 1 and outpolling favorite son, Byrnes, by more than 4,000 votes.

To summarize, what does the Wisconsin vote show?

It shows that a man who staked his all on forcing a public test on the civil rights bill was decisively defeated in every congressional district of Wisconsin.

It shows that a Democratic Governor, sorely beset with complicated political troubles of his own, won every single congressional district in the State and actually bettered his 1962 victory record in the very districts where civil rights opposition was expected to be the worst.

It shows that many Republicans—as might be expected—will take advantage of a chance to embarrass a Democratic President and a Democratic Governor, just as Democrats have often done in the past. But it also shows that many Republicans will line up in favor of civil rights even if it means backing a Democratic Governor who is under the most bitter attack from their own Republican leaders.

I hope this fact will not be lost on the Republican leadership in the Senate. It sounds a warning that if the Republican party should decide to oppose civil rights legislation, many of their own voters will not go along.

The only conclusion I can come to is that the Democratic Governor of Wisconsin was given a tremendous political boost when civil rights was made the sole issue in this election.

Wisconsin voters turned out in the second largest primary in history and, despite severe campaign misrepresentations, they rallied to the side of the Democratic Governor and gave him a significant victory. A substantial minority voted against him, as they vote against every politician in every election, but the hope of the opponents that Wisconsin voters would repudiate the civil rights bill failed.

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

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

Mr. ELLENDER. In connection with the primary voting in Wisconsin, I have a compilation of the latest figures. It indicates that Governor Reynolds got 508,597 votes with 3,489 out of 3,552 precincts reporting. Governor Wallace got 216,000. In other words, the difference is that Governor Reynolds got 240,000 more votes than did Governor Wallace.

I also have a record of the votes that were cast for Congressman BYRNES. The figures show that Congressman BYRNES received 249,724 votes. If one were to add the Wallace votes to the Byrnes votes, the total would exceed the number of votes received by Governor Reynolds.

How does the Senator account for that?

Mr. NELSON. That is the way addition works.

Mr. KEATING. Mr. President, would the Senator yield?

Mr. CASE. Mr. President, I do not want to inadvertently lose the floor by being too lax. If the Senator from New York has a comment which he would like to make, I would be happy to yield under the usual conditions.

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

Mr. KEATING. Mr. President, I think it would be highly unfair to Congressman BYRNES to add his vote to Governor Wallace's vote, if the Senator is trying to draw any inference that that total number of people were opposed to civil rights legislation. Congressman BYRNES was one of the leaders in the fight in the House and he voted for the bill, as I recall.

Mr. NELSON. Mr. President, if the Senator will yield, I would like to respond just briefly to the inquiry of the Senator from Louisiana.

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

Mr. NELSON. I wish to make this statement. Both Congressman BYRNES and the Governor of the State of Wisconsin strongly endorse the civil rights bill. So if the proposition is that this is a test, a kind of a Gallup poll in the State of Wisconsin on the civil rights bill, what we have is the fact that 76 percent of the people in our State support the bill; 24 percent oppose the bill. In other words, 800,000 voters are in favor of the bill and 261,000 voters are against it.

I have never seen any controversial legislation ever go through a legislative body with a 76-percent total approval.

Governor Reynolds got the highest total vote which any single candidate ever got in a presidential primary in the State of Wisconsin, including the tremendous vote secured by the late President in the 1960 primary.

In the State of Wisconsin, it is possible to cross over. The total combined Republican vote was 70 percent of the total vote cast. The Democratic vote was large in every section. I will never live long enough to see the day when I or any other Democrat in the State of Wisconsin can carry the State of Wisconsin with such a substantial margin. The Republican crossover was very substantial. Congressman BYRNES in his own district, where he is very popular, was defeated by Governor Reynolds. The result of the crossover by the Republicans was substantial. We always enjoy crossing over and settling Repub-

lican primaries when they have a contest. They were paying us back this year.

Mr. ELLENDER. I do not believe they ever had an open-segregationist candidate who received as many votes as Wallace did.

Mr. NELSON. We have had candidates run in our State without mentioning any names, and some of them have carried the State.

Mr. ELLENDER. In any event, it was stated on many occasions, even by Governor Reynolds, that it would be disastrous if Governor Wallace got as many as 100,000 votes. Governor Wallace received 261,148 votes, and they are not through counting the votes yet. There are over 100 precincts still to be heard from.

If it were to be considered disastrous if Governor Wallace received 100,000 votes, I wonder what it can be taken as now? It must be thought calamitous in some quarters that Wallace received as many as 261,000 votes which is about 26 percent of the amount of votes cast.

In my judgment, it just shows that the northern people do not want this bill any more than the southern people do.

Mr. CASE. Mr. President, if I may comment on this, I do not know what the situation is in Wisconsin, and I am not trying to pontificate on something about which I do not know. I find it difficult to know of the movements, the activities, and sentiments in my own State. But I do think that the people in Wisconsin, Senator PROXMIRE and Senator NELSON, and others, ought to be qualified to speak.

While I detect some little edge to the remarks which the Senator has made, I am sure it is not more than normal in circumstances like these. I do not feel there is any great difficulty here, except as it might affect the determination of Senators to vote on decent civil rights legislation.

The tragedy would be if, in this great opportunity, we fail to do the job that is essential.

Mr. President, I understand the Senator from North Carolina has a question before I yield the floor.

Mr. ELLENDER. Mr. President, would the Senator permit me to ask one question about the situation in Kansas City?

Mr. CASE. Yes. But I am sure I am not any more of an expert on Kansas City than I am on Wisconsin.

Mr. ELLENDER. In this situation the difference between those who voted for a broader public accommodations provision was a bare 1,000 votes. Of the total voters, there were 30,000 Negroes registered, according to the press. I wonder if the Senator can account for that situation.

Mr. CASE. No, I cannot. I do not know the facts. But I would like to say this, that I have never regarded support of civil rights—contrary to the suggestion made by some of our southern friends at different times—as a politically advantageous position.

I have always been conscious of the fact, in the North to a much lesser extent than in the South, but even in the North that a change in practices, a change in laws is liable to be unsettling to many people.

I think if I had to say anything about Wisconsin or Kansas City, it would be purely on the basis of general view, rather than knowledge of the facts.

I would say it is not at all surprising that that number of people in Wisconsin would look with some concern at the passage of any substantial civil rights legislation.

It will be remembered as I said before, perhaps to the boredom of listeners, that all change, as Dr. Johnson has said, is unsettling, even the change from worse to better.

But that does not make it any less our duty to see to it that a necessary change is made.

Mr. ERVIN. Mr. President——

Mr. CASE. I am glad to yield to the Senator from North Carolina.

Mr. ERVIN. I wish to preface my questions by saying that I must confess that I could not understand the deductions the Senator from New Jersey drew from the figures supplied by the Senator from Louisiana [Mr. ELLENDER].

The figure for my State of North Carolina is that 7.4 percent of the nonwhites in the civilian labor forces were unemployed.

Mr. CASE. As against 3.6 percent for the whites; is that correct?

Mr. ERVIN. Yes.

As I understand, the figure for New Jersey is that 9.5 percent of the nonwhites in the civilian labor forces were unemployed. I understood the Senator from New Jersey to tell the Senator from Louisiana that the fact that North Carolina had only 7.4 percent of its nonwhites unemployed and New Jersey had 9.5 percent of its nonwhites unemployed shows that New Jersey was not discriminating against Negroes in employment, but that North Carolina was discriminating against them. Did I correctly state the inference to be drawn from the remarks of the Senator from New Jersey?

Mr. CASE. Again, Mr. President, I have no desire to try to overprove anything or to distort the meaning of figures.

I do not regard this particular table as enormously significant, because we do not know the composition of the group involved or where the jobs are.

However, in our colloquy I endeavored—and I found the Senator from Louisiana at least reasonably perceptive and willing to give consideration to the actual facts, as opposed to trying to make debating points—to state that all agree that the applicable figures show an increasing problem in Northern States, such as New Jersey, as compared with Southern States, because of the constant migration of Negroes—one and a half million in the 1950's—from the Southern States into the Northern States—a continuing phenomenon in recent years.

Mr. ERVIN. The table also shows that 7.4 percent of the nonwhite civilian labor force in North Carolina was unemployed, whereas in California the corresponding figure was 10 percent. I point out that California has an FEPC law, but North Carolina has not. Does the Senator from New Jersey contend that those figures show the existence of discrimination in North Carolina and no discrimination in California, and also that in California the FEPC law is working well?

Mr. CASE. No. I point out that I did not offer the table as proving anything relative to the situation in States either North, South, East, or West, or in regard to the situation either rightside up or upside down, insofar as that table is concerned. So far as I recall, I made no claim in connection with the table.

On the other hand, I do say the table does not mean what the Senator from Louisiana and the Senator from North Carolina are attempting to make it appear to mean. One cannot examine the table without seeing very definite differences in the unemployment rates.

Mr. ERVIN. But the Senator from New Jersey must agree that the table shows a better situation as regards unemployment in North Carolina, where only 7.4 percent of the nonwhites in the civilian labor force are unemployed, as compared with the situation in California, where 10 percent of the nonwhites in the civilian labor force are unemployed.

Mr. CASE. I wish to state—so that it will be clear that we are dealing with facts which all of us understand—that the table to which the Senator from Louisiana referred in the course of his remarks relates only to the month of July 1960. That is true, is it not?

Mr. ELLENDER. Yes, for it is the only month for which we could obtain such figures. But it is typical.

Mr. CASE. It may or may not be typical of another month or of the situation in another year.

Mr. ELLENDER. That was shown by means of the 1960 census; and the figure can be obtained for only that one month. But it is typical.

Mr. CASE. I cannot say whether it is typical or is not typical, because it may be that seasonal factors affect the situation for that month, or that other factors affect it, with the result that the figures for that month may not be typical at all.

I know there is serious unemployment in New Jersey; and I know that the unemployment rate among Negroes there is roughly twice the amount of the unemployment rate among whites in New Jersey—a situation very different from that in the South. My point is that that is typical of the situation existing in the States of the North, as compared with the situation existing in the States of the South.

Mr. ERVIN. Perhaps the Senator from New Jersey will agree that the table shows that the percentage of unemployment among the nonwhites in the civilian labor force in New Jersey—namely, 9.5 percent—is 2.1 percentage points greater than the corresponding rate for North Carolina, which is only 7.4 percent.

Mr. CASE. North Carolina has for years been pirating industry from New Jersey and from other Northern States. In New Jersey we have a constant fight to prevent industry from being taken away—taken away by all sorts of inducements, some of which perhaps cannot be complained about, but others can be. So this is not a new situation, and

it is no news to me. Many other States—such as Ohio and Illinois—are faced with the same problem. So I would prefer to have the Senator from North Carolina tell us his views about that situation, rather than to be twitted about it.

Mr. ERVIN. I do not know of any industry which has left New Jersey and come to North Carolina?

Mr. CASE. I suggest that a great deal of our textile industry, for example, has left New Jersey. I know that has happened; and we also know that the textile industry in North Carolina has built up very greatly. I am not sure that I can match company for company or plant for plant; but I am certain that this drift is happening in the textile business, as it relates to New Jersey, and perhaps also as it relates to Massachusetts, for example.

Mr. ERVIN. I assure the Senator from New Jersey that virtually all the textile industry in North Carolina is homegrown; it originated in North Carolina, and the plants were originally built in North Carolina. North Carolina has received very few textile plants—and none from New Jersey, so far as I know—from other States.

Mr. CASE. I can only say that practically none of the textile industry is left in New Jersey, whereas the textile industry used to be a very significant factor in the industrial and employment situation in New Jersey. On the other hand, as everyone knows, and as I have seen, in North Carolina that industry has been burgeoning in recent decades.

Mr. ERVIN. Yes, it has; and virtually every bit of it in North Carolina, in so far as the textile industry is concerned, has been homegrown. In other words, the textile industry was developed there by North Carolina citizens. That is true of all the plants of which I can think offhand.

Mr. CASE. Well, for whatever reason, the textile industry in North Carolina is booming now, whereas that used to be true in New Jersey.

Mr. ERVIN. I also wish to refer to the figures for some of the other States.

Mr. CASE. Very well.

Mr. ERVIN. The table shows that in North Carolina the percentage of unemployment among nonwhites in the civilian labor force is 7.4; in Illinois, it is 11.5. Will the Senator from New Jersey go so far as to agree with me that those figures indicate that the percentage of unemployment among Negroes in Illinois is 4.1 decimal points greater than that in North Carolina?

Mr. CASE. I think I have made the general argument in refutation of the conclusion the Senator from North Carolina is persistently trying to draw from these figures. The figures show what they show. They show that Negro unemployment for that particular month of 1960 in Illinois was 11.5 percent, whereas in that particular month of 1960, unemployment among whites was 3.8 percent. To me, those figures in themselves show nothing whatever about discrimination in Illinois, although I have no doubt that discrimination exists.

It certainly does not indicate to the Senator from New Jersey, nor do I believe it would indicate to anyone from any part of the country except the South, that there is more discrimination in employment in Illinois than there is in the States which the Senator from Louisiana, the Senator from North Carolina, and some others have the great honor to represent, and which they represent so excellently.

There are many reasons for the high rate of unemployment among Negroes in the North. I believe the greatest reason is the influx of the unskilled, uneducated Negroes from southern areas into our great cities. They cannot be absorbed because there are no jobs in those areas which they are able to fill.

Mr. ERVIN. The Senator from New Jersey is arguing that the Senate ought to pass a national FEPC law in order to cope with conditions in the South. The figures show that in virtually every Southern State there is a far greater percentage of Negroes employed than are employed in the States which have FEPC laws. Notwithstanding my high respect for the Senator from New Jersey, I am compelled to say that I go by my North Carolina arithmetic, and when that arithmetic shows me that the percentage of nonwhites in New Jersey who are unemployed is 2.1 percentage points higher than in North Carolina, it compels me to reach the conclusion that the percentage of nonwhites unemployed in North Carolina is 2.1 percent lower than the figure for New Jersey. I am sorry that the Senator from New Jersey cannot agree with my arithmetic.

Mr. CASE. Mr. President, as I said before, I have a real affection for the Senator from North Carolina. I have admiration for the persistence with which he pursues the points which he has been attempting to make. But I do not think he has persuaded any Senator in his discussion.

Mr. ERVIN. I merely state the figures——

Mr. CASE. I understand the figures. I have been looking at them for a long time. They do not show what the Senator suggests they show.

Mr. ERVIN. They do show that the State of Virginia, which is a Southern State, and which has no FEPC law, has a percentage of unemployed nonwhites of 7.1, while the percentage of unemployed nonwhites in New Jersey is 9.5 percent. The percentage of unemployment among nonwhites in the State of South Carolina, which has no FEPC law, and which is a Southern State, is 5.7 percent, whereas the percentage of unemployment in New Jersey is 9.5 percent.

Mr. CASE. We could make comparisons with many other States, too. They all prove nothing.

Mr. ERVIN. The figures for the State of Mississippi show that the percentage of unemployed in the civilian labor force of nonwhites is 7.1 percent, whereas the percentage of unemployment of nonwhites in New Jersey is 9.5 percent. I could take up other illustrations to prove the same point. Since I learned the kind of arithmetic I did—namely, that two and two make four—I would say that those figures show that there is more unemployment among nonwhites in the States which have FEPC laws than there is in the Southern States.

Mr. CASE. Mr. President, I wonder if the Senator would permit me to turn to another comparison. During the course of my remarks I inserted in the RECORD tables showing the median income of white and nonwhite male workers from 1949 to 1959, as I recall. I have before me now a shorter table for the 11 Southern States, showing the median income of white and nonwhite male workers for 11 of those States for the years 1950 to 1960. I should like to make the comparison a part of our consideration now, since we are deeply interested in getting at the facts. I suggest that those figures have a bearing upon the problem.

In the Senator's State of North Carolina in 1960 the median income for male whites was $3,035; in the same year the median income for male Negroes was $1,286—less than half, or perhaps 40 percent. I call those statistics to the attention of the Senator. The same general ratio applies throughout.

The Senator from Louisiana and I have been discussing the subject. In the State of Louisiana the figure for white male workers is higher. I do not know what the explanation would be. But the median figure for male white workers in 1960 in Louisiana in respect to income was $4,001, which is almost $1,000 more than the median for the same workers in North Carolina. I leave the Senators to discuss the reasons for the difference. But those figures compare with an income figure of $1,565 for a male Negro, or again about 40 percent of the white rate. The percentage runs through the whole table, which I believe indicates discrimination.

Mr. ERVIN. If the Senator from New Jersey is discussing a comparison of incomes in New Jersey and North Carolina, I am satisfied that he could show much higher earnings in New Jersey. He could demonstrate higher earnings among lawyers; he could show higher earnings among doctors; he could illustrate higher earnings among schoolteachers. This is so because New Jersey is a wealthier State than North Carolina.

Mr. CASE. I am comparing the incomes of white and Negro workers within a State.

Mr. ERVIN. But there is another explanation, as far as that point is concerned, and as far as North Carolina is concerned. North Carolina has more people living on farms than any other State in the Union. With the exception of the State of Texas, it has more farms than any other State in the Union.

Farmers grow chickens, which they eat. They raise vegetables, which they eat. They grow corn, which they consume on the premises. Those items do not go into their income.

For example, in the State of New Jersey the nonwhites do not live on farms in the country. They live in urban centers. People in urban centers do not grow vegetables; they do not raise chickens or pigs. They must buy from stores everything they eat and every-

thing they wear, which is quite different from the situation in the Southern States.

Mr. CASE. I appreciate the contributions which my friend from North Carolina has made. Obviously we could discuss for a long time this and other points I and the Senator from Pennsylvania have made in our presentations. I must disagree with the Senator's conclusion. I have no desire to twist or distort any facts, and I am sure that my colleagues have no such desire. I am as convinced as that I am standing here that discrimination in employment exists all over the country. I know that. I have seen it operate. I have seen it operate in the South as well as in the North. I know that the proposed legislation is needed. I am convinced that unless we get it, we shall set back our society a long way.

The bill is the first opportunity there has been not only since I became a Member of Congress, some 20 years ago, but also for 100 years or more, to enact a decent civil rights law.

Mr. ERVIN. Perhaps the Senator will explain some figures which I obtained from the Department of Labor a few days ago relating to the month of February 1964. They do not go back to 1960, as did the percentages we have been discussing.

The Department of Labor found that in February 1964, unemployment in the entire United States among whites was 3,629,000.

Mr. CASE. Will the Senator repeat his last sentence?

Mr. ERVIN. I said that the Department of Labor advised me that during the month of February 1964, unemployment among whites in the United States was 3,629,000. Does the Senator from New Jersey contend that those 3,629,000 whites were without jobs in February of this year because someone discriminated against them?

Mr. CASE. No, but I believe the Senator would find, if he received that figure—and I do not have it for that particular date—that the rate for Negro unemployment is more than two times as great as for white. The difference indicates something.

Mr. ERVIN. Does the Senator contend that any of these 3,629,000 white individuals were denied employment because of their race or color?

Mr. CASE. I think I should wait to answer the Senator's chief questions before I go into a series of answers to almost inconsequential or frivolous questions. So will the Senator continue?

Mr. ERVIN. Does the Senator from New Jersey think it is frivolous to those 3,629,000 white individuals without jobs?

Mr. CASE. The Senator from North Carolina knows that the Senator from New Jersey does not think so.

Mr. ERVIN. I did not think so. That was the figure I was asking about. I do not consider the question to be frivolous.

Mr. CASE. The question was whether those whites were unemployed because of discrimination based on their white color. That was a frivolous question. I shall be glad to answer any serious question.

Mr. ERVIN. Will the Senator from New Jersey tell me why he thinks the 3,629,000 whites were unemployed in February of this year?

Mr. CASE. The Senator has asked a "$64" question. Nobody knows all the answers. There are many different answers. Automation makes up a part of the answer. Technological changes have some part in it. The change in the structure of employment, as it is called, has a great deal to do with unemployment. There are a number of causes, including inadequacy of education for some white people. The opportunities for many people, white and Negro, are not as good as they should be.

The only thing that is significant to the discussion is the comparison of unemployment based upon the difference between the rate of unemployment of Negroes and whites. Even this fact I would not argue too much, because it requires explanation along the line that the Senator from North Carolina and the Senator from Louisiana have been pursuing.

Mr. ERVIN. Does the Senator from New Jersey believe that the bulk of the 3,629,000 whites who were out of employment in February were unemployed due to economic causes?

Mr. CASE. Yes—due to economic, social, and other problems related thereto.

Mr. ERVIN. Does not the Senator from New Jersey also conceive it is possible that some of the 895,000 nonwhites who were out of employment at that time were out of employment due to economic causes?

Mr. CASE. Of course, but the Senator from New Jersey suggests there is reason to make further inquiry when we find that the rate of Negro unemployment is 2½ times that of the white.

Mr. ERVIN. It is a little over 4 to 1.

Mr. CASE. I overstated it. I believe it is about 5 to 11.

Mr. ERVIN. Why is it necessary to create a new Federal bureaucracy to help 895,000 nonwhites get jobs while the Congress does not concern itself about the 3,629,000 unemployed whites who are in an equally bad fix?

Mr. CASE. I hope we will concern ourselves with the whole problem of the unemployed, whether white or of another color. It is our job to concern ourselves with that problem. The President's war on poverty, socalled, is one of the ways in which we should be attempting to meet the problem. At least, we should get on with a study and consideration of the problem and act upon it.

But what indicates discrimination is not so much the overall figures, which must be interpreted. It has been said so often that figures do not lie, but liars figure. I know that my colleagues of the opposition have no desire to lie about this subject.

What is significant is what was indicated, for example, by the Florida Advisory Committee to the Civil Rights Commission, which reported, as I described at some length, the frustration faced by skilled Negro job applicants in the State of Florida; the fact that they acquired specialized training and were promised jobs, but when it was discovered they were Negroes, they were advised that the jobs had been filled by others. It is this specific frustration—which I know exists in my State also—which should be persuasive.

Mr. ERVIN. Does the Senator from New Jersey agree with the Senator from North Carolina that the frustration of not having a job is just as hard on whites as it is on nonwhites?

Mr. CASE. Yes, the Senator from New Jersey does; but he does not see why the Negro population should have a rate of unemployment over twice the burden of the white population.

Mr. ERVIN. Is not the difference in the unemployment rate of whites and nonwhites conceivably due to the inadequacy of education and inadequacy of skills? Could it not arise in large part from lack of education or skills?

Mr. CASE. I made that point in my own remarks. They are all factors in unemployment. But to have an education and not to have a job at the end is a bitter irony. There is no reason why we should not attack the problem on all fronts. This bill deals with employment problems. It goes into problems of education. It goes into problems of public facilities, in part III. All of that is necessary.

Mr. ERVIN. The bill is designed to compel employers to hire nonwhites in specific cases, whether they wish to hire them or not; is it not?

Mr. CASE. The bill would do only one thing. It would make it unlawful for a person to discriminate against an individual in regard to employment—hiring, firing, promotion, or any other matter—because of race. It does not require anybody to hire a particular individual. It does not require anybody to hire someone who cannot do the job necessary. There is no Motorola case involved in the Federal law as proposed, as I pointed out in my remarks.

Mr. ERVIN. How does the Senator from New Jersey reconcile his statement that it does not compel employers to hire certain people with the language which begins on line 22 of page 41 and runs, through line 5, on page 42 of the bill. I read this passage:

> If the court finds that the respondent has engaged in or is engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and shall order the respondent to take such affirmative action, including reinstatement or hiring of employees, with or without back pay * * * as may be appropriate.

Mr. CASE. If the Senator will read into that a finding of what is an unlawful employment practice——

Mr. ERVIN. I did.

Mr. CASE. No. What is an unlawful employment practice?

Mr. ERVIN. It is the contents of a man's mind. It is the intent he has in mind.

Mr. CASE. No. I would like the Senator to read the words, since he is talking about the bill.

Mr. ERVIN. The language is "on account of race, color, creed, or national origin."

Mr. CASE. That is correct.

Mr. ERVIN. That is a matter of intent. The intent in the man's mind is going to be judged, not by him, but by somebody else.

Mr. CASE. Yes, but in the time-honored custom of Anglo-Saxon jurisprudence, under the terms of the bill it would be determined by a court of law.

Mr. ERVIN. It would be determined not by the external acts in the case, but by what some Federal employee believes was in the mind at the time.

Mr. CASE. The Senator from North Carolina is trying to make it appear that it is unusual to have a determination of what is right or wrong depend on a mental state. Practically speaking, this has been universally true.

Mr. ERVIN. That is not true except in one case. I refer to the Labor-Management Act. Those who fashioned our law held that a man should not be convicted of any illegal act unless there was external evidence of the crime. For example, a man could not be convicted of murder unless a body was produced showing evidences of actual violence. A man could not be convicted of stealing unless it was shown that property was carried away without the consent of the owner.

It is dangerous to judge a man on the basis of the contents of his mind rather than on the basis of the character of his external act.

Mr. CASE. Let me make a few comments about that. In the first place, this is almost always true. The content of a man's mind, the will, the intent, is a mental state and is almost always important in any criminal act. The facts as to the statements are proved by external evidence.

The point is that this act is not a criminal act. We do not put a man in jail. We reason with him. As the Senator from Illinois would say, we reason with him "sweetly," in order to persuade him to change his ways. We try to persuade him, to show him where he is wrong, to get him to do voluntarily what he should be doing. It is only after the methods of persuasion, conciliation, and sweetness fail that it is possible for the Commission to bring an action, which it must do de novo.

Mr. ERVIN. This bill is based on the proposition that the employer's guilt depends solely upon an illegal thought; in other words this is a thought control bill. The employer is to be judged on the basis of what he thinks rather than on what he does.

Mr. CASE. The Senator is spinning a fine web of fantasy. He knows perfectly well that there is nothing unusual about the law in regard to its relation to a person's mental state. This is quite a common thing.

Mr. ERVIN. I do not know of a single punishable crime that does not require an illegal external act as a basis for judgment.

Mr. CASE. Neither does it do so in this provision. The man must do or fail to do something in regard to employment. There must be a specific external act, more than a mental act. Only if he does the act because of the grounds stated in the bill would there be any legal consequences.

Mr. ERVIN. If an employer receives an application from A and B for a job, and hires A, rather than B, his external act in so doing is immaterial under the bill. The only thing material is the state of his mind.

Mr. CASE. I have seen nothing yet in the circumstances described bearing on discrimination, or any ground to support a complaint of discrimination.

Mr. ERVIN. I ask the Senator, if in carrying out the provisions of the bill, the FEPC employee would not go into an employer's place of business and tell him whom he must hire or whom he must promote, even though such government employee had no experience in the particular business and knew nothing whatever about the skills required to operate such business; is that not correct?

Mr. CASE. No; the Senator is not correct when he says anyone can go into a man's business and tell him whom he must hire, or whom he must not hire. This is not what will be done. If in the enforcement and implementation of the act, the Commission does not engage competent people, I believe the Senator's own party should take some action to see that the Commission does. As it stands now, his party will be in charge of the administration of the law, but to say that something may be badly administered is no reason for refusing to attempt to deal with the problem. Rather it is, I believe, a smokescreen or "squid" with which the Senator has been attempting to cloud the water. There is discrimination in this country in employment, as well as in other areas; and it is time we did something about it.

Mr. ERVIN. Does the Senator contend that the FEPC employees who will work in this way would be skilled in the manufacture of furniture, the manufacture of textiles, the manufacture of electronic devices, or the like?

Mr. CASE. I suggest that the investigators whom the Commission might engage should certainly be skilled. If I have anything to do with it, or my party has anything to do with it, I will do my part to see that they are people competent to do the kind of job which they are hired to do. I do not believe, necessarily, that this will require they be able to manage a factory, or anything else, but they should be able to do the job they are given to do in the way of investigation, observation, and in general in the field of personnel relations.

Mr. ERVIN. The Senator would have more confidence in Government employees than I would have, under those circumstances. Does not the Senator concede that it would require vast knowledge for a Government official to discharge aright his functions under title 7?

Mr. CASE. I believe the best answer that can be made to the suggestions and the worries being expressed by the Senator from North Carolina is that in all States I have yet to find complaints from employers as to the operations of fair employment practices commissions and their employees. Specifically, I know of none in the State of New Jersey. The program is supported by industry as well as by labor. I believe that the Senator is raising a straw man.

Mr. ERVIN. Did not the Senator from New Jersey read about the action taken in the Motorola case in Illinois by the hearing examiner under FEPC?

Mr. CASE. I am quite familiar with it. I have read the hearing examiner's so-called decision. It is only that, because that is what the law says he shall make. It is only a preliminary decision and there are no sanctions in connection with it. If it is adopted by the Illinois commission, which has not yet acted, it can be taken to court, and so forth.

The fact that this particular case has been raised—and I believe rightly—and the storm it has provoked, indicates how unusual it is. The exception in this case, I believe, proves the rule.

Mr. ERVIN. Nevertheless, that man was in the employ of the State government of Illinois——

Mr. CASE. No; he was not in its employ. As I understand—and I believe I am correct—Illinois law provides for part-time retainers of persons in private law practice. This man was one who occasionally did a job of this character. He was not an employee.

Mr. ERVIN. How can the Senator say that a man is not an employee of the State when he goes out under orders of the State, and exercises the power of the State under the law of the State?

Mr. CASE. He does not exercise the power of the State. He makes an examination. He makes what is called a decision. It is, in effect, the same as a report, like the report of an advisory master. The commission can accept it or not.

Mr. ERVIN. Would not the report and recommendation of the trial examiner be automatically binding on the employer if he did not proceed further and secure its reversal?

Mr. CASE. As I pointed out before, I do not believe the Senator's conclusions as to what this case actually involves are correct; but, in any event, it is Illinois procedure he is talking about, not procedure under title VII of the bill.

Mr. ERVIN. Exactly the same procedure could be set up under the bill. The same kind of hearings could be conducted, and the same kind of decision could be reached.

Mr. CASE. The same kind of decision could not be reached, because specifically under the terms of the bill no one may be directed as to whom he shall employ. The bill says only that he may not discriminate among applicants on grounds of their race, color, religion, or national origin.

Mr. ERVIN. Under the bill, the Commission can tell a man he must employ A, or he will be dragged into court to defend himself.

Mr. CASE. The Commission cannot tell him anything. Only the court can do that, in a trial in which the Commission is a party plaintiff, and would have

to prove the case from the beginning, with full burden of proof.

Mr. ERVIN. Nevertheless, the Commission could say to the employer, "You will either do as we say, or we will put the law to you"; is that not correct?

Mr. CASE. I suppose an individual Commissioner might be an unpleasant person, and I suppose he might say something of the sort. What the Senator is paraphrasing he is putting in bad language—"If you do not follow this suggestion, we will at least consider whether we should file a complaint against you," but the Commission is only a party plaintiff in a suit in which both parties are equal before the court.

Mr. ERVIN. Without using any bad English——

Mr. CASE. I am not suggesting that. The Senator's English is always good.

Mr. ERVIN. The Commission can say to an employer, "If you don't hire A, we will put the law on you."

Mr. CASE. No. Of course, they might reach the conclusion that A had been discriminated against because he was a Negro. In that case they could very well say, "We can put the law on you." Is this a strange provision?

Mr. ERVIN. I think it is a dangerous power to vest in the Commission. Its decision is based solely on the content of a man's mind. No man can read another man's mind.

Mr. CASE. The Senator has said that a great many times. It might be useful to him, fine lawyer that he is, and outstanding member of the judiciary that he was, to think of the number of times, as a judge and as a lawyer, he has had to deal with the question, whether in a murder case, a malicious mischief case, or a case involving any other willful criminal act.

Mr. ERVIN. I have spent most of my life in the law. I have never tried a case in which the decision hinged solely upon the content of a man's mind and not on the external nature of his act.

Mr. CASE. Here we have a number of externals. There would have to be employment. There would have to be an employer. There would have to be a business. These are tangibles. There would have to be a refusal to give a person employment. Obviously that is a physical fact, or at least a tangible factor.

The only question that would arise would be "Why?" The question would be, Why was the man refused? There would be tangible acts for the court to consider. It is not only a matter of whether a man is thinking bad thoughts. Any effort on the part of the Senator to state this point in his own way does not change the situation. Whether or not a course of conduct is actionable depends on the state of mind of the actor. I do not find this to be strange in any degree.

Mr. ERVIN. It is quite strange to me. I wish the Senator would cite me one example in which the question of legality of a man's act is judged wholly on what is in his mind.

Mr. CASE. Not wholly. There is the failure to hire a person, the fact that he was not given an increase in pay, or the fact that he was fired. The only question is "Why?" If the Senator were the person who had been discriminated against, he would find it to be a specific thing and an important thing, and enough to warrant the intervention of a State which is interested in all its people.

Mr. ERVIN. But we do not judge a man on the ground of his employing somebody or his failing to employ somebody. These are acts which are external. They have no influence whatever upon the decision. The only decision is made on the state of mind which accompanied the act or the omission to act.

Mr. CASE. The only way a state of mind can be proved is by an external act, or by a pattern of acts, of a man, or by a treatment that was given. The burden of proof is on the plaintiff. The only finding the court can make is one for the purpose of injunctive or preventive relief. No criminality is involved.

Mr. ERVIN. Under title VII, an order can be entered ordering a man to pay back wages to a person who had never done a day's work for him. The amount of back wages may largely exceed the jurisdictional amount requiring a jury trial in common law cases under the Constitution. Title VII contains no requirement for a jury trial under any circumstances?

Mr. CASE. So far as the act itself is concerned, there is no provision for jury trial. Of course, whether a jury trial would be required would depend upon the Supreme Court in developing further its decision of the day before yesterday in the Barnett case. A jury trial might be provided if the penalty were heavy enough.

Mr. ERVIN. No jury trial is provided.

Mr. CASE. No jury trial is provided under the terms of this section.

Mr. ERVIN. With respect to the determination of the original question, that is.

Mr. CASE. No; except, possibly, if the suit were brought by an individual. In that case, I believe it is possible that under the statute a jury trial for criminal contempt might be ordered.

Mr. ERVIN. Inasmuch as this is an injunctive procedure, it would be on the equity side of the docket, and no jury trial would be allowed. Is that not correct?

Mr. CASE. That is a technical matter, varying in each jurisdiction. It would depend on what kind of docket there was in the jurisdiction; whether there were two dockets or whether there were one system. Whether a person would get a jury trial would depend on the system. Only in the matter of criminal contempt would the question arise. The difference between criminal contempt and civil contempt requires a nicety of perception at which the Senator from North Carolina is much better than the Senator from New Jersey.

Mr. ERVIN. Does not the Senator from New Jersey agree with the Senator from North Carolina that a suit in which injunctive relief is sought or granted is necessarily an equity proceeding in which there is no right of trial by jury?

Mr. CASE. There is no question about that.

Mr. ERVIN. All of the proceedings under title VII will be without a jury trial. Is that correct?

Mr. CASE. It will be done without a jury trial in the case of the determination of the fact in the first instance. The question of whether a jury trial would be granted would depend on the decision of the Supreme Court.

Mr. ERVIN. The Supreme Court held this week, by a 5-to-4 decision, that there was no right to a trial by jury in a criminal contempt case.

Mr. CASE. It was a little difficult to say exactly what the Court held. In the majority opinion, Justice Clark made it clear that in that case there was no need, under the applicable statute, for a jury trial. Certain members of the majority felt, if the penalty imposed by the Court were severe, that the question of the right to a jury trial might very well arise. The question is still an open one. It depends on the severity of the offense.

Mr. ERVIN. As I understand it, a majority of the suits would be brought by the United States. Is that correct?

Mr. CASE. Yes.

Mr. ERVIN. Does not the Senator know that the statute which allows a jury trial in certain contempt cases does not apply to cases in which the United States is a party?

Mr. CASE. I believe that the constitutional right to a jury trial in a case of criminal contempt would override that provision if the penalty were severe enough.

Mr. ERVIN. That would be true only if the majority of the Supreme Court were to hand down a different decision from the one of this week.

Mr. CASE. No; without changing the decision, but following out the intimation of the decision as to the severity of the penalty.

Mr. ERVIN. Federal courts have held in past cases that a person can be sentenced to as much as 3 years imprisonment in a criminal contempt case without a jury trial, and that the only limitation upon the punishment in such cases is the limitation in the constitutional provision which prohibits cruel and unusual punishments. I do not see any hope of getting a reversal of the decision of this week holding that there is no constitutional right to a jury trial in criminal contempt cases.

Mr. CASE. I am sure the Senator has read the Supreme Court decision in the case that was decided last week. Perhaps there will be a change. I have no desire to make it appear that the bill has anything in it that it does not have. It expressly excludes the provisions of the Norris-LaGuardia Act.

Mr. ERVIN. I refer the Senator to page 39, section 707, subsection (A). Does that provision not specify that the proceeding can be set in motion on a written charge of one member of the Commission?

Mr. CASE. Yes.

Mr. ERVIN. Does it not provide, on the following page, page 40, beginning

at line 6, and running down to line 14, that two of the Commissioners can conduct an investigation and reach a decision?

It provides:

If two or more members of the Commission shall determine, after such investigation, that there is reasonable cause to believe that the charge is true, * * *

Does that not imply that two members of the Commission can conduct a hearing and make the decision of the Commission?

Mr. CASE. It means what it says. It provides that whenever a charge is filed by a person in writing, it must be under oath or be made by a member of the Commission. Presumably, in that event, it would not have to be under oath. The Commission must then furnish the employer, employment agency, or labor organization with a copy of the charge, and investigate it.

Then if two or more members of the Commission determine after completion of the investigation that there is reasonable cause to believe that the charge is true—which sounds like an indictment, and not a determination—the Commission endeavors to eliminate the unlawful practice by informal methods of conference, conciliation, and persuasion, and obtain an agreement that the man will stop the practice.

Mr. ERVIN. But does not the Senator from New Jersey agree that two members of the Commission can act for the Commission?

Mr. CASE. Only to the extent stated.

Mr. ERVIN. There being no limitation in the bill as to the identity of the two Commissioners who are to judge the truthfulness of the charge, the one who prefers the charge originally may be one of those passing judgment.

Mr. CASE. Would the Senator repeat that?

Mr. ERVIN. There being no limitation whatever as to the Commissioners who are to act as judges, the bill would permit the Commissioner who made the charge to sit as one of the judges to determine the truth or falsity of the charge?

Mr. CASE. I see no reason in the bill itself why the member who makes the charge should not be one of the two who passes upon the question of whether there is reasonable cause to believe it is true and therefore to warrant conciliation efforts.

Mr. ERVIN. The Supreme Court declared in the case of *Wong Yang Sung* v. *McGrath*, 339 U.S. 33, 41 that Congress adopted the Administrative Procedure Act to cure or minimize certain administrative ills. I invite the Senator's attention to the Court's statement of one of these ills, as set out on page 41.

More fundamental, however, was the purpose to curtail and change the practice of embodying in one person or agency the duties of prosecutor and judge.

Does not the Senator from New Jersey think that an official who makes a charge and thereby becomes a prosecutor ought to be barred from passing upon the truth or falsity of his own charge?

Mr. CASE. The Senator insists upon discussing this question in terms of a criminal case. This is not a criminal case. This is an administrative proceeding based, first, upon inquiry, examinations, reports, and an administrative decision by two members, one of whom may have said in the beginning that the case ought to be looked into. We are talking about an administrative agency attempting to straighten the matter out between the parties. If the Commission thinks it is desirable in the interest of justice, only then would the Commission have the right to start an action.

I think it is clear that before any action can be started, it must be by a decision of a majority of the Commission, and not by a determination by two Commission members.

If this is not far away from the rationale of the Supreme Court decision to which the Senator referred, then I do not know what could be.

Mr. ERVIN. The decision also cites from the committee report these words, which appear on page 42:

The same men are obliged to serve both as prosecutors and as judges.

Mr. CASE. But there are no judges here.

Mr. ERVIN. The quotation proceeds:

This not only undermines judicial fairness; it weakens public confidence in that fairness.

Mr. CASE. I agree. It would, if it were so. But it is not so.

Mr. ERVIN. Does the Senator agree that it is up to the Commission to determine whether there will be any suit in any court to enforce its decision?

Mr. CASE. The full Commission must decide whether to bring a suit, which is not, however, to enforce its decision for it has no power to make a determination of violation.

Mr. ERVIN. Where does the bill provide that the full Commission must decide?

Mr. CASE. The bill provides that the Commission must decide. If it means less than a majority of the Commission, it so states. This is elementary.

Mr. ERVIN. It provides:

If two or more members of the Commission shall determine, after such investigation, that there is reasonable cause to believe that the charge is true, the Commission shall endeavor—

The bill authorizes the Commission to act through two of its members?

Mr. CASE. No. I think it is perfectly clear that what happens is that either an aggrieved party or a single member of the Commission by a simple writing may file a charge. Investigation is automatic on the filing of the complaint. On completion of the investigation the Commission by two or more votes, and one of those two may be that of the Commissioner who filed the charge in the first place, decides whether the situation warrants endeavors to correct the situation by conciliation, by persuasion, by a conference, or any informal action in an effort to settle the matter.

Mr. ERVIN. It says:

If two or more members of the Commission shall determine, after such investigation, that there is reasonable cause to believe that the charge is true, the Commission shall—

The bill says nothing about the identity of the Commissioners who are to make the investigations to determine whether the charge is true. It merely specifies that two or more Commissioners shall make the investigation and decision. As a consequence, the Commission acts through two Commissioners, one of whom may be the very man who preferred the charge in the first place.

Mr. CASE. I am sorry. We cannot disagree about plain language, and this language is not very abtruse about what happens. One man can start it off by a charge. Then, following an investigation, two members may decide there is reasonable cause to believe there has been discrimination. The Commission then attempts to settle the matter by conciliation and persuasion.

Mr. ERVIN. Yes. The decision is to be made by two Commissioners, one of whom may be the man who preferred the charge. I think it is expecting too much of human nature to believe that a public official can make a charge and then be depended upon to make a proper determination of whether the charge is true or false.

Mr. CASE. It requires a majority of the Commission to decide whether to prosecute; that is, to bring an action. A majority of the Commission must do this. The other steps relate to the conciliation and persuasive functions of the Commission.

Mr. ERVIN. Will the Senator point out to me any words which provide that the truth or falsity of the charge shall be investigated by the full Commission, as distinguished from two Commissioners?

Mr. CASE. The language is very clear in a separate section from the section dealing with conciliation. I refer to section (b) at the bottom of page 40.

If the Commission has failed to effect the elimination of an unlawful practice and to obtain voluntary compliance with this title, the Commission, if it determines there is reasonable cause to believe the respondent has engaged in, or is engaging in, an unlawful employment practice, shall, within 90 days, bring a civil action to prevent the respondent from engaging in such unlawful practice.

Mr. ERVIN. What is there to prevent the Commission from basing its conclusion solely upon the investigation and decision made by the two Commissioners?

Mr. CASE. The Senator is suggesting pure malevolence on the part of two individuals who are employees of the United States. I can see no reason for that. It is similar to saying that a single prosecutor, on his own motion, if he does not like the color of a man's eyes, can determine to bring an action.

Mr. ERVIN. That may not disturb the Senator from New Jersey. It does disturb me. I wish I had time to read all of the opinion of the court in the Wong Yang Sung case and the statements of the congressional committee quoted in it. The quoted statements certainly state that it is essential to the proper administration of justice that the functions

of prosecutor and judge should be separated.

Mr. CASE. And I agree with that, right down to the ground; and this title does not involve any violation of that principle, because the function of the judges are exercised only by the courts of the Nation, and would not be exercised by the Commission, which would be only a party plaintiff, without the benefit of any presumption of validity attached to any finding it might make. It would have to start de novo, and would have to prove its case by a preponderance of the evidence introduced into the court record.

Mr. ERVIN. But the question of whether the proceedings would ever go into court depends on the Commission's decision——

Mr. CASE. Just as the question of whether a case will be brought in court depends on the decision of the prosecutor, if he proceeds by way of presentation, rather than by indictment.

Mr. ERVIN. I invite the Senator's attention to the text of subsection (c), on page 41:

> (c) If the Commission has failed or declined to bring a civil action within the time required under subsection (b), the person claiming to be aggrieved may, if one member of the Commission gives permission in writing, bring a civil action to obtain relief as provided in subsection (e).

My question is this: Could not the entire Commission, after investigating the matter, find there is absolutely no merit whatever in the claim that there had been discrimination; and yet a single Commissioner could give the claimant authority to go into court and to harass the employer by filing a suit?

Mr. CASE. I think all the Senator from North Carolina is saying is that the bill would prohibit the harassment of employers, except in the unusual situation in which permission was given by a member of the Federal agency. Ordinarily, one who violates a law is subject to being sued, without let or hindrance, by the individual affected.

But the bill would not allow a plaintiff to go into court in a case of this sort—to file suit against an employer—unless he obtained the permission of one member of the Commission to bring the suit. Generally speaking, no one can tell a citizen whether he can or cannot bring a suit; a citizen who feels that he has been aggrieved is the one to make the decision as to whether he will sue.

Mr. ERVIN. But is it not true that, under the bill, one member of the Commission can grant a claimant the right to sue, notwithstanding the fact that all the Commissioners had decided there was no merit to the claim?

Mr. CASE. They might have decided that, or they might have decided that it would not serve the public interest. They might have reached the conclusion that they did not have enough time to deal with such a suit. On the other hand, they might be very happy to have the suit brought. Generally in other areas of law, the decision of only one man—the plaintiff—is required, in order to have a suit brought; but under the bill, one more man would be involved—in other words, the permission of one member of the Commission—before the suit could be brought.

Mr. ERVIN. But I point out that no suit could be brought at all on such a cause of action under existing Federal law.

Mr. CASE. Well, Mr. President, if the Senator from North Carolina wants Congress to pass a law to deal with discrimination——

Mr. ERVIN. I do not want such a law passed by Congress.

Mr. CASE. I know the Senator from North Carolina does not want it.

Mr. ERVIN. I want those who are engaged in business to be allowed to determine whom they shall employ. They are far better qualified than the Federal Government to know the skills they are seeking to obtain for their business. I believe in free enterprise—not bureaucratic control of business.

The pending bill would remove the power from employers to hire, promote, and discharge their own employees.

Mr. CASE. The Senator from North Carolina knows that is not correct. He knows that the bill provides only that such a decision could not be made on the ground of the color of a man's skin or his national origin or his creed. If the Senator from North Carolina wants to take issue on that basis, I am perfectly willing to take issue on it, and to let the public decide. But let us not fool ourselves in regard to what the bill would do.

Mr. ERVIN. But certainly, on the basis of the provisions of the bill, those rights would be taken away from employers.

Mr. CASE. The bill would only make it illegal for an employer to discriminate on the ground of the color of a man's skin or his national origin or creed.

Mr. ERVIN. The bill would vest that power in a Government employee who might not know what was the top of the machine and what was the bottom of the machine at which the employee he was selecting would work.

Mr. CASE. I suggest that the bill would take effect only when the employer had knowingly discriminated against an employee or a prospective employee because of race, color of the skin, creed, or national origin; and I think it not unreasonable for the bill to provide that the Commission can intervene when such a situation has been proven to exist for years throughout the Nation.

I wonder whether the Senator from North Carolina has completed his questions—because other Senators wish to speak.

Mr. ERVIN. I should like to ask a few more questions.

The Senator from Pennsylvania [Mr. CLARK] had to leave after he spoke about the purported constitutionality of the bill—and, in particular, title II. Inasmuch as he had to leave the Chamber, I should like to ask the Senator from New Jersey to turn to title II, the so-called public accommodations title.

Mr. CASE. I shall do so, although I am familiar with it only in a general way, and am not as familiar with it as I hope I am with title VII. However, I shall be glad to discuss title II as far as I can.

Mr. ERVIN. Does not that title state, in effect, that a motion picture house, theater, concert hall, sports arena, stadium, or other place of exhibition or entertainment is covered by the bill if "it customarily presents films, performances, athletic teams, exhibitions, or other sources of entertainment which move in commerce," that is, in interstate commerce?

Mr. CASE. I have not yet found that part of the title; but I assume that the Senator from North Carolina has been reading from it.

Mr. ERVIN. I should like to ask the Senator from New Jersey how he can reconcile the constitutionality of that provision with the decisions holding that the business of acting in a theater is purely a State affair, and the mere fact that the actors are obliged to cross State lines, does not change the character of the service.

The cases sustaining that are *Hart* v. *B. F. Keith Vaudeville Exchange*, 12 Fed. 2d 341, 344; *Pappas* v. *American Guild of Variety Artists*, 125 F. Supp. 343, a district court decision from Illinois; and *San Carlo Opera Co.* v. *Conley*, 72 F. Supp. 825, a district court decision, which was affirmed by the court of appeals. The San Carlo Opera Co. case held that an agreement between an operatic tenor and an opera company was not one arising out of a transaction in interstate commerce, even though the tenor would be required to travel from State to State to consummate the agreement.

Mr. CASE. The bill is quite specific and limited. It states that included among places of public accommodation shall be:

> (3) any motion picture house, theater, concert hall, sports arena, stadium or other place of exhibition or entertainment—
>
> If—
>
> it customarily presents films, performances, athletic teams, exhibitions, or other sources of entertainment which move in commerce.

So I believe it is quite clear that under the decisions—limited as the bill is—this title is within the role of the Federal power, and, specifically, is under the commerce clause.

Mr. ERVIN. I wonder what case holds that.

Mr. CASE. I would be happy to obtain a list of the decisions of the Supreme Court on that point. They exist—believe me; and I shall be happy to see that they are placed in the RECORD at the first appropriate opportunity. I do not happen to have them under my thumb; but I know they exist.

Mr. ERVIN. Frankly, I should like to see a case which sustains that point. I have diligently sought for weeks to find a case which holds that a theater can be regulated by Congress simply because it presents plays in which the actors have moved across State lines. Every case I have found holds exactly the contrary.

Mr. CASE. I would be happy indeed to supply the Senator with the authorities for that particular section. I do

not have them immediately at hand. I was not prepared to discuss the section in that detail. I am confident that, on the basis of the legal memorandum which I received from the Department of Justice, which makes the statement that such cases exist, I believe they do exist.

Mr. ERVIN. If the memorandum of the Department of Justice made that statement, I would suggest that the Senator not rely too much on it. I found four misstatements concerning constitutional principles and Supreme Court decisions on only three of the pages of that brief. As a consequence, I do not place credence in the brief.

For example, the Department of Justice stated in the brief that in the Civil Rights Cases of 1883, the Supreme Court tied its decision exclusively to the 14th amendment. The decision itself shows that the Court considered whether the act in controversy could be sustained on the basis of the commerce clause, the 13th amendment, or the 14th amendment, and adjudged it to be invalid under all of them.

Mr. CASE. I shall not get into an argument with the Senator from North Carolina on that score. I would be happy to see that the Senator's complaints are transmitted, if they are not already in the hands of the Department, and that the answers be given.

Mr. ERVIN. The Senator from New Jersey has been very indulgent and patient. I shall not tax his patience much longer.

Mr. CASE. It is always a joy to discuss issues with the Senator from North Carolina, for he is not often—though generally in the area of civil rights he is—completely mistaken about things.

Mr. ERVIN. I reciprocate the compliment of the Senator from New Jersey by saying that the Senator unfortunately does not entertain the same sound views on these particular issues that I do.

I should like to ask the Senator from New Jersey whether title II does not provide that restaurants would be covered if a substantial part of the food they serve has moved in interstate commerce.

Mr. CASE. Let us look at the applicable section and see exactly what it provides. I am sure that the Senator correctly states the provision.

Mr. ERVIN. I refer to page 7, lines 16, 17, and 18.

Mr. CASE. Yes. Section (c) states:

> The operations of an establishment affect commerce within the meaning of this title if * * * (b), it serves or offers to serve interstate travelers or a substantial portion of the food which it serves, or gasoline or other products which it sells, has moved in commerce.

That is the language of the bill.

Mr. ERVIN. I should like to call to the attention of the Senator the case of Commonwealth against Di Meglio.

Mr. CASE. The Senator from New Jersey will read the case in the RECORD. He is not very good at listening to the citation of cases.

Mr. ERVIN. The decision was handed down by the Pennsylvania Superior Court and is reported in 179 Pennsylvania Superior Court, page 472, and 117 Atlantic 2d, page 767. In that case the defendant was operating a restaurant inside the State of Pennsylvania. He had obtained his food from New York. Since it had been shipped into Pennsylvania from New York, it had moved in interstate commerce. The defendant was indicted for adding artificial coloring to the food when he cooked it and offered it for sale in his restaurant in violation of Pennsylvania law. He urged a defense that he was engaged in interstate commerce, because the food came from New York and had moved in interstate commerce.

The court rejected the contention in these words:

> [7, 8] It should be further noted that the Pennsylvania legislation does not prevent the shipping into, or sale of the Jell-O product within, this Commonwealth. Indeed, the product is freely sold for home use throughout the State. If the ingredients alone had been held for sale after shipment in interstate commerce the situation would be entirely different. However, the addition of egg yolks, water and pie crust makes a completely different and new product. The Jell-O filling thus loses its interstate characteristic and becomes entirely intrastate in every respect. In *Parrott & Co.* v. *Benson*, 114 Wash. 117, 194 P. 986, 988, the court said: "the act we are now considering can only operate after the eggs have lost their status as articles of foreign or interstate commerce, and have become a part of the great mass of domestic property as completely as though produced within our borders. Surely when an egg reaches a restaurant, hotel, or bakery and is taken from the package, cooked or mixed with other ingredients, and served to the guest or purchaser as food, it requires no argument or authority to establish beyond cavil that it is no longer an article of foreign commerce over which Congress alone has control; otherwise no article once brought from without into the State, no matter how changed by any conceivable process, could ever become subject to State legislation; but authorities are as numerous as the question is simple."

I should like to ask the Senator from New Jersey how he can reconcile the ruling in that case with the language of the bill providing that a restaurant is covered by the bill if a substantial part of the food it serves has moved in interstate commerce.

Mr. CASE. Yes. I hold in my hand an opinion which I am sure has been placed in the RECORD once, and perhaps several times. It is dated Sunday, April 5.

Mr. ERVIN. Is that a letter or a decision?

Mr. CASE. I am sorry. Does the Senator wish me to respond? Twenty of the Nation's outstanding lawyers, supporting the constitutionality of the civil rights bill, on the second page of the mimeographed text which I hold in my hand, stated a number of precedents for the exercise of Federal power under the commerce clause in regard to, for example, restaurants in a bus terminal serving travelers in interstate commerce. There is no question about that, of course.

We do not disagree with the law in respect to local establishments preparing or supplying food for consumption on interstate carriers.

The memorandum refers to restraints of trade on the manner or extent of the local exhibition of motion pictures, which is very close to the question which the Senator from North Carolina raised with the Senator from New Jersey earlier. There are in the memorandum to which I have referred a number of citations from the U.S. Supreme Court. All such activities as boxing matches and stage attractions, predicated on the commerce clause, have been subject to Federal legislation. The memorandum states:

> The supporting theory is that the exhibitions, and those who take part in them, move from State to State and the particular restraint would limit the freedom or the volume of interstate transactions.
>
> By similar reasoning, the courts have sustained the application of the antitrust laws to retail establishments serving people or selling goods that move in interstate commerce. (*United States* v. *Frankfort Distilleries*, 324 U.S. 293, decided in 1945.)

Mr. ERVIN. What act is that under?

Mr. CASE. That is under the antitrust laws. The rationale is that it narrows the markets for products moving in interstate commerce. By discrimination the market for products of establishments in the nature of those which the Senator is discussing would be narrowed and as the distinguished lawyers who signed the opinion stated—and it seems to me that they make great sense—the Federal power under the commerce clause adequately covers the situation.

Mr. ERVIN. Will the Senator state the other cases which he cited? I am rather curious about them.

Mr. CASE. In the boxing case the Court expressly said that boxing itself was a local transaction. The boxing case came within the purview of the Sherman Act because the evidence showed that television pictures of the boxing match were shown all over the country. In those cases they made the coverage by the commerce clause depend, not on the boxing, not on the exhibition at the place, but upon what was done in transmitting pictures from one State to another.

Mr. ERVIN. Those cases have no application whatever to the words of the bill, which deal with simple exhibitions of motion picture films, simple boxing matches, and the like. The cases mentioned in the letter relate to exceedingly complex matters, involving such things as radio broadcasts and TV telecasts crossing State lines at the time of the commission of the alleged violations of the Sherman Act.

Mr. CASE. I point out to the Senator that the bill itself does tie these activities into interstate commerce by the very section we are talking about. It contains the language:

> Customarily presents films, performances, athletic teams, exhibitions, or other sources of entertainment which move in commerce.

Mr. ERVIN. That is the point. It makes coverage of the proposed act depend on whether these things have merely moved in interstate commerce. The courts hold that mere exhibitions or entertainments are local matters. They have so held in every case where the exhibition or entertainment is uncom-

plicated with activities such as their transmission across State lines by radio or TV. The courts hold that boxing matches are local matters unless complicated by contemporaneous transmission by radio or TV across State lines. They hold that the mere showing of a film is a local affair not subject to the antitrust act. I say this with all due respect to the learned gentlemen who may have signed that letter.

Mr. CASE. The Senator is not talking about the bill now, because the bill requires that these performances or performers must move in interstate commerce.

Mr. ERVIN. If I had time I could call the Senator's attention to 25 cases which adjudge that that fact does not make any difference. The exhibition of a moving picture by a local theater is a local matter and is not subject to congressional regulation, even though the film may have moved in interstate commerce. The same observation applies to boxing where there is no transmission of it in interstate commerce by radio or TV.

Mr. CASE. If the Senator from New Jersey ever has a chance, he will be glad to match the Senator from North Carolina in a test of the constitutionality of this section after the Congress has passed it. I am certain the Senator will find that the courts will uphold the section as coming within the commerce clause, and also within the provisions of the 14th amendment.

Mr. ERVIN. The 14th amendment?

Mr. CASE. I did not mean to start the Senator off. He can speak of the 14th amendment on his own time. I am about to surrender the floor. I think I have been fairly indulgent. It has been nothing but the utmost pleasure to discuss the matter with the Senator from North Carolina. I am prepared to yield the floor, unless he has questions to ask.

Mr. ERVIN. I have only one more.

Mr. CASE. How many?

Mr. ERVIN. One more.

Mr. CASE. Very well.

Mr. ERVIN. I call the Senator's attention——

Mr. CASE. This is a question, of course.

Mr. ERVIN. I call the Senator's attention to one thing——

Mr. CASE. Mr. President, I ask unanimous consent that I may be allowed to permit the Senator from North Carolina to call something to my attention, without my losing the floor, or having the statement counted as another speech.

Mr. ERVIN. Does not the bill provide that a gasoline station is covered if the products it sells have moved in interstate commerce?

Mr. CASE. Let us take a look at that.

Mr. ERVIN. I refer to lines 17 and 18 on page 7.

Mr. CASE. The Senator is referring to subsection (b)(2), which includes any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, plus gasoline sales.

Mr. ERVIN. I wish to call attention to the case of State against Hobson, a Delaware case, reported in 83 Atlantic (2d) 846, wherein it is stated:

> Defendant asserts that in selling gasoline at retail he is engaged in interstate commerce and that the restrictive provisions of the act of June 5—

That is, the State act—

> unduly burden that commerce, and that therefore the Act is in conflict with the commerce clause of the Federal Constitution and is void.
>
> We think there is no substance in the argument. The retail sale of gasoline from filling stations in quantities to suit the purchaser does not constitute interstate commerce, though all the gasoline that is dealt in must be brought from other States * * * In *United States v. Mills, D. C.*, 7 F. Supp. 547, 549, Judge Chesnut said: "Indeed it would be difficult to state an activity more clearly involving only intrastate commerce than the business of local sales of gasoline from filling stations."

Mr. CASE. I think there are precluded gasoline stations which operate solely by sales of gasoline, if it was obtained within the State and was consumed in the State. That would be intrastate commerce. It is when the gasoline is obtained from outside the State or moves in or affects interstate commerce that the act would apply. I am satisfied that that is constitutional.

Mr. ERVIN. The case I have just cited states:

> The retail sale of gasoline from filling stations in quantities to suit the purchaser does not constitute interstate commerce, though all the gasoline that is dealt in must be brought from other States.

Mr. CASE. It may not itself constitute interstate commerce, but it still has the kind of effect on interstate commerce that justifies the intervention of the Federal power.

Mr. ERVIN. If I had not assured the Senator that I was not going to ask him any more questions——

Mr. CASE. May I suggest that he put the material he has in the RECORD?

I yield the floor.

Mr. ERVIN. Will the Senator let me thank him for his indulgence?

Mr. CASE. The only reason I do not permit the Senator to ask me any more questions is that I am afraid my good friend will start off again. I thank the Senator for his courtesy and his good spirit.

I yield the floor.

Mr. ELLENDER. Mr. President, on two previous occasions I discussed title I of the bill, as well as title II.

As to title I, I think I made it plain that any good lawyer who had studied title I would come to the conclusion that an effort is being made, by the enactment of the bill the Senate is now considering, to give Congress the power to provide qualifications for voting. On this point, it seems clear to me that, under article I, section 2, of the Constitution, the right to spell out qualifications remains in the States, and any effort made by the Congress that would in any manner give to the Congress the right to fix qualifications is unconstitutional.

I contend that under paragraph (A)(1)(B) of the pending bill, the moment we give to the Federal Government the right to determine what errors or omissions are made, we transfer to Congress the unconstitutional right to spell out qualifications.

By the same token, under paragraph (C), the bill makes an attempt to state what educational qualifications are necessary. Again Congress would trample on article I, section 2, of the Constitution.

Mr. President, in regard to title II, "Public Accommodations," which I discussed previously, section 201(b) declares:

> Each of the following establishments which serve the public is a place of public accommodations within the meaning of this title if its operations affect commerce, or if discrimination or segregation by it is supported by State action.

Following this subsection there is a list of establishments which are included within the act.

Subsection (C) of the same section (201) attempts to define the term "affects commerce," by stating if it serves or offers to serve interstate travelers, or a substantial portion of the food which it serves, or gasoline or other products which it sells has moved in commerce. The drafters of this bill are attempting to bring the control of public accommodations under the Federal Government by (1) use of the interstate commerce clause, and (2), the equal protection provision of the 14th amendment, which prohibits State action in discrimination.

It has been noted in previous Supreme Court cases that the Federal Government could regulate purely interstate activities through the Interstate Commerce Commission, the Railway Act and the like. This bill attempts to enlarge the regulatory power of the Government by regulating purely local business establishments under the guise of substantial usage of products which have moved in interstate commerce. No doubt the Federal Government can regulate interstate commerce. But the attempt to regulate purely local business establishments with no interstate business is simply an unconstitutional seizure of power.

Obviously, "a substantial portion of the food" which any purely local business serves would have at one time or another moved in commerce. It was never intended that the Federal Government should regulate purely local commerce, and certainly it was never intended that the Federal Government should regulate social relations by the use of the commerce clause.

Since the adoption of the Constitution, it has been steadily acknowledged by the Supreme Court that the States could regulate local commerce which did not "unduly burden" interstate commerce. The States have always had the right to enact any legislation within their competence so long as it did not unduly burden interstate commerce. This right has been recognized as recently as April 22, 1963, in the case of *Colorado Anti-Discrimination Commission, et al.*, v. *Continental Air Lines, Inc.*, 372 U.S. 714 (1963).

In that case, the Supreme Court held that the Colorado Anti-Discrimination

Commission could constitutionally prohibit Continental Air Lines from discriminating against a Negro aircraft pilot by refusing to employ him because of his color. Unquestionably, this Colorado statute affected interstate commerce in that it regulated employees of interstate carriers. Justice Hugo Black, speaking for the Supreme Court, held that this was not an undue burden on interstate commerce.

It seems clear that the States can pass laws affecting commerce so long as they do not unduly burden commerce among the States. It is equally clear that the Federal Government cannot regulate commerce which is purely local in character, but H.R. 7152 attempts to extend and expand the power of the Federal Government even in this remote area by saying that a substantial portion of the products used have moved in interstate commerce.

In the case of *Crandall* v. *Nevada*, 73 U.S. 35 (1867), the Supreme Court held that a Nevada law charging a $1 tax on each person leaving that State by railroad, stagecoach, or other vehicle or passing through the State, to be an unconstitutional restriction upon the right of U.S. citizens to go from one Federal office to another, such as the seats of government, land offices, ports of entry, and so forth. The Court specifically refused to hold the State law unconstitutional under the commerce clause because it did not conflict with any act of Congress, and also it was not a regulation of commerce and the Court did not wish to consider people as imports.

In the case of *Edwards* v. *California*, 314 U.S. 160 (1941), the Supreme Court held a California law unconstitutional which made it a criminal offense to bring indigent persons into the State of California. It is clear in this case that the exclusion of people from the State because of their economic condition is an undue burden upon interstate commerce and is, therefore, unconstitutional.

These cases are cited to show what is interstate commerce and what is not. In no sense can the operation of a local business be considered to affect or burden interstate commerce.

There has been much said in the debate on H.R. 7152 that segregation has a depressing effect upon the national economy. The Senator from Minnesota said on March 30, that the existence of separate facilities had cost the United States billions of dollars. This is not substantiated in any way and an analysis of the marketing and purchasing customs affecting both races would show that no business has been curtailed or stifled by these practices. If a person is refused service in one store, he simply goes to another and purchases the same product. Actually, if a person could not purchase a particular item anywhere in his town, he could order it from the mail order department stores. Of course, this has never happened—that a person could not acquire any property he wished in any town in the United States—but this merely shows that there is absolutely no effect upon commerce and business in the United States even if one agreed with the proponents of this legislation.

In the section of title II which would cover rooming houses with more than five rooms, there is a specific provision excluding rooming houses of five rooms and less where the proprietor lives in the residence. Certainly, there could be no effect on commerce whether there are five rooms or six rooms, and the only reason for inserting this provision into the bill was supposedly on grounds of morality. As it has been said, if it is immoral for Conrad Hilton to discriminate, then it is also immoral for Mrs. Murphy to discriminate on the basis of race. The truth of the matter is that this provision was drafted by cynical persons who state that there are more Mrs. Murphys who vote than Conrad Hiltons.

I now discuss discrimination in public accommodations in the part of title II, section 201, subsection (D), where it declares:

> Discrimination or segregation by an establishment is supported by State action within the meaning of this title if such discrimination or segregation (1) is carried on under color of any law, statute, ordinance or regulation; or (2) is carried on under color of any custom or usage required or enforced by officials of the State or political subdivision thereof; or (3) is required by action of a State or political subdivision thereof.

It is clear that the persons who drafted this subsection were attempting to come within the constitutional provisions of the due process clause of the 14th amendment which prohibits a State from discriminating against persons on the basis of race. Note the language of this subsection—it says that discrimination is State action when it is carried on under color of any custom or usage. By what stretch of the imagination can custom and usage be construed as State action? If Congress were to declare it so, it would not be so. Congress can no more declare custom to be State action than it can declare a mule to be a cow.

I fully realize that the constitutional requirement of "State action" has suffered serious erosion at the hands of the Supreme Court in recent years, but even a majority of that body of zealous advocates of equality have maintained the requirement of State action and have dismissed the contention that custom and usage would constitute such State action.

In the case of *Garner* v. *Louisiana*, 368 U.S. 157 (1961), the Supreme Court refused to consider custom and usage as being equivalent to State action. The requirement for State action is a constitutional provision and cannot be expanded by legislation any more than it can be by judicial interpretation.

The Garner case dealt with sit-ins in Baton Rouge in which Negroes were refused service at lunch counters in a department store. The refusal to serve these people was purely a private act and in no way employed State action. The Court acknowledged this fact, and although the case was reversed on other grounds, it refused to say that custom constituted State action.

The Supreme Court has for many years had pushed on it the argument that private acts are State acts where there is a custom of separate facilities. Even a minority of the Supreme Court has been infected with this type of logic. Justice Douglas did go so far as to say that custom or license or business "affected with a public interest" constitutes State action. That these are contentions contrary to fact does not seem to affect him or the drafters of H.R. 7152. A penetrating analysis of the Garner case and the confused thinking concerning State action, is contained in the Stanford Law Review, volume 14, page 762.

I ask unanimous consent that excerpts from the article may be printed in the RECORD at this point in my remarks. I shall not attempt to read them.

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

COMMENT: SIT-INS AND STATE ACTION—MR. JUSTICE DOUGLAS, CONCURRING

(Kenneth L. Karst and William W. Van Alstyne)

Last December the Supreme Court decided three "sit-in" cases. In *Garner* v. *Louisiana*,[1] the Court struck down disturbing-the-peace convictions of 16 young Negroes whose only allegedly criminal activity was to sit at "white" lunch counters in a department store, a drugstore, and a bus terminal, all in Baton Rouge. The opinion of the Chief Justice for the majority was a disappointment for those who had hoped for a sweeping expansion of the doctrine of State action under the 14th amendment. It rested on grounds which were as drab as they are now familiar:

"In the view we take of the cases we find it unnecessary to reach the broader constitutional questions presented, and in accordance with our practice not to formulate a rule of constitutional law broader than is required by the precise facts presented in the record, for the reasons hereinafter stated, we hold that the convictions in these cases are so totally devoid of evidentiary support as to render them unconstitutional under the due process clause of the 14th amendment."[2]

With a citation to *Thompson* v. *City of Louisville*,[3] the Court's constitutional analysis was over; it remained to examine the Louisiana statute to determine the elements of the crime, and to demonstrate by references to the several records that the convictions did not "rest upon any evidence which would support a finding that the petitioners' acts caused a disturbance of the peace."[4]

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[1] 368 U.S. 157 (1961). The Garner case was argued and decided along with *Briscoe* v. *Louisiana* and *Hoston* v. *Louisiana*. In Garner, two Negro students from Southern University "sat in" a drugstore at its lunch counter, after one of them had just bought an umbrella elsewhere in the store. The store served both Negroes and whites, but segregated the races in its seating arrangements. In Briscoe, seven Negro students "sat in" the restaurant in the local Greyhound bus terminal, which also maintained segregated seating. In Hoston, seven Negro students "sat in" a Kress department store at the "white" lunch counter, and did not change seats when they were told that they could be served at the counter across the aisle. Each of the students was arrested, see text accompanying note 28 infra, tried, and convicted for disturbance of the peace; each defendant was "sentenced to imprisonment for 4 months, 3 months of which would be suspended upon the payment of a fine of $100." 368 U.S. at 161.

[2] Id. at 163.

[3] 362 U.S. 199 (1960).

[4] 368 U.S. at 163–164.

But there was something for everyone in the Garner case. Those who wanted an opinion on the broader constitutional questions got one from Mr. Justice Douglas. Because his reading of the Louisiana Supreme Court opinions interpreting the statute required the conclusion that the accused Negroes had committed a violation, he reached the question of State action. While prediction is risky, it seems likely that if the Garner case is remembered at all, it will be remembered for Mr. Justice Douglas' concurring opinion.

The traditional nature of the opinion's opening gambit does not permit adequate psychological defense against the dazzling moves which are to come:

"It is, of course, State action that is prohibited by the 14th amendment, not the actions of individuals." [5]

Of course. The reader may settle back, awaiting an extension on the mechanics of *Shelley* v. *Kraemer*,[6] the arrests were made by policemen, and the convictions were adjudged by State courts. But Mr. Justice Douglas, having lost the last time he tried such a mechanical extension,[7] does not even cite the *Shelley* case. Instead, the State action requirement is to be killed with a new kind of kiss. Three seemingly independent grounds are asserted for holding that the private discrimination on which these convictions are based has satisfied the requirement of State action: (a) The customs of Louisiana, reinforced by the State's general legal patterns, maintain racial discrimination; (b) the restaurant business is "affected with a public interest," and thus subject to the regulatory power of the State; and, in fact, (c) the State, through its municipalities, had licensed these restaurants.

The opinion thus discards the substance of the State action limitation while maintaining it as a verbal facade. There is, of course, room for argument that the principle of State action has outlived any usefulness it ever had; such arguments have been made, off and on, ever since the adoption of the 14th and 15th amendments. Occasionally it is said that there is no justification for a traditional State action limitation when certain interests are at stake, as in the voting [8] or lynching [9] cases. Others have urged a more thoroughgoing rejection of the requirement of State action,[10] and perhaps the Court is listening. *Griffin* v. *Illinois*,[11] while obviously distinguishable, certainly looks in the direction of an affirmative State duty to guarantee equality.

If the State action requirement is not discarded, however, it seems unfortunate to assume that it can be satisfied by the skillful use of slogans. If the State action requirement is kept, no doubt the reason will be that it serves—or should serve—real values of constitutional proportion. Even in a unitary government, some principle of "governmental action" would be desirable as a protection of individual freedom of choice; the national interest in racial equality, for example, should not prevent an individual attorney from using racial criteria—or any arbitrary criteria—in the selection of a partner.[12] When an individual's actions strongly affect the interests of many people, we may apply constitutional limits to his freedom of action, on the ground that the impact of his conduct in effect resembles that of governmental conduct. Something like this consideration probably stands behind Mr. Justice Douglas' first ground, based on community customs. But when government acts, we do not worry about subordinating its freedom of action; government must justify its conduct, and cannot act arbitrarily. The Federal system adds another consideration which supports a requirement of State action before constitutional limits are to be applied. Such a doctrine decentralizes both the administration of nationally adopted standards and the effective decision whether to promote or retard various competing policies.

The most unsettling aspect of Mr. Justice Douglas' concurring opinion in the Garner case is that it ignores these interests, and lends support to treatment of the State action requirement as a gimmick. State action is once again viewed as a kind of conceptual hook; once the hook is found or invented, the racially discriminatory conduct is invalid, without further analysis.

Mr. ELLENDER. Mr. President, the originators of the public accommodations section of the bill are trying to bring purely local and private establishments under Federal control and regulation on the shaky ground of the commerce clause and the due process clause of the 14th amendment. The fact that they have combined these two constitutional provisions has in no way enhanced the constitutional validity of this title. One cannot add to or take away from the other; if the authority is not in the Constitution, combining several sections and/or articles, will not help support its legality.

I now come to a discussion of title III of the pending measure, which is supposedly aimed at the desegregation of public facilities, and as such it owes its parentage to——

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

Mr. ELLENDER. I yield.

Mr. MORTON. Would the Senator yield so that I might suggest the absence of a quorum, without losing his right to the floor?

Mr. ELLENDER. No; I would not consent to doing that. I would dislike to have Senators come to the Chamber and walk out.

Mr. MORTON. I realize that the Senator is making a very erudite speech. I believe he should have a bigger audience.

Mr. ELLENDER. I shall expect absent Senators to read about it tomorrow or the next day.

Title III owes its parentage to title III which was first submitted to Congress in 1957, and rejected in that same year. Those in favor of this provision may say that such is not the case—that title III as it appears in this bill has a much more narrow application than in the original 1957 act. I submit, however, that this section of the bill is just as strong and objectionable as any previously considered by the Congress.

For all their pious phrases, the advocates and drafters of this title have inserted a cute little gimmick in the manner of a "sleeper," whose language makes the powers envisioned in title III almost all inclusive. I shall address myself to that language later.

First, let me point out that under the terms of this new title III, whenever the Attorney General receives a complaint signed by an individual to the effect that said individual is being deprived of equal protection of the laws by being denied access to any facility which is State-connected, the Attorney General is authorized to bring a civil suit for relief in the name of the United States.

The Attorney General's power under this title would not be extended to the public school system, which is saved and put into a special category.

Now before the Attorney General can bring such suit, or institute proceedings in behalf of the United States, certain findings and certifications must be made by him. In all due respect, the requirements written into the bill with a view toward curtailing, to some degree, the power of this high office do not in actuality amount to much. In the hands of an unscrupulous, vindictive Attorney General—and I daresay there is no insurance that the Nation will not someday have one of this type—these so-called requirements would amount to nothing at all, as I shall point out in a moment. Indeed, it is possible they might come to represent less than nothing, for all practical purposes.

First, the Attorney General must certify, although the bill does not say to whom, that the signer, or signers of such complaints are unable, in his judgment, to initiate and maintain legal proceedings. He must further certify that the institution of such an action on his part will "materially further the public policy of the United States favoring the orderly progress of desegregation of public facilities." And here I pause to note that this is the first time I have heard

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[5] *Id.* at 177.

[6] 334 U.S. 1 (1948).

[7] *Black* v. *Cutter Labs.* (351 U.S. 292, 302–03 (1956)), (dissenting opinion).

[8] See *United States* v. *Given* (25 Fed. Cas. 1324 (No. 15210) (D. Del. 1873)); Pollack, *Racial Discrimination and Judicial Integrity: A Reply to Professor Wechsler*, 108 U. Pa. L. Rev. 1, 19–23 (1959). The case of *Terry* v. *Adams*, 345 U.S. 461 (1953), may—but need not—be explained on this broad ground.

[9] See *Ex parte Riggins*, (134 Fed. 404, 409 (N. Dak. Ala. 1904)); Hale, *Rights Under the 14th and 15th Amendments Against Injuries Inflicted by Private Individuals*, 6 Law, Guild Rev. 627, 638 (1946). For similar tendencies in other contexts, express or implied, see *Brewer* v. *Hoxie School Dist.* 238 F. 2d 91 (8th Cir. 1956), 70 Harv L., Rev. 1299 (1957) (education); Frank & Munro, *The Original Understanding of "Equal Protection of the Law,"* 50 Colum. L. Rev. 131 (1950) (land ownership or use; access to public accommodations).

[10] For a recent example, Mr. Justice Harlan's dissent in the *Civil Rights Cases*, 109 U.S. 3, 26–62 (1883), is echoed in Harris, The Quest for Equality 42 (1960): "The clause does more, therefore, than condemn unequal State laws or the unequal enforcement of equal laws; it requires the States to provide or afford equal protection of the laws. Neither a strenuous exercise in philology nor an examination of usage in 1866 is required to define the word 'deny.' It meant then within the context of the amendment what it meant long before and continues to mean, to refuse to grant, to withhold, to forbid access to, to refrain from giving some claim, right, or favor. Accordingly, the prohibition against the denial of equal protection of the laws is the same thing as a positive requirement which could read, 'Every State shall afford, or furnish, every person within its jurisdiction the equal protection of the laws'."

[11] 351 U.S. 12 (1956).

[12] We assume the absence of State fair employment legislation. Even in the absence of such legislation, the State action balance may not fall the same way in the case of a 60-man law firm which rejects Negro attorneys on racial grounds.

that our Government had any such public policy as this section of the bill attempts to promulgate. I believe it would be of much more value if the Attorney General were to seek the authority, and use it, to pursue a public policy of maintaining peace and tranquillity. But, of course, this wishful thinking, carried over from time gone by, is subject more to the laws of politics than to the laws of justice.

After the Attorney General has made the initial certification, he must deem the signer or signers unable to initiate and maintain legal proceedings because they are unable, either directly or through other interested persons or organizations, to bear the expense or obtain effective legal representation. This section of the bill is tantamount to giving official recognition to the NAACP as a legal aid society for the Federal Government, while at the same time, relieving it of any of the hardships litigants in court cases normally bear.

Actually, under these terms, the Government is turned into a legal aid society for these so-called interested organizations, which are then left free to go out and drum up more business for themselves.

In addition to finding the signers of the complaint unable to bear the expense of taking the case to court, the Attorney General may find that the instigation of such litigation would, and here I quote: "jeopardize the employment or economic standing of, or might result in injury or economic damage to, such person or persons, their families, or their property."

What a multitude of shields are erected to insure that the accuser in all these cases can remain unknown to the accused. How far we have come from the right of cross-examination which was once thought to be inherent virtually throughout our legal system.

But although all these findings must be made by the Attorney General, under the terms of title III, I cannot help arriving at the conclusion that all this language, and all the methods by which he may justify his action, in reality amount to nothing at all. This is another little gimmick, not the "sleeper" I referred to earlier, but a point of some consequence all the same.

I turn to the report on H.R. 7152, submitted by the House Judiciary Committee, and to page 22 of that section of the report prepared by the majority. Keep in mind that I have just been enumerating all the so-called certifications and findings that must be made by the Attorney General to allow him to institute proceedings under title III. Then on page 22 of the report, there is this sentence, tucked away deeply and innocently in one of the paragraphs. It states:

> It is not intended that determinations on which the Attorney General's certification is based should be reviewable.

In other words, Senators, all that fine language about what must be done has gone for naught. The basis for the certifications and findings are not to be made public. They are not subject to review, and for all practical purposes might as well not exist.

On the basis of unknown, unnamed, and perhaps nonexistent complainants, our local and State officials will suddenly find themselves facing the full array of the Attorney General's legal facilities, and at the same time, seriously hampered in efforts to erect a valid defense.

Thus far I have been discussing only section 301 of title III. It is section 302 of this title that we find the "sleeper" to which I earlier referred.

Although this title III supposedly deals with the desegregation of public facilities, section 302 reads as follows:

> Whenever an action has been commenced in any court of the United States seeking relief from the denial of equal protection of the laws on account of race, color, religion, or national origin, the Attorney General for, or in the name of the United States may intervene in such action. In such an action the United States shall be entitled to the same relief as if it had instituted the action.

I point out that the "laws" referred to in this section are not only those dealing with public facilities, but any laws which touch in any way whatsoever on the equal protection clause of the 14th amendment. The language would cover the gamut of any action brought before any court dealing with any facet of equal protection of the laws. The majority report issued by the House committee members affirm this to be the case, but as secretively as possible.

So, once again, we find a section of the bill being represented as something it is not. Far from relegating the authority of the Attorney General to intervene in suits only concerned with desegregation of public facilities, this would extend the right of intervention to the entire category of equal protection actions, which category is being expanded by the moment.

For all practical purposes, this section would make the so-called new title III synonymous with the powers which some in Congress sought to bestow on the Attorney General in 1957.

Once again we find a wolf in sheep's clothing. And once again we find extremely valid reasons why this bill should have been referred to a committee of the Senate for consideration and study, and a general enlightenment of its hidden features.

Other good reasons why this bill should have been referred to the appropriate Senate committee can be in title IV, which has reference to the desegregation of public education.

In all honesty, I have been expecting proposals as are to be found in title IV to be presented before the Congress long before now. The so-called liberals in Congress and in the country have long been complaining about the pace of desegregation across the South. I have noted that these same spokesmen have been conspicuously silent about the same slow pace of true desegregation in the public schools of all the great cities of the North.

In any event, title IV seeks to aid the Supreme Court as it continues to press its misguided, and in my view unconstitutional, efforts to control the educational system of the individual States. In my opinion, the Supreme Court needs no aid, although I will admit that in some areas it seems to be in need of a great deal of assistance to maintain its balance, and the equilibrium of the country.

This title, through a combination of Federal grants-in-aid and suits brought by the Attorney General—the old carrot and stick approach—would make a virtual czar out of the relatively unknown post of the U.S. Commissioner of Education.

And, as a matter of fact, it seems to me to be a dangerous indication of what the sponsors of this legislation envision, when the Members of the House, in one of the few successful efforts to amend this bill, feel constrained to add language to the bill's definition of desegregation, making it plain that "desegregation shall not mean the assignment of students to public schools in order to overcome racial inbalance."

I find it passing strange, however, that nowhere in this section is "racial imbalance" defined, although I understand that at one point that term played a prominent role in the House Judiciary Committee proceedings.

Personally, the most disturbing feature of this title is the attitude it seems to hold toward the duties of the local school boards throughout the Nation, as those duties are affected by the 1954 Supreme Court decision on school segregation. That decision, as is well known, did nothing more than declare State-supported school segregation to be in violation of the 14th amendment. To do so, the Court found it necessary to invade the rights of the States and to ignore completely the 10th amendment, which states that the powers not delegated to the United States by the Constitution are reserved to the States respectively, or to the people. But, of course, that is neither here nor there.

In connection with the "carrot" contained in this section of the bill, I note that Federal grants and payments are to be made available to just about everyone who will promise to do anything to help the public schools "deal effectively with special educational problems occasioned by desegregation," or to anyone who supplies "information regarding effective methods of coping with special education problems occasioned by desegregation."

What are some of these "special problems"? Why are they not named in the bill? Could it be that the sponsors of this title are ashamed to acknowledge that the troubles predicted with certain knowledge by southern spokesmen over the last 10 years are coming home to roost?

I further note that these grants and payments carry no specific price tag, and provide an open end authorization. The Commissioner of Education is authorized to arrange for grants and contracts with institutions of higher learning to enable these institutes to provide training for teachers, supervisors, counselors, and other school personnel. Training for what purpose? To deal effectively with the "special educational problems occasioned by desegregation."

The Commissioner is also authorized to make grants to the local school boards, again in an open end authorization. And again, for what purpose? The answer is twofold, in this particular instance. First, it would provide teachers and other school personnel with in-service training in dealing with problems "incident to desegregation." The second would be to provide employment for "specialists" to advise in problems "incident to desegregation."

There is the neatest little package of pure bribery I have come across in a number of days. Just imagine. The Congress would say to each and every school in the country: "Desegregate your classes and we will reward you by making Federal grants available to the teachers, principals, and school administrators who are all of a sudden receiving in-service training by learning to cope with the problems incident to desegregation"—whatever those problems might be.

Could it be said, perhaps, that these grants might be considered the equivalent of the hazardous duty pay received as an extra benefit by some of our Armed Forces personnel?

Madam President (Mrs. NEUBERGER in the chair), I note that the Justice Department, in a letter to the chairman of the House Judiciary Committee, inserted in the CONGRESSIONAL RECORD on page 2276 of February 6, estimated that the total expenditures to be disbursed in support of title IV will amount to $10,095,000. This is a lot of money to put out to solve a problem we should not be faced with in the first place, if reason and commonsense were allowed to prevail.

Turning from the "carrot" to the "stick," I find that, once again, the Attorney General is being authorized to institute suits against local officials, this time on the complaint of parents or children that they are being denied equal protection of the laws.

And I note again, from the majority section of the House report, that "it is not intended that the determination on which the—Attorney General's—certification was based should be reviewable."

Thus, we have once again the situation where our local officials may be dragged into court unable to face their accusers, unable to know, in truth, if the accusers are actual persons or phonies. This is neither fair nor wise, Madam President. It appears once again that strange remedies can be proposed in the name of civil rights.

This brings me to one last point relative to this section. And that is, Why is a section dealing with school desegregation sandwiched into a bill supposedly aimed at civil rights? Has the opportunity to attend an integrated school suddenly become the right of every American school child?

Or does this section indicate, purely and simply, that this proposed legislation is aimed at benefitting one particular group of politically powerful citizens, at the expense of other groups less well organized? I believe the answer is self-evident.

And now, Madam President, we come to one of my favorite subjects—the Commission on Civil Rights. Although I have already discussed, in my opening remarks, some of the activities and the Lazarus-like qualities of this remarkable group, I feel constrained to add a few additional comments aimed directly at title V.

According to the majority's comments in the House report on H.R. 7152:

> Title V, in addition to effecting minor procedural and technical changes, would make the Commission on Civil Rights a permanent body and would give the Commission new authority (1) to serve as a national clearinghouse for information concerning denials of the equal protection of the laws, and (2) to investigate allegations as to patterns or practices of fraud or discrimination in Federal elections.

Mercifully, the House saw fit to strike out the language conveying permanent status to the group.

Let us examine that somewhat breathless and innocent-sounding statement of the majority, to discover whatever truth it may contain. To be frank, I am extremely suspicious of anything which holds out the least possibility that the authority of the Commission will be expanded.

In this instance, I believe my suspicions are well founded. I find, for example, that one of the minor amendments would change the rules of the Commission procedure so as to allow the public eye to fall on evidence or testimony given to the Commission in executive session which might tend to defame, degrade, or incriminate any person. Naturally, the Commission would allow this to happen only to those persons it considered the "enemy."

Under the law as it now stands, if the Commission determines that evidence or testimony at any hearing may tend to defame or incriminate, the evidence must be taken in executive session. The person in danger of defamation or incrimination must be afforded the opportunity to appear voluntarily as a witness, and the Commission is charged with the duty of summoning, by subpena, such additional witnesses as the person may request.

Note that no authority is presently granted by law for the Commission to take in public evidence which it determines may tend to defame, degrade, or incriminate with or without the affected person being present.

This provision of this title would change this, by amending the present law so as to make it to read:

> In the event the Commission determines that such evidence or testimony shall be given at a public session.

In other words, Madam President, the Commission members would be given a choice to publicize or not to publicize. What we are seeing take place here is the slow evolution of a branch of the executive department into a court of inquiry, with authority to take evidence of any sort, in public session, without regard to the effect the publicizing of spurious and spiteful testimony or evidence might have on the innocent person involved.

Section 502 of this title would amend the present law so as to increase the pay of the Commissioners from $50 per day to $75. While I admit that living expenses have increased somewhat since 1957, I am not willing to admit that the cost of living has risen by 50 percent, as would seem to be the case according to this provision. I am sure President Johnson would also take that position.

As I have noted before, the Commission has objected to taxpayers' funds going to Mississippi because of certain acts which occurred in that State. I might point out that the great majority of taxpayers in Louisiana would object to having their tax moneys go to the support of the Civil Rights Commission because of that group's attitude and recommendations.

Other language in this title would expand the duties of the Commission—always, sooner or later, we find that inevitable expansion—to provide that it serve as a national clearinghouse for information in respect to the protection of the laws. The Commission would also be vested with authority to investigate written and sworn allegations of patterns or practices of voting frauds or discrimination in elections for national officials.

I see no value whatsoever in this first point, and I would not be surprised to learn that in reality it was put forward to allow the Commission to increase the number of staff members on the payroll. And, in effect, the adoption of this provision will make it just that much harder to dislodge the Commission from the permanence of its temporary position. As more duties are assigned to it, the more indispensable the Commission will be claimed to be.

It is, however, the last of the changes which this title seeks to accomplish in the present law that appears to me the most foreboding. It is a simple little statement found in section 507 of the bill, and reads as follows:

> The Commission shall have the power to make such rules and regulations as it deems necessary to carry out the purposes of this act.

First, we must ascertain to what act this language would have reference. The immediate presumption which comes to mind would be the Civil Rights Act of 1957. But it must be remembered that this act of Congress did not have reference to establishment of the Civil Rights Commission alone. It also had reference to voting rights; the Attorney General was for the first time authorized to bring suit in the name of the United States in voting cases. Section 2004 of the Revised Statutes and section 1343 of title 28, United States Code Annotated were both amended by the Civil Rights Act of 1957.

So, apparently the Commission would have the power to control by administrative fiat any or all of the myriad of "equal protection" situations which might arise under any of these provisions of the law. As a matter of fact, there is no way of telling for sure exactly what is meant and what power is conveyed to take what sort of actions under this seemingly simple language.

Title VI is called "Nondiscrimination in Federally Assisted Programs" and is designed to cut off Federal funds to any program or activity apparently conducted by a State or any subdivision thereof, or any other person, which is alleged to have discriminated against any person who is excluded from participation in such programs, and so forth. Without question, this provision of the bill is unconstitutional in every respect. It has no basis in law or morality.

The citizens of this country pay, by taxation, into the Treasury of the United States the money which goes to its support and maintenance. The United States gets it revenues from every State in the Union. Without these States there would be no revenue and no Union.

Now, after raising this money through taxation the Congress of the United States has seen fit to enact legislation whereby agencies of the Federal Government can assist various State and local programs through matching funds, and so forth. It is inherent in the Federal system that these two governmental units are sovereign in their respective spheres. To permit this title to be enacted into law and upheld by the courts would cause irreparable harm and damage to our system of government.

Can the U.S. Government abrogate and destroy our system of dual sovereignty merely because it has the physical and financial force to do so? Are there no checks and balances left, or is that just a meaningless expression reserved for the history books of days gone by? If there is a right for the Federal Government to cut off funds from the very States where it gets such funds to begin with, then is it too unreasonable to inquire if the citizens of such States could refuse to pay all Federal taxes, whether they be income, luxury, inheritance or in fact any form of taxation? The principles are the same.

All through the Constitution there is reference to equal treatment of the States by the Federal Government in commerce, rate fixing, taxation, and so forth. Merely because the policy of a particular State may be found disagreeable by the advocates of racial integration, is that a moral, legal, or constitutional justification for completely dislocating the State-Federal relations? I submit it is not.

Consider for one moment all the services performed by State and city governments in this country for the Federal Government and for its agents. The examples are endless—roads, schools, hospitals, police protection, fire protection, and many others. Would the States be justified in cutting off these services to the Federal Government and its agents because they did not agree with Federal policies? Certainly these are the United States of America and not just political entities with the Central Government as overlord. We have reciprocal responsibilities.

In April 1963, the Civil Rights Commission recommended that the President seek power to suspend Federal funds to States which fail to "comply with the Constitution and laws of the United States." In a press conference on April 17, President Kennedy said:

> I don't have the power to cut off aid in a general way as was proposed by the Civil Rights Commission, and I would think it would probably be unwise to give the President of the United States that kind of power.

When this bill was up for consideration in the House, the minority report submitted by Representatives RICHARD H. POFF and WILLIAM CRAMER contained such a penetrating analysis of this particular title that I feel justified in quoting a part of what they said:

> Should the Federal Government, acting through the executive branch, be vested with control powers to terminate or suspend by administrative fiat programs of financial assistance which the legislative branch has authorized and funded? True, this bill makes provision for judicial review of agency actions upon the demand of the State or individual aggrieved by such actions. However, agency action will have been taken, the funds will have been cut off, and the State and its citizens will have already been injured before any judicial determination of racial discrimination has been made. The cart is before the horse. Why should not the judicial determination be made first, and why should not the burden of bringing the suit rest upon the Federal Government rather than the State government or its citizens? Surely the accused should not be punished until guilt has been established under the rules of evidence and constitutional safeguards which our American system of jurisprudence provides.

This title constitutes blackmail, pure and simple. It is a club to hold over the heads of the States and it can be used to coerce them into almost any position the executive department wishes.

Congress enacts the laws for Federal grants and Congress appropriates the funds to be disbursed. Is it not also for Congress to determine who, if anyone, should be cut off?

It has been argued by some that, because some States receive more Federal funds in grants than the Government gets in taxes, this is sufficient justification for cutting off funds when there is alleged discrimination. Surely this reasoning will not hold up. If it did then the States would be justified in cutting off funds for service to Negroes because it is a known fact that Negroes pay lower taxes than any other racial group, per capita, in the United States.

In moving to a discussion of title VII, in many respects one of the most pernicious proposals ever to be presented to the Congress, I want to first discuss the measures which have been put forward in the past regarding fair employment practices in the area of civil rights. I think that this information will show conclusively that there is no additional need for new legislation in this field, and that there are adequate remedies available now for anyone who claims that he is being discriminated against because of race, creed, or color.

Every year, for over 25 years, we have heard consistently from various pressure groups what would be accomplished if we had legislation or Executive orders in this field. And in every instance we have been assured that the millennium would surely come about if this particular title were made into law.

There resulted the passage of many different civil rights laws, plus the issuance of Executive orders by the President. The result which was expected by these groups has not come to pass, and I submit it will not come to pass.

Madam President, as I indicated this afternoon during the discussion, the table which was furnished to me by the distinguished Senator from Pennsylvania shows unemployment as a percentage of the civil labor force, by color, in various States. Strange to say, the statistics show that, percentagewise, there were fewer Negroes employed in States that had FEPC laws than in States where such legislation was thought to be unnecessary.

Take the State of North Carolina. The rate of unemployment for nonwhite workers is 7.4 percent. There is no FEPC law there. But in Illinois the rate of nonwhite unemployment is 11½ percent.

Mr. DOUGLAS. Madam President, will the Senator yield to me for a moment?

Mr. ELLENDER. I yield.

Mr. DOUGLAS. Is that not true because in the South the Negroes are primarily farm tenants or farm laborers attached to plantations, with customarily steady employment, whereas in the North they are industrial workers, subject to all the difficulties which all industrial workers have, and handicapped further by the poor education they have received in the South, whence they came? We inherited the problem which the people of the South have disregarded for decades.

Mr. ELLENDER. I did not expect to excite my good friend so much. What he has said was the case 40 or 50 years ago, but today in order to be able to work on a plantation, a laborer must almost have a college education. The work is no longer done by hand, as it used to be.

My own brother operates a farm that was first planted by my father. My late father used as many as 125 persons to operate the farm. Today my brother does the work with about six people. In order to be able to do the work, the laborers must have more knowledge than they had years ago.

Mr. DOUGLAS. That is true of farm managers, but it is not true that farm laborers need a college education to operate a tractor or to do hoeing in the hot sun.

Mr. ELLENDER. We do not do nearly as much of that anymore.

Mr. DOUGLAS. Is it cooler down South?

Mr. ELLENDER. No. We have ways of destroying weeds with insecticides or herbicides. We also burn weeds. We also fatten geese on them.

Mr. DOUGLAS. Be careful with the insecticides, because they are ruining the rivers and destroying fish.

Mr. ELLENDER. I wanted to point out that the conditions to which the Senator referred may have obtained 40 or 50 years ago, but today they no longer

obtain. I point out also that there is not one Southern State in which the rate of nonwhite unemployment is as high as it is in the States where there are FEPC laws.

Mr. MORTON. Madam President, will the Senator yield?

Mr. ELLENDER. I yield.

Mr. MORTON. Has the Senator from Louisiana the figures for Kentucky? I am asking out of curiosity.

Mr. ELLENDER. Yes. Kentucky has no FEPC law. The rate of nonwhite unemployment is 8.1 percent. In Mississippi it is 7.1 percent.

Mr. MORTON. What are the figures for Kentucky, again?

Mr. ELLENDER. 8.1 percent for nonwhites.

Mr. MORTON. What is the rate for the white unemployed?

Mr. ELLENDER. 5.9 percent.

The point I tried to make—and I think I succeeded in making it—is that the States that have FEPC laws on the statute books have more nonwhite unemployed than do the States that do not have such laws.

Mr. DOUGLAS. Madam President, will the Senator yield?

Mr. ELLENDER. I yield.

Mr. DOUGLAS. Is the Senator trying to say that the FEPC laws actually make it more difficult to get a job? That is what my good friend is trying to maintain.

Mr. ELLENDER. No; I am not trying to maintain that at all. I am only saying that the laws do not work. If such laws did work, the figures for the whites and nonwhites, would probably be more closely in balance. The figures show that in all the States that have FEPC laws, the rate of nonwhite unemployment is greater than where there are no FEPC State laws, except in one or two States like North Dakota, where the percentage of nonwhite unemployment is 25.2 percent. It is the largest in the country. The next in line is the State of Montana, where the Negro population is, I think, two-tenths of 1 percent. In that State the nonwhite unemployment rate is 24.8 percent.

Mr. DOUGLAS. The Senator from Louisiana is perfectly well aware that there are few Negroes in North Dakota and Montana. I believe that in North Dakota the Negroes comprise only about one-tenth of 1 percent of the population. In Montana it is either one-tenth or two-tenths of 1 percent. To use statistics based on only a few people might lead to interesting, but possibly erroneous, conclusions. I am reminded of the article which was published in the Baltimore Sun in the 1880's, in which it was stated that one-third of all women graduates of Johns Hopkins married professors. This frightened people. It turned out that there had been only three women graduates of Johns Hopkins, and one had married a professor.

The Senator from Louisiana is generalizing from a very small sample.

Mr. ELLENDER. I am not generalizing at all. I am only stating the facts which were presented to the Senate and which have appeared in the RECORD. It seems to me that where there are so few colored people in the State of Montana, for instance, all of them could be employed in that area. Surely jobs could be found if the FEPC laws were effective.

In the State of Minnesota, where the population is centered in the cities of St. Paul and Minneapolis and where there is an FEPC law, the rate of nonwhite unemployment is 12.8 percent, and the rate for whites is 5 percent. That is in the great State of Minnesota which the Senator in charge of the bill represents.

Mr. DOUGLAS. Madam President, will the Senator from Louisiana yield?

Mr. ELLENDER. I am glad to yield.

Mr. DOUGLAS. Perhaps it is fruitless for me to discuss this with the Senator from Louisiana, because I do not suppose either one of us will convince the other, but let me say that we in the North have inherited large numbers of Negroes from the South who come north in pursuit of the higher wage scale and the general atmosphere of freedom which prevails in the North; but they have been so poorly trained and so culturally deprived that it is hard for them to fit into the industrial system of the North, although they can find employment in the South as farm laborers.

That is the essence of the situation.

Mr. ELLENDER. The cotton and cane fields—the entire agriculture economy—have become mechanized in the last 20 years. It has helped the migration of Negroes from the South.

Mr. DOUGLAS. There is freedom of migration in this country.

Mr. ELLENDER. The Senator is correct.

Mr. DOUGLAS. We are not proposing to change the practice of migration.

Mr. EASTLAND. Madam President, will the Senator from Louisiana yield?

Mr. ELLENDER. Efforts to aid the Negro depend a great deal upon the economy of the area where they live. Last year, I was called upon to make a talk to celebrate the 50th anniversary of the first school that was constructed from public funds, in the Parish where I was born. That was 50 years ago. Why did we not have schools built from public funds before that time? Because we were not able to get a sufficient tax base to afford to construct them.

Mr. EASTLAND. Madam President, will the Senator from Louisiana yield?

Mr. ELLENDER. Remember, that was 50 years ago. It was the first school that was constructed from public funds in the ward where I was born and raised. The school board was forced to lease a barn, or a house, in which the school was started.

The parish did not have the money with which to build the school. A good deal of what the Senator from Illinois is complaining about was due to our inability at the time to provide the facilities to educate everyone in the area.

Mr. EASTLAND. Madam President, will the Senator from Louisiana yield?

Mr. ELLENDER. I yield to the Senator from Mississippi.

Mr. EASTLAND. The Senator from Illinois has nothing to complain about. Is it not true that many Negroes leave the city of Chicago and come back South because of the economic discrimination practiced against them in the city of Chicago?

Mr. ELLENDER. I know of many Negroes who have come back, without question; but the condition which the Senator from Illinois is talking about was brought about not because we did not want to aid the Negro. It was because of our economic inability to do so.

Mr. EASTLAND. The Senator from Illinois is talking about nothing. There is no economic discrimination in the South. There is in the city of Chicago. Many Negroes leave Chicago and come back to the South because of the de facto discrimination which they faced in the city of Chicago.

Mr. DOUGLAS. Madam President, will the Senator from Louisiana yield?

Mr. ELLENDER. Madam President, I ask unanimous consent that I may yield to the Senator from Illinois, provided in doing so that I do not lose my right to the floor and without it counting as a second speech.

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

Mr. DOUGLAS. I do not wish to stir up the distinguished Senator from Mississippi, and perhaps I should not have stirred up the distinguished Senator from Louisiana, but I merely state that while it is probably true that some Negroes have left Chicago and returned to Mississippi, Louisiana, Alabama, or Arkansas, on the whole many more Negroes come to Chicago and stay there.

Mr. EASTLAND. I am dubious about that statement.

Mr. DOUGLAS. They stay in Chicago because there are better opportunities in employment, in education, and in other areas.

Mr. EASTLAND. If the Senator from Illinois had said that they went to California, I would agree; but when he says that they went to Illinois to stay, I say no, because there is terrible discrimination in the city of Chicago. I hear that from Negroes every day.

Mr. DOUGLAS. Many Negroes prefer Chicago and the State of Illinois to Mississippi, Louisiana, or Arkansas.

Mr. EASTLAND. I am dubious. I doubt that statement.

Mr. DOUGLAS. The population figures prove it.

Mr. EASTLAND. If the Senator had said California, I would agree with him, but when he mentioned Chicago, I know what is happening there.

Mr. DOUGLAS. The Negro population in Chicago has increased by approximately 400,000 in the past 15 years, which must mean——

Mr. EASTLAND. Many Negroes return to the South because of the ruthless discrimination practiced against them in the city of Chicago. Let us be frank about it. That is what is happening.

Mr. DOUGLAS. If that were true, the Negro population in Chicago would be diminishing, and the Negro population in Mississippi and Alabama would be increasing, but——

Mr. EASTLAND. No; they have gone farther west. They believe they will get

a better deal there than in the State of Illinois.

Mr. DOUGLAS. Let me say to the Senator from Mississippi that the population figures indicate exactly the opposite.

Mr. EASTLAND. No; the population figures do not indicate the opposite. It is increasing farther west.

Mr. DOUGLAS. The Negro population is also increasing in the State of Illinois. They furnish the backbone of labor in the mass production industries, as well as contributing in many other important areas.

Mr. EASTLAND. The worst slum conditions in the world exist in the city of Chicago.

Mr. DOUGLAS. I agree they are not very good, but we are trying to eradicate them.

Mr. EASTLAND. I hope that will be done.

Mr. DOUGLAS. I once went south on the Illinois Central Railway through the States of Mississippi, Alabama, Louisiana, and North Florida, and I saw cabins——

Mr. EASTLAND. The Senator is wrong to begin with. He did not go into Alabama on the Illinois Central Railway.

Mr. DOUGLAS. Mississippi, then.

Mr. EASTLAND. That is also wrong to begin with.

Mr. DOUGLAS. It cuts across.

Mr. ELLENDER. No; it does not—it goes north and south.

Mr. EASTLAND. Let us get the facts straight. The Senator did not see a single area that compared with the slums in his own city of Chicago.

Mr. DOUGLAS. Let me say to the distinguished Senator that regardless on which railroad I was traveling I saw worse conditions in the South. In both cases, North and South, we should do better.

Mr. EASTLAND. The greatest slums in all the world are in the city of Chicago.

Mr. DOUGLAS. That is not true.

Mr. EASTLAND. The Senator has never seen any in my State, or in the State of Louisiana, or in the State of Illinois outside of Cook County, or in Kentucky, or in Tennessee, that compare with his own backyard. The point I wish to make to the distinguished Senator is that Illinois should be attempting to clean up its own bad conditions, especially in Chicago, rather than exporting those conditions to other areas of the country.

Mr. DOUGLAS. We have been trying to improve those conditions steadily for the past 20 years. We have constructed something like 35,000 to 40,000 units of public housing. We have opened up many areas to Negro settlement. There are still many things to be done, and we are working very hard on them.

I wish to defend my city against the charges which the distinguished Senator from Mississippi has made.

Mr. ELLENDER. Madam President, we have gradually veered away from the time when employment contracts could be entered into freely by the employer and employee. Today all manner of controls are exerted on both the employer and the employee, and yet, we still hear that there is discrimination and that there is no freedom of employment.

On June 25, 1941, President Roosevelt issued Executive Order 8802, which officially declared an executive policy against discrimination in employment. This was the first order or action taken in the so-called fair employment field. The issuance of this order was made necessary when Negro leaders, especially A. Philip Randolph, the head of the Brotherhood of Sleeping Car Porters, threatened to stage an organized march of 50,000 people on Washington, D.C. It is interesting to note that the same action has been taken by the same people in the year 1963 to accomplish the same result which they expected to be accomplished in 1941.

The Roosevelt decree created a so-called Fair Employment Practices Committee of five members; later increased to seven, with authority to investigate complaints and to rectify discriminatory abuses if any were found.

Madam President, I wish to say again that efforts have been made in the Senate on at least three or four other occasions to put an FEPC law on the statute books, but they failed. As I have tried to demonstrate, from the table from which I quoted, in those States where FEPC laws are in effect, which in many cases are more stringent than the one that is proposed to be enacted, no success has been attained. I venture to say that no success will be attained here either if Congress should make the mistake of enacting this title as it is written.

The Fair Employment Practices Committee held hearings in several large cities, and in spite of vigorous enforcement, very little was achieved in this regard.

Due to mounting political pressure on the President, President Roosevelt promulgated Executive Order 9346, which established a new committee, with increased authority. The order set as its ostensible goal the maximization of war production by reducing racial tension. "Discrimination" was broadly defined in this order by the method of spelling out specific examples of discriminatory practices.

Executive Order No. 9346 required that all Government contracts, regardless of amount, must contain a clause forbidding employment discrimination. In addition, the Committee was empowered to hear cases and render opinions in instances where charges of discriminatory employment were brought against firms engaged in work deemed essential by the War Manpower Commission to the war effort, whether or not the work was done under Government contract, and in instances of complaints involving discrimination in Federal agencies.

Before the Committee could invoke the antidiscriminatory provisions in Executive Order No. 9346, it had to receive a signed complaint. If the Committee investigator found evidence of discrimination, he attempted to resolve the issue, often with the aid of other Government agencies.

If the discrimination persisted, the case was referred to the Committee which was empowered to hold public hearings. If the Committee found discrimination, a course of action to exert practical pressure on the employer had to be devised. Such pressures might include: The threat of cancellation of war contracts, the lowering of the manpower requirements of any employer by the War Manpower Commission, the denial to the employer the use of placement facilities of the U.S. Employment Service, and so forth. These measures were often effective to coerce employers.

The earliest attempt to enact legislation against alleged discrimination came on June 20, 1942, when Representative Vito Marcantonio of New York, then a Member of the House of Representatives, introduced a bill to create a permanent Fair Employment Practices Committee, to function somewhat like the National Labor Relations Board. This bill was not passed. Then on December 4, 1944, during the 78th Congress, Representative Norton of Massachusetts introduced a bill to end alleged discriminatory practices. Then Senator Chavez of New Mexico introduced a similar bill in the Senate during the same session. These were the first proposals submitted to Congress to enact so-called fair employment practices legislation. The Congress did not see fit to enact such legislation then, nor in the intervening years since that time.

When Mr. Truman was elected President in 1948, many groups began to push for a Federal Fair Employment Practices Act and an amendment to the Taft-Hartley Act designed to elminate alleged racial and religious discrimination. These attempts were defeated because of the compulsory aspects of the proposed legislation.

On July 26, 1948, President Truman issued Executive Order 9980, entitled, "Regulations Governing Fair Employment Practices Within the Federal Establishment." Then again in 1951, President Truman, by Executive order, created the Committee on Government Contract Compliance. This 11-man Committee was to scrutinize government contracts to make certain that alleged discrimination was eliminated in work performed under such contracts. This Committee was abolished in 1953 by section 9, Executive Order 10479, issued by President Eisenhower, and all its records were transferred to the newly established President's Committee on Government Contracts. In spite of all of Mr. Truman's efforts in the field of fair employment, he was accused by the political pressure groups of being a fraud in his advocacy of a Federal policy on discrimination.

In 1952, the Senate Committee on Labor and Public Welfare held hearings to determine the feasibility of a Federal Fair Employment Practices Act.

Actually two bills had been proposed. They were S. 1732, 82d Congress, 2d session, and S. 551, 82d Congress, 2d session, 1952. Both bills died in committee.

On August 13, 1953, President Eisenhower issued Executive Order 10479, reaffirming the Truman administration policy against alleged discrimination by employers holding Government contracts, and creating the President's Committee on Government Contracts to suc-

ceed Truman's Committee on Government Contract Compliance. Then on January 15, 1955, President Eisenhower issued Executive Order 10590, establishing the Committee on Government Employment Policy. This order sought to reduce alleged discrimination in Federal employment.

During 1957, the President's Committee on Government Contracts adopted several new measures designed to implement Executive Order 10479. They were, first, an annual review of compliance with the order by employers holding Government contracts; second, requests to Government procuring agencies, asking them to consider histories of discriminatory practices of companies before awarding contracts to those companies; third, the sponsorship of a youth training incentive conference to aid youngsters belonging to minority groups to get training for skilled work; and, fourth, the opening of a field office in Chicago.

In 1957, the so-called Civil Rights Act was passed by the 85th Congress, establishing a Commission on Civil Rights of 6 members to be appointed by the President, with the approval of the Senate. Section 104(A) of that act states that the duties of the Commission are to: First, investigate allegations in writing under oath that certain citizens of the United States are being deprived of their right to vote and have that vote counted by reason of their color, race, religion, or national origin; which writing under oath shall set forth the facts by which such belief or beliefs are based; second, study and collect information concerning the legal developments constituting a denial of legal protection of the laws under the Constitution; and, third, appraise the laws and policies of the Federal Government with respect to equal protection of the laws under the Constitution. This act has been in effect for several years and absolutely nothing has been accomplished under its provisions.

Mr. MORTON. Madam President, will the Senator yield?

Mr. ELLENDER. I yield.

Mr. MORTON. The points which the Senator made so well in connection with Executive orders relating to the Civil Rights Act of 1957, let to somewhat voluntary accomplishment of the problem. Is that not correct?

Mr. ELLENDER. To a certain extent. However, great pressure was used on the contractors wherever Government money was used. In that way, they made some progress. Pressure was applied, but otherwise, as the Senator states, compliance was more or less voluntary.

Mr. MORTON. The Senator is speaking now of title VII, which has to do with the right to hire. Does this not also include the right to fire?

Mr. ELLENDER. The Senator is correct. It is all included in the one section.

Mr. MORTON. I am one of the few Senators who is not a lawyer. But I have made a payroll.

Mr. ELLENDER. The Senator is fortunate.

Mr. MORTON. The right to fire, it seems to me, is an important right. Indeed, no man ever got fired from a job—unless he happened to be a drunkard who was a dishwasher or something—who did not think he was discriminated against.

So every single complaint in this land under title VII as written today will be thrown into court if a man is fired and he claims "I was fired because I am a Protestant; my foreman was a Catholic." Or, "I am a Catholic; my foreman was a Protestant; a Jew; a gentile; a Negro; or white."

I had the responsibility of running the administrative end of a State department for about a year. With all the red-tape involved in civil service, it is very difficult to fire someone. They merely put him in the backroom and hire another man to do the work and the man is back there.

If American industry is ever shackled in this way, I think it would be a very sad day. We cannot compete in the world. Today, we cannot compete if we cannot fire anyone for incompetency.

Mr. ELLENDER. I am in thorough agreement with the Senator from Kentucky. One thing which I am unable to understand is that many Senators who favor the bill say it is necessary to make us go forward, and yet its provisions will have a stifling effect on business.

Mr. MORTON. I am one. I favor much in the bill. But I want to change title VII.

Mr. ELLENDER. So far as I am concerned, I want to remove it from the bill.

Mr. MORTON. The Senator may have my help in doing that.

Mr. ELLENDER. I am glad to hear the Senator say that. Under the conditions that have prevailed since the United States was founded we have done extremely well under the present laws and regulations. We are the most powerful Nation in the world. It is said that we are the richest. I know we are the best fed. We produce more food than any other country in the world. All of that was accomplished under present conditions.

What annoys me is that some say, "We must change that record in order to continue doing as well as we have done in the past." If we shackle businessmen with the FEPC provision as written, and require them to make the many reports that are called for, and keep books in order to show whom they employed last week, last month, or last year, and they must keep such records to show a horde of investigators, I am sure it will have a harmful effect on business. It will do more harm, in my opinion, than good.

As I pointed out, in all the States of the Union which have FEPC laws, one can look at the record. It appears that there have been more nonwhites unemployed in States which have FEPC laws than in the States which have no FEPC laws. Why is that?

I will let the Senator answer that. It will not work. As I pointed out, that is why I placed all of this in the RECORD. I did that to show that for the past 10 or 15 years we have been attempting to legislate in the field of social relations by means of Executive orders and otherwise, all without success. One cannot force these things.

There are currently two Federal laws in force which indirectly have been used to combat alleged discriminatory practices. They are the Railway Labor Act and the Taft-Hartley Act. The Railway Labor Act has several sections which concern equality of representation. In at least two cases the court has held that a union of railroad workers acting as the exclusive representatives of a defined group of employees must accord equal protection to all members of the group irrespective of color or religion, even if some members of the group do not belong to the union. These decisions are especially significant since the Railway Labor Act was modified to permit a union shop. These cases are *Tunstall* v. *Brotherhood of Locomotive Firemen and Engineers,* 323 U.S. 210 (1944), and *Steele* v. *Louisville National Railroad,* 323 U.S. 192 (1944). There have been many other cases arising under this act.

Although the Taft-Hartley Act does not specifically ban racial discrimination, several provisions of the law by implication have reference to this problem. An example of such would be an employer interfering with or restraining or coercing employees in the exercise of rights guaranteed by section 7 of that act.

The Negroes have made such wide gains in the field of employment opportunity that in the case of *Hughes* v. *Superior Court of California,* 339 U.S. 460 (1950), the U.S. Supreme Court denied Negroes the right to picket for the purpose of forcing an employer to establish a quota hiring system. The Negroes had picketed a store in an effort to compel a white employer to hire Negro clerks in proportion to the number of Negro customers.

The picketing was restrained in the State court on the ground that it is contrary to public policy. The U.S. Supreme Court upheld the issuance of the injunction on the ground that the quota system of employment perpetuates discrimination. It is obvious from this case and all that has gone before it that the Negroes are not interested in equal employment opportunity, but in effect desire preferred treatment. In 1957 there were 15 States which had Fair Employment Practices laws. Today there are 29. These States are Alaska, Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Jersey, New Mexico, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Vermont, Washington, West Virginia, Wisconsin.

The State acts have varying requirements as to the number of employees an employer must have to be subject to the act. They range from five employees upward.

Apparently this was done on administrative grounds because obviously it would be wrong for an employer with one worker to discriminate if it is wrong for an employer with 25, to discriminate. It was thought that by decreasing the number of businesses covered by the act, it would eliminate a large number of

complaints which might bog down the State commissions in litigation.

In actual fact the opposite has been true. New York had expected a flood of complaints but they failed to materialize. In that State, which has a large minority element, there were less than 3,000 complaints filed in the first 9 years of operation. Had there been any real need for a Fair Employment Practices Act in New York State, there would have been many times that number of complaints. Bear in mind, these were complaints, not litigated cases. The number of valid complaints which were settled in or out of court to the satisfaction of the complainant is undoubtedly much smaller.

In setting standards for FEPC laws, if it is proper to have them based on race, color, creed, religion, or sex, it should also be proper to have them based on age. A person should not be discriminated against—whether a young man, an old man, a young woman, or an old woman. If we are genuinely sincere about an antidiscrimination law and the necessity for such a law, this requirement on age certainly should be added. A large proportion of the unemployed people in this country today are the young people out of high school and the older people past age 60. Yet, who can deny that these people must support themselves?

With that short history behind us, let us turn to the actual provisions of title VII of this bill, to see what they would do. In my opinion, they promise to strangle American business. The proposed permanence of the new Commission to be known as the "Equal Employment Opportunity Commission" is alarming. Under the plain meaning of the bill establishing the Commission, it is clear that within a very short time it would grow into a giant bureaucracy.

I wish to discuss this provision of the title creating the Commission, so that Senators will fully understand what is proposed to be enacted into law.

First, there would be five members, to be appointed by the President for 5-year terms, at a salary of $20,000 per year, and $20,500 for the Chairman.

Second, the Commission would establish regional offices where it deemed necessary, and must have one in each major geographical section of the country. This is one of the most objectionable parts because all of us well know that the empire builders who would get into every agency would within a short time have hundreds of employees.

The expenses of operating all those offices would mushroom into millions of dollars a year. There would be no end to the number of lawyers, examiners, investigators, accountants, statisticians, clerks, typists, and janitors who would be hired, most of whom would do only housekeeping services for the multitude of offices. The number of desks, typewriters, and filing cabinets required would be enormous. The bill provides for an appropriation of $2½ million for the first year, and then leaps to $10 million for the second year. It is not hard to imagine how much more it would increase in 3, 4, 5, or 10 years.

As I have noted, there is already in existence one Civil Rights Commission which roves all over the country, and the life of which would be extended by the bill. In addition, there is the President's Committee on Equal Employment Opportunity. How many commissions do we need? This title of the bill would give us a total of two such organizations with investigative powers.

The powers of the Commission would include, first, paying witnesses' fees; second, furnishing technical assistance to persons subject to the act; third, making technical studies to effectuate the act—but nowhere are we told what "technical assistance" means; fourth, investigating charges of unlawful employment practices; fifth, bringing civil actions in the name of the United States, to secure compliance; sixth, examining the evidence of any person or company being investigated; seventh, requiring the persons subject to the act to keep records, preserve them for specified periods of time, and make such reports as the Commission required.

This means that every employer in the United States who had 25 or more employees would have to maintain an elaborate bookkeeping system on a permanent basis, and to submit periodic reports to the Commission. This provision of the bill alone would directly cost the employers of this country—and the taxpayers, as well—millions of dollars annually, just to keep such useless records.

When this title was up for consideration in the House, Judge SMITH proposed an amendment to delete this recordkeeping section. He told the House:

> The expense of this is deductible under the tax provisions and 52 percent of the cost of keeping these useless records on these companies that are not in violation, have never been accused of being in violation, and never will be, because they have a program of nondiscrimination, as all the large corporations have, will be put on the Treasury of the United States.

The plain language of the bill in regard to the records is as follows:

> Every employer, employment agency, and labor organization subject to this title shall (1) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed, (2) preserve such records for such periods, and (3) make such reports therefrom * * *

And further on:

> The Commission shall, by regulation, require each employer, labor organization, and joint labor-management committee subject to this title which controls an apprenticeship or other training program to maintain such records as are reasonably necessary to carry out the purpose of this title, including, but not limited to, a list of applicants who wish to participate in such program, including the chronological order in which such applications were received, and shall furnish to the Commission, upon request, a detailed description of the manner in which persons are selected to participate in the apprenticeship or other training program.

Other powers of the Commission would be to issue "suitable procedural" regulations. We know that the regulations would soon become substantive, as well as procedural.

One need only look at what the courts have done to the "due process" clause of the 14th amendment, to fully realize that under the guise of "procedure," all manner of rules and regulations would be promulgated by bureaucrats, to further constrict the freedom of the employers and the working people of this country.

Now I want to call attention to what is considered an unlawful employment practice, under the terms of the bill.

First, would be the failure or refusal to hire or to discharge any individual, or to discriminate against him with respect to compensation because of race, religion, or sex. But the bill also provides that it would be all right to hire an employee of a particular religion, race, or sex, and to discriminate against others, if religion, race, or sex were a bona fide occupational qualification reasonably necessary to the normal operation of that particular business.

From this, it would seem that the bill provides that if to one ran a Chinese laundry, it would be all right to hire only Chinese, and to discriminate against everyone else; it would seem to say that it would be all right to hire only Hungarians, if one ran a Hungarian restaurant.

Apparently, anyone who could show his national origin could discriminate against all other Americans. It is easy to see how ridiculous this whole thing would become when an attempt was made to tell someone whom he could hire and whom he could not. Obviously, any businessman will hire the man or woman best qualified for any particular position. He is going to hire someone who is pleasant and courteous to his customers. In fact, he is going to be less interested in the race, sex, and religion of the employee than this bill is.

Another part of this title declares it to be an unlawful employment practice for any labor organization to print or publish any advertisement indicating preference for any race, sex, or religion. Suppose a newspaper owned by AFL-CIO, the United Mine Workers, or any other union, regularly printed labor news of interest to its members and others, and suppose it published a notice that it wished to hire a person of some particular race. That would be in violation of this title, and would subject such labor union to court action.

What would happen to freedom of the press? Freedom of the press means freedom to print anything, except libel, no matter how foolish, prejudice, or how ignorant the content might be. The import of this provision would be that there would be no freedom of the press in this area. This would herald the beginning of the erosion of our liberties in yet another area, an area which has held a special place in the list of freedoms ever since the inception of our Republic.

One of the great inequities of this bill is the provision of free government legal assistance, even to the extent of bringing a civil action into court, to prevent an alleged discriminatory hiring practice. In the field of criminal law, a citizen of the United States can stand accused of any crime, and there is absolutely no provision for the protection of his legal rights, except the district court's appointment of a local attorney to repre-

sent him, free of charge. The practice has all too often been to wait until the accused person has been held in custody for a long period of time before the attorney is appointed.

An attorney appointed to represent an accused person free of charge is not given even the slightest bit of help by the Department of Justice. He has no means of investigating the facts, no money with which to contact out of town witnesses, nor any provision even for taking a deposition. But in this proposed legislation any person who claims he has been mistreated by another citizen can bring to bear the full weight of the U.S. Government to the point of harassment. I ask, Is this fair and just? Mr. Justice Frankfurter has said that "justice is what English speaking people traditionally think it is." I ask, in all frankness, Is this what we traditionally think of as justice?

Certainly it is more important that a citizen accused of a crime by his government should have at least the same legal protection as a person who merely alleges that he has been discriminated against. Of course, this whole thing could lead to the socialization of the legal profession. Is everyone entitled to free legal representation?

In the area of public accommodations the Attorney General's Office furnishes the free legal representation. In the area of alleged discrimination in employment it is the new Commission which is to furnish the free legal services. In the development of Anglo Saxon justice this is one of the greatest perversions ever proposed.

In section 708(b) of title VII it is provided that in States which have their own so-called fair employment laws the provisions of this title would not be operative when an agreement is made between the State and the Commission. It provides that no civil action can be brought by any person under the provisions of this section. Supposedly the aggrieved person would take advantage of the State law.

Now surely, this is a strange law which we are asked to enact; it would not operate and could not be effective uniformly throughout the United States. This provision is not here for the purpose of showing deference to the State laws. It is in fact the rankest form of hypocrisy and is aimed directly at the South. It leaves the people in the Northeastern States, which have adopted such laws, under their own laws, but it seeks to subject the people of the South to the intervention of the Federal Government. What happens to the right to "equal protection of the laws" under the provisions of the bill? Apparently, some are more equal than others.

I have discussed only a few of the obvious faults contained in title VII. There is no telling how many additional faults and evils are contained in it.

Title VIII provides that the Secretary of Commerce shall promptly conduct a survey to compile registration and voting statistics in such geographic areas as may be recommended by the Commission on Civil Rights. This information is to include a count of persons of voting age by race, color, and national origin, and a determination of the extent to which such persons are registered to vote, and have voted in any statewide primary or general election in which Members of the House of Representatives are nominated or elected, since January 1, 1960. This information would be collected in connection with the Nineteenth Decennial Census, and such other times as Congress may prescribe.

What is the purpose of this title? On the surface, it would appear to be merely another collection of statistical information of the kind bureaucrats traditionally feed upon. This is not the case. It is without doubt aimed solely at the South. It will be noted that this information would only be compiled "in such geographic areas as may be recommended by the Commission on Civil Rights." It would not be gathered from all over the United States, but only from such areas as the Civil Rights Commission deemed advisable.

One can readily visualize a situation where such information might be useful if gathered nationwide so that voter participation by racial or ethnic groups could be studied by voting analysts on a nonpartisan basis. But the provisions of this title make it abundantly clear that no such purpose is even contemplated. It is designed only and solely to intimidate the South.

In recent elections, as everyone knows, it is not in the South where charges of voting fraud, stuffing of ballot boxes, discarding of boxes which are adverse, have been leveled. It is in large cities that charges of irregularities arise.

If we were to pass this title of the bill, then, for the first time in history, the Bureau of the Census would be embroiled in petty and partisan politics. Certainly the framers of our Constitution never had any such intention when they directed in article I, section 2:

> The actual enumeration [of persons] shall be made within 3 years after the first meeting of the Congress of the United States, and within every subsequent term of 10 years.

There is no need to additionally burden the Bureau of the Census with this useless title. The primary purpose of the Census Bureau is to collect information on population so that the House of Representatives can be properly apportioned.

Section 901 of title IX provides that title 28 of the United States Code, section 1447 (d) would be amended to read as follows:

> An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was removed pursuant to section 1443 of this title shall be reviewable by appeal or otherwise.

Now, section 1443 of title 28 of the United States Code provides that any civil action or criminal prosecution brought in a State court against a defendant who alleges that he has been denied or cannot enforce his civil rights in the State court may, upon the motion of the defendant, be removed to the Federal district court of the district in which the State court is located. Under section 1447 of title 28, the Federal court can remand the case to the State court if it decides that there were no proper grounds for the removal. Under subsection (d) of that section, the order remanding the case is not subject to appeal to a higher Federal court.

There has been a longstanding policy of Congress against any unnecesary disruption of the State court procedures. This has been an important factor in the efficient cooperation of Federal-State judicial systems. As Senators know, one of the great problems in recent times has been clogging of court calendars. Those who must concern themselves with the administration of justice have worked long and hard to find ways and means to expedite the courts' business.

Legal procedures have been worked out which, with justice to all litigants, have made for a smoother operation of our judicial system, both State and Federal. Now the proponents of this bill would upset all that has been done in this area.

It has been one of the basic cornerstones of American jurisprudence that, in the interest of an ordered society, legal controversies should be settled and litigation terminated without delay. The removal process takes a period of 10 days. If the remand order is appealable, much more time is consumed, even if upon appeal the remand order is affirmed and the case is returned to the State court. During this delay, the State court cannot act and the State remains completely without any power to resolve the civil controversy or to enforce the criminal law involved.

While the State court's hands are tied, pressure groups can organize civil disruptions and cause other violations of State laws and even the same laws which have been remanded or appealed. During all this time of Federal jurisdiction, the laws of the State which have been questioned are suspended. I submit, there is absolutely no justification for the disruption of our entire judicial system and the circumvention of the orderly due process of law which this title of the bill would bring about, if enacted.

TITLE X

Title X establishes a Community Relations Service with a Director and a staff of not more than six. Section 1002 provides:

> It shall be the function of the Service to provide assistance to communities and persons therein in resolving disputes, disagreements, or difficulties relating to discriminatory practices based on race, color, or national origin which impair the rights of persons in such communities under the Constitution or laws of the United States or which affect or may affect interstate commerce. The Service may offer help in case of such disputes, disagreements or difficulties whenever, in its judgment, peaceful relations among the citizens of the community involved are threatened thereby, and it may offer its services either upon its own motion or upon the request of an appropriate State or local official or other interested person.

I am happy to say that there is one title of this bill which I can support, and this is the one. I do not like to oppose

for the sake of opposition. I have opposed the other titles of this bill because of the inequities which they contain, and because there are many effects which we cannot even determine at this point without a thorough study of the bill in committee.

I have supported in the past every measure which was designed to promote the peace and welfare of all our citizens, and I shall always continue to do that. Title X declares that the Community Relations Service will help achieve the peaceful relations among the citizens of the community by giving its advice and assistance. The assistance given by this Service could be useful and constructive in bringing about racial accord in the communities affected by such problems. The bill does not contain detailed information on how this Service will function, but I feel that it could do a great deal to assist the local community, if properly administered.

CONCLUSION

Now, Mr. President, I have submitted to the Senate my detailed reasons for opposing this legislation, and for supporting the sound and logical reasoning offered as to why this bill should not be enacted.

But let me also refer to the reasons once advanced in support of this thesis by a man who now holds a much higher position than does the senior Senator from Louisiana. In fact, he is now the President of these United States. In discussing the limitations under which the House of Representatives works, and the necessity for the Senate to give full consideration of measures brought before it, President Johnson stated in 1949, when he was then a Member of this body:

> Like many of the Members of the Senate, I served for a number of years in the House of Representatives, at the other end of the Capitol, before coming to the Senate. I think I understand what that body can do and what it cannot do as a part of the legislative branch. It can and does feed a great quantity of new ideas into the bloodstream of legislative thinking, because of its large and diverse membership. The House, also, is a great legislative laboratory for perfecting legislation, correcting oversights, and preventing impositions harmful to specific areas or groups.
>
> But—and this I say with no intention to minimize the House's role—the House does not and cannot exert the force upon the Nation's political thinking that the Senate has and still does. Nor, in fact does the House exert the equivalent influence upon the executive branch—its Members are not so secure in tenure, the frequent elections subject the Members to whims of public opinion, which as we all know, can sometimes be aroused and inflamed by the leaders of the executive branch.
>
> Why is the House in this role? Because there is no unlimited debate there. A Member must ofttimes beg for a chance to address his fellow Members and then he is limited generally to 5 minutes or less. In that short time he is fortunate if he can impress any of his colleagues, must less impress the Nation. As a consequence the floor of the House and the cloakrooms constitute a national workshop.

I refer to this quotation of the President's when he was a Member of the Senate for the purpose of showing that then, as now, bills often come over from the House without that careful attention to detail which is necessary for all legislation, especially legislation as far reaching as this so-called civil rights bill.

The bill will be debated and studied on the floor. I hope that in the course of time we from the South and other Senators who are in opposition can make clear the implications involved in the bill.

Mr. MORTON. Madam President, I take it from the remarks of the Senator from Louisiana that he is opposed to the bill.

Mr. ELLENDER. I will leave the Senator to judge that for himself.

Mr. MORTON. Therefore, I should ask him why his party is for the bill.

Mr. ELLENDER. I will let the Senator ask the President that question.

Mr. MORTON. Madam President, I suggest the absence of a quorum.

Mr. ELLENDER. Does the Senator wish me to answer his question?

Mr. MORTON. Yes.

Mr. ELLENDER. As the Senator knows——

The PRESIDING OFFICER. Does the Senator from Kentucky withdraw his suggestion of the absence of a quorum?

Mr. MORTON. Temporarily.

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

Mr. ELLENDER. I was about to state to my good friend that the President has gone all out for the bill, and I am sure that, in order to carry out his promises and those of his predecessor, every effort will be made to have the bill enacted as it came from the House. I am very hopeful that my good friend from Kentucky will assist some of us who are opposed to many of the provisions of the bill to either strike them out or amend them so that the bill will be more palatable.

Mr. MORTON. That I shall do; but I assure the Senator from Louisiana that I will be helpful to him to a degree—perhaps not completely, but to a degree—hoping that there may be a bill for which I can vote.

TRANSACTION OF ROUTINE BUSINESS

By unanimous consent, the following routine business was transacted:

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States submitting a nomination was communicated to the Senate by Mr. Miller, one of his secretaries.

EXECUTIVE MESSAGE REFERRED

As in executive session,

The ACTING PRESIDENT pro tempore laid before the Senate a message from the President of the United States submitting the nomination of George M. Cole, Jr., for permanent appointment in the Coast and Geodetic Survey, in the grade of lieutenant (junior grade), which was referred to the Committee on Commerce.

MESSAGE FROM THE HOUSE

Message from the House of Representatives, by Mr. Bartlett, one of its reading clerks, announced that the House had passed, without amendment, the bill (S. 1951) for the relief of George Elias NeJame (Noujaim).

The message also announced that the House had passed the bill (S. 1828) to amend the joint resolution establishing the Battle of Lake Erie Sesquicentennial Celebration Commission so as to authorize an appropriation to carry out the provisions thereof, with an amendment, in which it requested the concurrence of the Senate.

The message further announced that the House had passed the following bills, in which it requested the concurrence of the Senate:

H.R. 4149. An act to provide for the satisfaction of claims arising out of scrip, lieu selection, and similar rights;

H.R. 5159. An act to authorize and direct that certain lands exclusively administered by the Secretary of the Interior be classified in order to provide for their disposal or interim management under principles of multiple use and to produce a sustained yield of products and services, and for other purposes;

H.R. 5498. An act to provide temporary authority for the sale of certain public lands;

H.R. 8305. An act to provide that until June 30, 1968, Congress shall be notified of certain proposed public land actions; and

H.R. 10437. An act to incorporate the National Committee on Radiation Protection and Measurements.

The message communicated to the Senate the resolutions of the House adopted as a tribute to the memory of the late General of the Army Douglas MacArthur.

HOUSE BILLS REFERRED

The following bills were severally read twice by their titles, and referred as indicated:

H.R. 4149. An act to provide for the satisfaction of claims arising out of scrip, lieu selection, and similar rights;

H.R. 5159. An act to authorize and direct that certain lands exclusively administered by the Secretary of the Interior be classified in order to provide for their disposal or interim management under principles of multiple use and to produce a sustained yield of products and services, and for other purposes;

H.R. 5498. An act to provide temporary authority for the sale of certain public lands; and

H.R. 8305. An act to provide that until June 30, 1968, Congress shall be notified of certain proposed public land actions; to the Committee on Interior and Insular Affairs.

H.R. 10437. An act to incorporate the National Committee on Radiation Protection and Measurements; to the Committee on the Judiciary.

EXECUTIVE COMMUNICATIONS, ETC.

The ACTING PRESIDENT pro tempore laid before the Senate the follow-

ing letters, which were referred as indicated:

AMENDMENT OF SECTION 8(E) OF SOIL CONSERVATION AND DOMESTIC ALLOTMENT ACT

A letter from the Secretary of Agriculture, transmitting a draft of proposed legislation to amend section 8(e) of the Soil Conservation and Domestic Allotment Act (with an accompanying paper); to the Committee on Agriculture and Forestry.

REPORT ON TUALATIN PROJECT, OREGON

A letter from the Assistant Secretary of the Interior, transmitting, pursuant to law, a report on the Tualatin project, Oregon, dated May 1963 (with an accompanying report); to the Committee on Interior and Insular Affairs.

REPORT ON PROCEEDINGS OF INTERNATIONAL CONGRESS ON EDUCATION OF THE DEAF

A letter from the president, Gallaudet College, Washington, D.C., transmitting, pursuant to law, a report on the proceedings of the International Congress on Education of the Deaf, and of the 41st meeting of the convention, held at that college, June 22–28, 1963 (with accompanying papers); to the Committee on Rules and Administration.

PETITIONS AND MEMORIALS

Petitions, etc., were laid before the Senate, or presented, and referred as indicated:

By the ACTING PRESIDENT pro tempore:

A concurrent resolution of the Legislature of the State of New York; to the Committee on Foreign Relations:

"CONCURRENT RESOLUTION OF THE SENATE AND ASSEMBLY OF THE STATE OF NEW YORK MEMORIALIZING CONGRESS TO CREATE A JOINT AMERICAN-CANADIAN COMMISSION FOR PLANNING AND EXECUTION OF A SESQUICENTENNIAL CELEBRATION OF THE TREATY OF GHENT

"Whereas the War of 1812 ended in 1814 with the Treaty of Ghent; and

"Whereas the United States and Canada have been at peace for 150 years since the signing of that treaty; and

"Whereas, the unarmed border between the United States and Canada is a monumental achievement in man's struggle for peace with justice; and

"Whereas, proper joint celebration by the United States and Canada of the 150th anniversary of the Treaty of Ghent would further strengthen the peaceful bonds between them, and be an inspiration to all peace loving nations; and

"Whereas millions of visitors from all nations will be in the cities of Niagara Falls, N.Y., and Niagara Falls, Ontario, during the summer vacation season, and it would be appropriate to hold a Sesquicentennial Celebration of the Treaty of Ghent on the Niagara Frontier during August of 1964: Now, therefore, be it

"*Resolved (if the assembly concur)*, That the Congress of the United States be and it hereby is memorialized to create a joint American-Canadian Commission for the planning and execution of a Sesquicentennial Celebration of the Treaty of Ghent; and be it further

"*Resolved (if the assembly concur)*, That copies of this resolution be transmitted to the Secretary of the Senate of the United States and to each Member of Congress of the United States duly elected from the State of New York and that the latter be urged to devote themselves to the task of accomplishing the purposes of this resolution.

"By order of the senate.

"ALBERT J. ABRAMS,
"*Secretary.*"

The petition of Magozo Oyakawa, chairman, Mobobu-cho Town Council, Okinawa, praying for a quick solution of the prepeace treaty compensation issue; to the Committee on Armed Services.

RECOGNITION OF GOD IN PUBLIC INSTITUTIONS—RESOLUTION

Mr. THURMOND. Mr. President, I am pleased to call to the attention of the Senate a resolution which has been approved by the South Carolina Conference of the Wesleyan Methodist Church on the importance of recognizing God in our public institutions. I ask unanimous consent, Mr. President, that this resolution be printed in the RECORD and be appropriately referred.

There being no objection, the resolution was referred to the Committee on the Judiciary, and ordered to be printed in the RECORD, as follows:

RESOLUTION ON THE RECOGNITION OF GOD IN OUR PUBLIC INSTITUTIONS

Whereas the historic attitude of the U.S. Government toward the worship of God has been one of friendliness, as may be substantiated by any number of evidences; and

Whereas the American citizenry today, of whatever creed, is overwhelmingly characterized by faith in God and a recognition of our national and personal dependence upon Him; and

Whereas the intent of our Founding Fathers in forbidding the establishment of religion in the 1st and 14th amendments of our Constitution was manifestly not to remove all vestiges of our theistic faith from government-sponsored premises and activities; and

Whereas in recent years there has been a determined effort by an atheistic minority, having every personal privilege of disbelief, to secure judicial decisions purportedly based upon the Constitution to shield themselves from reminder of their minority status by the banishment of all theistic traces from publicly sponsored activities and premises, notably from our public schools which, because of compulsory attendance requirements, affect the lives of the vast majority of the children, thus undermining the historic foundation of our moral and ethical value system; and

Whereas successive actions of the Supreme Court, occasioned by the persistent appeals of atheists and agnostics, seem to indicate a growing inclination to ban from public life all worship of God, in however terms, and all recognition of Him: Therefore be it

Resolved, That this South Carolina Conference of the Wesleyan Methodist Church, assembled in its 71th annual session in Greer, S.C., respectfully petitions our legislative leaders to discover for us and for the great God-fearing majority of our people some adequate lawful redress from the above-described disability. We presume that such may require a constitutional amendment recognizing the sovereignty of Almighty God for our Nation (while granting freedom of conviction and propagation to those who choose not to recognize Him), reaffirming the doctrine that units of the government are to avoid acts and policies involving the support of establishment of organized religion, but declaring the principle that it is not deemed a contravention of this doctrine that the name of God be honored in State and civic life and that men be encouraged to read the Bible in its various versions and tc worship God in accordance with the dictates of their own conscience, not excluding the incidental occurrence of such activities even from premises built or financed in whole or in part by public moneys, that this Nation may indeed be a nation under God.

BILLS INTRODUCED

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

By Mr. CHURCH:

S. 2716. A bill to prohibit the sale of silver bullion by the Secretary of the Treasury; and

S. 2717. A bill to increase the monetary value of silver to $2.5858 per ounce; to the Committee on Banking and Currency.

(See the remarks of Mr. CHURCH when he introduced the above bills, which appear under a separate heading.)

By Mr. ALLOTT:

S. 2718. A bill to amend the Internal Revenue Code of 1954 to allow a farmer a deduction from gross income for water assessments levied by irrigation ditch companies; to the Committee on Finance.

By Mr. JACKSON (for himself, Mr. MAGNUSON, Mr. BARTLETT, Mr. GRUENING, Mr. KUCHEL, Mr. ENGLE, Mr. MORSE, Mrs. NEUBERGER, Mr. FONG, Mr. INOUYE, Mr. BIBLE, and Mr. MOSS):

S. 2719. A bill to amend the Alaska Statehood Act (act of July 7, 1958; 72 Stat. 339) and for other purposes; to the Committee on Interior and Insular Affairs.

(See the remarks of Mr. JACKSON when he introduced the above bill, which appear under a separate heading.)

PROPOSED LEGISLATION RELATING TO SILVER

Mr. CHURCH. Mr. President, in the Congress, there has historically been a dispute between the western silver-producing States and the New England silver-using States. The situation in regard to silver has altered radically from earlier times, and this longstanding dispute ought to come to an end. The problem which currently faces us in regard to silver is that our coinage is becoming so valuable in terms of its intrinsic silver content that we face the threat of having it hoarded or melted down for industrial use. The demand for silver for industrial use has increased rapidly in recent years; it is being used for defense purposes, including the building of missiles, in the photographic industry, and for many other commercial purposes. We face the prospect of a rapidly diminishing number of silver coins unless we act now.

Representative COMPTON I. WHITE, of my State of Idaho, has introduced two bills in the House which would serve as an intelligent step toward meeting this problem. These bills would increase the monetary value of silver to $2.5858 per ounce and prohibit the sale of silver bullion by the Secretary of Treasury. By pegging the monetary value of silver at twice its current level, the risk of having our coinage either hoarded or melted down for industrial use would be eliminated. The effect of these measures would be to allow silver metal to seek its natural price in a free market, while preserving the stocks of silver held by the U.S. Government for strategic

governmental purposes and for future ues in coinage.

Mr. President, I ask unanimous consent to have the text of the two bills, which I now send to the desk, printed here in the RECORD, and that the two bills be appropriately referred.

The ACTING PRESIDENT pro tempore. The bills will be received and appropriately referred; and, without objection, the bills will be printed in the RECORD.

The bills, introduced by Mr. CHURCH, were received, read twice by their titles, referred to the Committee on Banking and Currency, and ordered to be printed in the RECORD, as follows:

S. 2716

A bill to prohibit the sale of silver bullion by the Secretary of the Treasury

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the last sentence of section 2 of the Act of June 4, 1963, entitled "An Act to repeal certain legislation relating to the purchase of silver, and for other purposes" (31 U.S.C. 405a–1), is amended to read as follows: "Silver certificates shall be exchangeable on demand at the Treasury of the United States for silver dollars, but not for silver bullion, nor may the Secretary of the Treasury sell or otherwise dispose of silver bullion as such to private purchasers."

S. 2717

A bill to increase the monetary value of silver to $2.5858 per ounce

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2 of the Act of June 4, 1963, entitled "An Act to repeal certain legislation relating to the purchase of silver, and for other purposes" (31 U.S.C. 405a–1), is amended (1) by inserting "(a)" immediately after "SEC. 2." and (2) by adding at the end thereof the following new subsection:

"(b) The monetary value of silver is $2.5858 per fine troy ounce."

SEC. 2. (a) The Secretary of the Treasury shall so adjust the weight or fineness of the standard silver dollar that the fine silver content thereof shall have a monetary value equal to the face value of the coin.

(b) The Secretary of the Treasury shall so adjust the weight or fineness of the subsidiary silver coins of the United States that the fine silver content of any such coin shall be equal to 93 per centum of the face value of such coin.

NOTICES OF MOTIONS TO SUSPEND THE RULE—AMENDMENTS TO INTERIOR DEPARTMENT APPROPRIATION BILL

AMENDMENT NO. 473

Under authority of the order of the Senate of February 27, 1964, Mr. HAYDEN submitted, on April 8, prior to the convening of the Senate, the following notice in writing:

In accordance with rule XL, of the Standing Rules of the Senate, I hereby give notice in writing that it is my intention to move to suspend paragraph 4 of rule XVI for the purpose of proposing to the bill (H.R. 10433) making appropriations for the Department of the Interior and related agencies for the fiscal year ending June 30, 1965, and for other purposes, the following amendment, namely: On page 38, line 3, after the word available insert a colon and the following:

"*Provided,* That of such amount $50,000 shall be available only for the purpose of making relocation payments comparable to those provided for in title I of the Housing Act of 1949, as amended (42 U.S.C. 1450–1464)."

Mr. HAYDEN also submitted an amendment, intended to be proposed by him, to House bill 10433, making appropriations for the Department of the Interior and related agencies for the fiscal year ending June 30, 1965, and for other purposes, which was ordered to lie on the table and to be printed.

(For text of amendment referred to, see the foregoing notice.)

AMENDMENT NO. 474

Under authority of the order of the Senate of February 27, 1964, Mr. HAYDEN submitted, on April 8, prior to the convening of the Senate, the following notice in writing:

In accordance with rule XL, of the Standing Rules of the Senate, I hereby give notice in writing that it is my intention to move to suspend paragraph 4 of rule XVI for the purpose of proposing to the bill (H.R. 10433) making appropriations for the Department of the Interior and related agencies for the fiscal year ending June 30, 1965, and for other purposes, the following amendment, namely: On page 38, line 15, after the word available insert a colon and the following:

"*Provided,* That of such amount $175,000 shall be available only for the purpose of making relocation payments comparable to those provided for in title I of the Housing Act of 1949, as amended (42 U.S.C. 1450–1464)."

Mr. HAYDEN also submitted an amendment, intended to be proposed by him, to House bill 10433, making appropriations for the Department of the Interior and related agencies for the fiscal year ending June 30, 1965, and for other purposes, which was ordered to lie on the table and to be printed.

(For text of amendment referred to, see the foregoing notice.)

AMENDMENT NO. 475

Under authority of the order of the Senate of February 27, 1964, Mr. HAYDEN submitted, on April 8, prior to the convening of the Senate, the following notice in writing:

In accordance with rule XL, of the Standing Rules of the Senate, I hereby give notice in writing that it is my intention to move to suspend paragraph 4 of rule XVI for the purpose of proposing to the bill (H.R. 10433) making appropriations for the Department of the Interior and related agencies for the fiscal year ending June 30, 1965, and for other purposes, the following amendment, namely: On page 43, line 1, insert:

"ALASKA TEMPORARY CLAIMS COMMISSION

"Salaries and expenses

"For expenses necessary to carry out the provisions of section 46 of the Alaska Omnibus Act (73 Stat. 152–153), including services as authorized by section 15 of the Act of August 2, 1946 (5 U.S.C. 55a), $33,000, to be immediately available."

Mr. HAYDEN also submitted an amendment, intended to be proposed by him, to House bill 10433, making appropriations for the Department of the Interior and related agencies for the fiscal year ending June 30, 1965, and for other purposes, which was ordered to lie on the table and to be printed.

(For text of amendment referred to, see the foregoing notice.)

AMENDMENT NO. 476

Under authority of the order of the Senate of February 27, 1964, Mr. HAYDEN submitted, on April 8, prior to the convening of the Senate, the following notice in writing:

In accordance with rule XL, of the Standing Rules of the Senate, I hereby give notice in writing that it is my intention to move to suspend paragraph 4 of rule XVI for the purpose of proposing to the bill (H.R. 10433) making appropriations for the Department of the Interior and related agencies for the fiscal year ending June 30, 1965, and for other purposes, the following amendment, namely: On page 43, line 8, insert:

"COMMISSION ON THE STATUS OF PUERTO RICO

"Salaries and expenses

"For expenses necessary to carry out the provisions of Public Law 88–271, approved February 20, 1964, $250,000, to be immediately available and to remain available until June 30, 1966."

Mr. HAYDEN also submitted an amendment, intended to be proposed by him, to House bill 10433, making appropriations for the Department of the Interior and related agencies for the fiscal year ending June 30, 1965, and for other purposes, which was ordered to lie on the table and to be printed.

(For text of amendment referred to, see the foregoing notice.)

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Bartlett, one of its reading clerks, announced that the House had passed the following bills, in which it requested the concurrence of the Senate:

H.R. 1385. An act for the relief of Barbara Coloma Sabio;

H.R. 1465. An act for the relief of Rifka Ibrahim Toeg;

H.R. 1503. An act for the relief of Hilda May Eave;

H.R. 1727. An act for the relief of Richard G. Green, Jr.;

H.R. 2300. An act for the relief of the Outlet Stores, Inc.;

H.R. 2735. An act for the relief of Ligia Paulina Jimenez;

H.R. 3645. An act for the relief of Yeghsa Ketenjian;

H.R. 3757. An act for the relief of Witold A. Lanowski;

H.R. 5408. An act for the relief of Jackie Bergancia Smith;

H.R. 5571. An act for the relief of Noble Frank Smith and his wife, Viola Smith;

H.R. 6267. An act for the relief of Lee R. Smith and Lee R. Smith III, his son;

H.R. 6568. An act for the relief of Frances Sperilli;

H.R. 6843. An act for the relief of David Sheppard;

H.R. 7132. An act for the relief of Wetsel-Oviatt Lumber Co., Inc., Omo Ranch, El Dorado County, Calif.;

H.R. 8415. An act for the relief of Maj. Keith K. Lund;

H.R. 8479. An act for the relief of Georgette D. Caskie;

H.R. 8964. An act for the relief of Diedre Regina Shore;

H.R. 9090. An act for the relief of Mrs. Audrey Rossmann;

H.R. 9150. An act for the relief of Miss Leonor do Rozario de Medeiros (Leonor Medeiros);

H.R. 9199. An act for the relief of CWO Stanley L. Harney;

H.R. 9220. An act for the relief of Elisabete Maria Fonseca;

H.R. 9475. An act for the relief of Miss Grace Smith, and others;

H.R. 9765. An act for the relief of Mrs. Battistina Gallo Iannuccilli; and

H.R. 9959. An act for the relief of Harold A. Saly.

HOUSE BILLS REFERRED

The following bills were severally read twice by their titles and referred to the Committee on the Judiciary:

H.R. 1385. An act for the relief of Barbara Coloma Sabio;

H.R. 1465. An act for the relief of Rifka Ibrahim Toeg;

H.R. 1503. An act for the relief of Hilda May Eave;

H.R. 1727. An act for the relief of Richard G. Green, Jr.;

H.R. 2300. An act for the relief of the Outlet Stores, Inc.;

H.R. 2735. An act for the relief of Ligia Paulina Jimenez;

H.R. 3645. An act for the relief of Yeghsa Ketenjian;

H.R. 3757. An act for the relief of Witold A. Lanowski;

H.R. 5408. An act for the relief of Jackie Bergancia Smith;

H.R. 5571. An act for the relief of Noble Frank Smith and his wife, Viola Smith;

H.R. 6267. An act for the relief of Lee R. Smith and Lee R. Smith III, his son;

H.R. 6568. An act for the relief of Frances Sperilli;

H.R. 6843. An act for the relief of David Sheppard;

H.R. 7132. An act for the relief of Wetsel-Oviatt Lumber Co., Inc., Omo Ranch, El Dorado County, Calif.;

H.R. 8415. An act for the relief of Maj. Keith K. Lund;

H.R. 8479. An act for the relief of Georgette D. Caskie;

H.R. 8964. An act for the relief of Diedre Regina Shore;

H.R. 9090. An act for the relief of Mrs. Audrey Rossmann;

H.R. 9150. An act for the relief of Miss Leonor do Rozario de Medeiros (Leonor Medeiros);

H.R. 9199. An act for the relief of CWO Stanley L. Harney;

H.R. 9220. An act for the relief of Elisabete Maria Fonseca;

H.R. 9475. An act for the relief of Miss Grace Smith, and others;

H.R. 9765. An act for the relief of Mrs. Battistina Gallo Iannuccilli; and

H.R. 9959. An act for the relief of Harold A. Saly.

U.S. NATIONAL COMMISSION FOR UNESCO

Mr. BOGGS. Mr. President, it was my privilege last week to attend the 3-day meeting here in Washington of the U.S. National Commission for the United Nations Educational, Scientific, and Cultural Organization, usually referred to by its initials, UNESCO.

I came away from the meeting with an appreciation for the various UNESCO programs underway and a conviction that we need more Americans taking part in these programs.

UNESCO's role is chiefly one of education—and particularly education helpful to developing nations. I was struck by one phrase which I heard several times:

The world is in a race between education and disaster.

I am afraid that this stark statement is true, and world conditions require that in the name of both expediency and humanity we do all we can to foster the spread of knowledge and technology.

UNESCO will continue to function whether or not we increase the attention we pay to it. I am convinced that it deserves our best ideas and energetic citizens as well as our money.

A report has been prepared which summarizes the 3-day meeting, and an article entitled "A New Look at UNESCO" by Eugene Sochor, Assistant Director of the Secretariat of the U.S. National Commission for UNESCO, has also come to my attention. For the information of my colleagues and others, I ask unanimous consent that both these accounts be printed at this point in the RECORD.

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

NEW DEVELOPMENTS AT UNESCO OUTLINED AT COMMISSION MEETING

New developments in the program and administration of the United Nations Educational Scientific and Cultural Organization (UNESCO) were outlined at the 25th meeting of the U.S. National Commission for UNESCO which met in the Department of State from March 31 to April 2 under the chairmanship of Dr. Harvie Branscomb, chancellor emeritus of Vanderbilt University.

The 100-member Commission consisting of representatives of 60 national organizations and prominent citizens interested in education, science, and the arts, was created by Congress in 1946 to advise the Government on UNESCO programs and promote a better understanding of UNESCO by the American people.

Lucius D. Battle, Assistant Secretary of State for Educational and Cultural Affairs, outlined administrative changes in UNESCO proposed by Director General Rene Maheu. The changes call for five assistant directors general—one for education, one for natural sciences and their application to development, one for social sciences, human sciences, and cultural activities, one for communication, and one for administration.

In the education program, Mr. Battle noted that the United States favors the emphasis to be given in 1965–66 to educational planning which is the key to educational progress in the developing countries. Under the Assistant Director General for Education, there will be a Department for School and Higher Education and a Department for Adult Education and Youth Activities.

Under the Assistant Director General for Science, there also will be two Departments, one for the Advancement of Sciences and one for the Application of Science to Development. The latter Department underscores UNESCO's new role in applying science and technology to speed the economic development of new countries while leaving unchanged UNESCO's traditional role of strengthening the teaching of basic sciences and advancing international cooperation in scientific research.

The third Assistant Director General will be responsible for a Department of Social Sciences and a Department of Cultural Activities. In this section of the program, the Director General of UNESCO has instituted a Division of Philosophy embracing interdisciplinary cooperation in the fields of philosophy, human sciences, and social sciences. This division underlines the fact that in addition to technical assistance, UNESCO should reinforce the intellectual framework for development, thus fulfilling one of its basic purposes.

Following the pattern found in the rest of the program, Mr. Battle reported that UNESCO's Department of Mass Communications and the Department of International Exchange will be grouped together under an Assistant Director for Communication.

In reporting on the appointment by the Director General of UNESCO of Mr. John Fobes, a career Foreign Service officer, as the new Assistant Director General for Administration, Mr. Battle observed that having first-rate Americans contribute to the work of the UNESCO Secretariat is perhaps the most important single factor in furthering interest in the organization.

The commission in plenary session approved the conclusions and recommendations of a special committee calling for increased efforts in recruiting competent Americans for UNESCO service. The report notes that "the American people need to achieve a much greater degree of understanding of the newly developed capacity of United Nations organizations to contribute significantly to world peace." The report further notes that "the problems connected with the recent growth of the United Nations system require continuing examination for the purpose of constructing solutions compatible with the traditions and interests of the United States and the many other nations committed to peaceful conduct of world affairs."

The committee, which also examined the role of UNESCO within the United Nations, was chaired by the Honorable Ellis Arnall, former Governor of Georgia. Other commission members on the committee were Mrs. Barry Bingham, of Louisville, Ky.; Dean Ernest Griffith of the School of International Service of American University; Dr. Walter Laves, chairman of the Department of Government, Indiana University; Dr. James A. Perkins, president of Cornell University, and Lawrence M. C. Smith of Philadelphia.

In asking adoption of the report, Mr. Arnall said, "Americans need to give of themselves." He added:

"It is not enough to give of our treasure. It is not enough to give of our intellectual conclusions. We must give service. And it is in this field that your committee felt much can be done to be of help to strengthen, solidify and move forward the welfare and the advance of UNESCO and the international organizations."

In commenting on the report, Harlan Cleveland, Assistant Secretary of State for International Organization Affairs, said that the United States belongs to 53 international organizations and contributes to 22 international programs. "It is a big complicated show, of which UNESCO is one rather large, rather complicated part, but only one part," Mr. Cleveland added.

One of the most interesting and important facts of life today in international relations, Mr. Cleveland pointed out, is that the United States, as the biggest contributor to all these large organizations, must be increasingly concerned with their relationship to each other. He called for greater coordination of technical assistance activities and noted that the United States had pressed this need with the international organizations to bring about "an increasing sense of unity in the total U.N. program." He singled out

UNESCO as being very helpful in this respect.

Mr. Cleveland remarked that the United Nations General Assembly had designated 1965 as international cooperation year. He urged that such an event be used for getting more Americans to focus on the problems of building international institutions and for developing within the American community a broad-scale effort to set targets for international cooperation in every field.

The commission commended efforts outlined by Mr. Cleveland to spur U.S. participation in international cooperation year and approved the appointment of an ad hoc committee for commission activities in this field as well as in planning the upcoming 20th anniversary of UNESCO.

The commission approved a report on obligations and opportunities for its member organizations which calls particular attention to ways in which they can contribute in keeping alive the objectives of UNESCO. This report was submitted by Vice Chairman Anna Rose Hawkes, representing the American Association of University Women.

At its final plenary session, the Commission approved reports of the Committees on Education, Natural and Social Sciences, Cultural Activities, Mass Communications, and Public Information.

The report on education presented by Dean Lyman V. Ginger of the College of Education, University of Kentucky, thanked UNESCO for its initial work in the use of the mass techniques of education in the developing countries.

The Committee cited the problems of university students, particularly at the graduate level who want to study in foreign lands but lack language proficiency. It recommended that the Commission study the means for setting up regional language centers or other means to help such students gain necessary language proficiency.

The Committee on Natural and Social Sciences welcomed the proposed establishment of a UNESCO Department of the Application of Science to Development involving the cooperation of natural scientists, social scientists, and technologists. The Committee recommended again that UNESCO establish a semiautonomous unit to provide multidisciplinary analysis of complex national and regional problems of development which cannot be studied by existing agencies UNESCO should also facilitate the transfer of technical and industrial "know-how" and continue to strengthen universities. The report was presented by Dr. W. M. Myers, dean of international programs, University of Minnesota, on behalf of the Committee chairman, Dr. Roger Revelle, university dean of research at the University of California.

The Mass Communications Committee cautioned against optimistic forecasts on the use of satellites and noted that while they can transmit messages over long distances, they will not for some years be able to solve a country's educational broadcasting problems. The Committee urged UNESCO to encourage the formation of voluntary organizations of mass media personnel in developing countries and commended UNESCO's continuing efforts to encourage the free flow of educational, scientific, and cultural information. The report was presented by Howard Kany, director of international business relations, CBS television stations, on behalf of Dr. Wilbur Schramm, director of the Department of Communication and Journalism, Stanford University, chairman of the Committee.

The Committee on Cultural Activities approved the proposed activities, and in addition, recommended that UNESCO strengthen its clearinghouse activities to provide more adequate distribution of materials in art, music, and drama. It also recommended that the most valuable aspects of UNESCO's major project in promoting a better understanding between Oriental and Western cultures be retained in the regular program after the 10-year project closes in 1966. The report was presented by Dr. T. A. Larson, director of the School of American Studies, University of Wyoming, on behalf of the Committee Chairman, Dr. Paul J. Braisted, president of the Edward W. Hazen Foundation.

The Commission approved guidelines on public information which were drafted by a small committee of experts who studied ways to bring about a better understanding of UNESCO in the United States. The report was presented by Attorney Marcus Ginsburg, of Fort Worth, Tex., chairman of the Public Information Committee.

Chairman Branscomb announced that the Commission will cosponsor with the American Council of Learned Societies a seminar on the role of international voluntary organizations in intellectual cooperation. The conference will be held at Gould House, Dobbs Ferry, N.Y., April 27–29 under the chairmanship of Dr. Frederick Burkhardt, president of the American Council of Learned Societies.

A New Look at UNESCO

(By Eugene Sochor)

About 100 years ago, Thoreau, a dreamer with a burning passion for social justice, wrote that if you build castles in the air, your work need not be lost. All you need to do is to put the foundations under them.

He might have referred to the United Nations Educational, Scientific, and Cultural Organization, the most misunderstood and most maligned of the U.N. specialized agencies. Strangely enough, most of its foes and many of its friends have only an idealized concept of its purposes. They still think of UNESCO in terms of castles in the air, rather than the firm foundations underneath.

While, to be sure, UNESCO has yet to bring about lasting peace, it has become a growing force in international cooperation, performing a variety of vital tasks which fulfill the wildest expectations of its founders. This growth of UNESCO has been characterized by an ever growing membership, the inevitable clashes of the cold war, and a better grasp by all concerned of the role of UNESCO in the world today.

No one who has followed UNESCO from its early days can fail to be inspired by the change brought about by its membership, which now stands at 113. Before the end of the first session of the General Conference 16 years ago, 28 of the 44 countries represented at the London Conference a year earlier had joined the organization. Seven member States came from Europe, six were from the British Commonwealth, five from the Middle East, two from east Asia, and eight from the Americas.

The early debates as to whether UNESCO should expand knowledge and technology or bring these to bear on the needs of the poorer countries—such debates became academic as soon as the countries of Latin America and south and southeast Asia and the Middle East joined UNESCO. These countries all brought problems of poverty, ill health, and illiteracy—one more urgent than the other. These countries were not interested in the type of intellectual cooperation which had characterized the old international Committee of International Cooperation of the League of Nations. The new countries demanded direct services from UNESCO. The newer member states, mostly from Africa, presented a picture of a continent with poverty and illiteracy unmatched anywhere else. Yet, intellectual cooperation still remains an important ingredient of the UNESCO program, if not its essential "raison d'être."

As UNESCO gained strength and standing, there was the sober realization that the organization, while pursuing its lofty goals of building the defense of peace in the minds of men, could not resist the storms and stresses of the cold war.

George Shuster, the eminent educator, who has long been involved in the work of UNESCO, recalls that the early days of the organization were permeated with "an aura of unreality," having to live in the same world with Stalin and the Truman doctrine. No one was quite sure how to go about promoting peace so that, Shuster recalls, the organization was busy with a bevy of small chores, sometimes bearing such resounding names as "reducing world tensions," but often failing to be more than the hobbies of their authors.

The Soviet Union joined UNESCO in 1954. Any expectation that this member would live up to the high hopes of the UNESCO founders soon proved false. While the Soviets have paid all their dues and while they have cooperated in substantial areas of UNESCO activities, particularly in the natural sciences, where international benefits transcend national interests, they have also tried their best to make propaganda mileage out of their membership. That they have largely failed is to due to the leadership of the United States.

Also, UNESCO in its early days was marked by the all-encompassing mind of its first Director General, Julian Huxley. This brilliant British biologist and philosopher, with interests ranging from art to zoology, created an intellectual uproar with his philosophy of "scientific humanism." It mattered little that a charge of atheism, which was tagged onto this philosophy, was unfounded and that UNESCO wanted nothing to do with Huxley's proposal and that impractical projects born in the fever and enthusiasm of people called upon to accomplish great feats were soon discarded. The early charges and controversies are still grist for the mill of those elements in the United States who have tried to prove in vain that UNESCO is preaching atheism, world government, or communism. These charges have been categorically rejected by several responsible organizations. The fact that the professional foes of UNESCO have to dig up old chestnuts to win converts and that they find little new to criticize proves that the foundations of UNESCO are strong and firm. The growth of UNESCO has proceeded along practical and vital lines which shows that member states can harmonize their interests for the benefit of all and overcome the obstruction of the few.

In the field of education, UNESCO has brought countries together in Latin America, Asia, and Africa to plan for their own regional needs. It has provided experts to carry out educational planning to a number of countries of Latin America, Asia, the Middle East, and Africa. At a conference in Karachi in 1960, Asian educators called for universal primary school enrollment by 1980. This is also the hope of the African countries, which met at a conference called by UNESCO in Addis Ababa, Ethiopia, in 1961.

These initial and followup conferences disclosed that Latin America, Asia, and Africa, which contain the overwhelming majority of the world's population, have put into operation huge educational programs at a cost of billions of dollars. The bulk of the cost will be borne by these countries as they devote more of their resources to education within the concept of the United Nations Decade of Development.

The resolution of the United Nations General Assembly in 1961 on the decade of development, which was spurred by the United States, reflects an important reassessment of the role of education and human resources

in economic and social development. Studies by economists in the United States and Europe have stressed that education is a good investment in more than a figurative way and a key factor in the economic growth of a country. Hence, as the director general of UNESCO has pointed out, the widespread demand for education in the world today is founded on the conviction that education is an important part of the standard of living which people want their children to enjoy as the fruit of economic development.

To fulfill their national goals, the less developed countries need more teachers, more textbooks, more school buildings and, above all, more educational planners who can project educational needs within a larger social and economic framework. The balance between primary and secondary education, the role of vocational training, the size and character of higher education—all these issues are being studied in each interested country in the light of particular needs and the growing experience of experts in the field.

As a major step in coordinating knowledge and providing the needed experts, UNESCO helped establish in the spring of 1963 an International Institute for Educational Planning in Paris. An extensive demand for educational planning missions can be foreseen in the next few years. Already, UNESCO has experts in educational planning in 17 countries. Their number will double in the next 2 years, as will the number of countries requesting them.

UNESCO will also delve into the potential of mass techniques of education, such as radio and television, teaching machines, and new teaching methods through regional workshops and teacher training projects. As stated by the Director General of UNESCO, these new techniques can help the underdeveloped countries if explored "at once critically and imaginatively."

Lack of education goes hand in hand with lack of information. Regional efforts to provide the means of education have been paralleled by efforts in the field of mass communications. The needs in this respect are no less compelling. Africa, for example, on the whole offers only 1 copy of a newspaper and 2 radio receivers per 100 people, with even lower figures for countries south of the Sahara. UNESCO estimates that 70 percent of the world's population lacks the usual means of communications. As part of the United Nations Decade of Development, UNESCO is helping underdeveloped countries draft blueprints for expanding their facilities for mass communications.

In natural sciences, UNESCO has embarked on a successful program of survey and research in land aridity, seismology, and oceanography. International cooperation in these fields, particularly between the United States and the Soviet Union, would not be possible if it jeopardized the national interest of any one country. Rather, it is possible because several countries find it in their interest to undertake jointly what they cannot do alone. This applies to ocean research which is too costly for any one nation to undertake, and to research on water and earthquakes which affect the lives and livelihood of peoples across national boundaries. Plans now underway for an international hydrological decade call for a coordinated program of observation and research in the conservation and management of water resources and the training of hydrologists.

Aside from scientific cooperation and documentation, UNESCO, as part of the decade of development, is interested in the application of science and technology for the benefit of the less-developed countries. The recent United Nations Conference on the subject held in Geneva last February has proven that science and technology are no longer the privilege of the powerful nations.

In the field of social sciences, UNESCO has also concentrated its programs on the problems of the less-developed countries, with emphasis on teaching, research, and the application of the social sciences to social and economic development. A new analysis unit is seeking better methods of assessing the impact of education, science and technology and mass communications in countries at different stages of development to help in planning and in international assistance.

Although the emphasis in the UNESCO program has shifted to educational and scientific needs, UNESCO still provides the most comprehensive introduction to cross cultural studies by translating books, reproducing art works, recording music, and providing travel grants to artists and teachers. These and other activities stimulate a better understanding and appreciation of other cultures, particularly between Western and oriental countries. This is an area which we as Americans should not overlook. Today, America's position of leadership requires us to know more about peoples of different cultures, particularly those in the non-Western World which comprises half of the world's population.

The evolution of UNESCO into a large-scale operational agency was bound to come. Perhaps nothing symbolizes the new role of UNESCO so well as the many practical tasks it is performing in Africa, Asia, and Latin America as the executive agency for the United Nations special fund in building training centers for teachers, engineers, and technicians who will staff the schools and shops needed in the less-developed countries. In fact, UNESCO's extra-budgetary resources for technical assistance almost equal its regular budget, which for 1963–64 was pegged at $39 million.

Enough has been said to suggest that the problems of development of education, science, and mass communications in the less-developed countries are global in nature. These problems cannot be confined within geographical frontiers or be solved within sovereign limits. These problems are too large even for the largest nations, and too essential to be ignored by them.

Our commitment to UNESCO must be viewed within the context of our role of leadership and our responsibilities in the face of the political, as well as social and economic, pressures in the world. We have a stake in UNESCO not only in that we provide a bulwark against Soviet propaganda and promises, but in the positive sense that UNESCO can become a powerful voice for our ideals and concepts which will be heard by many uncommitted nations. As Ambassador Adlai Stevenson noted, "One of our greatest assets in the world today is the fact that the foreign policy interests of the United States are generally in harmony with the foreign policy interests of all nations which want to see a peaceful community of independent states working together by free choice, to improve the lot of humanity. And since the majority of the nations of the world share this goal, the majority consistently side with the United States—or we side with them, depending on your point of view—when the roll is called and the yeas and nays are counted. It's as simple as that."

Our mission as Americans coincides with that of UNESCO. We seek educational and social betterment throughout the world. While we help reduce poverty and ignorance, we can help at the same time create a sense of cooperation and tolerance among mankind and build the foundations of a lasting peace.

KENNEDY'S VOYAGE OF DISCOVERY

Mr. MANSFIELD. Mr. President, in Harper's magazine for April, 1964, there appears an article, by Sander Vanocur, entitled "Kennedy's Voyage of Discovery." It deals with the trip which our late President made to the Western States in the early fall of 1963.

During the course of that trip, the late President visited Montana, and it was my privilege to be with him on that and other parts of the journey.

I remember very vividly the occasions which Mr. Vanocur describes, particularly the unscheduled visit to the home of my father, in Great Falls. I remember, too, the almost electric sense of kinship which communicated itself between the President and great audiences of westerners who came to see and to hear him.

It is a warm and moving account that Mr. Vanocur writes of a brief but vivid incident near the closing days of President Kennedy's life. I ask unanimous consent that the article referred to be included at this point in the RECORD.

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

KENNEDY'S VOYAGE OF DISCOVERY

(By Sander Vanocur)

(One golden week last September J.F.K. found out some unexpected things about the West, the radical right, and how Americans feel about disarmament.)

This trip began, as had so many others before it, on the south lawn of the White House. It was the morning of September 24, 1963, and John F. Kennedy was leaving by helicopter for Andrews Air Force Base outside Washington, there to board his jet which would take him to 11 States in 5 days. The theme of the trip was conservation. Its purpose was political. When it had ended, President Kennedy had confirmed for himself what he already suspected—that the test ban treaty enjoyed wide public support, that the John Birch Society's strength in the West was exaggerated, and that he was extremely popular with the voters. It was for him a trip of discovery.

He waited that morning until the Senate had ratified the test ban treaty by a vote of 80 to 19. The vote was a great personal triumph. He was a man who seldom displayed emotion before others; but he cared passionately about bringing an end to nuclear testing, even a partial end to it, and he had made the test ban the touchstone of his entire foreign policy. The House would vote the following afternoon on the tax bill. He had been assured by aids that they had the votes to see it passed, that his presence in Washington would not be required. The news pleased him, for he enjoyed the opportunity to get out of the White House whenever possible. Few Presidents could have loved the White House the way he loved it, in both the personal and the political sense. Yet he had persuaded himself that he could run the country as well from the rear cabin of *Air Force 1* as he could from his Office.

I was the network representative in the group of reporters assigned to his plane for the first leg of the trip to Milford, Pa., that morning, and as he left the White House, he seemed happier than I had seen him in several months. The extent of the grief he felt over the death of his premature son, Patrick Bouvier Kennedy, in August was not widely known, and it had only served to intensify his affection for Caroline and John, Jr. He had scarcely known Caroline while he was off campaigning first for the nomination and then for the Presidency, but since he had come to the White House, he came to know and love his children. He was taking his son along on the helicopter to Andrews that morning—as he always did when leaving on a trip—and there John-John would make a fuss about being left behind. As I watched them, I remember

thinking what a great shock that child would have when one day he was told the helicopters came from the Air Force and not F. A. O. Schwarz.

When the trip was first announced, late in the summer, Press Secretary Salinger smiled as he described it as "nonpolitical." He had good reason. The President was flying to 11 States, only 3 of which he had carried in 1960—Pennsylvania, Minnesota, and Nevada. In 10 of these States, there would be senatorial elections in 1964, with 9 Democrats trying to retain their seats. Three of them—QUENTIN BURDICK, of North Dakota, GALE MCGEE, of Wyoming, and FRANK MOSS, of Utah—were reported to be facing difficulties. A trip through the West would permit the President to come to the aid of himself and his party in an area where both needed help.

A conservation tour seemed the perfect arrangement. Such a trip had long been urged on the President by such westerners as Secretary of the Interior Stewart Udall, and New Mexico's Senator CLINTON ANDERSON. The President had always seemed somewhat reluctant. But in 1963, a freshman Democratic Senator, GAYLORD NELSON, of Wisconsin, joined with the others in urging him to make the trip. NELSON told him that not only was conservation a worthy theme for a President to support, it was also one which could win votes. A great many Americans were becoming worried about the demands of a growing population on recreational space, NELSON argued; hunters, fishermen, and campers all voted, and they cared strongly about this issue.

The idea began to appeal to J.F.K. Apart from the political advantages, a conservation tour was in the tradition of Theodore Roosevelt and Franklin D. Roosevelt. Of the two, I always believed that J.F.K. fancied himself more in the tradition of the first Roosevelt than the second. I never asked him whether this was true, so my judgment is personal and subjective. But there were similarities: the belief in the vigorous, outdoor life; the dual role of politician and historian; and the idea that he was the first President since Teddy Roosevelt to raise his young children in the White House. But on the subject of the West, I always felt the comparison paled. J.F.K. liked the West. He liked its people. But I don't think he was ever completely comfortable there, and for him the only recognizable phenomenon of nature between Mayor Richard Daley in Chicago and Assembly Speaker Jesse Unruh in Sacramento was Old Faithful.

I was never able to understand why. The best judgment I could make was that he was, by temperament and by region, a man governed at all times by a sense of restraint and proportion, qualities which are valued in the West, but not so highly as he esteemed them. On all his trips west, as candidate and as President, he somehow always managed to avoid putting on a cowboy hat, a sombrero, or Indian headdress. He dreaded the idea that he might look ridiculous, so he always accepted such headgear with grace and a remark similar to the one he offered to the Indians in Pocatello, Idaho, who presented him with a war bonnet in September 1960. "The next time I watch television," he said, "I'm going to root for our side."

He wasn't helped much by some of his closest aids, especially the "Irish mafia": Kenneth O'Donnell, his appointments secretary, and Lawrence F. O'Brien, his special assistant for congressional affairs. On one western trip in 1962, we spent the night at the Ahwahnee Hotel in Yosemite National Park. The Ahwahnee is one of the last of the great railroad hotels in the West. Yet when O'Brien walked through its spacious lobby, breathing in all that good mountain air, he insisted the place was too stuffy and vowed he would speak to Stewart Udall at the earliest opportunity about having the hotel air conditioned. Later the same night, O'Donnell and O'Brien stood at a hotel window watching the fire fall, a park ritual, in which glowing embers are dropped thousands of feet down a canyon wall. When it was over, after much hoopla and delay, O'Donnell turned to O'Brien and said: "I haven't been so excited since my first communion."

But J.F.K. became more and more fascinated with the West and was planning to spend a summer vacation with his family on a ranch, possibly just before the 1964 campaign began. He was also increasingly interested in its political importance, for, as he surveyed the country—looking for areas where he might compensate for the expected loss of some Southern States—the West appeared to him to be a political target of opportunity. O'Donnell, sensing the importance of this particular trip, called in Jerry Bruno from the Democratic National Committee to go out and make the advance arrangements.

Someday, a candidate for a Ph. D. in political science is going to enrich the literature with a study of advance men. In campaigns, they go ahead of the candidates, making all the local arrangements. Most of the time, they act as abominable nomen, for their candidate's interests are not always the same as the interests of the local officials. When this occurs, the advance man, especially if his name is Bruno, always has the last word—which is "no." On the advance for this trip Bruno said "no" so often in northern California that one local politician started calling him a dictator, telling his aids to clear everything with "Mussolini." But when Bruno had returned to Washington, so great was J.F.K.'s interest in this trip, that he walked into the Fish Room of the White House one day as O'Donnell was reviewing arrangements with Bruno and made a few alterations in the plans.

At Milford, the first stop on the trip, J.F.K. spoke at ceremonies dedicating the home of Gifford Pinchot, a pioneer in conservation, as the Pinchot Institute for Conservation Studies. In Ashland, Wis., that afternoon he was reminded of a stopover during the 1960 Wisconsin presidential primary campaign and he told the crowd: "I am, I think, the second President of the United States to spend the night in Ashland. Calvin Coolidge was here for some weeks, some days, but he never said a word. I was here for one night and spoke all the time."

That night, at the Duluth branch of the University of Minnesota, he made a perfectly dreadful speech, one of the worst reporters could remember. He rambled all over the lot, touching all bases, including conservation. Not once during the speech was he interrupted by applause. The following morning at the University of North Dakota in Grand Forks, reporters groaned as he told a story about Prince Bismarck categorizing the students of Germany: "One-third broke down from overwork, another third broke down from dissipation, and the other third ruled Germany. I do not know which third of the student body of this school is here today." We had heard the story a hundred times and we marked down the speech as another lackluster performance.

Though the crowds were large and friendly, the President had not set them on fire and it was becoming increasingly difficult for us to compete in our stories with the news breaking elsewhere. The House was voting that afternoon on the tax bill, and the news was out that American wheat traders had gone to Ottawa to talk with Soviet trade representatives about the possible sale of our surplus wheat. Reporters on the President's trip sought to make the story better than it really was by concocting vivid leads. The prize that second day went to Peter Lisagor of the Chicago Daily News, who began his story this way: "John F. Kennedy has been wandering through the West for the past 2 days like a strolling repertory player, alternating between the role of Paul Bunyan and Smokey the Bear."

WHAT HAPPENED IN BILLINGS

But late that afternoon of Wednesday, September 25, both the President's mood and style were to undergo a remarkable change. He had been informed by O'Brien by phone from Washington that the tax bill had passed by a greater margin than had been expected. This, plus the passage of the test ban treaty, constituted Kennedy's greatest legislative achievements. The crowd which welcomed him in Billings, Mont., was enormous and, considering this was Republican territory, it was enthusiastic. At the Yellowstone County fairgrounds he was introduced by the State's senior Senator, MIKE MANSFIELD, the majority leader. He rose to praise the leadership of MANSFIELD and of Minority Leader EVERETT DIRKSEN in securing ratification of the test ban treaty. When he mentioned these three words, there was prolonged cheering and applause. He knew that radioactivity was a source of some concern in the West and that the 150 Minuteman missile silos in the State caused anxiety. But even knowing this, he appeared to be somewhat surprised by the reaction to his reference to the test ban treaty.

J.F.K. had many faults as a speaker—he often threw away his best lines—but one of his more remarkable qualities on the political stump was his ability to shift gears if he sensed his audience was drifting away. In the same way, he could quickly begin to enlarge and embellish a theme if he sensed it was catching his audience. In Billings, he knew after the first response to his mention of the test ban treaty, that this crowd was his, and he started to develop the peace theme, his right forefinger stabbed the air, and the strident tone of the campaign days returned to his voice.

He talked about the nuclear confrontations of the past 2 years, the one over Berlin in 1961 and the more menacing one over Cuba in 1962. "What we hope to do," he said, "is lessen the chance of a military collision between these 2 great nuclear powers which together have the power to kill 300 million people in the short space of a day. That is what we are seeking to avoid. That is why we support the test ban treaty. Not because things are going to be easier in our lives, but because we have a chance to avoid being burned."

We left Billings and flew to Jackson Hole, Wyo., for the night. I suppose that in retrospect it is easy to make too much of this time and that place as the moment of truth or the instant of discovery. But I thought that night, and have had it since confirmed by those in a better position to know, that the President knew from then on that people in the West were really not very much interested in hearing him talk about conservation. Many of them had come long distances and had brought their children to hear him. They knew more about dams and reclamation projects than he would ever learn. What they wanted from him, what they wanted to hear from any President, was a discussion of the more cosmic issues—peace and war, the economy, automation, and the kind of education this society was going to provide for their children.

He welcomed the discovery. It fit the mood he was in. During his campaign for the Presidency, he had often cited Teddy Roosevelt's description of the Office, "a bully pulpit." But at least during the first 2 years in office, J.F.K. showed some reluctance to play to the full the important role of the President as educator. As a total rationalist, he hated to preach and to harangue. But during his third year in office, he felt compelled by events to place more emphasis on this role. His experience in Billings brought into focus what he was to talk about during the rest of the trip.

In Jackson Hole that night, there was a sense of excitement. We finally had a story Actually, we had only the faintest glimmerings of what had happened, that what we had embarked upon the previous day in Washington had changed from a routine political excursion into an exercise in political discovery. For myself, I remember vividly only two events that night: Salinger and O'Donnell looking up from the dinner table and staring at Stewart Udall in amazement when he suggested that the President might like to get up at 5:30 the next morning for a nature hike; and later in the evening, sitting next to Robert Baskin of the Dallas News as he telephoned his office to confirm that J.F.K. would be coming to Texas in November.

In Great Falls, Mont., the next morning, the size and warmth of the crowds continued to amaze the President and MIKE MANSFIELD. At the stadium, the President continued to develop the theme of peace and the test ban treaty and wove into it education, a subject which he was planning to use as an issue in the 1964 campaign. He talked about our children as our greatest natural resource and asked: "What chance do they have to finish school? Will their children grow up in a family which is, itself, deprived, and so pass on from generation to generation, a lag, a fifth of the country which lives near the bottom while the rest of the country booms and prospers?"

On the way back to the airport, the President stopped off to see MANSFIELD'S 86-year-old father. It was the President's idea. MANSFIELD urged him not to bother. But the President insisted. It was gracious and characteristic. When he asked the elder Mansfield how he thought his son was doing, the old man replied: "I think you're both doing a pretty good job."

IN THE MORMON TABERNACLE

On the way from Great Falls to Hanford, Wash., reporters were given the advance text of the speech the President was to make that night in the Mormon Tabernacle in Salt Lake City. Salinger had been assuring reporters all morning that the speech was not an attack on Senator GOLDWATER but rather an exposition of the President's views on the complexities of foreign policy. Yet, as I sat on the press plane reading the advance, I came across a passage which deplored the idea that "we pick up our marbles and go home" if we did not get our own way in the world. Salinger was sitting in front of me enjoying a beer, and I leaned forward to remind him that the line was vintage GOLDWATER. He bolted for the pilot's compartment and got on the radio to *Air Force I*, demanding to know from a secretary how that line from the original text had found its way into the finished version of the speech. It had been a mistake and he returned to the cabin to advise reporters to substitute a line which no one could say came from the mouth of BARRY GOLDWATER. It was an exercise in futility. All of us wrote stories saying the speech was a refutation of Senator GOLDWATER'S views.

After a brief stop in Hanford, Wash., for ceremonies dedicating a nuclear power reactor, the President flew on to Utah. Salt Lake City that night was the climax of the trip. I could only remember one other occasion like it, that moment during the campaign when John F. Kennedy came to Houston, Tex., in an effort to convince Protestant ministers that a President could be true to his Catholic faith and to the Constitution of the United States. We had heard in Washington that J.F.K. was not very popular in Salt Lake City, that the area was a bastion of John Birch Society strength. Yet the trip from the airport to the center of the city made us realize that what we had heard in Washington did not square with what we could see in Salt Lake City. The crowds along the route were large, they were enthusiastic, and when he arrived at the Hotel Utah, he was mobbed.

In the Mormon Tabernacle that night John F. Kennedy found his vindication. He had once told an aid who was very close to him personally that if he had to lose the 1964 election because of his stand on the test ban treaty, then he was willing to pay the price. But from the moment he entered the tabernacle, he must have known that particular sacrifice would never have to be made. The reception was incredible. The audience applauded him for at least 5 minutes as he entered, interrupted him many times during his speech, and gave him a prolonged, standing ovation when he had finished. The speech was a plea for acceptance of a complicated world where oversimplification and withdrawal had no place, nor any virtue. Just as he had stood in the center of Europe 3 months before, urging Europeans not to withdraw unto themselves, he now stood in his own land and asked the same of his countrymen.

THE BEST JOB IN THE WORLD

In Tacoma, Wash., the following morning, he was in a marvelous mood and after hearing a description of the wonders of Mount Rainier, he told the crowd in the stadium to go and see "the Blue Hills of Boston, stretching 300 feet straight up, covered with snow in winter; then you'd know what nature could really do." He continued the theme that he had been developing since Billings, that the problems we faced—unemployment, school dropouts, and economic growth—were complex, but they would have to be met and solved if we were to be able to maintain our commitments around the world. As he left Tacoma, he was further cheered by news from the State chairman that his stand on the test ban treaty would help him greatly in a State where many women voters were concerned about fallout.

The President was due to spend Friday night in the superintendent's cabin at Lassen Volcanic National Park in northern California, an arrangement which prompted among the press corps many variations on the theme that it was still possible in America for a President to be born rich and grow up to live in a log cabin. On the flight from Tacoma to Redding that afternoon, Jerry Bruno, still sweating and nervous in the finest tradition of all advance men, stopped to chat with Mrs. Evelyn Lincoln, the President's secretary. He asked her if the President had been pleased with his reception in Salt Lake City. She told Bruno she had never seen him happier. Perhaps it was this satisfaction which prompted him to allow photographers to be brought up from Redding to take pictures of him feeding bread to a tame deer, the kind of corny set-up shot which he had always avoided in the past. He was happy and relaxed that night and told Dave Powers and Kenny O'Donnell that the park superintendent had the best job in the world.

Saturday was the final day for speeches. The first was at the Whiskeytown Dam and Reservoir, where for the first time in public he seemed to accept the idea of a 35-hour workweek, and he asked whether or not there would be green grass for people to see when finally they could spend more and more time away from their jobs. In the convention hall in Las Vegas, a few hours later, in his last speech of the tour, he wove together all the themes he had been developing over the past 4 days—peace, conservation, education, and the necessity to find jobs for a population which would total 350 million by the end of this century. Here, as in Billings, Great Falls, Salt Lake City, and Tacoma, the crowd was his, and you knew this was no longer a tour, it was a campaign. If John F. Kennedy ever had any doubts about his reelection—and I think he had none—they were dispelled by this trip.

The President relaxed Saturday afternoon and all day Sunday at Bing Crosby's home in Palm Springs, watching football on television, taking an occasional swim in the pool, and discussing with Powers and O'Donnell how well the trip had gone. He returned to Washington, Monday, September 30. Shortly after he walked into his office, he called Evelyn Lincoln in to dictate this letter to Jerry Bruno:

"DEAR JERRY: The Western trip represented an outstanding job of organization and planning. Please accept my warmest thanks.

"With every good wish,

"Sincerely,

"JOHN F. KENNEDY."

Bruno has the letter in his desk at the Democratic National Committee in Washington. He had worked for John F. Kennedy since 1959, but this was the first letter he had ever received from him. It was also the last.

RECESS TO 10 A.M. TOMORROW

Mr. MORTON. Madam President, I am about to suggest the absence of a quorum.

Mr. PELL. Madam President, I ask the Senator to withhold that request so that I may move that the Senate stand in recess, in accordance with the previous order, until 10 o'clock tomorrow morning.

Mr. MORTON. Because of the charming lady who is in the chair, I agree.

The motion was agreed to; and (at 9 o'clock and 26 minutes p.m.), under the previous order, the Senate recessed until tomorrow, Thursday, April 9, 1964, at 10 a.m.

NOMINATION

Executive nomination received by the Senate, April 8 (legislative day of March 30), 1964.

COAST AND GEODETIC SURVEY

Subject to qualifications provided by law, the following for permanent appointment to the grade indicated in the Coast and Geodetic Survey:

To be lieutenant (junior grade)

George M. Cole, Jr.

HOUSE OF REPRESENTATIVES

WEDNESDAY, APRIL 8, 1964

The House met at 11 o'clock a.m.

The Chaplain, Rev. Bernard Braskamp, D.D., offered the following prayer:

Matthew 5: 16: *Let your light so shine before men that they may see your good works and glorify your Father who is in heaven.*

Eternal God, our Father, who hast revealed Thyself in the heart and history of mankind, incline us to be more sensitive and responsive to Thy presence and power in these days of crisis and confusion.

We rejoice that we are never absent from Thy thought and love. Thou art always near us when our life becomes a thing of conflict and struggle, of strain and stress, of difficulty and danger.

May we humbly recognize how luminous and lovely our human life could be