mittee on Public Works; with amendment (Rept. No. 1314). Referred to the House Calendar.

Mr. YOUNG: Committee on Rules. House Resolution 675. Resolution for consideration of S. 2394, an act to facilitate compliance with the convention between the United States of America and the United Mexican States, signed August 29, 1963, and for other purposes; without amendment (Rept. No. 1315). Referred to the House Calendar.

PUBLIC BILLS AND RESOLUTIONS

Under clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. BATTIN:

H.R. 10762. A bill to amend section 503 of title 38 of the United States Code to provide that, for purposes of determining the annual income of an individual eligible for pension, payments of State bonus for military service shall be excluded; to the Committee on Veterans' Affairs.

By Mr. BENNETT of Florida:

H.R. 10763. A bill to amend title 10 of the United States Code in order to promote high morale in the uniformed services by providing a program of medical care for certain former members of the uniformed services and their dependents; to the Committee on Armed Services.

By Mr. CAMERON:

H.R. 10764. A bill to provide for the presentation by the United States to the people of Mexico of a monument commemorating the independence of Mexico, and for other purposes; to the Committee on Foreign Affairs.

By Mr. CELLER:

H.R. 10765. A bill to amend the act of May 11, 1954 (ch. 199, sec. 1, 68 Stat. 81 (41 U.S.C. 321)) to provide for full adjudication of rights of Government contractors in courts of law; to the Committee on the Judiciary.

By Mr. HARRISON:

H.R. 10766. A bill to amend the Internal Revenue Code of 1954 to allow a taxpayer a deduction from gross income for tuition and other expenses paid by him for his education or the education of his spouse or any of his dependents at a college or university; to the Committee on Ways and Means.

By Mr. MAHON:

H.R. 10767. A bill to increase the amount of domestic beet sugar and mainland cane sugar which may be marketed during 1964, 1965, and 1966; to the Committee on Agriculture.

By Mr. OLSEN of Montana:

H.R. 10768. A bill to amend the Public Building Act of 1959 to require separate contracts to be entered into for the performance of mechanical specialty work required in certain construction and alteration of public buildings; to the Committee on Public Works.

By Mr. ROGERS of Texas:

H.R. 10769. A bill to increase the amount of domestic beet sugar and mainland cane sugar which may be marketed during 1964, 1965, and 1966; to the Committee on Agriculture.

By Mr. CHARLES H. WILSON:

H.R. 10770. A bill to amend the Bank Holding Company Act of 1956, and the Federal Deposit Insurance Act, as amended; to the Committee on Banking and Currency.

By Mr. BOGGS:

H.R. 10771. A bill to amend the joint resolution establishing the Battle of New Orleans Sesquicentennial Celebration Commission so as to authorize an appropriation to carry out the provisions thereof; to the Committee on the Judiciary.

By Mr. BURTON of Utah:

H.R. 10772. A bill to increase the amount of domestic beet sugar and mainland cane sugar which may be marketed during 1964, 1965, and 1966; to the Committee on Agriculture.

By Mr. O'BRIEN of New York:

H.R. 10773. A bill to provide that tires sold or shipped in interstate commerce for use on motor vehicles shall meet certain safety standards; to the Committee on Interstate and Foreign Commerce.

By Mr. PHILBIN:

H.R. 10774. A bill to authorize the disposal without regard to the prescribed 6-month waiting period, of cadmium from the national stockpile and the supplemental stockpile; to the Committee on Armed Services.

By Mr. WHALLEY:

H.R. 10775. A bill to amend section 1461 of title 18 of the United States Code with respect to the mailing of obscene matter, and for other purposes; to the Committee on the Judiciary.

H.R. 10776. A bill to require the Secretary of Commerce either to give the State of Pennsylvania alternative mileage on the Interstate System or to pay the Federal share of the Pennsylvania Turnpike; to the Committee on Public Works.

By Mr. WHITENER:

H.R. 10777. A bill to amend the act of March 3, 1901, relating to divorce, legal separation, and annulment of marriage in the District of Columbia; to the Committee on the District of Columbia.

By Mr. WIDNALL:

H.R. 10778. A bill to amend the Social Security Act so as to provide Federal financial assistance for establishing and maintaining State programs of voluntary health insurance for the aged; to the Committee on Ways and Means.

By Mr. MONAGAN:

H.J. Res. 990. Joint resolution proposing an amendment to the Constitution of the United States relating to succession to the Presidency and Vice-Presidency and to cases where the President is unable to discharge the powers and duties of his office; to the Committee on the Judiciary.

By Mr. SICKLES:

H.J. Res. 991. Joint resolution proposing an amendment to the Constitution of the United States relative to equal rights for men and women; to the Committee on the Judiciary.

By Mr. KILGORE:

H.J. Res. 992. Joint resolution to determine the desirability of establishing an historic site near Brownsville, Tex., in commemoration of the Mexican War; to the Committee on Interior and Insular Affairs.

By Mr. MINISH:

H. Res. 674. Resolution condemning persecution by the Soviet Union of persons because of their religion; to the Committee on Foreign Affairs.

MEMORIALS

Under clause 4 of rule XXIII, memorials were presented and referred as follows:

By the SPEAKER: Memorials of the Legislature of the State of Massachusetts, memorializing the President and the Congress of the United States to enact legislation requiring the formation of an Army Special Forces unit within all State National Guard units; to the Committee on Armed Services.

Also, memorial of the Legislature of the State of Massachusetts, memorializing the President and the Congress of the United States relative to requesting the Judiciary Committee of the U.S. Congress to report out the resolution which proposes an amendment to the Constitution of the United States permitting the reading of the Bible in the schools; to the Committee on the Judiciary.

Also, memorial of the Legislature of the State of Massachusetts, memorializing the President and the Congress of the United States relative to requesting the Congress of the United States to call a convention for the purpose of proposing an amendment to the Constitution of the United States allowing the reading of the Bible in the schools; to the Committee on the Judiciary.

Also, memorial of the Legislature of the State of Massachusetts, memorializing the President and the Congress of the United States to support and adopt an amendment to the Constitution of the United States permitting Bible reading and prayers in our public schools; to the Committee on the Judiciary.

PRIVATE BILLS AND RESOLUTIONS

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

By Mr. BURTON of California:

H.R. 10779. A bill for the relief of Yoshihiro Okamoto; to the Committee on the Judiciary.

H.R. 10780. A bill for the relief of Leonardo Milana; to the Committee on the Judiciary.

By Mr. DEVINE:

H.R. 10781. A bill for the relief of Linus Han; to the Committee on the Judiciary.

By Mr. JOHNSON of California:

H.R. 10782. A bill to remove a cloud on title to certain lands in California; to the Committee on Interior and Insular Affairs.

By Mr. KEITH:

H.R. 10783. A bill for the relief of Maria A. Marousis; to the Committee on the Judiciary.

By Mr. PUCINSKI:

H.R. 10784. A bill for the relief of Eugenia Makris; to the Committee on the Judiciary.

SENATE

THURSDAY, APRIL 9, 1964

(Legislative day of Monday, March 30, 1964)

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

Rev. Walter C. Eyster, D.D., minister, First Methodist Church, Galion, Ohio, offered the following prayer:

Our Father God, to Thee we pray,
As we come, in prayer, this day.
We seek Thy presence and Thy power—
Thy guidance—for this great hour.
Through Thy spirit's inner voice
Reveal Thy truth for human choice.
Give to this Senate Thy kingdom vision
And with it, God, supreme decision.
Make known Thy will, quicken human skill,
For freedom's rough-hewn carving.
Let each one see what now must be
As together human hearts are throbbing.
In Jesus' name we come and pray,
Looking ever for new dawn, new ray,
New light, for each new day. Amen.

THE JOURNAL

On request of Mr. MANSFIELD, and by unanimous consent, the reading of the Journal of the proceedings of Wednesday, April 8, 1964, was dispensed with.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Hackney, one of its reading clerks, announced that the House had agreed to the amendments of the Senate to the bill (H.R. 6196) to encourage increased consumption of cotton, to maintain the income of cotton producers, to provide a special research program designed to lower costs of production, and for other purposes.

The message also announced that the House had passed the following bills, in which it requested the concurrence of the Senate.

H.R. 8590. An act to incorporate the Aviation Hall of Fame; and

H.R. 10222. An act to strengthen the agricultural economy; to help to achieve a fuller and more effective use of food abundances; to provide for improved levels of nutrition among economically needy households through a cooperative Federal-State program of food assistance to be operated through normal channels of trade; and for other purposes.

HOUSE BILLS REFERRED

The following bills were each read twice by their titles and referred as indicated:

H.R. 8590. An act to incorporate the Aviation Hall of Fame; to the Committee on the Judiciary.

H.R. 10222. An act to strengthen the agricultural economy; to help to achieve a fuller and more effective use of food abundances; to provide for improved levels of nutrition among economically needy households through a cooperative Federal-State program of food assistance to be operated through normal channels of trade, and for other purposes; to the Committee on Agriculture and Forestry.

CIVIL RIGHTS ACT OF 1963

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

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

Mr. KENNEDY obtained the floor.

Mr. MANSFIELD. Mr. President, will the Senator from Massachusetts yield—provided it is understood that in doing so, he will not lose his right to the floor—so that I may suggest the absence of a quorum?

Mr. KENNEDY. Yes.

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

Mr. MANSFIELD. It will be a live quorum.

Mr. KENNEDY. Very well; I yield.

Mr. MANSFIELD. Then, 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. 125 Leg.]

Aiken	Hartke	Monroney
Allott	Hickenlooper	Morse
Anderson	Hill	Morton
Bartlett	Holland	Mundt
Bayh	Hruska	Muskie
Beall	Humphrey	Nelson
Bible	Inouye	Neuberger
Boggs	Jackson	Pastore
Brewster	Javits	Pearson
Burdick	Johnston	Pell
Cannon	Jordan, Idaho	Prouty
Carlson	Keating	Proxmire
Case	Kennedy	Ribicoff
Clark	Kuchel	Robertson
Cooper	Lausche	Russell
Cotton	Long, Mo.	Saltonstall
Curtis	Magnuson	Scott
Dirksen	Mansfield	Smith
Dominick	McCarthy	Walters
Douglas	McClellan	Williams, N.J.
Ellender	McIntyre	Williams, Del.
Fong	McNamara	Yarborough
Gore	Mechem	Young, Ohio
Gruening	Metcalf	
Hart	Miller	

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 Arizona [Mr. HAYDEN], the Senator from North Carolina [Mr. JORDAN], the Senator from Wyoming [Mr. MCGEE], the Senator from South Dakota [Mr. MCGOVERN], the Senator from Utah [Mr. MOSS], and the Senator from Missouri [Mr. SYMINGTON] are absent on official business.

I also announce that the Senator from West Virginia [Mr. BYRD], the Senator from IDAHO [Mr. CHURCH], the Senator from Mississippi [Mr. EASTLAND], the Senator from Oklahoma [Mr. EDMONDSON], the Senator from California [Mr. ENGLE], the Senator from Louisiana [Mr. LONG], the Senator from Florida [Mr. SMATHERS], the Senator from Alabama [Mr. SPARKMAN], the Senator from Mississippi [Mr. STENNIS], the Senator from Georgia [Mr. TALMADGE], 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 during convalescence from illness.

Mr. KUCHEL. I announce that the Senator from Utah [Mr. BENNETT], the Senator from Arizona [Mr. GOLDWATER] and the Senator from Wyoming [Mr. SIMPSON] are detained on official business.

The Senator from Texas [Mr. TOWER] and the Senator from North Dakota [Mr. YOUNG] are necessarily absent.

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

Mr. YARBOROUGH. Mr. President, will the Senator yield to me briefly?

Mr. KENNEDY. Mr. President, I ask unanimous consent that I may yield to the Senator from Texas without losing my right to the floor.

Mr. YARBOROUGH. Mr. President, I ask unanimous consent that the Senator from Massachusetts may yield to me without losing his right to the floor and without its being counted as two speeches against him.

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

GENERAL OF THE ARMY DOUGLAS MACARTHUR

Mr. YARBOROUGH. Mr. President, when General of the Army Douglas MacArthur died on Sunday, there passed away the greatest proconsul ever to serve this Republic. Not yet fully realized by his own countrymen is his achievement in Japan. When the occupation of Japan began in August of 1945, its cities were black scars on the land, two of them, Hiroshima and Nagasaki, had been incinerated with atom bombs, millions of lives had been lost by Japan in the war, tens of millions of its people were homeless, its navy and merchant marine—the lifeline of the small island empire—had been utterly destroyed, millions of its soldiers who had been gone from Japan for years were prisoners of war on distant islands, the resources of Japan were used up, ruin and famine stalked the land, even their religious faith—that the Emperor was the godhead and could not lose the war—was shattered, disproven, destroyed.

The bitterest war to the death this nation ever fought left the defeated people embittered and fearful—they had experienced 4½ years of destruction, defeat, and despair. They, a proud and intelligent people who had never known defeat nor foreign occupation, after all their losses, their sacrifices, their deprivation, looked up from their ruins in August and September of 1945 to see victorious troops of a strange, alien race, speaking an unknown, non-Asiatic tongue, marching in every county and ken, occupying every city and crossroad.

Commanding those troops was a man of destiny, the only U.S. Congressional Medal of Honor winner whose father was a Congressional Medal of Honor winner, General of the Army Douglas MacArthur.

General of the Army Douglas MacArthur was no ordinary American—indeed, no ordinary man. Son of a distinguished father, he graduated from West Point in 1903 with a grade average so high that no other cadet has ever achieved it since. Experience in administration was obtained as commanding general of the famed 42d—Rainbow—Division in Europe in World War I, as Superintendent of the U.S. Military Academy at West Point 1919–22, as Chief of Staff and in other governmental assignment, as military adviser of the Commonwealth Government of the Philippines 1935, as Field Marshal of the Philippine Army 1936–37, as commander in chief of United States and Filipino forces 1941–42, as supreme commander of the Allied forces in the South Pacific 1942, and as commander of the U.S. Forces in the Far East from 1941 to 1951.

This brief sketch of a part of his background gives only a part of the training

and experience which prepared Douglas MacArthur for his great role in Japan. Appointed supreme commander to accept the surrender by Japan in 1945, and likewise commander of the occupational forces in Japan, he set about his great task in Japan with a dedication to protection of the civilian population of Japan, their persons, rights, property, and privileges with a zeal and a success probably unequalled by any other occupying commander in all the history of warfare.

Tokyo, 20 miles wide north to south, 30 miles long east to west, was a blackened ruin in August 1945. For mile after mile no house stood; only a burned and rusted iron safe containing the family treasures, standing on a concrete slab, with a board stuck in the ground in front with the name of the owner, evidenced former abodes of millions of Tokyo residents. Under the MacArthur controlled occupation, those safes were untouched. No looting hands touched the knobs. The Japanese girls and women were far safer in the presence of American troops than American women would be now at night on the streets of many American cities.

Given virtually unlimited power over the defeated and occupied foe, Douglas MacArthur showed respect for the religion and culture of Japan, aided the reconversion of their industry, steered them into the ways of peace and democracy, caused their renunciation of war as an instrument of national policy, and with food and supplies helped stop the ravages of hunger and famine.

The occupation was no greedy plunder of a defeated people; it was a guarded and helping hand to a recovery whose magnitude still astounds the world.

Viceroy, military governor, commander of the occupation forces, pro-consul—we have no word in English that precisely defines the almost unlimited powers MacArthur was granted, and so carefully used, in Japan; but pro-consul probably comes closest to it.

A victorious commanding general in war, a magnanimous custodian of victory in the hour of triumph, Douglas MacArthur set a new standard of human conduct in dealing with a defeated foe—a new standard for America and for the world.

Twice in my lifetime I served in the Armed Forces of our country under Gen. Douglas MacArthur. The first time was for a year in my youth as a cadet at West Point, where the young Brig. Gen. Douglas MacArthur, back from a glamorous and spectacular service with the Rainbow Division in Europe in World War I, was a hero of the Army. I was there. A quarter of a century later, I served under him as a division military government officer in occupied Japan, where my division, the 97th Infantry, had jurisdiction over a seventh of the area and people of Japan, in carrying out the MacArthur directories. I was there. This time MacArthur was a hero to the world.

Douglas MacArthur was a soldier. No higher tribute can be paid by soldiers to a man who dedicated his life to soldiering and who did it so well, with a flair that inspired Americans, uniformed or civilian.

But I shall remember General MacArthur not only for his great military leadership in World Wars I and II, but for what I believe to be his greater achievement as a just and wise man in governing defeated people, a statesman dedicated to peace when peace was the order of the day, as it was when he presided over Japan after accepting that country's surrender.

Typical of General MacArthur's viewpoint during the occupation of Japan was the following statement, which he made in November 1945, 2 months after Japan's surrender:

I am not concerned with how to keep Japan down but how to get her on her feet again. We must scrupulously avoid interference with Japanese acts merely in search for a degree of perfection we may not even ourselves enjoy in our own country.

In Japan both American troops and Japanese citizens lined the streets to see General MacArthur as he entered or left his headquarters, the Dai-ichi Building in Tokyo. I watched their devotion often. He was a hero to all, and his just leadership was the first moving factor in the rebuilding of a Japan that is now a prosperous, strong ally of the West rather than an impoverished Japan caught up in the spreading web of communism in Asia. He was a rare man, a brilliant general in World War II, a champion of peace and justice when the shooting ended. Whatever controversies clouded his later years, there can be no question about his great generalship in World War II, and his even greater service as our governmental administrator over Japan in the post-World War II years.

I ask unanimous consent to have printed in the RECORD the text of President Lyndon Johnson's statement on the death of General MacArthur as printed in the Washington Post, Monday, April 6, 1964, and one of General MacArthur's last speeches made in 1962, as reprinted in the Washington Evening Star of Tuesday, April 7, 1964, under the caption: "MacArthur on War—'Drink Deep From the Chalice of Courage.'"

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

[From the Washington Post, Apr. 6, 1964]

JOHNSON'S STATEMENT

(Text of President Johnson's statement on the death of Gen. Douglas MacArthur.)

One of America's greatest heroes is dead.

General of the Army Douglas MacArthur fought his last fight with all the valor that distinguished him in war and peace.

I have given instructions that he be buried with all the honors a grateful Nation can bestow on a departed hero.

But in the hearts of his countrymen and in the pages of history his courageous presence among us and his valiant deeds for us will never die.

At a time of increasing complexity, where ancient virtues are obscured by the rush of events and knowledge, his life has reminded us that the enduring strength of America rests on its capacity for such simple qualities as integrity and loyalty; honor and duty.

For the man that he was and the success he achieved, this Nation gives thanks to God for the 84 years he lived and served.

May his devoted wife and his young son know that on behalf of a grateful Nation, Mrs. Johnson and I pray for God's grace on this great soldier and patriot.

[From the Washington Evening Star, Apr. 7, 1964]

MACARTHUR ON WAR—"DRINK DEEP FROM THE CHALICE OF COURAGE"

(Every January 26 in recent years General of the Army Douglas MacArthur was guest of honor at a New York birthday party attended by some 70 veterans who served with him in the Southwest Pacific during World War II. At the 1962 party, marking his 82d birthday, General MacArthur made a speech, which was recorded and distributed to the guests but never made public. Here is the text of that speech, released today by Robert M. White II, president and editor of the Mexico (Mo.) Ledger, who was one of the guests:)

My dear old comrades, what can I say to you tonight that has not been said before, again and again? We have fought our war so many, many times that I feel we have no foe left. We have gunned him; we have bombed him; we have torpedoed and sunk him so often that only the ghosts of his battered remnants remain.

Each year we have sensed again the mire of murky foxholes, the stench of ghostly trenches, the slime of dripping dugouts. We have listened vainly, but with thirsty ear for the witching sound of faint bugles blowing reveille, far drums beating the long roll, the crash of guns, the rattle of musketry, the strange, mournful mutter of the battlefield.

Our flags still fly in the evening of our memory. We have wined and dined here each year in our comfort, telling and retelling of the blazing suns of relentless heat, the torrential rains of devastating storm, the loneliness and utter desolation of jungle trails, the bitterness of long separation from those we loved and cherished, the deadly pestilence of tropical disease, the ghastly horror of stricken areas of war.

We have echoed and reechoed how swift and sure was our attack, how resolute and determined was our defense, how indomitable was our purpose, and how complete and decisive was our victory.

But everything is changing now. We are in a new era. The old methods and solutions no longer suffice. We have new thoughts, new ideas, new concepts. We are bound no longer by a straitjacket of the past. Nowhere is the change greater than in our own profession of arms.

Electronics and other processes of science have raised the destructive potential of weapons to encompass mass annihilation. But this very triumph of invention, this very success of imagination, has destroyed the possibility of global war being a rational method for the settlement of international difficulties.

It has changed the concept and the image of war as the ultimate weapon of statecraft, as the apotheosis of diplomacy, as a shortcut to international power and health. The enormous destruction to both sides of equally matched forces makes it impossible for even a winner to translate it into anything but his own disaster.

Our own war, even with its now somewhat antiquated armaments, clearly demonstrated that the victor must pay in large measure for the very injuries inflicted on his enemy. Our country expended billions of dollars and untold energy in healing the wounds of Japan and Germany. Preparedness—essential, vital, imperative as it is—is not a full solution to the problem, for the relative strengths of the two great opponents will change little with the years. Action by one along this line will be promptly matched by reaction from the other.

What, then, are the main military conclusions to be drawn from this situation? Each of you as professional men will have his own. Mine I give to you for what you may think they are worth.

First. The chance of deliberate global war has become most remote. The people of both sides desire peace. Both dread war. It is actually the one issue upon which both would profit equally. It is the one issue on which the interests of both are parallel. It is probably the only issue in the world upon which they might agree. The main flaw in this deduction is that the constant acceleration of preparation may ultimately, without specific intent, precipiate a kind of spontaneous combustion.

A famous Greek philosopher once said: "Only the dead has seen the end of war."

Second. If global war does come, a primary objective, indeed, perhaps the principal objective, may well be the civil population. Global war now means the nation in arms. Every man, woman and child is involved. The most vulnerable targets are the great industrial centers, with their massed and fixed populations. They are the nerve centers—paralyze them and you may immobilize the whole. The citizenry might then force the government to yield.

I recall so vividly a prediction made to me by the German field marshal, von Hindenberg, shortly after the armistice of the First World War. My division, the old Rainbow, was stationed on the Rhine just below Remagen and just above Coblenz. The field marshal was talking to a group of American officers. He said: "I predict that ultimately victory in war may depend largely upon the ability of civil populations to withstand attack. It will be a question of nerves. That nation will lose whose nerves snap first."

What, you may well ask, will be the end of all of this? I would not know. But I would hope that our beloved country will drink deep from the chalice of courage.

Goodnight.

THE TEXAS PECAN, AMERICA'S MOST VALUABLE NATIVE HORTICULTURAL PRODUCT

Mr. YARBOROUGH. Mr. President, before and since the first European in Texas, Cabeza de Vaca, described the Texas pecan—1528—the pecan has been an important item of food in our State. It was a major part of the food supply of the Indian tribes, and was also an important part of the diet of the early settlers of those river valleys and other areas of Texas where the pecan grew.

The pecan tree is now the State tree of Texas. It is found throughout the great central portion of the State and is of great economic importance. Texas raises 21 percent of all the pecans harvested in the United States, the production averaging over 35 million pounds per year over a 10-year period and the crop having an average value of over $8 million.

In addition to Texas leading all States in production of the native pecan, cultivated orchards of improved varieties are found throughout the State. Horticulturists have been improving pecans and developing new varieties in Texas for three-quarters of a century. The horticulturists who developed new pecan varieties and the many varieties they produced are listed and narrated in the interesting book, "Horticulture and Horticulturists in Early Texas," by Samuel Wood Geiser. Maury Maverick, Jr., of San Antonio, Tex., a student of Texas history, has furnished me many interesting facts about Texas pecans.

This delicious nut has improved the diet and graced the table for more than 4 centuries. While peaches, plums, apples, and citrus fruits and many other valuable tree products were grown in Texas from the time of the first settlement by Spanish-speaking people from Mexico and English-speaking people from the United States, the pecan is the most valuable horticultural crop grown in the United States and in Texas that is native to our country.

The pecan is the most widely planted orchard tree in Texas. It is grown commercially in 181 of our 254 Texas counties, and is native to 151 counties. Fifteen counties have annual pecan shows.

While many of the early improved varieties of pecans developed in Texas bore the name of the horticulturist who developed it, or names such as "Peerless" or some other such descriptive name by which its quality might be gaged, more recent varieties being developed at the U.S. Pecan Field Station at Brownwood, Tex., are being given the names of the Indian tribes who first inhabited this country, and in whose diet the pecan played such an important part. Prominent among these new varieties of the pecan are the Comanche, Choctaw, Wichita, and Apache. Members of the Senate have recently sampled these new varieties of pecans.

In the home where I was born and reared in Henderson County, Tex., trees of improved varieties of pecans set out by my father many years ago, now still thrive and produce abundantly.

Dr. F. H. Brison, professor of the horticulture section, department of soil and crop sciences at Texas A. & M. University, and an authority on pecans, has written a most interesting paper on the pecan in Texas. An ancient Kiowa Indian legend about pecans was printed by the Texas Folklore Society in "Foller De Drinkin' Gou'd."

Dr. F. R. Brison has narrated the work of some of the foremost leaders among famous early horticulturists to improve the pecan, but there were a number of other pioneers, including S. W. Bilsing, professor of entomology, Texas A. & M. University, and J. H. Burkett of Clyde, Tex., who developed the Burkett variety, who was enthusiastic at an early time when evidence of a favorable future for improved thin shelled varieties was meager. H. A. Helbert of Coleman was one of the early horticulturists to topwork native pecan trees, and O. S. Gray, a nurseryman of Arlington, Tex., was the first secretary of Texas Pecan Growers Association, was twice president of it, and was largely responsible for the permanence of that organization.

I ask unanimous consent that Dr. Brison's paper "The Pecan in Texas" and "The Kiowa Indian Pecan Legend" be published at this point in the RECORD.

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

THE PECAN IN TEXAS

(By F. R. Brison)

We in Texas have just completed the harvest of a wonderful pecan crop, and this is an appropriate time to refresh our recollection about the pecan, its history, importance, and our research contributions to the pecan industry.

The pecan is native to Texas, and is our State tree. It is the most valuable horticultural crop grown in the United States that is native to our country. The principal rivers of Texas and their many tributaries abound with native pecan trees; enterprising pecan growers have developed orchards. These are stately trees; they herald the spring with banners of leaf and bloom; bared to the winter's cold they are the harps of the winds and they whisper the music of the infinite spaces; the nuts which they produce are the most delicate morsels of food. There are many historic pecan trees in Texas. One very famous one, still growing, still producing, grows at the old Sam Houston home at Huntsville, Tex. They were perhaps young seedlings when George Washington was at Valley Forge, when Cortez visited America or even when Columbus first discovered this part of the world. If they could speak in a fashion comprehensible to understanding they would tell wonderful stories of the people who had inhabited the land where they grow—stories of love and courtship, of peace and war, of hardship and prosperity. And indeed they do tell a story of good soil, of good climate, of production methods and techniques that have been develped, and of the permanence, and stability of an important horticultural crop in the Lone Star State.

The commercial pecan industry in Texas is relatively new. The pioneers who wrested the pecan from the wilds are of our own day and age and recollection. It is proper that we pause to review the contributions of these pioneers, to recognize their dedicated efforts, and to acknowledge our indebtedness to them.

Cebeza de Vaca, that unlucky Spaniard, was probably the first white man to record his observation of the pecan. During the years 1528–37 de Vaca was enslaved by the Indians and traveled the coastal areas of Texas from Galveston Island to the Guadalupe River and beyond. In his story about his trials as a captive, he relates that "two days after Lope de Ovideo left, the Indians * * * came to a place of which he had been told, to eat walnuts (pecans) * * * and it is the subsistence of the people 2 months in the year without any other thing." During his captivity de Vaca was frequently tied to pecan trees and had opportunity to observe them firsthand. Since they were his principal food source, he came to have warm high regard for them. De Vaca then, was one of the first non-Indians to become enthused over the pecan as a horticultural crop. He was a pioneer, but the number who have shared his enthusiasm in the years that have followed has been progressively increasing. De Soto in his historic exploration of the Mississippi River Basin observed pecans and commented upon their excellence. In 1782 a Frenchman, de Courset, serving with General Washington in the Valley Forge campaign left the record that "the celebrated general always had his pockets full of these nuts and he was constantly eating them." George Washington mentioned in his diary under the date of 1794 the planting around his place at Mount Vernon "several poccon or Illinois nuts that had been sent to him." An important milestone in the history of the pecan industry was the successful grafting of pecans in 1846–47 by Antone, a slave gardener in Louisiana.

Prominent in pecan growing history of Texas is the name of E. E. Risien of San Saba County, Tex. He was an immigrant boy of 16, from England, and he landed here in 1872. Early he developed an interest in pecan growing and ultimately planted one of the historic commercial orchards—historic because so many of our Texas varieties originated in that orchard. From it came the Western Schley, Texas Prolific, Jersey, San Saba Improved, Squirrel's Delight, and

many others. The late beloved Gov. James Stephen Hogg, in 1906, realizing that his death was imminent said in conversation to friends, "I want no monument of stone or marble, but plant at my head a pecan tree and * * * let the pecans be given out to the plain people of Texas so that they may plant them and make Texas a land of trees." The fulfillment of the wish of the late Governor Hogg by pioneer horticulturists—E. W. Kirkpatrick of McKinney, F. M. Ramsey, of Austin, J. S. Kerr, of Sherman, and C. Falkner, of Waco—gave impetus to pecan growing that has continued with increasing interest until the present time. The Hogg pecan trees are historic trees in Texas. Since 1919 the pecan tree has been the State Tree of Texas, as a result of an act of the State Legislature.

The late Edwin Jackson Kyle, long-time dean of agriculture at the Texas A. & M. College (now university), and later U.S. Ambassador to Guatemala, was a friend to the pecan. Under his guidance, literally thousands of young men of Texas were instructed in pecan growing, and these men now in their various stations over the State are making contributions to the general welfare, by producing good delectable pecans. One of these students is Louie D. Romberg, horticulturist at the U.S. Pecan Field Station at Brownwood, Tex. His specialty is a development of new varieties, and he has been eminently successful. His various crosses representing years of intricately minute detailed maneuvers of cross pollination, selection, observation and testing, has resulted in new varieties which promise to be the basis of an expanding pecan industry for the future. Prominent among these are the Barton, Comanche, Sioux, Choctaw, Wichita, and Apache.

Gene Penicaut, one of the few Frenchmen to escape the Natchez massacre in 1729, wrote "The natives have three kinds of nuts * * * the best one * * * are scarcely bigger than the thumb and are called 'pecane'." It is appropriate that these Indian names which Romberg is choosing for his varieties be used since the modern term pecan was derived from this Indian word, "pecane." It was a term used by the American Indian to designate all nuts that were so hard as to require a stone to crack them. This name was appropriated by the French settlers of the Mississippi basin for one nut in particular, the pecan. The word "hickory," from which an early botanical name of the pecan, Hicoria Pecan, was derived, is likewise from the Indian word "powcohicora." The American Indians pounded pecan kernels with a stone, then boiled them in water to make a broth, called powcohicora. This powcohicora was used to thicken venison broth and to season hominy or corn cakes and in some instances was allowed to ferment for an intoxicating drink.

In these days of agricultural surpluses, acreage control, and uncertain markets, it is refreshing to encounter a crop of which we have no surplus and of which none is likely in the foreseeable future, and one which offers such promise.

Pecan growing is a way of life for those who love trees. The trees herald the spring with bursting buds, with beautiful rosettes of developing pecan clusters—25,000 on one tree—comparable in beauty to a giant Christmas tree with as many bright and lighted spires. In midsummer the branches arch gracefully under the load of developing fruits and there is the pleasant contemplation of a golden harvest in the fall. Pecan nuts are good food, and pecan growing represents a permanent agriculture and a good way of life. The trees grow larger, taller, and more productive each passing year for 100 years or more, and where they are beauty dwells.

THE TEXAS KIOWA INDIAN PECAN LEGEND

Long long ago the great White Father of the Kiowa Indians, whose home was on the plains of Texas, lived in their midst, directing them in their war councils, leading them in battles against the enemy and accompanying them on their hunts. He was their personal leader. But the time soon came when he must leave. He must go to the spirit land, he said. However, he promised to continue to guide his people through the medicine men, and to return to them when his mission in the spirit world was accomplished. He went away.

But he had no sooner entered the spirit world than the Evil One, who had been watching and hating him for many years, attacked him. In the combat that followed, the cohorts of the evil spirit and the cohorts of the good spirit fought until the whole upper world became an inferno of lightning and thunder. In the end the White Father was killed. His lifeless body fell to the earth that the Kiowas hunted upon. They saw and recognized his form. They buried it in the bed of a stream, and carefully covered the grave with rocks and gravel.

The place of the burial became a shrine for periodical visits. One time when some of the red men came to do homage at the grave, they saw that a green stem had pushed its way up out of the rock. They took this green thing as a good sign. As it grew year after year, they saw that it was a new kind of tree in their world. At last, after so many years had gone by that only the old men could remember the burial of their White Father, the Indians found some nuts fallen from the great tree that had sprouted out of the grave. They found the meat in these nuts delicious and the nuts excellent for carrying on long hunting expeditions. Other trees came from nuts scattered on the ground and after many, many years the nut-bearing trees were growing all along the streams of Texas. They called the tree "Pecan," which means "nut."[1]

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. KENNEDY. Mr. President, it is with some hesitation that I rise to speak on the pending legislation before the Senate. A freshman Senator should be seen, not heard; should learn, and not teach. This is especially true when the Senate is engaged in a truly momentous debate, in which we have seen displayed the most profound skills of the ablest Senators, in both parties, on both sides of the issue.

I have been extremely impressed over the past 4 weeks with the high level of the debate on this issue; with the dignity of the proceedings, the precision with which the legal issues have been defined. The viewpoint of each of the great sections of our Nation is being fully aired and fully developed, as we proceed toward a national consensus on this issue.

I had planned, about this time in the session, to make my maiden speech in the Senate on issues affecting industry and employment in my home State. I still hope to discuss these questions at some later date. But I could not follow this debate for the last 4 weeks—I could not see this issue envelop the emotions and the conscience of the Nation—without changing my mind. To limit myself to local issues in the face of this great national question, would be to demean the seat in which I sit, which has been occupied by some of the most distinguished champions of the cause of freedom.

I feel I can better represent the people of Massachusetts at this time by bringing the experience of their history to bear on this problem.

I believe the basic problem the American people face in the 1960's in the field of civil rights is one of adjustment. It is the task of adjusting to the fact that Negroes are going to be members of the community of American citizens, with the same rights and the same responsibilities as every one of us.

The people of my State of Massachusetts have been making this kind of adjustment for 300 years. We have absorbed every racial nationality group, from the Puritans to the Poles to the Puerto Ricans. Massachusetts today has a higher percentage of foreign nationality groups than any other State in the country. Fully 40 percent of the people of my State, according to the latest census, are either immigrants or children of immigrants.

Every problem this bill treats—be it voting, equal accommodations, employment, or education—has arisen in my State at one time or another and we have solved them—by persuasion where possible; by law where necessary.

We have not suffered from this effort. Indeed, we have been strengthened. Our economy, our social structure, the level of our culture are higher than ever before, in a large part because of the contributions minorities have made.

I believe that if America has been able to make this adjustment for the Irish, the Italians, the Jews, the Poles, the Greeks, the Portuguese—we can make it for Negroes. And the Nation will be strengthened in the process.

In 1780, a Catholic in Massachusetts was not allowed to vote or hold public office. In 1840, an Irishman could not get a job above that of common laborer. In 1910, a Jew could not stay in places of public accommodation in the Berkshire Mountains.

It is true, as has been said on this floor, that prejudice exists in the minds and hearts of men. It cannot be eradicated by law. But I firmly believe a sense of fairness and good will also exists in the minds and hearts of men, side by side with the prejudice; a sense of fairness and good will which shows itself so often in acts of charity and

[1] This tale was taken from a book entitled "Foller De Drinkin' Gou'd," published by the Texas Folklore Society and edited by J. Frank Dobie. The story was written by G. T. Bloodworth as told to him by John L. Smith who heard it from a Kiowa Indian with whom he served in the World War. The story illustrates the position occupied by the pecan in the culture of the Indians.

kindness toward others. This noble characteristic wants to come out. It wants to, and often does, win out against the prejudice. Law, expressing as it does the moral conscience of the community, can help it come out in every person, so in the end the prejudice will be dissolved.

This bill has deep moral implications for the individual and his society. For this reason we have seen in recent months an unparalleled show of support for the bill by the religious leadership of America. Yesterday, I received a communication from His Eminence Richard Cardinal Cushing, of Boston. He said as follows:

On behalf of nearly 2 million Catholics, I am unhesitantly and wholeheartedly supporting the civil rights bill which is now under consideration in the U.S. Senate. The rights embodied in this bill are sacred rights, important to the dignity of the individual under God. I make this statement through Senator EDWARD M. KENNEDY, as cardinal of the Boston archdiocese.

I want to add that no one, in my judgment, has made a greater contribution to racial and religious understanding in my part of the Nation than Cardinal Cushing through his life and his works.

I have also received the following statement from the presiding bishop of the Episcopal Church of Massachusetts, Bishop Anson Stokes:

I believe I speak for the overwhelming number of Episcopalians as well as for Protestants in general when I affirm my personal, wholehearted support for the civil rights legislation and particularly for its public accommodations section. Courtesy, respect, and equal opportunity for human beings of all races cannot be left to chance. It must be assured by law as a human right, in all parts of our country in North as well as South.

Bishop Stokes has also made a significant contribution in this area.

In January of last year, there gathered in Chicago a National Conference on Religion and Race. Representatives of 67 national religious bodies, Protestant, Catholic, and Jewish, representing nearly all of the denominations of America, said at that time:

Our appeal to the American people is this: Seek a reign of justice in which voting rights and equal protection of the law will everywhere be enjoyed; public facilities and private ones serving a public purpose will be accessible to all; equal education and cultural opportunities, hiring and promotion, medical and hospital care, open occupancy in housing will be available to all.

Mr. President, I ask unanimous consent to have the full statement printed in the RECORD.

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

[From the National Conference on Religion and Race, Jan. 17, 1963, Chicago, Ill.]

AN APPEAL TO THE CONSCIENCE OF THE AMERICAN PEOPLE

We have met as members of the great Jewish and Christian faiths held by the majority of the American people, to counsel together concerning the tragic fact of racial prejudice, discrimination, and segregation in our society. Coming as we do out of various religious backgrounds, each of us has more to say than can be said here. But this statement is what we as religious people are moved to say together.

I

Racism is our most serious domestic evil. We must eradicate it with all diligence and speed. For this purpose we appeal to the consciences of the American people.

This evil has deep roots; it will not be easily eradicated. While the Declaration of Independence did declare "that all men are created equal" and "are endowed by their Creator with certain unalienable rights," slavery was permitted for almost a century. Even after the Emancipation Proclamation, compulsory racial segregation and its degrading badge of racial inequality received judicial sanction until our own time.

We rejoice in such recent evidences of greater wisdom and courage in our national life as the Supreme Court decisions against segregation and the heroic, nonviolent protests of thousands of Americans. However, we mourn the fact that patterns of segregation remain entrenched everywhere—north and south, east and west. The spirit and the letter of our laws are mocked and violated.

Our primary concern is for the laws of God. We Americans of all religious faiths have been slow to recognize that racial discrimination and segregation are an insult to God, the giver of human dignity and human rights. Even worse, we all have participated in perpetuating racial discrimination and segregation in civil, political, industrial, social, and private life. And worse still, in our houses of worship, our religious schools, hospital, welfare institutions, and fraternal organization we have often failed our own religious commitments. With few exceptions we have evaded the mandates and rejected the promises of the faiths we represent.

We repent our failures and ask the forgiveness of God. We ask also the forgiveness of our brothers, whose rights we have ignored and whose dignity we have offended. We call for a renewed religious conscience on his basically moral evil.

II

Our appeal to the American people is this:

Seek a reign of justice in which voting rights and equal protection of the law will everywhere be enjoyed; public facilities and private ones serving a public purpose will be accessible to all; equal education and cultural opportunities, hiring and promotion, medical and hospital care, open occupancy in housing will be available to all.

Seek a reign of love in which the wounds of past injustices will not be used as excuses for new ones; racial barriers will be eliminated; the stranger will be sought and welcomed; any man will be received as brother—his rights, your rigths; his pain, your pain; his prison, your prison.

Seek a reign of courage in which the people of God will make their faith their binding commitment; in which men willingly suffer for justice and love; in which churches and synagogues lead, not follow.

Seek a reign of prayer in which God is praised and worshipped as the Lord of the universe, before whom all racial idols fall, who makes us one family and to whom we are all responsible.

In making this appeal we affirm our common religious commitment to the essential dignity and equality of all men under God. We dedicate ourselves to work together to make this commitment a vital factor in our total life.

We call upon all the American people to work, to pray, and to act courageously in the cause of human equality and dignity while there is still time, to eliminate racism permanently and decisively, to seize the historic opportunity the Lord has given us for healing an ancient rupture in the human family, to do this for the glory of God.

Mr. KENNEDY. Mr. President, I have also received many letters from other religious leaders, as well as interested groups and citizens, and I ask unanimous consent that a sampling of those letters may be printed in the RECORD.

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

NEW ENGLAND YEARLY MEETING OF FRIENDS,
Boston, Mass., October 8, 1963.

Hon. EDWARD M. KENNEDY,
Old Senate Office Building,
Washington, D.C.

DEAR SENATOR KENNEDY: The social concerns committee of New England Yearly Meeting of Friends (Quakers), composed of members from many quarters of this region, is distressed that the un-Christian practices of racial segregation and discrimination continue to blight the lives of so many of our fellow Americans, both white and colored. We have resolved at a meeting held on September 8, 1963, to recommend urgently your most vigorous support of the various pieces of civil rights legislation introduced thus far in the Congress in behalf of President Kennedy, including the provisions that would govern public accommodations.

This entire legislative program has come to have important symbolic as well as practical significance for many colored Americans. However, while supporting the legislation thus far proposed, we recognize that it falls far short of the legitimate demands and aspirations of colored Americans, and we therefore urge a search for further, useful legislation not yet included in the President's program.

We are fortunate to live in a part of the Nation that is continuing to document extensively its ancient tradition of concern for individual rights and for the defense of the oppressed. It would seem to us appropriate, therefore, for each New Englander in the Congress, whether in the Senate or in the House, to take every opportunity for effective leadership in exploring the possibilities for further civil rights legislation.

It is apparent to many that an effective Federal Fair Employment Practices Act is needed. Surely some sort of youth training bill is required. Perhaps legislation is needed to require the opening of apprenticeships in craft unions equally to members of minority groups. Programs of scholarships for college and graduate students may have to be devised to help overcome the inequalities of educational opportunity still handicapping many of the most capable members of various minority groups.

In offering these random suggestions we do not presume to be outlining the full extent of such a legislative program. We hope you will feel led to use your personal and official influence and leadership to insure that such a program is developed and offered in the Congress. Such efforts, we are convinced, would be truly in the service of the Lord.

Cordially,

JOHN R. KELLAM,
Chairman.
ANNE FOSTER,
Recording Clerk.

TEMPLE SINAI,
Sharon, Mass., February 8, 1964.

Hon. EDWARD M. KENNEDY,
Senate Office Building,
Washington, D.C.

DEAR SENATOR KENNEDY: As a matter of moral regard, I feel that it is most important that our Congress enact strong civil rights legislation. Far too long citizens of the United States have been denied equal rights because of race, color, or religion.

I feel particularly that the pending legislation concerning fair employment practices must receive special attention. Inability to better themselves economically forces the Negro citizen into ghettolike slum housing. Unable to live where they like, their children are forced into inferior schools and thus do not have the education they need to compete efficiently in today's world. Congress has an opportunity to break this cycle this year.

Very truly yours,

HENRY BAMBERGER,
Rabbi.

THE CAPE COD COUNCIL OF CHURCHES, INC.,
Hyannis, Mass., February 25, 1964.

Hon. EDWARD M. KENNEDY,
Senate Office Building,
Washington, D.C.

DEAR SENATOR KENNEDY: Enclosed is a copy of a resolution passed at the recent annual meeting of the Cape Cod Council of Churches.

The council is made up of 53 churches with a combined membership of approximately 10,000 Cape Cod people. The resolution was passed unanimously.

This shows that we are solidly behind every move to achieve complete freedom and equality for all Americans, including those of Negro ancestry.

Best regards.

Sincerely,

KENNETH R. WARREN,
Chairman, Social Relations Department.

PETITION BY CAPE COD COUNCIL OF CHURCHES

We, the representatives of the churches associated in the Cape Cod Council of Churches, respectfully petition the Congress to insist that the committees of both Houses shall permit the Congress to take action on civil rights legislation promised in the platforms of both parties in 1960.

When thus permitted to act we petition the Congress to provide for all citizens protection when they exercise their constitutional right to petition for the redress of grievances, equality in practice when they register to vote, and equality under the law in using all places of public accommodations.

Having petitioned the Congress of the United States to pass appropriate civil rights legislation, we, the representatives of the churches associated in the Cape Cod Council of Churches, respectfully petition these associated churches to come to a better understanding of the complex ramifications of sin and prejudice among all of us.

We are shocked to recall that, contrary to our national tradition of equality before the law, some States prescribe that places of public accommodation shall treat citizens in two classes. But the prejudice which occasions such discriminatory laws influences the everyday uses of our churches and our communities.

We therefore respectfully suggest that our churches should study how well each of them and many of their members can learn to treat all men as God treats all men, according to all the respect and dignity which each wishes to receive for himself.

THE FIRST RELIGIOUS SOCIETY (UNITARIAN),
Newburyport, Mass., February 24, 1964.

Hon. EDWARD M. KENNEDY,
Senate Office Building,
Washington, D.C.

DEAR SIR: The committee for social concern of the First Religious Society (Unitarian) of Newburyport, Mass., voted unanimously at its last meeting to give our complete support to the civil rights bill now before Congress. We urge you to do everything possible to expedite the prompt passage of this important piece of legislation in its entirety.

Very truly yours,

Mrs. BERTRAND H. STEEVES,
Secretary, Committee for Social Concern.

GRACE EPISCOPAL CHURCH,
Everett, Mass., February 25, 1964.

Senator EDWARD KENNEDY,
Senate Office Building,
Washington, D.C.

DEAR SENATOR: As one of your constituents, as a Christian, as a person vitally concerned with the future well-being and peace of this great land and for the rights of all her citizens, may I urgently and respectfully plead that you give your entire energies and support to the civil rights bill soon to come before the Senate.

Your own legislative record indicates your enthusiasm for this cause. I would urge you as the time draws near and during actual debate to give of your unstinting capacities and zeal for the passage of this essential legislation.

Most respectfully,

Fr. ROBERT HANSON.

FIRST CONGREGATIONAL CHURCH, UNITED CHURCH OF CHRIST,
Auburn, Mass., February 3, 1964.

Senator EDWARD M. KENNEDY,
Senate Office Building,
Washington, D.C.

DEAR SIR: Enclosed is a copy of a resolution recently adopted unanimously at our annual church meeting.

Please consider the second portion of this resolution as an expression of the feelings of our entire church membership of 746 members in making your decisions on the forthcoming civil rights bill.

Respectfully,

GUY L. KNIGHT,
Chairman, Social Action Committee.

RESOLUTION ON CHRISTIAN FELLOWSHIP BY FIRST CONGREGATIONAL CHURCH, AUBURN, MASS.

Whereas the Massachusetts Congregational Christian Conference has passed resolutions on several occasions dealing with the social, civic, economic, and religious issues in racial discrimination in this Commonwealth and Nation, and has asked its member churches to participate in this concern; and

Whereas Dr. Ben. M. Herbster, president of United Church of Christ, has asked each member church of the United Church of Christ to declare itself as an open member church in which the fellowship of all God's people is without restrictions as to race, class, or ethnic background: Therefore be it

Resolved, That this church reaffirms its practice of long standing of being an open member church in which the fellowship of all God's people is without restrictions as to race, class, or ethnic background and publicly declare this practice as its policy; and be it further

Resolved, That such legislation as can be proposed that will protect the civil liberties of all U.S. citizens without violating other constitutional guarantees be supported and encouraged by this church. Copies of this resolution are to be provided to the members of the Massachusetts delegation to the U.S. Congress.

SINAI TEMPLE,
Springfield, Mass., March 3, 1964.

U.S. Senator EDWARD M. KENNEDY,
U.S. Senate,
Washington, D.C.

DEAR SENATOR KENNEDY: It is my sincere hope that you will vote in favor of H.R. 7152, the Civil Rights Act of 1963, without any amendment.

I would also hope that you might vote in favor of cloture so that this bill may be acted upon without filibuster.

In addition to my personal sentiments, our congregation has officially taken the same position. Our congregation represents something like 600 families.

That was a magnificent address you gave at our temple this past Sunday morning. It was also my privilege to have presented your late brother when he was U.S. Senator and I was the president of the Connecticut Valley Foreign Policy Association.

Thanks again.

Cordially yours,

Rabbi HERMAN E. SNYDER.

TRINITY EPISCOPAL CHURCH,
Randolph, Mass., August 29, 1963.

Hon. EDWARD KENNEDY,
U.S. Senate,
Washington, D.C.

MY DEAR SENATOR KENNEDY: I feel very strongly that legislation on civil rights must be enacted which will be in keeping with the Constitution of the United States and which will neither favor nor work to the disadvantage of any group or individual, but will guarantee equal opportunity and justice for all American citizens.

I am convinced that now is the time when human rights or the lack of them must be faced squarely and acted upon with conviction by the American people and by you as an official representative of this State and the people therein.

I look to you for prompt, fair and firm action.

Very truly yours,

WALTER K. LYON,
Rector.

UNITARIAN UNIVERSALIST ASSOCIATION OF CHURCHES AND FELLOWSHIPS IN NORTH AMERICA,
Boston, Mass., October 23, 1963.

Hon. EDWARD M. KENNEDY,
Senate Office Building,
Washington, D.C.

DEAR MR. KENNEDY: It is my duty and privilege to report to you at once action taken by the board of trustees of the Unitarian Universalist Association (of North America) in regard to the President's civil rights legislation.

Our board of trustees acting upon the precedent and in the context of many denominational resolutions and expressions of conviction in the past, voted unanimously at its meeting on October 15 to urge adequate legislation at once. I do not need to say that this action is without any political bias on the part of our board and association, or that it seems to us to be entirely in accord with our belief in the principle of human brotherhood. We feel strongly that this legislation is a necessary tangible expression of our faith in human brotherhood.

We urge your support, for the sake of the people involved, for the sake of the integrity of our Nation, and for the sake of the image of America in the eyes of the world.

With cordial good wishes.

Sincerely yours,

DANA MCLEAN GREELEY.

COUNCIL OF CATHOLIC MEN, ARCHDIOCESE OF BOSTON,
Boston, Mass., November 15, 1963.

To: Massachusetts congressional delegation. From Board of directors, ACCM, Francis M. McLaughlin, president.

We are enclosing a statement on Federal civil rights legislation that was adopted by the board of directors of the Council of Catholic Men, at its meeting November 11, 1963. The board represents 300,000 laymen of the archdiocese through its affiliated

organizations that are federated in the Council of Catholic Men.

We are sending this statement to you for your consideration and want to emphasize the board of directors' concern for strengthening, wherever possible, the program sent to the Congress by the President.

We realize that no matter in recent years has received more thoughtful analysis by our distinguished representatives in Congress. We want you to know that we are aware of this and to assure you of our desire to assist in achieving meaningful civil rights legislation this year.

STATEMENT BY COUNCIL OF CATHOLIC MEN, ARCHDIOCESE OF BOSTON

Election returns are being carefully scrutinized in all parts of the Nation with a view to determining whether a just civil rights bill is expedient at this time. Many columnists and commentators are attempting to assess political loss which may result from granting fundamental human rights to American citizens.

As official representative of the Boston Archdiocesan Council of Catholic Men, we call to your attention that the only guide in this matter for one professing Christian principles is justice. No one may in good conscience call upon public opinion polls or election results to ascertain whether or not to grant all citizens equal rights in voting, in admission to schools at all levels, in employment, in housing, public facilities, and public recreation.

We urge you, not merely as a matter of private conscience, but that the public conscience be not outraged, to vote favorably for meaningful civil rights legislation at this session of Congress.

WOOLMAN HILL,
A QUAKER CENTER,
Deerfield, Mass., January 22, 1964.

Senator EDWARD KENNEDY,
Senate Office Building,
Washington, D.C.

DEAR FRIEND: I believe you will be interested in the enclosed resolutions adopted last weekend by a conference on civil rights, held at this Quaker center.

Sincerely yours,

WILLIAM K. HEFNER,
Chairman, Board of Directors.

RESOLUTIONS OF THE CONFERENCE ON THE RESPONSIBILITY OF EDUCATION FOR CIVIL RIGHTS, SPONSORED BY WOOLMAN HILL, AT QUAKER CENTER, DEERFIELD, MASS., JANUARY 18, 1964

Resolved, That the attenders at this conference heartily support the civil rights bill currently before the Congress of the United States and strongly endorse its early passage without crippling amendments, which would compromise its goal of providing equal rights for all Americans whatever their race or color.

Resolved, That the attenders at this conference strongly urge the institution of a comprehensive and imaginative program by the Federal Government based on the idea of a domestic peace corps which would provide a work program and special educational opportunities for young Americans between the ages of 15 and 21 who are currently underprivileged and undereducated, this program to be administered through the cooperation of State and local governments and to be oriented toward the improvement of our local communities, the elimination of urban blight, and the general welfare of the Nation.

WILLIAM HEFNER,
Chairman, Woolman Hill Board of Directors.

AMERICAN JEWISH CONGRESS,
NEW ENGLAND REGION,
Boston, Mass., February 14, 1964.

Hon. EDWARD MOORE KENNEDY,
Senate Office Building,
Washington, D.C.

DEAR SENATOR KENNEDY: For many years, the New England region, American Jewish Congress, has been one of the leaders in pressing for civil rights legislation on both the national and local scene. The time has now arrived when the problem of civil rights must be settled on the Federal level.

We, therefore, urge that you support the civil rights bill now before your august body to provide equal rights for all citizens of our country regardless of race, color, creed, or national origin. Such legislation has long been overdue.

Our democracy can no longer afford to discriminate against certain of its citizens. We hope that you will put yourself on record in favor of this basic principle and will vote for the civil rights measure.

We shall be pleased to have your views.

Sincerely,

MARVIN N. GELLER,
President.

DIOCESAN COUNCIL OF
CATHOLIC WOMEN,
WORCESTER DISTRICT,
October 5, 1963.

Hon. EDWARD M. KENNEDY,
Senate House Building,
Washington, D.C.

DEAR SIR: On behalf of the Worcester District, Diocesan Council of Catholic Women, and myself, I am writing to ask you to support a full civil rights bill including the public accommodations section and an amendment covering fair employment practices.

We, as Catholic women, believe God has created all of us to His own image and likeness. We also believe that the Constitution of the United States guarantees everyone life, liberty and the pursuit of happiness.

It is about time we lived up to the words in the Constitution and gave the Negro people equal rights.

Please vote for the passage of the House bill 7152 and 1731 without delay.

Thank you.

Sincerely,

WINIFRED M. O'NEIL,
President.

NATIONAL ASSOCIATION OF
SOCIAL WORKERS,
EASTERN MASSACHUSETTS CHAPTER,
Boston, Mass., September 9, 1963.

Hon. EDWARD M. KENNEDY,
Senate Office Building,
Washington, D.C.

DEAR SENATOR KENNEDY: The eastern Massachusetts chapter of the National Association of Social Workers, a professional organization representing over 1,300 members, wishes to express its hearty endorsement of the President's civil rights program. We urge you to give this urgent legislation your wholehearted support, particularly title II of the bill (S. 1731), which bans discrimination in places of public accommodation and business establishments.

We are aware of the many arguments against title II in the name of property rights, and we share the concern of those who fear any violation of these. However, we consider the misuse of property rights to humiliate and deny individual rights of citizens because of their race, religion, or ethnic background contrary to the basic ideals of the Nation. We consider it the responsibility of the Federal Government to be as concerned with the protection of individual human rights as it has been concerned, traditionally, with property rights.

If this legislation is kept from a vote by the efforts of the opponents, we trust that you shall vote for cloture, in the interests—not only of your Negro constituents—but of all Americans.

Thank you.

Sincerely,

JAMES M. MCCRACKEN, JR.,
President.

BOSTON, MASS.

Senator EDWARD KENNEDY,
Senate Office Building,
Washington, D.C.:

We strongly urge that you use all the influence and prestige of your position to insure passage without modification of the House-passed civil rights bill at the earliest possible date.

BERNARD BORMAN,
President, Greater Boston Junior Chamber of Commerce.

FIRST CONGREGATIONAL CHURCH,
Hadley Mass.,
SECOND CONGREGATIONAL CHURCH,
North Hadley, Mass.,
February 14, 1964.

Senator EDWARD KENNEDY,
U.S. Senate Office Building,
Washington, D.C.

DEAR SENATOR KENNEDY: I have been pleased with the work of the House of Representatives on the civil rights bill and I believe that the bill as they passed it is just, patriotic and moral and that it will help us to overcome the tragic sin of racial discrimination.

May I urge you to support the civil rights bill as passed by the House including the fair employment practice of the bill and the public accommodations section.

May I also urge you to vote to stop a filibuster by the opponents of the bill which I believe is your privilege according to the rules of the Senate.

Thank you very much for your consideration of this letter.

Cordially yours,

DARRELL W. HOLLAND.

MASSACHUSETTS COUNCIL OF CHURCHES,
Boston, Mass., October 1, 1963.

Hon. EDWARD KENNEDY,
U.S. Senate, Washington, D.C.

DEAR SENATOR: The bombing in Birmingham requires that the U.S. Congress must within this year pass the President's civil rights bill, S. 1731 and H.R. 7152. There can no longer be any quibbling regarding equality of citizens—black, white, or green—in the United States in any aspect of our public and national life.

When the Christian community, or any religious body, is no longer safe in the house of God and at worship, then America is in danger of the loss of the democratic process and the democratic way.

I write to ask you to use every ounce of your influence to see that the President's civil rights legislation is passed with the strongest possible support which you can give and urge others to give because of your extensive influence. The Senators of the North must mobilize the leadership of the South to the moral international implications of this act.

My prayer is that we perform as Americans in a democratic way, not because we are ashamed of our international image, but because it is right that men should be treated as those made in the image of God.

Sincerely,

OLIVIA PEARL STOKES,
Director, Department of Religious Education.

EPISCOPAL CHURCHWOMEN OF PROVINCE, I,
Worcester, Mass., August 24, 1963.

DEAR SENATOR KENNEDY: The executive board of the Episcopal Churchwomen of New England (representing all Episcopal churchwomen in New England) favor a strong civil rights bill.

Very truly yours,
Mrs. LOWELL H. MILLIGAN,
President.

THE COUNCIL OF CHURCHES
OF GREATER SPRINGFIELD,
Springfield, Mass., February 21, 1964.

Hon. EDWARD M. KENNEDY,
Senate Office Building,
Washington, D.C.

DEAR SENATOR KENNEDY: The board of directors of the Council of Churches of Greater Springfield at its meeting of February 14, 1964, considered and discussed the civil rights bill presently pending before the Senate of the United States.

It was the unanimous vote of the board of directors that we urge you, our Senator, to support a strong and effective bill for equal rights for all citizens.

Our council represents 56 Protestant churches of the Greater Springfield area and we are anxious to keep our member churches informed of legislative developments regarding civil rights legislation.

We would appreciate an expression of your position on these matters to share with our people.

Respectfully yours,
EMERSON WESLEY SMITH,
Executive Director.
HERSCHEL W. ROGERS,
Chairman, Division of Christian Social Relations.

WESTON COLLEGE,
Weston, Mass., August 30, 1963.

SENATOR EDWARD M. KENNEDY,
U.S. Senate,
Washington, D.C.

DEAR SENATOR KENNEDY: It is my firm conviction that racism is the most important moral issue of our generation. As a Christian I am deeply sorry that our Nation should move so slowly to redress the wrongs committed against nonwhites in this country. May I ask you to support the President's civil rights legislation with all your efforts.

At the same time, may I ask you to support the President's revision of the immigration law. I would like to see a much more liberal policy toward the admission of Oriental people to our country.

Respectfully yours,
Rev. THOMAS F. MATHEWS, S.J.

Mr. KENNEDY. Mr. President, when religious leaders call on us to urge passage of this bill, they are not mixing religion and politics. This is not a political issue. It is a moral issue, to be resolved through political means. Religious leaders can preach, they can advise, they can lead movements of social action. But there comes a point when persuasion must be backed up by law to be effective. In the field of civil rights, that point has been reached.

Mr. President, others have discussed the specific provisions of this bill with more skill than I possess. The constitutionality of the bill has been affirmed by the most eminent lawyers in the land. But there are some points in each of the major sections I would like to stress.

The purpose of title I, the voting section, is to accomplish the aims of the voting rights sections of the civil rights bill of 1957 and 1960. Had Congress known then the weaknesses in those sections, I believe these provisions would have been added at that time. We learn by experience. The Civil Rights Division of the Department of Justice, under the outstanding leadership of Burke Marshall, has labored for 3 years to do the job assigned to it by the prior legislation. Its small squadron of attorneys have worked long and hard, but every possible legal barrier has been thrown in its path to win, after protracted litigation, the right to vote in an election held a year ago, is no victory. The right to vote in Federal elections must be enforcible at the time of the election to have any meaning.

The barriers to the right to vote were taken down in my State over 100 years ago. The differences between our social and economic groups have been settled peacefully at the ballot box, the way they should be in a democracy.

Title II, the public accommodation section, seeks to relieve the principal cause of demonstrations that have torn the South in recent years. It confers on Negroes a right the rest of us have enjoyed under the common law for 500 years—the right to enter and be served in establishments holding themselves out to serve the public. Were we to ground this section on the 14th amendment, it is entirely possible, in view of recent decisions of the Supreme Court, that the civil rights cases of 1883 would be overruled on this point. But we need not speculate on this, in view of the obvious sweep of the commerce clause. If this clause can be used, as it has been used, to eliminate sweatshop labor, to end racketeering, to throw Communists out of unions and management; if we can use it to eliminate prostitution and narcotics and adulterated foods which sap the physical fiber of the Nation, certainly it can be used to eliminate the humiliation and discrimination which sap the moral fiber of the Nation.

Titles III and IV seek to execute the Supreme Court's desegregation decisions, in the same way as title I seeks to realize the aims of Congress. The Court, in Brown against Board of Education in 1954, did not say that only 10 Negroes in a State should be admitted to integrated schools by 1964. It did not say that wide areas of the South should have no school integration, years after the principle of integration was established. The Court spoke of "all deliberate speed" and of a "prompt and reasonable start toward full compliance." And in Watson against City of Memphis, last year, the Court said:

> The basic guarantees of our Constitution are warrants for the here and now.

In my judgment, if Congress does not take these steps to aid in the implementation of the integration decree, it will be acquiescing in what has amounted, in many places, to a virtual reversal of the Supreme Court's decisions.

We have seen examples, in a number of States, where local school boards have adopted desegregation plans, only to be thwarted by State authority. Last September, the Governor of Alabama sent State police and National Guardsmen to four major cities in his State, to bar children—both white and Negro—from attending schools that had been integrated under locally approved plans. In these cases and others, integration was blocked by outside authority, arbitrarily and illegally imposed.

I respect the doctrine of States rights because it recognizes the importance of local action to individual freedom. But I respectfully submit that one cannot oppose having the Federal Government telling the States what to do, and at the same time, condone States telling cities what to do.

My State has been criticized in the field of education, and I would like to look at the record. Forty-seven percent of the Negroes in Massachusetts live outside of the city of Boston. All of their children go to school with white children. But most of the Negroes in Boston do not, because they live in all-Negro neighborhoods—racially mixed.

We in Massachusetts have recognized this problem and have begun to seek means to correct it. But there is an enormous difference between school segregation as practiced in some States and the situation in mine. In Massachusetts, no State law forbids integration in schools. No State official stands in the doorway to block it. The only barrier to complete school integration is the sound and historic principle that children of the same neighborhood should attend the same school. With the increase in economic opportunity that will come to Negroes in my State, residential segregation will break down and the school problem will diminish.

Title VI will serve the important purpose of removing Federal financial support from segregated programs. We cannot justify using Negro taxpayers' money to perpetuate discrimination against them.

Federal programs, especially in the fields of health and education, and training for jobs have an enormous influence on the social fabric of our communities. They can set a pattern in keeping with the moral commitment of the Nation, or they can set a pattern opposed to it.

Title VII is directed toward what, in my judgment, American Negroes need most to increase their health and happiness. To be deprived because of race of the right to vote or use public accommodations or to attend integrated schools is a humiliation and an impediment. But to be deprived of the chance to make a decent living and of the income needed to bring up children is a family tragedy. The average Negro with a high school education can expect to earn, in his lifetime, $100,000 less than the average white man with the same education. This is a personal hardship. It is a burden on families. It saps the economic strength of the Nation.

In Massachusetts we have found that job opportunity is the key to assimilation of any minority group. As long as our minorities were shut off from worthwhile jobs, they remained poor, ignorant, resentful of the rest of the community. Once they found a wider range of jobs, they were able to cast off their poverty, break out of their slums, and, most important, measure up to the standards of social behavior set by the community.

Crime and illegitimacy declined as men found something to live for. This can happen again.

It is argued that title VII can only make jobs for Negroes by taking them away from whites. The same accusation was thrown at the Irish in Massachusetts in the 1820's. The argument is groundless in America, because it assumes a stagnant economy. We have almost always had a dynamic, job-creating economy. The new income spent by new job holders has created more demand and more jobs, in a great upward movement of growth and prosperity.

Mr. President, this is not a force bill. There are no fines or criminal penalties. On the contrary, the bill abounds with reasonableness, with conciliation, with voluntary procedures, with a moderate approach toward its goals.

The public accommodations section covers only those types of establishments where discrimination works the severest hardship. Even these types are exempt if they are small enough so that their integration would disturb the owner in his private life.

The voting section covers only Federal elections. It uses the procedures of the courts. It creates not special privileges, but only tries to prevent irreparable injury.

The education section creates no new rights. The Department of Justice would be able to sue only to enforce what the Constitution already requires.

The Federal program section is equally moderate. Funds could only be denied to programs where discrimination is practiced. Other funds could not be affected. The procedures under this section must conform to the standard of due process, of notice and hearing, of the administrative procedures act.

And the employment section is equally mild. Companies would have adequate time to comply with its requirements. The Fair Employment Commission has no sanctions of its own, but must look to the courts for enforcement of its orders.

In short, the bill emphasizes not new rights but remedies of existing rights; not coercion but voluntary compliance; not the heavy hand of the Federal Government but the even-handed justice of the courts of law.

With provisions as mild as these, it can truly be said that even in passing this bill, we are still relying primarily on the decency and the tolerance and the conscience of the American people to secure these rights for Negro citizens.

In conclusion, Mr. President, there are some personal reasons why I am so interested in passage of this bill. As a young man I want to see an America where everyone can make his contribution, where a man will be measured not by the color of his skin but by the content of his character.

As one who has a special concern with the emerging nations of Africa and Latin America, I have seen what discrimination at home does to us in those countries. I want to see America respected there.

And, finally, I remember the words of President Johnson last November 27:

> No memorial oration or eulogy could more eloquently honor President Kennedy's memory than the earliest possible passage of the civil rights bill for which he fought so long.

My brother was the first President of the United States to state publicly that segregation was morally wrong. His heart and his soul are in this bill. If his life and death had a meaning, it was that we should not hate but love one another; we should use our powers not to create conditions of oppression that lead to violence, but conditions of freedom that lead to peace.

It is in that spirit that I hope the Senate will pass this bill.

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

Mr. KENNEDY. I yield.

Mr. DOUGLAS. I congratulate the Senator from Massachusetts for the magnificent address which he has just made. I have never heard the principles of the bill or the tenets of civil rights stated more succinctly or more accurately. I have never heard an address of a more truly noble and elevated tone.

We are all deeply grateful for what he has said and for what he is doing. He is a worthy continuer of the great tradition of the seat which he occupies in the Senate, beginning, I believe, with John Quincy Adams, Daniel Webster, and Charles Sumner and, through George Frisbie Hoar, to his beloved and lamented brother, who served with us for so many years.

Not only should the whole State of Massachusetts be grateful for what he has said, but I believe the whole Nation also is grateful to him. Without striking any note of false sentimentality, I am sure the spirit of his beloved brother rejoices also in what he has said.

Mr. KENNEDY. I appreciate the comments of the Senator from Illinois. I know how dedicated, interested, and committed he has been to the great questions which have come before the Senate and which are now before the Senate. It is a source of considerable inspiration to a junior Member of the Senate to find the wisdom and the experience which he has brought to this question. I appreciate his comments.

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

Mr. KENNEDY. I yield to the Senator from Oregon.

Mr. MORSE. Mr. President, I join the Senator from Illinois in expressing thanks for the truly great speech just delivered by the Senator from Massachusetts. I know I speak for all Members of the Senate who heard the speech. The Senator has moved us deeply, both emotionally and intellectually. When the news of his speech goes across the Nation, it will move the American people deeply, too.

I am proud to have the privilege of saying that, in my judgment, the junior Senator from Massachusetts has already demonstrated that before he leaves the U.S. Senate he will have made a record in this body that will list him among the great Senators in the history of the Senate.

Mr. KENNEDY. I appreciate the generous comments of the Senator from Oregon.

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

Mr. KENNEDY. I yield to the Senator from Minnesota.

Mr. HUMPHREY. I join the Senator from Illinois [Mr. DOUGLAS] and the Senator from Oregon [Mr. MORSE], and I am sure other Senators, as well, in paying a well deserved tribute to the Senator from Massachusetts for a moving, persuasive address on the all-important issue of civil rights for the American people.

I am particularly grateful to the Senator for his emphasis upon the international aspects of what we seek to do in the Senate concerning the domestic problem. I am particularly moved by the Senator's reference to the proposed legislation as being so close and dear to the heart of our late beloved President, the distinguished brother of the junior Senator from Massachusetts.

The Senator from Massachusetts has given new inspiration to us who work in the vineyard of civil rights and human rights. I commend him and, above all, I thank him, not only for his speech but also for his steadfastness of purpose and his willingness to be present during these difficult, trying days in handling the chores of managing certain parts of the bill, which continue day after day.

The Senator from Massachusetts has been performing yeoman service in helping the Senate come to a decision on this great national moral issue. His speech stands on its own. I am sure it will receive considerable attention throughout the country. I trust it will be read carefully by every Member of this body, regardless of his point of view.

Mr. KENNEDY. I appreciate the kind remarks of the Senator from Minnesota.

Mr. SYMINGTON. Mr. President, will the Senator from Massachusetts yield?

Mr. KENNEDY. I yield.

Mr. SYMINGTON. I am very sorry not to have heard the entire speech of the Senator from Massachusetts, but I was attending a meeting of the Committee on Foreign Relations, at which the Secretary of the Treasury was present.

I intend to read the Senator's address carefully, and congratulate him upon the part to which I had the privilege of listening. Every day that goes by I consider it a greater privilege to serve with him in the Senate.

Mr. KENNEDY. I thank the Senator from Missouri for his kind remarks.

Mr. YOUNG of Ohio obtained the floor.

Mr. HUMPHREY. Mr. President, will the Senator from Ohio yield, without in any way prejudicing his right to the floor or having his resumption, after the interruption, being interpreted as a second speech?

Mr. YOUNG of Ohio. I yield with that understanding.

ATTENDANCE OF SENATORS

Mr. HUMPHREY. Mr. President, due to official business this morning, three

Senators were unable to be present. One of them, the Senator from Missouri [Mr. SYMINGTON], has already spoken. He called me to say that he was in an important conference with the Secretary of the Treasury.

The Senator from South Dakota [Mr. MCGOVERN] just notified me—and I think the point he has made should be checked into—that the bells in his office did not ring. He has already called official attention to that.

The Senator from Arkansas [Mr. FULBRIGHT] also was attending the conference with the Secretary of the Treasury, and therefore could not be present in the Chamber.

I thank the Senator from Ohio for yielding.

Mr. YOUNG of Ohio. Mr. President, I ask unanimous consent that I may yield to my colleague the distinguished senior Senator from Ohio [Mr. LAUSCHE], without losing my right to the floor.

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

SUBSIDIES FOR COTTON GOODS MANUFACTURERS

Mr. LAUSCHE. Mr. President, I observe from the CONGRESSIONAL RECORD that the House yesterday passed the so-called agriculture bill by a vote of 211 yeas to 203 nays. In my judgment, the passage of that bill forebodes trouble for our country and for the taxpayers.

The bill, labeled as an agriculture bill, includes a new subsidy for the manufacturers of cotton goods. Senators know that heretofore Congress has subsidized cottongrowers as it has subsidized producers of other farm products. In the bill passed by the House yesterday, however, provision has been made to subsidize the manufacturers of cotton goods.

I do not wish to speak as an oracle, but I cannot bring my mind to the conclusion that a train of bills will not be introduced in Congress seeking subsidies for the manufacturers of other types of goods. I would not be surprised if within the next several days the manufacturers of Ohio should say, "Congress has subsidized the manufacturers of cotton goods. By what reasoning can a similar subsidy be denied to us?"

In Ohio, manufacturers of steel and steel products, shoes and leather goods, pottery, glassware, transistors, small radios, aluminum, electric generators, turbines, motor buses, printing machinery, and other items are feeling the serious impact of foreign competition. If the Congress adopts the policy that injured cotton mills are to be subsidized, then the industries I have mentioned and others adversely affected could justifiedly ask for a similar subsidy. They are all complaining about the damage that is being done to their businesses by the importation of manufactured products from other nations of the world. How can we say to them, "You will get no subsidy, although Congress will provide to manufacturers of cotton goods a subsidy of at least $319 million, possibly going as high as $500 million."

I am thoroughly conscious of the gravity of the words that I use, that the passage of the wheat subsidy bill forebodes a black and troublesome day. We are entering a practically new field of throwing away taxpayers' money.

Why should a lad living on St. Clair Avenue, in Cleveland, the neighborhood from which I come, be called upon, out of his hard-earned dollars, to subsidize the manufacturers of cotton goods, when, within that neighborhood are manufacturers and industries that are likewise being affected by the importation of foreign goods?

There has been talk about retrenchment of expenses. Congress proclaimed to the world that there would be a tax cut, and Congress has provided a tax cut. It has been said that to minimize the impact of the tax cut, public expenditures will be retrenched. I cannot see retrenchment when it is obvious that we are entering into a new field of subsidies.

To the cotton manufacturers, I say: You may have a glorious day as the $319 million is delivered to you; but by your persistence in asking for it, you are helping to forge the nails that may finally close the sepulcher of the democracy in which we live.

I voted against this measure. I am glad I did. And I am profoundly glad, Mr. President, that my Congressman, MICHAEL FEIGHAN, in my district, voted against it. I examined the CONGRESSIONAL RECORD especially, today, to see how he voted; and I am gratified to find that he foresees the danger that is in this bill. He realizes that it is not in the interest of our country, the worker, or the general citizenry. I commend him for his vote.

Mr. President, I ask unanimous consent that the statement which I made on this particular bill on March 6, slightly modified, may be printed in the RECORD.

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

AGRICULTURAL ACT OF 1964

Mr. LAUSCHE. Mr. President, I ask unanimous consent to have printed at this point in the RECORD the text of the statement I made yesterday, March 5, 1964, giving 13 reasons why the bill should be defeated.

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

"Mr. LAUSCHE. Mr. President, I contemplate supporting the amendment on the subject of fixing quantities of beef that may be sent into this country by foreign exports. Regardless of what the outcome is on the amendment dealing with beef cattle and beef supplies, I, in the end, will vote against the bill. I am opposed to it for the following reasons:

"First. This bill delegates to the Secretary of Agriculture inordinate powers to control and determine the acreage, marketing, and price of farm products, with unprecedented latitude of discretion, harnessing the farmer with greater force than ever before.

"Second. The wheat program contained in this bill has been rejected by farmers by referendum less than a year ago. For example, over three-fourths of the wheat farmers voting in Ohio voted against the wheat certificate plan.

"Third. The wheat program authorized in this bill is not voluntary and to call it such is deception. When a wheat farmer is dependent upon a wheat certificate for over one-third of the price of his wheat and when such a certificate is denied him unless he joins the program, this is compulsion.

"Fourth. The wheat program authorized in this bill does not distinguish between wheat that is in surplus and wheat that is in short supply. The Soft Red Winter wheat grown in Ohio is not in surplus; yet the acreage will be cut, the same as wheat that is in surplus. Certificates will be allocated without regard to what the consumer prefers.

"Fifth. The enactment of this bill would place a processing tax on wheat and every American consumer would pay that tax every time a loaf of bread or sack of flour was bought. This constitutes a deceptive and cruel form of taxation since the burden of it would fall upon low-income families who are least able to carry the burden.

"Sixth. The cotton and wheat industries, from farm to mill and port, would become the most comprehensively regulated industries in the United States. This would require an even greater brigade of bureaucrats than presently exists to enforce the will of Government upon the agri-business industry of our country.

"Seventh. This bill creates not only a new subsidy, but a new type of subsidy, costing $312 million. To compensate for the subsidy to certain cotton producers, a subsidy to exporters has been instituted; and now to compensate for the subsidy to exporters, a subsidy to domestic mills is proposed. This means subsidy on subsidy on subsidy, and is not a solution, but creates further chaos.

"Eighth. The direct payment subsidy proposed to be paid to cotton mills could set a precedent for similar Government payments in other industries. If the price of cotton should be subsidized in competition against synthetics, why not butter in competition against margarine? Why not steel in competition against aluminum? Why not leather against plastic?

"Ninth. Many of our Nation's industries are adversely affected by foreign competition.

* * * * *

"The forthcoming tariff negotiations may add to the long list of injured American producers and also inflict further injury to those already in jeopardy.

"In Ohio, manufacturers of steel and steel products, shoes and leather goods, pottery, glassware, transistors, small radios, aluminum, electric generators, turbines, motorbuses, printing machinery, and other items are feeling the serious impact of foreign competition. If the Congress adopts the policy that injured cotton mills are to be subsidized, then the industries I have mentioned and others adversely affected could justifiedly ask for a similar subsidy.

"Tenth. The cotton program authorized in this bill institutes the old discredited Brannan plan type of direct payments to farmers. This could destroy the market price system in cotton, lead to even stricter controls, and make farmers dependent upon Government appropriations for an ever-increasing part of their income.

"Eleventh. While the bill contains greater incentives and subsidies for cutting cotton acreage by one-third, it permits these same acres to be used for the production of other agricultural products in competition with other farmers. These acres could even be used to produce crops already in surplus supply.

"Twelfth. The bill authorizes the Government through the Commodity Credit Corporation to enter into close and direct competition with the cotton farmer by reducing the Commodity Credit Corporation's resale

price from 115 to 105 percent of the current loan rate. This virtually makes certain that the market for cotton will not be allowed to operate.

"Thirteenth. The whole cotton program will cost the Federal Government over $3 billion. It could cost as much as $1,300 million in 1965 alone. It is an act of fiscal irresponsibility to pass such a measure in a year in which the Federal Government will experience a $10 billion deficit and has authorized an $11.5 billion cut in taxes.

"To summarize, I shall support the amendment now pending, but in the end I shall vote against the bill because I believe it exhibits fiscal irresponsibility.

"Mr. President, I yield the floor."

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

Mr. LAUSCHE. I yield.

Mr. DOUGLAS. Is not one of the discouraging features about this whole situation the fact that business groups that will denounce subsidies to other elements in our society will all too frequently use the subsidies for themselves—as, for example, in the case of shipping, ship operation, many of the feeder airlines, and the oil and gas industry? Is not that a discouraging situation?

Mr. LAUSCHE. It certainly is; I completely concur. It is tragic that subsidies are opposed until the opponent himself is proposed as the beneficiary; then all the former arguments about the impropriety of this type of governmental activity are thrown aside. We find that situation in industry after industry, although I must say that I have received letters from many who have written: "Though this will help me, though I will get a subsidy, it is not in the interest of the security of our country. Therefore, I ask you to vote against it."

But generally what the Senator from Illinois has said is true.

Mr. DOUGLAS. Mr. President, will the Senator from Ohio yield further to me?

Mr. LAUSCHE. I yield.

Mr. DOUGLAS. I congratulate the Senator from Ohio for the consistency with which he has taken this position. As he knows, he and I have differed on some issues. For example, I have felt that it is proper to extend aid to low-income groups which otherwise would be unable adequately to protect themselves. But the Senator from Ohio has been consistent; so far as I know, he has opposed subsidies and grants to all groups. So I pay tribute to his sincerity, even though at times I have thought he might have been a little too rigid in his attitude.

Mr. LAUSCHE. I understand.

Mr. President, in a few days I shall speak about the subsidy to the coal industry. The coal companies are stripping the scenic areas of Ohio of the topsoil, the grass coverage, and the trees; but those companies are the beneficiaries of what is called the depletion allowance for coal, which makes a very great difference to them, particularly when we bear in mind the small amount of taxes they pay on the land they use. I mention that because the Senator from Illinois has been fighting the depletion allowance granted to the oil and gas interests, and I feel deeply sorrowed by the fact that when we were told there would be reforms in the tax structure, although we were then told that the depletion allowance to the oil and gas industry would be one of the reforms, we found that almost immediately that proposal died; it died before it ever reached the floor of either House of Congress.

I thank the Senator from Illinois for his comments.

Mr. DOUGLAS. I thank the Senator from Ohio.

Mr. LAUSCHE. Mr. President, I also thank my colleague [Mr. YOUNG] for yielding to me.

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. YOUNG of Ohio. Mr. President, we in the Senate are now engaged in a great debate—a debate which I am confident will lead to legislation establishing for all time first-class citizenship for all Americans.

The administration's civil rights bill, as passed in the House of Representatives, should be enacted into law. For the proponents of this proposal to grant civil liberties and equality to even consider any deals or any weakening is unthinkable.

For too long, 20 million Americans have been denied the basic rights our forefathers envisioned when they conceived the Constitution of the United States. It is left now to us to guarantee those rights—to allow citizens the right to vote, the right to use public accommodations equally, and the right to be eligible for employment without discrimination.

These rights have been affirmed in the courts as belonging to all Americans, not almost all.

No greater domestic issue faces our country than the problem of guaranteeing first-class citizenship for all Americans. Racial problems are, in reality, moral problems. They are not political issues. We should have no sympathy whatever for those who believe that the best the Congress should do for Negroes is to give them a license to fight for their God-given rights while Representatives and Senators remain idle by the roadside, watching to see whether they can win these rights. The Federal Government must not remain neutral or be a mere onlooker.

We of the United States of America have carried the torch of liberty higher and more proudly than have the citizens of any other nation in all history. We are the Nation which chiseled on our Statue of Liberty:

Give me your tired, your poor,
Your huddled masses yearning to breathe free;
Send these, the homeless, tempest-tossed to me;
I lift my lamp beside the golden door.

On the other hand, we have shamefully tolerated social and economic segregation of 20 million fellow Americans.

These two traditions are mutually exclusive, and one of them must yield. One hundred years ago Abraham Lincoln warned:

> Those who deny freedom to others deserve it not for themselves; and, under a just God, cannot long retain it.

Mr. President, the justice of our cause is too apparent to be argued. Those who try to oppose civil rights with logic or legalities cannot do so. They can only muster wornout, self-defeating arguments. Only last week one legislator stated bluntly that of course Negroes in his State are denied the right to vote, because, as he put it, "if they registered and voted, they would outnumber us." I would answer: What better argument for the justice and fairness of this proposed legislation is there?

Because both logic and law are on the side of those favoring civil rights, determined, die-hard right-wing opponents resort to fanning flames of hatred and fear, in an attempt to convince Americans that this proposed legislation is dangerous and will infringe on their liberties. Citizens are deluged with scare pamphlets and fright literature masquerading as fact.

Daily, I receive letters from Ohioans who have been confused and bewildered by false statements and propaganda distributed by these groups. For example, one lady wrote:

> What we read about the civil rights bill frightens us; is it true that one can be arrested, sentenced, and imprisoned without trial by jury?

Another citizen said:

> It appears to me that the bill is a wild scheme to take away all personal and State rights.

Other letters talk of a "police state," "power grab," and a "plot to enslave the American people."

Because these outlandish charges are believed by some, it is imperative that all citizens know the facts—know exactly what the civil rights bill provides. Let us briefly examine it step by step.

Title I will enforce voting rights for all citizens, regardless of color. It bars unequal registration requirements designed to prevent Negroes from voting. No longer will a voting registrar in the Deep South be able to turn a qualified Negro away from the polls because he cannot meet the "test"—the test, in the case of the Negro being vastly different from that given the prospective white voter.

Title II bars racial discrimination in places of public accommodation. American Negroes as well as white men in our Armed Forces fought and died together the world over; surely they should be

able to meet and eat together in their own country. What is arbitrary in assuring every citizen the right to enter a public restaurant and order a cup of coffee or to register in a hotel? I shall discuss this point at length, a little later in my remarks.

Title III provides for the integration of public facilities such as parks and libraries. Title VI would allow the President to withhold funds from any Federal programs where discrimination exists. Income tax collectors do not discriminate because of race—each and every taxpayer supports Federal assistance programs. Surely all should be allowed to participate in them without bias.

It has been 10 years since the Supreme Court ruled that segregation in public schools is unconstitutional and ordered integration "with all deliberate speed." The fact is, very few school districts in our Southern States have even begun to conform to the law of the land. Title IV empowers the Attorney General to institute court actions to hasten compliance with law. The Federal Government will no longer be a mere onlooker while citizens struggle to receive rights guaranteed them by our Constitution.

Title V extends the Civil Rights Commission for 4 years.

Title VII establishes an Equal Opportunities Commission to help end job discrimination. This will not take jobs from one group and give them to another. I would be opposed to such reverse discrimination. It will merely help make equality of opportunity a reality for all Americans.

Senators know that the civil rights bill would not establish new rights. There is nothing in it which would give Negro citizens rights or privileges which they do not already enjoy in Ohio and have enjoyed there and in other States for years. Now these rights will be guaranteed to all Americans regardless of where they live or travel.

Mr. President, many of my colleagues who strongly favor the proposed legislation have discussed the various provisions and titles of this bill. From the thousands and thousands of letters I have received from citizens who are concerned over the effects of this legislation, it has become apparent to me that the areas of greatest misunderstanding and confusion are in titles II and VII, those provisions dealing with public accommodations and job discrimination. For that reason I should like to discuss in detail the need for these two titles and perhaps to dispel some of the confusion and uncertainty that exists regarding them.

TITLE II

Racial discrimination in motels, restaurants, theaters, and other places of public accommodations is one of the most irritating and humiliating forms of discrimination the Negro citizen encounters. The Commerce Committee hearings on S. 1732 and the House Judiciary Committee hearings on H.R. 7152 have produced convincing evidence, if any is needed, of the impact segregation and discrimination in such places have on the Negro. The hearing record makes plain the difficulties, inconveniences, and insults he is apt to meet when he travels or attempts to enjoy amenities of life which other citizens take for granted. The record amply demonstrates the necessity for the enactment of legislation to relieve him of the hardship and afront which are inflicted on him only because of the color of his skin.

The civil rights demonstrations of the past 3 years have been motivated in large part by refusals to afford Negroes equal access to establishments serving the general public. Of approximately 2,100 demonstrations which occurred between late May 1963 and the end of the year, it is estimated that 65 percent were caused in whole or in part by grievances of this kind. It is small wonder, of course, that these grievances have this effect, for they are shared by all Negro citizens regardless of age, station, or attainments.

It is significant that in both the Senate and House hearings segregation and discrimination by places offering sleeping accommodations, eating facilities, and amusement or recreation to the public were consistently referred to as the primary sources of grievance.

It is encouraging that significant numbers of hotels, restaurants, lunch counters, and theaters have voluntarily desegregated their facilities in recent years and months. Progress of this type occurs principally in larger communities. All but 6 of the 89 cities with populations over 50,000 have effected some desegregation of public facilities or moved to establish machinery for the settlement of grievances concerned with public facilities. All but 3 of 42 cities with populations over 100,000 have achieved a degree of desegregation of such facilities.

Unfortunately, there has been virtually no spread of voluntary desegregation to additional cities since last October. Moreover, desegregation has not been broadly achieved even in localities where it has begun, and where completion of the task will be slow and uncertain. Information available with respect to some 275 cities with populations over 10,000 in the 11 States of the Old Confederacy and the border States of Kentucky, Maryland, Oklahoma, and West Virginia discloses that in 65 percent all or part of the hotels and motels were still segregated as of last July; in close to 60 percent all or part of the restaurants and theaters were segregated; and 43 percent still had segregated lunch counters.

An even bleaker picture is presented in 98 cities in Southern and border States with populations of less than 10,000, as to which information is available. In 85 to 90 percent of these cities, all or part of the eating places, hotels, motels, and theaters remain segregated.

In short, the limits of voluntary desegregation under present circumstances have been or are being reached in many localities and areas. In a great number of communities, voluntary change in any substantial degree is not reasonably foreseeable for years to come. It is necessary therefore that the processes of the law be invoked to eliminate the daily injustices and affronts which millions of our Negro citizens encounter. Title II is designed to accomplish this purpose by making discrimination illegal in those places of public accommodation which are the sources of the principal difficulties.

It should be noted that title II will undoubtedly have a beneficial effect in respect to voluntary desegregation. In many cases, a businessman who would like to end discriminatory practices is deterred by fear of community pressure or competitive disadvantage. A Federal statute prohibiting discrimination will provide him with a basis for voluntary action and, by its applicability to all those in his situation, will enable him to take such action without losing business to his competitors.

The damage caused by racial discrimination and segregation in public accommodations is not limited to the Negro. It spreads out to affect the internal commerce and peace of the Nation as a whole.

Segregation in public facilities obstructs interstate travel and the sale of related goods and services. It restricts the number of persons to whom the nationwide amusement and entertainment industries may offer their goods and services. It causes businesses to avoid the location of offices and plants in areas where it is practiced, and thus prevents the most effective allocation of national resources. It occasions losses of business, felt in varying degrees throughout the country, because of consumer boycotts and demonstrations.

Segregation has other side effects as well. One of the most painful is the injury caused the Nation by the frequent incidents involving African and other diplomats, students, and visitors. These, as well as the broader manifestations of discrimination, are harmful to the conduct of our foreign relations and to our position as the leader of the free world.

Finally, and most important of all, it is impossible to permit the continuance of segregation in our public life without renouncing our beliefs in equality and liberty. The moral issues are plain, and we shall remain uneasy in conscience until the indignity of racial discrimination and the violation of our basic democratic principles which it manifests have been eliminated from all facets of public life.

Title II of H.R. 7152 would establish the right of all persons, without regard to race, color, religion, or national origin, to the full and equal enjoyment of the services and facilities of a variety of places of business serving the general public. The list of businesses expressly covered by the title consists of places of public accommodation in which racial discrimination is particularly humiliating and causes the greatest inconvenience. Moreover, the list focuses on situations in which congressional action can clearly produce prompt and significant relief.

The places of public accommodation specifically designated in title II for coverage—section 201—are:

First. Hotels, motels, and other places offering lodging to transient guests. However, facilities which are actually occupied by the proprietor and which

offer no more than five rooms for rent are excepted.

Second. Restaurants, lunch counters, soda fountains, and other facilities engaged mainly in the business of selling food to be eaten on the premises. Specifically included in this category are eating places located within retail stores.

Third. Gasoline stations.

Fourth. Theaters, sports arenas, and other public places of exhibition or amusement.

Fifth. Establishments which are either located within the premises of, or contain within their own premises, a business listed above and hold themselves out as serving the patrons of such business. Perhaps the most common example of coverage under this category is a retail establishment which contains a public lunchroom or lunch counter. All of the facilities of such a retail establishment, not simply its eating facilities, would be covered. Similarly, all business facilities located within a covered hotel and intended for use of its guests would be required to give nondiscriminatory service.

A bona fide private club or other establishment not open to the public would not be covered, except to the extent that its facilities were made available to patrons of a listed establishment.

Discrimination by one of the enumerated establishments would be prohibited if, first, the operations of the establishment "affect commerce" or second, the discrimination or segregation is "supported by State action." Frequently both tests will be met, but an enumerated establishment would be subject to the prohibition of title II if either one of the tests is met.

The first or "commerce clause" test has to do with the characteristics of the establishment itself. Generally speaking, if the establishment in question is related to the movement of persons or goods across State boundaries, it would be subject to the prohibition of title II—that is, it could not deny the use of its facilities on the ground of race, color, religion, or national origin. Thus, hotels, motels, and the like are covered if they serve transient guests. Restaurants, lunch counters, and other food-service facilities and gasoline stations are covered if they serve or offer to serve interstate travelers, or if a substantial portion of the food or other products they sell have moved in interstate commerce. Movie theaters, concert halls, sports arenas, and other places of public entertainment or amusement are included if they customarily present films, exhibitions, or athletic teams or other sources of entertainment which have moved in interstate commerce.

The second or "State action" test is derived from the 14th amendment to the Constitution, which guarantees certain rights of citizens and other persons against abridgement by a State or its political subdivisions. This second criterion is necessarily concerned with the basis for discriminatory treatment and not, like the commerce clause standard, with the characteristics of the business which practices it. In particular, the criterion is whether the racial or other discrimination, first, is carried on under color of any law, statute, ordinance, or regulation; or second, is carried on under color of any custom or usage required or enforced by officials of a State or political subdivision thereof; or third, is fostered or required by action of a State or political subdivision thereof. If so, a place of public accommodation within any of the categories listed in title II is prohibited from engaging in such discrimination.

In addition to the provisions in section 201 applying to the specifically enumerated places of public accommodation just discussed, title II contains section 202, which makes discrimination or segregation unlawful in any place or establishment if it is required by a State or local law. Such statutes or ordinances even though patently unconstitutional, have often been relied upon as a basis for the continuation of discriminatory practices, and the threat of attempted enforcement or prosecution thereunder has deterred voluntary progress in elimination of racial barriers. It is expected that section 202 will foster repeal of the offensive laws and help end the affronts and difficulties which flow from their continued existence.

The coverage of section 202 differs from that of section 201 in several respects. First, section 202 is broader in that it would bar discrimination or segregation in any establishment, whether or not included among those listed in section 201, if such discrimination or segregation were required by a State law or local ordinance. It is narrower in that it would bar such discrimination or segregation only where it is required by a law, statute, ordinance, or rule. It does not reach discrimination or segregation which is the product of any form of State action other than a law, ordinance, rule, or regulation actually "on the books." Nor does section 202 reach discrimination which affects interstate commerce, unless it is required by State law.

The enforcement provisions of title II are based on the specific prohibition in section 203 against denying or interfering with the right to the nondiscriminatory use of facilities covered by the title. In case of a violation, the aggrieved person would be able to sue for an injunction to end the denial or interference. In addition, the Attorney General would have the authority to bring suit for an injunction in such a case whenever he is satisfied that the suit would materially further the purposes of the title. However, in the event there is an applicable State or local public accommodations law proscribing the conduct complained of, the Attorney General would first be required, in all but exceptional cases or those in which local efforts would be ineffective, to refer the matter to State or local authorities and, on request, allow them a reasonable time to act before he filed suit. In addition, he would be authorized in any case to use the services of any available Federal, State, or local agency to secure voluntary compliance with the provisions of the title.

The prohibitions of title II would be enforced only by civil suits for an injunction. Neither criminal penalties nor the recovery of money damages would be involved. Of course, any person violating a court injunction issued under the provisions of title II would be subject to contempt proceedings, but any criminal contempt proceedings would be limited, under section 205(c), by the jury trial provisions of the Civil Rights Act of 1957. Thus, the accused in a criminal contempt proceeding could be tried initially with or without a jury, at the discretion of the judge. However, if tried without a jury and convicted and sentenced to a fine in excess of $300 or imprisonment in excess of 45 days, the accused would have a right to obtain a new trial before a jury.

There is no objection to invoking several sources of constitutional authority in congressional enactments. It is desirable to do so here since it may be easier in some cases to make proof of effect on interstate commerce than proof that discrimination is supported by State action, or vice versa.

The power of Congress over interstate commerce and activities affecting it is broad. It has been exercised to regulate labor-management relations, wages and hours, competitive practices, the quality and labeling of food and drugs, and many other activities and practices injurious to the public health, morals, or welfare. In general, "The authority of the Federal Government over interstate commerce does not differ in extent or character from that retained by the States over intrastate commerce." *United States* v. *Rock Royal Co-operative*, 307 U.S. 533, 569.

Among other things, the commerce clause gives Congress authority to deal with conditions adversely affecting the allocation of resources. Experience shows that discrimination and segregation, when widely practiced in a particular section of the country, have an adverse effect on the amount of capital and the numbers of skilled persons coming into that area.

There is a parallel legislative power to eliminate the causes of disputes that may curtail the flow of interstate commerce. The exercise of that power, recognized and sustained in the courts in decisions under the National Labor Relations Act, is appropriate with respect to racial discrimination in places of public accommodation since it frequently gives rise to demonstrations and other activities interfering with interstate travel and the sale of goods and services moving in commerce.

Congress may exercise the commerce power even though a particular activity to which it is applied is local, is quantitatively unimportant, or standing by itself may not be regarded as interstate commerce. In *Wickard* v. *Filburn*, 317 U.S. 111, the Agricultural Adjustment Act was applied to a farmer who sowed 23 acress of wheat for consumption on his own farm and whose individual effect on interstate commerce amounted only to the pressure of 239 bushels of wheat upon the total national market. In *United States* v. *Sullivan*, 332 U.S. 689, the Court held that Congress may forbid a small retail druggist to sell drugs without a label required by the Food and Drug Act even though the drugs were

imported in properly labeled bottles from which they were not removed until they reached the local drug store and even though the drugs had reached the State 9 months before being resold.

Congress has long exercised authority under the commerce clause to remove impediments to interstate travel and interstate travelers. Statutes presently on the books have been held by the courts to prohibit racial segregation of passengers on railroads, motor carriers and air carriers. It has been held that the authority of Congress extends to the prevention of discrimination in restaurants at a terminal used by an interstate carrier. *Boynton* v. *Virginia*, 364 U.S. 454. These holdings are direct precedents for the exercise of congressional power to remove the impediment of racial discrimination to any kind of interstate travel and facilities related thereto. Moreover, in removing impediments to interstate travel, Congress is not limited to forbidding discrimination against interstate travelers alone; it may forbid discrimination against local customers as well. *United States* v. *Darby*, 312 U.S. 100. Thus, discrimination in eating places and gas stations serving interstate travelers and in places of lodging for transient guests may undoubtedly be prohibited by congressional enactment.

Supreme Court decisions have many times sustained the power of Congress to promote interstate commerce through laws which remove artificial restrictions upon the markets for products. Thus, restraints involving the local exhibition of motion pictures have been the subject of Federal regulation under the Sherman Act, as have restraints involving stage attractions, professional boxing matches and professional football games.

The restrictive effect of racial discrimination on the motion picture industry is plainly to reduce the demand for films from out of State by limiting the number of people who may see them. Similar restrictions on consumption result from racial discrimination in other segments of the entertainment industry—and, for that matter, in other establishments which receive supplies, goods or services through the channels of interstate commerce. The power to remove such restrictions by eliminating racial discrimination is clearly applicable to places of entertainment customarily presenting films or other sources of entertainment which move in interstate commerce.

Section 1 of the 14th amendment provides:

> No State shall * * * deny to any person * * * the equal protection of the laws. Section 5 provides that Congress shall have power to enforce by appropriate legislation, the provisions of this article.

Laws enforcing the amendment must be aimed at State action. *Civil Rights* cases, 109 U.S. 3. In those cases the Court held that certain provisions in the Civil Rights Act of 1875, which made it unlawful for "any person" to deny to another person the right to equal enjoyment of designated places of public accommodation, were invalid because the statute "makes no reference whatever to any supposed or apprehended violation of the 14th amendment on the part of the States"—109 U.S. at page 14.

The Court in the Civil Rights cases—at page 16—contrasted the 1875 public accommodations law before it with the Civil Rights Act of 1866 (14 Stat. 27), as reenacted and modified in 1870 (16 Stat. 140). The latter act made it a crime for any person, "under color of any law, statute, ordinance, regulation, or custom," to deprive another person of certain rights on account of his color or race. The Court point out that the 1866 act, as modified, was valid because it prohibited State action, as contrasted with the action of a private individual, through the use of the above-quoted language. Noting the absence of that or comparable language in the 1875 act, the Court found that it was addressed to private action and therefore beyond the power granted to Congress by the 14th amendment.

Title II uses virtually the same language in section 201(d)(1) as was found lacking to make the act of 1875 valid, and section 201(d)(2) also gives recognition to the necessity for the existence of State action. Thus, to the extent that title II relies on the 14th amendment, it is limited to situations in which there is the requisite State action. It is therefore consistent with the decision in the Civil Rights cases and later decisions applying the concept of State action. It accepts the Civil Rights cases as still being the law, and its validity does not in any sense depend on their being overruled.

"State action" is a broad concept. Any significant "degree of State participation and involvement in discriminatory action" may bring it within the prohibitions of the 14th amendment—*Burton* v. *Wilmington Parking Authority*, 365 U.S. 715, 724.

Racial discrimination or segregation which is or purports to be required by State or local law is obviously the most direct kind of State action. It is beyond doubt that all such laws are unconstitutional and that section 202, which strikes at such discrimination, is valid.

Section 201(d) provides that discrimination or segregation is supported by State action if it is "carried on under color of any law, statute, ordinance or regulation." The quoted phrase is taken from a civil rights provision enacted in 1871—42 U.S.C. 1983. The constitutionality of that provision, as an implementation of the 14th amendment, is clear. *Monroe* v. *Pape*, 365 U.S. 167, 171–187. In fact the decision in Civil Rights cases points to the omission of that provision in the 1875 statute before the Court as a defect in the statute.

Section 201(d) also provides that discrimination or segregation is supported by State action if it is "carried on under color of any custom of usage required or enforced by officials of the State or political subdivision thereof." In the Civil Rights cases, the Supreme Court read the word "custom," which appeared in the 1875 Civil Rights Act without qualifying language, to mean custom having the force of law—109 U.S. 16. Thus, the foregoing language in section 201(d) would seem to be declarative of the concept expressed by the Court.

Section 201(d) of title II provides finally that discrimination or segregation is supported by State action if it is "fostered or required by action of a State or political subdivision thereof." It is settled that there need not be State compulsion to find "State action" in relation to otherwise private discrimination. It may be found, for example, where a private establishment is allowed to use publicly owned property or to receive financial or other benefits from a State, *Burton* v. *Wilmington Parking Authority*, 365 U.S. 715; where a private organization has a special franchise or privileges, *Steele* v. *L. & N.R. Co.*, 323 U.S. 192, 198; or where, under some circumstances, the State lends its aid to the enforcement of discriminatory practices carried on by private persons, *Shelley* v. *Kramer*, 334 U.S. 1.

These illustrations are by no means exhaustive. The existence of State action in any situation of course depends on the facts and circumstances. Since section 201(d) would not go beyond the concept of State action, there can be no doubt of its constitutionality under the 14th amendment.

The prohibitions against discrimination proposed in title II do not violate the fifth amendment's prohibition against the taking of private property without due process of law. Any regulatory statute is, to some extent, a limitation on the use of private property. The regulation proposed here does not vary in principle from hundreds of statutory restrictions affecting businesses and property. Indeed, the public accommodations laws on the books of more than 30 States are solid evidence that title II would not unconstitutionally abridge private property rights.

TITLE VII

One of the most widespread forms of discrimination harmful to the Negro and to the Nation as a whole, is racial discrimination in employment. Denial to the Negro of the right to be gainfully employed shuts him off from all prospect of economic advancement. The right to be served in places of public accommodation is meaningless to the man who has no money. The opportunity for education in an integrated school or college is lost on a child who knows that, whatever his education, he is condemned to a life of unskilled and menial labor punctuated by periods of unemployment.

Congress has received ample evidence of the extent and seriousness of the problem of discrimination in employment because of race, color, religion, or national origin. The House Committee on Education and Labor recently concluded, after 10 days of hearings:

> Job opportunity discrimination permeates the national social fabric—North, South, East, and West.
>
> Job discrimination is extant in almost every area of employment and in every area of the country. It ranges in degrees from patent absolute rejection to more subtle forms of invidious distinctions. Most frequently, it manifests itself through relegation to "traditional" positions and through discriminatory promotional practices. The maxim "last hired, first fired," is applicable to many minority groups, but most particularly Negroes, as is evidenced by the greater unemployment rate for these groups. (H. Rept. No. 570, 88th Cong., 1st sess., p. 2.)

The committee report points out that certain rapidly growing fields which are

traditionally prime employers of young people, are among the chief practitioners of discrimination—banks and other financial institutions, advertising agencies, insurance companies, trade associations, management consulting firms, and book and publication companies.

Statistics presented to the Congress by the Department of Labor demonstrate the gravity of the problem. Among male family breadwinners, the unemployment rate today among nonwhites is three times what it is among whites. While nonwhites represent approximately 11 percent of the total civilian work force, they represent more than 25 percent of those who have been out of work more than 26 weeks, the long-term unemployed. Furthermore, the discrepancy between white and nonwhite unemployment rate was 64 percent higher than the white; in 1952, 92 percent higher; in 1957, 105 percent higher; and in 1962, it was 124 percent higher.

Nor are comparative unemployment rates the most significant indicators of the extent to which discrimination in employment affects our racial minorities. Where nonwhites are employed, it is generally in the lower paid and less desirable jobs. For example, 17 percent of the employed nonwhites have white-collar jobs; the corresponding proportion among whites is 47 percent. Fourteen percent of all employed nonwhites are unskilled laborers in nonagricultural industries; the corresponding proportion among whites is only 4 percent.

Secretary of Labor Wirtz pointed out in his testimony before a subcommittee of the House Committee on Education and Labor:

> Negroes make up 90 percent of the nonwhite population and also receive the brunt of the burden of discrimination. Only one-half of 1 percent of all professional engineers are nonwhites. There are no more than 3 percent of male Negroes employed in each of 19 of the standard professional occupations for which we have data; for example, accounting, architects, chemists, farm assistance, and lawyers. These numbers are depressingly small.
>
> There were only about 250 professional male Negro architects in 1960; the largest number in any of the 19 professions was about 4,500, which is the figure for doctors. Hearings before the General Subcommittee on Labor of the House Committee on Education and Labor, 88th Congress, 1st session, page 445 (June 6, 1963).

Unquestionably some of the present disparity between the employment figures for whites and for nonwhites is not the direct result of discrimination in hiring. For many skilled jobs there is a lack of qualified nonwhite applicants. This shortage of skills, however, is attributable in large part to present and past patterns of discrimination which discourage Negroes and other nonwhites from preparing themselves for those jobs from which they have been traditionally excluded by reason of their race. It is an unhappy fact that if all racial discrimination in employment were to cease tomorrow, the legacy of past discrimination, as reflected in inadequate training, economic and cultural deprivation, as well as the seniority rights of the present work force, will be felt for at least a generation. Permitting such discrimination to continue projects these evil effects still further into the future.

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. Exemptions are provided for governmental bodies, bona fide membership clubs, 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.

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. 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. The Commission will have no power to issue enforcement orders. Enforcement will be left to the courts. The experience of 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.

If efforts to secure voluntary compliance fail, the Commission may seek relief in a Federal district court. 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. 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. 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.

Ample provision has been made in title VII for using existing State fair employment laws and procedures to the maximum extent possible. 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.

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, 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.

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.

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.

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 701(b) of the bill declares that the provisions of title VII are necessary "to remove obstructions to the free flow of commerce among the States and with foreign nations" and "to insure the complete and full enjoyment by all persons of the rights, privileges, and immunities secured and protected by the Constitution of the United States." Title VII is amply supported by Congress power to regulate commerce among the States and with foreign nations.

Title VII covers employers engaged in industries affecting commerce, that is to say, interstate and foreign commerce and commerce within the District of Columbia and the possessions. The title also applies to employment agencies procuring employees for such employers and labor organizations engaged in such industries. In order to protect the free flow of commerce, Congress has previously legislated with respect to the practices of employers and labor unions in industries affecting such commerce, National Labor Relations Act, 29 U.S.C.

151, 152, 160; Labor-Management Reporting and Disclosure Act, 29 U.S.C. 401, 402. The power of Congress to legislate in this area is no longer subject to question, *National Labor Relations Board* v. *Jones and Laughlin Steel Corp.*, 301 U.S. 1 (1937); *Lawson* v. *United States*, 300 F. 2d 252, 254 (C.A. 10—1962), and the amount of commerce affected in any particular case is not a material consideration in determining Congress constitutional power, *National Labor Relations Board* v. *Fainblatt*, 306 U.S. 601, 606 (1939). (See also *Mabee* v. *White Plains Publishing Co.*, 327 U.S. 178 (1946), holding the Fair Labor Standards Act, 29 U.S.C. 201 et seq., applicable to the business of publishing a daily newspaper, only about one-half of 1 percent of whose circulation is outside the State of publication.)

The term "affecting commerce" has a long history of judicial application under the National Labor Relations Act, *National Labor Relations Board* v. *Fainblatt, supra*, at 606; *National Labor Relations Board* v. *Reliance Fuel Corp.*, 371 U.S. 224, 226 (1963), and thus there should be little difficulty as to its meaning. As the Court said in the *Polish National Alliance etc.*, v. *National Labor Relations Board*, 322 U.S. 643, 648 (1944):

> Whether or no practices may be deemed by Congress to affect interstate commerce is not to be determined by confining judgment to the quantitative effect of the activities immediately before the Board. Appropriate for judgment is the fact that the immediate situation is representative of many others throughout the country, the total incidence of which if left unchecked may well become far-reaching in its harm to commerce.

Mr. President, opponents of this legislation have been unbounded in their efforts to alarm unduly and grossly mislead the American public. History provides a parallel to indicate what might be the fate of such tactics. In volume 3 of his "History of the English-Speaking Peoples," Winston Churchill records this account of a similar effort against a regulatory measure proposed by Sir Robert Walpole, England's first Prime Minister:

> However, in 1733 a storm broke. Walpole proposed an excise on wines and tobacco, to be gathered by revenue officers in place of a duty at the ports. The measure was aimed at the vast smuggling that rotted this source of revenue. Every weapon at their command was used by the opposition. Members of Parliament were deluged with letters. Popular ballads and pamphlets were thrust under the doors. National petitions and public meetings were organized throughout the land. Doleful images were raised of the tyranny of the excisemen. The Englishman's castle was his home; but this citadel would be invaded night and day by revenue officers to see whether the duty had been paid.
>
> Such was the tale—then novel. It was spread among the regiments of the Army that their tobacco would cost them more, and one officer reported that he could be sure of his troops against the pretender, but not against excise. The storm swamped the country and alarmed the Government majority in the House of Commons. The force of bribes was overridden by fear of expulsion from the enclosure in which they were distributed. Walpole's majority dwindled; his supporters deserted him like sheep straying through an open gate. Defeated by one of the most unscrupulous campaigns in English history, Walpole withdrew his excise reform. After a near division in the House of Commons he uttered the famous saying, "This dance can no longer go." He crawled out of the mess successfully, and confined his revenge to cashiering some of the Army officers who had helped his opponents. The violence of his critics recoiled upon themselves, and the opposition snatched no permanent advantage.

This legislation will not, by itself, abolish injustice. That must come through the growing understanding and good will of the people. However, it will be a step forward on the long path toward mutual tolerance and understanding. We must keep in mind that we—and I refer to the white citizens of America—are not in reality giving anything. In assuring these rights to our fellow Americans we are only reassuring them to ourselves. It is for our sense of decency, for our conscience, and for human dignity—our own and our neighbors. Those who for selfish reasons, or out of prejudice and bigotry, or for any other reasons, are standing in the way of constitutional rights for the Negroes of America are, in a sense, to be pitied. They are trying to hold back the tide of human progress, to halt the relentless force of the strength of the human spirit. It is a hopeless cause and a pitiful waste of human effort.

To take this all-important step, this Congress should labor as long and as hard as necessary. Whatever the cost, the strain, or personal hardship, we must stay in session until the Civil Rights Act has been passed. Frankly, Senators and Congressmen have no right to speak of hardship when we look at the suffering and humiliation endured by our Negro citizens due to failure to deliver to them the full blessings or liberty provided by the Constitution of the United States.

Civil rights is the most important domestic issue facing the United States today. It goes to the very heart of our national purpose and challenges our national will and wisdom. If our democracy is to survive, discrimination because of race and color must be ended. Ours must be a nation where no one is forgotten and where all stand equal before the law and protected in all their rights and in all their liberties.

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

Mr. YOUNG of Ohio. I yield to the distinguished Senator from Pennsylvania.

Mr. CLARK. I should like to pay tribute to the Senator from Ohio for the very able, learned, and moving address which he has just delivered in support of the civil rights bill now pending before the Senate. I commend him for his industry. It has been one of the really great speeches made on the floor of the Senate in support of the pending legislation. I hope it will be widely distributed in the Senator's home State of Ohio, for I am convinced that if the speech could be brought home to the Senator's constituents, there would be little doubt that he would be returned for another 6-year term in the Senate by an overwhelming majority.

Mr. YOUNG of Ohio. Mr. President, it makes me feel very good indeed that the distinguished senior Senator from Pennsylvania has said such fine things about me and has made such a flattering comment on my effort here today and on my service as a Senator representing the State of Ohio.

Mr. MOSS. Mr. President, I wish to express my admiration for the address of the Senator from Ohio. I count it as one of the most moving and telling addresses that we have heard on the civil rights bill. I commend him highly for his leadership, scholarship, preparation, and delivery on the floor of the Senate today. I subscribe to the sentiments expressed by the Senator from Ohio.

Mr. YOUNG of Ohio. I thank the distinguished Senator from Utah.

Mr. President, I yield the floor.

TITLE VI

Mr. JAVITS. Mr. President, when I made a speech on Tuesday on title VI of the bill, a question was raised by the Senator from Louisiana about the school districts which had desegregated rather than lose their Federal impacted area funds. I have the information now from the Department of Health, Education, and Welfare, that there have been 16 such school districts, in Florida, Tennessee, Texas, and Virginia.

I ask unanimous consent that a list of these districts be made a part of my remarks and printed in the RECORD.

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

Florida: Hillsborough County Board of Public Instruction, McDill AFB; Santa Rosa County Board of Public Instruction, Whiting Field Naval Air Station; Okaloosa County Board of Public Instruction, Eglin AFB.

Tennessee: Shelby County Board of Education, Memphis Naval Air Station.

Texas: Abilene Independent School District, Byess AFB; Mineral Wells Independent School District, Camp Wolters; Colorado Consolidated School District No. 36, Bergstrom AFB; Burke Burnett Independent School District, Shepherd AFB; Potter County Consolidated School District No. 3, Amarillo AFB; Connolly Consolidated Independent School District, James Connolly AFB; Fort Worth Independent School District, Carswell AFB; Sherman Independent School District, Sherman AFB.

Virginia: York County School Board, Langley AFB; City of Hampton School Board, Fort Monroe; Arlington County School Board, Fort Myer; Fairfax County School Board, Fort Belvoir.

Mr. JAVITS. Mr. President, also along the same line, the Senator from Louisiana questioned a chart which I introduced, prepared by the Tax Foundation, showing for fiscal year 1962 the total Federal grants to State and local governments and the estimated burden of Federal grants and comparing the States on the basis of the amount paid in Federal taxes for every dollar of aid received.

As I now have received an up-to-date table prepared by the Tax Foundation on that subject, for fiscal year 1963, I

ask unanimous consent that it may also be made a part of my remarks.

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

TABLE 4.—*Total Federal grants to State and local governments and estimated burden of Federal grants, fiscal year 1963*

State	Federal grants-in-aid [1]		
	Payments to States	Estimated burden [2]	Amount paid for every dollar of aid received
Total	*Millions* $8,303.6	*Millions* $8,303.6	
Alabama	183.3	104.5	$0.57
Alaska	46.5	9.2	.20
Arizona	91.7	65.0	.71
Arkansas	121.6	58.6	.48
California	819.2	906.0	1.11
Colorado	120.1	89.4	.74
Connecticut	97.4	156.8	1.61
Delaware	27.3	36.7	1.34
Florida	179.7	229.8	1.28
Georgia	207.5	143.4	.69
Hawaii	41.8	27.2	.65
Idaho	51.3	28.5	.56
Illinois	386.0	522.3	1.35
Indiana	143.3	208.7	1.46
Iowa	102.3	112.1	1.10
Kansas	87.5	95.6	1.09
Kentucky	172.1	99.1	.58
Louisiana	252.2	109.5	.43
Maine	50.6	39.2	.77
Maryland	118.6	152.0	1.28
Massachusetts	206.2	254.0	1.23
Michigan	297.4	360.6	1.21
Minnesota	150.5	147.3	.98
Mississippi	135.4	58.8	.43
Missouri	216.0	201.3	.93
Montana	63.5	31.7	.50
Nebraska	70.5	66.6	.94
Nevada	29.8	23.9	.80
New Hampshire	28.5	28.5	1.00
New Jersey	177.9	332.5	1.87
New Mexico	81.2	41.5	.51
New York	606.4	910.3	1.50
North Carolina	167.8	159.4	.95
North Dakota	39.0	23.6	.61
Ohio	373.6	449.5	1.20
Oklahoma	187.3	100.1	.53
Oregon	109.7	84.0	.77
Pennsylvania	423.3	495.6	1.17
Rhode Island	41.7	38.8	.93
South Carolina	91.7	72.5	.79
South Dakota	47.2	27.1	.57
Tennessee	207.6	122.6	.59
Texas	444.1	430.1	.97
Utah	65.4	39.3	.60
Vermont	30.7	15.8	.51
Virginia	181.3	163.6	.90
Washington	161.6	135.7	.84
West Virginia	98.9	59.5	.60
Wisconsin	137.7	170.9	1.24
Wyoming	48.5	19.1	.39
District of Columbia	83.2	45.8	.55

[1] Excludes shared revenues; includes highway aids.

[2] The tax burden for aid payments is assumed to be equal to aid payments. The burden of aid payments financed through the budget is distributed by State on the basis of an estimated distribution of the burden of general taxes; the burden of highway aid payments is distributed by State on the basis of a Bureau of Public Roads estimate of the State distribution of taxes going to the highway trust fund.

Source: Treasury Department and Tax Foundation, Inc., February 1964.

HAWAII CIVIL RIGHTS DELEGATION

Mr. FONG. Mr. President, in recent weeks, I have been hearing from many church and other community groups as well as from individual citizens of Hawaii urging that the Senate pass a strong, effective civil rights bill.

This week, a civil rights delegation from Hawaii, representing these community groups and citizens, arrived in the Capital. Members of the delegation, distinguished and outstanding leaders of the 50th State, are the Reverend Dr. Abraham K. Akaka, pastor of Kawaihao Church and chairman of the Hawaii Civil Rights Commission; the Reverend Lawrence S. Jones, president of the Honolulu Council of Churches; and Charles Campbell, a teacher at Leilehua High School.

Their presence here in Washington, over 5,000 miles away from their home State, speaks of the strong desire of Hawaii's people that our Nation live up to the inalienable guarantees of the Constitution by enacting a good, strong, civil rights bill.

Mr. President, I wish to congratulate and commend these three dedicated American citizens from my State of Hawaii for their unselfish devotion to the cause of American liberty, freedom, and justice.

They have called at the office of every Member of the Senate to present each Senator with a flower lei bearing the following message:

Aloha from the people of Hawaii. We believe the civil rights bill means human dignity and equality for all America. Please vote "yes." Mahalo nui loa (many thanks).

Mr. President, the flower garlands are symbolic of the spirit of Hawaii which is the spirit of aloha, of brotherhood, and of love.

The message accompanying the leis speaks eloquently of the strength of conviction held by the people of Hawaii for the American precepts of equality, fairness, and justice.

In Hawaii, people of many widely different racial and cultural backgrounds have learned to live in harmony and good will. Typical of this spirit of concord that prevails in the islands is the civil rights delegation of Reverend Akaka, who is of Hawaiian extraction, Mr. Campbell, of Negro ancestry, and Reverend Jones, of Caucasian extraction.

Hawaii's outstanding record in race relations had its beginnings in the ancient monarchy of Hawaii and, indeed, coincides with Hawaii's emergence as a unified kingdom in 1795 during the reign of Kamehameha I.

It was this great King who established the first civil rights in Hawaii, when in 1797 he promulgated the "Law of the Splintered Paddle."

Kamehameha, the founder of the dynasty which bears his name, was born into a society in which there were no civil rights.

Each chief was an absolute ruler of his people and maintained his power by a cruel tabu system including the death penalty.

While he was consolidating his rule on the Island of Hawaii, Kamehameha engaged in raiding expeditions along the Puna coast. During one raid, he was set upon by Puna fishermen who resisted his efforts to plunder their village.

One fisherman, bolder and stronger than the rest, brought his canoe paddle down heavily on Kamehameha, splintering the weapon. Kamehameha barely escaped with his life.

Later, when Kamehameha was undisputed ruler of the island, the fisherman was brought before him for sentence. Kamehameha, acknowledging that he, not the fisherman, was in the wrong, forgave the man and propounded the historic law of the splintered paddle.

He, Kamehameha, would guarantee to all his people their physical security from robbers and brigands. Indeed, they might lie beside the highway and not be molested, on pain of death to any who might violate the edict.

In thus recognizing both the right of his people to be secure in their homes and their belongings, the government's responsibility to protect this right, Kamehameha established the first civil rights in Hawaii.

Today, although ethnically Hawaii is composed of many nationalities, Hawaii is a showplace of racial harmony. The early settlers were the Polynesians. Caucasian sailors, adventurers, whalers, traders, and missionaries were second-comers. Then followed Chinese contract laborers recruited to work the sugar plantations as the Hawaiians were not inclined to hard labor.

With the annexation of the islands to the United States in 1898, Chinese labor immigration was completely prohibited as the laws, which were then in force excluding Chinese laborers to the United States, were made applicable to Hawaii.

Japanese contract laborers in great numbers were also imported from 1885 until their exclusion in 1924.

Portuguese, Swedes, Germans, Koreans, South Sea islanders, Puerto Ricans, and Filipinos also comprised immigrant groups brought in for the cultivation and the processing of sugar.

From these heterogeneous and diverse ethnic groups has evolved a homogeneous community—a community which has been termed by students of sociology as a "21st century society" where racial harmony and cooperation are normal and accepted conditions of life. This spirit of working together pervades civic, business, political, and cultural endeavors. There is sincere respect for, rather than mere toleration of, each other's nationality, traits, characteristics, and cultures.

Acceptance comes from the heart. It is not superimposed by such means as legislation, judicial process, or promotional campaigns. We live brotherhood, we believe in it, and we know it has real prospect for success nationally and internationally, for it satisfies the soul and has the force of logic.

President Eisenhower once said:

Hawaii cries insistently to a divided world that all our differences of race and origin are less than the grand and indestructible unity of our common brotherhood. The world should take time to listen with attentive ear to Hawaii.

This week, Reverend Akaka, Reverend Jones, and Mr. Campbell, from Hawaii, are asking the Senate to heed the message of Hawaii and enact a good, strong civil rights bill.

They have performed a fine service for Hawaii and for the Nation.

Mr. ALLOTT. Mr. President, I compliment the Senator on his remarks. He is one of our most distinguished and most capable Senators. The words he has uttered today assert a fundamental truth, and the whole country could well read them. I know that those of us who

are interested in civil rights would much prefer to have a society in which civil rights came naturally and in which the feelings and nationalities and cultures of various people were respected, as they are in Hawaii. The Senator has made a great contribution to the discussion now in progress in the Senate. It shows that what he has told us is perhaps the ideal way, even though we may need legislation, and do need legislation, to help show the path and help guide us to such a condition.

Mr. FONG. Mr. President, I thank the distinguished Senator from Colorado for his very kind words. The Senator from Colorado has been in the forefront of the fight for Hawaiian statehood. He has fought for many of the objectives that I have fought for in behalf of my State. I thank him for his compliment.

I agree that legislation must be enacted, because I know that some States of the Union do not follow the precepts that we follow in Hawaii. Therefore, it is necessary that laws be passed which will guarantee civil rights and guarantee liberties to our citizens.

I again thank the Senator for his kind remarks. I also thank the Senator from Ohio for yielding to me.

Mr. YOUNG of Ohio. I likewise desire to express my congratulations to the distinguished Senator from Hawaii for the great statement he has made today.

Mr. FONG. I thank the Senator.

THE WISCONSIN PRIMARY

Mr. PEARSON. Mr. President, yesterday, my good friend, the junior Senator from Maryland, commented in a television interview on the significance of the Wisconsin primary as it relates to the civil rights bill now before the Senate.

In his interpretation of this election, he unhesitatingly assigned the large vote secured by Governor Wallace to Wisconsin Republicans who, he said, crossed over in the open Wisconsin primary to express their opposition to the civil rights bill. At the same time, he indirectly commended Wisconsin Democrats for their support of Governor Reynolds and their party support of the bill on civil rights.

I want to comment on my good friend's interpretation of this election. First, this bill which is so critical to the welfare of this country and all of its citizens is either a bipartisan matter, or it is not. Up to the point of the interpretation of the Wisconsin primary, I had been under the impression that this legislation was being approached on a bipartisan basis. Now, for some unexplained reason, there is a concerted effort to relegate it to a partisan issue.

There is nothing, as I see it, in the Wisconsin primary to lead one to a conclusion that those election results demonstrated a partisan attitude on civil rights. Let me make my point clear. Governor Reynolds and Governor Wallace, running in the Democratic primary, compiled a total of 769,745 votes, or 72.3 percent of the total vote. Congressman BYRNES, running in the Republican primary, collected 294,724 votes, or 27.7 percent of the total 1,064,469 votes cast.

Some news media, and apparently the junior Senator from Maryland, quickly compared the results of this primary with the results of the presidential election of 1960, when Vice President Nixon outdrew President Kennedy by 895,175 to 830,805.

The significant comparison should be made with the presidential primary election of 1960 when President Kennedy engaged in the Wisconsin primary with our good friend, the senior Senator from Minnesota. These two candidates in the Democratic primary compiled 842,777 votes, or 71.3 percent. Vice President Nixon, unopposed in the Republican primary, drew 28.7 percent or 339,383 votes.

Thus, the Democrat contested primary, in both instances, drew well over twice as many votes as the uncontested Republican primary in the primary elections of 1960 and 1964 although the Republican presidential candidate outdrew the Democrat presidential candidate in the general election.

Who can logically assign a partisan interpretation to the 261,000 votes cast for Governor Wallace when, in fact, the total vote for Governors Wallace and Reynolds exceeded those of the Democrat candidates in the 1960 primary by only 1 percent. There were, undoubtedly, some crossover Republicans, but I object most vigorously to either the junior Senator from Maryland or the press attempting to assign the responsibility for 261,000 so-called anti-civil-rights votes to the Republicans of Wisconsin.

Secondly, I would emphasize at this point in our considerations that we had better determine that either this bill is going to be a bipartisan bill, which we will support and defend here in the Senate and in every precinct in the Nation as a bipartisan policy, or it is going to be a political issue. If it is to fall in that latter category, those whose rights are at stake also have the right to know that they are being used rather than served.

"A CHALLENGE"—SPEECH BY GARY McDONOUGH, PRESIDENT, UNITED NATIONS CLUB, JUDGE MEMORIAL HIGH SCHOOL, SALT LAKE CITY

Mr. MOSS. Mr. President, from time to time a young American—his spirits high, and his hopes undaunted by disappointment and setback—hears more clearly the call of the times than does an adult. And he often can put that call into simple and fundamental language.

I feel that young Gary McDonough, president of the United Nations Club at the Judge Memorial High School in Salt Lake City, has written a talk which measures up to these standards, and I ask unanimous consent to place it in the RECORD. Gary has called his speech, "A Challenge," and I believe it will be exactly that to everyone who reads it.

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

A CHALLENGE

(By Gary McDonough, president of the United Nations Club, Judge Memorial High School, Salt Lake City, Utah)

Fellow Americans, there comes a certain challenge to every citizen of this country. It is a challenge whose birth took place over a hundred and eighty-seven years ago, but in all that time it has not been changed or altered. For that challenge is the one posed to us by our unique right to freedom. For every right that we possess there is a duty, a duty whose responsibility increases with the importance of that right. There is no greater or more important right to Americans than our freedom. Our obligation to protect this freedom, our responsibility to spread this freedom, our duty to uphold the ideals of freedom are great challenges to the citizens of this country.

This challenge to citizenship has never been an easy one to answer, and many have answered with their lives. During the Revolutionary War the call was answered well and we won our independence. The War Lords of Europe and Asia questioned this freedom and again we were triumphant. Today there comes a challenge which is also not easily answered. Our enemies today are not the Red Coats of General Burgoyne, not Hitler's forces nor the armies of Japan, but rather the dual enemies of communism and indifference. These evils cannot be silenced by the roar of cannon or the firing of muskets.

Premier Nikita Khrushchev has boldly declared that he will bury us. His aim is to destroy our system of government so that he may emerge as victor of the cold war. How can we prevent his threatening predictions from coming true? Certainly we as individuals cannot go about chasing Soviet spies, nor can we pull our muskets down off the walls and shoot anyone whom we believe to be a Communist. Our battle against communism is not one to be fought on either an individual or on a thermonuclear level. Rather it is a battle which will be decided ultimately on the moral, social, military, economic, political, and diplomatic strength of the United States.

Our elected officials, therefore, will do most of the fighting. We are challenged by our conscience to give our country the best possible representation in this battle. If we shirk this responsibility we are abandoning the challenge which citizenship has given us. If we are indifferent in our voting for elected officials then we run the risk of losing our freedom. As Americans we have a solemn responsibility to see that this freedom is not lost. We must vote honestly and intelligently for the officials we feel are best qualified, for they will not only determine our destiny, but the destiny of the entire free world. The leaders we elect will not only lead our country to victory or to defeat, but the entire Western World as well.

It is extremely important, therefore, that Americans today realize that the world is looking to us for leadership. We cannot win the cold war without the support of the other countries of the world. We can no longer revert to the isolationist policies of the past if we expect to win. The opinions of the smallest countries in the world become extremely important if they carry with them the opinons of other nations. Hence, the free world is examining the United States with a scrutinizing eye. The people of the world examine every aspect of our society in hope for a better future.

The United States has preached the doctrine of equality of all mankind since its

revolutionary beginning. When, for the first time in the history of man, a democracy succeeded in giving its people a truly just and successfully workable form of representative government. The freedoms which we enjoy in the United States are unique in the history of man, for they are not just given to the rich and powerful, but guaranteed to every citizen of the country. If these were the ideals for which our country was founded then we are challenged by our citizenship to protect them. If the rights of our fellow citizens are being infringed upon, then who is to say that ours will not be next? If we are indifferent to those who would take our rights away from us then we do not deserve to have them. If we preach of equality to the emerging African nations and then deny this equality to our Negro citizens we become hypocrites in the eyes of the world.

We cannot allow this challenge to go unanswered. We must proceed to oppose those enemies who would destroy us with the same enthusiasm that the colonists had at Concord and with the same conviction that our soldiers had on the battlefronts of Germany and Japan. Our victory over communism depends on the strength and stability of our Government, and that, in turn, depends upon how well we accept our challenge to citizenship.

This challenge is a personal one and so each and every American must strive to see that it is properly answered. We must overcome our bitterness, our sectionalism, our indifference. We must throw out our racial prejudice. We must fight to see that our freedoms are not taken from us, and we must become intelligent and informed voters. If we do, then no power, no matter how strong, no matter how threatening, will ever bury us.

RAILROAD STRIKE THREAT

Mr. MORSE (during the delivery of the speech of Mr. YOUNG of Ohio). Mr. President, will the Senator from Ohio yield to me with the understanding that I shall not lose my right to the floor, with the understanding that my intervention will appear elsewhere in the RECORD, and with the understanding that the Senator's yielding to me will not count when he proceeds again as the completion of a first speech? I wish to make a few remarks in regard to a crisis which confronts our country.

The PRESIDING OFFICER. Without objection, it is so ordered. Will the distinguished Senator from Oregon also ask unanimous consent to waive the rule of germaneness?

Mr. MORSE. Yes; I ask unanimous consent that the rule of germaneness be waived.

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

Mr. MORSE. Mr. President, I have been in consultation with high Government officials in connection with the threat of a railroad strike. I raise my voice at this time in a plea to the parties to that dispute to recognize the solemn responsibility they have, to be exercised to the utmost—responsibilities, in the case of the brotherhoods, to their membership; in the case of the carriers, to their stockholders; in the case of both, to the American people.

Mr. President, I ask unanimous consent that excerpts from speeches that I made on August 27, 1963, in relation to the rail crisis of last year be printed at the conclusion of my remarks.

There being no objection, the excerpts were ordered to be printed in the RECORD.

(See exhibit 1.)

Mr. MORSE. Mr. President, I do not rise to say, "I told you so," for that is not important. But I do rise to plead with the Senate not to make the same mistake that it made last August, for we can make it again, and the problem will again remain unresolved.

It will be recalled that last August I urged adoption of the program offered by the President of the United States, which would provide a procedure for the settlement of the railroad dispute. I warned then that the dispute would not be settled by the compulsory arbitration law passed by the Congress, because there was imbedded in that law the assurance, in my judgment, that there was no prospect of settling the dispute by that procedure.

When all is said and done, the law enacted by the Congress set up an ad hoc compulsory arbitration board for two major issues, and did nothing of effectiveness in connection with the other issues which, so far as the workers are concerned, are perhaps more annoying and perhaps of more direct interest to the local parties concerned than the two so-called major issues which the Congress thought it was dealing with when it enacted the compulsory arbitration law.

Its judgment was—and I was satisfied that it was a mistake in judgment—that if those two issues were got out of the way, the storm cloud would evaporate in the skies, and the problem would be settled.

Senators will find that in my speech last August I said to the Senate:

> Remember, when the issue comes up again in 6 months—

Because that is when I thought it would come up again, and, of course, it brewed all during March, and we are now in April—

> we shall be that much closer to the November election.

In my judgment, the result of the bill passed by Congress was to strengthen the political arm of the railroad brotherhoods. The issue is not one which should ever be settled in the political arena. The complex of issues must be settled by finding the facts and applying the facts to the problems involved in the dispute.

In my judgment, we are now in a worsened position because Congress enacted a law that was ad hoc in its effect; it created a board that really did not have the type of procedural authority and sustaining existence as that which the President of the United States recommended, in what I think was the only sound proposal before Congress at the time.

Of course, the railroad brotherhoods were adamant in their opposition to referring the issues to the Interstate Commerce Commission. I shall always be at a loss to understand why they were allowed to prevail, because the proposal of President Kennedy would have given to the railroad brotherhoods exactly the procedural protection they needed—exactly the procedural protection which, if they had, in my judgment, they would not find themselves today in the present situation.

The Senate made a great mistake in following the recommendations of the Senate Committee on Commerce for enacting the legislation that was enacted, instead of the proposed legislation recommended by President Kennedy. We made another serious mistake when we even modified the language of the bill proposed by the Committee on Commerce and adopted the McGee amendment; all we did was to buy the trouble that now faces the United States in this dark day in the field of railroad management and labor.

But that is behind us. I do not raise my voice today to weep over spilled milk, but I raise the question, "What must we do now?"

What I worry about is that if tonight the plug is pulled, as they say in labor parlance, and the strike starts, there will be a substitution of emotional attitudes for intellectual solutions to the problem. For that reason I said in my opening remarks today, to both carriers and management, "This is the time to take stock of your responsibilities."

What we need, of course, is a continuing procedure, not an ad hoc procedure which provided for compulsory arbitration, which functioned on a couple of issues and then passed out of existence. The record was clear that the bargaining provided for in the McGee amendment and the committee solution had no prospect of successful operation. It was a baseless hope that this dispute could be settled by that kind of procedure, for what is needed is a continuing procedure.

The President of the United States offered both sides the protection of the procedures under the Railway Labor Act—and how important they are—giving them also in that bill a procedure that would apply for 2 years. Then it would have been back with us, to decide the issue in calm deliberation, to decide whether we should continue it, modify it, or substitute something for it. If ever a President was let down, the President was let down by the Senate on that fateful day. I shall never be able to understand why that course of action was followed in this body.

If the impending strike is called, the answer is not more legislation of the type passed last year. The answer is not to impose upon the industry and labor another compulsory arbitration law.

Everything I said at that time—and under the unanimous-consent agreement I shall insert in the RECORD some excerpts from what I said—against compulsory arbitration for settling disputes between labor and management is as applicable today as it was last August. It is more applicable, for it only gives me another case in substantiation of my point.

Let me say to management and the brotherhoods that they once again have an opportunity to be citizen statesmen. They once again have an opportunity to exercise a precious right of freedom—the right to resolve their differences by the procedures of voluntarism. They

know as well as the senior Senator from Oregon knows how they can do it. They know that if they will only relax their tensions, if they will only let their impulses get into the cortex and into the thalamus gland, they can resolve the issues on the basis of voluntarism, in the interest of the stockholders, the employees, and the American people.

I would be less than honest if I did not say on the floor today that if the transportation system of this country is pulled down into a costly strike, the elected representatives of the people in the Congress of the United States will resort to legislation.

Let me very quickly add, as a side remark to my leadership in the Senate, that the senior Senator from Oregon has made clear that his application of the rules of the Senate to the civil rights debate, by not allowing committee meetings and a morning hour, and by insisting that Senators confine their attention to the civil rights bill, had the reservation annexed to it that, of course, the objections would be waived for any national calamity.

I waived them in connection with the calamity of the Alaskan earthquake. I shall do so in connection with the national calamity that would follow a nationwide railroad strike, which would paralyze transportation and thereby soon paralyze the economy of this country.

But I ask the carriers and the brotherhoods what they hope to gain by throwing their problem into the boiling pot of legislative politics at this late hour.

In my judgment, they will gain nothing but more losses—loss of rights, loss of prestige, and the most valuable possession they have—loss of public confidence and respect.

I say to both sides in this dispute that neither side should overlook the great loss it will suffer in American public opinion, respect, and confidence, if it fails to find a policy of voluntarism for the settlement of the disputes.

A series of options is available to the parties for the resort to voluntarism. I do not speak for the President, nor for the Secretary of Labor. However, I am completely satisfied that any fair and reasonable proposal for the setting up of voluntary procedures for the settlement of the dispute would receive an attentive and friendly ear from the Government of the United States, and would certainly receive a friendly ear from the Congress.

The issue should not be thrown again into the cauldron of congressional politics. It should not be thrown again into the legislative pot. In my judgment, what would come out would not be a living, vital piece of legislation that would be of use to this country in the settlement, not only of this dispute but of other emergency and critical cases that will arise in the future. Instead, it would set another unfortunate and bad precedent, just as the law that was enacted last August was an unfortunate and bad precedent and had no hope of success at the time, and has no hope of success now, for any settlement of the dispute.

I believe the Senator from New York [Mr. JAVITS] wants me to yield, and I yield to him with the permission of the Senator from Ohio [Mr. YOUNG] and under the same understanding with respect to his right to the floor.

Mr. JAVITS. Mr. President, I heard the prophetic words of the Senator from Oregon last August. I joined him then. He and I sat next to each other in the Cabinet Room in the White House and anticipated precisely what has occurred. I have great honor in joining him now.

I gather that implicit in the plea of the Senator from Oregon is that the date or moment of the strike which is imminent should be deferred. I believe that the next time there is legislation it may very well be seizure legislation, because we have learned now that we cannot legislate halfway. When we get into it, we must get into it the whole way.

I could not agree more with the Senator that it could be the first inauguration of a procedure of turning the whole collective bargaining process over to the Government, which certainly would not satisfy labor.

I join the Senator from Oregon, as a member of the committee, in the urgent plea he has made so eloquently. The first thing to do is call off the day or moment of the strike which threatens. When the strike is called, the fat will be in the fire.

Mr. MORSE. I thank the Senator from New York very much. I am glad that he made reference to the work of the Labor and Public Welfare Committee. I say most respectfully and uncritically that I hope that the parties are unable to settle the matter by resorting to voluntarism, and we get into a legislative controversy over the issue again, it will not go to the Committee on Commerce. In my judgment, it should not have gone to the Committee on Commerce in the first place.

In my judgment, the place for a problem such as this should always be in the Labor and Public Welfare Committee, because it deals with the entire question of collective bargaining. It makes no difference whether a particular industry is bound up in commerce, or is bound up in some other economic operation. The overall problem is a labor problem. I sincerely hope that if we must deal with it legislatively—and I pray that we do not—the problem will go to the Labor and Public Welfare Committee and not to the Commerce Committee.

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

Mr. MORSE. I yield to the Senator from Washington.

Mr. MAGNUSON. I do not wish to enter into a colloquy with the Senator from Oregon about the merits of what was done last August, or what is happening now. I believe it is amply clear from the RECORD that every member of the committee stated on the floor of the Senate that, first, this was a so-called one-stop piece of legislation dealing with arbitration on the so-called major issues; and second that on the other issues there was some hope—as the Senator from Oregon said today—that the parties would volunteer to reach an adjustment.

We also expressed the fear—and we were somewhat prophetic—that they probably would not reach an agreement and that we would be back again on the so-called secondary issue—where we are now. I believe the record is amply clear on that point.

As to the jurisdiction of the committees in this matter, the bill proposed by the Senator from Oregon, as I recall, included the provision that the dispute be sent to the Interstate Commerce Commission. That subject clearly falls within the jurisdiction of the Senate Commerce Committee.

The bill was amended. The Senator from Oregon did much yeoman work on the bill. Many meetings were held. The Interstate Commerce Commission theory was rejected, for many reasons. The bill came from the committee, but there was a note of urgency involved, as the Senator knows, and we had to move quickly.

I do not intend to have anyone point the finger at the committee. It did a good job. It worked hard on the problem. It thought it was doing the right thing. I still believe the committee did the right thing on the so-called major issues. Its members have some knowledge of labor matters, too. I do not believe we are all devoid of experience in labor matters.

I am inclined to be a little modest about myself, but the Senator from Oregon is not devoid of knowledge about labor problems. He has dealt with them during much of his political career, and also on the floor of the Senate.

I agree with the Senator from Oregon that much can be accomplished on a voluntary basis. I repeat the same suggestion made by him, that it would be a serious matter if the problem were again to be thrown into the lap of Congress. When the bill was brought up on the floor of the Senate, that opinion was expressed over and over again.

Mr. MORSE. Mr. President, in reply to my good friend from Washington—and I mean exactly that, he is my good friend—I state most respectfully that I am in complete disagreement with his observations.

He and I are as far apart as to what his committee did, and the procedure it followed last August, as the North and South Poles. In my judgment, nothing he can say by way of rationalization or explanation can change the fact—and this is my opinion as a Senator, to which I am entitled—that the Committee on Commerce should have supported the President of the United States to the hilt last August, and accepted his bill. The committee, however, left him cold. In my judgment, that is when the great mistake was made.

Mr. MAGNUSON. I do not disagree——

Mr. MORSE. I do not wish to yield until I finish my remarks. I intend to say what I wish to show. The Senator has already spoken.

Mr. MAGNUSON. That is his opinion. Seventeen members of the committee had another opinion.

Mr. MORSE. I am expressing my opinion, that the results show that the committee made a great mistake in not following the recommendations and the program of the President of the United States, and the discussion in the conference which a good many of us had with the President of the United States.

I believe there is no question that we should have supported the President to the hilt; but, as I said at the beginning of my remarks, that is water over the dam, or water under the bridge—whatever figure of speech one wishes to use.

The question now is, where do we go from here?

Mr. President, I have a few more comments to make by way of suggestions to the parties to the dispute, I offer them only to be helpful to the parties, because they do not have many hours left before the deadline will have to be faced.

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

Mr. MORSE. I yield.

Mr. PASTORE. Mr. President, no one in the Senate was more involved in that situation than I. I was chairman of the committee. Unfortunately, at that particular time, the regular chairman had to be absent from the hearings because of illness. It fell upon me to conduct the hearings and to assume full responsibility for the management of the bill that was reported by the committee.

In the first instance, it was regrettable that the matter had to come to the Congress. It actually put us in the position where we were substituting for all collective bargaining. That of course was very, very unfortunate, and no one understood that better than I.

Be that as it may, the President of the United States at that time took the position that a national strike of the railroads was absolutely intolerable and that it would do irreparable harm to the economy of the United States.

That was the position taken by the President and he made some fundamental recommendations. I wish to say on behalf of the Senator from Oregon that he was consistent at that time, and that he is consistent now. There is not one word he has stated here today that he did not state at that time, that he did not state at all of our meetings. He also said at that time that it would come back to haunt us. The fact is, it did come back to haunt us. We deviated slightly from the original recommendations of the President. Of course there were practical considerations. The matter came before a committee of 17 members, members who had ideas of their own.

The Senator from Oregon in the private meetings we had with the Secretary of Labor and the meetings we had with representatives of the union and with representatives of management, took the position that the authority should be given exclusively to the Committee on Commerce and that the committee should adjudicate all the issues once and for all. But, even if the committee did adjudicate the issues once and for all, of course, it was conceded that new disagreements might arise, thereafter which, could be cause for a new strike, if the parties could not get together under a system of collective bargaining.

The point I wish to make is that I believe it is quite unfair to say this whole matter was a failure because of the action of the committee. We were confronted with a practical and realistic situation. Many members on the committee did not want legislation at all. There is no question about that. They did not want any legislation at all.

There were a few on the committee who thought that this was more or less punitive against the workers. We were confronted with a human problem—a very human problem—and there was not much question on the part of members of the committee that some of these jobs were absolutely unnecessary.

However, how does a man tell a railroad worker who has been working for the railroad 20 or 25 years that his job is no longer necessary, that he must leave his job? That was quite a serious responsibility on the part of the people who represented labor. They were in the difficult position where they had to go to the rank and file of their members and say to them, "A certain percentage of you must go."

The argument was made that this dispute could be adjusted by attrition. We went into that argument to some extent.

The issue is back again to haunt us. It is regrettable that it has come back to us. The Senator from Rhode Island utters the fervent prayer on the floor of the Senate that it will not be referred again to the Commerce Committee. This is a very disagreeable chore. The Senator from Rhode Island has always been sympathetic toward the worker. He believes in the nobility of collective bargaining.

On the other hand, we must admit that the unions had a right to strike. Under our system of collective bargaining they have the right to strike.

The President did not want a strike.

That is the position which confronts us now.

I understand that one of the big railroads has already been struck. The same thing will happen to other railroads.

The Secretary of Labor has been exhorting the unions not to strike. I am afraid that his words are falling on deaf ears, the unhearing ears of both labor and management. Undoubtedly, the President of the United States will be involved again in this situation. I do not like to see the Congress involved again. However, if Congress is involved, I fervently hope that the matter will be referred to the committee of which the Senator from Oregon is a member. This is one of the most sorrowful tasks that any man has assumed. We realize that certain procedures are available under collective bargaining. It is argued by some people that collective bargaining has broken down. Other people argue that labor and management should sit down and take more time. However, Mr. President, unless labor has the right to strike, there is hardly a chance that it can win its fight. On the other hand, if labor is allowed to strike, the economy of this country will be paralyzed.

Therefore we are on the horns of a dilemma. We must make a decision. It is not a decision between right and wrong. It is a decision between two evils. It is one of those Solomon responsibilities: We must cut the baby in two. But how does one do that? It cannot be done.

Neither side must lose. But I believe that both sides are sensible and responsible enough to realize that there is another party in interest, the American people. If the railroads of the country are stopped, irreparable harm will be done to the American people and irreparable harm will be done to the system of collective bargaining.

So, Mr. President, if my words can be heard at all, I implore and I beg both the representatives of the union and the representatives of management to sit down as reasonable people and realize that the President should not be brought into the conflict, and realize that Congress should not be brought into the conflict. If the President or Congress are brought in, a lethal blow will have been struck at the whole system of collective bargaining.

The parties ought to be able to resolve these disputes among themselves. Somewhere between the two points of view there must be a reasonable ground of commonsense. I hope and fervently pray that both sides will strive for commonsense.

My distinguished friend from Oregon has been consistent. He has said nothing today that he has not said before. Once the issue is before Congress, we are bound to go to extremes. All extremes are bad. I hope that both sides will avert this peril.

Mr. MORSE. The Senator from Rhode Island and the Senator from Oregon are agreed on one thing—and it is an important thing—that we disagree on many things that the Senator has said, but that we agree in what I believe to be the controlling thing that the Senator has said, and that is that we must try to resolve this issue, if at all possible, in fairness, without its being brought to Congress again.

Both sides to the dispute have a clear responsibility in these trying hours today to try to reach a procedural understanding for a settlement of their disputes without resort to economic force.

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

Mr. MORSE. I yield to the Senator from Michigan.

Mr. McNAMARA. With the permission of the Senator from Ohio [Mr. YOUNG], I wish to compliment the Senators who have taken part in this discussion. The warning they have issued to the parties to the dispute, that they should settle it outside the Congress, is most timely. I could not agree more.

However, the discussion seems to suggest that there must be a winner and there must be a loser. Such a suggestion is hardly borne out by the facts. It seems to me that both sides can look forward

only to losing, and the American public will also lose in the process. If the matter comes to Congress, I predict that both sides to the dispute will lose, and lose much, indeed. All of us will lose, because we shall wind up with less freedom than we have today. God knows we cannot afford to lose any more freedom.

Mr. MORSE. The Senator suggests the next comment I wish to make on the observation of the Senator from Rhode Island. It is an observation, rather than a reply. I do not believe that one side must win and the other side must lose. From the very beginning this matter could have been settled by well-known policies in the field of labor law—through arbitration, mediation, and conciliation—whereby the legitimate rights of each side could very well have been protected. That is exactly what the President had in mind. In the bill the President offered were encompassed some procedures which would have given assurance that such a result would have flowed.

Because of what has been said today, I owe it to myself, to the President, and to the majority leader to say that on the morning of the day when the Senate finally acted on the matter, and when there had been a counting of noses and it appeared that the President's program would be repudiated, the President called me to the White House, and we discussed at some length—for an hour and a half, as I recall—what lay ahead on the floor of the Senate that day. It was then that the President of the United States made the decision to notify the majority leader that I should offer the President's program. If Senators will check the CONGRESSIONAL RECORD, they will see that early in that speech on the floor of the Senate I said I was offering the administration's program.

There is no question that Senators knew what the position of the President was. He told me to make it clear to Senators that I was presenting the administration's program. I presented it. As I recall, it received 15 votes.

That is where our differences developed. I have no hard feelings. However, it must be remembered that a historic mistake was made in the Senate at that time. The President was entitled to the support for which he had asked. I wish to tell the Senate why. He not only offered a procedure which would have provided for a fair, equitable solution of this problem, but he proposed a procedure which was not encompassed in the Senate bill. One procedure was substituted for the other. It was foreign to the McGee amendment, which I think was a very unfortunate amendment.

He proposed for the first time in the history of our country the establishment of a Presidential Council on Automation. I pleaded with the Senate at the time to realize what that encompassed. The Presidential Council on Automation would have worked hand in glove with the Interstate Commerce Commission during that 2-year period to find out what the contribution of the public should be in a fair and equitable settlement of the railroad dispute.

I repeat today that this dispute will never be settled equitably and fairly until the people recognize that they have not only an interest in the dispute, but that they also have an obligation relevant thereto. All the people of the country have an obligation to go along with the adjustment which must finally be made in connection with great automation cases, such as this and others, in order to make a fair public contribution to the solution of the problem.

We cannot treat labor as old, wornout shoes. We cannot treat railroad workers in that fashion. No group of workers in American are better citizens than railroad workers. Many deserve the same compliment which I pay railroad labor. But no group of workers in the country are better citizens than railroad workers. They are entitled to equity. They are entitled to fair treatment. We have developed an economic order which is dependent upon railroad transportation. If anyone thinks we are not dependent upon railroad transportation, he will discover how wrong he is before too many days pass by if the plug is pulled tonight.

Every taxpayer has a great interest in the operation of the railroads of the country for his own economic welfare. The President recognized that.

There were Senators in the Cabinet Room, sitting in the Office of the President during the series of conferences which we had with him. They heard the President discuss the problem of automation in regard to this dispute. The President discussed how important it was that something constructive be done in any legislation that might be enacted. In the legislation which was enacted, the automation feature was eliminated.

Let no one tell me, in attempting to rationalize what the Senate did, that the legislation which was enacted last August can be rationalized on the basis that it might work. If Senators thought so, they were not thinking. The legislation could not work, when the automation feature was eliminated.

I owe it to myself; and I owe it to the President, in view of the comments which were made in the Senate, to say that there never was a case in which one side had to lose and the other side had to win. This dispute was like every other major labor case, in which each side was protected in its legitimate rights on issues involved in the case as the facts showed those rights to be. The President wanted a showing of the facts.

Under the terms of the bill which was passed, circumscribing the operation of the ad hoc compulsory arbitration board, it was impossible to make a showing of all the facts. The Interstate Commerce Commisison established machinery to provide additional personnel with the assistance that they would have received from the President's Presidential Council on Automation. But the President made it clear that whatever additional personnel was needed in order to settle this matter would be supplied.

A 2-year limitation was fixed in the President's bill. It provided for all the procedures and machinery necessary to do the job.

I do not care what the personal views of anyone are with regard to the senior Senator from Oregon in respect to this issue.

When this matter was debated in the Senate, railroad politics was rampant. The chiefs of five operating brotherhoods, and their big lobbies, sat in the galleries. We voted against the President. Every Senator has a right to do that. I did not; and I am glad I did not.

I understand that the parties will meet this afternoon with the Secretary of Labor. I say to each of the five chiefs that they have a great opportunity for industrial statesmanship. I say to Mr. Dan Loomis and Mr. Wolfe, representing the carriers, "What a glorious opportunity you have to demonstrate your willingness to put the public welfare above any selfish interest."

It is not for me to advise a great Secretary of Labor. He needs no advice from me. I merely make a comment and express my own view. I am satisfied that the Secretary of Labor will make it clear to the parties in the dispute that the Government intends to aid the parties in the attainment of their legitimate economic interest and rights.

The words I have just spoken are pregnant with deep meaning and implication as to the responsibility of the Government.

We cannot treat railroad workers as old shoes. We cannot cast aside a railroad employee with 20, 25, or 30 years' service on a railroad merely because an adverse situation develops economically, as it has developed in the field of automation. We owe him much. Not only do the carriers owe him much, but we owe him much.

Somehow we must make the American people understand that we are a part of the economy. Sometimes we do not act independently.

I am always a little amused when I hear someone say, "I am a self-made man." There are no self-made men. All of us, working as citizens in an economically free society, help to make each person what he is economically.

I do not mean, of course, that the incentive, the intelligence, the drive, and the judgment of individuals do not have much to do with determining what they become economically and in every other way. But there is a cause and an effect. We must make people understand this cause-and-effect relationship between the interrelation and interaction of economic society as a whole and the economic results that are produced on individuals as individuals. So all of us are the products, economically, of our economic society, our social society, and our political society; and I am sure the Secretary of Labor will put at rest any fear, if any exists, that labor is going to be treated as "old shoes," or that, on the other hand, the rights of the stockholders and the rights of the carriers, insofar as their economic effects are concerned, will, somehow, be confiscated. This is the balance which must be maintained in the critical hours ahead in connection with this dispute; and I have every confidence in the great Secretary of Labor.

I believe it was the Senator from Rhode Island who said that of course the President of the United States is bound to be involved. He already is involved, in the sense that any leader of our country in the White House is bound to be involved when there develops a situation which threatens to result in a transportation breakdown and the great economic consequences which would flow from it. I have every confidence in the present President of the United States, just as I did in the late President Kennedy. President Kennedy wanted to preserve every economic right for labor and management, consonant with protecting at all times the superior right of the public interest.

So I say to the parties that I hope this afternoon they will be able to agree on a postponement of any strike for, let us say, a year, or—as President Kennedy had suggested in his bill—2 years, while they proceed to work out, under the various forms of the procedures of voluntarism, their differences, with the assistance of the Government. The Government now has a duty to participate with the parties—also on a voluntary basis, not on a compulsory one—in the endeavor to solve the issues which have become so highly charged with emotionalism. That should definitely be done in connection with this dispute, to the end that the rights which each side can show deserve to be protected will be protected.

But I wish to make clear that if this procedure is to be followed—and, of course, this was the basic objective of President Kennedy's proposal—it can be done voluntarily; it does not have to be done through an existing organization such as the Interstate Commerce Commission. If it is to be done in that way, let me stress the point that the carriers have a right to post their rules. That has been held by the courts, and it has also been held by every agency involved, such as the emergency boards appointed by the President and the special mediation boards appointed by the President, and also the ad hoc arbitration board. However, I hope the carriers will not post their rules. On the other hand, we should put ourselves in the position of the representatives of the stockholders, and should ask ourselves whether, if we were in that position, we would refuse to post rules which the courts have consistently held and which Government boards have consistently held the carriers have a right to post; or whether we should refuse to post them because a strike gun is pointed at our economic temples.

In a period such as this, it is so easy to blame the employer and to take the position that the employer must pay for the losses, merely because organized thousands say to him, "In spite of what have been determined to be your procedural rights, if you exercise them, you will pay through your economic nose." Mr. President, that would not be fair, either.

I am not suggesting a formula; I am merely hinting at one. In fact, I do not know whether I would continue the hint after all the facts were in. I might then withdraw it—although I doubt that I would, because I know enough about this case and about similar cases, for this is not the only labor dispute in which I have ever been interested.

Mr. President, this dispute is a minor one, compared with the major railroad dispute in 1941. I was Chairman of the board that handled that dispute. For 6 long weeks we conducted hearings in Chicago; and for a number of weeks thereafter we continued to handle the matter, here in Washington. We resolved that dispute on the basis of the equitable and fair procedures about which I am hinting now.

I do not know of one issue in this dispute, on either side, that men of good will could not settle by way of resorting to voluntary procedure. But, Mr. President, if a freeze date is agreed upon—1 year or 2 years or x period of time—I think the Government should make very clear that after the facts are in and after they are analyzed and after an evaluation is made of the degree, if any, to which the public has an obligation to take up some of the losses, the parties will know that the Government will do that; and here is one Senator who will support it.

As I have said on the general subject of automation, I shall support such proposed legislation, once we obtain the facts, and after competent experts advise us in regard to the kind of legislation which they believe should be enacted in order to implement the facts in fairness to both management and labor, along with the public's taking up part of the bill that is suffered as a result of the loss of jobs. Certainly it is not right for labor to say to management, "When the labor-saving machinery is installed, you must pay the cost of the loss of jobs which will result"; and neither is it fair for management to say to labor, "It is just too bad that you have lost your jobs; but there is a public welfare office uptown, and you can go there and take advantage of the temporary relief payments." That would not be fair, either.

So we must ascertain the extent to which the Government should be a party to the dispute, by way of making its fair contribution to what can be considered to be losses in relation to which society as a whole has a public responsibility to make a contribution, in order to alleviate the human suffering which flows from the lost jobs—or to prevent that suffering in the first place.

There is nothing new about that; it merely calls for a new application of some very old principles.

This is the basic procedure about which I am hinting—namely, application of the basic principle of the workmen's compensation laws of the 1920's, and application of the basic principle of the responsibility in connection with safety legislation, and application of the basic principle in connection with unemployment insurance legislation. These principles are also basic to the entire concept of social security. They merely mean that we must raise our sights and must aim at a broader economic horizon.

So I hope this afternoon, during the negotiations, it will be made very clear to the parties that the Government does not intend to walk out, if there is a freeze period for the handling of the dispute, on whatever can be shown to be its economic obligation in respect to the dispute.

For that reason I think it is important that we proceed at once to apply at least the principle of President Kennedy's proposal for a National Automation Council; we should proceed to find the facts, and then to report the remedies that the Congress and the country ought to follow.

One more point and I am through. When I think of the subsidies that our Government pays, including some to the railroads, and when I think of the millions and millions of taxpayers' dollars that we are pouring abroad, a large percentage of which is wasted, I am at a loss to understand why there is such a hesitancy about bringing governmental assistance to a solution of a major domestic problem. It is of concern to us from the standpoint of our security, from the standpoint of defense, and from the standpoint of the economic well-being, not only of the railroad workers and the stockholders of the railroad, but the American people generally. There is so much looking askance at the situation that we had better step into the picture and assure the parties that we will be of assistance in connection with losses that may be suffered because of economic changes in our society as a whole. Some people call it automation—I care not what the term. I am interested only in the problem.

Mr. President, I close by saying to the five chiefs, Mr. Loomis, Mr. Wolfe, and the Secretary of Labor, "I hope that in your conferences this afternoon and evening you can reach an agreement for a freeze period during which period you will resort to the voluntary procedures to which I have alluded, with the understanding that the Government will not walk out on you, and with the understanding that the Government will not take the position that you need not look to the Government for any economic assistance in connection with the broader problem I have outlined, if facts can be shown to prove that the Government has a responsibility." I believe they can. But I wish to make clear that in view of the legal rights that it has already been determined are available to the carriers, the Government, in urging such a freeze period, would have no justification for allowing a situation to develop in which we would be confiscating, in effect, material and legal values, values of economic substance, and legal procedural values, from the stockholders merely because a strike gun is being held at the heads of the stockholders—yes, at the head of the entire American economy.

There is an area in which there can be an adjustment of the issues that will not do irreparable damage to the carriers and which will protect the legitimate rights of workers who may lose their jobs as a result of the final settlement of the dispute. I feel that the result will be that the dispute will go down in American industrial history as the dispute that gave rise to a new era of

progressive legislation similar to the era between 1905 and 1930, known as the era of progressive labor legislation, for at long last we shall have recognized that, after all, in this Government we seek not to penalize people but to help people, and that we seek to implement the general welfare clause of the Constitution of the United States.

I yield the floor.

EXHIBIT 1

Mr. MORSE. Mr. President, Senators will be closer to election in March than they are now. Now is the time to stand up to the political pressure of the brotherhoods which, in my opinion, could not, even if they so desired, deliver the votes of their memberships.

Let no Senator assume for a moment that we are through with the discussion of this case on the floor of the Senate. This case and the record of every Senator in the case, will be discussed in local brotherhood halls across the country.

I received a call this morning from Oregon from a brotherhood man. It was 5 o'clock out there when he called me.

He had been listening to the radio and listening to news reports in regard to the speech I made on the floor of the Senate last night, which to him added up to my refusal to follow the brotherhoods because of their failure in leadership for many months, and because of the great disservice that they have performed for the rank and file of the railroad workers of this country, by the adamant position they have held and their refusal to cooperate with their Government, and their refusal to adopt every proposal that the Government had made for a peaceful solution of the problem so that it would never get to the floor of the Senate.

The chiefs of the five operating brotherhoods must take the full responsibility in the history of the American labor movement for being responsible for the adoption of the first compulsory arbitration law in the history of Congress.

The rank and file of the American labor movement will understand the disservice of these political chiefs—and that is the best description I can give them.

Mr. President, I have seen lobbies, but I have never seen the kind of political lobby in operation that I have seen in recent days in the precincts of Congress on the part of the railroad brotherhoods. There is not a Senator who can talk on a record of service to railroad labor any more than can the senior Senator from Oregon. I have been with the brotherhoods when they have been right on the facts, and I have been against them when they have been wrong. They are dead wrong in the way they have handled this case. They are dead wrong in the support they are giving to the pending measure.

We all know what they are looking to. They want to be able to say to the membership, "We did not agree to compulsory arbitration. It was imposed upon us by Congress."

However, we know that behind the scenes that is what they want. I want none of it.

Mr. President, these are not secondary issues. These are major issues. Six months from now we will be that much closer to the election in 1964, and they can be the cause of great unrest in the railway industry.

If any Senator believes that they are not going to be back, he is mistaken. They will have even more political power that close to the election than they have now. Now is the time to settle every issue involved in this case. If they want to continue with their professions that they have been bargaining collectively, it will not take them long to offer whatever they want to offer for a compromise in collective bargaining.

I am sure no Senator believes that collective bargaining will go on while the arbitration is in progress. I will give the Senate some of their alibis. They will say they are sorry they cannot engage in collective bargaining because one man is tied up in this case or someone else is tied up in another case, or a group is tied up.

These men have been heel draggers with regard to this case.

Mr. President, we have problems. We ought to be giving attention to the real problems in the railway industry. We have an obligation to see to it that fair treatment and fair consideration are given to each and every railroad worker who will suffer a job disjointure as a result of the technical technological age in which we now live.

For weeks, I have been trying to get the Senate to see that we ought to be on with the job of passing legislation in the field of automation. The President gave it to us in his bill, and the Senate has just finished turning it down. He proposed an automation council. He proposed that the council should proceed to study the effect of automation upon the economy and that it should then recommend legislation to do justice to all people in the country who are thrown out of jobs as a result of automation.

The continuation of men in employment cannot be justified if the facts show that they are not needed in such employment. That brings me back to my point as to the other party to the dispute, namely, the carriers.

What we would be buying by these amendments would be a 6 months' delay in the final determination. Even then, we would not have it. It would be back in the cauldron of American politics, pretty close to the heat of a campaign. But the campaign would heat the cauldron. If a measure can be passed under those circumstances, I do not know what will be done with the so-called secondary issues when there is a threat of a strike, based upon the warning of the carriers that they intend to post their work rules, rules which they have a right to post.

These amendments should be defeated. We ought to completely rewrite section 6(b) to provide that when the arbitration board hands down its decision on the two main issues, it will be final on those two issues. It will be the decision, and it will go into effect at once.

Do not insult the arbitration board by including in the bill a provision that so encumbers the arbitration terms of reference that although the board will have completed its work, its award will become effective in futuro. Have the major issues settled finally before the board hears the case and renders its judgment. That will give time for the parties to deliberate and determine whether they can reach the agreement that the Senator from Kentucky, the Senator from New Jersey, and the Senator from New York are so concerned about. If they have not reached agreement before then, my prediction is that they will not reach it.

* * * * *

Mr. President, the labor dispute in the railroad industry involves not two, but three parties. We are apt to think of this issue in terms of the Nation's railroads and the railroad brotherhoods which represent the railroad employees. However, there is a third party, and in my opinion, that is the most important party—the American public. To the carriers and the brotherhoods I say today, there are considerations that rise above individual or group selfish economic interests; namely, the good of our country and the public interest.

I have pointed this out to the brotherhoods in the past weeks, as I have pleaded with them not to make the mistaken judgment of attempting to settle on the picket lines a set of issues which are not susceptible of being settled on the picket lines, unless they want to defend going back to jungle law in economic disputes. We ought to settle this dispute by the application of rules of reason, by taking the economic evidence involved in connection with this substantive issue and in connection with the jobs that are involved in the dispute. A good many substantive work rules are involved.

If there ever was a case, in my work in the field of labor relations, that calls for settlement, first around the collective bargaining table, and then around the voluntary arbitration table, this is it.

If some equitable agreement is not reached between the carriers and the railroad brotherhoods, with the help of congressional legislation if necessary, we are still confronted with the fact that the Nation cannot tolerate a general shutdown of our most vital artery of national commerce. This artery carries the lifeblood of our Nation. It must remain open.

We in the Congress serve here with the primary responsibility of representing the public interest of all the people of the Nation. Whenever any economic segment of that citizenry follows a course of action which may develop a fact situation in which its course of action sacrifices the general public interest, then it will become the responsibility of the Congress to proceed to protect the public interest, for the right to strike is not an absolute right, and never has been. Most rights we have must be exercised in connection with their relationship to other rights. It is very easy for us to say we have a right to do such and such. We may have the right, it is true, but it may not be used in a manner which will destroy other rights with which it must be reconciled.

Mr. President, in connection with these great national disputes which involve so directly the national welfare, including the health, safety, and security of the country, I say most respectfully to labor, as I have said so many times in the past: Never forget that the greatest value of the right to strike is to be found in the threat to strike. All too often, when labor goes beyond the threat to strike and pulls the plug, so to speak, it loses the strike, because in most national emergency disputes which involve the health and safety and welfare of the Nation, public interest must come first.

Labor ought to recognize that the public interest will always be placed first.

That is why the Senator from Oregon has urged in recent weeks that the parties agree to voluntary arbitration of the issues in this dispute on which they could not reach agreement.

Having mentioned the procedure of voluntary arbitration, I wish to pay my respects and my compliments to a great industrial statesman within the field of railroad labor. He is the head of one of the so-called nonoperating unions. I refer to the incomparable George Harrison, who has demonstrated time and time again that he recognizes the point the senior Senator from Oregon has made. It is very interesting to note that in recent weeks Mr. Harrison entered into an arbitration agreement in regard to one part of the transportation industry in the country, and I commend him for it. It is with great regret that I note that the chiefs of the five operating brotherhoods did not exercise the same degree of industrial statesmanship.

The President of the United States has alluded clearly to the unthinkable results of a nationwide stoppage of our railroad systems. In his message of July 22, 1963, he told the Congress:

"In the event a strike occurs it will bring widespread and growing distress.

"Many industries which rely primarily on rail shipment—including coal and other mining which is dependent on rails leading directly to the mine, steel mills that ship by rail, certain chemical plants which load liquids directly into tank cars, and synthetic fiber mills dependent on chemicals which for safety reasons can be carried only in rail tank cars—all of these and others would be forced to close down almost immediately. There would not be enough refrigerated truck capacity to transport all of the west coast fruit and vegetable crop. A substantial portion of these and other perishable products would rot. Food shortages would begin to appear in New York City and other major population centers. Mail services would be disrupted. The delay, cost, and confusion resulting from diverting traffic to other carriers would be extremely costly; and considerable rail traffic would be wholly incapable of diversion.

"The national defense and security would be seriously harmed. More than 400,000 commuters would be hard hit.

"As more and more industries exhausted their stockpiles of materials and components—including those engaged in the production of automobiles, metal products, lumber, paper, glass, and others—the idling of men and machines would spread like an epidemic. Construction projects dependent on heavy materials—exports and waterway shipping dependent on rail connections—community water supplies dependent on chlorine which also moves only by rail—slaughterhouses and stockyards, iron ore, rubber and machinery, magazine publishers, and transformer manufacturers—all would be hard hit by a strike. The August grain harvest would present a particularly acute problem.

"The Council of Economic Advisers estimates that by the 30th day of a general rail strike, some 6 million nonrailroad workers would have been laid off in addition to the 200,000 members of the striking brotherhoods and 500,000 other railroad employees—that unemployment would reach the 15-percent mark for the first time since 1940—and that the decline in our rate of gross national product would be nearly four times as great as the decline which occurred in this Nation's worst postwar recession.

"At the same time, shortages and bottlenecks would increase prices—not only for fruits and vegetables, but for many industrial materials and finished products as well—thus impairing our efforts to improve our competitive posture in foreign and domestic markets and to safeguard our balance of payments and gold reserves. And even if the strike were ended by private or congressional action on the 30th day, at least another month would be required before the economy would be back on its present expansion track. Indeed, a prolonged strike could well break the back of the present expansion and topple the economy into recession before the tax reductions and other measures now before the Congress for reinforcing the expansion have had a chance to take hold."

The parties to this dispute knew that. The President did not tell the parties anything they did not know when he recited to the American people what the economic effects of the strike would be. Yet the record of the case is clear. Time and time again, the carriers agreed to cooperate with the Government in the adoption of peaceful procedures for the determination of the issues on the merits; and the brotherhoods adamantly, time and time again, refused. Who put the public interest first? Not the brotherhoods. I am sorry to find it necessary to say these things on the floor of the Senate.

I propose to put the blame where it belongs—right on the backs of the chiefs of the brotherhoods involved in this dispute. They have made a sad and sorry record of noncooperation with the Government in the attempt to seek voluntary, peaceful procedures for the settlement of this dispute.

A stoppage of general railroad service would be particularly disastrous to the small business segment of our economy. Thousands of such firms would close in bankruptcy after a few days. Their losses would be reflected many times over in related and dependent areas of the national economy. We cannot afford so great a sacrifice. We cannot afford it because I believe reasonable men, with their minds uppermost on the general public interest, can resolve the railroad dispute.

LEADERS OF THE RAILROAD BROTHERHOODS, SERIOUS MISTAKE—REJECTION OF VOLUNTARY ARBITRATION

If there was ever a labor-management dispute that called for a solution through the procedures of voluntary arbitration, it is the railroad dispute with which we are now confronted.

President Kennedy deserves the highest praise for having offered the voluntary arbitration procedures to the parties and the carriers are to be commended for having agreed to accept this procedure under the specific plan offered by the President.

The President offered to the parties the services of one of the most able and highly respected labor arbitrators in our Nation—Mr. Justice Arthur Goldberg. Mr. Justice Goldberg is recognized as one of the greatest leaders of our generation in the field of labor relations. His record is one of impartiality. He has brought his great judicial temperament to every labor dispute he has ever mediated or arbitrated.

Mr. Justice Goldberg was willing to devote his time this summer to an arbitration of the railway labor controversy dispute. Both sides to the dispute should have wasted no time in accepting the President's suggestion. The proposal was for voluntary arbitration. I believe that management and the railroad brotherhoods also had a patriotic obligation—I use the term "patriotic" advisedly—to retain voluntary arbitration in the field of labor relations as a tool, a vehicle, and a procedure for the settlement of labor disputes.

It is perfectly clear, as one studies the issues involved in this dispute, that the American public has come to the conclusion that there should be an equitable settlement of this dispute without a costly strike.

I need yield to no one as a friend of the legitimate rights of management and of the legitimate rights of labor. I say to the railroad brotherhoods, "In my judgment you had a clear responsibility, owed to your membership, owed to the families of your membership, and owed to the American public, to accept the principle of voluntary arbitration and to accept as the arbitrator a truly great man recommended by the President who, in my judgment, has no peer in the field of labor arbitration."

Mr. President, everyone in the dispute knows that a shutdown of the railroads would finally end with a settlement on just about the same terms as would be awarded by such an impartial judicial arbitration award, based upon all the evidence, as Mr. Justice Goldberg would have handed down.

Why the leaders of the railroad brotherhoods rejected the voluntary arbitration services of Mr. Justice Goldberg, I shall never understand. They lost a golden opportunity for a fair and equitable ruling. They know that Justice Goldberg is without a parallel as a mediator of labor disputes. With his great ability in this field he would have mediated—and successfully—the majority of the issues in dispute. His arbitration functions would have been called for on only a small number of issues. Above all, he would have placed his reputation as a Justice of the U.S. Supreme Court at stake. This would have assured absolute fairness and justice on any decision he might have rendered by way of arbitration.

But all this is "water over the dam," so to speak. The leadership of the brotherhoods rejected the President's voluntary arbitration offer, and thereby lost a great opportunity.

In the 11th hour of the negotiations the brotherhood finally agreed tentatively to proposals by Secretary Wirtz to arbitrate two basic issues involving the engine crew and the train crew. Unfortunately, it was too late. The brotherhood and railroads could not get together on the terms of the arbitration and the matter was thrown back to Congress.

But with respect to the offer of arbitration on the part of the brotherhoods, in my judgment, it does not meet the test of a good-faith offer, because the brotherhoods so entwined their offers with restrictions and reservations, as I said earlier in the debate today, that in one breath they offered arbitration, and in another breath they effectively took arbitration away. The terms, conditions, and restrictions they sought to impose killed their offer at the very time they submitted it.

It now remains for the Congress to exercise its jurisdiction toward a fair solution of the dispute.

* * * * *

The legislative problem which the administration faced in drafting Senate Joint Resolution 102 was to provide a procedure which would preserve collective bargaining but which at the same time would provide the assurance that there would be a resolution of the dispute through voluntary action of the parties without resort to a work stoppage.

Senate Joint Resolution 102 as originally introduced in the Senate, attempted to do this by identifying the engine crew and train crew issues as matters which are closely comparable to railroad mergers, amalgamations and coordinations, as well as mass transit modernization, with respect to their impact upon employment security. It was pointed out that not only are job security problems identical in these regulated areas, but that the proposed rule changes with respect to the manning of the engine and train involve matters generally subject to regulation by the Interstate Commerce Commission with specialized knowledge of the railroad industry, including factors such as public service and safety which are so intimately involved in the current dispute. These were the considerations which prompted the administration to develop an ad hoc procedure designed to remove the case which had been blocking the channels of bargaining.

The second key to the administration proposal was to develop a system within the ICC framework for the development of interim rules governing the engine and train crew issues for the time being.

It is in the light of these interim rules that Senate Joint Resolution 102 would encourage and stimulate the parties to continue to bargain in order to develop final solutions of these and of all other remaining issues.

This is what the Secretary of Labor meant when he stated that the procedures contemplated by Senate Joint Resolution 102 did not constitute compulsory arbitration, but, on the contrary, were designed to preserve collective bargaining within the limitation established by the background of these long overdrawn negotiations.

Thus, section 1 of the original Senate Joint Resolution 102 provides that changes in the work rules involving the manning of train or engine crews shall become effective only upon application to and approval on modification by the Interstate Commerce Commission under section 5 of the Interstate Commerce Act. It appears to be the inten-

tion in this section, read in the light of the scheme of the resolution and of the legislative background, that these rules will provide a basis for the manning of the trains for the interim period only.

Stated conversely, the resolution does not authorize the Commission to approve rules which are dispositive of the entire manning issue for the indefinite future. The emphasis is on interim work rule procedures to be effective only until such time as the parties reach agreement regarding the entire matter or 2 years following the date the interim rule goes into effect, whichever occurs sooner.

Section 3 of the original Senate Joint Resolution 102 emphasizes that the Commission in acting upon application to approve the proposed work rule changes within the limitations already developed, shall take into account considerations of safety and public interest and shall give due consideration to the recommendations of the Presidential Emergency Board and to the narrowing of the areas of disagreement developed in the negotiations following the Emergency Board report.

No matter what the Commission does in this connection, it is required to provide fair and equitable job security arrangements provided by section 5(2)(f) of the Interstate Commerce Act—the so-called Washington agreement procedures—protecting the jobs of employees and providing for the insurance against any worsening of the position of employees in consequence of the interim rule change.

Secretary Wirtz suggested that the decisions of the Commission would be subject to review in the same manner as are the orders of the Commission under section 5 of the Interstate Commerce Act.

The parties are enjoined to bargain collectively with respect to the unresolved issues covered by the notices, other than the manning issues governed by section 1. However, if the parties fail to agree on any such issue within 60 days following the effective date of Senate Joint Resolution 102, either party may submit the proposal to the Interstate Commerce Commission for disposition by special procedures adopted by the Commission after consultation with the parties, including, but not limited to, such procedures as were recommended by the Emergency Board.

Thus, the resolution is designed to avoid "compulsory arbitration" as the term is generally understood and to provide in its place for the development of some interim basis for creating an atmosphere conducive to collective bargaining without the crisis pressures which have been built up as of this time. This is accomplished by the device of the so-called interim procedures.

WASHINGTON AGREEMENT SUPPORTED IN PAST BY BROTHERHOODS

Mr. President, basic in the procedures and principles adopted by the President in the suggested proposal for legislative action is the Washington job protection agreement in the Mass Transportation Act. Those of us who have been consulting with the administration in regard to the railroad dispute crisis were not parties to the drafting of Senate Joint Resolution 102. It was presented to us for consultation after the officers of the executive branch of the Government had prepared it and believed that it warranted favorable consideration. We talked about its pros and cons. Many suggestions were considered. Finally the administration decided that it ought to be considered in the form which it sent to Congress. The record should be made clear that under those circumstances we said we would support the resolution. Neither the consultants nor those who drafted the proposal—and although I cannot speak for him, I can express the opinion that it also applies to the President of the United States himself—took the position that under no circumstances should Senate Joint Resolution 102 be modified by amendment or by substitution unless a better program could be proposed, first, to protect the public interest; and, second, to protect the legitimate interests of the carriers and the brotherhoods.

The Senate Commerce Committee considered the President's proposal as originally introduced under Senate Joint Resolution 102. What did the Commerce Committee produce?

A compulsory arbitration resolution, under the substitute Senate Joint Resolution 102, which was reported to the Senate on August 23.

COMPULSORY ARBITRATION—A DISSERVICE TO EMPLOYERS AND EMPLOYEES

I have said time and again that I will not vote for any legislation providing the perennial bromide of compulsory arbitration as the means for settling the railroad dispute. Regrettably, the joint resolution reported by the Senate Commerce Committee offers precisely that kind of remedy.

Each time throughout recent history that the statutory procedures fail to settle a dispute involving the national economy, at some point someone reaches into the cabinet for the timeworn proposal of compulsory settlement as the basis for curing the headache. Some have called compulsory arbitration an excessively harsh remedy, but it is more than that. Let us not delude ourselves. It is a form of economic capital punishment. As a practical matter, it means that there will be no more collective bargaining where it prevails. Some may prefer decapitation as a cure for this headache, but I urge more realistic measures which are designed to maintain a true balance between the rights of labor to engage in collective bargaining and to strike and the rights of the public to be safeguarded against paralyzing and destructive consequences of a total strike affecting the national health and safety.

The committee measure favors decapitation of collective bargaining, and it is with sadness and regret that I must at this point part company with my distinguished friends who have joined in reporting out a measure of this kind.

The significance of compulsory arbitration as a form of economic capital punishment is well understood by the administration, by the railroad brotherhoods, by the carriers, by the house of labor and by all of the professional members of the labor-management relations community. Indeed, it was only a few weeks ago, as I mentioned earlier, that the President of the United States in his special message to the Congress on the railroad dispute told us that the administration had given careful consideration to the various kinds of legislation which Congress might enact to solve the present railroad situation and had specifically rejected compulsory arbitration as inconsistent with the principles of free collective bargaining.

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 II OF H.R. 7152

Mr. MAGNUSON. Mr. President, my remarks today are directed to a discussion of title II of H.R. 7152, the public accommodations provisions of that bill. Several days ago, Senators HUMPHREY and KUCHEL described the Civil Rights Act of 1963 in its entirety with an excellent and learned description of each of the 11 titles contained therein. It is my role to expand this inquiry as to the constitutionality, wisdom, intent, and effect of title II and to explore the various ramifications of its language. This task has at least a dual purpose—first, an extensive expression of the intended application of these provisions is essential to assure that the intent of Congress is easily determined and appropriately applied. This is obviously desirable and necessary to assure that the will of Congress and the policies it seeks to express through this legislation are effectuated by the judicial branch. Second, there has been much said and written about public accommodations legislation. Much of what has been said and written has been a considerable distortion of the facts, or the intent, or a misinterpretation of the language itself. It is my purpose, in part, to attempt to clarify the design of this legislation and the effect these provisions would have in a variety of situations.

In order to best serve these two purposes—namely, building a legislative history to aid the courts and providing an explanation of this title to the American public—I wish to present my remarks as an entirety. I shall, therefore, not yield for questions, observations, or comments by my distinguished colleagues until I have completed my formal remarks. At the end of these remarks I shall be glad to yield for questions.

The public accommodations provisions of H.R. 7152 were originally included in S. 1732, the public accommodations measure referred to the Senate Committee on Commerce of which I am privileged to be chairman. While the provisions of title II as it now reads are less inclusive than those in the original measure, and more limited than the bill reported by the Commerce Committee, its language is very substantially like that considered by the committee during our exhaustive hearings on public accommodations legislation. I shall, therefore, draw upon the facts, convictions, and ideas developed in the course of those hearings in discussing the need for such legislation, the power of Congress to act in this field, and the intended application of the terms of this bill.

COMMITTEE ACTION ON TITLE II

Title II has been the subject of the most careful and searching scrutiny at the committee level.

Therefore, any criticism as to length of hearings which has been leveled at some of the other sections of the bill cannot be leveled at this section. The Committee on Commerce began on July 1, 1963, a series of 23 hearings that finally concluded on August 2. These hearings are printed in three volumes and total 1,575 pages. Forty witnesses

appeared before the committee, including 19 invited by the Senator from South Carolina, who, of course, were opposed to the bill. They were in opposition to a public accommodations bill, and in some cases, to any civil rights bill at all.

In addition, comments were requested from law school professors and deans throughout the country and from Governors of each of the States.

These hearings necessarily involved profound legal, constitutional, and policy questions. These questions were pursued in hearings free of partisanship and by witnesses not limited by region or point of view. The witnesses from the administration, uniformly supporting the bill and its purposes, included the following: Attorney General Robert Kennedy, Secretary of State Dean Rusk, Secretary of Labor Willard Wirtz, Under Secretary of Commerce Franklin Roosevelt, Jr., and Assistant Attorney General for Civil Rights, Burke Marshall. Also invited to appear were those whose positions or experience provided insights into the issues at hand. These included: Erwin N. Griswold, a member of the U.S. Civil Rights Commission and dean of the Harvard Law School; Hon. Frank Morris, mayor of Salisbury, Md., accompanied by John W. T. Webb and the Reverend Charles Mack, chairman and member, respectively, of the Salisbury-Wicomico Biracial Commission; Dr. Eugene Carson Blake, National Council of Churches; Father John F. Cronin, National Catholic Welfare Conference; Rabbi Irwin Blank, Synagogue Council of America; Peter Rozelle, commissioner, National Football League; Ford Frick, commissioner of baseball; Hon. Joe Foss, commissioner, American Football League; Roy Wilkins, executive secretary, National Association for the Advancement of Colored People; Hon. Ivan Allen, Jr., mayor of Atlanta, Ga.; and Bruce Bromley, attorney.

The 19 witnesses who appeared at Senator THURMOND'S request included the Governors of South Carolina, Georgia, Florida, Alabama, and Mississippi; and also the attorneys general of Arkansas, Mississippi, and South Carolina.

The Senator from South Carolina [Mr. THURMOND] specifically requested that the Governor of South Carolina be invited to attend, and, in fact, the committee invited all 50 Governors of the States of the Union. Furthermore, statements were received for the record from the attorneys general of Georgia and North Carolina.

In this way a full record was developed; a record that sought as completely as possible to explore the legality, wisdom, and need for a Federal statute securing for all persons the right of equal access to places of business held open to the public.

At the conclusion of these hearings, the committee held 9 executive sessions concluding on October 8, 1963, when the measure was ordered reported favorably by a vote of 14 to 3.

One of the most striking and clear results of our exhaustive committee hearings was the inescapable conclusion that racial discrimination by establishments serving the public greatly burdens our national economy. This burden is not indirect or imagined; but is direct and beyond dispute. At this point I ask unanimous consent to incorporate my remarks on pages 17–22 of the Report No. 872 of the Committee on Commerce wherein this matter is fully discussed.

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

ECONOMIC ASPECTS

As discussed earlier, the fundamental purpose of S. 1732 is directed at meeting a problem of human dignity; and such an objective has been and can be readily achieved by congressional action based on the commerce power of the Constitution. In addition, though, the committee is convinced that the measure is a sound approach to the economic burdens created by discrimination in public establishments.

Dean Griswold, addressing himself to the question of whether or not there was a valid connection between discrimination and interstate commerce, made the following statement:

"In the United States of 1963, it does not require any fiction to see the relationship of places of public accommodation to interstate commerce. In 1961, commercial airlines flew more than 18 billion revenue passenger miles in the Nation during the first half of the year. More than 350 million passengers traveled on the 218,000 miles of railroad routes in 1958. Intercity bus lines in 1959 carried 170 million passengers over 208,000 miles of route. The 41,000-mile Interstate Highway System, which reaches into every corner of the land, crosses the boundaries of 673 cities and passes close to many hundreds of others.

"With the growth of metropolitan complexes, many thousands of citizens travel across State lines for business or pleasure, not periodically but on a daily basis. And at the same time, a great volume of the goods and appliances used by businesses which serve the public move in interstate commerce."

Public establishments presently discriminating or segregating on account of race, color, religion, or national origin are enjoying the benefits of access to and participation in commerce. The business of such establishments is fostered and made more profitable because of the advantages afforded them by utilizing these various channels of commerce. However, when the discriminatory practices employed by such establishments lead to demonstrations or boycotts in addition to the humiliation of those subject to discrimination, the economy of our Nation suffers.

For example, such practices have a stifling effect on the business of providing accommodations for conventions. Mr. Ray Bennison, convention manager of the Dallas (Tex.) Chamber of Commerce was quoted in the Wall Street Journal, July 15, 1963, as stating:

"This year we've probably added $8 to $10 million of future bookings because we're integrated."

Within 1 day after 14 Atlanta hotels recently announced they would accept Negro convention guests, the Atlanta Convention Bureau had received commitments from three organizations including 3,000 delegates that would not have otherwise visited Atlanta, according to the same source.

The adverse economic effect of discrimination by public accommodations is not limited to the convention business. Discrimination or segregation by establishments dealing with the interstate traveler subjects members of minority groups to hardship and inconvenience as well as humiliation, and in that way seriously decreases all forms of travel by those subject to such discrimination. Surely a family is not encouraged to travel along a route or into an area where, because of the color of their skin, they will be denied suitable lodging or other facilities. According to Mrs. Marion Jackson, publisher of Go-Guide to Pleasant Motoring, a Negro traveling by car from Washington, D.C., to New Orleans must travel an average of 174 miles between establishments that will provide him with suitable lodging. Many of these establishments are small and there is often no vacancy for the traveler who seeks accommodations in the latter part of the day. Not only is this an affront to human dignity; it is also a detriment to the economy of this Nation.

The reluctance of industry to locate in areas where such discrimination occurs is another manifestation of the burden on our economy resulting from discriminatory practices. Employees do not wish to work in an environment where they will be subject to such humiliation. There is a lack of local skilled labor available in such areas because many workers, rather than be subject to discriminatory practices, have relocated in other regions.

The Honorable Franklin D. Roosevelt, Jr., Under Secretary of Commerce, in his statement before the committee, pointed out that—

"In the 2 years before the crisis over schools and desegregation of public accommodations erupted into violence in Little Rock in September 1957, industrial investments totaled $248 million in Arkansas. During the period, Little Rock alone gained 10 new plants, worth $3.4 million, which added 1,072 jobs in the city. In the 2 years after the turbulence which brought Federal troops to the city, not a single company employing more than 15 workers moved into the Little Rock area. Industrial investments in the State as a whole dropped to $190 million from $248 million of the 2 years before desegregation."

Mr. Glenn E. Taylor, Birmingham (Ala.) Chamber of Commerce official, was quoted in the Wall Street Journal, September 19, 1963, as saying shortly after the bomb blast in that city killing four Negro children:

"We haven't had a commitment for a new industry all summer, but we had hopes that things were going to improve. I was planning to take a trip next week to contact some prospects. But what's the use now?"

Not only is industry discouraged from locating where discrimination is practiced, but physicians, lawyers, and other professional persons are deterred from engaging in their professions where the advantages of membership in local professional associations, or other benefits, will be refused them because of the color of their skin. Included in the statement of the Under Secretary of Commerce, before the committee, was this quotation from a statement by the provost for medical affairs of the University of Arkansas:

"The university medical center, being within the community of Little Rock, could not help but be affected by the disturbance. I think it would be only fair to say that because of this complicating social change, the medical center has had its faculty recruitment program brought to a virtual standstill."

Discriminatory practices in places of amusement and retail establishments often leads to the withholding of patronage by those affected, and in that way the normal demand for goods or entertainment is restricted. Other patrons, even though not themselves subject to discrimination, also avoid establishments employing such practices when picketing or boycotting occurs because of fear of possible violence. In his statement before the committee, the Under Secretary of Commerce said:

"Retail sales in Birmingham were reported off 30 percent or more during the protest

riots in the spring of 1963. That is just retail sales, gentlemen. One local businessman said several retailers had told him their books had shown a net loss for the first time in a generation. Another businessman of 35 years experience said there were more stores for rent in Birmingham last fall than there had been during the depression.

"The Federal Reserve bank in Atlanta reported that in the 4-week period ended May 18, 1963, department store sales in Birmingham were down 15 percent below the same period in 1962. Since January 1, 1963, the city's department store sales dropped 5 percent from 1962. During the same 4½ months, department store sales were up 7 percent in Atlanta, up 10 percent in New Orleans, and up 15 percent in Jacksonville, Fla."

The Honorable Frank Morris, mayor of the city of Salisbury, Md., appearing before the committee, commented on the effect of recent demonstrations in Cambridge on its economy. Mr. Morris said:

"I am engaged in the wholesale plumbing, heating, and supply business in Salisbury, a family-owned business. We have a branch store—we have seven of them, and one is in Cambridge. Our own particular business is there, we sell to the plumbing and heating contractors. We do not sell to the retail public. Our business there has dropped very substantially, as much as 80 percent off from when it was on its peak, as far as the demonstration.

"Also, our council in Salisbury has the district manager of the Acme Stores. Their food business in Cambridge dropped as much as 30 to 40 percent during the peak of the demonstrations.

"I have been told by a shoestore manager, a national chain shoestore manager, that he was working on his quota, and he worked on a quota basis—I had one conversation with the gentleman, so I am going second-hand with it, so to speak—anyway, he was going on a quota basis, and on his quota, he was 165 percent ahead of his quota for the first 4 months. And then the freedom riders came into town, and his business dropped and within the next 3 months he was down to less than 40 percent of his quota. He had gone from 165 down to 40 percent on a yearly quota.

"Definitely the demonstrations have a real effect. Certainly when demonstrations are at their peak, you are not going to take your family, normally speaking, down on the street to see what is going on. You are going to leave your children home. You want your wife to stay home. If you have to go some place, buy something, or do something, you do only the necessities. And if you can avoid the area that is troubled, you are going to avoid it. It very definitely has an effect."

The Under Secretary of Commerce told the committee that discriminatory practices in places of entertainment or amusement not only artificially restrict the demand for entertainment, but also that—

"Where segregation is practiced in theaters and auditoriums, the entire community, both white and Negro, is denied access to a variety of cultural and entertainment activities. The Metropolitan Opera Company canceled its annual season in Birmingham because municipal authorities failed to desegregate theater facilities. Although they had formerly had very successful seasons in Birmingham, there are no plans for resumption in the immediate future.

"Actors' Equity adopted a rule about a year ago, written into every contract, that performers need not perform in theaters where discrimination is practiced either against performers or patrons.

"Entertainers in the American Guild of Variety Artists have also been refusing to book where either the stage or the audience is segregated. The guild's resolution is fairly recent, but many of the booking agencies have insisted upon this clause for a long time."

Ford Frick, commissioner of baseball, directed the attention of the committee to the contrast between the disbanding of the Southern Association, largely due to segregation in the cities holding franchises, and the experience in 1962 on the reopening of a professional baseball team in Little Rock, Ark. It was determined by the board of directors of the new club that there should be integration on the playing field as well as in the stands. Commissioner Frick inserted in the hearing record a report from the general manager of the new team that said in part:

"The Southern Association of which Little Rock was a member for many years never did integrate at any time. We did considerable groundwork and study before applying for a franchise in the International League. We were assured by the four larger hotels in the city that they would take care of all visiting Negro players in the rooms, coffeeshops, and dining rooms exactly as they would provide for the white players. We selected the Hotel Marion because of its all-night coffee shop.

"The local NAACP field secretary requested that we integrate the park. We answered them that we would sell tickets to the general public. When the board of directors of the club met, it decided to integrate the park on opening night, April 16. No public mention of this decision was made although local TV and radio sports announcers and newspaper sportswriters were aware that the decision had been made.

"The park was quietly integrated on opening night with 6,966 paid admissions of which several hundred were Negro patrons. There was no trouble, no commotion, and no complaint, except one lone man with a sign who moved up and down in front of the park. No one paid any attention to him. He tried it again the second night for a short time and then gave up.

"Negro players on the home team and visiting teams have been applauded from the start, and sometimes louder than the white players. Visiting managers report better treatment here in hotels and coffeeshops than elsewhere. One visiting team has as many as six Negro players.

"Our Negro players are popular with our fans. They came here in fear, but a large group of white fans met the team on their arrival here from spring training and took them on tour in private cars over the city. They are much at home now.

"We sold $114,330 worth of preseason tickets early in the spring. Tickets were sold in 90 cities and towns in Arkansas outside of Little Rock. Enthusiasm and support have been steady and general throughout the State.

"Integration in Little Rock has been smooth. It came about naturally and is a normal part of Arkansas baseball now."

This is an indication that progress has been made. But there are other cities and other areas where resistance is stronger. Gov. George Wallace of Alabama, for example, after noting that segregation in his State is a matter of custom and usage, made the following reply to a question about the likelihood of voluntary desegregation of public establishments in Alabama:

"No, sir; they can integrate. Let them go ahead and integrate. One or two have talked about integrating in Birmingham, Ala. They have had Negro boycotts, now they have white boycotts."

Mayor Allen of Atlanta similarly cast doubt on reliance on voluntary action to achieve effective desegregation. He prophesied a return to the old turmoil of riots, strife, demonstrations, boycotts, and picketing if S. 1732 failed of enactment.

It is, moreover, clear that where desegregation in public establishments has been achieved either by community biracial efforts or legislation or ordinance, it has been done without the adverse economic results that had been forecast by its opponents. Richard Marshall, an attorney of El Paso, Tex., advised the committee by letter of the actual experience in his city with a public accommodations statute similar to S. 1732. He wrote as follows:

"Although such legislation, on a State and local basis, is nothing new but has existed for over 75 years, it was noteworthy that El Paso, Tex., adopted such an ordinance last year since this was the first such enactment in any of the 11 traditional Southern States.

"Our experience has been gratifying. Our four aldermen were all in favor of it, but the mayor vetoed it and the ordinance was passed over his veto. There was no violence, there were no demonstrations, and there was acceptance of the ordinance by the hotels, theaters, and restaurants of El Paso. Many of the theaters and restaurants welcomed with relief the passage of the ordinance, since they had the force of law behind their natural desire to serve all patrons without causing arguments on their business premises.

"I do not think that even the most fervent 1962 opponents of the ordinance among the restaurants and hotel people would today be able to state that this legislation had either harmed their business, taken any of their property or profits from them, deprived them of any of their liberties, or created any super police power in the community."

Mr. MAGNUSON. Mr. President, I also ask unanimous consent to incorporate at this point in the RECORD the committee findings as to the necessity for Federal public accommodations legislation as set forth in the same report at pages 14 to 16.

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

THE NEED FOR FEDERAL LEGISLATION

"Race discrimination hampers our economic growth by preventing the maximum development of our manpower, by contradicting at home the message we preach abroad. It mars the atmosphere of a united and classless society in which this Nation rose to greatness. It increases the cost of public welfare crime, delinquency, and disorder. Above all, it is wrong" (President John F. Kennedy, Feb. 28, 1963.)

State law

As noted earlier in this report, the Supreme Court, in 1883, believed that all States had in effect laws guaranteeing "proper accommodations to all unobjectionable persons who in good faith apply for them." Yet, by 1947, the Truman Commission report, noting that 18 States did have public accommodations laws, recommended a renewed effort at the State level to eliminate such discrimination by legislation. It is now 80 years after the Supreme Court decision and 16 years after the Truman Commission report and only 14 additional States have made discrimination in public accommodations and facilities a prohibited act.

Many of these 32 States have adopted statutes more comprehensive in coverage and severe in penalty than what is contemplated by S. 1732. These State laws would be specifically preserved and relied on for effective enforcement of the proposed Federal statute. Wherever a remedy is available at the State level, for example, S. 1732 provides that such remedy would be pursued before injunctive relief under this bill is sought.

Despite the action in 32 States attempting to secure equal access to public accommodations, there is obviously a broad statutory gap that has fueled and fired racial and religious tensions. This fact was neither contested nor controverted during the course of the committee hearings. And the conclusion has been inescapable: the problem is one national in scope requiring Federal legislation. The time has now passed when discrimination was susceptible to local treatment alone without a residual right of enforcement. As John W. T. Webb, chairman of the Salisbury (Md.) Biracial Commission noted:

"We started working with the restaurants in the fall of 1960 and at that time tempers were not as short, lines were not as drawn, and the situation was enormously easier than it is today in communities that have this problem of discriminatory service."

His fellow commission member, the Reverend Charles Mack, made a similar observation:

"But for God's sake, have some bill, something to fall back on in the case where everything is stopped, where people are sitting around not doing anything about the situation at all."

And finally the mayor of Atlanta, Ga., Ivan Allen, Jr., summed up the possible futility of past progress if Congress fails to enact this bill:

"Surely the Congress realizes that after having failed to take any definite action on this subject in the last 10 years, to fail to pass this bill would amount to an endorsement of private business setting up an entirely new status of discrimination throughout the Nation. Cities like Atlanta might slip backward.

"Hotels and restaurants that have already taken this issue upon themselves and opened their doors might find it convenient to go back to the old status. Failure by Congress to take definite action at this time is by inference an endorsement of the right of private business to practice racial discrimination and, in my opinion, would start the same old round of squabbles and demonstrations that we have had in the past."

Human dignity

Americans do not adjust to segregated living; nor should they.

Several witnesses before the committee described the nature of the affront; the effects of the systematic and arbitrary exclusion of an individual from public facilities for no reason other than the color of his skin. Roy Wilkins, executive secretary of the National Association for the Advancement of Colored People, commented as follows:

"The truth is that the affronts and denials that this section, if enacted, would correct are intensely human and personal. Very often they harm the physical body, but always they strike at the root of the human spirit, at the very core of human dignity.

"It must be remembered that while we talk here today, while we talked last week, and while the Congress will be debating in the next weeks, Negro Americans throughout our country will be bruised in nearly every waking hour by differential treatment in, or exclusion from, public accommodations of every description. From the time they leave their homes in the morning, en route to school or to work, to shopping, or to visiting, until they return home at night, humiliation stalks them. Public transportation, eating establishments, hotels, lodginghouses, theaters, motels, arenas, stadiums, retail stores, markets, and various other places and services catering to the general public offer them either differentiated service or none at all.

"For millions of Americans this is vacation time. Swarms of families load their automobiles and trek across country. I invite the members of this committee to imagine themselves darker in color and to plan an auto trip from Norfolk, Va., to the gulf coast of Mississippi, say, to Biloxi. Or one from Terre Haute, Ind., to Charleston, S.C., or from Jacksonville, Fla., to Tyler, Tex.

"How far do you drive each day? Where and under what conditions can you and your family eat? Where can they use a restroom? Can you stop driving after a reasonable day behind the wheel or must you drive until you reach a city where relatives or friends will accommodate you and yours for the night? Will your children be denied a soft drink or an ice cream cone because they are not white?"

Later in the same hearing, Mr. Wilkins added:

"You just live uncomfortably, from day to day. It must be remembered that the players in this drama of frustration and indignity are not commas or semicolons in a legislative thesis; they are people, human beings, citizens of the United States of America. This is their country. They were born here, as were their fathers and grandfathers before them, and their great-grandfathers. They have done everything for their country that has been asked of them, even to standing back and waiting patiently, under pressure and persecution, for that which they should have had at the very beginning of their citizenship."

The Reverend Eugene Carson Blake, appearing on behalf of the National Council of Churches, gave the committee a specific example during the testimony. He recounted the following experience:

"I traveled with a distinguished Negro pastor for three night stands. We were speaking on 'international peace' in 1948, I believe it was, and we were traveling through the Pacific Northwest.

"No bad incident happened as far as the race of my companion was concerned during that half a week that we spent together. But, I never was the same again, because I, for the first time in my life, realized what it would be to be a Negro traveling, because he didn't know each time as to whether he would be received. There was just this edginess which no human being ought to be subjected to."

The primary purpose of S. 1732, then, is to solve this problem, the deprivation of personal dignity that surely accompanies denials of equal access to public establishments. Discrimination is not simply dollars and cents, hamburgers and movies; it is the humiliation, frustration, and embarrassment that a person must surely feel when he is told that he is unacceptable as a member of the public because of his race or color. It is equally the inability to explain to a child that regardless of education, civility, courtesy, and morality he will be denied the right to enjoy equal treatment, even though he be a citizen of the United States and may well be called upon to lay down his life to assure this Nation continues.

On this point, Mayor Allen of Atlanta comments as follows:

"The elimination of segregation, which is slavery's stepchild, is a challenge to all of us to make every American free in fact as well as in theory—and again to establish our Nation as the true champion of the free world."

Mr. MAGNUSON. Mr. President, I also ask unanimous consent to insert at this point in my remarks, an excellent article that appeared in the New York Times of March 25, under the byline of Anthony Lewis, in which the recent racial problems in Jacksonville, Fla., are described as "a dramatic illustration of the need for the public accommodations title of the pending civil rights bill."

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

[From the New York Times, Mar. 26, 1964]

RIOTING AND RIGHTS BILL: TURMOIL IN JACKSONVILLE IS SAID TO SHOW NEED FOR PUBLIC ACCOMMODATIONS LAW

(By Anthony Lewis)

WASHINGTON, March 25.—The racial outbreak in Jacksonville, Fla., is viewed by Federal officials as a dramatic illustration of the need for the public accommodations title of the pending civil rights bill.

Their belief is that tensions over racial barriers in restaurants and other facilities that are open to the public can be effectively resolved only by a uniform rule on the right to service—a rule binding on all citizens and all effected businesses in any city. They think that only Congress can supply such a clear and universal standard, and without it, they foresee growing turmoil in the Deep South.

Reports from Jacksonville indicate that one troublesome factor in the racial situation there has been an inability to get the broad agreement of businessmen that is needed to go ahead with voluntary steps toward desegregation. This very problem is seen as a major argument for a public accommodations statute.

Experience in a number of southern communities has shown that, even when many concerns are ready to try serving Negroes, a few holdouts among their competitors may scare them off.

SAVANNAH ACCORD FALLS

Something like this is said to have happened in Savannah, Ga., last summer. The chamber of commerce there came out for desegregation of restaurants, and many restaurant operators agreed to the move. But some resisted and even resigned from the chamber of commerce, among them one of a southern chain of cafeterias, Morrison's. The agreement collapsed, and there were disturbances in Savannah's streets.

In Jacksonville a chamber of commerce committee worked for some years for a peaceful, voluntary end to segregation in public facilities. The group included the city's top business and professional leaders, working with a counterpart committee of Negroes.

But again there were restaurant owners who would not take any steps toward desegregation. Some are said to have warned that they would do their best to embarrass any competitors who did admit Negroes. Again, one of the holdouts was a Morrison's cafeteria.

There is much more to the racial problem of the South than the difficulty of getting unanimity among businessmen in easing discrimination. But a keen observer in Jacksonville remarked today that this was "one difficulty that would be removed by the civil rights bill."

Title II of the legislation, as it passed the House, prohibits discrimination in hotels, motels, restaurants, cafeterias, lunch counters, movie theaters, and other places of entertainment. These are the facilities where segregation means daily indignity to the Negro.

MAKES OBLIGATION CLEAR

"All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations" of these facilities, the pending bill says.

It would thus make indubitably clear to every place of business covered that overriding Federal law obligated it to serve all well-behaved customers. The businessman could blame the law for having to desegregate. He would not have to be a pioneer.

To Federal officials, the experience in Jacksonville reinforces the belief that, even with

conservative leadership, it is most difficult to bring about desegregation voluntarily in a city with a deeply segregationist tradition.

Jacksonville, though it has that tradition, is a large city in a changing State. Officials think the need for a Federal public-accommodations laws to prevent a racial explosion will be even more urgent in the smaller communities of the deeper South.

THE AUTHORITY OF CONGRESS TO END DISCRIMINATION IN PLACES OF PUBLIC ACCOMMODATIONS

A great deal has been said about the authority of Congress to act to end discrimination in places of public accommodation. The constitutional authority sustaining this title is found in article I, section 8, of the Constitution which gives Congress power "to regulate commerce among the several States," and in the 14th amendment. Section 1 of the 14th amendment provides that no State shall "deny to any person within its jurisdiction the equal protection of the laws," section 5 of the 14th amendment provides that "Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

There has been much discussion as of late about the decision of the Supreme Court in the civil rights cases of 1883. Those cases determined the validity of an 1875 statute enacted by Congress which undertook to prohibit discriminatory practices by public carriers, inns, and theaters, whether or not such discrimination was supported or required by State action. The Court held that the 1875 statute was unconstitutional, for in attempting to reach discrimination unaccompanied by requisite State action Congress had stepped outside the scope of the 14th amendment. The majority opinion of the Court in the 1883 decision carefully stated that they were not foreclosing a statute based on the broad powers of Congress such as are found in the commerce clause. Mr. Justice Bradley wrote:

Of course, these remarks do not apply to those cases in which Congress is clothed with direct and plenary powers of legislation over the whole subject, accompanied with an expressed or implied denial of such power to the States, as in the regulation of commerce with foreign nations, and among the several States and with the Indian tribes, the coining of money, the establishment of post offices and post roads, the declaring of war, etc. In these cases Congress has power to pass laws for regulating the subjects specified in every detail, and in the conduct and transactions of individuals in respect thereof. (109 U.S. 3, 18 (1883).)

There is a large body of legal thought that believes that either the court would reverse this earlier decision if the question were again presented or that changing circumstances in the intervening 80 years would make it possible for the earlier decision to be distinguished. This conjecture would remain only conjecture if title II were enacted, for the provisions of title II are entirely consistent with the decision in the civil rights cases.

Only two subsections of title II are based upon the power granted Congress through the 14th amendment. The first of these two subsections, section 201(d), is applicable only when discrimination by an included establishment on account of race, color, religion, or national origin is supported by State action. The other subsection utilizing the 14th amendment powers is subsection 202. This subsection is applicable only when discrimination is required or purports to be required by any law, statute, ordinance, regulation, rule, or order of a State or any agency or political subdivision of the State. These are the only two instances in which the 14th amendment is utilized under title II of H.R. 7152.

As both instances require State action, the reliance upon the 14th amendment in title II is entirely consistent with the decision in the Civil Rights Cases of 1883. It is the commerce clause power of Congress that serves as a basis for the prohibitions against discrimination in title II of H.R. 7152 other than the prohibitions contained in subsections 201(d) and 202.

Insofar as title II rests on the power of the Congress to regulate commerce, its provisions are amply supported by well-established constitutional principles. There is no question but that Congress, in the exercise of its commerce clause powers, may regulate not only those businesses engaged in interstate commerce or activities occuring in interstate commerce, but may as well regulate purely local or intrastate activities that effect interstate commerce. For example, in *Mabee* v. *White Plains Publishing Co.*, 327 U.S. 178, the Fair Labor Standards Act was applied under the commerce clause to a newspaper whose circulation was about 9,000 copies and which mailed only 45 copies—about one-half of 1 percent of its business—out of State. Congress even has the authority to regulate the wheat a farmer grows on his own farm, solely for his own consumption, even though the amount he grows amounts only to the pressure of 239 bushels of wheat upon the total national market. *Wickard* v. *Filburn*, 317 U.S 111 (1942).

The simple fact of the matter is that the inquiry as to whether or not an establishment is engaged in interstate commerce is not determinative of the question of whether Congress can control the activities of that establishment in the exercise of its power to regulate interstate commerce. In *United States* v. *Sullivan*, 332 U.S. 689, the Court held that Congress may forbid a small retail druggist from selling drugs without a label required by the Food and Drug Act even though the drugs were imported in properly labeled bottles from which they were not removed until they reached the local drugstore, and even though the drugs had reached the State 9 months before being resold.

The power of Congress over interstate commerce and activities affecting interstate commerce is broad and plenary.

The congressional authority to protect interstate commerce from burdens and obstructions—

Chief Justice Hughes said in *Labor Board* v. *Jones and Laughlin Steel Corp.*, 301 U.S. 1, 36–37—

is not limited to transactions deemed to be an essential part of a flow of interstate or foreign commerce * * * the fundamental principle is that the power to regulate commerce is the power to enact all appropriate legislation for its protection and advancement. * * * to adopt measures to promote its strength and insure its safety * * * to foster, protect, control, and restrain.

The Congress may exercise this power notwithstanding that the particular activity is local, that it is quantitatively unimportant, that it involves the retail trade, or that standing by itself it may not be regarded as interstate commerce—

[W]hatever its nature [it] may be reached by Congress if it exerts a substantial economic effect on interstate commerce, and this irrespective of whether such effect is what might at some earlier time have been defined as direct or indirect. *Wickard* v. *Filburn*, 317 U.S. 111, 125.

In *United States* v. *Darby*, 312 U.S. 100, 118 (1939), the Court stated:

The power of Congress over interstate commerce is not confined to the regulation of commerce among the States. It extends to those activities intrastate which so affect interstate commerce or the exercise of the power of Congress over it as to make regulation of them appropriate means to the attainment of a legitimate end, the exercise of the granted power of Congress to regulate the interstate commerce.

Further in that same opinion this language appears:

But it does not follow that Congress cannot by appropriate legislation regulate intrastate activities where they have a substantial effect on interstate commerce. * * * A recent example is the National Labor Relations Act for the regulation of employer and employee relations in industries in which strikes, induced by unfair labor practices named in the act, tend to disturb or obstruct interstate commerce. See *National Labor Relations Board* v. *Jones and Laughlin Steel Corp.*, 301 U.S. 1, 38, 40; * * * But long before the adoption of the National Labor Relations Act this Court had many times held that the power of Congress to regulate interstate commerce extends to the regulation through legislative action of activities intrastate which have a substantial effect on the commerce or the congressional power over it. (Id. at 119–20.)

RESTAURANTS, MOTELS, GASOLINE STATIONS

Congress has long exercised authority under the commerce clause to remove impediments to interstate travel and interstate travelers. As long ago as 1887, legislation was enacted (49 U.S.C. 3(1)) forbidding a railroad in interstate commerce "to subject any particular person to any undue or unreasonable prejudice or disadvantage in any respect whatsoever." Similar statutory authority is provided with respect to motor carriers (49 U.S.C. 316(d)) and air carriers (49 U.S.C. 1374(b)).

These provisions have been authoritatively construed to proscribe racial segregation of passengers on railroads, on motor carriers, and on air carriers and illustrate that "discrimination" has a defined judicial meaning in the context of those practices title II seeks to end. See *Mitchell* v. *United States*, 313 U.S. 80; *Henderson* v. *United States*, 39 U.S. 816; *NAACP* v. *St. Louis-San Francisco Railway Co.*, 297 ICC 335; *Boynton* v. *Virginia*, 364 U.S. 454; *Keyes* v. *Carolina Coach Co.*, 64 MCC 769; *Fitzgerald* v. *Pan American Airway*, 229 F. 2d, 499 (C.A. 2).

The decisions in these cases are, of course, direct authority for the position

that Congress may enact legislation appropriate to secure equality of treatment for those using the facilities of interstate commerce.

The constitutional authority of Congress under the commerce clause, moreover, extends beyond the regulation of the interstate carriers themselves. It covers all businesses affecting interstate travel. Thus, the wages of employees engaged in preparing meals for interstate airlines, sandwiches for sale in a railroad terminal and ice for cooling trains, have all been held subject to Federal regulation under the commerce clause. Similarly, Congress has authority under the commerce clause over restaurants at a terminal used by an interstate carrier. Boynton against Virginia, supra. Thus, whether or not a restaurant serving interstate travelers is engaged in interstate commerce, the fact that it has a substantial effect upon interstate commerce means that it is subject to the power of Congress, if it should legislate under the commerce clause.

Mr. President, the commerce power is broad and plenary; and of course the committee did not have any problem as to the authority of Congress to implement its power under the commerce clause. The committee's real problem was to determine how far it wished to go within this authority, as a matter of national policy. The result was the bill which has been reported to the Senate; and, as I have pointed out, the bill, as reported, is very similar to title II of the House bill.

For the reason already stated, to the decision in the case of *Williams* v. *Howard Johnson's Restaurant*, 268 F. 2d 845 (C.A. 4, 1959), does not deter Congress from the use of the commerce power as to restaurants or similar establishments. In that case a Negro who was refused service by a Howard Johnson restaurant in Virginia sued for an injunction on the grounds, among others, that his exclusion on racial grounds amounted to discrimination against a person moving in interstate commerce and interference with the free flow of commerce in violation of the Constitution.

His position in this regard was based on the argument that the commerce clause was self-executing and thus could be invoked even without Federal public accommodations legislation. The Court ruled against the plaintiff.

The decision is undoubtedly correct insofar as the commerce clause is concerned because the plaintiff's argument that the clause was self-executing in his favor is unsound. In other words, the absence of a Federal statute like title II was fatal to his position. In its opinion, the Court expressed the view that a restaurant is not engaged in interstate commerce merely "because in the course of its business of furnishing accommodations to the general public it serves persons who are traveling from State to State." Even assuming that the circuit court was correct in this statement, that would still not foreclose the validity of basing the provisions of title II of H.R. 7152 on Congress' commerce clause powers, for, as I have stated previously, and as all students of the Constitution are well aware, Congress' powers to regulate under the commerce clause is not limited to merely regulating the activities of businesses engaged in interstate commerce, but extends as well to regulating purely local matters affecting interstate commerce.

The decision in Williams against Howard Johnson's restaurant merely states that in the absence of Federal legislation prohibiting discrimination in public accommodations affecting interstate commerce, there is no Federal right to be free from such discriminatory practices. I believe the only importance to the decision in the case of Williams against Howard Johnson's restaurant is that it well illustrates the necessity for enacting the very type of legislation proposed by title II of H.R. 7152.

In removing impediments to interstate travel, Congress is not limited to forbidding discrimination against interstate travelers alone; it may forbid discrimination against local customers as well. Congress may "choose the means reasonably adapted to the attainment of the permitted end, even though they involve control of intrastate activities." *United States* v. *Darby*, 312 U.S. 100, 121.

Earlier in my remarks, I noted the serious economic burdens placed upon our economy due to discriminatory practices by establishments dealing with the general public.

I wish to list these burdens. The testimony before the Commerce Committee brought them out clearly and concisely. These economic burdens include: First, obstacles to interstate travel; second, distortions in the pattern of expenditures by Negroes because of limited access to places of public accommodations; third, limitations on the ability of organizations to hold national and regional conventions in convenient places; fourth, adverse effects in the entertainment field; fifth, disruptions in trade resulting from demonstrations protesting discrimination in retail establishments; and sixth, numerous other hurdles to the normal conduct of business—for example, difficulties in recruiting professional and skilled personnel leads to rejection of otherwise desirable plant locations.

Under the cases cited above, there can be no doubt that Congress has power to legislate so as to prohibit discrimination in eating places and gasoline stations which serve, or offer to serve, interstate travelers. Obtaining lodging, food, gasoline or related services and conveniences is an essential part of interstate travel, and discriminatory practices which restrict the availability of such goods and services and conveniences or expose interstate travelers to inconvenience or embarrassment in obtaining them, constitute burdens on interstate commerce which Congress has clear authority to remove.

PLACES OF EXHIBITION OR ENTERTAINMENT

Mr. President, let us consider the subject of places of exhibition or entertainment. What is our authority in that field? What is the policy and intent of that particular section?

Supreme Court decisions have many times sustained the power of Congress to enact legislation which would remove artificial restrictions upon the markets for products from other States. The removal of such restrictions, as the Supreme Court recognized in *Stafford* v. *Wallace*, 258 U.S. 495, promotes interstate traffic and, therefore, constitutes an appropriate object for the exercise of Congressional authority. On that basis, restraints involving the local exhibitions of motion pictures, have been the subject of Federal regulation under the Sherman Act (*Interstate Circuit* v. *United States*, 306 U.S. 208), and so have restraints involving stage attractions (*United States* v. *Shubert*, 348 U.S. 222), professional boxing matches (*U.S.* v. *International Boxing Club*, 348 U.S. 236), and professional football games (*Radovich* v. *National Football League*, 352 U.S. 445).

Like unlawful monopolies, racial discrimination and segregation in the establishments covered by the proposed legislation constitute artificial restrictions upon the movement of goods in interstate commerce, and may be dealt with by the Congress for that reason. The restrictive impact of discriminatory practices is perhaps best illustrated by reference to the motion picture industry.

Motion picture theaters which refuse to admit Negroes, or which discriminate in other ways is the next subject of my statement.

I do not like constantly to refer to Negroes when I discuss the subject of discrimination, because discrimination can apply to many other people besides Negroes. It applies to many races. In my part of the country there are some potent illustrations of discrimination in the past applying to orientals. So when I speak of discrimination I include all who are discriminated against.

Motion picture theaters which refuse to admit Negroes will obviously draw patrons from a narrower segment of the market than if they were open to patrons of all races. The difference will often not be made up by separate theaters for Negroes because there are localities which can support one theater but not two—or two but not three, and so forth—and because the inferior economic position in which racial discrimination has held Negroes often makes their business alone financially inadequate to support a theater. Thus, the demand for films from out of State, and the royalties from such films, will be less. What is true of exclusion is true, although perhaps in less degree, of segregation. Given any particular performance, a segregated theater may well lack sufficient seating space for white patrons while offering ample seating in the Negro section, or vice versa. Moreover, the very fact of segregation in seating discourages attendance by those offended by such practices.

These principles are applicable not merely to motion picture theaters but to other establishments which receive supplies, equipment, or goods through the channels of interstate commerce. If these establishments narrow their potential markets by artificially restricting their patrons to non-Negroes, the volume of sales and, therefore, the volume of interstate purchases will be less. Although

the demand may be partly filled by other establishments that do not discriminate, the effect will be substantial where segregation is practiced on a large scale. The economic impact is felt in interstate commerce. The commerce clause vests power in the Congress to remedy this condition.

Congress, in the exercise of its plenary power over interstate commerce, may regulate commerce or that which effects it for other than purely economic goals:

The motive and purpose of a regulation of interstate commerce are matters for the legislative judgment upon the exercise of which the Constitution places no restrictions and over which the courts are given no control. (Mr. Justice Stone in *United States* v. *Darby*, 312 U.S. 100, 115 (1941)).

The fact that title II would accomplish socially oriented objectives by aid of the commerce clause powers would not detract from its validity. There are many instances in which Congress has discouraged practices which it deems evil, dangerous, or unwise by a regulation of interstate commerce. Examples of this are found in Federal legislation keeping the channels of commerce free from the transportation of tickets used in lottery schemes, sustained in *Champion* v. *Ames*, 188 U.S. 321 (1903); the Pure Food and Drug Act, sustained in *Hipolite Egg Co.* v. *United States*, 220 U.S. 45 (1911); the "White Slave Traffic Act," upheld in *Hoke* v. *United States*, 227 U.S. 308 (1913); strict regulation of the transportation of intoxicating liquors, sustained in *Clark Distilling Company* v. *Western Maryland Railway Company*, 242 U.S. 311 (1917); and the Fair Labor Standards Act, imposing wage and hour requirements, sustained in *United States* v. *Darby*, 312 U.S. 100 (1941).

All those cases have been sustained over and over again by the courts. The commerce clause has been used to take care of what we consider evil, dangerous, or unwise practices by the same type of regulation that is contained in title II.

In summarizing the authority of Congress to enact the provisions of title II of H.R. 7152, it appears that the question involved is not one of power but one of policy. That is the point I mentioned before, and which was, of course, the real question before the committee.

There is no real question as to the authority of Congress to legislate in this area. As a matter of policy, the requirement that public accommodations and facilities serving the general public do so without racial or religious discrimination is neither new nor novel. It is now well established and equally accepted that that no public convenience such as a bus, railroad, airline, or the facilities adjacent thereto may discriminate against or segregate its patrons. The doctrines that, to a large extent, sustain this result are deeply rooted in English common law but are by no means limited to common carriers. In the 17th century, Lord Chief Justice Hale expressed the authority that the public, through its government, can exert over commercial enterprises dealing with the public:

Property does become clothed with a public interest when used in a manner to make it of public consequence and to effect the community at large. When, therefore, one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in the use and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created. He may withdraw his grant by discontinuing the use; but, so long as he maintains the use, he must submit to the control. (1 Harg. Law Tracts 78. This has been cited by the Supreme Court of the United States on several occasions, but particularly by Mr. Chief Justice Waite in *Munn* v. *Illinois*, 94 U.S. 113, 126 (1877).)

This potential for regulation of businesses established to serve the public evolved into the actual obligations of such establishments to serve all members of the public equally:

Whenever any subject takes upon himself a public trust for the benefit of the rest of his fellow subjects, he is eo ipso bound to serve the subject in all the things that are within the reach and comprehension of such an office, under pain of an action against him.

This is an illustration that has been used on many occasions in our lawbooks—

If on the road a shoe fell off my horse, and I come to a smith to have him put it on, and the smith refused to do it, an action will "lie against him, because he has made profession of a trade which is for the public good, and has thereby exposed and vested an interest of himself in all the King's subjects that will employ him in the way of his trade."

In other words, he is open to the public. The court went on:

"If the innkeeper refused to entertain a guest when his house is not full, an action will lie against him; and so against a carrier, if his horses be not loaded, and he refuses to take a packet proper to be sent by a carrier." (Lord Chief Justice Holt in *Lane* v. *Cotton*, 12 Mod. 472, 484 (1701).)

That is the basis of the regulation in effect today for interstate transportation.

The common law rule as to the obligation of an innkeeper was clearly set forth in another early English decision:

An indictment lies against an innkeeper who refuses to receive a guest, he having at the time room in his house and either the price of guest's entertainment being tendered to him or such circumstances occurring as will dispense with that tender. This law is founded in good sense. The innkeeper is not to select his guests. He has no right to say to one, "You shall come to my inn," and to another, "You shall not," as everyone coming and conducting himself in a proper manner has a right to be received; and for this purpose innkeepers are a sort of public servant, they having in return a kind of privilege of entertaining travelers and supplying them with what they want." (Mr. Justice Coleridge in *Rex* v. *Ivens*, 7 Carrington and Payne, 213 (1835)).

The English rule that, because an innkeeper is engaged in a business in which the public has an interest and enjoys certain privileges not given the public generally, he cannot discriminate for or against any class or pick and choose his guests also became the American rule. In fact the presence of this rule, either by express statute or adoption of the common law duties, was significant to the Supreme Court that held unconstitutional the 1875 statute which guaranteed full and equal enjoyment of public accommodations and facilities. Mr. Justice Bradley wrote in the majority opinion:

Innkeepers and public carriers, by the laws of all the States, so far as we are aware, are bound, to the extent of their facilities, to furnish proper accommodations to all unobjectionable persons who in good faith apply for them. (The *Civil Rights Cases*, 109 U.S. 325 (1883)).

It should be noted that this decision of the Supreme Court was handed down 10 years before the adoption of State laws, statutes, or ordinances requiring segregation. There is historical evidence to indicate that in 1885 a Negro could use railroad, dining, and saloon facilities without discrimination in the Carolinas, Virginia, and Georgia.

This was in 1885, before States adopted laws requiring segregation.

As late as 1954, Louisiana repealed a statute requiring places of business and public resort to serve all persons "without distinction or discrimination on account of race or color." And in 1959 Alabama repealed that part of its code which incorporated the common law duties of innkeepers and hotelkeepers.

It is the position of the proponents of this bill, therefore, that the powers granted Congress by the Constitution of the United States surely vest Congress with the power and authority to enact the provisions of title II of H.R. 7152 in furtherance of a policy firmly rooted in the common law. The fact that 32 States have taken some action to secure equal access to public accommodations well illustrates the wisdom of that action Congress seeks to take through enactment of title II.

I shall not dwell further on the matter of the constitutionality of title II, for I do not doubt that its enactment would be a valid exercise of congressional power. I believe that I am somewhat learned on the matter of Congress' power to enact legislation under the commerce clause—not only as a lawyer but as a U.S. Senator who has served 17 years on the Senate Committee on Commerce, the last 9 of which I have been privileged to be chairman of that committee.

I am aware that there are some who disagree with my point of view. Yet I have not been impressed by either the law or the logic of those who contend that title II is unconstitutional. And I would further point out that I enjoy very respectable company as to the view I hold in this matter. For example, the following renowned professors of law, from some of the greatest law schools of this Nation, are convinced that Federal legislation preventing private establishments dealing with the general public from discriminating on account of race, color, religion, or national origin is constitutional.

Mr. President, without burdening the Senate by reading the list, I ask unanimous consent to have printed at this point in the RECORD the names of some of the renowned professors of law from the University of California at Berkeley, Harvard University Law School, Ohio

State University College of Law, University of Michigan Law School, Yale University Law School, University of California at Los Angeles, University of Pennsylvania Law School, Columbia University Law School, Notre Dame Law School, and New York University School of Law. Some of them are deans of these respected law schools.

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

UNIVERSITY OF CALIFORNIA AT BERKELEY

John G. Fleming.
R. H Cole.
Albert A. Ehrenzweig.
Geoffrey C. Hazard, Jr.
E. C. Halbach, Jr.
I. M. Heyman
Dean Frank C. Newman.
Preble Stolz.

HARVARD UNIVERSITY LAW SCHOOL

Dean Erwin N. Griswold.
Paul A. Freund.
Mark DeW. Howe
Arthur E. Sutherland, Jr.
Ernest J. Brown.

OHIO STATE UNIVERSITY COLLEGE OF LAW

Kenneth L. Karst.
Ivan C. Rutledge.
Paul D. Carrington.
Roland J. Stanger.
William W. Van Alstyne.

UNIVERSITY OF MICHIGAN LAW SCHOOL

Dean Allan F. Smith.
Paul G. Kauper.

YALE UNIVERSITY LAW SCHOOL

Dean Eugene V. Rostow.
Louis H. Pollak.
Thomas I. Emerson.

UNIVERSITY OF CALIFORNIA AT LOS ANGELES

Murray Schwartz.

UNIVERSITY OF PENNSYLVANIA LAW SCHOOL

John O. Honnold, Jr.
Howard Lesnick.
A. Leo Levin.
Louis B. Schwartz.
Dean Jefferson B. Fordham.
Theodore H. Husted, Jr.

COLUMBIA UNIVERSITY LAW SCHOOL

Harlan Blake.
Marvin Frankel.
Walter Gellhorn.
Wolfgang Friedmann.
William K. Jones.
John M. Kernochan.
Louis Lusky.
Jack B. Weinstein.
Herbert Wechsler.

NOTRE DAME LAW SCHOOL

Dean Joseph O'Meara.
Robert E. Rodes, Jr.

NEW YORK UNIVERSITY SCHOOL OF LAW

Edmond Cahn.
Robert B. McKay.
Norman Dorsen.

Mr. MAGNUSON. Mr. President, I invite attention to the letter and memorandum appearing in the CONGRESSIONAL RECORD yesterday morning from two eminent lawyers, Harrison Tweed and Bernard G. Segal, upholding the constitutionality of title II and title VII of H.R. 7152. Twenty other lawyers joined Mr. Tweed and Mr. Segal in their opinion, including three former Attorneys General of the United States—Francis Biddle, Herbert Brownell, and William P. Rogers.

That probably comes as close to being a nonpartisan group of Attorneys General as one could find in recent decades.

Also joining in the opinion were four former presidents of the American Bar Association—David F. Maxwell, John D. Randall, Charles S. Rhyne, and Whitney North Seymour.

Mr. President, I could burden the RECORD with hundreds of articles, statements, and positions by eminent lawyers and legal scholars in the United States regarding the constitutionality and authority of Congress to act in this matter under the commerce clause and the 14th amendment.

SECTION-BY-SECTION ANALYSIS OF TITLE II

Mr. President (Mr. MCINTYRE in the chair), in order that the RECORD may be clear and the intent of Congress better ascertained by the courts in the future, after the bill is enacted, I believe that to make legislative history I should briefly describe each section of title II. Following that, I should like to dwell on the interpretation of those sections.

SECTIONAL ANALYSIS OF TITLE II

Section 201(a) declares the basic right to equal access to places of public accommodation, as defined, without discrimination or segregation on the ground of race, color, religion, or national origin.

Section 201(b) defines certain establishments to be places of public accommodation if their operations affect commerce, or if discrimination or segregation in such establishments is supported by State action. These establishments are first, hotels, motels, and similar businesses serving transient guests, except those located in a building which has not more than five rooms for rent and which is actually occupied by the proprietor of the establishment as his residence; second, restaurants, lunch counters, and similar establishments, including those located in a retail store; and gasoline stations; third, motion picture houses, theaters, and other places of exhibition or entertainment; and fourth, establishments which either contain, or are located within the premises of, any establishment otherwise covered, and which hold themselves out as serving patrons of the covered establishment.

Section 201(c) provides the criteria for determining whether the operations of an establishment affect commerce. Hotels, motels, and similar establishments which serve transient guests are declared to do so if they are included within the description contained in section 201(b)(1). Restaurants, lunch counters, and similar establishments, and gasoline stations affect commerce if they serve interstate travelers or a substantial portion of the food or gasoline they sell has moved in interstate commerce. Motion picture houses, theaters, or other places of entertainment are declared to affect commerce if they customarily present films, performances, athletic teams, exhibitions, or other sources of entertainment which move in interstate commerce. Finally, an establishment within the description contained in subsection 201(b)(4) is declared to affect commerce if it is located within the premises of, or there is located within its premises, an establishment the operations of which affect commerce.

Section 201(d) delineates the circumstances under which discrimination or segregation by an establishment is supported by State action within the meaning of title II. Some of these laws were recently enacted.

Discriminatory practices are treated as so supported first, if carried on under color of any law, statute, ordinance, or regulation; or second, if carried on under color of any custom or usage required or enforced by officials of the State or political subdivision thereof; or third, if required by action of a State or any of its political subdivisions.

Section 201(e) exempts bona fide private clubs or other places not open to the public, except to the extent that their facilities are made available to customers or patrons of a covered establishment.

Section 202 requires nondiscrimination in all establishments and places whether or not within the categories described in section 201—if segregation or discrimination therein is required or purports to be required by any State law or ordinance. There are many municipal ordinances involved in this problem in several States of the Union.

Section 203 lays the foundation for suits by providing that no one shall deprive or attempt to deprive any person of any right or privilege secured by section 201 or 202, or interfere or attempt to interfere with the exercise of any such right or privilege.

Section 204(a) authorizes any person aggrieved, or the Attorney General, if he is satisfied that the purposes of the title will be materially furthered, to institute an action for injunctive relief for violations of section 203.

Section 204(b) permits the court in any action commenced pursuant to this title to allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs and provides that the United States shall be liable for costs the same as a private person.

Section 204(c) provides that if State or local law prohibits a practice as to which the Attorney General has received a complaint, the Attorney General is to notify the State or local officials and, on request, allow them a reasonable time to act under such laws before bringing suit himself. Local authorities can make the request and have sufficient time to handle the matter themselves, if they wish.

Section 204(d) authorizes the Attorney General, before filing suit in case of any complaint, to use the services of any available Federal, State, or local agencies to secure voluntary compliance with the provisions of the title.

Section 204(e) permits the Attorney General to sue without first complying with section 204(c) if he certifies to the court that the delay would adversely affect the interests of the United States, or that compliance would prove ineffective.

Section 205(a) grants Federal district courts jurisdiction over proceedings instituted pursuant to title II, without

regard to whether the party aggrieved has exhausted any other remedies.

Section 205(b) declares that the remedies provided in title II shall be the exclusive means of enforcing the rights created by title II, but that individuals or State or local agencies are not precluded from seeking other available State or Federal remedies to vindicate rights otherwise created. Thus, State antidiscrimination laws not inconsistent with title II would not be superseded.

In other words, the law in the State of Washington, for example, would not be superseded. The State of Washington has had such a law for more than 16 years, somewhat similar to title II. It is a much stronger law in its enforcement than title II would be, however.

Section 205(c) makes the jury trial provisions of the Civil Rights Act of 1957 applicable to contempt proceedings under title II. By incorporating the provisions of section 151 of the 1957 act, this section establishes that if the accused in a proceeding for criminal contempt is initially tried without a jury and convicted and sentenced to a fine in excess of $300 or imprisonment in excess of 45 days, he may obtain, upon demand, and as of right, a trial de novo before a jury.

This is the exact language that we put in the Civil Rights Act of 1957. We lifted the language from that act which the Congress had already passed upon.

As is readily apparent from a reading of these provisions, title II concentrates on categories of public establishments which are a continuing and substantial source of discrimination and as to which Federal legislation can offer prompt and effective relief. The types of establishments covered are clearly and explicity described in the four numbered subparagraphs of section 201(b). An establishment should have little difficulty in determining whether it falls in one of these categories. If it provides lodging to transient guests it is covered by section 201 unless it has not more than five rooms for rent and is actually occupied by its proprietor as his residence. Establishments which sell food on the premises, and gasoline stations, may be expected to know whether they serve or offer to serve interstate travelers, or whether a substantial portion of the products they sell have moved in commerce. Similarly, places of exhibition and entertainment may be expected to know whether customarily it presents sources of entertainment which move in commerce. Finally, any establishment may be expected to know whether it is physically located within, or contains, a covered establishment.

Moreover, in every case, a judicial determination of coverage must be made prior to the entry of any order requiring the owner to stop discrimination. Thus, no one would become subject to any contempt sanctions—the only sanctions provided for in the act, until after it has been judicially determined that his establishment is subject to the act and he has been ordered by the Court to end this discrimination, and he has violated that Court order.

ESTABLISHMENTS OFFERING LODGING TO TRANSIENTS

On Thursday, March 26, Senator GRUENING raised certain questions of interpretation of the language of title II. I should like to answer those questions. Senator GRUENING first inquired as to why inns are specifically included in the House bill, but are not mentioned in the Senate bill. The addition of the word "inn" to the provisions of section 201(b)(1) of the House bill is merely to make clear the intent of that subsection. There is no doubt in my mind that if the word "inn" were struck or if the word "hotel" or "motel" were struck, the language of that section would not really be limited in any way for the language "establishment which provides lodging for transient guests" would still appear and I believe that any inn, hotel, or motel is an establishment providing lodging to transient guests.

Senator GRUENING next called attention to the fact that the so-called "Mrs. Murphy" exclusions of the two bills differed in that the Senate bill would exclude such an establishment only when the building in which it was contained was actually occupied by the proprietor as his "home," while title II requires that the proprietor occupy the building as his "residence." In the report of the Committee on Commerce, the use of the word "home" is explained as follows: "If a person has more than one place of residence or abode, his home would be that place which he uses as his principal residence." The word "home" was chosen rather than "residence" for the purposes of the Senate bill because the members of the committee felt that the various uses of the term "residence" in the many different ways and purposes for which this term is used in the law could raise confusion as to the intended meaning of that word. For example, "residence" for tax purposes may be defined completely differently from "residence" for purposes of voting, marriage, attending school, and so forth.

I do not believe the use of either word changes the basic concept of what we intend when we say "establishment which provides lodging for transient guests."

In some instances it means merely a place of temporary abode. In other instances it may mean that place at which the person in question customarily resides. The term "residence" may have a meaning coextensive with a definition of the word "domicile." In any event, the meaning to be given "residence" as that term is used in title II of H.R. 7152 is one identical to the use of the word "home" in S. 1732. In other words, a person may at any one time have only one "residence" as that term is used in this title. If the person in question had a residence or abode in several different localities, "residence" would be that residence or place of abode which was his place of principal residence.

The next point raised by Senator GRUENING again concerns the language of section 201(b)(1). In that section the House bill refers only to "transient guests" while the Senate bill refers to "transient guests, including guests from other States or traveling in interstate commerce." The omission of the words "including guests from other States or traveling in interstate commerce" in no way changes the meaning of the words "transient guests" as they are used in H.R. 7152 from their use in S. 1732. In fact, "transient guests" is a thorough explanation of what in fact was intended by S. 1732 with the language actually therein used. For as developed in the hearings in the Committee on Commerce on that measure, it was pointed out and agreed by members of the committee that a hotel, motel, or other establishment that offered lodging to transient guests would be included whether or not any of the guests actually were from other States or traveling in interstate commerce. The idea is that in an establishment which deals with or offers to deal with transient guests has substantial effect upon interstate commerce whether or not in fact any of its guests are actually engaged in interstate travel.

Similarly, under the provisions of title II if an establishment serving the public offered lodging to transient guests, it would be subject to the provisions of section 201, whether or not any of its guests were actually involved in interstate travel. Another point I should like to make clear is that a hotel, motel, or other place offering lodging to transient guests could not exempt itself from title II by refusing to take any interstate travelers—Negro or white—if in fact it served the public. Insofar as coverage is based on the 14th amendment, it obviously could not exempt itself by such action. Insofar as coverage is based on the commerce clause, it also could not exempt itself in this way. Section 201(b)(1) would be applicable to any "hotel, motel, or other establishment which provided lodging to 'transient guests.'" If it offered such accommodations to transient guests it would be deemed under section 201(c) to be an establishment whose operations affect commerce. Since the Shreveport Rate case 50 years ago, the courts have uniformly held that Congress can regulate intrastate transactions and activities where reasonably necessary to make effective rules for the protection of interstate commerce. Interstate commerce would be burdened if interstate travelers were required to carry with them proof that they were in the course of a trip through more than one State. See *Badlin* v. *Morgan*, 287 F. 2d 750 (C.A. 5). Nor would an exclusion of all interstate travelers destroy the hotel or motel's status as an establishment serving the public, for it would remain a commercial establishment dealing with the general public.

An establishment which provided lodging for transients, but did not, in fact, deal with the public, as would be the case in any private club which provided lodging for its transient members, would not be subject to the provisions of section 201(b)(1), for although it served transients, and in that way affected interstate commerce, it would not be an establishment which served the public, as required by section 201(b) in order to

be subject to the provisions of that subsection.

In summary, to be included within the provision of section 201(b)(1) an establishment which provided lodging must first of all serve the public, and, second, it must provide lodging to transient guests. If both these qualifications were met, that establishment would be subject to the terms of title II, by reason of section 201(b)(1).

It is clear that anything which could accurately be called a hotel or motel would be covered unless within the "owner occupied" exclusion. A tourist home serving travelers which offered more than five rooms for hire would likewise be covered. On the other hand, the same structure when operated as a rooming-house to accommodate nontransients would not be subject to title II. Similarly, title II would not apply to other establishments, such as apartment buildings, which provide permanent residential housing either under leases for a fixed term or under month-to-month tenancies automatically renewed each month, unless specifically terminated. It should be noted that whether or not an establishment caters to "transient guests" would be a question of Federal law, not State or local law.

Nor would a covered hotel or restaurant violate title II by providing a meeting place and food service to a segregated civic or fraternal organization—for example, to a local segregated chamber of commerce which held its weekly meetings in a hotel. The private organization would not be covered by title II, nor would it be simply because it happened to meet in a restaurant. Since the hotel or motel or restaurant would not itself be guilty of discrimination, there would be no violation of title II on its part. In other words, nothing in title II would require a public establishment to deny service to a segregated private group.

In that connection, I emphasize the word "private."

Nor would an individual operating an exempted tourist home or motel lose the exemption if he served breakfast as an accommodation to guests. Title II would cover only those eating places which served the public and which were facilities "principally engaged in selling food for consumption on the premises." The food-service facility there would not fall within that coverage, and would have no effect on the exemption of the lodging facility.

ESTABLISHMENTS SELLING FOOD OR GASOLINE

I should like to expand for a moment on the provisions relating to establishments principally engaged in selling food for consumption on the premises. Section 201(b) speaks of "any restaurant, cafeteria, lunchroom, lunch counter, or other facility principally engaged in selling food for consumption on the premises" and specifically includes "any such facility located on the premises of any retail establishment." Any eating place encompassed by this language would be subject to the prohibition of title II against discrimination or segregation if it served, or offered to serve, interstate travelers or if a substantial portion of the food it served had moved in interstate commerce. Any such eating place would be subject to the same prohibition if discrimination or segregation therein was supported by State action—that is, if it engaged in discrimination or segregation under color of State or local law, custom, or usage, or if discrimination or segregation was required or encouraged by State or local law.

Most public eating places would be within the ambit of title II because of their connection with interstate travelers or interstate commerce. And in some areas, public eating places would come within the ambit of title II, because of the factor of State action.

At any rate, it is clear that few, if any, proprietors of restaurants and the like would have any doubt whether they must comply with the requirements of title II.

The specific mention in section 201(b) of eating facilities "located on the premises of any retail establishment" is aimed principally at such facilities in department and variety stores.

A bar, in the strict sense of that word, would not be governed by title II, since it is not "principally engaged in selling food for consumption on the premises."

It is argued that a formerly segregated restaurant would lose all its white patrons as a result of complying with title II. As a practical matter, that would be a most unlikely occurrence, since the white customers of the restaurant minded to leave it would, no doubt, find that its competitors were also required by title II to desegregate; and thus they would gain nothing by leaving.

Title II would not require a covered restaurant or other establishment to give service to every person who sought it. An establishment could refuse to serve an individual who was not properly dressed or who was boisterous, and so forth, be he white or Negro. What is prohibited is a refusal to serve an individual because of his race, color, religion, or national origin.

Now a word or two about gasoline stations: It is difficult to conceive of a gasoline station which does not serve or offer to serve interstate travelers, or a substantial portion of whose gasoline or other products for sale has not moved in interstate commerce. Consequently, even aside from considerations of State action, there would seem to be little question that virtually all gasoline stations would be required to offer their facilities without discrimination or segregation.

PLACES OF EXHIBITION OR ENTERTAINMENT

The provision dealing with motion picture houses and other places of exhibition or entertainment are easily understood. Pursuant to section 201(b)(3) and (c)(3), title II would apply to all moving picture houses, theaters, concert halls, sports arenas, stadiums, and other places of exhibition or entertainment which "customarily present films, performances, athletic teams, exhibitions, or other sources of entertainment which move in interstate commerce."

Most motion picture theaters customarily present films made in Hollywood or other out-of-State localities and obviously would be covered. Most legitimate theaters, concert halls, or sports arenas similarly present performers or athletes who move interstate, and such establishments likewise would be covered.

A place of amusement or entertainment would not be covered merely because, on one or two occasions, it presents sources of entertainment which move in interstate commerce. By "customarily," section 201(c)(3) means more than occasionally. Some significant percentage of the performances occurring in an establishment must move in interstate commerce if it is to come within the purview of title II. But once it is within the purview of the title, the fact that a particular production presented there did not move in interstate commerce would not lift the requirement that the audience or spectators be unsegregated. Thus, a baseball stadium which is customarily used for games by teams traveling interstate is held to the nondiscrimination standard even on a day when local sandlot teams are playing there.

Furthermore, there is no requirement for the application of title II that the particular kind or class of entertainment provided at a given time must customarily move in interstate commerce. For example, a concert hall customarily presenting musical artists who move interstate must operate on a desegregated basis not only for their concerts but also for a special lecture series presented by local people.

Finally, it should be noted that it is a prerequisite to coverage under section 201(b)(3) that the establishment presenting a performance holds its entertainment out to the public. Performances produced by private organizations, like fraternal groups, in places to which the public is not invited are outside the scope of title II. Similarly, a performance in a covered theater or concert hall presented only to the members of such a private organization also would not be within the scope of the title.

ESTABLISHMENTS LOCATED WITHIN OR CONTAINING A COVERED ESTABLISHMENT

There has been much discussion about the language in title II dealing with establishments located within the premises of, or themselves containing, a covered establishment. The best examples of this fourth category of section 201(b) are a barbershop located in a hotel which holds out its services to guests and a department store which maintains a lunchroom within its premises.

Although barber shops are not listed in section 201(b) and the ordinary barbershop would therefore not be subject to the provisions of title II, a shop in a hotel which holds itself out as serving the patrons of the hotel would come within those provisions. The theory is that all guests of the hotel—an included establishment—are entitled to equal access to facilities for hotel guests.

A department store or other retail establishment would not be subject as such to the restrictions of title II. But if it contains a public lunchroom or lunch counter, it would be required to

make all its facilities, not simply its eating facilities, available on a nondiscriminatory basis.

The following questions have been raised concerning establishments located within the premises of, or themselves containing, a covered establishment. Many of the questions have been asked on many occasions in the committee hearings and by many of us on the floor.

First. Would a barbershop be covered by title II simply because it is located in the same office building as a covered soda fountain or restaurant?

No. Since the barbershop is not located within the soda fountain nor the fountain within the barbershop, the shop is not covered. In short, all the occupants of an office building are not covered simply because the building contains one or more covered establishments. Similarly, establishments in a shopping center would not be covered merely because there was a restaurant in the shopping center.

Second. Is a barbershop—and I guess this would apply to beauty parlors, too—liquor store or other enterprise located next door to a hotel, but not embraced within it, subject to the provisions of title II?

No. Section 201(b)(4) speaks of an establishment "physically located within the premises" of a covered establishment. Thus, if it is necessary to leave the premises of a hotel to gain access to a store or shop, the latter is outside the reach of that provision.

Third. A barbershop in a hotel would be required to serve Negroes, but a barbershop across the street could refuse. Is this not an indefensible situation?

No. Although the nearness of the two shops makes the variance in their obligations somewhat dramatic, the result is not unreasonable or arbitrary. If a hotel is required to operate in a nondiscriminatory manner, it follows that an establishment within it which caters to its guests must be held to the same standard. The proximity of a segregated competitive enterprise in any given case cannot, either in principle or as a practical matter be given any weight.

PRIVATE CLUBS

Let us take a closer look at the provisions of the bill concerning private clubs and other establishments not open to the public generally. Local fraternal organizations, private country clubs, and the like are outside the reach of title II by reason of the bona fide private club exclusion.

However, the exemption for private clubs does not apply to the extent that they open their facilities to the customers or patrons of a covered establishment, that is, to the extent they cease to be a private club. For example, if a hotel which is covered by title II has arrangements with a private golf club whereby the hotel's guests can use the club's golf course, the club must make the course available to the hotel guests without racial discrimination. On the other hand, the club could continue to discriminate with respect to its other facilities not subject to its agreement with the hotel. It could discriminate even as to its golf course with respect to other than hotel guests, and could make its facilities available to organizations not covered by title II without conforming to the nondiscrimination requirements of the title.

The following questions have been raised about this section of the bill:

First. Suppose a covered motel contains a so-called private club for the recreation of its guests and makes it available to all white guests upon the payment of a nominal fee. May it refuse to admit a Negro guest?

No. An arrangement of this sort does not create a bona fide private club within the meaning of title II. The fact that the so-called club admits white persons who can pay the purported membership fee indicates that it is not really a private club at all.

The clubs exempted by section 201(e) are bona fide social, fraternal, civic, and other organizations which select their own members. No doubt attempts at subterfuge or camouflage may be made to give a place of public accommodation the appearance of a private organization, but there would seem to be no difficulty in showing a lack of bona fides in these cases.

Second. May a country club which permits its golf course to be used by the guests of a covered hotel also permit the course to be used by outside segregated organizations? May the club itself discriminate as to nonhotel guests?

The answer, under the bill, is "Yes." The guests of the hotel must, of course, be given access to the course on a nondiscriminatory basis. But there is no requirement that the course be denied to segregated groups not covered by title II. And, except for use by the hotel guests, the club itself may discriminate, even with respect to the golf course.

Third. Section 202 of title II prohibits discrimination or segregation which is required by State law. The public accommodations laws of States which have them generally exempt private clubs from prohibitions against discriminations or segregation. It has been suggested by some that section 202 would operate to prohibit discrimination in the private clubs in those States and thus would make illusory the exemption for private clubs granted by section 201(e) of title II. Is this argument valid—that is, does section 202 act as a boobytrap for private clubs?

The answer is, "No." Section 202 is aimed at State laws which compel segregation. Provisions in State public accommodations laws exempting private clubs, of course, do not compel them to segregate. Therefore section 202 could not be invoked against a private club exempted under State law and, contrary to the above argument, the exemption of section 201(e) would not be affected.

Fourth. May a private club sponsor a segregated benefit concert or other performance to which the public is invited?

The answer is "Yes" unless the performance is to take place in a hall which customarily presents entertainment moving in interstate commerce, including such a hall owned by the club. On the other hand, if the public is not invited to the performance, but it is presented for club members only, then segregation may occur no matter what kind of hall is used.

A few weeks ago the Senator from Louisiana [Mr. LONG] stated that he was not clear as to when bars or nightclubs would be subject to the provisions of title II. As a general rule, establishments of this kind will not come within the scope of the title. But a bar or nightclub physically located in a covered hotel will be covered, if it is open to patrons of the hotel. A nightclub might also be covered under section 201(b)(3) if it customarily offers entertainment which moves in interstate commerce. A business which describes itself as a bar or nightclub would also be covered if it is "principally engaged in selling food for consumption on the premises." And, of course, a bar or nightclub would be covered under section 202 in the rare case in which State law required it to segregate or discriminate.

Now we come to another sensitive subject.

It has been claimed that doctors, dentists, lawyers, and so forth, and retail establishments other than those principally engaged in selling food or gasoline are covered by title II. Such is not the case. Service or professional establishments would not generally be covered unless they are physically located within the premises of a covered establishment and hold themselves out as serving the patrons thereof.

That means, for example, that if a doctor or dentist had an office in a hotel, he would not be covered if he merely had his office there and was practicing out of that office and had his own private practice. But if he opened his doors to the patrons of the hotel, if, for example, he was the hotel doctor, he would be covered under the act.

The following establishments would, therefore, be generally exempt: Barber shops and beauty parlors. Lawyers, doctors, and other professional people. Dance studios. Bowling alleys and billiard parlors.

We even had a big discussion in committee about undertaking establishments. They are going to be excluded. We are going to let them rest where they are.

SECTIONS 201(D) AND 202

As I have already pointed out, to the extent that title II relies on the 14th amendment, it is limited to situations in which there is the requisite State action, such as a law requiring segregation.

Title II is therefore consistent with the decision in the civil rights cases and later decisions applying the concept of State action. It accepts the civil rights cases as still being the law, and its validity does not in any sense depend on their being overruled.

Section 201(d) is intended to encompass a broad scope of the term "State action" under the 14th amendment. In contrast, section 202 is more limited in that it includes within its scope only a single type of State action prohibited by the 14th amendment; it applies only in those instances in which a statute or

ordinance requires segregation or discrimination. Of course, section 202 applies to any establishment whether or not included under section 201, while section 201(d) applies only to establishments within section 201.

Section 201(d) provides that discrimination or segregation is supported by State action under three general circumstances all clearly involving "State action" within the meaning of present interpretations of the 14th amendment. The first is if it is "carried on under color of any law, statute, or ordinance or regulation." The quoted phrase is taken from a civil rights provision enacted in 1871 (42 U.S.C. 1883). The constitutionality of that provision, as an implementation of the 14th amendment, is clear. *Monroe* v. *Pape*, 365 U.S. 167, 171–187. In fact, the decision in the civil rights cases points to the omission of that provision in the 1875 statute before the Court as a defect in the statute.

Section 201(d) also provides that discrimination or segregation is supported by State action if it is "carried on under color of any custom or usage required or enforced by officials of the State or political subdivision thereof."

It need not be a law, but if it is carried on under color of any custom or usage, and if the local or State authorities enforce it, it falls under this provision.

In the civil rights cases, the Supreme Court read the word "custom" which appeared in the 1875 Civil Rights Act without qualifying language, to mean custom having the force of law (109 U.S. 360). Thus, the foregoing language in section 201(d) would seem to be declarative of the concept expressed by the Court in those cases.

Section 201(d)(2) does not embrace a "custom or usage" constituted merely by a practice in the neighborhood or by prevalent attitudes in a particular community. The practices that it includes are those which, though not embodied in law, receive notice and sanction to the extent that they are enforced by the officialdom of the State or locality.

Section 201(d)(3) is the third test set forth in section 201(d) to determine whether discrimination or segregation in an establishment enumerated in section 201(b) is "supported by State action."

Section 201(d)(3), in particular, prohibits discrimination or segregation in an enumerated establishment if it "is required by action of a State or political subdivision thereof." The most obvious application of this provision is, of course, in the case where a State or local law prescribes segregation. To this extent, section 201(d)(3) overlaps section 202, which applies specifically where there is actually a segregation law on the books.

However, section 201(d)(3) is broader than section 202 in that it reaches cases of discrimination by reason of State action other than statutes, ordinances, and the like.

It should be noted however, that section 201(d) is narrower than section 202 in that the former applies only to an enumerated establishment while section 202 applies to any establishment.

VOLUNTARY COMPLIANCE STRESSED

Mr. President, a great deal of testimony was given, a great deal has been said, and much more will be said, about voluntary compliance.

I would be the last person to state that there has not been a great deal accomplished in the past few years—even in the past few months—with voluntary compliance in this field.

Witnesses from the South have testified with a great deal of pride as to what they have accomplished in this field. Naturally, it is a part of the whole concept of this particular problem where voluntary compliance is achieved. If voluntary compliance would suffice in all cases, there would probably be no need for legislation. Unfortunately, that is not the case.

As I have already pointed out, before instituting suit under title II, the Attorney General may utilize the services of any Federal, State, or local government agency available to seek compliance by voluntary procedures. Of course, the Attorney General may institute suit only after receipt of a complaint, after having notified appropriate State or local officials, and upon their request—giving them time to act under their laws—by voluntary compliance, or otherwise—before he institutes court action. However, in those instances where, in the opinion of the Attorney General, it would be useless to notify appropriate State or local officials, or in those instances where such notification and attempted State or local solution of the controversy would, under the circumstances, take so much time as not to serve the interests of justice, the Attorney General may institute suit without having so notified the appropriate State or local officials.

It should be remembered that the Attorney General is not authorized by title II to institute suit upon the receipt of every complaint alleging violation of title II. Rather, the Attorney General is authorized to file suit only in those instances where he is satisfied that the purposes of the act will be materially furthered by the filing of such action. One consideration which might prompt the bringing of a suit would be the size and significance of the establishment involved. Another might be the existence of a holdout situation where most establishments of a particular kind in an area were willing to comply voluntarily if all would do so, but one establishment refused. We have heard testimony of many instances of this situation. The Attorney General's judgment in this respect would not be reviewable. The authority given the Attorney General to institute such actions is no greater, however, than the discretion which he has with respect to invocation of most Federal statutes committed to his enforcement. In fact it is less broad. For example, under the antitrust laws, the Attorney General can sue, regardless of whether private parties who have been injured bring suit. The bill reflects the fact that neither Congress nor the executive branch intend that the Federal Government should become involved, unless it appears that the public interest needs vindication.

ATTORNEY GENERAL SUES ON BEHALF OF THE UNITED STATES

Should the Attorney General institute suit under title II, it would be done on behalf of the United States in furtherance of the national interest. As the Attorney General would be suing on behalf of the United States when he brings a lawsuit under title II, he would be suing on behalf of all of the citizens of the United States. Thus, he would seek an order in title II cases requiring the establishment in question to refrain from racial discrimination against any and all persons, rather than merely those persons whose written complaint prompted action by the Attorney General.

CRITICISMS DIRECTED AT THE CONSTITUTIONALITY OF TITLE II

Those who oppose public accommodations legislation have in the past, and will continue throughout this debate, I am sure, to attack the provisions of title II as unconstitutional. Opposition to the provisions of this title cannot take any other course, for those who oppose public accommodations legislation cannot be expected to criticize the proposition that racial discrimination by those holding themselves out as willing to deal with the public for commercial gain is a worthwhile American tradition, nor can they be expected to defend prejudice and bigotry.

In their attempt, then, to discredit the constitutionality of title II, they refuse to recognize that private action supported or required by State action which denies any person equal protection of the laws is prohibited by the 14th amendment. And likewise, they refuse to recognize decades of Supreme Court decisions holding that Congress, in the exercise of its commerce powers, may regulate purely intrastate matters which have a substantial effect upon interstate commerce. Not only do they refuse to acknowledge these principles of constitutional law that any first-year law student would readily recognize, but they also pervert and distort the historical and clear meaning of other provisions of the Constitution, in order to build an argument against the constitutionality of public accommodations legislation.

The following specious arguments are made against the constitutionality of title II: First, Federal public accommodations legislation would infringe upon private property rights, in violation of the fifth amendment.

The fifth amendment provides that property shall not be taken without due process of law, and if property is taken for public use there shall be just compensation. So far as the fifth amendment is concerned, any Federal regulatory legislation is, to a certain extent, a limitation on the use of private property.

It is of the essence of regulation that it lays a restraining hand on the self-interest of the regulated and that advantages from the regulation commonly fall to others. *Wickard* v. *Filburn*, 317 U.S. 111, 129.

The type of regulation proposed in title II is hardly novel. Some 32 States—including my own State of Washington—presently have public-accommodations

laws forbidding racial or religious discrimination. Many of these laws date back to the period immediately after the Civil War. Most of them are far tougher than title II, and are broader in coverage. Many of these laws allow criminal sanctions for violations and permit injured parties to sue for recovery of damages in contrast to the provisions of title II.

Furthermore, the constitutionality of public accommodations legislation against claims that they violate due process of private property rights have been sustained by Supreme Court decisions. See *Bob-Lo Excursion Co.* v. *Michigan*, 333 U.S. 28 (1948); and *District of Columbia* v. *Thompson Co.*, 346 U.S. 100 (1953).

Surely, if public accommodations legislation so restricted the use of private property as to violate due process or as to constitute a taking of private property for public use without compensation, the Supreme Court of the United States would not have sustained these statutes. In fact, in the Bob-Lo case the State court had held that the law was consistent with due process and counsel did not even attempt to argue this point before the U.S. Supreme Court.

The failure of counsel in the Bob-Lo and Thompson cases to raise specific intentions under the due-process clause is readily understandable in view of the Supreme Court's prior decision in *Railway Mail Association* v. *Corsi*, 326 U.S. 88 (1945). In that case, challenge was made to a provision of the New York civil rights law which prohibited a labor organization from denying any person membership, or equal treatment, by reason of race, color, or creed. The Court stated on page 94:

> We see no constitutional basis for the contention that a State cannot protect workers from exclusions 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 employees.

The right of a private association to choose its own members is certainly entitled to as much respect as the right of a businessman to choose his customers. Hence, the Corsi decision effectively disposed of any due-process objections that could have been made in the Bob-Lo and Thompson cases.

In light of these decisions, it is clear that a public accommodations law, such as is proposed in title II of H.R. 7152 is a "regulation which is reasonable in relation to its subject and is adopted in the interests of the community," and is consistent with the due process guaranteed by the 5th amendment. See *West Coast Hotel Co.* v. *Parish*, 300 U.S. 379 (1937). As the Court stated in West Coast Hotel Co. at page 391:

> Liberty under the Constitution is thus necessarily subject to the restraints of due process, and regulation which is reasonable in relation to its subject and is adopted in the interest of the community is due process.

It is to be remembered that 32 of the 50 States and the District of Columbia have laws similar to or stronger than title II. Thus, it is grossly inaccurate to describe title II as laying down requirements heretofore unheard of subjecting businessmen to new and unwanted regulation.

It is interesting to note that although the State of Mississippi today has statutes requiring segregation in some places of public accommodation, there was a time when it actually prohibited such segregation. An 1873 decision of the Mississippi Supreme Court in *Donnell* v. *State*, 48 Miss. 661, sustained the constitutionality of a Mississippi public accommodations law as applied in a criminal prosecution against a theater that sought to segregate a Negro patron. The decision of the Mississippi Supreme Court was unanimous. It seems to me that if public accommodations legislation so restricted the use of private property as to violate the 5th amendment the supreme court of the great State of Mississippi certainly would have struck down such legislation rather than unanimously holding that it was constitutional.

In the Mississippi Supreme Court decision I have just referred to, the court, in its unanimous decision upholding the constitutionality of a public accommodation law more severe than the provisions of title II, stated:

> The assertion of a right in all persons to be admitted to a theatrical entertainment * * * in no sense appropriates the private property of the lessee, owner or manager, to the public use (48 Miss. 661, 682).

In spite of the fact that 32 States now enjoying public accommodations legislation have not considered such restrictions on the use of property as a violation of the constitutionally guaranteed property rights, and in spite of the fact the U.S. Supreme Court has twice sustained such legislation, I am sure we will continue to hear that title II is an unconstitutional infringement upon the rights of private property owners. Let us not forget, however, that the right of the private property owner to serve or sell to whom he pleased was never claimed when laws were enacted prohibiting the private property owner from dealing with persons of a particular race. In fact, many who argue that title II is an unconstitutional infringement upon private property rights would sustain the segregation laws of the South which certainly limit the private property owner by telling him that he cannot do business with people merely because of the color of their skin. While laws compelling segregation have been struck down as a denial of the equal protection guarantees of the 14th amendment, they have never been held to violate the supposed rights of any private property owner.

There are other persuasive reasons for not allowing concepts of private property to defeat public accommodations legislation. The institution of private property exists for the purpose of enhancing the individual freedom and liberty of human beings. This institution assures that the individual need not be at the mercy of others, including Government, in order to earn a livelihood and prosper from his individual efforts. Private property provides the individual with something of value that will serve him well in obtaining what he desires or requires in his daily life.

Is this time-honored means of freedom and liberty now to be twisted so as to defeat individual liberty and freedom? Certainly, denial of a right to discriminate or segregate by race or religion would not weaken the attributes of private property that make it an effective means of attaining individual freedom. In fact, in order to assure that the institution of private property serves the end of individual freedom and liberty, it has been restricted in many instances. The most striking example of this is the abolition of slavery. Slaves were treated as items of private property, yet surely no man dedicated to the cause of individual freedom could contend that individual freedom and liberty suffered by emancipation of the slaves.

There is not any question that ordinary zoning laws place far greater restrictions upon the rights of private property owners than would public accommodations legislation, such as the proposed law or the laws in effect in 32 States. Zoning laws tell the owner of private property to what type of business his property may be devoted, what structures he may erect upon that property, and even whether he may devote his private property to any business purpose whatsoever.

Such laws and regulations restricting private property are necessary so that human beings may develop their communities in a reasonable and peaceful manner. Surely the presence of such restrictions does not detract from the role of private property in securing individual liberty and freedom.

Nor can it be reasonably argued that racial or religious discrimination is a vital factor in the ability of private property to constitute an effective vehicle for assuring personal freedom. The pledge of this Nation is to secure freedom for every individual; that pledge will be furthered by elimination of such practices. As previously noted, this principle was well recognized in the English common law which held that the owner of private property devoted to use as a public establishment did not enjoy a property right to refuse to deal with any law-abiding member of the public who had the funds to pay for the accommodations offered. Rather, English common law reasoned that one who employed his private property for reason of commercial gain by offering goods or services to the public must stick to his bargain. I see no reason why those similiarly situated in the United States today should not also be held to stick to their bargain.

I would point out again that this title which is alleged to violate private property rights is in fact much more moderate than most of those statutes existing in the 32 States now enforcing public accommodations legislation. Title II gives no right to damages to the injured party nor does it provide any criminal penalties to those who violate its provisions. The most that can happen to one who violates the law laid down by title II is that he will receive an order from the court compelling him to

comply with that law he had originally violated.

Second. Title II, by incorporating the jury trial provisions of the 1957 Civil Rights Act, would authorize criminal contempt proceedings without trial by jury in violation of article III, section 2, and the sixth amendment of the U.S. Constitution.

Probably the most unfounded argument against the constitutionality of title II is that it violates the constitutional right of trial by jury. While the Constitution guarantees the right of trial by jury in criminal cases, this guarantee has never in the history of the United States been extended to cases of criminal contempt as a matter of constitutional right. As Justice Harlan stated in *Green* v. *United States*, 356 U.S. 165, 183 (1958):

> The statements of this Court in a long and unbroken line of decisions involving contempts ranging from misbehavior in court to disobedience of court orders established beyond peradventure that criminal contempts are not subject to jury trial as a matter of constitutional right.

The language I have just quoted is quoted with approval by the U.S. Supreme Court in a case decided only Monday of the week; United States against Barnett. Mr. Justice Clark, writing for the majority, follows that quotation from the Green case with this language:

> It has always been the law of this land, both State and Federal, that the courts—except where specifically precluded by statute—have the power to proceed summarily in contempt matters. (*United States* v. *Barnett*, at p. 11 of majority opinion, Apr. 6, 1964.)

In footnote 14 of Green against United States, supra, the Court lists 11 U.S. Supreme Court opinions identified as "major opinions" in which the Supreme Court "discussed the relationship between criminal contempts and jury trial and have concluded or assumed that criminal contempts are not subject to jury trial under article III, section 2, of the sixth amendment."

Later in that same opinion, Justice Harlan stated:

> The principle that criminal contempts of court are not required to be tried by a jury under the sixth amendment is firmly rooted in our traditions. *Green* v. *United States*, 356 U.S. 165, 187 (1958).

Throughout the history of the United States and, in fact, prior to a formation of this Nation, criminal contempt proceedings were always considered of a different nature than the ordinary criminal proceeding. Truly, "trial by jury and indictment by grand jury * * * possess a unique character under the Constitution," *Green* v. *United States, supra*, at 187.

Justice Frankfurter, in his concurring opinion in the Green case, observed:

> What is indisputable is that from the foundation of the United States the constitutionality of power to punish for contempt without the intervention of a jury has not been doubted, *Green* v. *United States, supra*, at 190.

It is clear, then, that those who argue that criminal contempt proceedings without a trial by jury violate the U.S. Constitution are, in fact, ignoring the interpretation of our Constitution that has been endorsed by the Supreme Court throughout the history of the United States. In order for the argument of those asserting that there is a constitutional right to trial by jury in criminal contempt proceedings to succeed, it would be necessary for the Supreme Court to overturn a century and a half of decisions. Those who advocate such action are, nevertheless, the first to criticize the U.S. Supreme Court for its landmark decision in Brown against Board of Education in which the separate but equal doctrine of Plessy against Ferguson was discarded. Apparently, these opponents of title II who claim there is a right to jury trial—they are talking about a constitutional right—in cases of criminal contempt advocate stare decisis only in those instances in which the prior decisions of the Court are consistent with their own views.

Third. Title II is unconstitutional because it deals with a subject reserved to the States under the 10th amendment to the Constitution of the United States.

The 10th amendment provides:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

In *Everard's Breweries* v. *Day*, 265 U.S. 545, 558, the Supreme Court stated:

> If the act is within the power confided to Congress, the 10th amendment, by its very terms, has no application, since it only reserves to the States powers not delegated to it by the Constitution.

Similarly, speaking of legislation enacted by Congress pursuant to the enforcement clause of the 14th amendment, the Supreme Court has said that sovereignty cannot, by definition, be invaded by the enactment of a law "which the people of the States have, by the Constitution of the United States, empowered Congress to act"—*Ex parte Virginia*, 100 U.S. 339, 346.

The distinguished American, James Madison, sponsor of the 10th amendment, in the course of the debate which took place while the 10th amendment was pending concerning Hamilton's proposal to establish a national bank, declared:

> Interference with the power of the States was no constitutional criterion of the power of Congress. If the power was not given, Congress could not exercise it; if given, they might exercise it, although it should interfere with the laws, or even the constitutions of the States. (S. Doc. 170, 82d Cong., 2d sess., p. 915.)

As Congress has power, under the 1st and 5th clauses of the 14th amendment and under article I, section 8 of the U.S. Constitution to enact public accommodations legislation, it would surely be acting pursuant to a constitutional grant of power if it should enact title II. Therefore, it would be exercising a power delegated to the United States by the Constitution and such legislation could not possibly violate the 10th amendment.

Therefore, those who argue that the enactment of title II would violate the 10th amendment are, once again, encouraging a view of the Constitution that is in conflict with settled principles of constitutional law and express language of the U.S. Supreme Court.

I believe I have fairly stated the intent and provisions of title II of H.R. 7152. Simply stated, the bill merely seeks to establish the right of all persons, without regard to race, color, religion, or national origin, to the full and equal enjoyment of the services and facilities of a variety of places of business serving the general public. It is really a moderate title with enforcement limited to injunctive relief against discriminatory practices, with the Attorney General permitted to bring suit for such relief when he has received a complaint that such discriminatory practices are occurring and such action would be in the best interest of the United States.

It is to be noted that under all but two of the State statutes now in effect, "public accommodations" include a broad spectrum of businesses not limited to those affecting interstate commerce. Twenty-three States and the District of Columbia provide penal sanctions for the enforcement of their statutes; 12 States provide for civil recovery for damages. Only three of the States limit the sanctions solely to injunctive relief, as would title II. Five States have created commissions to investigate, conciliate, and order relief from violations of the statute. No commission would be created by title II. One State and the District of Columbia provide for revocation of the license of offenders. No such recourse would be available under title II. Two States provide for the recovery of costs, and one State provides for the recovery of attorney's fees. Under title II the prevailing party would be entitled to attorney's fees as costs, at the discretion of the court.

Section 205(d) of title II specifically preserves rights and remedies under State laws; and section 204 in general requires the Attorney General to refer cases to State authorities, for disposition under those laws, before he files suit. Therefore, in the vast majority of States it is to be expected that instances of discriminatory practices would continue to be resolved under existing State statutes. In fact, enactment of title II should actually encourage States to enforce their own statutes dealing with discriminatory practices, and possibly encourage other States, presently without such laws, to enact them.

Mr. LAUSCHE. Mr. President, will the Senator from Washington yield for a question?

Mr. MAGNUSON. I yield.

Mr. LAUSCHE. The Senator from Washington will recall that when the public accommodations bill was before the Commerce Committee, the discussion there dealt with the question of whether an aggrieved party would have a right to sue for damages, even though that right was not specified in the proposed law. Has the Senator from Washington given consideration to that aspect

of the problem? I have not heard him discuss it.

Mr. MAGNUSON. I do not believe title II would either add to or detract from any right which an aggrieved party might have to sue for damages in any of these cases; nor would it add to or detract from any State law. Some State laws allow suits for damages by an aggrieved party, on either side. But that subject is not dealt with in the pending bill.

Mr. LAUSCHE. Is it the opinion of the Senator from Washington that even though a right was violated by not extending accommodations held out to the general public, and even though a suit for damages might be initiated, no such damages would be recoverable?

Mr. MAGNUSON. Title II is not intended to create a right to sue for damages in case of violation of its provisions. Of course, such rights under State laws—where existing—would not be affected by enactment of title II. Personally, I believe a suit for damages may well be desirable as an aspect of Federal legislation dealing with problems of discrimination. However, title II is not intended to create a right to sue for damages.

Mr. LAUSCHE. Yes. However, I think it would be true that if a legal right were violated, regardless of whether the pending bill were to deal with the right to sue in such a case, there would be great likelihood that the injured party would have a right to take such action.

Mr. MAGNUSON. That view is held by many who are well versed in the law.

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

The PRESIDING OFFICER (Mr. INOUYE in the chair). Does the Senator from Washington yield to the Senator from New York?

Mr. MAGNUSON. I yield.

Mr. JAVITS. The Senator from Washington has almost completed his very fine speech as chairman of the Commerce Committee, which studied and took testimony on this particular title and then reported a bill on it. His own activities definitively answer the charge that the proponents of the pending bill are trying to have the Senate pass a bill without the benefit of committee hearings, consideration, and report. Therefore, his statement is of unique importance.

I should like to ask the Senator from Washington to comment on the argument made by opponents of this bill—mainly Senators from the South—who contend that this title of the bill would restrict the businessman's freedom of choice. I point out that in a number of the Southern States there are on the statute books segregation laws which prevent local businessmen from serving Negroes in segregated areas. Are not such laws not only substantial efforts, but also unconstitutional efforts, to control local businessmen; and, therefore, does not the existence of such State or local laws blow completely out of the water that argument by the opponents of the pending bill?

Mr. MAGNUSON. As I have pointed out in my remarks, certainly laws and ordinances requiring segregation have never been construed as violating property rights. We hear no objection concerning property rights as to such laws by those from the South. Surely a Federal court would not uphold such laws, however, because of their conflict with the 14th amendment. But the point to be stressed is that as segregation laws do not violate private property rights—at least no count has ever struck them down for that reason—then certainly public accommodation laws do not violate property rights.

I do not know whether the Senator from New York was present when I discussed one of the classic examples. I mentioned that among the States in which a holding was made that the question was not in violation of property rights was the State of Mississippi, where the supreme court unanimously upheld that it was not in violation of property rights.

Mr. JAVITS. I heard the Senator make that statement. It was a remarkable piece of research that the Senator produced.

Mr. MAGNUSON. The law is quite clear. When a business is open to the public, it is subject to a certain amount of regulation. Regulations necessarily deprive a businessman of some right that he might ordinarily have. But the benefits flowing from the regulation to the public become greater. The business would be enhanced. I cannot conceive of any legal argument that the title would violate property rights in any respect. Hundreds of laws go further in restraining a person in his business for some good reason. Perhaps some reasons are not so good. There may be local ordinances or State laws involved. Hundreds of laws go further as far as a man's business is concerned.

Mr. JAVITS. Certainly the wage and hour law would affect a man's business.

Mr. MAGNUSON. I should like to tell a little story to the Senator from New York. One time when I was prosecuting attorney in my home county a group of Japanese people—and I have told the story to the distinguished occupant of the chair [Mr. INOUYE]—moved into what we called the Capital Hill district. A group of people in the district did not want them to move in. They came to me and wanted me to pursue the legal argument that coming into that district would deprive the property owners of their property rights without due process of law.

I looked into the question pretty carefully and found that, of course, it would not do so at all. But the point of the story is that some years later the same group came to me and thanked me for not doing something about it, because instead of property values being jeopardized, property values were enhanced. The people coming into the district kept their houses, gardens, and shrubbery in such beautiful shape, and their conformity with the law and community spirit were so much greater, property values increased.

Mr. JAVITS. I am very delighted to hear that story.

I should like to ask the Senator one or two additional questions, because I think certain features of his statement should be highlighted. I know that earlier in his statement the Senator said that of all the grievances which have called forth demonstrations, the particular subject which we are discussing accounted for most of them. The Senator was referring to the fact that about two-thirds of the demonstrations in the year 1963 which occurred in racial matters were attributable, in whole or in part, to grievances of that character.

Under those circumstances I should like to ask the Senator whether or not we can justify refraining from legislation when we find that, notwithstanding all these protests many cities in the 15 States of the South, including both the old Confederacy and the border States, continue to segregate in this kind of establishment. For example, in these 15 States of some 275 cities with populations of over 10,000, in 65 percent, all or part of the hotels and motels were still segregated as of July 1963, and in close to 60 percent all or part of the restaurants and theaters were segregated and 43 percent still had segregated lunch counters, where almost all the protest has taken place. And of 98 cities in the same States with populations of less than 10,000, in 85 to 90 percent, all or part of these types of establishments remained segregated. Under those circumstances can we refrain, where there is such a deeply felt grievance, and where it has involved such threats to public order and tranquillity, from legislating to afford some measure of justice?

Mr. MAGNUSON. I do not think we can. I think that condition dictates more than anything else why we should go on and get the job done. Title II of the bill is the most sensitive part of the bill, when we get down to it. Title II would open avenues for the people involved to take care of the matters themselves, and then we would not have demonstrations. There would be no need for them if title II of the bill were passed.

Mr. JAVITS. Or at least if there are demonstrations—and let us assume that paradise will not have descended upon earth—at least we will have what we do not have today. We have no answer to the deeply held grivances except to say, "Keep your shirt on until we get this bill passed." If we do not pass the bill, we shall have no answer.

Mr. MAGNUSON. We shall have absolutely no answer. As the Senator from New York has so well pointed out many times, there might then be some real serious trouble.

Mr. JAVITS. I have one last question. It is often argued that the bill will not permit the owner of an establishment to have any control over his patronage. Does the Senator from Washington construe title II as requiring the owner of an establishment covered by the title to admit and serve, even if he is a Negro, a person who is boisterous, drunk, or dressed in some disreputable way so as to disgrace the establishment? In other words, would the normal opportunities for the businessman to deal with his clientele in a perfectly proper way

run afoul of title II, or is it confined to the question of race, color, and national origin without intruding upon the other discretions which the businessman normally has?

Mr. MAGNUSON. If there is anything we have tried to point up in the Senate hearings in the committee—and I suspect the same thing was true in the House and in the present debate—it has been to be sure that the title would not affect the right of any business to select its patrons except where the establishment would deny equal treatment on account of race, color, creed, or national origin. A businessman could throw out a fellow who was boisterous, argumentative, and even if he did not wear a tie in an establishment which required ties. I have been in such places. I have been thrown out of some of them. Traveling along a highway, I did not have on a tie, and one was required. Establishments have a perfect right to choose their patrons, but they cannot deny patronage because of a person's race, color, or creed. I hope that that point is indelibly made in any interpretation of the bill, because we never intended otherwise. The language in that respect is as clear as the English language can be.

Mr. JAVITS. I am grateful to the Senator. In my judgment his answers and his splendid statement have made a very strong case.

Mr. MAGNUSON. I thank the Senator.

Mr. President, I shall briefly conclude my statement. I wish to point out that much of what I have said represents my own ideas rather than those of the committee as a whole.

CONCLUSION

This bill is part of a comprehensive program to assure equal legal and constitutional rights to all American citizens, and to assure further that no American citizen is denied these equal rights on the ground of race or color.

The subject of title II is the equal rights of Americans. This is hardly new business on the national agenda. The charter of our independence long affirmed the proposition that all men are created equal. The history of our Republic has been the history of the movement to realize that proposition in every sector of our national life. In our pronouncements to other nations, we hold out equality of right and opportunity as our national ideal and as the emblem of the American way of life. No subject is closer than this to our traditional values, to the character and quality of our national life, or to our image before the world.

Title II deals with the question of equal rights in public accommodations and facilities. This, of course, is only one dimension of the larger problem of legal exclusion arising from the experience of the Negro in the United States since his emancipation from slavery. I shall not enumerate the instances of discrimination here. They apply not only to Negroes, but to all kinds of Americans.

Other aspects of the problem are dealt with in the comprehensive legislative proposals made to Congress by the President, as well as in many bills originated by Members of the Congress themselves.

The first bill I introduced in Congress in 1937 was a bill to abolish the poll tax. That was many years ago. There have been many bills on this broad subject, and many approaches.

I will only say that each item on the list is evidence of a subversion of our national ideals—each is a badge of continuing national injustice—each is a mockery of our pretentions before the world.

Our boast is that success in American life is proportionate to talent and character—yet discrimination on the ground of race falsifies that boast every day.

Our assumption is that this is a nation of equals—yet this assumption falls to the ground as soon as discrimination to the Negro is taken into account.

The hard fact is that we have failed to redeem the promises of the Emancipation Proclamation, and of the 14th and 15th amendments, that race must not thwart the American Negro in his struggle to cast away the legacy of centuries of slavery and stand proud and erect as a free American.

The hard fact is that the American system of equality has, up to now, left out men and women whose skins were of another color.

It is now time to abolish second-class citizenship as a century ago we abolished slavery. It is now time to eliminate hypocrisy in our national life and make sure at last that our acts begin to square with our ideals.

The Federal judiciary has been forthright in upholding the proposition that race has no place in American life or law—that, in the lapidary phrase of the elder Justice Harlan, the American Constitution is colorblind. The executive branch has adopted this proposition in the conduct of its affairs. The Nation has asked that Congress make a similar commitment to the same proposition. In a series of bills, beginning in 1957, we have begun to make that commitment.

There are still some—a few—who assert that what they call the Central Government has no proper role in dealing with this gravest of domestic issues. To preach this doctrine, in my view, is to preach a form of anarchism. The question of the role and responsibility of the National Government was definitively settled nearly a century ago. To ask the national legislature to acquiesce in the continuance of national injustice is a plea for national irresponsibility. To rely for remedy on changes in the hearts of men who pride themselves on resistance to change is to sanction a national policy of default.

Had the leaders of segregated areas taken significant steps in the past to remove racial barriers and injustices, the Congress would not be confronted by this situation today. But they did not take such action—and the Federal action they condemn is the price they must pay for indifference and neglect. We would be lacking in dignity as a nation—we would advertise our national impotence to the world—if we did not take measured and responsible action to fulfill the pledge of equal rights on which this Republic is based.

The particular matter of this bill—racial discrimination in places of public accommodation—was the subject of intensive hearings and study before the Commerce Committee for almost 5 weeks. This is not, of course, the first time that Congress has legislated in this field. Eighty-eight years ago Congress enacted the Civil Rights Act of 1875 in a notable effort to guarantee all American citizens their equal rights. Eight years later, a conservative Supreme Court ruled in an 1883 decision that the 14th amendment, upon which Congress had based relief, did not authorize the legislation. At the same time, the Court declined to consider whether the legislation was within the scope of the authority granted Congress by the commerce clause.

This decision did not end all governmental action to prevent discrimination in public accommodations. Since 30 States, including my own, have enacted statutes for that purpose. But to await similar legislative action by the remaining States is to renounce relief for years, if not for decades. If racial discrimination in hotels, restaurants, and other places holding out accommodations to the public is to be brought to an end throughout the Nation now, we must have Federal legislation. The issue, then, is whether such legislation is justified.

The answer is plain: If the legislation were justified, as a majority of Congress believed, in 1875, it is even more justified in 1964. If the United States had wearily lain down to a long sleep after the Civil War—if it had entered a period like the Middle Ages, when society remained in a state of torpor—no doubt the issue of public accommodations would be less urgent and preemptory than it is today. If most of our population still lived on farms, or in small communities devoted mainly to satisfying the needs of agriculture—if it were still largely immobile and rarely able to spend leisure time away from homes and neighborhoods—most citizens, white and Negro alike, would have relatively little use for the facilities of public establishments.

However, the Nation chose not to dream through the past century but, instead, to alter and improve the lives of its people at a rate and to a degree never before experienced in the history of mankind. It has given its people great mobility and cosmopolitan outlook, has placed before them the arts, learning, sports, and various other forms of entertainment and amusement, and, above all, has afforded most of them the means to enjoy these new advantages. Freedom of movement is more than ever the essence of American life. Working, buying, and eating in public places, enjoying public amusements and entertainment, traveling for business or pleasure—all these are essential aspects of normal living in the United States. Therefore, those who are deprived of the opportunity to participate in these now routine activities to the extent of their means are plainly being denied the full measure of

the benefits which the Nation provides for its people. When such deprivation is based on grounds of race, color, religion, or national origin, it is all the more intolerable because it contravenes the concepts of liberty and democracy which have guided us in achieving our amazing growth and progress during the past century.

If Federal measures to assure all citizens equal rights to public accommodations are the logical consequence of our national traditions and national values, the question which next arises is the problem of the constitutionality of these measures. I noted earlier that in 1883 the Supreme Court had ruled that the 14th amendment did not sanction civil rights legislation, but that the Court did not rule on the question whether the commerce clause of the Constitution might not sustain such legislation. That was, as I noted, a conservative Court. But, paradoxically, it has been in many cases conservatives who have recently argued that the proposed civil rights legislation should rely primarily, not on the commerce clause, but on the 14th amendment.

My own view, after listening carefully to an extended discussion of this question, is that the constitutional debate involves only a choice of means, and does not in the slightest degree place the end in doubt. No one can suppose, after the regulatory legislation of the last 30 years, that the commerce clause would not directly and easily sustain the proposed legislation. And my own view is that, in spite of the decision of 1883, the Supreme Court would now uphold the 14th amendment as a basis for legislative action. After all, a good many decisions handed down by the Court of the 1880's and 1890's have been subsequently reversed, both because of changes in the Court and because of changes in the facts and their implications.

I support this bill because I believe that it meets an urgent national need.

We are not embarking on a wild and reckless experiment without precedent in our national history. On the contrary, we are proposing to extend to the Union a procedure which a third of our States have followed by law—and considerably more by voluntary decision—and without visible harm to the normal life of the people. My own State of Washington has had for a decade a public accommodations statute more stringent than the bill we consider here—and it has used it to the benefit of the citizens of the State. So have 29 other States. Even in the South, where history and custom have intensified feelings about such legislation, we now have vivid evidence that there need be no difficulty. I am informed, for example, that in 346 southern cities with populations of over 10,000, well over half of the total in that category, there has already been substantial desegregation of public accommodations—without difficulty. Public reaction might well be typified by the remark of a retailer in one southern city who was quoted as saying: "The greatest surprise I ever had was the apparent 'so-called' attitude of the white customers."

These gains have come in the communities of the South with civic leadership which is willing to move in the direction of the ideals of America. There remain, however, more than a hundred cities which have thus far declined to move. Many residents of these cities are prepared to accept the national commitment. It is for their sake—as well as for the sake of the Nation—that we urge the enactment of legislation which will make sure that no American will suffer because he tries to fulfill a national obligation.

Title II will both end discriminatory access to public places and protect against unfair competition those citizens who wish voluntarily to treat all Americans on an equal basis.

In most of the areas where the Negro is excluded from, or experiences discrimination in, establishments of a public character, the absence of applicable State or local legislation leaves him without a legal remedy. When he cannot obtain relief by means of legal appeal or of voluntary action on the part of the owners, he has no alternative but public protest and demonstration. Any of my colleagues in his place—any American citizen denied his equal rights—would do likewise; and this Nation is fortunate that those who have protested and demonstrated against the deprivation of their rights have done so with such incomparable patience, restraint, and dignity.

Opponents of this bill will denounce it as a measure designed to revolutionize American life. I need hardly point out to Members of this body the dangers of hyperbole as a substitute for logic in debate. How many measures through our long history were guaranteed by their opponents to spell the end of the American way of life—from the acquisition of the Louisiana Territory, the abolition of imprisonment for the debt, and the refusal to recharter the Second Bank of the United States to the Social Security Act, the Fair Labor Standards Act, and the Employment Act. Yet our country has not only managed to survive these mortal blows but has somehow grown in strength and freedom and affluence. I doubt whether the prophecies of doom are any better founded in 1964.

Not so long ago rail and bus transportation was segregated in many areas, as were rail, bus, and airline terminals. Now such segregation is ended—and to the social, and economic, advantage of the communities involved. In many cities, hotels, motels, and restaurants have recently been desegregated. The cities and, in the great majority of instances, the enterprises themselves, have benefited in the same way. These experiences constitute powerful evidence that the passage of this bill will not, as its opponents claim, destroy but will, rather, strengthen the American system of freedom.

I ask the Senate to study this bill, to consider its contribution to national strength and national unity, to reflect on its impact on the American position before the world, and, above all, to see it as the fulfillment of a sacred moral necessity, rooted both in our religious and our civil heritage. Having done so, this body, I believe, must agree that the action presented in the bill is the only course consistent with both national interest and national right.

From time to time, as they have forced themselves on our attention, we have pronounced the problem of agriculture—or the problem of unemployment—or the problem of educating our children—or any of a half dozen others—as the most urgent domestic matter confronting us. Invariably we are forgetful. For a long time past, by far the most serious of our domestic problems—and one that very often contributes to the severity of the others—has been our failure to bring the Negro into the mainstream of American life. Only occasionally have we bestirred ourselves to take more than token action. Most of the time we have ignored the problem. All of the time we have deluded ourselves with vague hopes that it would somehow be washed away by an inevitable spread of enlightenment. But inevitability is often slow and not always sure.

Not only the Negro minority but all the rest of the population is harmed by our neglect. Until the time arrives when race ceases to be a disability in the United States, our economy will be damaged, our educational system retarded, our cities disorganized, and our conscience corroded.

The value of American citizenship is debased by the discriminatory treatment of the Negro, and it is hard to see how any of us can remain easy in conscience as long as we maintain two standards of citizenship. Certainly, the Negro citizen, desiring to abolish the double standard, is going to exert pressure until he reaches his goal of equal treatment. Any Senator would do the same in his place—and he is plainly within his rights in so doing and in so exercising the venerable American prerogatives of free speech and public protest.

Unless the majority of the white citizens of this land renounce our national heritage of liberty and freedom and attempt to imprison the Negro forever within the confines of an inferior status, his drive for equal treatment cannot be stayed and he will reach his goal. That our patrimony will be preserved and that the Negro will succeed, I do not doubt. But in the meantime we shall violate our own creed and damage our own self-respect if we refuse to do what is necessary to promote the equality he rightfully seeks.

Let us seize this opportunity not only to repair the historic damage to our conscience and to extirpate what John Quincy Adams called this foul blight on the North American Union but to place our Nation before the world proud in the fact that our deeds at last begin to live up to our words—and that our great Nation stands, exultant and unafraid, as a society truly based on the dignity of the individual and truly dedicated to the equal rights of all its citizens.

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

Mr. MAGNUSON. I yield.

Mr. JAVITS. On behalf of the proponents of the bill, I thank the Senator for

a gifted, eloquent, deeply moving, extremely important speech, which I believe will go far, in view of the Senator's distinction in this body, toward bringing about passage of the bill.

Mr. MAGNUSON. I thank the Senator.

WELCOME TO SENATOR RANDOLPH

Mr. MAGNUSON. Mr. President, I am so glad to see the senior Senator from West Virginia back among us. It appears that the treatment he has been receiving was successful. I know that I speak for all Senators in welcoming back the Senator from West Virginia.

Mr. RANDOLPH. I thank the Senator from Washington for his cheerful greeting.

Mr. HILL. Mr. President, the Senator from Washington voices my sentiment. I rejoice that our good friend the able and distinguished Senator from West Virginia [Mr. RANDOLPH], is able to be back with us.

Mr. RANDOLPH. The Senator from Alabama is thoughtful and generous. I thank him.

Mr. SMATHERS. Mr. President, I wish to add my word of welcome to the distinguished Senator from West Virginia. I am glad that he is back with us. We have missed him. We have been concerned about him. We are delighted to see him looking so well, and are glad in the knowledge that he will be back with us permanently, fully recovered.

Mr. RANDOLPH. I appreciate the kind statement of the Senator from Florida.

Mr. MAGNUSON. If there had not been so many live quorums, we would have been able to visit the Senator.

Mr. JAVITS. Mr. President, on behalf of what I know would be the entire membership of the minority, because I am now occupying the chair of the minority leader, I wish to say how delighted we are that our friend and colleague from West Virginia is back among us.

Mr. RANDOLPH. The Senator from New York is generous and I am appreciative of his comments.

Mr. YARBOROUGH. Mr. President, it is with great relief and pleasure that we welcome back the distinguished senior Senator from West Virginia. I have the honor to serve with him on the Committee on Labor and Public Welfare, and on various subcommittees of that important committee. Since he first became a Member of the Senate he has been one of the most diligent members of that committee.

The Senator from West Virginia, through his membership on the Subcommittee on Employment and Manpower, has studied and worked on the problem of manpower as it affects the 1¼ million Americans who are automated out of their jobs every year.

The senior Senator from West Virginia has worked on the major educational bills that were pased by the Senate in the past 6 months. The contributions he has made in the broad field of education, including vocational as well as conventional education, and in seeking to provide jobs for those who have lost their employment due to the changing economy, have been notable. I know of no one who has devoted more time to all these activities than has the distinguished senior Senator from West Virginia.

It is with a sense of personal pleasure and joy and with knowledge of what his service has meant for the country that I welcome Senator RANDOLPH back to the Senate.

Mr. RANDOLPH. I am encouraged by the statement of the Senator from Texas, and I thank my friend for his kindness.

Mr. MANSFIELD. Mr. President, I join other Senators in welcoming back to the Senate floor our distinguished compatriot from West Virginia, JENNINGS RANDOLPH. The Senate ought to know that for the past 3 weeks, Senator RANDOLPH has been on call, in spite of the restrictions he has experienced following his most delicate operation. He was ready to come to the Senate if his vote had been needed, even though that would have meant additional hardship for him.

In a sense, it is ironical that the distinguished Senator from West Virginia had an eye operation, because it was he, more than anyone else, when the Senator from Washington [Mr. MAGNUSON] and I were Members of the House with Senator RANDOLPH, who introduced legislation seeking to provide more benefits for the blind. One of those pieces of legislation provides authority to permit blind and blinded persons to operate vending stands in Federal buildings, for the purpose of selling candy, tobacco, chewing gum, and other commodities, to enable them to achieve self-supporting status.

I am informed that over 2,700 blind persons now operate such establishments, and that more than 4,000 have profitably participated since the inception of the program our colleague's leadership efforts helped bring into being.

I am happy that our distinguished colleague is back. I am grateful to him for the messages he sent to me from time to time, stating that if his vote were needed, he was prepared to come to the floor of the Senate. I am happy to say that his vote was not needed, and that he was able to recuperate and return to us once again, whole, hale, and hearty. I know that, as of now, his travail is not over; but at least he is on the road to complete recovery; and, judging from the reports I have received from the doctor, in due time the Senator from West Virginia will again be his old self—although, I am happy to note, with a few less pounds.

Mr. RANDOLPH. I thank the Senator from Montana. It is a real privilege to serve under his capable and benevolent leadership.

Mr. President, I am gratified by the very gracious and generous comments of my colleagues in the Senate.

It has been approximately 6 weeks since I sat at this desk in the Senate Chamber. It is not appropriate, nor is it my desire, to indicate the seriousness of the surgery which I underwent. My physician tells me that among the approximately 2 million persons who live in the Washington metropolitan area, the incidence of detachment of the retina of the eye is approximately 200 a year. So 200 such operations in a population of 2 million indicates that this surgical procedure is not a frequently required one for restoration of impaired vision.

I found time for meditation. One lies perfectly quiet on his back for days before and after the operation. The patient's eyes are tightly covered and he is not allowed to turn either to the left or to the right. He has no opportunity to see. So in the quietness and in the darkness of those uncomfortable days and nights, even a Senator can meditate, and I have done much of that.

I have already spoken too long, but it is indicated that I express gratitude for the messages of sympathy, encouragement, and good cheer that came to me from my colleagues in this body. The doctor told me today, on my way to Capitol Hill, that it will not be many days until I will be able to perform the active duties of a Member of this body. I know that patience and perseverance under the recovery program prescribed will be necessary. I am inspired and encouraged by the greetings of my colleagues as I briefly participate in Senate deliberations today.

Mr. HILL. 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. 126 Leg.]

Aiken	Hart	Monroney
Allott	Hickenlooper	Morse
Anderson	Hill	Morton
Bartlett	Holland	Moss
Bayh	Hruska	Mundt
Beall	Humphrey	Muskie
Bennett	Inouye	Nelson
Bible	Javits	Pastore
Boggs	Johnston	Pearson
Brewster	Jordan, Idaho	Pell
Burdick	Keating	Prouty
Cannon	Kennedy	Robertson
Carlson	Kuchel	Scott
Case	Lausche	Simpson
Clark	Long, Mo.	Smathers
Cooper	Magnuson	Smith
Cotton	Mansfield	Sparkman
Dirksen	McCarthy	Symington
Dominick	McIntyre	Thurmond
Douglas	McNamara	Williams, N.J.
Fong	Metcalf	Williams, Del.
Gore	Miller	Young, Ohio

The PRESIDING OFFICER. A quorum is present.

VISIT TO THE SENATE BY RATU KAMISESE KAPAIWAI TUIMACILAI MARA, OF FIJI

Mr. KEATING. Mr. President, today it is my pleasure to introduce to the Senate Hon. Ratu Kamisese Kapaiwai Tuimacilai Mara, of Fiji, Commissioner of the Eastern Division, and a member of the Legislative Council of the Eastern Constituency.

Ratu Mara, as he prefers to be called, is a graduate of Oxford University and the London School of Economics. He is a member of the Independent Party of his country.

Such a party does not exist in the United States; but in many countries such a party is well known, and is always a party of honor. Although it is

true that at times some of the members of both of the U.S. political parties are accused of being too independent, yet we know that in many countries there is truly an Independent Party. Ratu Mara is an honored member of the Independent Party of Fiji.

He has been a member of the standing finance committee, the fiscal review committee, the Fijian Affairs Board, the Fijian Development Fund Board, the Native Land Trust Board, and the Educational Advisory Council.

He has traveled widely. He is a distinguished representative of his country; and I know that all Senators join in welcoming him to the Senate. [Applause, Senators rising.]

Mr. MAGNUSON. Mr. President, we all join in welcoming our honored guest.

ORDER FOR RECESS UNTIL 10 A.M. TOMORROW

Mr. MANSFIELD. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until 10 o'clock tomorrow morning.

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

RED CHINA MOVES ON AFRICA

Mr. THURMOND. Mr. President, Mr. Anthony Harrigan, the able associate editor of the News and Courier, of Charleston, S.C., and a member of the strategy staff of the American Security Council, has just returned from a visit to Africa, where he studied in detail political developments on that vast continent. In an article published in the American Security Council's "Washington Report" of April 6, 1964, Mr. Harrigan has some very interesting and informative comments and observations on Communist China's efforts to subvert various countries in Africa. The article is entitled "Red China Moves on Africa," and I ask unanimous consent that the article be printed in the RECORD.

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

RED CHINA MOVES ON AFRICA

(By Anthony Harrigan)

The "winds of change" in Africa blow from Peiping these days.' A traveler, returning from Africa, can report that the Chinese Communists pose the greatest long-range threat to the African countries, and that there is mounting evidence that Peiping regards Africa as the new world of the Chinese empire—a vast continent ripe for conquest.

In midwinter Chinese Communist Premier Chou En-lai was in Algeria, outlining his plan for a corridor of revolution across the Sahara Desert. He told Algerian Dictator Ben Bella that his government would build a cross-Saharan road from the Mediterranean down into Mali, Chad, and Niger. "He dreams," wrote Patrick Seal in the (London) Observer, "of reviving the north-south routes across the Sahara as a channel for revolutionary ideas as well as for goods and men." What the Chinese can do is evidenced in Yemen on the Arabian Peninsula where the Peiping Communists have built the Sana-Hodeida road which has since become the lifeline of the Soviet-equipped Egyptian Army in that country. Chou En-lai sees Algeria as a turntable, linking Europe, Africa, and the Arab world.

Meanwhile, in Zanzibar, the Communists are the guiding force behind the government on that strategic island off the East Coast of Africa that is referred to as the Cuba of the African Continent. Foreign Minister Abdul Mohammed Babu is Peiping's man. Before the revolution on the island, Babu served as a correspondent for the New China News Agency. He is a member of the editorial board of the Peiping-oriented Algerian magazine, African Revolution.

Farther south, reports are current that the next Peiping-inspired coup may come in Basutoland, the British protectorate inside South Africa. Informed sources say that the Chinese-allied faction in Basutoland has come into possessions of large sums and that no steps are being taken by the British authorities or the U.S. Central Intelligence Agency to counter the Chinese influence. Danger exists that Basutoland may go the way of Zanzibar, which also was under theoretical British protection.

Chinese Communist moves are not restricted to these activities, however. Peiping is moving ahead at all points on the spectrum of national pressure. For example, there is discussion in Algiers of a deal to supply Communist China with oil from the Saharan fields. And in the Congo, Peiping-trained Pierre Mulele has ravaged portions of Kwili Province with a blend of tribal atavism, Mau-Mau techniques, and Communist guerrilla war methods. The occasion of Kenya's independence celebration in Nairobi also was an occasion for Chinese Communist Foreign Minister Chen Yi to meet with Holden Roberto, head of the terrorist movement in Angola. Within weeks, the Angolan government-in-exile, headed by Roberto, announced that it had decided to accept the help of Communist China in the war in northern Angola. "Only the Communists can give us what we need," he said. When he made this statement, Roberto, according to the New York Times correspondent in Leopoldville, his group already had received "80 tons of arms, including mortars, bazookas, and mines from Algeria and Tunisia."

The day after this arms shipment was made known in the United States, a joint Sino-Albanian statement issued during Chou En-lai's visit to that country was published by the New China News Agency. Concerning the African situation, it read in part as follows:

"Both parties pay warm tribute to the Algerian people * * * and are happy to see that the influence of the banner of anti-imperialist armed struggle held aloft by the Algerian people, more and more African peoples have taken the course of armed struggle. Both parties declare their resolute support for the peoples of Angola, Portuguese Guinea, Mozambique, Zimbabwe, Zambia, Nyasaland, Swaziland, Bechuanaland, and South-West Africa who are fighting heroically for independence and freedom."

This Chinese Communist interest in Africa has deep historical roots of which most Americans are unaware. A study of Chinese history reveals the fact that in the second century before Christ, the Chinese ruler Wang Mang the Usurper recorded that his naval forces received tribute from "Huang Chih," which some orientalists believe refers to Ethiopia. Certainly, Africa was on Chinese maps in the 14th century. The London Tablet recently made the point that between 1417 and 1433 Chinese naval and trading expeditions reached the African coast These Chinese moves into African waters came to an end when the Emporer Cheng T'ung closed down China's shipyards. Thus it seems that in the middle part of the 15th century China narrowly missed the chance of becoming dominent in East Africa and of making itself felt elsewhere on the Dark Continent. Obviously, world history would have been utterly different in these five centuries past had it been China instead of Portugal that gained dominance in East Africa at the end of the 15th century. China might have insinuated itself into the Mediterranean, instead of Portugal—and later the Netherlands, France, and Great Britain—establishing itself on the rim of the Chinese world.

"The surfeit of Han," said the Tablet, "is already beginning to spill out over the rim of Asia. Africa may well seem to them a natural outlet, just as the empty Australian Continent attracts other teeming and underfed Asian multitudes."

One place where the Chinese already have spilled over is the tiny European country of Albania. Elias P. Demetracopoulos, political editor of the Athens Post, recently informed this writer that Greece has determined that there are 5,000 Chinese Communists in this postage stamp size Stalinist country on the Adriatic. The significance of the Chinese presence on the continent of Europe is not always recognized in the United States. It is usually viewed in terms of the ideological contest between the Soviet Union and Communist China. But in the historian's eye, China's role in Albania is something quite different—and the Chinese are a history-minded people even under a Marxist dictatorship. This is the first time since Genghis Khan's epoch that true Asians have made a deep penetration of Europe. And judging by Chinese efforts to establish the closest possible links to Algeria, it is likely that Albania is but the first of a number of beachheads Peiping will establish along the shores of the Mediterranean world in the decade ahead.

The scope of the Chinese Communist grand design for Africa is as enormous as it is little comprehended. Peiping's ambitions and activities range from the Basutoland protectorate to the gates of Europe. Europeans, more than Americans, are beginning to sense the colossal danger of the Chinese advance on Africa and are seeking ways and means of countering it. Africa is Europe's hinterland, and European industry requires the raw materials and markets of Africa. If Communist China were to become the dominant influence on the African Continent, it would be a disaster for Europe—as cripping a blow as the Moslem conquests of the seventh century that paralyzed Europe until the Portuguese broke out around Africa at the end of the 1400's. Whereas the United States possesses great mineral wealth on its own territory, our NATO allies are utterly dependent on materials from abroad, chiefly Africa. For the new African nations themselves, Chinese supremacy on the continent would be thralldom of an especially tragic and ruthless character.

What is needed, many Europeans conclude, is a strong NATO presence in Africa to help the nations of Africa resist Chinese Communist subversion and indirect aggression. Unfortunately, America's airbase system in Africa has been all but completely dismantled. U.S. bombers have been withdrawn from the Moroccan bases built at heavy cost. And Libya recently refused to renew the lease for the American airbase in that country. Meanwhile, new airbases for Mig fighters are under construction in Algeria.

Some signs of returning mindfulness of a security association with Europe are being shown in Africa, however. Reports from Léopoldville tell of an impending Congolese request that Belgium send an airwing to the old Belgian military base of Kamina in the Katanga to help maintain the country's independence. Both Kenya and Tanganyika found it necessary to request British military assistance against mutineers. Ethiopia has asked for and received American military aid against Somalia where the Chinese

Communists have been particularly active. But more formal defense plans seem necessary. One idea under discussion involves the establishment of a NATO fire brigade on Africa that would be able to assist lands threatened by Communist rebellion. It is argued, for example, that it is just as important for NATO to defeat Communist-led rebellion in Angola as it is for the United States to defeat the Communist Vietcong in South Vietnam. Insofar as air strength is concerned, it is said that the Moroccan airbases might be replaced by installations in Spanish Sahara or on Portuguese islands in the Gulf of Guinea, thus building up an African version of the Azores complex.

Wehrkunde, the leading defense journal in West Germany, recently discussed the possibility of creating a South African Treaty Organization (SATO) on the model of the Atlantic pact organization." Such an organization, said the article, would embrace all the countries and territories in the African sub-continent. In line with this, Maj. Patrick Wall, a member of the British Parliament, called for a defensive partition of Africa along the line of the Zambesi River in the southern half of the continent.

Unilateral initiatives are not out of the question, however. For it was precisely this kind of move that was taken by President de Gaulle, of France, when French forces intervened in Gabon in February to oust a rebel faction that had seized control of the government of this African nation associated with the French oversea community. This action was taken without prior consultation with other governments or the United Nations organizations.

Whatever type of defense measures are employed in Africa, it is clear that the nations of Africa cannot escape Communist thralldom unless they are afforded a strong measure of protection by the Western powers. Africans, Europeans and Americans all have a vital interest in thwarting the Communist design for Africa.

BENEDICT ARNOLD'S MARCH TO QUEBEC

Mr. MUSKIE. Mr. President, the march to Quebec, made in 1775 by 1,100 American Revolutionary patriots under the command of Benedict Arnold, is widely recognized as one of the most astounding military feats accomplished in the annals of recorded history. Despite innumerable natural hazards, Arnold's men dragged their boats some 250 miles through the rugged, unexplored area of Maine and Canada to the outskirts of Quebec.

Because of Arnold's later act of treason, early historians played down this significant accomplishment. To them the traitor Arnold could do no right. Ignoring the true facts, they criticized the march and its results. It fell upon a famous Maine author, the late Kenneth Roberts of Kennebunkport, to tell the heroic true story of Arnold's early success. Arnold's march to Quebec became the major theme of Roberts' historical novel, "Arundel." Roberts vividly described the heroism and valor of these early Americans, many of whom died along the way and in the subsequent unsuccessful attack on Quebec. He also severely criticized those American historians who had allowed Arnold's act of treason to color their reporting of his earlier accomplishments.

The Maine State Park Commission has done an outstanding job in preserving the Arnold route as an historic monument. The history of Arnold's march has been thoroughly researched. Several turnout areas along the historic route have been established, complete with illustrated signboards explaining the historical significance of the Arnold march.

I believe that this historic route is worthy of recognition and support by the National Park Service. The historical values of the trail definitely warrant its preservation and development.

To explain the historical significance of the march, I ask unanimous consent that an article by Charles P. Bradford, supervisor of historic sites for the Maine State Parks and Recreation Commission, be included at this point in the RECORD.

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

ARNOLD'S MARCH TO QUEBEC THROUGH THE STATE OF MAINE

(By Charles P. Bradford, supervisor of historic sites, Maine State Parks and Recreation Commission)

On Saturday, October 21, 1775, at "4 o'clock in the morning we were awakened by the freshet which came rushing on us like a torrent, having rose 8 feet perpendicular in 9 hours."

Here, Maine's Dead River, was anything but dead; it was very much alive after 3 days of incessant rain. Here, 5 weeks after leaving Gen. George Washington in Cambridge, Mass., Col. Benedict Arnold was about halfway between the mouth of Maine's Kennebec River and Quebec's Chaudiere.

September 21 Colonel Arnold had been a house guest of Maj. Ruben Colburn in his home overlooking the Kennebec in what was then Gardiner's Town, now Pittston. (Mr. and Mrs. Paul Plumer are the present occupants of this pre-Revolutionary home.)

Maj. Return J. Meigs, in his journal of the previous day wrote: "This day makes 14 only, since the orders were first given for building 200 battoes, collecting provisions for and levying 1,100 men, and marching them to this place, viz, Gardiner's Town, which is great dispatch." Two days later (September 22) his entry was "Embarked on board battoes."

The month between September 21 and October 21 had been spent rowing, poling, pushing, dragging, lifting, and cussing the 200 green bateaux (battoes, batteaus) and all the material for 1,100 men, 105 miles up the Kennebec, 8 miles across the Great Carrying Place, involving 4 carries of about 5 miles and 3 miles rowing across the 3 Carry Ponds, and up the Dead River from 12 to 18 miles.

During this month two-fifths of their provisions (for 45 days) were lost in wrecked bateaux and it would be another month, November 22, before food, other than what they carried, would be found.

They had passed Pownalborough, "Where there is a courthouse and gaol" now owned by the Lincoln County Cultural and Historical Society who have restored it and opened it for public use. Forts Western and Halifax were passed. The latter is believed to be the oldest original wood blockhouse in America. The hand-hewn timbered structure, fastened together with wooden dowels, is typical of fortifications built for the Indian wars.

The high falls at Skowhegan (Scohegin, Schouhegan, Sou-heauyon) were passed and "To Norridgewock, which is 12 miles," according to Dearborn, "where there are two or three families (and) is to be seen the ruins of an Indian town, also a fort, a chapel, and a large tract of clear land.

This is where Father Sebastion Rasle spent the last 30 years of his life with his Abnaki friends. His teachings, begun in 1698, are considered by some to be the first school in Maine.

Colonel Arnold reached the Great Carrying Place on the Kennebec on October 11. Here began the terrific task of man hauling everything for 5 miles over four carries to the Dead River. In his diary, October 12, "This day employed Captain Goodrichs company in building a Logg House on the 2d Carry Place to accommodate our sick, 8 or 10 in number who we are obliged to leave behind."

The 8-foot rise of the Dead River forced Arnold to move; however, "very luckily for us we had a small hill to retreat to." Added to the flood, some of the men had taken the wrong fork of the Dead River at Stratton; "here we had the misfortune of oversetting seven battoes and loosing all the provisions"; some men were sick and some discouraged.

On the 23d "as our provisions are but short and no intelligence from Canada, I (Arnold) ordered a council of war summoned of such officers as were present."

In Cambridge, Mass., Washington and his staff had selected 34-year-old Benedict Arnold who had been a leader with Ethan Allen in capturing Fort Ticonderoga, with full knowledge that, if this expedition was to stand any chance of success the right leader must be chosen.

"Our commander," wrote 17-year-old John Joseph Henry, "was of a remarkable character. He was brave, was believed by the soldiers, perhaps for that quality only; he possessed great powers of persuasion." He was "a short handsome man, stoutly made."

A leader with vision, courage, and an abundance of leadership was needed now, to determine whether or not to proceed, and if so with how many men. Dr. Isaac Senter describes the scene, "The question being put whether all to return, or only part, the majority were for part only returning." "According to Colonel Arnold's recommendation the invalids were allowed to return, as also the timorous."

To Colonel Enos, Arnold wrote from here: "We have had a council of war last night, when it was thought best, and ordered to send back all the sick and feeble with 3 day's provisions, and directions for you to furnish them until they can reach the commissary or Norridgewock; and that on receipt of this you should proceed with as many of the best men of your division as you can furnish with 15 days' provisions; and that the remainder, whether sick or well, should be immediately sent back to the commissary to whom I wrote to take all possible care of them. I make no doubt you will join with me in this matter as it may be the means of preserving the detachment, and of executing our plan without running any great hazard, as 15 days will doubtless bring us to Canada."

As we know, Colonel Enos did not advance, but returned with the sick and timorous. Naturally such action was misunderstood and only later may be impassionately judged.

Be that as it may, the decision was to advance. "Captain Hanchet with 50 men set out early for Chaudiere (Shadear) Pond in order to forward on provisions from the French inhabitants of Sortigan for the use of the Army."

Between here and Chaudiere Pond was the Chain of Ponds surrounded by "prodigious high mountains" (the boundary mountains). Beyond these lay another Carrying Place which took them from Kennebec to Chaudiere drainage and which proved to be one of the most discouraging hardships of the march.

It was here that Dearborn, who later was to serve twice as Marshal of Maine, two terms in Congress and Jefferson's Secretary of War (when he built Fort Edgecomb) received the news of Colonel Enos' retreat.

This was "a very unhappy circumstance" * * * "which disheartened and discouraged our men very much. We could be in no worse situation if we proceeded." Only a few days later, Dearborn wrote, "We started very early this morning; I am still more unwell than I was yesterday." That could not have been questioned, as they floundered, lost and hungry "through a swamp above 6 miles, which was pane glass thick frozen, besides the mud being half leg deep; got into an Alder swamp" (quoted from Thayer's Journal). On October 30 Topsham wrote: "Came to a river where we was obliged to strip and wade through the river it being waist high and very cold." Three days later he wrote "it is an astonishing thing to see almost every man without any sustenance but cold water which is much more weakening than strengthening—I have now been 48 hours without victuals."

Once in Chaudiere waters the muscular execution of moving the bateaux was over, but their troubles were not. The river grew more rapid and was filled with stones. Great falls were encountered. Some of the bateaux that had been man hauled and nursed through all the hardships had to be abandoned. More of the all too scanty material and provisions were lost.

On November 3, Meigs entered in his journal that "At 12 o'clock we met provisions, to the inexpressible joy of our soldiers, who were near starving." The following day "At 11 o'clock arrived at a French house, and were hospitably used. This is the first house I saw for 31 days. It lies 25 leagues from Quebec."

Opposite Quebec the men waited. On December 1, General Montgomery arrived from Montreal. It was New Year's Eve before the all-out assault was made.

It was another case of too little too late. Some historians believe that if Arnold had attacked immediately the element of surprise might have outweighed the gains of caution. However, after the terrible hardships of the past 2 months Arnold found it impracticable to attack.

The attack was made, as we know, on December 31 and it was unsuccessful. Colonel Arnold was wounded in his leg and all were captured. New Year's Day was not one for rejoicing for the Colonial troops, although all were well treated by their British captors.

History is to record the lives of many of Arnold's men, but it was Arnold's leadership that got the men to Quebec. Though he failed in his mission, Charles Knight, in his "History of England" wrote, "Arnold displayed more real military genius and inspiration than all the generals put together, on both sides."

Through Maine, marched this ill equipped, poorly clothed and starving army in search of freedom. Their leader was, of necessity, "stoutly made."

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. ROBERTSON obtained the floor.

Mr. HARTKE. Mr. President, before the Senator from Virginia begins to speak, I should like the RECORD to show that the Senator from Indiana will listen very attentively to the Senator's statement.

Mr. ROBERTSON. We are always pleased to have an attentive audience. I shall speak today about jury trials. I believe jury trials are still esteemed in Indiana, but we shall find out.

Mr. President, the distinguished junior Senator from Florida paid me a high honor when he had printed in the CONGRESSIONAL RECORD of Monday, April 6, at page 7030 the speech that I made the previous Saturday at the annual meeting of the Florida Bankers Association, which, incidentally, is one of the largest and most active bankers associations in the Nation.

In connection with my prepared references to the civil rights bill, I said extemporaneously at that time that the compulsory approach of a civil rights bill was contrary to the Christian philosophy of brotherly love and cited as an illustration of a correct approach the attitude of the immortal Stonewall Jackson to the subject of slavery.

Stonewall Jackson was born and reared in a simple home in an area of Virginia, known in the Revolutionary period as West Augusta, which extended throughout West Virginia and Kentucky to the Mississippi River. That section of Virginia was settled primarily by Scotch-Irish immigrants of the Presbyterian faith who had come to Virginia in search of religious, political, and economic freedom. They had no slaves and they were bitterly opposed to slavery. In 1860 in that section of Virginia, which later became the State of West Virginia, there was solid support for Gov. John Letcher of Lexington whose major platform was "Save the Union."

Needless to say, Maj. Thomas J. Jackson, a professor of military science and tactics at the Virginia Military Institute in 1860, voted for Letcher for Governor. In addition to being a great soldier with a splendid record in the Mexican War, Jackson was a very religious man. He believed that the immortal soul of every man was precious in the sight of God and so he organized and taught a Sunday school class of slaves in the First Presbyterian Church of Lexington. But, in the spring of 1861 when Lincoln called for volunteers to apply military power without any constitutional authority to South Carolina and other seceding States, Virginia seceded from the Union. Virginia loved the Union because Virginia had done more than any one State to create it. Thomas J. Jackson loved the Union, but his first allegiance was to Virginia and the protection of States rights which Lincoln's call for volunteers had violated. And, so Jackson offered his services to the Confederacy and organized what later became the most famous unit in the Confederate Army—the Stonewall Brigade.

A Lexington slave who had been a member of his Sunday school class, volunteered to be Jackson's body servant during the war. That slave used to tell friends with pride:

> The general prays every night before he goes to bed; the general prays every morning before he eats breakfast, but when the general gets up in the middle of the night and prays, I know that hell is going to break loose the next day.

That slave was beside his master as the then famous Stonewall Jackson lay dying of pneumonia in the little farmhouse at Guinea Station; that slave heard General Jackson, just before an angel wafted his immortal spirit beyond the pearly parapet of paradise, murmur in his delirium:

> Let us cross over the river and rest in the shade of the trees.

That slave accompanied the body of Jackson to Lexington, which was to become his final resting place. Within 6 months after the burial of Jackson that slave was dead. The local doctor who attended him said he could find no evidence of any disease, and the conclusion was inescapable that the slave had died of a broken heart.

Last Monday, in his outstanding speech on title VII of the civil rights bill, the distinguished Senator from Florida [Mr. HOLLAND] quoted a news item from Birmingham, Ala., printed in the Washington Evening Star entitled "Graham's Alabama Rally Hailed for Integration." A white minister of Alabama was quoted in the article as saying:

> After waiting some 15 years for such a visitation as Billy Graham and his team, I am moved almost beyond expression to the outpouring of confidence in our fellow man as seen today.

Mr. President, notwithstanding the fact that a few ministers in Virginia, who unfortunately know neither the provisions nor the implications of the pending civil rights bill, have urged me to vote for that bill and against all ameliorating amendments, the rank and file of the thinking people of Virginia—and I frankly believe throughout the Nation—share the sentiments concerning the approach to the elimination of racial discriminations that were expressed in a letter to me by a religious and well-informed Lexington woman. This is what she wrote:

> When President Kennedy was living, he saw one day the world famous evangelist, Dr. Billy Graham, among a group of his friends.
>
> Mr. Kennedy made this comment to one of the best known newsmen of the Nation, "there goes the greatest man in the world today."
>
> Dr. Graham has just held a great crusade in a large industrial city. He advertised it beforehand as an integrated crusade, and he spoke to many thousands of white people and Negroes seated together in a vast auditorium. The power of God was upon him and upon his audience. The city was Birmingham, Ala.
>
> Last Sunday, April 5, Dr. Graham spoke on a worldwide hookup from his headquarters at the World's Fair in New York where his Christian messages and Christian films will be seen and heard by millions of people.
>
> This is what Dr. Graham said last Sunday from New York:
>
> "The racial question in America will never be solved by either street demonstrations or legislation. The burden of responsibility does not rest upon the white citizens of this Nation any more than it rests upon the Negro citizens.
>
> "There is absolutely no solution for such human relations unless both sides are willing to meet this problem with Christian love. It

can be accomplished in no other way. It is no more right for the majority to be deprived of civil liberties by force than it is for the minority.

"Only a spirit of humanity and a turning back to God in true repentance for sin will save America from the strife, recriminations and trumped up hatreds which threaten our very existence at this hour. I say to you, 'America must repent and fall on her knees before God if we are to be spared the judgment which has overtaken every nation which has lived in open defiance of His laws.' "

I should like to add that the recriminations and much talked of hatreds and vague injustices we hear so much about are trumped up by the Communists, who have paid agents at work to see that strife is stirred up in order to bring about the downfall of America without their having to fire a shot.

Satanic forces are at work to delude even the most wary among us. I do not impugn the motives of some who are proponents of this bill, but the road to hell is paved with good intentions, and some have been badly deluded.

Let me say finally that those Members of the Senate who are deliberately tampering with the security of this Nation by destroying the inalienable rights of the majority of its people in order to give—without one vestige of authority to do so—special privileges to the minority for political advantage, will live to see destruction in America such as we cannot imagine in our wildest flights of fancy.

Once Pandora's box is opened it will then be too late. Let no man, or department, who calls this grab for dictatorial power, fair or innocuous, tell you otherwise.

When pandemonium and lawlessness break forth—after the mischief is done—I daresay that the so-called do-gooders in the land, who may be sincere but blissfully ignorant of the far-reaching consequences of the mischief they are stirring up, will be the first to scream that Congress is to blame for their plight.

In the bill to which that good lady referred is title VII which makes all discriminations in employment because of race, color, sex or religion, a crime. Without even defining the word "discrimination" in order that he who has been charged with crime may know what he can, and what he cannot, legally do, the bill denies to him the right of trial by jury. Since when has the denial to a defendant in a criminal case of the right of a trial by jury become so great a moral issue that it must be discussed from the pulpits of our land to the exclusion of the words of our Saviour, "My kingdom is not of this world"?

AMENDMENT NO. 477

Mr. President, I send to the desk, and ask that it be read, an amendment to title VII of the bill which will guarantee to every defendant charged with a criminal offense his constitutional right of a trial by jury, except in those instances in which the offense has been committed in the presence of a trial judge.

The PRESIDING OFFICER. The amendment will be read.

The amendment was read, as follows:

On page 43, between lines 10 and 11, insert the following new paragraph:

"(i) In any proceeding for criminal contempt arising under this title, the accused, upon demand therefor, shall be entitled to a trial before a jury, which shall conform as near as may be to the practice in other criminal cases, except that this provision shall not (1) apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice nor to the misbehavior, misconduct, or disobedience, of any officer of the court in respect to the writs, orders, or process of the court, or (2) be construed to deprive courts of their power, by civil contempt proceedings, without a jury, to secure compliance with or to prevent obstruction of, as distinguished from punishment for violations of, any lawful writ, process, order, rule, decree, or command of the court in accordance with the prevailing usages of law and equity, including the power of detention."

On page 43, line 12, strike out "(a)".

On page 43, beginning with line 19, strike out all through line 7 on page 44.

The PRESIDING OFFICER. The amendment will be received and printed, and will lie on the table.

Mr. HUMPHREY. Mr. President, will the Senator from Virginia yield for a question?

Mr. ROBERTSON. I yield.

Mr. HUMPHREY. I understand that the Senator's amendment has been sent to the desk solely for the purpose of the information of the Senate. I further understand that the Senator from Virginia does not now call up the amendment, for the purpose of debate on it. Is that correct?

Mr. ROBERTSON. That is correct.

Mr. HUMPHREY. Is it the intention of the Senator from Virginia to call up the amendment later on, for debate?

Mr. ROBERTSON. Absolutely so; because in the past we have had before us the question of jury trials in criminal cases; by means of the pending bill, Congress would be creating new criminal offenses. If that part of the bill had frankly been labeled as such, there would be no question but that it would come under the general provisions of the Constitution which provide for jury trials. But since, under the bill, such proceedings would be held before judges only, without the presence of a jury, I am convinced that the adoption of this amendment is necessary.

This part of the bill relates to a situation arising under the old common law which the people of our country inherited at the time when the colonists came to America. In short, in so-called chancery cases, which were civil cases, if a man committed contempt of court, the court would fine him, and there was no requirement for a jury trial.

However, that has been an exception to the general rule which has come down through the centuries, beginning with Magna Carta, and continuing to the present time; and at present the law requires that there may be a jury trial in any case which involves more than a certain amount of money. That is why I have sent the amendment forward. At this time I propose to discuss the history of jury trials and the importance of preserving that very important and highly cherished right.

Mr. HUMPHREY. I thank the Senator from Virginia for his explanation of his purpose. I know his amendment will be one of the very interesting developments in the debate, because, of course, this issue is of great interest to all Members of the Senate. So I hope the Senator from Virginia will permit the Senate to proceed in a short time to vote on the amendments. Certainly that is the legislative process.

Therefore, I encourage the Senator from Virginia to proceed—after proper and due consideration of his amendment—to call it up for action by the Senate on it.

I know the Senator from Virginia will give a brilliant defense of the amendment; and those on our side will be able, for our part, to assign to the other side of the issue a Senator who will present the case in opposition to the amendment. I trust that we shall be able to assign to that task one of the most intellectually able Members of the Senate, for the ability of the Senator from Virginia is such that only an outstandingly able opponent would suffice.

Mr. ROBERTSON. I thank the Senator from Minnesota. I cannot claim that my support of the amendment will be brilliant, but at least it will be extended; and at a subsequent time I should like to take approximately 3 or 4 hours to discuss the principle involved. Furthermore, nothing would please me more than to have an early vote taken on the amendment.

I emphasize that our great, late President Kennedy did not send this title VII to us. But if there is any part of the bill that will cause quite a few eyebrows throughout the country to be raised, certainly that will happen when it becomes known that this title VII is included in the bill. Title VII was supposed, by some, to be a gun aimed only at the South.

However, the Senator from Minnesota may be surprised to find how widespread will be the reaction in opposition to title VII. For example, when I was in Miami, to address the Florida Bankers Association, I was approached by one of the most prominent and successful Jews in that part of the country. He is worried sick over title VII. He has made a fortune, but in his business he does not employ even one gentile or one Negro. He said, "I could not operate with gentiles or Negroes among my employees, for gentiles and Negroes do not know my method of doing business."

I replied by saying, "I do not know what the percentage of Jews here is; but under this part of the bill you could be required to have a certain percentage of gentiles and Negroes among the employees in your business, once title VII was enacted into law."

He replied, "Then I had better sell out right now."

Mr. HUMPHREY. Can the Senator from Virginia inform us whether that would be a good opportunity for a bargain, to be taken advantage of? [Laughter.]

Mr. ROBERTSON. At any rate, that prominent businessman is very greatly disturbed and discouraged.

Mr. HUMPHREY. But I feel sure that the Senator from Virginia is not going to suggest or intimate that under this title of the bill there would be such a thing as a quota or a required percentage.

Mr. ROBERTSON. Not only am I going to intimate it, I am going to charge it; and I am also going to point it out in detail.

Mr. HUMPHREY. Does the Senator from Virginia say that clearly would be required by this part of the bill?

Mr. ROBERTSON. I told that businessman it would be possible, and if it would be possible, such a provision should not be included.

Mr. HUMPHREY. But can the Senator from Virginia point out in title VII any section or subsection or provision that would indicate that in connection with the elimination of segregation in employment based on color, race, religion, or national origin, an employer would be required to hire any member of a certain ethnic group?

Mr. ROBERTSON. Again I ask, What is the meaning of "discrimination"?

In the Motorola case, in Illinois, the company did not employ a certain percentage of Negroes. The applicant for employment was told that he did not qualify. He had been asked to take the simplest sort of test, which included two or three questions, one of which was to state a synonym for the words "small fellow." There were several optional answers, one of which was "a little boy." But the applicant could not answer that question.

Consider the problem which this title would cause a businessman. For example, I have a friend who employs approximately 100 truckdrivers. Every one of them is colored. He says he would rather employ colored truckdrivers than white truckdrivers—every time. He is in the millwork business. He says that for his business, colored truckdrivers suit him better.

Does not the Senator think that some white man could say, "I am just as good a truckdriver as those colored fellows; I live in Richmond; I am out of a job; I applied for a job; they didn't give it to me"? How can the owner of that business defend himself against a charge that he has not discriminated against a white man?

Or suppose all white men are concerned. A businessman might say, "I just like them better. They fit into my scheme of things. They know how I do business. I know I can trust them. I would rather not have a Jew or a Negro, or whoever is making the complaint."

What does "discrimination" mean? If it means what I think it does, and which it could mean, it means that a man could be required to have a quota or he would be discriminating. The question comes down to what is meant by "discrimination" and the framers of the bill will not tell us.

In the debate in the House it was frankly admitted that quotas were possible under the vague definition of what is "discrimination."

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

Mr. ROBERTSON. I yield.

Mr. HUMPHREY. Can the Senator point out any place in the language of the bill that calls for quotas or a percentage of employees based upon race, creed, color, or national origin? The Senator can say, "Yes," but what is "discrimination"? It is like my asking the Senator about atomic energy, and he replies, "Yes, but how about ice cream cones?" Really, it is a non sequitur. The Senator is a man of logic and reason. I ask him a simple question. We will get around to a definition of "discrimination." But what about percentages and quotas?

Mr. ROBERTSON. The bill has been framed by some very clever lawyers. They were so clever that they even fooled my distinguished friend from Minnesota. When I spoke about title VI, I had in mind the Senate bill, which covered insurance contracts. My friend, the Senator from Minnesota said, "Oh, no, look at section 602. They took the insurance and the contract provisions out." I looked, and they had taken them out.

Mr. HUMPHREY. Right. How good the Senator from Minnesota was.

Mr. ROBERTSON. Yes, but the Senator from Minnesota was advised by counsel to take a new look. What did he say on the next go around? He said, "Yes, we took them out of the bill, but section 601 applies to the power of the President to enforce his housing orders, and that would include the President's open housing orders and Dr. Weaver claims the President has similar authority over all the insurance contracts which includes FHA.

Yes. We think the provision is under this shell that we lift. Where is it? We do not see it. But look at the President's housing orders. The Senator from Minnesota came back, and when he again discussed it, he amended his hold by saying, "But do not forget, we have not repealed the President's housing orders. Section 601 is congressional authority to enforce discrimination in public housing. The President has issued his open housing order."

Dr. Weaver has claimed that he has as much authority to apply it to insured funds in the banks that lend as he has to FHA, Veterans loans, and activities of that kind.

The Senator from Alabama [Mr. SPARKMAN] said—and I do not know but what he is right—that we cannot have it both ways.

Mr. HUMPHREY. The Senator is so correct.

Mr. ROBERTSON. Just a minute. The Senator from Alabama [Mr. SPARKMAN] said that taking out the insurance contracts from section 602 would repeal the President's authority to include them. There is another vague provision. I shall speak about 4 hours on that subject later on. I think I shall join with the Senator from Alabama [Mr. SPARKMAN] and take the position that the distinguished Senator from Minnesota first took.

Mr. HUMPHREY. And still does take.

Mr. ROBERTSON. They are all out.

Mr. HUMPHREY. And may I say to the Senator——

Mr. ROBERTSON. The Senator still takes the view that the President cannot issue an order about open housing or an order which would affect banks and insurance companies?

Mr. HUMPHREY. Where there is insurance, and where there are guarantees, that is excluded under section 602.

Mr. ROBERTSON. Let us get the point understood——

Mr. HUMPHREY. Let us not chase rabbits. Let us get back to the bearhunt for a while.

Mr. ROBERTSON. I want to get this point definite. The president of the American Bankers Association said to the bankers of Florida last Saturday morning that he had been definitely advised—and I think he quoted the Senator from Minnesota—that the bankers were out.

Mr. HUMPHREY. Correct.

Mr. ROBERTSON. Then the President cannot enforce his open housing order——

Mr. HUMPHREY. Wait a minute, now, Senator.

Mr. ROBERTSON. The Senator is bringing them back in. Is that correct?

Mr. HUMPHREY. Hold on a minute. The President's open housing order applies to direct loans on the part of the Government.

Mr. ROBERTSON. At the present time.

Mr. HUMPHREY. That is correct. Section 602 makes it so that the insured and the guaranteed operations of the Government, like the Federal Deposit Insurance Corporation and the FHA, shall not be included. Correct? Does the Senator agree to that?

Mr. ROBERTSON. Dr. Weaver has repeatedly said that the President has as much right to apply his open housing rules to banks and savings and loan associations as he does to FHA and other Government insurance, that the Government insures them, and the Government by that operation would get control of them. It is the policy of the Government not to discriminate; to refuse to have open housing is a discrimination. The President had the authority to act. I have always denied that he had such authority. But if section 601 applies, he could then legally apply this section to open housing for urban renewal, FHA, and direct Government loans. Then, according to Dr. Weaver, the noose would be around our necks, and the banks and savings and loan associations would later be brought in full fledged.

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

Mr. ROBERTSON. I yield.

Mr. HUMPHREY. The Senator makes such a persuasive case for his concern about what Dr. Weaver is alleged to have said as to convince not only me, but also he is apt to convince the majority of the Senate, and he will build a legislative history which will run contrary to what I am sure is his ultimate purpose.

Mr. ROBERTSON. My ultimate purpose is to kill the bill.

Mr. HUMPHREY. Ah, the Senator is a frank and honest man.

Mr. ROBERTSON. Yes.

Mr. HUMPHREY. I wish to say to the Senator that he is doing well. There are many ways to kill. One is by the sudden stroke; the other is through the process of attrition.

The Senator from Virginia has made his choice, and I believe in freedom of choice. In this instance it seems to be attrition. But I wish to say to the good Senator from Virginia that were it not for the exemption or the limitation in section 602, there is no doubt but what the full power and authority of the Government could be exercised. But with the limitation in section 602, the guarantees and the insurance operations of the Government such as FDIC and such as FHA separate from urban renewal, which is a grant proposition; separate from public housing, which is a grant proposition; and separate from the veterans housing, which a direct Government loan proposition—the limitations of section 602 apply.

I would hope that the Senator would agree with me so that he can build a good solid base of legislative history.

Having helped the Senator relieve himself from his fears and concern over section 601 and section 602 of title VII, may I say to the Senator that the question which I put to him before was as follows: Where does the Senator find in the bill—H.R. 7152—which is the pending business before the Senate, under title VII, which starts on page 7 and runs into page 50——

Mr. ROBERTSON. Over half the bill is in title VII. We sat up all night attempting to understand it.

Mr. HUMPHREY. The reason for its length is so that the title could clearly state the exact procedures to be followed and so that the worries and concern of the able and distinguished Senator from Virginia would not materialize. One of the things that I had hoped our friends in the House of Representatives would do was to relieve any Senator from undue anxiety, worry, pain, or tension that might come from uncertain language in title VII.

Mr. ROBERTSON. The distinguished Senator from Illinois [Mr. DIRKSEN] said, "Let us not make that section effective for 2 years."

The Senator from Minnesota says, "Do not let us make it effective until after the November election." If we are going to do that, why not put that section off for 2 years, let the people find out what is in it, and let the Congress have another opportunity to decide whether it should pass it?

Mr. HUMPHREY. The Senator from Virginia is off on a rabbit hunt again, and I am not going to follow him through the sagebrush. But I would like to make an offer to him. If the Senator can find in title VII—which starts on page 27, line 21, and goes all the way through page 50, line 25—any language which provides that an employer will have to hire on the basis of percentage or quota related to color, race, religion, or national origin, I will start eating the pages one after another, because it is not in there.

Mr. ROBERTSON. Do not start eating the pages, because the first example will be the wage and hour law. Where is there any provision that a simple sawmill operator in Virginia who makes planks and puts one in a bridge across the North River, near where I live, and someone from another State rides over it, the bridge is in interstate commerce and the sawmill operator is subject to the commerce clause of the Constitution? Where do we find that in the Constitution? Where do we find in the Constitution the holding of the court in Brown against Board of Education that the 14th amendment requires desegregation in public schools? It may be found in the writing of the Socialist from Sweden, but he says the Constitution is outmoded and ought to be thrown in the ashcan. He says, "Get rid of the Constitution and then desegregate the country's schools." But where do we find it in the Constitution? Yet it is proposed to write some vague language in this title VII and the Senator asks, "Where do you find quotas in it?" I find it in the possible ruling of a bureaucrat and then confirmed by a court that does not operate in a way that I approve.

Mr. HUMPHREY. Mr. President, I enjoy these debates, because I know when I engage in them with the Senator from Virginia, he becomes more eloquent, moving, and persuasive every moment. There is no one else with whom I would rather discuss these complex matters, because, somehow or other, we end by making them more difficult and more complex.

Mr. ROBERTSON. Mr. President, a newspaperman who was writing an article about the Senator from Minnesota asked me about how the Senator from Minnesota would run in second place in Virginia. I said, "Better than some."

Mr. HUMPHREY. With that, I have no more questions of the Senator from Virginia.

I should like to respond to the Senator from Virginia, with reference to the plank that was put on a bridge—over what river was it?

Mr. ROBERTSON. I said the North River, but it could be any other river. The North River runs into the great James River. Does the Senator know about the James River?

Mr. HUMPHREY. Yes.

Mr. ROBERTSON. Daniel Webster mentioned it at the laying of the cornerstone at Bunker Hill. Has the Senator ever seen the monument to Daniel Webster in Statuary Hall?

Mr. HUMPHREY. I have.

Mr. ROBERTSON. One foot is forward, and one hand is up like this.

Mr. HUMPHREY. Yes.

Mr. ROBERTSON. He was fishing for trout in a stream in Maine. The guide said he suddenly stopped, put one foot forward and his hand up like that, and said, "Venerable sirs, you have come down to us from a previous generation." They were veterans of the Revolutionary War which ended 50 years before the Bunker Hill Monument was dedicated.

Referring to the James River, Webster said, "As long as the James flows by Jamestown, as long as the Atlantic washes Plymouth Rock, no vigor of youth, nor maturity of manhood will cause our Nation to forget those early spots that cradled and defended the infancy of our Republic."

In 1618, there was a representative government at Jamestown, and every defendant in a criminal case was entitled to a jury trial.

I would go back a little ahead of that, but it is in my prepared speech.

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

Mr. ROBERTSON. I yield.

Mr. HUMPHREY. I say to the Senator that I literally weep when I reflect upon the superlative talents of the great Senator, and the vast fund of knowledge, possessed by this living encyclopedia of information, particularly about the great history of our country, and realize that he is on the side of the opposition. It breaks my heart. My tears could bring the North River to floodtide when I think of it. How wonderful it would be if the talents, brilliance, and great knowledge of the Senator from Virginia could be placed upon the scales on the side of the Civil Rights Act, on the side of social justice, on the side of full equality. Then the Senator from Minnesota could relax and rest, the battle would be won, the Senate would be happy, and we could get on with the public business.

Mr. ROBERTSON. I can return the compliment, because if we had in opposition to the bill strong speakers like the Senator from Minnesota [Mr. HUMPHREY] and the Senator from Oregon [Mr. MORSE], it would be cloture or nothing.

Mr. HUMPHREY. I invite the Senator to begin his speech.

INJUNCTIONS—CONTEMPT PROCEEDINGS—JURY TRIALS

Mr. ROBERTSON. Mr. President, on March 23 I gave the Senate my reasons for thinking the administration proposal for a junior FEPC designed and framed so as to develop rapidly into a full-scale FEPC, would be unconstitutional, unwise, and unworkable.

I should like today to turn my attention to the broad subject of injunctions, contempt proceedings, and jury trials. I should like, in my discussion of the subject, to have the support and sympathy of the so-called civil rights supporters, for there are no civil rights more vital to our free and democratic way of life than those embodied in the fifth and sixth amendments. The protection of a grand jury, the protection against double jeopardy, the privilege against self-incrimination, and, broadest of all, the prohibition against the Government depriving a person of life, liberty, or property without due process of law, are set forth in the fifth amendment. And the sixth amendment provides to a person accused in a criminal prosecution the right to a speedy and public trial, by an impartial jury of his neighbors, the right to a statement of the charges against him, the right to confrontation and cross-examination of the adverse witnesses, and the right to counsel and to have process to bring in his own witnesses.

These were hard-won rights of Englishmen, repeatedly taken away by arbitrary rules and repeatedly won again. They were brought to this country by the earliest colonists, and fought over again and again during colonial days. The Declaration of Independence spelled

out the denial of these rights by George III, and they were written into the Bill of Rights by the First Congress and the States.

These rights were not written into the Constitution in order to promote efficiency and speed in prosecuting defendants. Everyone recognized then, as they should now, that these rights were written into the Constitution in order to protect individual citizens against oppression by the Federal Government. The framers of the Constitution knew their history and their law. They knew that the star chamber was a speedy and efficient device to work the will of the Crown. They knew that Judge Jeffreys convicted more defendants more rapidly than any Federal court could do under the fifth and sixth amendments. And we know that the will of Mussolini, Hitler, and the Kremlin could be worked and can be worked more efficiently without the protection of these time-honored rights.

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

Mr. ROBERTSON. I yield.

Mr. HILL. Do not the history of the country and the record of the debate at the Constitutional Convention at Philadelphia, and the record of the debate in the various State conventions which were called to ratify the Constitution, which was ratified at the Constitutional Convention, show unequivocally that if those rights had not been agreed to and written into the Constitution, there would have been no Constitution?

Mr. ROBERTSON. Absolutely; there would have been no Constitution. The founders put the provision about jury trial in one place in the Constitution, and then said, "Let us put it in again"; and they put it in the Bill of Rights. The Constitution would not have been ratified unless that provision had been put in there so clearly that nobody could question it. It is one of the cherished rights that go with what we call American constitutional liberty.

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

Mr. ROBERTSON. I yield.

Mr. HILL. Is it not true that what we call the Bill of Rights in the Constitution was the Bill of Rights of Virginia, originally written by George Mason of Virgina?

Mr. ROBERTSON. That is true. Nineteen days after it was ratified in Williamsburg, Jefferson proposed the Declaration of Independence. He paraphrased what had been done there, but added a few other things to that Declaration.

Mr. HILL. Is it not also true that Woodrow Wilson stated that he would much rather have written the Virginia Bill of Rights of George Mason than any other document penned by the hand of man?

Mr. ROBERTSON. That is true. Next to Thomas Jefferson, I regard Woodrow Wilson as the most erudite and scholarly President we ever had. He was a great political philosopher. It is unfortunate that his health, and to some extent his career, was ruined over the League of Nations, which got beyond his control when the "little band of willful men" wrecked America's interest in the League of Nations. In any event, Woodrow Wilson was a great man. Certainly, as the Senator has pointed out, he would like to have written George Mason's Bill of Rights.

Several years ago, I made a speech on the Virginia Bill of Rights, and I stated at that time that I believed George Mason was possibly one of the ablest men in America during that period of its history, and that I believed he had not been accorded the recognition he deserved. As Senators know, he refused high public office. He loved his family more. He had 6 children, and when his wife died, he was so devoted to his children that he refused to leave them.

In those horse and buggy days, even a trip from Gunston Hall to Williamsburg, Va., took several days; and once arrived, it was not possible to return home every Saturday evening as we can do today. George Mason sacrificed his political career for the sake of his children. He was a noble character and a very able man.

Mr. President, efficiency is not the sole aim of government, or the principal aim of government. The aims of our Government, as set forth in, and developed under, our Constitution, must be accomplished and achieved without doing violence to those provisions of the Constitution which protect the individual citizen from oppression by the Federal Government.

All constitutional rights are important and all must be considered and weighed together. We must not destroy one set of constitutional rights in order to further another set. Some reason, some balance, must be maintained.

Under the existing statute, a cause of action for damages is given to a person who has been injured or deprived of having or exercising his rights as a citizen by a conspiracy to prevent an officer from carrying out his duties, by a conspiracy to interfere with judicial processes in one way or another, by a conspiracy to go on the highway or on the property of another to deprive another of the equal protection of the laws, or by a conspiracy to prevent a voter from supporting his candidates for Presidential electors or Congressman.

Section 1985 of title 42, United States Code, reads as follows:

CONSPIRACY TO INTERFERE WITH CIVIL RIGHTS

(1) Preventing officer from performing duties: If two or more persons in any State or territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

(2) Obstructing justice; intimidating party, witness, or juror: If two or more persons in any State or territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws.

At this point, I should like to invite the attention of the Senate to a number of recent cases, one of which is pending in New York where a grand jury was prevented from making an indictment, another where a man was recently convicted of tampering with the jury, and yet another case of jury tampering now under consideration—if it has not already been decided by this time. So there are fundamental principles of law, which involve the protection of a jury.

(3) Depriving persons of rights or privileges: If two or more persons in any State or territory conspire to go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or territory from giving or securing to all persons within such State or territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators (R.S. sec. 1980).

Let us now note the provisions of the Constitution which refer to jury trials in criminal cases, and then in civil.

Mr. President, I read the comprehensive section which protects the voting rights of all citizens, but there are those who do not wish to go through the procedures of a jury trial, because they believe it takes too much time, is tedious and too slow, or for other reasons. They look for a quick and easy way to go before a judge. There is even a provision in the bill to provide that if those who are prosecuting do not like a certain district judge before whom they must go, they

can go anywhere else in that circuit and bring in two or more judges favorable to them, and in that way have a better opportunity to get the decision they would like to have.

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

Mr. ROBERTSON. I am glad to yield.

Mr. McCLELLAN. I read somewhere—I do not know whether it was in the latest Supreme Court decision or some comment, but one of the reasons for such a ruling, obviously, was that the courts did not feel they could trust jurors to protect them from contempt. Has the Senator observed that statement anywhere?

Mr. ROBERTSON. I had not seen that.

Mr. McCLELLAN. I wonder whether our courts have lost confidence in the jury system, or feel that they cannot trust juries to try persons for acts which might be regarded as criminal with respect to their conduct toward a court.

Mr. ROBERTSON. I have never heard of any court that was not willing to do it. The amendment I have submitted would give any court the right of summary punishment for contempt committed in its presence.

Mr. McCLELLAN. Courts have just as much reason, if not more reason, to have confidence in the people of this country, and in the pledge of our citizens to do equity and justice in a jury verdict, as the people have a right to have confidence in the courts.

Mr. ROBERTSON. What the Senator has said may be called a soft impeachment, which I would not challenge.

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

Mr. ROBERTSON. I yield.

Mr. HILL. Speaking of jury trials, I am sure the Senator recalls that 4 years ago last September, on September 14, 1959, Congress enacted what we know as the Landrum-Griffith Act. This is an act to provide for the reporting and disclosure of certain financial transactions and administrative practices of labor organizations and employers, to prevent abuses in the administration of trusteeships by labor organizations, and to provide standards with respect to the election of officers of labor organizations.

The Senator will note that title I of that act is captioned "Bill of Rights of Members of Labor Organizations."

Section 608 of the act, captioned "Criminal Contempt" reads as follows:

CRIMINAL CONTEMPT

SEC. 608. No person shall be punished for any criminal contempt allegedly committed outside the immediate presence of the court in connection with any civil action prosecuted by the Secretary or any other person in any court of the United States under the provisions of this Act unless the facts constituting such criminal contempt are established by the verdict of the jury in a proceeding in the district court of the United States, which jury shall be chosen and empaneled in the manner prescribed by the law governing trial juries in criminal prosecutions in the district courts of the United States.

Mr. ROBERTSON. Of course. What Member of Congress would vote for a criminal penalty to be imposed on a member of a labor union and deny him the right of trial by jury? Members of labor unions represent a great many votes. No one would run roughshod over a labor union. No one would attempt to take constitutional rights away from them. We were designating a new crime, and we made sure that we gave members of labor unions the right of trial by jury.

Mr. HILL. The right of trial by jury in the district where the alleged offense occurred.

Mr. ROBERTSON. And not to go around the circuit looking for another judge.

Mr. HILL. A judge who might be 600 or 700 miles from the place where the alleged offense occurred.

Mr. ROBERTSON. Yes.

Mr. McCLELLAN. Reference was made to title I of the Landrum-Griffin Act, which is known as the bill of rights of the working union members. Being the author of that title, I have some interest in its enforcement. I hoped to have the Attorney General enforce the rights of workers under that statute. However, so far as I am concerned, the right to work, the right to earn a livelihood, is a civil right which is supreme and paramount, I believe, to any civil right that is attempted to be dealt with in the proposed legislation. I believe it is a civil right for a man to work, and to be protected in a labor union, and not be under tyranny in a labor union. If that is true, we should apply the same authority and give the same directions to the Attorney General to protect a person who might come under the provisions of the proposed act. I believe that such an amendment to the bill would not only be germane, but also appropriate. Senators who support the bill cannot afford to advocate omitting such an amendment, or refusing to support it, if they are sincere in wishing to protect the rights of the citizens of this country, irrespective of their color.

Mr. ROBERTSON. The Senator is absolutely correct. I believe that before the debate is over, some of the leaders of labor organizations will find that title VII strikes a direct blow at seniority rights in all labor organizations. One rhetorical question after another may be asked: "Where is a quota system to be found in the bill?"

It will be found in the way in which it will be put into effect under rules and regulations that the administrative agencies will draft. The administrative language in the bill is so vague that no one will know exactly how it is to be applied. It can reach all the way up into the higher echelons of management. There is nothing in the bill which provides that it does not include the president, vice president, or secretary of an organization. There is nothing in the bill that provides that it does not include all supervisory personnel, such as foremen. The bill does not apply merely to day laborers.

Labor unions will find that unless the bill is amended—and I hope it will be—it will be disastrous if it is enforced impartially all over the Nation. That is particularly true of title VII.

Such a statement was made deliberately, I believe, by a Member of the House in the debate on the floor of the House. He said that his area had been assured that this title would not be enforced against his area. I do not know what authority he had to make that statement.

Mr. HILL. Who in the world had any such authority to give anyone such assurance? If a person had such temporary authority, how in the world could he be sure that some other person coming into the agency later would not do what he had said would not be done?

Mr. ROBERTSON. No one can give any such assurance. Every Senator should vote on the assumption that every provision of title VII will be strictly enforced throughout his State. This is a national issue. It is not by any means limited to the South.

The right to trial by jury under the Constitution is found in article III. It reads:

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

As the Senator from Alabama has pointed out, in Virginia, New York, South Carolina, and Georgia, a great many persons feared that we were forming an overwhelming central government, even though it was called a Federal Union, which means a union composed of sovereign States. They were not satisfied with it. In the fifth amendment it was provided:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury.

Jury trials are also provided in the sixth amendment, in which this provision is repeated. The greatest safeguard of all is contained in the 9th and 10th amendments.

They were added after Madison and Hamilton and others had said that the Constitution did not give the Federal Government any powers except those delegated to it. In the 10th amendment it was provided that the Federal Government shall have no powers except those delegated to it, and all others would be reserved to the States or to the people thereof.

Of course, they do not mention any felony prosecutions in title VII, or any other section. But even in the case of a felony, some kind of warrant is supposed to be issued, to tell a defendant what he is accused of doing—but not under this bill. We do not even know what discrimination means until some bureaucrat spells it out for us.

AMENDMENT 6

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed.

The original Constitution of 1787 contained no guarantee of trial by jury in

civil cases; that is, in litigation between individuals.

AMENDMENT 7

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

This leaves a class of cases, those in equity and admiralty, in which trial by jury is neither guaranteed nor denied by the Constitution.

I referred early in my remarks to that exception which had come down to us from the English equity and admiralty laws. It was limited primarily to proceedings for contempts which were committed in the presence of the judge, or so clearly connected with an equity proceeding in which an injunction had been issued against a person ordering him to do or not to do a certain thing. He could protect himself by not doing it. If he went ahead and did it anyway after the judge said, "You cannot do this," the judge would say. "I will put you in jail for a period of time." But that is quite a different thing from what we are doing here.

This undefined area, historically encompassing not only the chancery and the admiralty but the star chamber as well, is one in which legal subtleties can be used to provide superficial support for denying the constitutional right to trial by jury in proceedings brought by the United States in its sovereign capacity against the individual.

Mr. HILL. I am sure the Senator recalls the case of ex parte Milligan. In that case, the question was whether or not the defendant had a right to trial by jury, or whether he could be tried by a drumhead court martial.

Mr. ROBERTSON. That case arose in Missouri?

Mr. HILL. It arose in Missouri. I am sure the Senator recalls the great speech of Jeremiah S. Black in that case.

Mr. ROBERTSON. It has never been surpassed.

Mr. HILL. Mr. President, I would like to read a brief excerpt from what Mr. Black said. I ask unanimous consent that the Senator from Virginia shall not lose his right to the floor.

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

Mr. HILL. The excerpt involves the Magna Carta, the Petition of Right, and the Bill of Rights.

They went over Magna Carta, the Petition of Right, the Bill of Rights, and the rules of common law, and whatever was found there to favor individual liberty they carefully inserted in their own system—

"Their own system" meaning our American system—

improved by clearer expression, strengthened by heavier sanctions, and extended by a more universal application. They put all those provisions into the organic law, so that neither tyranny in the executive, nor party rage in the legislature, could change them without destroying the government itself.

Mr. ROBERTSON. Mr. President, I thank the distinguished Senator for calling attention at this appropriate moment to the wonderful and eloquent plea of counsel for the defendant in that trial. I think every lawyer should know of it. No Senator should ignore it in considering my amendment which seeks to preserve that right for the new classes of criminal action which will be set up under title VII.

THE MEANING OF CRIME IN 1787

The foregoing quotations show that the original body of the Constitution insists that the trial of all crimes, except in cases of impeachment, must be by jury—article III, section 2, clause 3. Since under the Civil Rights Act of 1957 and the bill in question an injunction would be sought by the Attorney General on behalf of the United States, and contempt of such order might invoke the punitive sanctions already discussed, there is involved the United States in its sovereign capacity in an action against a citizen.

In other words, the question is whether Congress has the power under the Constitution to authorize the Attorney General to bring proceedings in the Federal courts in the name of the United States in which proceedings the defendants may be fined and imprisoned, without according to the defendants a right to trial by jury, for acts committed outside the actual or constructive presence of the Federal courts.

It is sometimes said that, while it is true that the Constitution guarantees trial by jury in criminal prosecutions, contempt proceedings are not criminal, so that the constitutional guarantees contained in article III, section 2, clause 3, does not apply. The argument, of course, assumes that contempt proceedings were not considered to be in the nature of criminal proceedings, in the understanding of the men who drafted the Constitution. Actually, there does not seem to be an iota of evidence in the contemporary documents to support the premise.

On the contrary, the evidence is clear that the framers intended to insure trial by jury in proceedings brought by the sovereign against the individual.

That is what is involved in title VII. The "sovereign" in this case will be the Attorney General and his minions, who will proceed against someone on a vague and nebulous charge of discrimination.

There is the strong evidence in the actual records of the history of article III, section 2, clause 3, that the purpose of that clause was to insure "that no person shall be deprived of the privilege of trial by a jury, by virtue of any law of the United States."

Mr. President, I fear we are getting ready—I hope we are not, but some believe we are—to pass a new law creating new crimes concerning discrimination in employment.

It is also clear that in 1787, contempts were considered to be crimes. On this point Blackstone's "Commentaries" are authoritative. On more than one occasion Blackstone was cited to the Federal Convention of 1787 and his statements were accepted as conclusive on the status of English law at the time— 1 Farrand 472, 2 Farrand 448–449.

All doubts as to whether charges of contempt were considered criminal charges in the 18th century is set at rest by the following passage from Blackstone:

It cannot have escaped the attention of the reader, that this method of making the defendant answer upon oath to a criminal charge, is not agreeable to the genius of the common law in any other instance; and seems indeed to have been derived to the courts of king's bench and common pleas through the medium of the courts of equity. (4 Blackstone, "Commentaries," 287).

Perhaps, in the absence of constitutional provision, the English system of summary proceedings would have become a part of the Federal practice. Since contempts, at the time the Constitution was framed, were understood to be crimes, article III, section 2, clause 3, applies: the trial of all crimes shall be by jury.

As is well-known, Blackstone is divided into four books. Book IV of which is entitled "Of Public Wrongs." Blackstone divided all public wrongs, or crimes, into divisions, one of which consisted of crimes against the King and his government. These, he said, are of four kinds:

1. Treason.
2. Felonies injurious to the king's prerogative.
3. Praemunire.
4. Other misprisions and contempts. (4 Blackstone, "Commentaries," 74.)

Chapter 9 of Blackstone's Book IV bears the title "Of Misprisions and Contempts Affecting the King and Government." Blackstone goes on to say:

II. Misprisions, which are merely positive, are generally denominated contempts or high misdemeanors; of which—

1. The first and principal is the maladministration of such high officers, as are in public trust and employment.
2. Contempts against the king's prerogative.
3. Contempts and misprisions against the king's person and government.
4. Contempts against the king's title not amounting to treason or praemunire.
5. Contempts against the king's palaces or courts of justice have been always looked upon as high misprisions. (4 Blackstone, "Commentaries," 121–24.)

In this last class of contempts or misprisions, Blackstone includes violence or threatening words to the judge's person; injury to those under protection of the court, such as to a party, juror, and so forth; and attempts to dissuade a witness from giving evidence or disclosure of evidence by a grand jury member—4 Blackstone, "Commentaries," 126.

Historically, of course, the English courts of equity punished for contempt without according to defendant a trial by jury. But this, as Blackstone makes clear, was only for private wrongs, as distinguished from public wrongs. The subject is discussed in book III of Blackstone, which bears the title "Of Private Wrongs." After the plaintiff filed a bill in equity, the defendant had to reply, or the processes of contempt were applied against him, including imprisonment until compliance with the command—III Blackstone, "Commentaries," 443–445.

The cited passage makes clear this was not considered a proper proceeding between the sovereign and the subject, but only between subject and subject, since the defendant is made to pay "the costs which the plaintiff has incurred" by his contemptuous behavior.

Blackstone also pointed out in book IV that there was one kind of contempt or crime which, under English law, was punishable in summary proceedings—that is, without a trial by jury. He says:

III. The principal instances, of either sort, that have been usually punishable by attachment, are chiefly of the following kinds:

1. Those committed by inferior judges and magistrates.

2. Those committed by sheriffs, bailiffs, gaolers, and other officers of the court.

3. Those committed by attorneys and solicitors, who are also officers of the respective courts.

4. Those committed by jurymen, in collateral matters relating to the discharge of their office.

5. Those committed by witnesses.

6. Those committed by parties to any suit or proceeding before the court.

7. Those committed by any persons under the degree of a peer; and even by peers themselves, when enormous and accompanied by violence (4 Blackstone, "Commentaries," 283–285).

It will be noted that this list of contempts subject to punishment in England in the 18th century by summary proceedings does not include contempts committed by a defendant in proceedings brought against him by the sovereign. The reason is obvious, of course, since that type of contempt was encompassed within the branch of crimes known as misprisions and contempts affecting the king and Government.

Blackstone described the contempts that might be "committed by parties to a suit or proceeding before a court," category six just quoted, in the following words:

As by disobedience to any rule or order, made in the progress of a cause; by nonpayment of costs awarded by the court upon a motion; or by non-observance of awards duly made by arbitrators or umpires, after having entered into a rule for submitting to such determination. (4 Blackstone, "Commentaries," 284.)

That the 18th century viewed the subject of crimes as covering all the proceedings brought by the sovereign against the subject is shown by the very titles of the treatises on Criminal Law: Sir Matthew Hale, "The History of the Pleas of the Crown"—first edition printed in 1678; Sir William Hawkins, "Treatise of the Plea of the Crown."

We can now comprehend the assumption made about the nature of a contempt in a proceeding brought by the Government by the men who guaranteed in the Constitution a jury trial of all crimes.

Let us now turn to additional contemporary evidence on the nature of a contempt, from the pen of an American.

THOMAS JEFFERSON'S DRAFTS OF THE VIRGINIA CONSTITUTION OF 1776

In June 1776, Thomas Jefferson prepared three drafts of a constitution for Virginia. These have been collected and published in volume 1, "The Papers of Thomas Jefferson"—Boyd, editor, 1950. The constitution that Jefferson proposed began with a statement of grievances against the King of England; it declared that the legislative, executive, and judicial powers shall always be separate, relating to each of these powers. The pertinent provisions of the third draft are as follows:

A BILL FOR NEW-MODELLING THE FORM OF GOVERNMENT AND FOR ESTABLISHING THE FUNDAMENTAL PRINCIPLES THEREOF IN FUTURE

Whereas George Guelf, king of Great Britain and Ireland and Elector of Hanover, heretofore entrusted with the exercise of the kingly office in this government, hath endeavored to pervert the same into a detestable and insupportable tyranny.

* * * * *

for depriving us of the benefits of trial by jury; for transporting us beyond seas to be tried for pretended offenses.

* * * * *

JUDICIARY

The judiciary powers shall be exercised—

* * * * *

Juries: All facts in causes, whether of Chancery, Common, Ecclesiastical, or Marine law, shall be tried by a jury upon evidence viva voce, in open court; but where witnesses are out of the colony or unable to attend through sickness or other invincible necessity, their depositions may be submitted to the credit of the jury.

Fines &c: All Fines and Amercements shall be assessed, & Terms of imprisonment for Contempts & Misdemeanors shall be fixed by the verdict of a jury.

In these writings of Thomas Jefferson is strong evidence that contempts and misdemeanors were both considered crimes, and that in the enlightened view of the day there should be a right to trial by jury in the prosecution of contempts.

THE FEDERAL CONVENTION OF 1787

Article III, section 2, clause 3, of the Constitution provides:

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury, and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

It was basic to the thinking of the men who drafted the Federal Constitution that any man who was proceeded against by the Government should have the right to trial by jury. This was absolutely necessary in order that the defenseless citizen should not be oppressed by the powerful men who were in control of the machinery of government. The petit jury of his peers must always stand between the humble citizen and oppression. This was so well understood by all in 1787, that there could be no serious debate about the proposition. As a result, the records of the Convention contain very little on the development of article I, section 2, clause 3. What little there is, though, is highly significant.

The idea behind the clause was clearly expressed in a document found among the papers of Roger Sherman, of Connecticut. The purpose for which this document was drafted is not entirely certain; but all seem to agree that it contains a series of propositions intended to be proposed as amendments to the Articles of Confederation, or as a plan of government presented to the Federal Convention of 1787. Bancroft considered it as a plan of government presented to the Federal Convention "which in importance stands next to that of Virginia." Farrand considers it as "probably presenting the ideas of the Connecticut delegation in forming the New Jersey plan," volume 3, Farrand, "Records of the Federal Convention," revised edition, 1937. The concluding paragraph of the Sherman document is as follows:

That no person shall be liable to be tried for any criminal offence, committed within any of the United States, in any other State than that wherein the offence shall be committed, nor be deprived of the privilege of trial by jury, by virtue of any law of the United States (id. at 616).

It will be noted that this clause flatly prohibits depriving a person of the privilege of trial by a jury. Wherever trial by jury exists, it cannot be taken away by virtue of any law of the United States.

It has already been demonstrated that it was understood at that time that the right to trial by jury existed in a proceeding by the sovereign against a subject for all contempts except that known as summary.

The beginnings of article III, section 2, clause 3, in the actual records of the Convention are first bound in the report of the Committee of Detail. This committee, which consisted of Rutledge, of South Carolina; Randolph, of Virginia; Gorham, of Massachusetts; Ellsworth, of Connecticut; and Wilson, of Pennsylvania, was named on July 24 to "report a Constitution conformable to the resolutions passed by the Convention"—volume 2, Farrand, page 106. See also volume 2, Farrand, page 97.

Document IV of the Committee of Detail is in the handwriting of Edmund Randolph, with emendations by John Rutledge. One of the emendations by Rutledge is as follows:

That Trials for Criml. Offences be in the State where the Offe was comd—by jury—4 Farrand 45. It is significant that this phraseology follows the paragraph in the Sherman document, the jury requirement following and being independent of trial of crimes in the State where committed.

The clause next appears in document IX of the Committee of Detail, which is in the handwriting of Wilson, with emendations by Rutledge—volume 2, Farrand, page 163.

"Crimes shall be tried in the State, in which they shall be committed; The Trial of them shall be by Jury." The following words were struck out: "Crimes shall be tried"; "in which": "and"; "them"; and new words added by Rutledge, so that the changed version now reads:

& in the State, where they shall be committed; The Trial of all Criml Offences—except in cases of Impeachment—shall be by Jury. 2 Farrand 173.

The final report of the Committee of Detail contained an article XI dealing with the judicial power of the United States, which contained the following section:

Sect. 4 The trial of all criminal offences (except in cases of impeachments) shall be

in the State where they shall be committed; and shall be by Jury. Id. at 187.

On August 28, the Convention considered this part of the report of the Committee of Detail. Its action is recorded by Madison as follows:

Section. 4—was so amended nem: con: as to read "The trial of all crimes (except in cases of impeachment) shall be by jury, and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, then the trial shall be at such place or places as the Legislature may direct. The object of this amendment was to provide for trial by jury of offences committed out of any State. 2 Farrand 438. See also 2 Farrand 434.

For the sake of completeness one other document should be mentioned, although its significance is not known. The document is in the handwriting of an unidentified person, with interlineations by George Mason, and is in the George Mason papers in the Library of Congress. It appears to have been a plan for the organization of the Federal judiciary. The similarity of the trial by jury provisions to that adopted by the Convention on August 28 suggests that there was some relationship. The provision in this document among the Mason papers is as follows:

The Trial of all Crimes, except in Case of impeachment shall be in the Superior Court of that State where the offence shall have been committed in such manner as the Congress shall by Law direct, except that the Trial shall be by a Jury—But when the Crime shall not have been committed within any one of the United States the trial shall be at such place and in such Manner as Congress shall by Law direct, except that such Trial shall also be a Jury. 4 Farrand 55–56.

The committee of style made minor changes in punctuation and phraseology in the clause volume 2, Farrand, page 601. As so changed the clause was adopted by the Convention and became a part of the Constitution.

TRIAL BY JURY IN CIVIL CASES

It is familiar history that certain members of the Federal Convention of 1787 favored a provision guaranteeing trial by jury in civil cases. I will summarize briefly Madison's report on the debate for September 12. Williamson, of North Carolina, Geary, of Massachusetts, and Mason, of Virginia, urged that there should be put into the proposed Constitution provision for juries in civil cases to guard against corrupt judges.

However, the difficulty of distinguishing by a uniform rule equity cases from those in which jury trials were proper, discouraged Mr. Gorham and Mr. Sherman, of Connecticut, from supporting the proposal. These men believed that the State legislatures would be able to provide such jury safeguards as each wished.

This argument apparently won the day, for a motion for a committee to prepare a bill of rights incorporating such a provision did not prevail—volume 2, Farrand, "Records of the Federal Convention, pages 587–588," revised edition, 1937—nor did one later on September 15, volume 2, Farrand, page 628. It seems significant that in these debates no mention was made of whether or not there should be trial by jury in contempt cases. The inference is that everyone understood that this question had been settled when a provision had been written into the Constitution requiring that "the trial of all crimes shall be by jury."

STATE RATIFYING CONVENTIONS

One of the principal objections raised in the State ratifying conventions to the Constitution was that it failed to secure trial by jury in civil cases. This objection was answered by the supporters of the Constitution, as it had been in the Convention, with the assertion that the Constitution did not interfere with trial by jury in civil cases and such mode of trial could be expected to be continued. There seems to have been no statement made in any of these conventions with reference to trial by jury in contempt cases. This was undoubtedly true because in the understanding of that day "contempts" were "crimes," and so trial by jury was insured by article III, section 2, clause 3. There are a number of expressions of governmental theory recorded in the debates in the State ratifying conventions that support this view.

James Wilson pointed out to the Pennsylvania ratifying convention that the theory of "crimes against the state" provided a more fertile field for the perpetration of wrong than any other whatsoever. Using treason as an example, Wilson said:

I am happy to mention the punishment annexed to one crime. You will find the current running strong in favor of humanity; for this is the first instance in which it has not been left to the Legislature to extend the crime and punishment of treason so far as they thought proper. This punishment, and the description of this crime, are the great sources of danger and persecution, on the part of government, against the citizens. Crimes against the state and against the officers of the state. History informs us that more wrong may be done on this subject than on any other whatsoever. But, under this Constitution, there can be no treason against the United States, except such as is defined in this Constitution. The manner of trial is clearly pointed out; the positive testimony of two witnesses to the same overt act, or a confession in open court, is required to convict any person of treason (vol. 2, "Elliot's Debates on the Federal Constitution" p. 468).

A little later James Wilson told the Pennsylvania ratifying convention in words that are crystal clear:

Whenever the general government can be a party against a citizen, the trial is guarded and secured in the Constitution itself, and therefore it is not in its power to oppress the citizen. In the case of treason, for example, though the prosecution is on the part of the United States, yet the Congress can neither define nor try the crime. If we have recourse to the history of the different governments that have hitherto subsisted, we shall find that a very great part of their tyranny over the people has arisen from the extension of the definition of treason. (Id. at p. 487.)

I again emphasize the point that the history of trial by jury clearly shows that contempt, except in the limited cases in which the contempt was committed in the presence of the trial judge, was considered a crime. Second, I emphasize the fact that those who framed the Constitution intended that all persons accused of crime were entitled to a jury trial. In title VII there is a provision creating a crime, called discrimination. That crime, of necessity, would be prosecuted, as history shows, by the State. When a State is proceeding against a citizen, he should undoubtedly have the protection of a jury trial.

James Wilson explained in detail to the Pennsylvania Convention why a guarantee of trial by jury in civil cases was not included in the Constitution. In the course of this statement, Wilson made a very cogent comment concerning the advantages of trial by jury:

I think I am not now to learn the advantages of a trial by jury. It has excellences that entitle it to a superiority over any other mode, in cases to which it is applicable.

Where jurors can be acquainted with the characters of the parties and the witnesses—where the whole cause can be brought within their knowledge and their view—I know no mode of investigation equal to that by a jury; they hear everything that is alleged; they not only hear the words, but they see and mark the features of the countenance; they can judge of weight due to such testimony; and moreover, it is a cheap and expeditious manner of distributing justice. There is another advantage annexed to the trial by jury; the jurors may indeed return a mistaken or ill-founded verdict, but their errors cannot be systematical. Id. at 516.

Whatever may be said against juries, James Wilson says, "Their errors cannot be systematical." Whenever the general government can be a party against a citizen, there is the need for the intervention of some agency whose "errors cannot be systematical."

Edmund Randolph spoke on the subject in the following manner to the ratifying convention in Virginia:

The trial by jury in criminal cases is secured—in civil cases it is not so expressly secured, as I could wish it; but it does not follow, that Congress has the power of taking away this privilege which is secured by the constitution of each State, and not given away by this Constitution—I have no fear on this subject—Congress must regulate it so as to suit every State. I will risk my property on the certainty, that they will institute the trial by jury in such manner as shall accommodate the conveniences of the inhabitants in every State; the difficulty of ascertaining this accommodation, was the principal cause of its not being provided for. Volume 3, Farrand page 309.

THE FIRST CONGRESS

One of the most authoritative sources of information on the meaning of the Constitution is to be found in the proceedings of the First Congress, which met in 1789, since so many of the Members of this body had also served as delegates to the Constitutional Convention of 1787.

This First Congress proposed to the States the amendments which have come to be known as the Bill of Rights.

On June 8, 1789, Mr. Madison, of Virginia, laid before the House of Representatives his proposals for amendments to the Constitution. Among these was the following:

Seventhly. That in article 3d, section 2, the third clause be struck out, and in its

place be inserted the clauses following, to with:

The trial of all crimes (except in cases of impeachements, and cases arising in the land or naval forces, or the militia when on actual service, in time of war or public danger) shall be by an impartial jury of freeholders of the vicinage, with the requisites of unanimity for conviction, of the right of challenge, and other accustomed requisites; and in all crimes punishable with loss of life or member, presentment, or indictment by a grand jury shall be an essential preliminary, provided that in cases of crimes committed within any county which may be in possession of an enemy, or in which a general insurrection may prevail, the trial may by law be authorized in some other county of the same State, as near as may be to the seat of the offence.

In cases of crimes committed not within any county, the trial may by law be in such county as the laws shall have prescribed. In suits at common law, between man and man, the trial by jury, as one of the best securities to the rights of the people, ought to remain inviolate. 1 Annals 435.

After some debate, the House referred Madison's proposed amendments to the Committee of the Whole. Subsequent action by the House and Senate can be traced in the journals of the two bodies: Volume 1, Annals pages 660, 665, 672, 755–60, 779, 71, 74, 77, 903, 905, 913, 88.

The final text of the amendment proposed to the States, and which became the sixth amendment, was as follows:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses of his favor, and to have the assistance of counsel for his defense.

The debates on these amendments proposed to the States in 1789 do not contain so much as a word suggesting that contempts not committed in the presence of a Federal court could be prosecuted other than by a jury trial.

COURT DECISIONS

Although the Supreme Court of the United States has often spoken in dicta about the defendant having no right to trial by jury in contempt proceedings, it appears that the Court has never actually sanctioned a denial of trial by jury to a defendant subject to criminal sanctions in a proceeding brought by the United States as an interested party, representing the public—until the decision of last week in the case from Mississippi, involving, among others, Governor Barnett, who had demanded a jury trial but had been denied that right.

A strong minority on the Court would grant the defendant a right to trial by jury in all proceedings for criminal contempt.

The word "contempt" covers a multitude of ideas. Many of the decisions dealing with the subject involve points not presented by the pending bill, H.R. 7152. The question is not whether a violation of an injunction obtained by the Attorney General should be called civil or criminal contempt, direct, or indirect or constructive contempt, or by any other particular label. The narrow and explicit question is whether Congress has the power under the Constitution to authorize the Attorney General to bring proceedings in the Federal courts in the name of the United States, in which proceedings the defendants may be fined and imprisoned, without according to the defendants a right to trial by jury, for acts committed outside the actual or constructive presence of the Federal courts.

The question of the inherent power of a court to punish contempt by some type of proceeding, whether by jury trial or summary proceeding, as discussed in *United States* v. *Hudson* v. *Goodwin* (7 Cranch. 32 (1812)), and *Anderson* v. *Dunn* (6 Wheat. 204 (1821)), is not involved.

The question of the power of State courts to punish contempt summarily without violating the 14th amendment as presented in *Fisher* v. *Pace* (336 U.S. 155 (1949)), and *Eilenbecker* v. *District Court of Plymouth County* (134 U.S. 31 (1890)), is not involved.

The question of the power of a Federal court to punish summarily for a contempt committed in open court and in the presence of the judge, as in *Ex parte Terry* (128 U.S. 289 (1888)), is not involved.

The question of the right of appeal in the Federal judiciary from a contempt conviction, as presented in *Bessette* v. *W. B. Conkey Co.* (194 U.S. 324 (1904)), is not involved.

The question of the inherent power of a court established by the Constitution to punish for contempt is not involved. This was the question presented by many of the State court decisions, sometimes cited as supporting legislation of the type embodied in the bill, H.R. 7152. *Watson* v. *Williams* (36 Miss. 331 (1858)); *Carter's case* (96 Va. 791, 32 S.E. 780 (1899)); *Bradley* v. *State* (111 Ga. 168, 36 S.E. 630 (1900)); *Ex parte McCown* (139 N.C. 95, 51 S.E. (1905)).

The Supreme Court in *Ex parte Robinson* (19 Wall. 505 (1873)), recognized the power of Congress to regulate the exercise of contempt powers by the Federal courts, with the possible exception of the Supreme Court, including contempts in causes or hearings before the courts. The Court said:

The power to punish for contempts is inherent in all courts; its existence is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders, and writs of the courts, and consequently to the due administration of justice.

The moment the courts of the United States were called into existence and invested with jurisdiction over any subject, they became possessed of this power. But the power has been limited and defined by the act of Congress of March 2, 1831. The act, in terms applies to all courts; whether it can be held to limit the authority of the Supreme Court, which derives its existence and powers from the Constitution, may perhaps be a matter of doubt. But that it applies to the circuit and district courts there can be no question. These courts were created by act of Congress.

Their powers and duties depend upon the act calling them into existence, or subsequent acts extending or limiting their jurisdiction. The act of 1831 is, therefore, to them the law specifying the cases in which summary punishment for contempts may be inflicted. It limits the power of these courts in this respect to three classes of cases: First, where there has been misbehavior of a person in the presence of the courts, or so near thereto as to obstruct the administration of justice; second, where there has been misbehavior of any officers of the courts in his official transactions; and, third, where there has been disobedience or resistance by any officer, party, juror, witness, or other person, to any lawful writ, process, order, rule, decree, or command of the courts. As thus seen the power of these courts in the punishment of contempts can only be exercised to insure order and decorum in their presence, to secure faithfulness on the part of their officers in their official transactions, and to enforce obedience to their lawful orders, judgments, and processes.

* * * * *

The law happily prescribes the punishment which the court can impose for contempts. The 17th section of the Judiciary Act of 1787 declares that the court shall have power to punish contempts of their authority in any cause or hearing before them, by fine or imprisonment, at their discretion. The enactment is a limitation upon the manner in which the power shall be exercised, and must be held to be a negation of all other modes of punishment. The judgment of the court disbarring the petitioner, treated as a punishment for a contempt, was, therefore, unauthorized and void. (Id. at 510–12.)

The fact that the United States, as a disinterested party, may constitutionally exercise particular powers in order to secure justice in litigation between private parties, does not provide a precedent for granting the United States, as an interested party, precisely the same powers.

McNAMARA'S WAR IN VIETNAM

Mr. MORSE. Mr. President, will the Senator from Virginia yield, with the understanding that in doing so he will not lose his right to the floor, with the further understanding that this interruption will not count as a second speech when he resumes?

Mr. ROBERTSON. Mr. President, I ask unanimous consent to yield to the Senator from Oregon, under those conditions.

The PRESIDING OFFICER (Mr. NELSON in the chair). Is there objection? The Chair hears none, and it is so ordered.

Mr. MORSE. Mr. President, last night on a national television network, Mr. Walter Lippmann explored some of the changes that have overtaken the world and America's position in it since the end of World War II.

With respect to our present involvement in South Vietnam, Mr. Lippmann pointed out that it has long been a principle of American policy not to become involved in a land war on the continent of Asia.

I agree with Mr. Lippmann that this is a sound guide for us to follow; but I would also say it is a guide we should

be following now with respect to South Vietnam.

To say that because this sound principle has been ignored to the extent that we have put 15,000 troops in South Vietnam does not mean we should maintain our position there no matter what the cost. Mr. Lippmann declares that for us to change our policy now in South Vietnam would mean a great loss of prestige for this country. But, the longer we must fight, and the more troops we must put in just to stay in the same place, the more prestige we are bound to lose.

France's prestige was never lower than while she was fighting to maintain herself in Indochina and Algeria. Since she has extricated herself from those impossible endeavors, her prestige has gone steadily upward.

More important, as the costly status quo continues in South Vietnam, the American people will lose confidence in their Government. I am far more concerned about the prestige of the U.S. Government with its own people than I am about its standing in Asia.

Whatever prestige the United States stands to lose abroad by terminating its unilateral intervention in South Vietnam, the American people are not going to support an indefinite and expanding intervention there.

I invite the attention of the Senate to the statement reported in today's New York Times that the Secretary General of the Southeast Asia Treaty Organization denies there is any military aggression in South Vietnam. I have been pointing that out for weeks in speeches on the floor of the Senate in opposition to U.S. policy in South Vietnam. I have stated over and over again that this is a civil war. I have pointed out the undeniable fact to the Secretary of State and to the Secretary of Defense that not one single witness for the administration on the record, and not one single spokesman for the administration off the record, ever denied that this is a South Vietnamese conflict with South Vietnamese supporting the government and with South Vietnamese supporting what has become known as the Vietcong. There has never been any evidence submitted that there are any foreign soldiers in South Vietnam engaged in this civil war, except U.S. soldiers—no North Vietnamese soldiers, no Red Chinese soldiers, and no Russian soldiers. This is a South Vietnamese operation.

All that the administration witnesses have been able to disclose is that equipment used by the Vietcongs is, for the most part—except for American equipment which they have captured from South Vietnam—either Red Chinese equipment or equipment that is manufactured in North Vietnam, or Russian equipment. We have furnished vast quantities of equipment to South Vietnam. The situation in that regard is almost as bad as when Chiang Kai-shek was in China and the Communists captured American equipment from him or, in a very interesting oriental operation, in some way, or some how, got it into their possession before it was even uncrated.

Whose equipment are the South Vietnamese using? It is 100-percent American equipment. We had better not start throwing stones on that issue. One of the replies that the Secretary of State and the Secretary of Defense make in justifying McNamara's war in South Vietnam is to tell us that the South Vietnam Government invited us in. Senators know what we think about the excuse of Russia, when it tries to rationalize its presence in East Germany. It is that the East Germans invited the Russians in there.

Puppets have a way of doing that. That is one of the purposes of creating a puppet government. South Vietnam is a puppet government of the United States. The United States is more responsible for the creation of the so-called South Vietnam Government than any other factor.

I continue to ask the question: What are we doing there? Why are we there? By what international law or right are we there? I am still waiting for the State Department to tell me, or for the Defense Department to tell me. In my judgment, the Defense Department has taken over State Department policy in South Vietnam. I do not believe the Defense Department should determine American policy in Asia. I think it is wrong. It ought to be changed.

It is very interesting that we now hear the Secretary General of SEATO deny that there is any military action in South Vietnam. The SEATO Secretary General is reported to have said in Manila, on Monday, that the struggle in South Vietnam is only an internal quarrel between two factions. Those who have been criticizing American foreign policy in South Vietnam have said just that.

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

Mr. MORSE. I yield.

Mr. McCLELLAN. I did not understand who made that statement.

Mr. MORSE. The Secretary General of SEATO. The Secretary General of SEATO is from Thailand. Thailand borders on South Vietnam. It is a next-door neighbor. There is not one Thai soldier in South Vietnam. There is not one Thai dollar in there, either. One would think that if the civil war in South Vietnam were of such importance, as U.S. officials try to make out—and they are fooling the American people about it—Thailand would be concerned.

One would think that Australia would be concerned, as would New Zealand, Pakistan, and the Philippines. They are all in that area. They are doing nothing about it. For them the policy is hands-off. Let me repeat—and it is necessary to repeat this over and over again, until finally the American people will begin to understand the facts—that we are in there because of the SEATO treaty. That is the reed on which we are leaning. What part of the SEATO treaty are we leaning on? It is on the protocol agreement, attached to the SEATO treaty. The signatories to SEATO—New Zealand, Australia, Pakistan, Thailand, the Philippines, Great Britain, France, and the United States—state in the protocol agreement that this is an area of mutual concern. South Vietnam, however, is not a signatory to SEATO. It is not a member of SEATO.

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

Mr. MORSE. I am delighted to yield.

Mr. McCLELLAN. Is any member of SEATO participating in this conflict in any way whatever, financially or militarily?

Mr. MORSE. None but the United States. This is a U.S. unilateral intervention in a civil war in southeast Asia. Our administration is trying to convince the American people that if we do not stay in there, and kill more American boys, communism will take over. That is so much "hogwash."

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

Mr. MORSE. I yield.

Mr. McCLELLAN. Is not the Senator from Oregon somewhat encouraged by the recent reports of the Secretary of Defense on the progress we are making and what we hope to do in the future?

Mr. MORSE. I was never so depressed. I was never so depressed as I was the other day when I listened to the Secretary of Defense. I appreciate his inviting me to the National Security Council meeting. I do not know why I was invited. I listened to the report by the Secretary of Defense. As I listened I kept saying to myself, "If all these things are true, what in the world are we doing in there?"

He made the greatest statement in support of our getting out of South Vietnam, and ended by urging that we go in to a greater extent. That is the kind of mental gymnastics that I do not understand. But that is our position.

Senators have heard me say before that I do not criticize a policy unless I am willing to offer what I believe to be a substitute. I have offered the substitute over and over again. I cannot find any takers for it in the administration, but I cannot get any answers, either. I offer it again this evening on the floor of the Senate. The SEATO Ministers are meeting in Manila. I am waiting, wondering whether they will pass a resolution saying, "We are coming. We are coming in with you. We will put in our battalions."

I do not believe that the battalion approach is the way to settle the controversy. But if we are to take the military approach—and I do not believe we should—why do not our allies offer to do some of the dying?

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

Mr. MORSE. I yield.

Mr. McCLELLAN. A battalion from any one of those countries would be a token contribution, would it not?

Mr. MORSE. Even one soldier would be a token contribution. I shall come in a moment to a discussion of whether the military approach is the approach to make. However, I point out that if we are to make the military approach—and that is the approach we are making—the SEATO nations in southeast Asia are not sufficiently interested in dying. If

they are not interested in doing any of the dying, the situation is not of the serious import on the basis of which the Secretary of Defense is trying to sell it to the American people, as his rationalization of McNamara's war.

But my alternative is that the SEATO countries, the signatories to the SEATO treaty who entered into the protocol agreement at Manila—now assembled there—offer to have the SEATO organization take over the trouble spot in South Vietnam. That would give De Gaulle an opportunity to put up or shut up.

Do not forget the play that De Gaulle made a few short weeks ago. We did not have any blueprint. But with one diplomatic brush stroke, he put the United States in a very difficult spot. Senators will remember that he announced that he thought South Vietnam ought to be neutralized. I do not know what he means. Who does? I want to find out.

I should like to know what De Gaulle's program is in South Vietnam. France's signature is on that treaty. That is why I offer this as the first alternative: "All right, SEATO. Come on in. Say that SEATO is going to carry out whatever obligations it has under the protocol agreement and offer to take over the administration and handling of the operation in South Vietnam."

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

Mr. MORSE. I yield.

Mr. McCLELLAN. There is no contention on the part of any of the SEATO countries that South Vietnam is an aggressor, is there?

Mr. MORSE. Oh, no. There is no aggression in Vietnam. It is only a family fight—fathers on one side, sons on another; brothers on one side, brothers on another; uncles on one side, nephews on another.

Mr. McCLELLAN. There is no claim that there is any danger to the area by reason of the nature of the activities or plans of aggression in South Vietnam?

Mr. MORSE. I could not say that there is no claim.

That is a part of this fabulous——

Mr. McCLELLAN. I am talking about a claim by the SEATO countries.

Mr. MORSE. Their silence is golden. They are waiting for our gold, however. They are not engaged in any discussion. They do not want to talk about this affair. But they want more aid.

Mr. McCLELLAN. SEATO countries?

Mr. MORSE. SEATO countries—Pakistan, Thailand, the Philippines. They want our money. They want our gold. But they are maintaining a golden silence with respect to this affair. The talk by the Secretary General is the first mention of it in some time except De Gaulle's talk a few weeks ago when he talked about neutralization. I want to know what he means by "neutralization."

The Senator from Arkansas knows that one cannot understand my position about foreign policy unless he understands my deep conviction that in a situation such as this we ought to try to exhaust all the possibilities of reaching accord and a settlement without killing, through the application of what we claim to be our basic foreign policy in the trouble spots of the world; namely, the substitution of the rule of law for the jungle law of force.

That is what I am pleading for. Of course, I was trained in that concept by a great Republican—I think one of the greatest we have had in my 20 years in the Senate. He was my leader on foreign policy. He became one of the great internationalists in the Senate, after being one of the leading isolationists for many years. I speak of the late Arthur Vandenberg, of Michigan.

The other day I told the story about his changing from isolationism to internationalism when he became convinced that the atomic bomb would become a reality. He used to tell us that he realized there was no longer any place for an isolationist in the Senate. He left us this unanswerable ideal criterion. It is an ideal criterion. It is not supposed to be practical. And because it is an ideal, it is a great practicality. It cannot be a practicality except in terms of an ideal put to work.

I want to apply it to South Vietnam. What a great opportunity we have to keep faith with all our prating. We ought to try, at least, to settle international disputes.

Senator Vandenberg used to say there would be no hope for permanent peace in the world until all the nations of the world were willing to establish a system of international justice through law, to the procedures of which they were willing to submit each and every issue that threatened the peace of the world for final and binding decision to be enforced by some international organization such as the United Nations.

I do not believe we can leave a heritage of freedom to our grandchildren unless we do a better job of trying to implement that great ideal. There is no better time to start than now. I receive much abuse and castigation because I favor making greater use of the international law procedures of the United Nations than the United States has been willing to advocate. I do not know whether those procedures will work or not; but we shall never know until we try. Trying does not mean that we will weaken our security.

I have voted in the Senate, and shall continue to vote in the Senate, for huge appropriations to keep my country strong, so that Russia and Red China will understand that they have everything to lose and nothing to gain by resorting to aggression against the United States. But I also know that if that should become our foreign policy, we would be sunk. If that should become the basic foreign policy of the United States, we would not have a chance of survival in the years not too far distant. If that should become our foreign policy, we would be headed straight to war. We would not survive a nuclear war; nor would our potential enemies. But that is not much consolation to the advocates of freedom.

So I favor remaining strong, so that no nation will dare to attack us. But I am against aggression on the part of the United States, too. I am against killing on the part of the United States in South Vietnam or anywhere else in the world. Our country must be able to demonstrate for the record of history that we can always be counted upon to resort to the peaceful procedures of international law for the settlement of international disputes.

So I continue to repeat what I have said many times. How many times? I do not know—a dozen or more times in the Senate in recent weeks. I shall repeat again that we ought to say to the SEATO nations: "Come in, sit down in conference, and try to arrive at a program for the handling of the trouble spot in the world known as South Vietnam."

If they do not want to cooperate; if De Gaulle, for example, does not want to put up or shut up; if Thailand, as I judge from the statement of the Secretary General of SEATO, which I have quoted, is not interested; if Pakistan is interested only in getting more military aid and economic aid to the tune of hundreds of millions more dollars; and if the Philippines want to take the same position; let us wash our hands of South Vietnam. Let us move out, and save the lives of American boys.

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

Mr. MORSE. I yield.

Mr. McCLELLAN. What does the Senator from Oregon think would be the consequences if we withdrew our troops from South Vietnam?

Mr. MORSE. The Vietnamese would settle their differences. Those people are not militant. They do not want to fight. The people of southeast Asia are the most peaceable, lovable, happy-go-lucky, cheerful, live-by-the-day people in the world. But, of course, when we are giving them material benefits they never before dreamed of, what do we expect?

Mr. President, consider the amounts of money we have been pouring into South Vietnam, and also the amounts we have provided for the pay their soldiers have been receiving. It is sad to have any of them die; but is it not remarkable how long the fighting there has continued, with a relatively small number of casualties?

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

Mr. MORSE. I yield.

Mr. McCLELLAN. Do I correctly understand the Senators' statement to mean that the presence of our personnel over there is sustaining and prolonging the conflict?

Mr. MORSE. I so charge; and history will so record—to the shocking disgrace of the United States of America.

Mr. President, do Senators think I like to say that about a program of my country? Certainly I do not like to say it. But I have a responsibility as a Member of the U.S. Senate, and including my responsibility as a member of the Senate Foreign Relations Committee, to express my honest views on the basis of the facts, as I see them; and

I believe that our country could not sustain its record in South Vietnam before any impartial, international jury established to evaluate it. Furthermore, there will be such an impartial, international jury after all of us have left the scene. That jury will be composed of the historians who will write the record of the United States in South Vietnam; and it will be a record against the United States, not for our country.

Mr. McCLELLAN. Mr. President, will the Senator from Oregon yield further?

Mr. MORSE. I yield.

Mr. McCLELLAN. I wish the Senator from Oregon to understand that I am not asking these questions for the purpose of being frivolous or in any sense to challenge the position of the Senator from Oregon.

Mr. MORSE. I understand.

Mr. McCLELLAN. Heretofore, I have heard him speak on the floor of the Senate on this subject. He serves on the Foreign Relations Committee; and therefore there is available to him, I am sure, information not available to me. So I am very much interested in his point of view and his opinions and recommendations.

In my opinion, all of us believe some change is needed in the situation in South Vietnam—whether to remove our personnel from South Vietnam or to really wage a war there and get it over with, I do not know. But so far as I can determine, the situation there does not give much satisfaction either to those who want our personnel to leave South Vietnam or to those who want our country to wage and win a war there. Instead, we are merely doing enough to keep the situation in the stage of conflict, but we are not willing to devote enough to it to be able to win it; neither do we seem to be willing to leave it. I am not criticizing the administration, but I should like to have a better understanding of that situation.

Mr. MORSE. I am trying to ascertain any reason the administration could give which would rebut the information I am placing in the RECORD.

We called representatives of the administration before our committee. Those gentlemen did not have any information which would answer the points which I and the Senator from Alaska [Mr. GRUENING] and other Senators have been making on the floor of the Senate.

Before I conclude, I shall read some letters from American military personnel in South Vietnam. I wish to read them for the benefit of the Secretary of Defense, Mr. McNamara; I want him to have available all the information I can make available to him in regard to this situation.

Mr. McCLELLAN. Mr. President, will the Senator from Oregon yield for another question?

Mr. MORSE. I yield.

Mr. McCLELLAN. A few days ago, I heard the Senator from Oregon—or perhaps it was the Senator from Alaska—state on the floor the amount of money the presence of our personnel in South Vietnam is costing, daily. What is the daily cost?

Mr. MORSE. The daily cost is $1,500,000; and if McNamara is allowed to pay for the additional draft costs, that will increase the daily cost.

When we consider the amount of money we made available to France—$1,500 million to France, at the time when she was losing the Indochina war; nevertheless, we provided all that money, to help France—we find that we have spent in this part of Asia, during the French debacle and since then, $5,500 million. But France was thrown out; and a little prince in Cambodia kicked out the U.S. personnel.

In my judgment, we can never win in South Vietnam. In the situation which exists there, we cannot win. The internal situation there must be settled by the South Vietnamese, among themselves.

The question asked by the Senator from Arkansas prompts me to make an additional comment about a point which I think we must keep in mind; namely, the nature of the operations in South Vietnam.

At our committee meeting, one of the witnesses was Mr. Poats. The other day, when I went to the Foreign Relations Committee hearing, I had no intention of voting against approval of the nomination of Mr. Poats, the Assistant Administrator of the Agency for International Development—at least, not until I heard him. Mr. Poats had been Assistant Administrator for Near Eastern and South Asian Affairs, in the State Department.

The Senator from Vermont [Mr. AIKEN] asked him a few questions. As I listened to the mental gymnastic, trapeze performance by Mr. Poats, I said to myself, "Why are we considering this nomination?"

So I asked Mr. Poats a few questions, one of which was:

What are we doing in South Vietnam?

He replied:

We were invited in.

When I raised the question of the puppet relationship, it became perfectly obvious to me that I was dealing with a witness who was not coming clean. Whenever I find a witness is not coming clean, I will vote against approval of his nomination. So in the committee, I voted against approval of his nomination.

He said we were invited in by the Republic of South Vietnam. Mr. President, I know something of the semantics used by the State Department; so I asked him whether he would discuss with the committee what he meant by his use of the word "Republic." I asked:

Do you mean that we are dealing with a country that is democratic or is based on freedom?

Of course he knew he could not say that.

That causes me to state that in South Vietnam we are dealing with a tyrannical military dictator; in South Vietnam we are trying to strengthen a tyranny. Do Senators think there are any human rights under the control there by that general-dictator?

The other day that dictator called me a traitor. Imagine that, Mr. President—that little tinhorn tyrant—military dictator in South Vietnam is supported by the Government of the United States. How come? He proceeded to call an elected Member of the United States Senate, one of the representatives of a free people, a traitor. I wonder whether he thought I was going to send him a bunch of roses.

I hear the whip say, "Portland roses."

I say to the Senator from Arkansas that one would think that if we were going to get ourselves into a controversy abroad, we would be supporting freedom and human rights and democratic processes. Has the Senator from Arkansas been surprised, when he has picked up the daily newspapers during the past several years, to discover that that little tinhorn tyrant in South Vietnam has had to do some recouping and some maneuvering and juggling because he has some trouble with his Cabinet?

I wonder if our Ambassador is helping him. The Ambassador should be called home to make a report. I do not believe he is doing a good job. I think it is a lousy job. The situation is growing worse under him.

Mr. McCLELLAN. Is the Senator from Oregon talking about the candidate for President?

Mr. MORSE. The Senator means the candidate of the other party?

Mr. McCLELLAN. Yes.

Mr. MORSE. I do not know who their candidates for President are. It makes no difference who they are. They do not have a prayer, and they know it.

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

Mr. MORSE. I yield.

Mr. HUMPHREY. The Senator has suggested that the Ambassador be called home.

Mr. MORSE. He ought to be called home for a report. He should never have been sent over there.

Mr. HUMPHREY. Other distinguished public officials also feel that the Ambassador should be called home.

Mr. MORSE. I understand. Some of our good friends running for the Republican nomination also believe he should come home and report.

I shall get on with my alternative.

Mr. McCLELLAN. Mr. President, will the Senator yield for another question?

Mr. MORSE. I yield.

Mr. McCLELLAN. I asked the Senator about the cost of the operation or war in South Vietnam. The Senator replied. I recall that a few days ago the Senator made some reference to the number of casualties in South Vietnam. He said that at that time he had not been able to procure information as to the number of casualties that we have suffered in that operation. Has the Senator been able to obtain such information?

Mr. MORSE. Not yet. We have asked for it. We know that more than 200 American boys have been killed in

South Vietnam—in my judgment, needlessly and unjustifiably. In my judgment, not a one of them who gave his life in South Vietnam gave it for a good cause.

The Senator ought to read the editorials that have come into my office and read the editorials by which editorial writers, by "sticking their pens in my blood," thought they were going to bleed me.

I have said, and repeat again tonight—and I have been saying it on the platforms of America away from the floor of the Senate—that South Vietnam is not worth the life of a single American boy. I repeat that statement. More than 200 of them have been killed. If we escalate the war, there will be more casualties.

I say, "Watch out. Watch out." The trial balloon is up. We may escalate the war into North Vietnam before we are through; but if we escalate the war to North Vietnam, we shall not do it alone with conventional American ground forces. We must do it with nuclear weapons. I believe that after the first nuclear bomb that we drop in connection with the South Vietnam McNamara war, we shall have few, if any, friends left among the free nations of the world. If we cannot even interest SEATO in coming in and trying to reach an accommodation in keeping with the processes of law for the settlement of that international dispute, where do we think we shall have any friends in Europe?

The second phase of my program for settling the South Vietnam situation in keeping with our professed dedication, at least, to the peaceful procedures for the settlement of disputes which threaten the peace of the world is to take it to the United Nations. What in the world is wrong with that procedure? Sometimes in the Senate I gain the impression that if we have a simple program that is right, it is unacceptable because it is not complicated enough to confuse.

Sometimes it seems that the only foreign policy the United States can have is a complicated gobbledygook program for which we need a half dozen interpreters to try to figure out its semantic meaning. It is designed to conceal simple principles that usually describe what is right.

What is wrong with taking the South Vietnam controversy to the United Nations? Will Senators tell me? We might be surprised. We might be able to reach an agreement in the United Nations by which a United Nations trusteeship could be set up for 10 or 30 years, until we could train a civil service, until we could do the educational training that would be necessary to develop an ability on the part of people to govern themselves. We could strengthen the seedbeds of economic freedom in South Vietnam so that the flower of political freedom could blossom. There cannot be political freedom in South Vietnam, in Latin America, or in any other underdeveloped area of the world until the people first enjoy economic freedom of choice for the individual. It is a truism. I have made that statement almost ad infinitum on the floor of the Senate, but Senators will hear it again and again and again, for there is no answer to it.

American foreign policy, so far as aid to underdeveloped areas of the world is concerned, must be based upon economic freedom, and helping those areas develop their economic freedom. We cannot develop economic freedom with bullets. We cannot develop economic freedom with Sherman tanks. We cannot develop economic freedom with fire bombs.

A little of the news got in the newspapers, but a remarkable coverup job has been done in America in recent days. We were caught flatfooted. We were caught with an American light plane inside of Cambodia, with American military personnel as well as South Vietnam personnel, dropping a fire bomb which destroyed a village and killed 16 people. We rushed for cover with apologies. We said, "It will not happen again."

Do Senators think that the apologies would have been forthcoming if we had not been caught? The Cambodians were able to shoot down our plane. That is how we were caught. But suppose that had been a successful flight, engineered with so-called American military advisers, who are really combat soldiers. I do not think we have any right to put our boys in that position. Suppose we had not been caught. Those same 16 Cambodians would have died. The same Cambodian village would have burned from that fire bomb. We were caught. Our Government was quick to announce, "No more fire bombs."

Mr. President, we shall witness one incident after another in South Vietnam until we get out.

I am greatly disturbed about the danger that we may escalate the war. I am greatly disturbed lest this country will continue to follow a unilateral course of action in South Vietnam that will lead to worsened conditions, and that finally some shocking catastrophe may happen and many American boys may be killed. Then the superpatriots will demand some kind of full-scale operation, and the holocaust will be on.

Hypothetical? Perhaps. But I think it is a very real possibility.

Now is the time to think about it. Now is the time to try to do something about it. Now is the time for those of us who feel as deeply as the senior Senator from Oregon feels about it to dare to stand up on the floor of the Senate and say so. Popularity contests are not won that way, in or out of the Senate, but one goes to bed at night satisfied that he did what he thought was his duty. I sleep much more comfortably knowing that I have raised my voice again in a plea for taking the problem to the United Nations. That is where we should take it. I do not know what we are waiting for.

If we are waiting for the trouble in South Vietnam to vanish, we shall wait a long time, so long as we stay in South Vietnam and continue to stir it up with mercenary pay and military pay. I would like to get the military aid out of there. For want of a better descriptive term, I would like to get some form of international trusteeship established. I would like to see my country stop supporting military tyrants. Under a military Fascist rule, there is no more freedom for the individual South Vietnamese than there is under Communist rule. They are equally bad and intolerable.

Yesterday's and today's newspapers indicate that the military tyrant in South Vietnam is having more trouble. This is an old pattern. Stop and reflect on the number of times there has been a juggling of military and government personnel in South Vietnam. The juggling continues. A group here and there will start organizing, conspiring, and contriving. We pick up a paper some morning and read either of a successful or unsuccessful coup.

Mr. President, they live on that. There is much dissent in many of the hamlets in the so-called delta area. We ought to go down to some of those hamlets and take their arms away, although they got their arms in the first place because it was thought they would be loyal to the South Vietnamese Government and the U.S. Government.

We discovered, of course, that they were working in concert with the Vietcong. Among the Vietcong were some of their relatives, in some instances members of their families.

We cannot proceed under those conditions. There will continue to be a juggling and shuffling for new positions. We are supporting this sort of thing on a unilateral basis, making more and more enemies for ourselves around the world, losing more and more face.

I am somewhat amused by the suggestion which has been made that if the suggestion of the Senator from Alaska and the Senator from Oregon is followed, American prestige will suffer. We are losing more support and more face by supporting the little tyrant by McNamara's war in South Vietnam than we will ever lose by being honest with ourselves, by saying we are ready to resort to the peaceful procedures provided for in the charter to which our Government's signature is attached.

Mr. SYMINGTON. Mr. President, will the able Senator from Oregon yield to me?

Mr. MORSE. I am delighted to yield.

Mr. SYMINGTON. The Senator knows the great respect I have for him, so I ask the Senator why he calls it "McNamara's war." It seems to me in peacetime and in normal times the Secretary of State handles foreign policy, with the advice and approval of the National Security Council. As the Senator knows, I have great respect for him, but I also have respect for the Secretary of Defense. I wonder sometimes, having read it in the CONGRESSIONAL RECORD, why the Senator from Oregon constantly calls it "McNamara's war." Knowing of the justice and fairness of the Senator from Oregon, which I also observed when I testified before him when I was in the

executive branch, I trust he understands the spirit in which I ask the question.

Mr. MORSE. I call it McNamara's war because, before the Senator from Missouri came to the Chamber, in the early part of my speech I said that in my opinion McNamara is the Secretary of State in southeast Asia. I believe Rusk has abdicated. Rusk merely follows McNamara. It is McNamara who is calling the shots in South Vietnam. It is McNamara's policies that are being followed. The four objectives that have been outlined as U.S. policy in South Vietnam did not come from Rusk. They came from McNamara.

I always believe both in giving a man credit and placing on his shoulders the responsibility when he is to blame. The South Vietnamese program is McNamara's program. I am not interested in Rusk's "me-too-isms" in regard to it.

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

Mr. MORSE. I yield.

Mr. SYMINGTON. I have respect both for the Secretary of State and for the Secretary of Defense. Therefore, I would not want to enter into a discussion as to the relative merits of either; but based on my knowledge of the executive branch, no Secretary of Defense could operate without full consent of the Secretary of State and the National Security Council. I disagree with my friend. I believe McNamara is not the architect, although, because he is the operator, he has to be the builder.

Mr. MORSE. The Senator heard him. He heard the testimony. The Senator heard him outline the program. The Senator heard the Secretary of State in effect say "Me, too," or, if the Senator likes a more polite phrase, "I second the motion."

That is exactly what has happened in regard to the South Vietnamese program. The South Vietnamese program is being called by the Pentagon and the rest of the administration is following it. I am trying to change that course of action, so I am pressing my honest convictions as to who is responsible to see if I cannot secure a change. I never give up hope.

Mr. SYMINGTON. Will the Senator from Oregon yield further?

Mr. MORSE. I am delighted to yield.

Mr. SYMINGTON. No Member of this body has more consistently fought for civilian control over the military than has the Senator from Oregon. I therefore suggest to the Senator that there may be some dichotomy of thought on his part, because of all the Secretaries of Defense who have worked for civilian control, I am confident he will agree with me that none has tried harder than the current Secretary of Defense.

Mr. MORSE. I did not mean to intimate that the Secretary of Defense is not in the saddle. There is no general in the saddle in the Pentagon. What I am saying is that the Secretary of Defense is surely in the saddle. He is galloping ahead with saber drawn, leading McNamara's war in South Vietnam. That is my position.

Mr. SYMINGTON. I thank the Senator for yielding to me. I trust he will give consideration to my observations, because he is a fair man.

Mr. MORSE. I always give consideration to the observations of the Senator from Missouri.

Mr. SYMINGTON. I thank my good friend, the Senator from Oregon.

Mr. MORSE. I am always hopeful that sooner or later I may persuade the good Senator from Missouri to my view. I am always hopeful. I never give up hope.

Mr. SYMINGTON. The Senator often does persuade me; but in this particular case I would hope to persuade him.

Mr. MORSE. Please do not bar the doors of the wonderful intellect of the Senator from Missouri. Please keep them ajar until I can get through to him. I am perfectly willing to wait for that final discussion. Please do not bar those doors to me yet. Give me an opportunity.

Mr. SYMINGTON. The Senator knows I would never try to close my mind to anything he had to say.

Mr. MORSE. I point out that I have outlined my program for a peaceful approach, and not a bullet approach, to South Vietnam, for an international law approach rather than a law of the jungle approach to South Vietnam, seeking to make it through SEATO, and if that fails, through the United Nations.

To continue with my argument on this problem, I have pointed out that the Secretary General under the SEATO treaty—who is a Thai—states that there is only an internal quarrel between two factions in South Vietnam.

His reported statement is indicative of the reluctance of the Asiatic nations to involve themselves in someone else's behalf in warfare, which might involve Red China.

According to reports of foreign aid spending for fiscal year 1963, the United States has spent $280.8 million on regional aid in this part of the world. That was for military aid only. Approximately $4 million or more was spent for economic aid. The footnote on the aid summary shows that the $280.8 million figure included aid to Australia and New Zealand, furnished on a regional basis. The grand total of our military aid in that area, on a regional basis, since 1946, comes to $1,510 million. Do not forget, that is grant money. That is giveaway money.

As I stated in my reply to the Ambassador to India, my good friend Chester Bowles, when he made his speech before the Press Club the other day, when he said that in connection with the AID program we had better stop playing God, I also suggested that he remember that we should stop playing Santa Claus as well. This is Santa Claus aid which the United States has been pouring into that part of the world. The only regional organization in that part of the world is the Southeast Asia Treaty Organization, known as SEATO. Besides the regional aid we have furnished, we are also furnishing hundreds of millions of dollars each year in military aid to certain individual members—namely, Thailand, the Philippines, and Pakistan. That is separate and distinct in what they receive.

Of course, we know what Pakistan will do with her aid. She is building up a vast military force for a potential war with India over Kashmir. If anyone believes she is building it up for a war against Red China, he could not be more wrong. Pakistan is opening her doors to Red China, entering into trade agreements and entering into airport landing agreements.

Although India is not a member of SEATO, we are pouring millions of dollars of military aid into India. What will it be used for? It will be used to fight Pakistan over Kashmir, if it is deemed necessary.

What a paradox—what irony. The United States is supplying 100 percent of the military equipment for Pakistan and India—building it up.

The only possible use to which the aid will be put will be in fighting each other.

Perhaps some Senator can justify that procedure on moral grounds. I cannot do so. I have been heard to say before that if we cannot justify a policy on moral grounds, we cannot justify it at all. If we cannot justify a policy on the basis of its morality, we had better dump it. We cannot justify a policy of building up the military strength of Pakistan and India and placing them in a position in which they can kill large segments of their population over Kashmir, when the issue of Kashmir should be taken to the United Nations.

Here is another dispute that threatens the peace of the world, which should be subjected to the procedures of determination by international law.

What is wrong with that? I ask that question again.

It makes so much commonsense. It is morally unanswerable that we should be supporting it, not undercutting it.

In my judgment, the military aid we are giving to India and Pakistan is morally unjustifiable.

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

Mr. MORSE. Why did I lead the fight, along with two or three other Senators in the previous session, against the foreign aid bill? Not because I was against foreign aid, but because I am against that kind of foreign aid.

I am glad to yield to the Senator from Alabama.

Mr. HILL. How much aid are we giving to India and Kashmir at the present time?

Mr. MORSE. I have not that information before me, but I will get it and place it in the RECORD. I believe we have given each country billions of dollars in aid since 1946. We have poured out more than $100 billion of the taxpayers' money since 1946 in foreign aid, military and economic—but mostly military. Military aid is almost always an overwhelming percentage of grant money.

Does anyone believe that has stabilized the world? Does anyone believe that has tilled the seedbeds of economic freedom?

I am the chairman of the Subcommittee on Latin America. Does anyone believe that we have tilled the seedbeds of economic freedom in Latin America?

We flirted with one coup after another. We let a military junta overthrow a constitutional government in the Dominican Republic and after a certain period of time, when most people had forgotten about the Dominican Republic and it went off the headlines, we recognized it.

We let a military coup overturn the constitutional Government of Honduras a few days before an election was to be held, because the leading candidate on a democratic ticket—with a small "d"—believed in the American principle that the military should be brought under constitutional control with the President of the country as its Commander in Chief. That is a pretty good American doctrine, is it not? The Honduran military did not think so. Knowing that if he won, the sound principle of constitutionalism would be established in Honduras, they overthrew the Government. However, a little while later we recognized them.

At that time we had an Assistant Secretary of State by the name of Martin. He tried to distinguish between dictators as "good guys" and "bad guys." I never saw a good military dictator in my life, and no one else has, either. A military dictatorship means the end of civil liberties. It means the end of self-government. It means the end of economic and political freedom. It means that the citizens have become but pawns of the state.

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

Mr. MORSE. I yield.

Mr. HILL. There is no separation of powers, no check and balance, is there?

Mr. MORSE. There is only one power.

Mr. HILL. No separation; only one power.

Mr. MORSE. Yes; and that is the dictatorship.

Mr. HILL. That is the dictatorship.

Mr. MORSE. Yes.

Of course, Senators know what would happen to the Senator from Oregon if he were in Vietnam now. He would be liquidated. I said at the White House:

> Do you know what would happen to the senior Senator from Oregon if he were in South Vietnam? He would be liquidated.

That would happen, because they do not tolerate any criticism of the Government over there.

Let me say to the Senator from Missouri, before he leaves the Chamber, that McNamara, in conducting McNamara's war, is perfectly willing to support that kind of dictatorship. He is supporting that kind of dictatorship and he is now advocating that we pick up the check and pay for the military draft that is supposed to be put in effect over there. Does the fact that Rusk supports it too make the Senator from Missouri feel any better?

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

Mr. MORSE. I yield.

Mr. SYMINGTON. I should like to discuss the matter further with the Senator from Oregon. Unfortunately, I must leave the Chamber. It is always a privilege to discuss a subject with the Senator from Oregon. At another time, I look forward to discussing the problem with the Senator from Oregon, and perhaps our discussion will lead into an argument. I would look forward to it.

Mr. MORSE. I thank the Senator.

Mr. SYMINGTON. I thank the Senator very much.

Mr. MORSE. The only regional organization in that part of the world is the Southeast Asia Treaty Organization. Besides this regional aid we have furnished under it, we are also furnishing hundreds of millions of dollars each year in military aid to certain of its individual members; namely, Thailand, the Philippines, and Pakistan.

This is why I said here some days ago that SEATO is little more than a mechanism for extracting aid from the United States.

Mr. President, if they could not get aid from us under SEATO, SEATO would be finished overnight. It is one of Dulles' gimmicks for extracting a great deal of money from the United States for the benefit of those countries. SEATO was a great mistake when Dulles proposed it. His "domino" theory was also a fallacy. There was never anything to it. Little Cambodia proved it. Even before Cambodia, it was proved by Thailand, Indonesia, Malaysia, Laos, and North Vietnam. They all proved it.

It is interesting to listen to the State Department officials talking about the Geneva accord of 1954. All the Geneva accord did was to quarter Indochina, to create South Vietnam, North Vietnam, Laos, and Cambodia.

Then there was the great Dulles brainstorm of the "domino theory." It was said we must go in there, we must pour the largess of the American taxpayers, because those countries are like a row of dominoes. The theory is that if one of these countries falls, they all go down. Bunkum. Pure bunkum. Events have proved how much bunkum it was.

Connected with the Dulles "domino theory" was Thailand, Indonesia, and Malaysia. They have not gone over to communism. I do not say that they have gone over to democracy, either. They have not. Does anyone believe there is any democracy in Thailand? It is another monarchy, whose king sits on the throne at the sufferance of the military. We support the military.

Do American taxpayers know that we support the military in Thailand 100 percent? We pay the full cost of the Thai military organization. As I said the other day, I observed a great Thai military maneuver. It was held to show the result of our military aid to Thailand. I do not exaggerate very much when I say that I could have taken 10 American Boy Scout troops over there and whipped the whole Thai Army. If a film of that maneuver were shown in an American theater, it would be the subject of high comedy. Does anyone think they would be of help to American forces if our forces were engaged with them in a fight against an enemy? The great problem would be for the American soldiers to get out of the way of the Thai troops before they were trampled to death as the Thai retreated.

We pour money into all those countries. We are not pouring it into armies that are willing to die for a cause.

It is a shocking waste. It ought to be stopped.

I want to help the Thai. I want to help the Pakistanis. I want to help India. However, I want to help them sow the seedbeds of economic freedom. I want to bring the economic freedom of choice to the masses of people, because I know, according to history, what will be the result. Every society in the history of mankind which has developed economic freedom of choice for the individual has become a free society.

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

Mr. MORSE. I yield.

Mr. McCLELLAN. I commend the Senator for the views he is expressing. I have shared those views for a long time. As evidence of it, in the past 9 years I voted against all foreign aid. I voted against it not because I was against all foreign aid, but because of the kind of aid the Senator refers to.

I ask the Senator if he agrees with me that when we give aid some condition ought to be laid down that these countries must live up to; otherwise it is a complete giveaway, irrevocably and irretrievably.

Mr. MORSE. The Senator from Arkansas has been 100 percent right. I greatly appreciate the great support he gave me in the previous session of Congress as we tried to modify the foreign aid bill. The administration has now made a good start. It is not enough. We hope it will go further in this session.

The Senator is correct. I offered an amendment to end all foreign aid—stop it—wipe the slate clean—at the end of fiscal year 1965; and then start all over again on two major premises: First, that those who want foreign aid will come and apply for it. We have rammed down the economic gullets and the military gullets of some foreign countries, since 1946, foreign aid that they did not want, that they did not ask for, because of the human frailty that characterizes the human animal, and they could not turn it down. My amendment provided that we end it and start all over with two principles or guideposts. We would require that first they must apply for it on terms and conditions which we proscribe in order to qualify them as applicants; and, second, that we limit the aid to not more than 50 countries. Does the Senator know how many countries we are aiding now? One hundred and seven.

Mr. McCLELLAN. How many more are soon to be born that we will assist?

Mr. MORSE. That we do not know. We shall be economic midwives to them, if we do not watch out. There are only eight countries outside the Iron Curtain, down whose gullets we have not rammed foreign aid.

Mr. McCLELLAN. Only eight?

Mr. MORSE. Only eight. If some of us had not made the fight—including the Senator from Arkansas [Mr. McCLELLAN]—which we have been making, the State Department would have seen to it that those countries would be getting the taxpayers' dollars.

I would drastically cut military aid, and I would reorient foreign aid so as to follow the program which I suggested, and require a demonstration of economic feasibility on a project-to-project basis. I would have most of it based on loan money, not grant money.

What does the Senator from Arkansas have to do and what do I have to do when we want to get a reclamation project, or when we want to get a dam, or when we want to get a public works project?

He and I must present evidence that shows a cost-benefit ratio favorable to the project. I do not quarrel with that. We ought to be required to do it. Does the Senator think we do that in our foreign aid program? We build dams when any careful study of the project would show that the prospect of ever getting enough water behind the dam to warrant its construction would be nil. We build roads which go nowhere. This is not the senior Senator from Oregon speaking. This is the Comptroller General of the United States.

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

Mr. MORSE. I yield.

Mr. McCLELLAN. We must do much more than merely ask for a project. We must justify it by the best available expert testimony and show that it is economically justifiable.

Mr. MORSE. Of course.

Mr. McCLELLAN. In the countries where we are spending the money, no such requirement is made. I recall that some 7 or 8 years ago, the Committee on Government Operations and the Permanent Investigations Subcommittee investigated a project in Bolivia. An irrigation project was constructed where there was no water.

Mr. MORSE. There was no water at all.

Mr. McCLELLAN. That is correct.

Mr. MORSE. Do not be surprised at that. The Comptroller General is our watchdog. He is our agent. He is an officer of Congress. He has been trying to warn us for years as to what is going on in foreign aid. He has given us a pile of reports. And he does not mark them top secret. But they are marked "Top secret."

Does the Senator remember when I used the reports in a debate during the previous session? There was an 18-inch-high pile of reports showing the shocking waste in foreign aid, the failure to carry out the professed objectives of a given program, and also the existence of great corruption among governments in underdeveloped areas of the world. I announced in the Senate Chamber that the reports were available for Senators to read.

In my judgment, one of the main reasons there are the votes which occur on some amendments is that Senators accepted my invitation and read some of those reports. Senators came to me and said, "WAYNE, I had no idea this was going on. I have listened to you. I know your position. But I had no idea this was your backstop evidence."

I remember that I once said—because of what the Senator from Arkansas has said, perhaps I ought to say it again—that one of the reports from the Comptroller General showed that more than 200 hay balers were shipped into a desert country, where it would not be possible to grow a ton of hay in a hundred square miles. Yet there they were, rusting away, some of them not even uncrated, and absolutely no good to anybody. Somebody lined some pockets. I do not charge that American officials did, because I will say to the everlasting credit of American officials that I know of no evidence of any corruption on their part. There was bad judgment. But much corruption is created in other countries because of the exercise of bad judgment on the part of U.S. AID officials.

It is important that we now hear that the Secretary General of SEATO, a Thai, finds that the war in South Vietnam is only an internal struggle between two factions. I do not disagree with him. I believe he is quite correct. But I also agree with General Khanh, the military tyrant of South Vietnam, when he calls SEATO a "paper tiger." He does not like it. He is not a booster for SEATO. He knows very well that if SEATO came in, he would go out.

He knows very well that an international jury, which the foreign ministers of the SEATO countries ought to be, because the signatures of their countries are attached to that treaty, could not very well support that tyrant's policies.

Probably in this instance both the Secretary General of SEATO and the military tyrant of South Vietnam are correct: SEATO has become a paper tiger. I wish it were not, if it could do any good. I should like to give SEATO a chance to prove whether it is a paper tiger. That is why I am urging my Government to try to make a resort to the SEATO organization in an attempt, at least, to end the killing in South Vietnam and restore some kind of order through a SEATO command, a SEATO trusteeship, or whatever can be agreed to by way of a SEATO pact for South Vietnam. We have no business getting into the middle of a civil war in South Vietnam. We have no business being a "sugar daddy" to a group of nations in southeast Asia that are strong for American intervention in Vietnam, but who want no part of the activity for themselves.

Unless the meeting of SEATO in Manila embarks on a joint SEATO policy toward South Vietnam and begins to deal with this threat to the peace in the one and only area it was created to deal with, the United States should get out of SEATO. At the very least, we should cancel our military and economic aid to it.

The only thing about SEATO that seems to work is its mimeograph machines. I receive an ample supply of publicity releases about its joint exercises with all-American equipment. Apparently that is all that the military establishments of these countries will ever do under SEATO—that is, to exercise their American equipment.

If there is a threat to peace in South Vietnam, SEATO should be dealing with it. That is its only reason for existence. The United States should not be dealing with it on a unilateral basis. If there is not a threat, but only an internal struggle between two factions, the United States has no business in South Vietnam, and should get out. Our present policy is only bleeding the United States financially and militarily.

Some days ago, on the floor of the Senate, I discussed a statement made in Manila by the President of the Philippines. He said that, by all means, the United States should stay in South Vietnam. There was no question about it. I was a little disturbed because that statement by the President of the Philippines did not continue and say that because the Philippines Government signed the SEATO Treaty, the Philippines would come in and help. He did not add that. So I respectfully—if none too politely—suggested, on the floor of the Senate, that I was not very much moved by that statement by the President of the Philippines; and I said I thought it would be more fitting if Filipino forces were in South Vietnam, doing a little of the dying and a little of the supporting. The President of the Philippines did not like that statement; and he had a few unkind words to say about the senior Senator from Oregon—which convinced me that I was right.

I received a letter from Jose F. Imperial, Chargé d'Affaires ad interim, Embassy of the Philippines. The letter reads as follows:

EMBASSY OF THE PHILIPPINES,
Washington, D.C., March 31, 1964.

Hon. WAYNE MORSE,
Senate of the United States,
Washington, D.C.

DEAR SENATOR MORSE: I read with much interest your remarks in the CONGRESSIONAL RECORD, Senate, of March 26, 1964, titled "Answer to the Secretary of Defense."

On page 6469 of the RECORD is the following statement: "Your country's signature is on the SEATO Treaty. You have walked out, Mr. President of the Philippines; you have not lived up to your signature."

I am not aware, Mr. Senator, that the President of the Philippines has either "walked out" or that he has "not lived up" to the signature on the SEATO Treaty. South Vietnam is one of the protocol states. I am certain, Mr. Senator, you are also familiar with the fact that without the specific request of a protocol state, SEATO is powerless to intervene in the internal affairs of that country. Since SEATO is not involved in South Vietnam, and American assistance there is a unilateral action on the part of the United States, your strong remarks against the President of the Philippines is both unfair and unjustified.

Without counting the cost, Filipino boys fought side by side and died side by side with American boys in two World Wars and in Korea for the cause of freedom and human dignity. In the event that SEATO action should become necessary in South Vietnam please rest assured, Mr. Senator,

that the Philippines will be there to the full limit of her treaty obligations.

Sincerely yours,

JOSE F. IMPERIAL,
Chargé d'Affaires ad interim.

Mr. McCLELLAN. Mr. President, at this point will the Senator from Oregon yield?

The ACTING PRESIDENT pro tempore (Mr. METCALF). Does the Senator from Oregon yield to the Senator from Arkansas?

Mr. MORSE. I yield.

Mr. McCLELLAN. If there is no such obligation on the part of the SEATO countries—apparently that is what he was trying to state in his letter—and nothing which has developed in South Vietnam calls for the SEATO members to act to fulfill their signatures to the SEATO agreement, why is the United States called on to intervene unilaterally in South Vietnam?

Mr. MORSE. I point out that there is a "gimmick" in that gentleman's letter—namely, his statement that the Government of the Philippines never was asked to go into South Vietnam, whereas the United States was asked to go in.

Mr. McCLELLAN. Who asked the United States to go in? As I understand the statement the Senator from Oregon is making, only the South Vietnamese Government asked the United States to go in there.

Mr. MORSE. We were asked to do that by a tryant we put into power there in 1954—a man by the name of Diem. Let us remember that after France set up a puppet there, and after France was kicked out, we set up a puppet there—the late dictator Diem. And of course it was not difficult for us to get him to ask us to go in there—just as it was not difficult for the East Germans to ask the Russians to go into East Germany.

However, let me say, as a former professor of logic, that the Chargé d'Affaires ad interim of the Embassy of the Philippines who wrote the letter to me would have flunked my course, if he wrote an examination paper which was as full of false assumptions, non sequiturs, and misstatements as the large number we find in the letter he sent to me. It will be noted that in his letter he admitted that South Vietnam is one of the protocol states; but he failed to state that SEATO had much to do in connection with that protocol state arrangement, because every nation which was signatory to the SEATO Treaty joined in the statement in the treaty that the signatories thereto recognized South Vietnam as an area of mutual concern and interest. Of course they pledged themselves, at that very time, to take an interest in South Vietnam—along with the United States. We have kept our pledge—although I think we have carried it out very poorly and unfortunately. But the point is that the Philippine Government and every other government which signed the SEATO Treaty should have been in South Vietnam with us, trying to work out there, with us, under the protocol agreement they joined in placing in the SEATO Treaty, an agreement involving South Vietnam—a peaceful handling of the controversy which has arisen, in South Vietnam.

Mr. McCLELLAN. Then, if I correctly understand, whatever obligation the United States may have had to be in South Vietnam stemmed from the fact that the United States was a party to the SEATO Treaty; is that correct?

Mr. MORSE. Yes, that is the only international-law reed we have to lean on; and the same obligation exists with respect to every other nation signatory to that treaty.

Mr. McCLELLAN. Is it true that there is no other obligation in that connection that has been incurred by the United States other than through our signature of the SEATO Treaty?

Mr. MORSE. That is correct.

Mr. McCLELLAN. If I correctly understand, every signatory to that treaty is under as much obligation to be in South Vietnam tonight as the American troops are. Is that correct?

Mr. MORSE. That is my position; and the escape hatch that McNamara and the State Department are trying to use—mainly, that Diem asked us to come in—is, in my judgment, an arrangement of convenience.

Mr. McCLELLAN. Were we under any obligation to go in there?

Mr. MORSE. Only as a member of SEATO.

Mr. McCLELLAN. If we had an obligation to respond to that invitation, it seems to me that all the other signatories to the SEATO Treaty had the same obligation.

Mr. MORSE. Certainly they did. Not only that, but when we did respond to that invitation, every other signatory to the SEATO Treaty should have asked us, "What are you up to? What do you propose to do? What are you doing in there?"

In this matter we bound ourselves in regard to mutual concern. In that case, what happened to Australia, New Zealand, Great Britain, France, and the other countries? I do not know; I never have been able to find out. But I believe we can take judicial notice of the fact that they merely took the position that if Uncle Sam was willing to spend his money and blood there, let him do it.

Of course that happens all around the world; as long as the United States is willing to "pick up the checks" and the responsibilities, the other countries will let us do it.

Mr. McCLELLAN. They will say, "Let you and him fight."

Mr. MORSE. Of course, as the Senator from Arkansas has said, they will reply, "Let you and him fight."

We poured out over $100 million.

In response to the letter I received from that Filipino diplomat, I dispatched the following letter:

APRIL 6, 1964.

Hon. JOSE F. IMPERIAL,
Chargé d'Affaires ad interim of the Philippines, Washington, D.C.

DEAR SIR: Thank you for your letter of March 31.

I completely disagree with the rationalizations set forth in the letter. The fact remains that the Government of the Philippines signed the SEATO Treaty. It, like the other signatories of the treaty, has exercised no leadership in trying to resolve the civil war in South Vietnam short of military action. Until your President exercises such leadership, I shall continue to point out that he, along with the other signatories of the treaty, have walked out on their clear responsibilities to seek a peaceful solution to issues that threaten the peace in South Vietnam.

I recognize and have paid tribute to the fact that Filipino boys have fought along beside American boys in past wars, but there are no Filipino boys in Filipino uniforms dying in South Vietnam these days.

I am enclosing tear sheets from the CONGRESSIONAL RECORD, containing the references I have made to the President of your country and to the policies of your country. I assure you that I stand on every word I have spoken in criticism of your President and your country.

Yours respectfully,

WAYNE MORSE.

Mr. President, I now repeat, all the criticism that I have heretofore made of the failure of the Philippine Government to live up to what I consider to be their clear obligations under the SEATO Treaty, and I now incorporate in that criticism, Australia, New Zealand, Pakistan, Thailand, Great Britain, and France. The only one, I believe, who has made a gesture on the question is De Gaulle. The trouble is that we do not know what he means, and I wish to give him an opportunity to clarify his position. I wish to give him an opportunity to expound, amplify, and define. I do not believe we can do so except through SEATO.

There was a little criticism of my position on South Vietnam from an American Legion Post, Southeast Post No. 146, American Legion, Department of Oregon, signed by Don E. Johnson, Americanism Chairman, District 8, Post No. 146, American Legion, Field Box 7013, Portland, Oreg., 97219.

Mr. President, I ask unanimous consent that the entire letter, including the listing of the officers of the post, be printed in the RECORD.

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

SOUTHEAST POST NO. 146,
AMERICAN LEGION,
DEPARTMENT OF OREGON,
Portland, Oreg., March 30, 1964.

Subject: Your picture—Peoples' World.

Senator WAYNE MORSE,
U.S. Senate Office Building,
Washington, D.C.

HONORABLE SENATOR MORSE: Do you think that the patriotic, well-informed citizens of the State of Oregon appreciate your smiling picture on the front page of the Peoples' World, dated Saturday, March 28, 1964?

Yours very truly,

DON E. JOHNSON,
Americanism Chairman, District 8, and Post 146, American Legion, Portland, Oreg.

OFFICERS 1963–64

Dan E. Mosee, commander.
Alfred G. Rouse, first vice commander.
Roy L. Axt, second vice commander.
Hohn E. Shapland, adjutant.
Don E. Johnson, assistant adjutant.

Willard G. Hoard, finance officer.
Clarence D. Griffiths, junior past commander.
George F. Payne, chaplain.
Earl F. Olson, historian.
William J. Kirkland, service officer.
Charles R. Crisp, sergeant at arms.

EXECUTIVE COMMITTEE

A. A. Esau, Ervin R. Johnson, Herb Smith, Norman LePoideuin, Bernard Anderson, Harold Widman, Jr., and Jack Stewart.

PAST COMMANDERS

Herbert A. Peterson, 1946–47.
Gordon O. Auborn, 1947–48.
Ronald E. Callbeck, 1948–49.
Albert H. Boss, 1949–50.
Donald M. Lehman, 1950–51.
Ralph W. Kaufman, 1951–52.
Willard G. Hoard, 1952–53.
George O. Nelson, 1953–54.
Irvin R. Johnson, 1954–55.
Orville W. Reynolds, 1955–56.
William J. Kirkland, 1956–57.
Robert C. Jones, 1957–58.
Clinton H. Fromm, 1958–59.
William F. Bower, 1959–60.
Peter B. Lang, 1960–61.
Irvin R. Johnson, 1961–62.
Clarence D. Griffiths, 1962–63.
Dan E. Mosee, 1963–64.

Mr. MORSE. I wish to complete my discussion of the letter I received from the chairman of the Committee on Americanism of Southeast Post No. 146 of the American Legion in Portland, Oreg. The letter reads:

Subject: Your picture—People's World.
HON. SENATOR MORSE: Do you think that the patriotic, well-informed citizens of the State of Oregon appreciate your smiling picture on the front page of the Peoples' World, dated Saturday, March 28, 1964?
Yours very truly,
DON E. JOHNSON.

I responded to the chairman of the Americanism Committee of the Southeast Post No. 146 of the American Legion of Portland, Oreg., as follows:

DEAR MR. JOHNSON: I have received your letter of March 30.
I would be interested in knowing what in the world you think I had to do with my picture being on the front page of the Peoples' World. Do you mean to tell me that you have duped yourself with the guilt by association philosophy? What nonsense.
Yours truly.

One cannot take my position on South Vietnam and not receive mail of that type, because the people who write such mail are not interested in the facts. Seldom do they give evidence that they resort to thinking of great abstract principles of government that keep us free.

When a Senator fights in the Senate to have his Government keep faith with the great ideal that this country should resort to the rule of law—which we say we do—instead of the jungle law of force for the settlement of disputes, and then says it should be applied to South Vietnam, and says, quite frankly and undeniably, that this country is not doing it there, one expects people to write letters such as this. But it is a part of the liabilities that go with the position one holds in this body, and I do not intend to be deterred by mail of that type. I intend to continue to press my administration for some answers to the questions I have been raising.

I have another letter I wish to read. It is similar to the 200 or more letters I placed in the CONGRESSIONAL RECORD a few days ago, from every State in the Union, and from officers, privates, and sergeants of our Military Establishment in South Vietnam, in support of the position I am taking on South Vietnam. I said before that those letters would have to be published without disclosing their signatures. I said the letters were available for Senators to read, and I said the letters were available to the White House to read, if the White House wanted to read them. But, knowing the military as I do, I know what would probably happen to any officer in South Vietnam who wrote a letter of encouragement and support to the senior Senator from Oregon in regard to his position toward American foreign policy in South Vietnam. So the Official Reporter will please eliminate the name or any identification mark, and return the letter to my office uncut.

The letter reads as follows:

DEAR SENATOR MORSE: I thought you might note the enclosed article clipped from today's Saigon Post. Also enclosed is the Vietnamese press version of Ambassador Lodge's and Mr. McNamara's statements. It seems that policies as usual are still undecided.

The small article on the L–19 crash, of which the lieutenant has died, shows what some of our military aid in southeast Asia has done for us. As you will note he was shot down by Cambodian T–28 fighters. This is a case of some of our foreign aid coming back to us in the form of death to our own troops. This is just one of many instances.

I trust you will find these articles of interest.

Yours truly,

Mr. President, I ask unanimous consent that the articles that the member of our Military Establishment in Saigon sent to me also be incorporated at this point in my remarks.

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

[From the Saigon Post, Mar. 28, 1964]

U.S. AIR FORCE L–19 MISSING WITH TWO ABOARD—KHMER-DOWNED U.S. PILOT DIES

A U.S. Air Force L–19 observation plane has been reported missing in Quang Tri Province since Wednesday with two American pilots aboard according to American military sources.

The plane took off from Khe Sanh at 2:15 p.m. for a 2-hour reconnaissance flight. It carried enough gas for approximately 3 hours and 40 minutes of flight.

When the aircraft did not return to Khe Sanh as scheduled, a ground communications check failed to reveal any information on its status. Darkness and bad weather in the area prevented any immediate airborne search.

No emergency messages or position reports were received from the aircraft after it took off. The general area of the L–19's proposed flight plan was searched Thursday by 18 fixed-wing aircraft.

Due to bad weather in the area, the search could not be started until 11:10 a.m.

Two H–34 helicopters are on standby for medical evacuation purposes and 12 other H–34's are on alert to fly troops in to secure the area when the missing plane is located.

The pilot is assigned to the U.S. Air Force and the observer is a U.S. Army officer.

The sources also reported that the U.S. Air Force first lieutenant who piloted the Vietnam Air Force L–19 observation plane shot down by Cambodian fighter planes March 19 died Wednesday at the Clark Air Base hospital in the Philippines.

The pilot was evacuated to Clark on Tuesday; at that time he was still in critical condition with multiple injuries.

The L–19 crashed in Kien Tuong Province about 2.5 miles this side of the Cambodian border after being fired on by two Cambodian T–28 fighters painted gray with red tails.

[From the Saigon Post, Mar. 28, 1964]

U.S. PULLOUT DISASTROUS; VICTORY SURE, LODGE SAYS—LOSS OF VIETNAM WOULD ENDANGER FREEDOM OF 240 MILLION PEOPLE

U.S. Ambassador Henry Cabot Lodge said Thursday that withdrawal of U.S. troops from Vietnam would be disastrous and that neutralization of the country at this time would be "the complete equivalent of Communist victory."

The Ambassador also said, in prepared answers to questions put by Associated Press that persistent execution of existing civil, political and military plans under Gen. Nguyen Khanh will bring victory—provided the hostile influences stay within bounds.

The loss of South Vietnam to the Communists would be a clear success for Communist China, which wants to turn Vietnam into a satellite, and would endanger a vast area of Asia in which 240 million people live, he said.

This is the reason why the freedom of South Vietnam is so important to the United States, the Ambassador pointed out.

"South Vietnam is the hub of an area which is bounded on the northeast and east by Formosa and the Philippines, on the south by Indonesia and on the west by Borneo. Communist seizure of South Vietnam would put the Communist squarely into the middle of southeast Asia, whence they could radiate all over," he said.

The loss of South Vietnam would have an incalculable effect on Cambodia and Laos, with strong repercussions further west in Thailand and Burma, he added. It would shake Malaysia to the south, it would surely threaten Indonesia. If Indonesia were unable or unwilling to resist, the Chinese Communists would be on the front doorstep of Australia.

Eastward, the repercussions for the Philippines and for Formosa would be severe, he said. Therefore, when we speak of southeast Asia, we are not talking of some small neck of the woods, but of an area about 2,300 miles long from north to south and 3,000 miles wide from east to west with about 240 million people.

"If the Communist Chinese, using North Vietnam as a catspaw, were able to take over South Vietnam, it would be interpreted as a vindication of the fanatic Chinese methods over that of the Soviets. It would also be regarded in the free world as reflecting a general lack of ability, a lack of willpower by the United States to prevent Communist aggression," he said.

The Ambassador dismissed current criticism about the war being in a stalemate with little gain by either side. He said that under General Khanh a new and much stronger situation is being created which means that in the Army bravery is being rewarded. "I believe that persistent execution of the existing civil-political and military plans will bring victory—provided the hostile external influences stay within bounds," he added.

Commenting on suggestions that the U.S. troops withdraw immediately, the Ambassador said that some U.S. troops which are

performing specific missions can be withdrawn as soon as their missions are completed. "But a general withdrawal of the United States at this time would be disastrous," he reasoned. "We and the Vietnamese have built a strong position here."

He said that the cost to the United States in dollars per year is less than it cost to build one airplane carrier. "For us to throw away this joint investment, for which brave men have laid down their lives, would be imprudent," he emphasized.

The Ambassador scored the idea of neutralism as proposed by France, as the complete equivalent to Communist victory under present circumstances.

"In fact," he said, "the Communists in describing their idea of victory always use the word 'neutralism'. But they apply it exclusively to South Vietnam and not to the North."

He said that before discussing any kind of new relationship between North and South Vietnam, the North should stop aggression against the South.

No conversations with North Vietnam are even conceivable while this interference in South Vietnam's internal affairs is going on "They must withdraw immediately," he pointed out.

The minute they do so, there will be peace he concluded.

[From the Saigon Post, Mar. 28, 1964]

MORE MEN, GUNS, PLANES FOR VIETNAM—McNAMARA: HIT-HANOI PLAN NOT SHELVED

U.S. Defense Secretary Robert S. McNamara Thursday night said that the United States will help the Republic of Vietnam expand its land and air forces to press its war against the Communist Vietcong. At the same time, he did not specifically rule out the possibility of direct South Vietnamese military action against North Vietnam.

Speaking at the annual James Forrestal memorial dinner in Washington, named in honor of America's World War II Secretary of War, McNamara said that President Johnson approved 12 recommendations which he and Gen. Maxwell D. Taylor, U.S. Joint Chiefs of Staff Chairman, following their 5-day visit here early this month.

The Secretary did not spell out in complete detail what the 12 recommendations were, but mentioned the following:

He again reaffirmed U.S. support for the Government of South Vietnam in carrying out its anti-insurgency plan. Under the plan, he said, Prime Minister Gen. Nguyen Khanh intends to supplement a national mobilization plan program to mobilize all national resources in the struggle.

The Secretary said that the quality of the "new life" hamlets will be improved, and will be built systematically outward from secure areas and over-extension will be corrected.

The security forces will be increased by at least 50,000 men. The present strength of all regular and paramilitary forces is now about 400,000. The armed forces will be consolidated and their effectiveness and conditions of service will be improved, he announced. "We will provide required additional material," he said. "This will include strengthening the Vietnamese Air Force with better aircraft and improving the mobility of the ground forces."

McNamara made the rural problem the focal point of his speech. He said that a broad national program is to be carried out, giving priority to rural needs. He announced the imminent establishment of an administrative corps which will include teachers, health technicians, agriculture workers and other technicians. The initial goal during the year 1964 will be at least 7,500 additional persons, he disclosed, with the ultimate goal being at least 40,000 technicians for the more than 8,000 hamlets in 2,500 villages and 43 provinces.

The Secretary touched on the topic of carrying the war to North Vietnam. He said it was one of the options before President Johnson in the counterinsurgency program in South Vietnam.

He said: "This course of action—its implications and ways of carrying it out—has been carefully studied. Whatever ultimate course of action may be forced upon us by the other side, it is clear that actions under this option would be only a supplement to, not a substitute for, progress within South Vietnam's own borders."

McNamara ruled out two other options for dealing with the Vietnamese problem. He totally rejected the notion that the United States withdraw its help, and he said the proposal for the neutralization of Vietnam would, in reality, be an interim device to permit Communist consolidation and eventual takeover.

McNamara noted that both North Vietnam and Communist China regard their battle for South Vietnam as a test case for the new Communist strategy. But he noted that they have different objectives. Hanoi's objective is limited to a mere conquest of the South, he said, while Peiping would regard Hanoi's victory as a first step toward eventual hegemony over the two, Vietnam and southeast Asia.

America's goal, McNamara said, is peace and stability, both in Vietnam and southeast Asia. "When the day comes when we can safely withdraw, we can expect to leave an independent and stable Vietnam, rich with resources and bright with prospects for contributing to the peace and prosperity of southeast Asia and the world," he concluded

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ONE-STAR RANK CREATED IN VIETNAM ARMY

A new rank, a one-star general has been created within the Vietnamese Army, it was authoritatively reported yesterday.

The source said the officers getting this new rank will be between a full colonel and the present brigadier general. Just why the move has been made is not known.

In Vietnamese, according to the source, the rank is "chuan tuong."

English translation of the rank is a problem since the Vietnamese brigadier general or "thieu tuong" has two stars, the major general, three, and the lieutenant general, four. So what can this new rank be called in English?

What about "junior general" for Vietnam's future one-star officers?

[From the Saigon Post, Mar. 30, 1964]

NO BIG POWER BACKDROP FOR KHMER TALKS—P.M.—U.S. SENATOR INVITED FOR LOOK-SEE

Prime Minister Gen. Nguyen Khanh on Saturday apparently tried to dissuade Cambodia from demanding a Geneva conference to guarantee its neutrality as a prerequisite for resumption of the Vietnamese-Cambodian border talks postponed early last week.

The Prime Minister said Cambodia and Vietnam are independent countries having complete sovereignty and when it comes to matters only concerning our two countries, we should settle them between ourselves without having recourse to the patronage of any outside country or seek any guarantee other than the sincerity and friendship of two fraternal people.

After pledging "strict respect for all agreements" the two governments may sign "in full freedom of action," he said the Vietnamese people "are ready to welcome" a Cambodian delegation which Prince Sihanouk recently said he might send to Saigon.

General Khanh said he and his government understood Cambodian indignation over the Chantrea bombing, and we have shown to the world that we know how to accept our responsibilities.

"If Vietnam and Cambodia now self-reliantly solve the common problems between the two nations, they will directly and effectively contribute to the maintenance of peace in southeast Asia and at the same time win the esteem of the whole world for the Cambodian and Vietnamese people," he added.

General Khanh made this statement at a 45-minute planeside press conference after presiding over the end of a course for observation pilots at Nha Trang Air Base.

Before inviting newsmen to ask questions, General Khanh made known the press conference had to be held in Nha Trang because he had to fly to Central Vietnam on an inspection trip immediately after.

Asked to comment on Prince Sihanouk's most recent attitude in the light of his "guarantee Cambodian neutrality first" statement, the Prime Minister said:

"On the basis of that statement, I asked myself why our two nations can't get together directly to settle their common problems without always relying on some great powers standing beside them? On my honor I can guarantee that Vietnam will respect all the agreements it may sign with Cambodia.

"At this point I also want to answer a rumor in the press that in the Cambodian incident, the Vietnamese Government acted on the recommendation of the United States. I want to make clear that the Government and myself made the decision ourselves without any advice from outside.

"On the other hand, one paper said to make concessions to Cambodia was a shame to our nation. They said that because they didn't understand the matter. Actually as far as force goes we are stronger than Cambodia and precisely because of this strength we must show modesty and peaceful intentions. On the contrary, we cannot have the same attitude towards a country stronger than us, as France for example.

For these reasons I want to repeat that the Vietnamese Government is striving to reestablish normal relations with Cambodia on an equal basis.

In reply to another question, he said he knew nothing of Cambodia's intention to exhibit the Chantrea victims' bodies but admitted that damage done to the Cambodian border village was heavy.

"Just imagine that a 1-ton bomb makes a crater 35 feet wide and you'd realize," he drifted off in a visibly moved mood.

Asked to comment on a recent statement by U.S. Defense Secretary McNamara that extension of the war to North Vietnam is not entirely ruled out, the Prime Minister said that was "a question of grand strategy, and the enemy always would like to know what's in our minds."

"All I can say as a general is that to be on the defensive is to lose and to be on the offensive is to win.

"However, military actions above the 17th parallel have important international implications and I can't answer you in detail. I can only let you know that we can repay Communist aggression, and there are many ways we can do that, not only with flags flying and drums beating."

KNOW BETTER

In answer to a newsman's question about his reaction to a recent statement by a U.S. Senator (WAYNE MORSE of Oregon) to the effect that all South Vietnam "isn't worth the blood of one American soldier," General Khanh said:

"If I were an American citizen, I would never vote for such a Congressman. Because the Americans in Vietnam are fighting for a just cause—freedom—to oppose the in-

ternational Communists' invasion of a small nation.

"I am ready to invite that Congressman to come and live here with the Americans in the field. Then he will know better."

Mr. MORSE. Mr. President, how right he is about some of that military aid coming back to us. I referred previously to the incident when a small military plane was caught dropping a fire bomb inside Cambodia, which course of conduct could not possibly be justified on humane grounds.

Mr. President, I have another letter. Tomorrow, or next day, or the day after, or in the near future, I shall have another collection of letters to put in the CONGRESSIONAL RECORD, many of them from South Vietnam. News has reached there that some of us in the Senate dare to speak out in opposition to this policy. So I am hearing from them.

The next letter, Mr. President, is dated April 1, and reads as follows:

DEAR SIR: Today I read an article about you in the Pacific Stars and Stripes. I'd like to congratulate you and say I'm behind you 100 percent. Many others here share your viewpoints.

You "hit the nail on the head" about the statement aimed at the Philippine President. We are the only ones here sitting as targets for the Communists. Believe me, the Reds are hitting those targets too. And then they say we're not actually "in" the cold(?) war.

I also believe in the fact that the Commander in Chief should speak up. He's evaded the situation long enough. I believe this whole thing is a political scandal which is a 100-percent flop. It's all a political battle in the U.S. offices.

As for the flag flying at half mast; it'd be at half mast for many, many days.

I also believe McNamara should've spent some of his time here talking to the American GI's while he toured the field. No, he spent it all with the Vietnamese and the big U.S. officials who probably "snowed" him. If he actually knew the situation, maybe he'd change his viewpoints.

The administration should stop and think of all of our supplies that are being shot right back at us.

Sir, I appreciated your article very much. It helped many of us that read it. We're glad to know someone sees things right. Nine out of ten of the GI's go along with my feelings.

Again I say "Thank you" for the support. Keep up the fight. The righteous wins.

P.S.—I'd appreciate acknowledgment if possible.

Mr. MORSE. Mr. President, I ask unanimous consent to have printed in the RECORD an article entitled, "Saigon Criticizes Position of SEATO," written by Jacques Nevard, and published in the New York Times for April 9, 1964.

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

SAIGON CRITICIZES POSITION OF SEATO—SAYS BAN ON MEETING COVERT AGGRESSION HAMPERS IT

(By Jacques Nevard)

SAIGON, SOUTH VIETNAM, April 8.—South Vietnam said today that the Southeast Asia Treaty Organization was running the risk of becoming a "paper tiger," because it considered its role limited to prevention of open aggression by Communists.

A statement issued by the government of Premier Nguyen Khanh said that the subversive struggle being waged by the Chinese Communists "does not require frontal attack, uniformed soldiers, or even a battlefront."

The criticism of SEATO was a result of reports here that Konthi Suphamongkhon, Secretary General of the eight-nation pact, said Monday in Manila that there was no military aggression in South Vietnam and that the struggle there was only an internal quarrel between two factions.

FOREIGN MINISTERS MEET

The Secretary General, a Thai citizen, was interviewed on his arrival in the Philippines for a meeting of the Foreign Ministers of the SEATO nations—Australia, Britain, France, New Zealand, Pakistan, the Philippines, Thailand, and the United States.

A protocol to the 1954 treaty that established the alliance provided an umbrella of protection for South Vietnam, Laos, and Cambodia, although they are not members.

In a statement issued by the Foreign Ministry, South Vietnam said that never in the nearly 10 years since the beginning of the alliance had the Chinese Communists committed open aggression, "except perhaps in the case of the Indian frontier."

The statement said that "instead of armed struggle," the Communists "preferred by far an intensive propaganda campaign in extremist groups in newly independent countries, thus creating unyielding infiltrators more dangerous in the long run for seizing power than a battalion of soldiers."

CLASSIC IDEAS OBSOLETE

The Foreign Ministry said: "In another order of ideas, the classic concept of aggressive war, or rather traditional terminology in military matters, risks being obsolete. International law, which governs our treaties, conceives of aggressive war in the form of a frontal attack launched by a uniformed army. But the subversive struggle invented by the Communists, designed for wars of liberation, does not require a frontal attack, uniformed soldiers, or even a battlefront. How, in such cases, can one talk about war and aggression, much less about intervention and armistice?"

Mr. MORSE. Mr. President, I have other material here, but the Senator from Nevada [Mr. BIBLE] has arrived in the Chamber. I understand that we are to take up another subject matter tonight—I am not too sure whether there has been a change in the plan, but this is my speech on McNamara's war in South Vietnam for today. There will probably be another one tomorrow and the day after, so long as the administration continues to follow a course of action which I believe is as unsound as America's unilateral action in South Vietnam.

Mr. President, I yield the floor.

ORDER OF BUSINESS

Mr. McCLELLAN. Mr. President, I had intended to discuss the pending bill some time today, but circumstances have intervened. Other Senators have been recognized by the Chair and have occupied the time until this late hour. I understand, too, that some agreement or arrangement was made whereby it was understood that there would not be another quorum call tonight. I believe that arrangement was made to accommodate a number of Senators who are now absent and who desire to be absent.

Under the conditions which prevail, it would hardly be expected that I would make a lengthy address this evening on this important proposed legislation with the Chamber completely empty except for two Senators of the majority party who are now present, besides the occupant of the chair, and with the membership of the minority party, except one, absent attending some repast, some enjoyable dinner. I hope that when I speak on the measure I shall have the presence of some of our distinguished friends across the aisle as well as some of my own colleagues.

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

Mr. McCLELLAN. I yield.

Mr. BENNETT. I wish to make the observation that even Republicans must eat, though the fare is sometimes a little bit scanty.

Mr. McCLELLAN. I am in favor of that, and I think we ought to recess immediately so that we can all eat. I do not believe it is fair to permit only the Republicans to eat with the understanding that there will be no quorum call. While they dine, some of us must carry on. As soon as the distinguished Senator from Oregon returns and finishes his remarks, it would be very fitting and very becoming to the dignity of this body for the Senate then to recess under the previous order until 10 o'clock tomorrow morning—so I look forward to that moment that I think would be appropriate under the conditions that now prevail.

Mr. President, I spoke on the motion to consider the bill on the 12th day of March. One day from now that will be a calendar month ago. I have been prepared to speak on the bill each day subsequent to that day. The reason I have not is that I have had very little opportunity to do so. I have been crowded off the stage. The supporters of the measure have taken up a great deal of the available time—and rightly so. But to date I have been almost a little peeved at times because I could not get to speak routinely as the day arrived for my team to occupy the time. But those are inconveniences that we must endure from time to time. So having suffered such inconvenience and disappointment in the past, it would be unfair to expect me tonight under those circumstances to speak at any great length. So without serious objection—and I do not believe there will be any—when the distinguished Senator from Oregon concludes the able address that we have been privileged to listen to, I think it would be appropriate—and I hope that Senators will agree that I may make a motion to recess until the time heretofore agreed upon.

I was very much interested in the remarks of the distinguished Senator from Oregon. I may say that for the last 9 years I believe I have voted against the foreign aid bill each year and have voted against the appropriation therefor as a protest against the kind of aid we were giving and the circumstances under which we were giving it.

I appreciate very much the kindness of the Senator from Oregon in yielding

to me. I am very thankful I had the opportunity to make these few remarks.

Mr. MORSE. I thank the Senator from Arkansas very much. He was very kind to me. The courtesy he extended to me is deeply appreciated.

GEN. DOUGLAS MacARTHUR

Mr. SYMINGTON. Mr. President, unfortunately, I was not on the floor when many tributes were paid to the late great Gen. Douglas MacArthur, who now lies in state in the city in Virginia he felt to be his home.

It happens that for reasons not important at this time I have known General MacArthur for over 45 years. Rather than eulogizing further his great record, I ask unanimous consent that a moving and beautiful editorial from the St. Louis Globe-Democrat of April 6 be inserted at this point in the RECORD.

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

[From the St. Louis Globe-Democrat, Apr. 6, 1964]

GEN. DOUGLAS MACARTHUR

In all the annals of military history, there has never been a career to excel that of General of the Army Douglas MacArthur. The world will almost surely never see his like again.

Impressive as they are, statistics alone cannot do justice to this great and noble man. The youngest general in World War I, the youngest Army Chief of Staff in our history, the magnificent architect of victory in the vast reaches of the Southwest Pacific from Australia to Japan, the indomitable leader of heroic forces against overwhelming numbers in Korea, the most decorated soldier of all time, Douglas MacArthur was a great military commander, and much more.

It was the strength of his character and reputation and love for him which held the Filipino nation together in the dark days of the Japanese occupation until final victory could be won. "I shall return" kept the light of liberty alive as nothing else could.

His overlordship of Japan converted a vicious foe into a stanch and resolute ally, so that the Japanese nation wept when their one-time conqueror went home.

The careers of many great military leaders have been but a few years at command rank. Most of the generals and admirals of all nations and services in World War II served less than a decade as flag officers. General MacArthur wore the stars of a general officer on active duty almost 35 years.

Yet the greatness of this wonderful leader cannot be measured in military victories alone, though tens of thousands of Americans are alive today because the genius of his leadership always was equated with the minimum expenditure of American lives.

His great qualities of heart and mind and his deep religious faith shone through all his words and deeds. He deeply believed that God had intended the United States of America ever to be a land of courage, a land to which all the world might look for honor and decency and spiritual values, a land ordained to be the home of truth and justice, a nation whose sterling example others might hope to emulate and follow.

Thus he was ever impatient of the second best, of the compromiser with evil and of the doctrine of weakness and equivocation. His code for his beloved Army—"duty, honor, country"—perhaps the greatest speech in our language since Lincoln's Gettysburg Address, was intended fully as much for his countrymen as for the Corps of Cadets at West Point.

Douglas MacArthur served his country long and well. He set a standard which will ever be both inspiration and aspiration to those who follow him.

He had but one code—victory. He had but one love—America. He had but one guiding principle—honor.

A nation mourns the greatest of her sons.

EXECUTIVE SESSION

Mr. BIBLE. Mr. President, I move that the Senate proceed to the consideration of executive business, to consider the nomination on the Executive Calendar.

The motion was agreed to; and the Senate proceeded to the consideration of executive business.

The ACTING PRESIDENT pro tempore. If there be no reports of committees, the nomination on the Executive Calendar will be stated.

THE DISTRICT OF COLUMBIA

The legislative clerk read the nomination of Walter N. Tobriner, of the District of Columbia, to be a Commissioner of the District of Columbia for a term of 3 years, and until his successor is appointed and qualified.

Mr. BIBLE. Mr. President——

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

Mr. BIBLE. Mr. President, it is a privilege for me to speak in behalf of the nomination of Walter N. Tobriner. His nomination is now before the Senate.

Although the temptation is great to ask for a quorum call, in view of the lateness of the hour, and possibly the interest in affairs which are primarily limited to the District of Columbia, I shall not do so.

However, this is a very important position. It is one which everyone who resides in the District of Columbia and in the metropolitan area should follow with intense interest.

The nomination was reported to the Senate by a vote of 4 in favor, the distinguished Senator from the great State of Oregon [Mr. MORSE] voting present and there being no negative votes.

The nominee was born in the Nation's Capital on July 2, 1902. He has a fine educational background. He has distinguished himself in the practice of law in the Nation's Capital for many years. He served with distinction in World War II. He was commissioned as a major in the Air Force. He served for many years as a professor of law, and in that respect followed the path of the distinguished Senator from Oregon [Mr. MORSE] as a law professor. He taught for many years at the National University Law School, from 1930 to 1950, with a short time out for military service. He has been repeatedly recognized for his fine community service.

I could list many of his achievements in this regard. He has been active with the Democratic Party, but I am directing my attention tonight particularly to the work of this good man as Chairman of the Board of Commissioners of the District of Columbia for the past 3 years or more. I am familiar with his record.

As chairman of the Committee on the District of Columbia, it is my duty as well as my privilege to come in contact with the three District Commissioners charged by law with the government of the District of Columbia. In that capacity, I have had many occasions to observe Mr. Tobriner's performance. I find him to be a sensitive man, a kind man, and a dedicated man—dedicated to the same principles and objectives to which I believe all of us are dedicated; that is, to make the Nation's Capital a better place in which to live.

Mr. Tobriner has many problems—as all of us have who attempt to work on the affairs of the Nation's Capital. I believe primarily that one of the most frustrating parts of being either a Commissioner in the District of Columbia or serving on legislative or appropriations committees is the cumbersome way in which the government of the Nation's Capital is organized.

In that respect, I know that the Senator from Oregon [Mr. MORSE] and I are close together, because we both believe it is ironical that in the capital of the free world its people do not govern themselves. The Senator from Oregon and I see the problem exactly alike on the question of home rule. Of course, home rule is not the question before the Senate tonight. The nomination of Walter N. Tobriner is. As I said earlier, it is a proud moment and a privilege for me to report his nomination to the Senate; and I urge its confirmation.

Mr. Tobriner did not particularly seek this post. The position sought him. The President of the United States knew, because of the excellent service of his first 3 years, that he had in Mr. Tobriner a dedicated man, an able man, and a man of great integrity—a man who should continue in the task on which he had started.

There are many problems to work on and to solve in the District of Columbia. I believe Mr. Tobriner knows those problems as well as any man in the entire metropolitan area.

There is the constant problem of finances, the constant problem of revenue, the constant problem of education, the constant problem of welfare, the perplexing problem of transit, and the problem particularly accentuated in the Nation's Capital, that of being a Federal city in part—surrounded on the north by the sovereign State of Maryland, on the south by the Commonwealth of Virginia, and hedged in by five or six metropolitan counties with different governing boards. This has complicated the difficulties with which not only this man, but the two other members of the Board of Commissioners, and those on the congressional level, have wrestled.

I believe it would be well to continue this man in his present position, and I unhesitatingly recommend him to the Senate.

As I stated earlier, I am tempted to suggest the absence of a quorum, but I realize that the hour is late, and I am practical enough to realize that occasionally the problems of the Nation's Capital do not receive the attention which many of us feel they deserve.

Mr. President, I ask unanimous consent at this point in my remarks, on behalf of Mr. Tobriner, to have printed in the RECORD an editorial published in the Washington Post under date of March 9, 1964, entitled "First Citizen"; an editorial published in the Washington Star for March 9, 1964, entitled "Mr. Tobriner Stays"; an editorial published in the Washington Daily News for March 3, 1964, entitled "The Man We're Looking For"; an editorial published in the Washington Post of March 2, 1964, entitled "Reappoint Tobriner"; an editorial in the Washington Star for March 2, 1964, entitled "Tobriner Not Out?" an editorial published in the Washington Afro American of January 18, 1964, entitled "Commissioners Show Courage"; and an editorial in the Washington Star for January 15, 1964, entitled "Man for the Job."

I ask that these editorials be printed in the RECORD in full as part of my remarks, because they indicate the sense of the news media of this area in commending a man who has done a job faithfully and very well, either urging his reappointment or subsequently complimenting the President of the United States upon his appointment.

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

[From the Washington Post, Mar. 9, 1964]

FIRST CITIZEN

Walter Tobriner has been Washington's first citizen for a number of years. President Johnson simply confirmed him in that title by asking him to serve another term as a member of the District Board of Commissioners.

Mr. Tobriner's acceptance of the reappointment is good news for the Capital. It means continuance of a distinguished career of community service and assurance to the colonial dependents who live here that they will retain in the top executive position of their municipal government the man they would have elected to that office in all probability had their fellow Americans accorded them the elementary democratic right of self-government.

When he was president of the Board of Education, Walter Tobriner piloted Washington through a trying period of transition from a segregated to a desegregated school system; his firmness, patience, and tact helped to make the change a smooth and salutary one. As president of the Board of Commissioners in his first term, he achieved significant gains in political freedom here; he brought the police into conformity with the Constitution by calling a halt to the practice of making arrests for investigation without probable cause to justify them; and he promulgated a housing regulation which will at least diminish racial discrimination in regard to residence.

There is a great deal left for him to do. In his second term as Commissioner, perhaps he will be able to guide the community through a transition into full and genuine self-government. It is good to have him still at the helm.

[From the Washington Star, Mar. 9, 1964]

MR. TOBRINER STAYS

President Johnson's decision to appoint Walter Tobriner for another term as District Commissioner was based apparently on several considerations. It is a choice, however, which can have but one major result—experienced and dedicated direction of the affairs of the Nation's Capital.

Mr. Tobriner's combat experience makes him a veteran of this city's political wars. It is a peculiar kind of warfare in which the opposing forces are unequal and in which, therefore, the blast-away technique is more or less ruled out. This is best evidenced by Mr. Tobriner's comments after his reappointment had been announced—especially his statement that he will "continue to try to improve relations with Congress so the District can get the appropriations and legislation we need."

The need to propitiate the lords and masters on Capitol Hill sometimes is galling. The urge to tell them where to head in often is strong. Facts are facts, however, and the District has to live with them. That Mr. Tobriner recognizes this is a mark of competence, wisdom, and one might say, experience under fire.

[From the Washington Daily News, Mar. 3, 1964]

THE MAN WE'RE LOOKING FOR

Walter N. Tobriner's term as District Commissioner expires today, and since, at this writing, rumors to the contrary, the White House apparently has not settled on a replacement for him, we again urge President Johnson to reappoint him to another term.

Some of the uncertainty attending the filling of this post undoubtedly results from Mr. Tobriner's frank expression, in recent months, of an understandable reluctance to continue in a job which is long on work and short on thanks. There is nothing petulant in this regard. It is indicative, rather, of an honest, modest, and capable man's self-esteem.

If the White House is looking for a better Commissioner than Mr. Tobriner, it will have to search far and wide. He has proved himself an able, quiet, and remarkably effective administrator of this city's affairs—wise, fair, and beholden to no man. If he's willing to have another go at it, as he seems to be, then why fool around?

[From the Washington Post, Mar. 2, 1964]

REAPPOINT TOBRINER

Commissioner Walter Tobriner's term as Chairman of the Board of Commissioners ends tomorrow. He has not sought reappointment and, apparently, does not desire it. Nonetheless, he should be reappointed.

Commissioner Tobriner subordinated his personal wishes to the community interest when he accepted reappointment to the school board—and the city ever since has been grateful and glad that he did so. He has experience in waiving his own preferences in order to accommodate the preferences of his city and it will do him good to exercise again this endearing facility.

The White House might be able to find someone who would better serve the Democratic Party, in a narrow partisan sense. It might be able to find someone who would better serve the Board of Trade, or some other group or class or race interest. Commissioner Tobriner is not much of a partisan in this sense. But he is a partisan of the larger interests of this city. He is a uniting and unifying force in Washington. All groups have confidence in his utter integrity, his conscientious impartiality and his sound judgment on public affairs. He should be reappointed.

[From the Washington Star, Mar. 2, 1964]

TOBRINER NOT OUT?

The fact the the President did not announce the selection of a new District Commissioner on Saturday may indicate that he has not decided to replace Walter Tobriner, whose term expires tomorrow. We hope this is the case, and if it is, we also hope Mr. Tobriner will be reappointed. Parochial politics aside, we think that all of those who have been mentioned Mr. Tobriner is best equipped to serve the interests of Washington. And this should be the controlling consideration.

[From the Washington Afro American, Jan. 18, 1964]

COMMISSIONERS SHOW COURAGE

The first fair housing order in the history of the District becomes effective Monday, January 20.

On this date, the Nation's Capital joins 12 States—with roughly 40 percent of the population of the country—and more than a dozen cities which have fair housing laws or ordinances.

The Board of Commissioners issued the District's regulations after more than a year of trying to get the southern-dominated House District Committee to take action against housing discrimination.

While all members of the Board are deserving of congratulations for their courageous action, special praise should go to Commissioner Walter N. Tobriner, President of the Board.

While the regulation admittedly emphasizes conciliation, it is designed to guarantee freedom of choice in housing. This means it seeks to give everyone—regardless of race, religion, or nationality—an equal opportunity to buy or rent on the open market.

We understand now that certain southern Congressmen are outraged that the District Commissioners sought to fulfill their obligation to the residents of the Nation's Capital.

Some of these die-hard segregationists may feel inclined toward penalizing the Board of Commissioners.

We hope these gentlemen from the South will think twice before giving expression to their racial prejudices.

While Washingtonians have not always agreed fully with either Commissioner Tobriner or Commissioners John B. Duncan and Charles M. Duke, any action against the Commissioners because of the housing regulation is likely to precipitate explosive action.

One such action could be sit-ins in the offices of southern Congressmen.

We repeat, the District Commissioners ought to be congratulated for their courageous action.

[From the Washington Star, Jan. 15, 1964]

MAN FOR THE JOB

With his current appointment as District Commissioner due to expire March 3, Walter Tobriner apparently has not yet been asked by the White House to serve another term. This has to be an oversight. In view of his ability and past experience, Mr. Tobriner is clearly the man for the job.

Mr. Tobriner has made it plain he will not actively solicit reappointment. He has said he would seriously consider another term, however, if asked by the President. The point is that he wants to be asked.

This is not an unusual position. Mr. Tobriner was appointed by President Kennedy. He wants to serve under the new President only if he is sure Mr. Johnson really wants him.

In this case, however, there is more to it than that. The fact is that Mr. Tobriner has been upset for some time about what he considers a serious deterioration in the

traditionally close relationship between the Commissioners and the White House. Specifically, the appointment of Charles Horsky as Presidential aid for National Capital Area Affairs has created an entirely new relationship and, to some degree, new procedures. One result apparently is that the Commissioners' direct communication with the President has been virtually cut off. And Mr. Tobriner is known to feel that this has severely impaired the effectiveness of the Commissioners.

There is no occasion, and we feel sure there would be no desire, for the Commissioners to run to the White House very often with their problems. They have not done so in the past. Nor does it necessarily follow that the creation of Mr. Horsky's post was a mistake. But Mr. Tobriner's attitude, as reported by his close associates, raises an entirely legitimate concern about the President's relations with the Nation's Capital.

Mr. Johnson by all means should sit down with Mr. Tobriner long enough to hear his side of it.

Mr. BIBLE. Mr. President, I urge the confirmation of the nomination of Mr. Tobriner as a Commissioner of the District of Columbia.

Mr. MORSE. Mr. President, I rise to oppose the nomination. I wish to talk to the Senate a little about the procedure that confronts us. If I thought I had any chance of beating the nomination, I would not have agreed to the procedure to which I have agreed. I know that the nomination will be confirmed. I have a clear duty, however, as a member of the committee on which I have served for so many years—as a Republican, as an Independent, and now as a Democrat—to make the statement that I am about to make. I have lived with and suffered with the problems of the District of Columbia for many years. I believe the appointment of Mr. Tobriner as a Commissioner is a mistake. I have agreed that it should be presented tonight, that the record, should be made, and that a voice vote on it should be had. I am satisfied that a substantial majority of the Senate would vote to confirm the nomination.

That does not relieve me of my responsibility to make a record against it.

My good chairman—and he is a very able chairman—of the District of Columbia Committee has said he and I agree on most matters. I believe that is true. We are dealing here with a field in respect to which we shall probably be in more disagreement, than we usually would be, because of the other issues involved in the nomination. I have agreed that there will not be a quorum call or a yea-and-nay vote, but that we may make the record, have a voice vote, and go home.

In the District of Columbia Committee, as my chairman has said, I voted "present." I felt that at that stage of the proceedings on the Tobriner nomination, it was the proper course to follow. I felt that the nomination should come to the floor of the Senate and that here I would, of course, stand up and be counted as to whether I would vote for or against or vote "present" on the nomination. I shall vote against it.

I say goodnaturedly that I disagree with my chairman that Mr. Tobriner was not particularly interested in reappointment. It was not planned, at first, to reappoint him. It is pretty well known that for a period of time another person had been decided upon to fill this position. I know of my own knowledge that a good many persons within the Democratic Party in the District of Columbia, of which Mr. Tobriner is a leader, brought persuasive influences to bear for his reappointment. Mr. Tobriner never acted in a vacuum during all the time that the representations were being made. My opinion is that he was very much interested in reappointment, and worked to that end.

What is the major basis of my opposition to Mr. Tobriner? Mr. Tobriner is president of the District of Columbia Commissioners. He is the Commissioner who has under his jurisdiction the administration of the Washington, D.C., Police Force. I do not believe he has been doing a good job in that capacity. In the previous session of Congress I announced, as a member of the District of Columbia Committee, in a subcommittee in which police affairs fall, that I was about to conduct a personal study of a good many complaints which I have been receiving in respect to the Washington, D.C., police department and the administration of it. I said if I found that my study warranted subsequently asking the committee to authorize a committee investigation, I would so report.

I have been at work on that study for many weeks. I wish tonight to discuss one phase of it. I intend to continue the study for probably another 2 or 3 months.

I have made a request of the Comptroller General of the United States for some assistance, and have conferred with him and his aids today, outlining the general subjects on which I should like to secure his assistance, by way of necessary investigations that fall within the purview of the Comptroller General of the United States.

I shall submit to the Comptroller General, in the very near future, an official memorandum outlining the subject matters on which I desire his assistance, and my official request for it. I have no doubt that within the authority of the Office of the Comptroller General, assistance will be forthcoming.

I have been involved in enough studies and investigations of the administration of criminal justice in this country over the years to know how important it is that one check with the greatest of care and scrutiny allegations that are leveled against law enforcement officers at all levels. That is why I have been proceeding with such care, and intend to continue to do so. I have no desire to harm anyone.

In the various crime surveys in which I have participated, including the major study that I directed for the U.S. Department of Justice in the 1930's, which resulted in the publication of five volumes, two of which I wrote completely. I played a major part in the writing and editing of the other three. I was very careful at all times to lean over backward in support of objectivity.

I intend to do the same thing in connection with my study of the District of Columbia Police Department. If it develops—and I have gone far enough to satisfy me that all odds are in favor of such a development—that a clear prima facie case exists in support of many of the troublesome, disturbing allegations that are made against the District of Columbia Police Department and its Chief of Police, I shall in due course submit a resolution asking for a Senate investigation through the Committee on the District of Columbia.

I shall also recommend in support of that resolution that any funds which are made available for the investigation shall be spent pursuant to the same policy which I recommended—and the Foreign Relations Committee unanimously approved—when the the Senate a few years ago voted $150,000 to the Subcommittee on American Republics Affairs for what the committee first suggested should be an investigation. But I suggested that the language be changed to "A study of United States Latin American relations."

After the money had been appropriated, I took the position in the subcommittee—and it was unanimously approved by the full committee—that all of such money should be spent, if we needed the total amount. We did not need it all, but we spent a large part of it. I do not know of a more profitable expenditure of committee funds during my service in the Senate than that proved to be.

I said, "The study should not be conducted by members of the Foreign Relations Committee. We are not qualified experts on Latin America. But if we are not qualified legislative jurors, we have no business being in the Senate. All the presumptions indicate that we are qualified legislative jurors. So many thousands of dollars ought to be spent by entering into contracts with universities, research foundations, and institutions, on whose staffs are recognized authorities on Latin American problems. We ought to enter into contracts for them to prepare a series of expert monographs on U.S. Latin American problems with recommendations as to what governmental action—including legislative action, as well as administrative action—should be the policy of our Government vis-a-vis Latin America. We ought to call these experts down here and get their advice as to what topics they think we ought to study."

That was done. And the Senator who seconded my motion, and, as I said before, made an eloquent speech on the subject of my motion was the then Senator from Massachusetts, Jack Kennedy.

As my good friend, the whip [Mr. HUMPHREY], who has come into the Chamber, knows, when the action of the subcommittee, after we took unanimous action on the proposal, was put before the full Committee on Foreign Relations, the full committee approved it. Out of that was developed the type of study that I want to see develop from an investigation of the Police Department of the District of Columbia, if we come to the point that an investigation is needed.

That set of objective research monographs, with suggested recommendations, was taken to the White House when the Senator from Massachusetts became President of the United States. That is where the Alliance for Progress program came from.

Mr. President, if one reads the monographs that the experts prepared for us, one will find that every major recommendation of that great program that the President subsequently initiated and enunciated took root in the reports prepared for us by experts on Latin American affairs, and financed by the Senate in the grant of money to the Subcommittee on American Republics Affairs.

I have told that story again because I want Senators to know that, so far as the senior Senator from Oregon is concerned, I am moving in connection with the police problems in the District of Columbia with the same objectivity. No one would be more pleased than I if the study ended with a recommendation based upon a finding that there is no need for that type of investigation. But if I were asked tonight if that is probable, my answer would be an emphatic "No," for I have already discovered enough in regard to the Washington, D.C., Police Department to satisfy me that it is in need of a thorough overhauling, procedurally, policywise, and, in some respects, personnelwise, including the Chief of Police.

Tonight I wish to discuss only one phase of police department policies to which I take strong exception. I have on my desk a list of the actions of one part of the police department for the past year, known as adjustment of traffic tickets. That is a nice-sounding phrase—adjustment of traffic tickets. It is known in the parlance of law enforcement as ticketfixing.

I have in my hand a 1-foot ruler—a 12-inch ruler. The pile of documents on my desk measures 11¾ inches high. But do not think that each of those pages represents only one ticket. One page contains references to 10 cases. Another one relates to seven. Another relates to 10. But not all of them are limited to 10, either. One contains 32 cases. I have a little difficulty reconciling that exhibit with police department efficiency. But do not think that these documents represent all the tickets that were fixed.

Those are only tickets that were "fixed" at the precinct levels. But there were more, although I do not have those tickets here. However, I have received some information, through my very able staff. I shall not indulge my staff members by naming them; but they are very fine, able staff members. There is not a better staff on any committee. In fact, I do not think the head of the staff would mind my paying him a compliment, because he deserves it. He is Chet Smith, Mr. President—one of the most able directors of a professional staff, in my judgment, on Capitol Hill. The chairman of the committee and I have complete confidence in him. That does not mean we always agree; but the staff is a very able one. The assistant, now sitting at my left, is Dick Judd. He, too, is very able. We also have a very able counsel—now sitting in the rear of the Senate Chamber—Mr. Fred McIntyre.

They have the job of supplying us with the information we request, if they can get the information for us—and they have done so. They have cooperated fully with me. So I am indebted to Mr. McIntyre, Mr. Smith, Mr. Judd, and all the other members of the staff. I said, "See whether you can get a fairly reliable estimate of other tickets that have been 'fixed' "—or "adjusted," to use the Department's term.

Mr. Smith advises me that during the 1963 calendar year, the adjustments or cancellations at the Office of the Corporation Counsel of the District of Columbia—which means the Office of the District of Columbia Commissioners, of which Mr. Tobriner is president—totaled an additional 7,362. For the fiscal year from January 1, 1960 through June 30, 1961—well, I shall read the entire letter:

GOVERNMENT OF THE DISTRICT OF COLUMBIA, METROPOLITAN POLICE DEPARTMENT, TRAFFIC DIVISION,
April 7, 1964.

To: The Chief of Police.
Through: The Executive Officer.
Subject: Comparative statistical evaluation of traffic violation notices adjusted by this Department; by fiscal years, July 1 through June 30 of the succeeding year.

In compliance with telephone request of this date, there is listed below the information obtained from the most readily available source. The information in reference to the subject matter, consists of excerpts from the "Annual Report of the Business of the Municipal Court for the District of Columbia," as forwarded to the Attorney General by the Chief Judge of the District of Columbia Court of General Sessions and reflects the work activities of the Central Violations Bureau.

Fiscal year	Received from Department	Withdrawn by Department	Percentage [1]
July 1, 1960, through June 30, 1961	392,074	27,492	7.0
July 1, 1961, through June 30, 1962	443,635	28,429	6.4
July 1, 1962, through June 30, 1963	494,782	33,739	6.8
July 1, 1963, through Mar. 31, 1964	362,579	26,077	7.2

[1] Overall average 6.85 percent.

I point out that in the foregoing tabulation, the caption "Withdrawn by Department" means, so the Department states, "adjusted." But I believe that in each case the word "fixed" would more appropriately be used.

In connection with the column headed "Percentage," I point out that the Department likes to make a great deal of the figures "7 percent," "6.4 percent," "6.8 percent," "7.2 percent," and "Overall average—6.85 percent." In effect, the attitude of the Department seems to me, "Those percentage figures show that the situation is not so bad."

However, I think they show a "lousy" performance. When a police department is issuing tickets improperly—although, of course, that is a false assumption—to such an extent as to make it necessary to cancel 7 percent of them, we had better find out what is the matter with the department. I think we would find that some—but very few—policemen do make mistakes. However, I think very few of those are mistakes.

How do we expect to maintain respect for the law and for the administration of justice if a system of that kind is maintained? Let no one tell me that the same situation probably exists in other cities, too. If it does, what of that? That is not the correct way to administer government by law. The "fixing" of a ticket is a rather serious matter, in my judgment. I do not think it can be justified, in the absence of a showing that there really was no reason for the arrests or the tagging.

I continue to read from the letter:

It should be noted that the foregoing data is applicable to those violations processed through the Central Violations Bureau and refers primarily to those traffic violations notices issued for parking violations. This Division does not have available the statistics for violation notices issued by the various units of this Department for other offenses.

It is generally recognized that an adjustment rate of less than 10 percent of traffic violation notices issued, is acceptable and favorable.

Who says so? It is not so, Mr. President. Practices such as that create the impression that malfeasance, "pull," favoritism, politics, and graft have come to permeate a police department. It is no place for such a performance. Instead, the department should adhere to the old adage, "The administration of government must be as pure as Caesar's wife"; and so must the administration of the criminal law.

The letter is signed "William J. Liverman, Deputy Chief of Police in Charge of Traffic."

I say to Mr. Liverman that he will not be his own judge.

I point out that not often do those statistics, in my judgment, represent all the statistics. Adjustments are made in strange places—not only in the commissioners' offices, but elsewhere, and I am very much disappointed about them. I am very much disappointed about a president of a board of commissioners who lets such a situation develop. I cannot vote tonight for a president of a board of commissioners who has let it develop.

In our study we have to be careful about that, because we will talk with people within the department. We will talk with officers who, as we say, have gripes, and officers who feel that they have had a raw deal in connection with promotion or some other subject. But when we conduct the kind of study that I am in the process of conducting, we have to listen to them all, and then be the judge of the reliability of the complainant, of the witness, as to whether

or not the officer is what we sometimes call a "griper," or whether he is an officer who is dedicated to his profession and wishes to see the police department administered on an efficient and noble basis. In all the criminal investigation work that I have ever been engaged in, I have cast aside information that I have received from those whom I thought had an ax to grind and were not too reliable; and I shall continue to do so.

But I have talked with officers who are not in that category. They tell me that a considerable number of officers in the District of Columbia Police Department write few tickets because they have had the sad experience, as they say, of making fools of themselves by reason of the tickets being fixed, adjusted, dropped, canceled, or whatever word may be used. I know of no better way to create a problem of troubled morale in a police department than to have the feeling exist that the police officers will not be supported in their rights.

It is to be understood that in a city such as Washington, D.C., that the police chief has a hard row. There are many public officials around the Congress and the executive branch of the Government, through the denial of home rule, upon whom the agencies of the District Government are dependent. I do not use the words "at the mercy of" that some use. But they are dependent upon maintaining the good will of Members of the Congress and the executive branch of the Government. These officers tell us that tickets put on the cars of Members of the Congress and Government officials have a way of being adjusted. I do not believe they should be.

Day before yesterday I was told that my administrative assistant had on occasion something to do with having tickets adjusted. I am a pretty tough taskmaster in my office on a question such as that. I called him in on the carpet, so to speak. I asked: "Is there any basis in fact for that statement?"

He assured me there was not. He told me the story or account. He said, "I have a policy. Sometimes we receive calls from Oregonians who have had a little difficulty with the law in the way of traffic violations or worse." My administrative assistant said:

"I follow what I know is your policy. We make no adjustments or recommendations for adjustments. We tell them to go to the District of Columbia Committee."

I told him at the beginning that I wished he had come and told me about it first. He said, "Senator, there is only one instance that I can remember when I was involved at all in a problem involving a traffic ticket.

He spoke of Mr. Bob Wolf, who at the time was the top staff adviser on the Senate Committee on Interior and Insular Affairs, and who is now with the Department of the Interior. He is one of the best informed men in Washington, in my judgment, on the subject of forest problems, access roads, the public domain, and public roads. My administrative assistant said: "We had to go down to the Department of the Interior for a very important conference on an emergency that had arisen. We parked in an area reserved for official parking. I put on my windshield the official parking card that is made available for such parking. When I came out, there was a ticket on my windshield. I saw a police officer there. I said, 'Didn't you see the parking card authorizing us to park here'?

"He said: 'No, I did not see it. If I had seen it, I wouldn't have given you the ticket. But I have written it all out, and it will have to stand.' "

My administrative assistant said, "I tried to convince the police officer that under those circumstances he himself ought to take care of the matter, and on his copy of the ticket set out the fact that the parking card was on the windshield." He said that he refused to do what I requested. I came back and turned that card over to Mr. Sullivan.

I said, "Who is Mr. Sullivan?"

He said, "Mr. Sullivan is the Capitol Police Chief, I think."

As a result of that, and based upon those facts, the ticket was adjusted.

I said to my administrative assistant, "I do not think that was the way to handle it." I said, "After all, the way to handle it was to stand trial, exercising your procedural rights; and if the court believed you, you would be acquitted. If it did not, you would pay the fine."

As long as I have been on the District of Columbia Committee, that has been the policy in my office. That is the way we do business.

I had a laugh on myself at the last Mexican Interparliamentary Conference. I was a little late for dinner at the Madison Hotel. I parked my car on a street, the name of which I forget at present, but it was this side of Peoples Drug Store near Thomas Circle, on 14th Street, I believe. I looked at the sign. There is a sign there which reads, "No parking" at certain hours. I thought I was within that space. When I returned from that dinner, which was attended by the President—and I did not want to be late to it—I discovered a $5 ticket on my windshield. Then I looked up at the sign. My car was parked at a sign which read "No parking at anytime." However, next to that sign, there was another sign that limited parking to the hours after 6:30 p.m., I believe.

So I sent in my check, with a note suggesting that those signs be examined to see if they should not be clarified.

There is no reason why I should not pay the fine, if I am not blind, or if I am in haste. Or perhaps I should pay for a better pair of glasses.

I make the statement because, so far as the senior Senator from Oregon is concerned, there are no adjustment policies of which the Senator from Oregon approves in his capacity as a member of the committee.

The situation in regard to adjusting tickets bespeaks some other administrative policies connected with the police department that I shall bring out from time to time as my study of that subject proceeds.

I do not say that, on the basis of this point, and it alone, Mr. Tobriner's nomination should not be confirmed; but I say it is a part of the record that has caused me to lose all confidence in him and has led me to believe that he is an inefficient administrator and is not doing the job he should do as the one on the Commission who has responsibility for the administration of the police department. Therefore, I cannot support him.

I come now to the second basis of my opposition to Mr. Tobriner, namely, his legislative activities.

Before I go into that subject, I should like to put into the RECORD a little information which has just been supplied to me by George England, of the Department of Motor Vehicles. Here again we have a police department. These figures deal with the rate of automobile accidents in the District of Columbia.

In 1958, the number of accidents was 19,545; injured, 7,080; fatalities, 63.

In 1959, 22,060; injured, 8,076; fatalities, 63.

In 1960, 21,365; injured, 7,822; fatalities, 72.

In 1961, 23,042; injured, 8,350; fatalities, 60.

In 1962, 25,290; injured, 9,095; fatalities, 65.

In 1963, 27,955; injured, 10,320; fatalities, 98.

For 1964, the figure is not available for the total number of accidents and injured, but the fatalities thus far are 35, unless someone was killed today. The number is 35 up to this date, which compares with 17 fatalities at this time last year.

I mention this because it bears on another facet of my study. I am receiving many complaints about the lax handling of traffic in the District of Columbia by the Washington, D.C., Police Department, and the failure of the superiors in the Washington, D.C., Police Department, which means from the Chief on down, and which means Commissioner Tobriner above could do a better job of enforcing the traffic laws.

We receive some very interesting explanations from the officials as to why they are not doing a better job with traffic violations and careless driving that create accidents, injuries, and fatalities.

I find it difficult to accept the major premises of these rationalizations. I am aware that businesses are moving out to the suburbs in Maryland and Virginia, outside the District of Columbia, but I have a little difficulty justifying loose traffic enforcement as an inducement to people to come into the District to shop.

I shall read into the RECORD a portion of the document dated September 5, 1962, addressed to the Chief of Police and the executive officer:

GOVERNMENT OF THE DISTRICT OF COLUMBIA, METROPOLITIAN POLICE DEPARTMENT, TRAFFIC DIVISION,

September 5, 1962.

To: The Chief of Police.
Through: The executive officer.
Subject: The Honorable WAYNE MORSE, U.S. Senate, writes to the President of the Board of Commissioners, District of Columbia, regarding complaints he has received about a lack of enforcement of parking regulations in the District of Columbia.

Senator WAYNE MORSE, in his attached communication to the President of the Board

of Commissioners, D.C., states he is receiving an increasing number of complaints from citizens alleging that parking regulations are not being enforced by members of the Metropolitan Police Department. It is specifically indicated that the following types of violations are being ignored by police officers:

1. Parking on sidewalks.
2. Parking on public space.
3. Parking on "red meters."
4. Parking over 24 hours.
5. Failing to deposit coin in meter.

Downtown Washington, like most major cities in the Nation, is faced with many complex problems. Despite the advantages of its central location and the proximity to the Capitol, the White House, and other significant buildings and areas, the downtown area is steadily losing ground as a desirable location for new development. Businesses have been forced to take energetic steps to devise ways and means of attracting shoppers to halt declining retail sales. Thousands of dollars are expended to attract visitors in order to bolster the economy. Experts have been engaged to study this problem and elaborate plans have been prepared for revitalizing the downtown area. Such plans are of a long range and should serve to solve some of the existing traffic problems. However, the problem is present now and business is not hesitant to criticize the Police Department for any action taken which might serve to discourage shoppers from doing business in the downtown area. Appeals made by them cannot be ignored since cooperation from this group is essential to the successful operation of this Department.

Mr. President, that is an interesting document, signed by the Deputy Chief of Police, William J. Liverman.

I ask unanimous consent to have the entire document printed in the RECORD.

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

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Emergency situations frequently arise whereby it is necessary to make certain arrangements which will best serve the public interest without creating problems for others' use of the highways. Such arrangements are not made arbitrarily, but after careful study by police officials and other interested parties. Whenever possible, these conditions are corrected by regulations or engineering measures. No tolerance is extended when it is indicated the special arrangement will create a hazard for others or impede the movement of traffic. It is considered this is an element which cannot be completely removed and that the solution to such problems must come about through the establishment of workable means designed to serve the best interests of all parties involved.

Numerous traffic problems have been created by the accelerated highway construction and building program in the District of Columbia. Normal traffic patterns have been disrupted by the closing of arterial streets and the necessity for establishing traffic detours. Parking on many streets has been restricted in order that contractors may have space to operate their vehicles and equipment. All of this tends to inconvenience motorists in spite of all efforts and plans made by the engineers and the police. It creates problems for those doing business or residing in these areas which can only be solved through completion of the projects. All such projects are kept under close surveillance in order to prevent unnecessary interference with the movement of traffic. In many of these areas which are under construction and where there are no well-defined curbs or sidewalks, motorists do park on public space in violation of existing regulations. Much of this will be corrected when the roadways are completed. Precinct commanders have been alerted to these conditions and directed to give it special attention.

There has been no decline in the number of traffic tickets issued for parking law violations. As a matter of fact, there has been a definite increase in the number of citations issued by personnel of this Department, and it is considered that more parking tickets are being written today than at any time in the history of the Metropolitan Police Department. The following figures reflect the increase in the number of parking tickets issued for all parking violations for the periods indicated:

Fiscal year 1959–60, 357,198; fiscal year 1960–61, 375,000; fiscal year 1961–62, 426,121.

Parking meter violations are receiving more attention today than in past years due to the addition of parking aids to the enforcement force. Statistics reveal 33,451 such tickets were paid January through July 1962 as compared with 27,500 for the same period in 1961 and 25,373 for the same period in 1960. It is felt that such violations are not being ignored and that tickets are being written on all such cases coming to the attention of members of this Department.

No doubt many vehicles parked on the streets in excess of 24 hours do not receive tickets and are not impounded. It has been the policy of this Department for several years to enforce this regulation primarily on the basis of complaints. Impounding of such vehicles creates a problem in view of the limited storage facilities. If all vehicles are to be impounded for violating this and the other regulations, then additional storage facilities will be required.

Several steps have been taken in recent months designed to discourage motorists from parking illegally on arterial streets during the traffic rush hours. The court authorized the doubling of collateral when it becomes necessary to impound a vehicle for any violation. It was hoped this increased penalty would have a deterrent effect. Signs were erected on the "flow streets" informing motorists that vehicles parked in violation during certain hours will be towed away. In May and June 1962, three private towing cranes were engaged on a contract basis to augment the regular Police Department towing force. In spite of all these efforts, motorists continue to park in violation during the peak hours. Many of these violators are from out of town and not familiar with our local regulations. Most of them are very critical when their car is impounded and they are required to deposit $20 collateral for the violation. Nevertheless, nonresident motorists are treated in the same manner as local motorists since the primary concern in removing illegally parked vehicles is to prevent congestion.

The use of private towing cranes during the traffic rush hours was considered to be a success; however, while this Department was able to absorb the cost of the 2-month, three-crane experimental program, financing of the recommended full year, six-crane program would require appropriation of $70,000 for that purpose. No funds for the crane rental program are included in the 1963 appropriation estimates of this Department. This division favors the use of private cranes for the removal of illegally parked vehicles from flow streets and recommends that funds be appropriated for this purpose. This solves the storage problem to a degree since the vehicles towed by these cranes are stored on private property until claimed by the owner.

This division plans to again recommend the adoption of a "strip" type sign to be placed on the street side of parking meter stanchions to vividly bring to attention of motorists that vehicles are subject to being impounded during certain hours. Many nonresident motorists complain that they place a coin in the meter and do not understand the meaning of the "No standing" restriction.

The Traffic Division does not fail to take energetic steps to correct all bona fide complaints called to our attention. There is no doubt that many parking law violations go undetected due to manpower and other police problems. This is true in any jurisdiction since it is impossible to have enough manpower to detect all violations. Quantity enforcement is not the sole solution to any traffic problem. Enforcement action must be based upon reasonable regulations which are accepted by the public. Officers must exercise a certain amount of judgment in the issuance of traffic tickets in order to gain the respect of motorists and the public in general. It is felt the records reflect this Department does have a sound traffic enforcement program.

In view of the general nature of the complaint, this report by necessity is also very general. It is respectfully suggested that Senator MORSE be asked to supply this division with specific information in order that each complaint may be investigated to determine the validity of the complaint and in order that steps may be taken to correct the situation where such action is indicated.

WILLIAM J. LIVERMAN,
Deputy Chief of Police,
In Charge of Traffic.

Mr. MORSE. Mr. President, I make one comment on it. I believe we can do a better job in maintaining safety and enforcing traffic regulations and not do

injury to business. But, if we must make a choice, I put the safety of citizens ahead of the cash registers of any business concern in Washington, D.C. It is that simple with me.

I cannot understand this kind of excuse. In my judgment, an efficient job is not being done by the Washington Police Department in enforcing the laws and traffic regulations. The policemen with whom I have talked say, "Senator, it is understood that we must be rather selective." It encourages laxity, because we have a Deputy Chief of Police who is acting under a Chief of Police who seems to believe that if the Police Department is going to keep the good will and support of the business interests of Washington, D.C., it should follow this course of action.

I have another interesting document, dated December 9, 1963, to the Chief of Police, also written by Mr. Liverman, the Deputy Chief of Police. Listen—Senators will be surprised:

> The enforcement program conducted by this Department has always been on a selective basis.

I shall read it again:

> The enforcement program conducted by this Department has always been on a selective basis.

How can we justify that? Do we mean justice for some and injustice for others? That is what it adds up to.

If we are to maintain the confidence of the American people in the administration of justice in any of its branches, but particularly in the administration of criminal justice, we must not administer criminal justice on a selective basis, because if we do, we place the police department at the mercy of charges that it has gone corrupt, that it is a department of "pull and fix," that it is not a department which keeps faith with that cardinal principle of justice emblazoned and chiseled in stone over court houses and justice departments, "Equality Before the Law."

In discussions which I have held with persons whose reliability I am satisfied is beyond question, including some police officers the so-called selective process for the administration of police department justice in the District of Columbia has brought the police department into disrepute in many places. Speaking for myself, I believe it is a policy which Mr. Tobriner should have stopped. He has not done so. I cannot vote for him. I have a serious question in my mind as to his qualifications. I am coming to the conclusion that the enforcement program of the police department is so selective that sometimes one cannot even find it. The selective process eliminates it entirely, in some instances.

Let me read further:

> That is to say, assignments of personnel are determined from the facts developed through the investigation of traffic accidents as to the location, time of occurrence and types of violations contributing to accidents. Emphasis has always been placed on quality rather than quantity enforcement.

What in the world is meant by that? Does it mean falsification in the selective process? Will they hold a driver known by the police officer not to be too influential, but consider it a matter of equality in enforcement policy to drop a charge if a driver is influential?

The report continues:

> Traffic authorities recognize this as being the proper approach in any traffic law enforcement program designed to curtail traffic accidents and thereby reduce deaths and injuries.

That is nonsense, too.

Continuing:

> There has been no deviation from this basic program and it was not considered the intent of the Commissioners that such a program be abandoned simply for the purpose of increasing the number of traffic arrests.

Who is responsible for that? Mr. Tobriner. He is President of the Board. He has jurisdiction over the Police Department. He condones this kind of program.

Let me tell him for his information that all they have done by this policy is to open themselves up to an ugly charge. I am far from finishing my study on this question, but I am disturbed over the fact that in the District of Columbia, with a heavy Negro population, the selective process of enforcement works to the disadvantage of the Negroes of the District.

All Senators know the kind of debate in which we are now engaged—the great problem of civil rights. We know that in the months ahead—as I stated in my civil rights speech on the floor of the Senate the other day—if Congress fails to deliver the Constitution of the United States to the Negroes of America in this session of Congress, their fight for those rights will be taken to the streets. They have no other place to go. We have already waited too long—a hundred years too long—to deliver the Constitution of the United States to the Negroes of America. If this matter gets out of hand, if this martyrdom attitude, which is taking over tens of thousands of Negroes in this country, many of them young, but not all, continues, and they are confronted with the failure of Congress to deliver them their constitutional rights, and they take the conflict to the streets of America, we had better be interested in the kind of police department we have—not the police department which administers police justice on a selective basis, but on a uniform basis.

After that speech, I received a Newhouse publication rag published in St. Louis called "Democratic Globe." The publisher wrote a bitter editorial against me, which I have answered. I do not know whether it will be published, but I have answered it. That speech of mine, according to this Newhouse rag was supposed to be inciting. I do not know what it incited. I am accustomed to the Newhouse type of yellow journalism, because they publish the Oregonian in Portland, Oreg. It is an eastern journalistic combine, which has newspapers scattered across the country, which give us a very low type of journalism.

All I did was to point out one of the operative facts which exist in the American social structure today. It happens to be one of the ugly realities. I am not a Senator who runs away from the facts and the realities.

I wish to make very clear that I intend to bore in on charges that are made that the Police Department of Washington, D.C., is honeycombed with racial bias. If it is, the responsibility for it rests squarely on the shoulders of the Chief of Police and on Mr. Tobriner.

I once before reported it, but I shall cite the case again. I understand that I was the first Senator to appoint a Negro patronage boy on his patronage list to operate a Senate elevator. He was a brilliant boy from Jefferson High School in Portland, Oreg., by the name of Ben Walker. Some people were a little concerned about the appointment. I was satisfied that no incident would occur. If it did, we had better get that behind us. Following that appointment, I was advised that it was the common practice for Senators, who follow the policy of using their patronage to put the boys through school, and use the jobs as a sort of scholarship for college students, to appoint Negro boys. He was one of the finest young men anyone could ever know.

After he had served on the elevators for awhile, he was transferred to the Senate post office. It was a better paying job, and the hours available to him, which were early hours in the morning—I believe he started at 4 or 4:30 a.m., on that early morning shift—meant shorter hours. Therefore, he was free earlier in the day to pursue his studies at Howard University, and later at George Washington University.

After some time he brought to me a very disturbing report. He said:

> Senator, on the average of about once a month, and sometimes more frequently, while I have been walking to the Senate Office Building early in the morning, a Washington police car has pulled up alongside the curb.

He reported to me that an officer would get out of the car and proceed to interrogate my patronage boy. He said:

> I want you to know that I have just four words that I always try to use, unless I have a more explanatory statement to make, and those words are "yes, sir" and "no, sir."

He said:

> We Negroes know that we had better not be taken to jail in Washington, D.C., if we can avoid it.

I was shocked.

I know that the Chief or Police of Washington, D.C., has been a long-time advocate of arrests for investigation. If that were the only thing against him, it would be enough to disqualify him as Chief of Police. The Police Chief wants his force empowered to arrest for investigation. The District of Columbia Police Association was angry at me. If they wish, they can write another letter to me and pass another resolution in their lobbying organization. I say to the members of the Washington, D.C., Police Association, "When your Police Chief advocates arrests for investigation, which was the subject of your scurrilous criticism of me, he advocates a police state technique."

It was the arbitrary dictatorial authority of the British Crown and the enforcement officers of the British monarchy that gave rise, in part, to the American Revolution against the tyranny of the British Crown.

Freemen have always had to stand up and be counted against the police-state tactics of police departments. Freemen have always had to stand up and guard against power-hungry law enforcement officers who, if not checked, have the human frailty of seeking to take unto themselves arbitrary, capricious, and brutal power.

The advocacy of the Chief of Police of the District of Columbia Police Department of investigatory arrests disqualifies him to serve as Chief of Police of this Department, if that were his only disqualification. But he has many.

Let me say to the citizens' organizations of the District of Columbia, who are giving accolades and awards to the Chief of Police, that that does not change his record. The senior Senator from Oregon will not be a party to supporting a chief of police who advocates that policy.

I was speaking of the colored patronage boy of mine, named Ben Walker, who gave the accounts of his being accosted—and I use the term advisedly, because the police can accost, too. When a police squad car stops along a curb, and a colored man is walking down the sidewalk of that street, minding his own business, no police officer should be allowed the right to accost that citizen and ask him, whether it be 4 o'clock in the morning, 3 o'clock in the morning, or any other time of night, "Where are you going? Who are you? What are you doing on this sidewalk?"

Mr. President, that conduct does not form the slightest basis of probable cause for arrest, and the police have no right to accost a person unless his conduct is such that it gives justification for a conclusion that there is probable cause for arrest. We are not living in Russia. We are not living in Nazi Germany. Supposedly, we are living in the citadel of freedom—Washington, D.C. That kind of conduct on the part of the Washington, D.C., Police Department cannot be countenanced; and the senior Senator from Oregon has no intention of countenancing it, because I know too much about what has happened in the history of this country, in city after city, when police departments were allowed to develop such tyranny.

After the accosting of my patronage boy on the sidewalks of Washington, the receptionist in my office, Miss Julia Johnson, of Coos Bay, Oreg., decided to give a dinner one Sunday night in the late spring for the Oregonian members of my staff. She lives in Georgetown. She invited Ben Walker to the dinner. Why not?

He got off the bus in Georgetown. He had a little card in his hand with Miss Johnson's address on it. He was looking up at the numbers on the houses as he walked along. A police car rolled up to the curb. The officer rolled down the window and said:

What are you doing here?

Ben Walker said:

I am trying to find this address.

The policeman asked:

What do you want that address for?

Ben said:

I am going there for dinner.

The police officer asked:

Oh, you are? Well, come with me, and I will take you to that house, and will find out what you are going there for.

He replied:

No. you won't take me there. I have no intention of appearing at the front door of the house of my hostess, accompanied by a police officer.

Later, Mr. Walker reported to me that then the officer said:

You will either come with me to that house, or you will come with me to the station, or you will get on the next bus and will leave this area.

Ben said to me:

Senator, you know we Negroes know better than to be taken to a police station if we can avoid it.

So that officer stayed with him until the next bus arrived; and Ben got on the bus, and went back to his room; and then he telephoned his hostess, and told her why he could not be there.

That happened in the Capital City of the United States, which is supposed to be the citadel of world freedom.

Mr. President, I am afraid there is a shocking amount of racial bias within the Police Department of Washington D.C. I am worried as to what would happen if a tragedy were to confront the Nation, with the civil rights issue being taken to the streets of America. I am worried about what would happen in Washington, D.C. But later I shall comment further on that subject.

So I care not how emotionally aroused the lobbying organization of the District of Columbia police force, known as the District of Columbia Police Association, becomes—I suppose that is its name; I will put its exact title in the RECORD, in the interest of accuracy—or whether it takes umbrage at my disapproval of this kind of conduct by the Chief of Police. I have serious question as to the propriety of the Chief of Police engaging in lobbying activities, as he has done and continues to do, seeking legislation that would authorize authority to arrest for investigation. I have many reservations as to the lobbying activities and the propriety thereof of the District of Columbia Police Association, including the donation of baseball tickets for the first baseball game each year to a large number of Members of Congress. Why do they do that? What personal interest, what comity of interest, what relationship exists between a Member of Congress and the District of Columbia Police Association that would justify the association giving Members of Congress baseball tickets? I do not have to be hit over the head with a baseball bat to know why it is done. By doing it, they really insult the intelligence of every Member of Congress. Patterns become established around here.

People do not mean to do things that are improper. But they open themselves up, unnecessarily and unfortunately. This is a form of influence peddling that might be helpful when the next lobby drive is put on for an increase in pay for Washington, D.C., policemen, and other benefits.

I received a fruitcake from this association at Christmastime last year. I have been in this hassle with them. They have made this attack on me. I do not know whether I did right or not. I ate it. It did not have any poison in it.

I felt if I were to send it back, it would be considered to be a little small of me. They should not have sent the cake.

The Washington, D.C., Policemen's Association is an out-and-out lobbying organization. Do not be fooled on that score.

When I gather material as to how much time they spend in their lobbying activities and to what extent, if any, they spend their time in that activity when they ought to be doing official work, I shall obtain information on that. I shall have more to say about that subject later.

Because of the courtesy to my chairman, and my love and affection for him, at this late hour I wish to proceed to the next point which I wish to make. It is a major point, as in the case of the other important material which I have placed in the RECORD.

Mr. President, I am opposed to confirmation of this nomination because I am unalterably opposed to the position the President of the Commissioners of the District of Columbia, the nominee, Mr. Tobriner, has taken in regard to various sections of the so-called omnibus crime bill, on which hearings have been held in the District of Columbia Committee.

It will be recalled that in their attack on me, the members of the District of Columbia Police Association criticized me because I had not attended those hearings. However, Mr. President, here on the floor of the Senate I served notice that, because of other duties, it would be impossible for me to attend those hearings. As the Senate knows, I had the responsibility of being the floor leader, for President Kennedy, for his educational program; and I also had the responsibility of taking that program through that committee.

However, I know this field fairly well. I knew that undoubtedly both the pros and cons of the so-called omnibus crime bill would be submitted at the committee hearing; I knew that both testimony for that bill and testimony against it would be submitted there. If the CONGRESSIONAL RECORD is checked, it will be found that before the hearings were held, I said I would study with great care the testimony presented at the hearings, and that I would be prepared to discuss in detail the testimony taken in the District of Columbia Committee, when the matter comes up in executive session. I said I intended to do it, and I will do it.

So, Mr. President, I studied that testimony. In particular, I studied the testimony of Commissioner Tobriner.

In the interest of saving time tonight, I ask unanimous consent that his testimony be printed at this point in the RECORD.

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

Mr. TOBRINER. Mr. Chairman and members of the committee, I wish to say preliminarily that the Commissioners and the entire government of the District of Columbia share with you your concern respecting the mounting crime rate in the District of Columbia and will cooperate with you to the fullest in securing protection against crime, consistent with constitutional rights.

The Commissioners appreciate this opportunity to present their views on titles IV and V of H.R. 7525 and on S. 486. However, since I understand that section 506 of title V, as the chairman has so indicated, is to be made the subject of a later hearing before this committee, I shall reserve to such later hearing my statement as to the views of the Commissioners on that section. Accordingly, nothing in the testimony I offer here today should be considered as being applicable, either directly or indirectly, to section 506 of title V.

The CHAIRMAN. That deals with indecent publications which will be made the subject of a separate hearing.

Mr. TOBRINER. Yes, Mr. Chairman.

The CHAIRMAN. We understand that what you are going to say on title V does not have any relation to section 506.

Mr. TOBRINER. Right.

H.R. 7525, as passed by the House of Representatives on August 12, 1963, is intended to change existing law in the District of Columbia so as to deal more effectively with the crime situation. This is a situation with which the Commissioners have long been concerned, and accordingly they welcome the interest in the problem which the Congress is showing. However, for reasons which they will develop in the course of these hearings, the Commissioners, while they favor certain provisions of the bill, nevertheless, have a number of reservations concerning many of its provisions. As a result, they have recommended to this committee, in a letter dated September 13, 1963, that the bill not be enacted in its present form.

The chairman has already incorporated that letter into the record.

The CHAIRMAN. That is correct. It has already been incorporated into the record.

Mr. TOBRINER. Title IV of H.R. 7525 has the effect of including the crime of robbery in the group of crimes embraced within the term "crime of violence," as specified by the first section of the act approved July 8, 1932. In view of the fact that the term "crime of violence" as presently defined in such section includes murder, manslaughter, rape, mayhem, maliciously disfiguring another, abduction, kidnaping, burglary, housebreaking, larceny, any assault with intent to kill, commit rape, or robbery, assault with a dangerous weapon, or assault with intent to commit any offense punishable by imprisonment in the penitentiary, it appears that the addition of the crime of robbery in this group of crimes is merely the correction of an oversight. The Commissioners favor this change in existing law.

Title V consists of seven sections (excluding sec. 506). Six of these sections amend a variety of existing laws, while the seventh enacts in statutory form an existing District of Columbia Police regulation prohibiting the making of false or fictitious reports to the Metropolitan Police Department. The sections of this title have virtually nothing in common with one another, except that several of the sections either specifically or in effect change existing law so as to provide for the imposition of mandatory minimum sentences upon convictions of certain specified offenses. On this aspect of the general problem, the Commissioners question the effectiveness of a mandatory minimum penalty, in the belief that any such penalty not only deprives the courts of discretion in the sentencing of offenders, but also may, in its effect, be self-defeating. If the mandatory minimum penalty be considered excessive by a jury, the jury may tend to acquit the defendant rather than subject him to what it considers an excessively high penalty. In view of this, the Commissioners question whether a mandatory minimum penalty, or an increase in an existing mandatory minimum penalty, will operate so as to affect materially the crime situation in the District. Accordingly, my comments respecting the sections of title V which would have the effect of establishing a mandatory minimum penalty, or increasing an existing mandatory minimum penalty, should be considered as including the foregoing general comment concerning the efficacy of mandatory minimum penalties.

The CHAIRMAN. Do you have someone who is going to testify on this subject of mandatory minimum sentence in more detail? My understanding is that Mr. Clemmer, Director of the District of Columbia Department of Corrections, will testify in detail as to how the present penalties work under the various code sections.

Mr. TOBRINER. Yes; that is under his jurisdiction, in the Department of Corrections.

The CHAIRMAN. I will then withhold those questions, and ask them of him.

Mr. TOBRINER. Yes.

Section 803 of the act of March 3, 1901, presently provides that every person convicted of any assault with intent to kill or commit rape, or to commit robbery, or of mingling poison with food, drink, or medicine with intent to kill, or of willfully poisoning any well, spring, or cistern of water, shall be sentenced to imprisonment for not more than 15 years. Section 501 of H.R. 7525 amends this provision so as to provide a mandatory penalty of not less than 2 years. For the reasons I have already stated, the Commissioners question the desirability of this section of the bill.

Section 502 amends existing law relating to housebreaking so as to denominate the offense as burglary; to provide for two degrees of such offense; and to establish a minimum and maximum penalty for each such degree. The bill provides that burglary in the first degree involves the breaking and entering, or the entering without breaking, with criminal intent, of any dwelling, or room used as a sleeping apartment in any building, if any person be in actual occupation of any part of such dwelling or sleeping apartment at the time of such breaking and entering, or entering without breaking. Burglarly in the second degree involves the breaking and entering, or entering without breaking, with criminal intent, of any dwelling, bank, store, warehouse, shop, stable, or other building, or any apartment or room, whether at the time occupied or not, or any steamboat, canalboat, vessel, or other watercraft, or railroad car, or any yard where any lumber, coal, or other goods or chattels are deposited and kept for the purpose of trade. The penalty prescribed for first degree burglary is imprisonment for not less than 20 years nor more than life, and for the lesser offense of burglary in the second degree, imprisonment for not less than 5 years nor more than 15 years. In general, subject to the comment I have made with respect to the desirability of mandatory minimum penalties, the Commissioners favor the enactment of section 502. They suggest, however, that the language of subsection (b) of the proposed new section 823, would be clearer if the phrase "whether at the time occupied or not," appearing in line 8 on page 18, were changed to "regardless of whether any person other than the owner of the premises in which such apartment or room is located is entitled to the occupancy thereof."

The CHAIRMAN. Do I understand that the Commissioners' position on this section is that there should not be a minimum of 20 years for burglary—is that correct?

Mr. TOBRINER. We say that there should be no minimum sentence imposed but that we favor the designation of burglary in two separate degrees.

The CHAIRMAN. I understand that, but you are opposed to the imposition of a minimum mandatory sentence?

Mr. TOBRINER. That is correct.

Section 503 increases the existing mandatory minimum penalty of 6 months upon conviction of the offense of robbery to a mandatory minimum penalty of 5 years' imprisonment. Here again the Commissioners question the desirability of establishing a mandatory minimum penalty.

The CHAIRMAN. May I ask you a question there? Do you object to the setting of a minimum penalty of 6 months upon conviction for an offense such as robbery as it is now in the statute?

Mr. TOBRINER. No. I would not object to that, because I think that is practically de minimis in respect to a crime of that kind.

The CHAIRMAN. I am wondering if you are consistent, though, where you object to minimums in relation to the other sections—why do you not object to a minimum sentence for robbery?

Mr. TOBRINER. Because we think that in the case of robbery, which is a felony, that the minimum sentence currently prescribed is one which any court would normally give.

The CHAIRMAN. That is written into the statute?

Mr. TOBRINER. It is written into the statute, but I feel that it is a de minimis matter, and the Commissioners have no strong feelings about this item of 6 months under the robbery section.

The CHAIRMAN. The burden of your argument up to date on the House passed bill is to oppose a minimum sentence?

Mr. TOBRINER. We do, sir, but I say that a sentence of 6 months on a conviction for robbery is so minimal that I do not feel, if that were permitted to stay in the statute, that it would constitute any real interference with judicial discretion.

The CHAIRMAN. If there were a minimum sentence of 6 months for these other crimes you would then have no objection?

Mr. TOBRINER. That would depend upon the nature of the crime. I would say that generally would be true. I do not believe that constitutes any substantial impairment in the case of a felony in the court's discretion, which we believe should reside and remain with the judges.

The CHAIRMAN. Under the present sentencing system for burglary, if I understand it correctly, the present sentence for housebreaking is imprisonment for not more than 15 years. Is that the sentence that the judge would give, or would he impose one of 10 or 5 years?

Mr. TOBRINER. It would be within his discretion to give anything.

The CHAIRMAN. He can and does specifically set the sentence in the District of Columbia?

Mr. TOBRINER. Yes, sir.

The CHAIRMAN. Is that correct?

Mr. TOBRINER. Yes, sir. We have an indeterminate sentence law, if that is what you are driving at.

The CHAIRMAN. That is what I am driving at. The offender is convicted of housebreaking and he is before the judge for sentencing. Now, my question is, what type of a sentence can the judge impose?

Mr. TOBRINER. My recollection is, subject to correction, is that he sentences him for not less than nor more than.

The CHAIRMAN. So the judge himself then has a statute to which he can go permitting him to set the minimum?

Mr. TOBRINER. Within the confines of the sentence prescribed for the individual crime for which the sentence is imposed.

The CHAIRMAN. That is in the District of Columbia?

Mr. TOBRINER. I will have to refer to some of my lawyer friends here about that.

The CHAIRMAN. I am just trying to find out exactly how it works.

Mr. TOBRINER. I think that is true. Is Mr. Acheson here at the moment? Is that correct, Mr. Acheson?

The CHAIRMAN. Would you like to come forward? Maybe this is more properly in your province.

Mr. ACHESON. I will touch on that in my testimony.

The CHAIRMAN. We will ask you the question then at that point. Thank you.

Mr. TOBRINER. Section 504, generally relating to the bribing of persons participating in athletic contests, and offers to bribe such persons, replaces an existing provision of law having a similar effect. In general, this section of the bill appears to change existing law only to the extent of changing the penalty which may be imposed upon conviction of the proscribed offense, but otherwise to add nothing to existing law. Inasmuch as the Commissioners are informed that there appears to be no need for any change in existing law relating to this aspect of the problem, the Commissioners see no need for section 504. Accordingly they recommend against its enactment.

Section 505 has the effect of depriving the court of any discretion with respect to the imposition of an additional penalty for the offense of committing a crime of violence when armed with, or having readily available, any pistol or other firearm. Under existing law, if any person commits a crime of violence when armed with or having readily available a pistol or other firearm, he may, in addition to the punishment provided for the crime, be punished by imprisonment for an additional terms of years, which I believe the statute says is 5 years. However, present law does not require that such additional term of imprisonment be imposed, but leaves the matter to the discretion of the court. Section 505 changes existing law in two respects. First, it makes it mandatory that the court impose an additional term of imprisonment when a crime of violence is committed while the offender is in possession of, or has readily available, a pistol or other firearm. Second, the section deprives the court of authority to suspend sentence or to place the offender on probation. The Commissioners question the desirability of depriving the court of discretion in matters of sentencing. Accordingly they are opposed to the enactment of section 505.

The Commissioners question the desirability of section 507 inasmuch as it has the effect of requiring the imposition of a minimum penalty upon conviction of a violation of section 825(a) of the act of March 3, 1901, prohibiting the placing of explosives at certain specified locations.

I shall now discuss section 508. For many years the police regulations of the District of Columbia included and presently include a provision prohibiting the making of a false or fictitious report to the Metropolitan Police Department of the commission of any criminal offense, knowing such report to be false or fictitious, or to communicate or cause to be communicated to such Department any false information concerning the commission of any criminal offense or concerning any other matter or occurrence of which the Metropolitan Police Department is required to receive reports, or in connection with which such Department is required to conduct an investigation, knowing such information to be false. Section 508 of the bill is merely a restatement of the long-existing police regulation, differing therefrom only with respect to the penalty which may be imposed. The police regulation provides for a penalty of a fine not exceeding $300 or imprisonment not exceeding 10 days. Section 508 contains a penalty of a fine not exceeding $100 or imprisonment not exceeding 6 months, or both. We consider the proposed change in existing law both unnecessary and undesirable—unnecessary, in that the penalty presently prescribed for the violation of the police regulation is deemed adequate to the need; undesirable, in that the proposed increase in the penalty for such offense will have the result of permitting persons accused of making false reports to demand trial by jury for what in many cases would not be considered a major offense. In view of this, the Commissioners recommend against the enactment of section 508.

The two titles of H.R. 7525 that I have been discussing attempt to deal, in a limited way, with the serious firearm problem which exists within the District of Columbia. Title IV, incorporating robbery in the definition of a crime of violence, has a limited effect on the problem. Section 505, making it mandatory that persons convicted of a crime of violence while armed be given an additional term of imprisonment and be precluded from receiving a suspended sentence or being placed on probation, also has a limited effect on the problem. However, as they have set forth at some length in their report on H.R. 7525, beginning on page 19, the Commissioners are of the view that the bill does not deal with the serious inadequacies in present law regarding the acquisition and possession of firearms. They believe that an appropriate means of dealing with this problem is that set forth in the draft bill forwarded to the Congress by the Commissioners on April 5, 1963. I submit for the record a copy of the Commissioners' draft bill, together with a copy of their letter of April 5, 1963, to the Honorable Lyndon B. Johnson, President, U.S. Senate.

The CHAIRMAN. Without objection, that will be made a part of the record at this point.

(The document referred to follows:)

"APRIL 5, 1963.

"Hon. LYNDON B. JOHNSON,
"President, U.S. Senate,
"Washington, D.C.

"MY DEAR MR. PRESIDENT: The Commissioners of the District of Columbia have the honor to submit herewith a draft bill 'To amend the act of July 8, 1932, relating to the control and possession in the District of Columbia of dangerous weapons, and for other purposes.'

"The purpose of the draft bill is to reduce the rate of serious crimes in the District by more closely controlling the acquisition and possession of certain dangerous weapons, with particular attention to handguns, which the Commissioners feel are now too easily available to criminal elements in the community.

"Crimes committed in the District, as elsewhere in the larger cities of the United States, have been steadily on the increase in the past few years. Many factors play their part in this trend. The Commissioners feel one factor has been the easy availability of the implements of crime and firmly believe that an important step in the direction of reducing the crime rate is to provide tighter legal control over the possession of firearms.

"Police records give some indication of the seriousness of the weapons situation in the District. For example, more than 1,250 handguns alone have been confiscated and destroyed over the past 3 years. In addition, police have confiscated other firearms, such as rifles and shotguns, in possession of persons in trouble with the law. The Commissioners are informed that in more than half the cases in which these handguns were confiscated the persons from whom the weapons were taken were charged with assault with a dangerous weapon, armed robbery, or homicide. Recently, the Senate Subcommittee To Investigate Juvenile Deliquency focused attention on the easy availability of the so-called mail-order guns in the District, many of which have been confiscated by District police. It was noted at these hearings by Senator THOMAS J. DODD, chairman of the subcommittee, that an estimated 800 to 1,000 firearms of all types are confiscated in the District each year.

"Part of the reason for the general influx of guns into the District, in the view of the Commissioners, is the existence of several serious inadequacies in present law regarding the acquisition and possession of firearms. Accordingly, the attached draft bill is designed to eliminate those features in existing law considered to be hindering the effective control of guns and at the same time tighten other features of the law relating to the control of dangerous weapons generally.

"Weaknesses contained in present law allow persons to come into possession of handguns without an adequate investigation of whether they should have such weapons from the standpoint of their stability and lawful intentions. For example, anyone in the District may keep a gun in his home, place of business or on any other land he may possess without any requirement of any type of license whatsoever. A license is required at present only when a pistol is carried on one's person outside of his property (sec. 22–3204, District of Columbia Code, 1961 edition).

"Another inadequacy in existing law concerns the provisions requiring a waiting period before a seller may deliver a handgun to a purchaser (sec. 22–3208, District of Columbia Code, 1961 edition). The purpose of the waiting period is to give the police an opportunity to investigate the potential purchaser to determine if any reason exists why he should not have the weapon. The required waiting period may be as brief as 42 hours. This, police officials have indicated, is far too short a period in most instances for a thorough check to be made. Further, the statute does not provide specific authority for the police to actually forbid the delivery of the weapon in cases when the potential purchaser is determined not to be qualified to possess one. In addition, existing law, as it relates to possession of handguns by minors, implies that any person under the age of 21 years is free to have such weapons except as restricted by general provisions contained in the statute. Although the law appears to allow such possession, it specifically forbids the sale or transfer of any handguns to minors except by parents or guardians (sec. 22–3207, District of Columbia Code. 1961 edition). This means that a minor may bring into the District and have in his possession a handgun purchased elsewhere but is not permitted to purchase a handgun in the District. The rationale of the prohibition against any such purchase in the District appears to be that possession of a handgun by a minor is considered undesirable. The Commissioners believe the law should clearly prohibit possession of handguns by persons under the age of 18 years, except to permit certain activities under proper regulations, as for example, the participation in target shooting at authorized locations.

"These inadequacies are in large part overcome by the proposed amendments contained in the draft bill. Other features of existing

law are also substantially strengthened. Briefly, the major areas of change proposed by the amendments would provide the following:

"1. Require every person in the District (with exception of police, military personnel, and certain other groups that are specifically exempted or may be exempted under regulatory authority granted the Commissioners) to obtain a permit from the Commissioners or their designated agent in order to legally possess a handgun. When an applicant demonstrates that he is a person of good moral character and responsibility, the Commissioners or their designated agent are required to issue a permit for possession of a handgun to be kept in his home or place of business or on other land he owns or possesses. When an applicant meets similar standards, in addition to demonstrating a need for a weapon to protect his person or property, the Commissioners or their designated agent may in their discretion issue a permit to carry a handgun on his person.

"2. Prohibit possession of handguns in the District by person under 18 years of age, but allowing the Commissioners regulatory authority to permit such person to engage in such activities as target shooting and competitive shooting matches under restrictions that they may impose.

"3. Prohibit the carrying about of any rifle or shotgun anywhere in the District unless such weapon is unloaded, except that the possession of a loaded rifle or shotgun kept in one's home, place of business, or on other land owned or leased by such person, is permitted.

"4. Require closer surveillance by law-enforcement authorities over the importation and delivery of handguns into the District to insure that these weapons not get into the hands of unqualified recipients. The Commissioners or their designated agent are given clear authority to order that no delivery be made to such person. No delivery or transfer of any handgun would be permitted by any person unless he first obtains written permission to do so.

"5. Requires stricter licensing of manufacturers and dealers in weapons in the District, including those selling weapons at retail and wholesale and those in the business of repairing firearms, and require records to be kept and reports to be made to the Chief of Police concerning weapons sold and repaired and to whom sold and delivered.

"6. Tighten existing provisions prohibiting the possession of a dangerous weapon with intent to use it unlawfully, including establishment of a presumption that the possession of certain weapons, including possession of a pistol without a license, constitutes possession of such weapon with intent to use it unlawfully.

"7. Require any person desiring to purchase a pistol, machinegun, sawed-off shotgun, or blackjack within the District to first obtain a permit to purchase any such weapon.

"This latter provision, contained in section 2 of the bill and amending section 8 of the act (sec. 22–3208, District of Columbia Code, 1961 edition), has a far-reaching effect in strengthening existing law and is one of the most important features of the bill. The requirement that any purchase of a pistol, or any other prohibited weapon listed, must be preceded by the granting of a permit to purchase such weapon brings the District within the provisions of the Federal Firearms Act (15 U.S.C., ch. 18) governing interstate traffic of firearms. Section 902(c) of such act provides that:

"It shall be unlawful for any licensed manufacturer or dealer to transport or ship any firearm in interstate or foreign commerce to any person other than a licensed manufacturer or dealer in any State the laws of which require that a license be obtained for the purchase of such firearm, unless such license is exhibited to such manufacturer or dealer by the prospective purchaser."

The Commissioners believe that the permit to purchase provision, in light of the above-quoted provision of the Federal Firearms Act, would eliminate in great part the serious probem of mail-order shipment of handguns to persons in the District. For example, any licensed dealer outside the District (or, in fact, within the District as well, since the Federal Firearms Act defines interstate commerce to include commerce within the District) would be required to see evidence of a permit to purchase issued by the Commissioners or their designated agent before shipping or transporting the weapon in question. Should a dealer fail to comply with this requirement, he would face prosecution under the Federal statute; in addition, under the language of the proposed bill, he would also face prosecution under the strengthened District dangerous weapons statute. The Commissioners have been informed that several States now require a permit (or some equivalent procedure) to purchase firearms bringing them within the Federal Firearms Act, including Hawaii, Massachusetts, Michigan, Missouri, New Jersey, New York, and North Carolina.

"In developing the draft bill, the Commissioners' legal staff has had the close cooperation and assistance of various Federal officials, including the Internal Revenue Service which administers the Federal Firearms Act and the National Firearms Act. In addition, Mr. David C. Acheson, U.S. attorney for the District of Columbia, has aided in the drafting of the amendments. Mr. Robert V. Murray, Chief of Police for the District of Columbia, has also given personal attention to this matter and has been in communication with high-ranking officials of the New York Police Department concerning the effectiveness of such provisions as are now being proposed.

"In summary, the Commissioners believe that a need exists at this time for strengthening the District's dangerous weapons statute. The bill would, on one hand, continue to allow the possession of firearms by those law-abiding citizens desiring protection of their property and persons, under proper regulation, so that no qualified citizen desiring possession of such weapon need go unarmed. But, on the other hand, the bill provides for close control over the importation and possession of weapons and thus enables the authorities to take necessary steps to prevent these weapons from falling into the hands of criminal elements or persons not qualified to possess them. Accordingly, the Commissioners most strongly urge the enactment of the proposed bill.

"The Commissioners have been advised by the Bureau of the Budget that, from the standpoint of the administration's program, there is no objection to the submission of this legislation to the Congress.

"Very sincerely yours,

"WALTER N. TOBRINER,
"President, Board of Commissioners, District of Columbia."

"A bill to amend the Act of July 8, 1932, relating to the control of possession in the District of Columbia of dangerous weapons, and for other purposes

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first section of the Act entitled 'An Act to control the possession, sale, transfer, and use of pistols and other dangerous weapons in the District of Columbia, to provide penalties, to prescribe rules of evidence, and for other purposes, approved July 8, 1932 (47 Stat. 651), as amended, is amended to read as follows:

"'SECTION 1. When used in this Act, unless the context otherwise requires—

"'(a) "Pistol" means any firearm, by whatever name known, with a barrel less than twelve inches in length, which will, or is designed to, or which may be readily converted to, expel a projectile or projectiles by the action of an explosive.

"'(b) Sawed-off shotgun means any shotgun or any rifle with a barrel less than 20 inches in length.

"'(c) "Machinegun" means any firearm which shoots automatically or semiautomatically more than 12 shots without reloading.

"'(d) "Rifle" means a weapon, other than a sawed-off shotgun, designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

"'(e) "Shotgun" means a weapon, other than a sawed-off shotgun, designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

"'(f) "Switch-blade knife" means a knife which has a blade which opens automatically by hand pressure applied to a button, spring, or other device in the handle of the knife.

"'(g) "Gravity knife" means a knife which has a blade which is released from the handle or sheath thereof by the force of gravity or the application of centrifugal force and which, when released, is locked in place by means of a button, spring, lever, or other device.

"'(h) "Sell" and "purchase" and the various derivatives of such words shall be construed to include letting on hire, giving, lending, borrowing, and otherwise transferring.

"'(i) "Crime of violence" means any of the following crimes, or an attempt to commit any of the same, namely: Murder, manslaughter, rape, mayhem, maliciously disfiguring another, abduction, kidnaping, burglary, housebreaking, larceny, any assault with intent to kill, commit rape, or robbery, assault with a dangerous weapon, or assault with intent to commit offense punishable by imprisonment in the penitentiary.

"'(j) "Commissioners" means the Board of Commissioners of the District of Columbia, or their designated agent.

"'(k) "District" means the District of Columbia."

"SEC. 2. Sections 3 through 14 of such Act approved July 8, 1932 (secs. 22–3203 through 22–3214, D.C. Code, 1961 ed.), are amended to read as follows:

"'SEC. 3. (a) No person shall own or keep a pistol, or have a pistol in his possession or under his control, within the District, if—

"'(1) he is under the age of 18 years;

"'(2) he is a drug addict;

"'(3) he has been convicted in the District or elsewhere of a felony;

"'(4) he has been convicted of violating section 1 of the Act entitled "An Act for the suppression of prostitution in the District of Columbia" approved August 15, 1935 (49 Stat. 651, as amended, section 1 of the Act entitled "An Act to confer concurrent jurisdiction on the police court of the District of Columbia in certain cases" approved July 16, 1912 (37 Stat. 192), or sections 1 and 3 of the Act entitled "An Act to define and punish vagrancy in the District of Columbia, and for other purposes" approved December 17, 1941 (55 Stat. 808) as amended; or

"'(5) he is not licensed under section 10 of this Act and he has been convicted of violating any section of this Act.

"'(b) No person shall keep a pistol for, or intentionally make a pistol available to, any person referred to in subsection (a) of this

section, knowing or having reason to believe that he is under the age of eighteen years or that he is a drug addict or that he has been so convicted. Whoever violates this section shall be punished as provided in section 15 of this Act, unless the violation occurs after he has been convicted of a violation of this section, in which case he shall be imprisoned for not more than ten years.

"'SEC. 4. (a) No person shall within the District—

"'(1) carry either openly or concealed on or about his person any deadly or dangerous weapon capable of being so concealed, except as herein provided;

"'(2) carry either openly or concealed on or about his person or own or have in his possession or under his custody or control any pistol without a written permit therefor issued to him as provided in this Act;

"'(3) have in his possession or under his custody or control, except in his dwelling house or place of business or on other land owned or leased by him, any rifle or shotgun, unless such rifle or shotgun be unloaded; or

"'(4) own or have in his possession or under his custody or control any machinegun, sawed-off shotgun, or any instrument or weapon of the kind commonly known as a blackjack, slung shot, slingshot, sandbag, switch-blade knife, gravity knife, or metal knuckles, or any instrument, attachment, or appliance for causing the firing of any firearm to be silent or intended to lessen or muffle the noise of the firing of any firearm.

"'(b) Any person within the District carrying or having in his possession or under his custody or control any pistol for the possession of which a permit has been issued to him as provided in this Act shall have such permit on his person or within his immediate custody. Any person having such possession, custody, or control of a pistol shall upon demand exhibit such permit to a duly appointed law-enforcement officer. The failure of any person to exhibit such permit as provided herein shall be cause for the revocation of any and all permits issued to him under this Act.

"'(c) If any person within the District voluntarily delivers to a duly appointed law-enforcement officer any pistol, machinegun, sawed-off shotgun, shotgun, rifle, or other firearm, or blackjack, slung shot, slingshot, sandbag, switchblade knife, gravity knife, or metal knuckles, or any instrument, attachment, or appliance for causing the firing of any firearm to be silent or intended to lessen or muffle the noise of the firing of any firearm, under circumstances that do not give reason to believe that any law other than subsections (a) or (b) of this section has been violated, the voluntary delivery of such weapon or instrument, attachment, or appliance shall preclude the arrest and prosecution of such person on a charge of violating any provision of such subsections (a) or (b) with respect to such item voluntarily delivered. In the case of a voluntary delivery of any such weapon, instrument, attachment, or appliance, such item shall be delivered to any police precinct between the hours of 7 antemeridian and 6 postmeridian, shall be securely wrapped and, in the case of a firearm, shall be unloaded, and the bearer shall not have on his person or in his immediate possession any ammunition for such firearm. Any person within the District may summon a police officer to his residence or place of business for the purpose of voluntarily delivering to a police officer any such weapon, instrument, attachment, or appliance which shall be securely wrapped, and if a firearm, shall be unloaded. Any such weapon, instrument, attachment, or appliance delivered to any police officer or to any law-enforcement officer shall be disposed of in accordance with orders or regulations prescribed by the Commissioners.

"'(d) Whoever violates this section shall be punished as provided in section 15 of this Act, unless the violation occurs after such person has been convicted in the District of a violation of this section or of a felony, either in the District or in another jurisdiction, in which case he shall be sentenced to imprisonment for not more than 10 years.

"'SEC. 5. (a) Sections 3 and 4 of this Act shall not apply to the following:

"'(1) police, marshals, sheriffs, prison or jail wardens, or their deputies, or law-enforcement agents of the U.S. Government; and

"'(2) members of the Armed Forces of the United States, the National Guard, or the Organized Reserves, while such members are on duty.

"'(b) The Commissioners are authorized in their discretion to make orders or regulations exempting from any or all of the provisions of sections 3 and 4 of this Act any or all of the following classes of persons:

"'(1) special policemen appointed pursuant to the Act approved March 3, 1899 (sec. 4–115, D.C. Code, 1961 edition), special privates appointed pursuant to sections 378 and 379 of the Revised Statutes relating to the District (sec. 4–113, D.C. Code, 1961 edition) or employees of the United States or of the District, other than police, duly authorized to carry weapons;

"'(2) employees of any bank, public carrier, express, or armored-truck company organized and operating in good faith for the transportation of money or valuables;

"'(3) persons licensed under section 9 and 10 of this Act, and employees of persons so licensed, engaged in the business of manufacturing, repairing, or dealing in the weapons referred to in such sections;

"'(4) regularly enrolled members of any organization duly authorized to purchase or receive firearms from the United States;

"'(5) members of civil or educational organizations; and

"'(6) persons engaged in target shooting at duly authorized or licensed shooting galleries or ranges, or persons engaged in the operation of such shooting galleries or ranges.

"'(c) The Commissioners are also authorized to make orders and regulations to carry out the purposes of this Act, including, without limitation, orders and regulations prescribing the form, content, and requirements respecting the number of copies of reports, applications, permits, and licenses required under or authorized by this Act; providing for the keeping and disposition of records by persons selling, purchasing, manufacturing, repairing, transporting, or delivering weapons, instruments, attachments, and appliances covered by this Act; providing for the carrying of a pistol to and from a place of sale or repair or in moving goods from one place of abode or business to another; and further regulating the conduct of the businesses required to be licensed under this Act.

"'SEC. 6. (a)(1) The Commissioners may in their discretion, upon the written application of any person having a bona fide residence or who conducts business within the District, issue a permit to such person to carry either openly or concealed on or about his person a pistol within the District if the Commissioners are satisfied that the applicant is a person of good moral character and is a responsible person in the light of his age, reputation, employment, medical history, experience with firearms, or other relevant matters, and if the Commissioners are satisfied that the applicant has a need for such pistol in order to protect his person or property.

"'(2) The Commissioners shall, upon the written application of any person having a bona fide residence or who conducts business within the District, issue a permit to such person to own or have in his possession or under his custody or control a pistol, but may require such person to keep such pistol in his dwelling place or place of business or on land owned or possessed by him within the District. The Commissioners shall issue such permit if they are satisfied the applicant is a person of good moral character and is a responsible person in the light of his age, reputation, employment, medical history, experience with firearms, or other relevant matters.

"'(3) Any permit issued under this section may include such restrictions and prohibitions with respect to the possession or carrying about of such pistol as the Commissioners may impose. Any permit issued under this section may be revoked by the Commissioners when they have reason to believe that the permittee no longer has the qualifications requisite for the issuance of such a permit: *Provided*, That such revocation shall be only upon written order, which order may be issued at any time during the period of the permit. Upon service on the permittee of an order revoking any such permit, the permittee shall immediately return such permit to the Commissioners. No permit shall be of any force or effect after service on the permittee of an order revoking the same.

"'(b) The Commissioners shall require that each applicant for a permit under this Act, as a condition to being issued such a permit, be fingerprinted.

"'(c) Each application for a permit, or a renewal thereof, under this section shall be accompanied by a fee in an amount fixed by the Commissioners but not exceeding $5, which shall be retained by the District regardless of the action taken with respect to the application.

"'(d) The Commissioners are authorized to prescribe the duration of such permit and to require renewals thereof at such times as they deem appropriate.

"'SEC. 7. No person shall within the District sell any pistol to a person who he has reasonable cause to believe is forbidden by this Act to possess a pistol, and unless the purchaser is personally known to the seller or shall present clear evidence of his identity, and unless such person exhibits to the seller a permit issued by the Commissioners for the purchase of such pistol.

"'SEC. 8. (a) No person, except marshals, sheriffs, prison or jail wardens, or their deputies, policemen, or other duly appointed law-enforcement officers, shall purchase any pistol within the District without first obtaining a permit from the Commissioners to purchase such pistol. An application for a permit to purchase a pistol shall be filed with the Commissioners who shall within a reasonable period of time cause an investigation to be made to determine whether the applicant is qualified under the provisions of this Act to receive, own, or possess any such pistol. At the time of making a purchase of a pistol the purchaser shall exhibit to the seller a permit to purchase such pistol issued by the Commissioners and no seller shall deliver any pistol to any person unless such permit is exhibited to him and he makes a record of such permit to purchase, as may be required by regulation.

"'(b) No person shall ship, transport for delivery, or deliver to any person within the District any pistol or any package which such shipper, transporter, or deliverer has reason to believe contains one or more pistols, without first notifying the Commissioners in writing of the name and address of the person to whom such pistol or package is being shipped or delivered and the place of delivery. Delivery to such person shall be withheld for such reasonable period of time as may be specified in writing by the Commissioners during which period the Commissioners shall cause an investigation to be

made to determine whether such person is qualified under the provisions of this Act to obtain a permit to receive, own, or possess any such pistol. In the event the Commissioners determine that such person is not qualified under the this Act to receive, own, or possess a pistol, they shall serve upon the shipper, transporter, and such person written orders prohibiting such delivery to such person, or if they determine that the person is so qualified they shall, in writing, so notify the shipper, transporter, and such person.

"'(c) No person shall purchase any machine gun, sawed-off shotgun, or blackjack within the District of Columbia without first obtaining a permit from the Commissioners. No person shall sell or deliver any such weapon within the District, or ship or deliver any package within the District if he has reason to believe that such package contains any such weapons, without first obtaining written permission to do so from the Commissioners.

"'(d) Whoever violates this section or any order served by the Commissioners pursuant to this section shall be punished as provided in section 15 of this Act, unless the violation occurs after such person has been convicted in the District of a violation of this section or of a felony, either in the District or in another jurisdiction, in which case he shall be sentenced to imprisonment for not more than ten years.

"'SEC. 9. No person shall within the District engage in the business of selling, or manufacturing, or repairing pistols, machineguns, rifles, shotguns, sawed-off shotguns, or blackjacks without being licensed as provided in section 10 of this Act.

"'SEC. 10. (a) The Commissioners may grant licenses, effective for not more than one year from date of issue, permitting the licensee to sell at retail or at wholesale, or to manufacture or to repair, pistols, machineguns, rifles, shotguns, sawed-off shotguns, or blackjacks. Whenever any such licensee shall breach any conditions upon which his license was issued or upon violation of any provision of this Act or of any provision of section 7 of the Act of July 1, 1902 (32 Stat. 622, et seq., ch. 1352; ch. 23, title 47, D.C. Code, 1961 edition), which is applicable to any such licensee or of any applicable regulation made pursuant to such Acts, the license shall be subject to suspension or revocation and the licensee shall be subject to punishment as provided in this Act.

"'(b) Except as otherwise provided in this Act, the provisions of section 7 of the Act approved July 1, 1902 (32 Stat. 622, et seq., ch. 1352; ch. 23, title 47, D.C. Code, 1961 edition), relating to the issuance, revocation, suspension, transfer, and assignment of licenses, and license taxes or fees, and the provisions of such section 7 relating to the supervision, regulation, and inspection of licensed businesses, shall be applicable to licenses authorized to be issued by this section and to the holders of such licenses.

"'(c) The Commissioners are authorized and empowered to fix, and from time to time increase or decrease, fees for any services rendered under this section. The Commissioners shall increase, decrease, or fix fees in such amounts as will, in the judgment of the Commissioners, approximate the cost to the District of administering this section.

"'SEC. 11. No person shall, in purchasing any weapon or applying for any permit or license under this Act, or in giving any information pursuant to the requirements of this Act, give false information or offer false evidence of his identity.

"'SEC. 12. No person shall within the District change, alter, remove, or obliterate the name of the maker, model, manufacturer's number, or other mark or identification on any pistol, machinegun, rifle, shotgun, or sawed-off shotgun. Possession of any pistol, machinegun, rifle, shotgun, or sawed-off shotgun upon which any such mark shall have been changed, altered, removed, or obliterated shall be prima facie evidence that the possessor has changed, altered, removed, or obliterated the same within the District: *Provided,* That nothing contained in this section shall apply to any officer or agent of any department or agency of the United States or the District engaged in research or experimental work.

"'SEC. 13. Nothing in this Act shall be construed to prohibit delivery, sale, or possession of any toy or antique pistol so constructed or in such condition as to be not usable as a firearm, except that no person shall within the District possess any such toy or antique pistol with intent to use the same unlawfully.

"'SEC. 14. (a) No person, including those persons as may be exempted by subsection (a) of section 5 of this Act or exempted by the Commissioners from the provisions of subsection (a) of section 4 of this Act, shall within the District of Columbia possess, with intent to use unlawfully, any dangerous or deadly instrument or weapon, including, but not limited to, any pistol, machinegun, sawed-off shotgun, shotgun, rifle, or other firearm, or imitation pistol or firearm, or dagger, dirk, razor, stiletto, or any knife. The possession by any person, other than persons granted exemption by such subsection (a) of section 5 or by the Commissioners, of any pistol without a written permit therefor issued to him in accordance with the provisions of this Act, or of any machinegun, sawed-off shotgun, or any instrument or weapon of the kind commonly known as a blackjack, slung shot, slingshot, sandbag, switch-blade knife, gravity knife, or metal knuckles, shall be presumptive evidence of possession of such firearm or weapon with intent to use the same unlawfully.

"'(b) Whoever violates this section shall be punished as provided in section 15 of this Act, unless the violation occurs after he has been convicted in the District of a violation of this section or of a felony, either in the District or in another jurisdiction, in which case he shall be imprisoned for not more than ten years.

"SEC. 3. Such Act approved July 8, 1932, as amended, is amended by adding at the end thereof the following new sections:

"'SEC. 18. (a) Any order or notice required by this Act to be served shall be deemed to have been served when served by any of the following methods:

"'(1) when forwarded to the last known address of the permittee, as such address is recorded on the permit record on file with the Commissioners, by certified mail, postage prepaid;

"'(2) when delivered to the person to be notified; or

"'(3) when left at the usual residence or place of business of the person to be notified with a person of suitable age and discretion then resident or employed therein.

"'(2) Any notice to a corporation shall, for the purposes of this Act, be deemed to have been served on such corporation if served on the president, secretary, treasurer, general manager, or any principal officer of such corporation in the manner hereinbefore provided for the service of notices on natural persons; and notices to a foreign corporation shall, for the purposes of this Act, be deemed to have been served if served personally on any agent of such corporation, or if left with any person of suitable age and discretion residing at the usual residence or employed at the usual place of business of such agent in the District.

"'(c) It shall be the duty of the permittee to notify the Commissioners in writing of loss or theft of any pistol for which a permit has been obtained, the loss or theft of a permit, or any change of address from that address recorded on the permit of such permittee within forty-eight hours following such change of address or discovery of such loss or theft.

"'SEC. 19. The Commissioners are authorized to delegate any function vested in them by this Act and to provide for subdelegation of any such function: *Provided,* That the Commissioners shall not delegate the authority to make regulations pursuant to the authority contained in this Act.

"'SEC. 20. This Act may be cited as the "District of Columbia Dangerous Weapons Act",'.

"SEC. 4. The Act entitled 'An Act to consolidate the Police Court of the District of Columbia and the Municipal Court of the District of Columbia, to be known as "the Municipal Court for the District of Columbia," to create " the Municipal Court of Appeals for the District of Columbia," and for other purposes', approved April 1, 1942 (56 Stat. 190, ch. 207), as amended (sec. 11–772, D.C. Code, 1961 edition), is hereby amended by adding at the end of subsection (e) of section 7 of said Act the following new clause:

"'(10) Any final decision or final order denying, suspending, or revoking any application, permit, or license, or renewal of any permit or license, issued or applied for under the District of Columbia Dangerous Weapons Act.'

"SEC. 5. Section 911 of the Act entitled 'An Act to establish a code of law for the District of Columbia', approved March 3, 1901 (31 Stat. 1337), as amended (sec. 23–301, D.C. Code, 1961 ed.), is amended by inserting after the word 'place' where such word first appears 'any weapon, instrument, attachment or appliance possessed in violation of the Act approved July 8, 1932 (47 Stat. 650, ch. 465), as amended.'.

"SEC. 6. Section 914 of such Act approved March 3, 1901 (sec. 23–304, D.C. Code, 1961 ed.), is amended by adding the following:

"'If the property seized be a dangerous article declared to be a nuisance by section 17 of the Act approved July 8, 1932 (47 Stat. 654), as amended, such article shall be disposed of pursuant to such section 17.'.

"SEC. 7. Nothing contained in this Act or in any amendment made by this Act shall be construed as diminishing power or authority vested in the Commissioners of the District of Columbia by section 4 of the Act of June 30, 1906 (34 Stat. 809, ch. 3932; sec. 1–227, D.C. Code, 1961 ed.), or by section 7 of the Act of July 1, 1902 (32 Stat. 622, et seq., ch. 1352; ch. 23, title 47, D.C. Code, 1961 ed.), to make and enforce regulations relating to firearms, projectiles, explosives, or weapons of any kind, but this Act and amendments made by this Act shall be deemed as supplemental to such section 4 of the Act of June 30, 1906, and such section 7 of the Act of July 1, 1902.

"SEC. 8. The provisions of section 4(c) of such Act approved July 8, 1932, as amended by this Act, relating to the voluntary delivery of weapons to police, shall take effect upon the approval of this Act. The remaining provisions of this Act shall take effect on the thirtieth day following approval by the Commissioners of the District of Columbia of initial regulations made pursuant to the authority contained in such Act approved July 8, 1932, as amended by this Act, and on such effective date all outstanding licenses for the possession of pistols in the District of Columbia shall be of no force or effect.

"SEC. 9. That the first section of the Federal Firearms Act (52 Stat. 1250; 15 U.S.C., ch. 18) is amended by adding at the end of the definition of the term 'interstate or foreign commerce' the following sentence: 'For the purposes of this Act the term 'State' shall be held to include the District of Columbia and the Commonwealth of Puerto Rico.'.

"SEC. 10. Appropriations to carry out the purposes of this Act are hereby authorized."

Mr. TOBRINER. This letter sets forth the need for the recommended legislation, and explaining its provisions, which, the Commissioners believe, would provide the District with a strong, enforcible law to deal with the dangerous weapons problem in the District of Columbia. The Commissioners desire at this time to recommend that the Congress consider the enactment of legislation substantially similar to that set forth in the draft bill which I have offered for the record.

So much then for H.R. 7525.

I shall now proceed to a discussion of S. 486, a bill to amend certain criminal laws applicable to the District of Columbia, and for other purposes. This bill, designed to strengthen certain existing provisions of criminal law in the District, broadens the law governing immunity of witnesses in certain criminal proceedings, and to make certain procedural changes, was drafted by the U.S. attorney for the District of Columbia with the assistance of the Corporation Counsel. The Commissioners recommend its enactment.

Briefly, the first section of the bill amends section 848 of the act of March 3, 1901, relating to the crime of malicious injury or destruction of property. Section 848 is broadened to cover malicious injury or destruction of all personal and real property, rather than being limited, as at present, only to the malicious injury or destruction of movable property. Also, at present section 848 makes it a felony to maliciously injure or destroy property valued at $50 or more. Section 1 of the bill increases this limitation to $200 or more.

This is in line with current depreciation in values. The first section of the bill also revises the penalties established for such felonies by eliminating the mandatory maximum and minimum sentences of not less that 1 year nor more than 10 years' imprisonment, and substitutes instead a fine of not more than $5,000 or imprisonment for not more than 10 years, or both. In addition, it increases the maximum fine for misdemeanors in such cases from $200 to $1,000, and provides that the penalty for a misdemeanor shall be a fine not exceeding $1,000 or imprisonment not exceeding 1 year or both. The Commissioners believe that these amendments will result in more effective prosecution of those offenses which would be affected by the amendments.

The second section of the bill eliminates from an existing provision of law relating to willful or wanton disfigurement of property (sec. 1 of the act of July 29, 1892), language relating to the destruction of property, inasmuch as all prosecutions for malicious injury to or destruction of property would, by the first section of the bill, be brought under the amended section 848 of the act of March 3, 1901.

Section 3 of the bill amends existing District of Columbia law relating to kidnaping by striking the words "for ransom or reward" and submitting in lieu thereof the words "for ransom or reward or otherwise, except, in the case of a minor, by a parent thereof." The purpose of this amendment is to broaden the kidnaping statute, which now makes it unlawful only to hold a person for ransom or reward. The amendment would make the statute also applicable to those kidnaping cases in which the motive is lust, a desire for companionship, revenge, or some other motive not involving a desire for ransom or reward. However, in order to make the language of the statute inapplicable to cases involving the taking of a minor child by one of the parents of such child, the proposed amendment expressly excepts any such case from the operation of the statute. The Commissioners are informed that the proposed amendments of existing District of Columbia law will bring the District's law into conformity with the Federal statute.

Section 4 of the bill broadens immunity privileges now granted under the law to witnesses in cases involving civil actions relating to the abatement of disorderly house nuisances by authorizing the granting of similar immunity in criminal prosecutions for keeping such houses. Under this amendment the courts, upon application of the prosecutor, may compel a witness to testify in any such criminal prosecution notwithstanding his claim of privilege under the fifth amendment. Such witnesses, nevertheless, remain subject, under the amendment, to prosecution for perjury or contempt of court in connection with their testimony. It is expected that the broadening of the immunity statute to include cases involving criminal charges for keeping a bawdy or disorderly house will aid in the successful prosecution of such charges.

Section 5 of the bill amends the Healing Arts Practice Act by substituting the Corporation Counsel for the U.S. attorney as the official to conduct proceedings with regard to the suspension or revocation of licenses issued under the authority of such act. Similarly, section 6 substitutes the Corporation Counsel for the U.S. attorney with regard to the conduct of proceedings leading to the suspension or revocation of licenses issued to nurses under the authority of the act of February 9, 1907.

Sections 7 and 8 amend existing law so as to designate the Corporation Counsel as the prosecutor of violations relating to the licensing of optometrists and accountants.

Section 9 repeals certain provisions originally enacted June 22, 1874, relating to the appointment and bonding of private detectives in the District. These provisions for a number of years have been considered as having been superseded by paragraph 41 of section 7 of the act of July 1, 1932, requiring the licensing of private detectives.

Section 10 of the bill substitutes the Corporation Counsel for the U.S. attorney in cases involving certain actions dealing with receivership of properties belonging to absentees or absconders. The amendment would, in effect, require that the District of Columbia, instead of the United States, be made a necessary party in proceedings involving receivership of such property when the absentees or absconders have left the District without making provision for support of a wife or minor children, or when such assets are to be treated as though the absentee had died intestate.

Finally, section 11 of the bill provides for the effective dates of the amendments of existing law made by the several sections of the bill.

In summing up my testimony on titles IV and V of H.R. 7525 and on S. 486, I desire to reiterate that the Commissioners favor the enactment of title IV of H.R. 7525 and the enactment of S. 486. With respect to the sections of title V which I have discussed for the reasons I have stated earlier the Commissioners object to those provisions which would have the effect of establishing a mandatory minimum penalty for certain offenses, or increasing an existing mandatory minimum penalty. Subject to the foregoing comment, the Commissioners favor the enactment of section 502 of the title, relating to burglary. The Commissioners see no good for the balance of the provisions of title V of H.R. 7525, and accordingly they recommend against the enactment of all of the sections of that title with the exception of section 502.

Thank you very much for affording the Commissioners an opportunity to express their views with respect to the merits of titles IV and V of H.R. 7525 and of S. 846.

The CHAIRMAN. Thank you very much, Mr. Tobriner. I appreciate your testimony. I have no questions to direct to you. I previously indicated that we will have our hearing on the Mallory rule, which presents many problems, either next Tuesday or the Tuesday after that, and we will, likewise, have a full week of hearings on the Durham rule. We will look forward to seeing you back on those two separate occasions.

Mr. TOBRINER. Thank you.

The CHAIRMAN. Are there any questions, Senator DOMINICK?

Senator DOMINICK. Mr. Chairman, I do not really have any questions, because I was unable to be here for the full testimony and have not had a chance to read it, but I do want to get clear what I understood from your last comment, Mr. Tobriner, and that is it is my understanding that you are against section V or all provisions of this point?

Mr. TOBRINER. We are, primarily, against those provisions of title V.

Senator DOMINICK. Title V; yes.

Mr. TOBRINER. Which either increase an existing mandatory minimum sentence or which provide for one where none previously existed. Our feeling is, Senator, that this is a matter which should fundamentally be left to the judgment and the discretion of the presiding judge who has before him the defendant, the witnesses, the record, and other circumstances which may or may not induce longer or shorter sentences. We feel that it is primarily a judicial function which can safely be left to the discretion of our judges.

Senator DOMINICK. Have you expressed an opinion in this with respect to your position on the so-called Mallory rule?

Mr. TOBRINER. No, sir.

The CHAIRMAN. If I may interrupt there, I am trying to break this hearing into three different sections. Starting next Tuesday we intend going in depth into the Mallory rule, through the balance of the week, and then the following week we are going into the so-called Durham rule. I have no objection to the Senator questioning about this at all, except that I am trying to divide it into three sections. And since there is great controversy over both the Mallory—both the Mallory and the Durham rules, it occurred to me—and the witnesses have indicated that it will take us 3 or 4 days on each one of those two phases of the bills—that we would get into title I, which is the Mallory rule in depth starting on next Tuesday.

Senator DOMINICK. Thank you, Mr. Chairman. What I really was trying to find out was whether in this statement the Commissioner had made any statement of opinion?

Mr. TOBRINER. No, there is no statement of opinion in the statement that I presented today.

Senator DOMINICK. Is this true as far as the Durham rule is concerned?

Mr. TOBRINER. That is also true. This relates solely to S. 486 and title IV and title V of H.R. 7525.

Senator DOMINICK. Did you express any opinion on the possible licensing of firearms?

Mr. TOBRINER. Yes, we did.

Senator DOMINICK. Are you in favor of that?

Mr. TOBRINER. Yes, we are.

Senator DOMINICK. Do you feel that this has been helpful in New York?

Mr. TOBRINER. Our information, obtained from the chief of police of New York, through our chief of police, is that it has been—the so-called Sullivan law.

Senator DOMINICK. Does the Chair, if I may ask, intend to go in depth into the specific provisions, other than the Mallory and Durham rules on this bill?

The CHAIRMAN. I will say to the Senator that today we are confining ourselves to title IV and to title V and on next Tuesday we will go into depth into title I which is the Mallory rule and title III of the House passed bill, which is detention on the reasonable

grounds to suspect a person is or has committed a crime, as well as the detention of material witnesses section. And on the following Tuesday we will go in depth into the Durham rule.

Senator DOMINICK. Thank you.

Mr. TOBRINER. Senator DOMINICK, I will be happy to submit for the record the letter to which I referred from the Police Commissioner of New York City to our Police Chief, relative to the satisfactory working of the Sullivan law.

(The letter referred to follows:)

"THE POLICE COMMISSIONER,
"CITY OF NEW YORK,
"March 13, 1963.

"Mr. ROBERT V. MURRAY,
"Chief of Police, Government of the District of Columbia, Metropolitan Police Department, Washington, D.C.

"DEAR BOB: I am enclosing herewith a copy of the penal law of the State of New York, in response to your request relative to the subject of dangerous weapons. Article 172 entitled 'Public Safety,' beginning with sections 1894 through 1899 relates to the so-called Sullivan law. On page 260 there are amendments to some of these sections, which were passed in the legislative session of 1961.

"We have had very little opposition from law abiding businessmen and citizens of the city concerning the enforcement of these provisions relative to the possession and carrying of concealable weapons. We have consistently reduced the number of permits we issue, and at this time there are only 17,207 in force.

"We feel that this law is very desirable, as it does keep guns out of the hands of criminal elements to a certain extent. Its effectiveness is undermined by the ease with which pistols and revolvers can be obtained in other jurisdictions. I am sure that the most effective method of control would be through a Federal statute.

"It was a great pleasure to see you in Chicago, and I am looking forward to seeing you again soon.

"Sincerely,
"MICHAEL J. MURPHY,
"Police Commissioner."

Senator DOMINICK. Let me make some comments on this and perhaps then to ask you some questions.

The Sullivan law has been in effect for a long time in New York. I have not seen any particular decrease in the crime rate in New York that can be attributed to the Sullivan law. But let me also say this, do you have any evidence through the police records or otherwise that the requirement of licensing of people who have guns decreases the number of people who hold guns for felonious intent?

Mr. TOBRINER. We have this evidence, sir, that a recent Senate subcommittee hearing on juvenile delinquency revealed that the police confiscate an estimated 800 to 1,000 handguns here every year.

Senator DOMINICK. Do you feel that this would make it more difficult for you to get those guns?

Mr. TOBRINER. I think, sir, if the proposal that we have suggested is passed it would bring the matter of shipping in guns into the District under the current Federal firearms law which would make it illegal for any dealer to consign or ship a gun to a person who is unlicensed, so that in that respect it would make the out-of-state shipment of guns into the District of Columbia subject to closer surveillance and inspection.

Senator DOMINICK. What do you plan on doing about those who already have guns in the District?

Mr. TOBRINER. We would ask those people to register their guns. This is not only a protection to the public, it is also in my opinion, sir, a protection to the person who owns a gun, in that if that gun is stolen it can be readily traced, and for that reason it seems to me he is better protected.

Senator DOMINICK. Do you propose to apply it to handguns or to shotguns or what?

Mr. TOBRINER. I said that the proposed statute has a very complex definition which I will be glad to read to you. The permit to possess guns will be confined to pistols which means any firearm by whatever name known with a barrel less than 12 inches in length which will or is designed to or which may be readily converted to expel projectiles.

Senator DOMINICK. In effect, it is confined to pistols and revolvers?

Mr. TOBRINER. Yes.

Senator DOMINICK. Thank you, Mr. Chairman. That is all.

STATEMENT OF WALTER N. TOBRINER, PRESIDENT OF THE BOARD OF COMMISSIONERS

Mr. TOBRINER. Thank you very much, sir.

Mr. Chairman and members of the committee, the Commissioners appreciate this opportunity to present their views on titles I and III of H.R. 7525, an act relating to crime and criminal procedure in the District of Columbia, passed by the House of Representatives on August 12, 1963.

Title I of H.R. 7525 is intended to overcome for the courts of the District of Columbia the effect of a rule of evidence laid down in a line of cases beginning with the case of *Mallory* v. *United States*, decided in 1957 by the Supreme Court, barring the admissibility in evidence of statements made by arrested persons if such persons are not promptly taken before a committing magistrate in accordance with rule 5(a) of the Federal Rules of Criminal Procedure, requiring arrested persons to be taken before a committing magistrate "without unnecessary delay."

Title I of the bill would change the existing situation in the District of Columbia so as to provide that statements and confessions, otherwise admissible, will not be inadmissible solely because of delay in taking an arrested person before a Commissioner or other officer with power to commit persons charged with offenses against the laws of the United States.

The Commissioners naturally favor the admissibility of confessions and statements which are made freely and voluntarily. However, they believe that title I of H.R. 7525 should be amended in several respects so as to expand its coverage and afford certain safeguards to the persons making confessions or statements.

Accordingly, the Commissioners have recommended a number of changes in this title of the bill, set forth on page 2 of their report to the committee. The first of these changes would make the title applicable in cases of arrests for violations of the laws of the District of Columbia as well as of the laws of the United States.

The second change has the effect of requiring that each person shall immediately prior to being interrogated, be advised that he is not required to make a statement and that any statement made by him may be used against him. The third change proposed by the Commissioners is the addition of three new subsections designed to surround arrested persons with safeguards to protect their constitutional rights.

The first of these subsections requires that, prior to any interrogation, an arrested person shall be plainly advised by the police officer or officers having him in custody of his right to reasonable opportunity to communicate with counsel or with a relative or friend, and requires that the arrested person shall in fact be afforded such opportunity.

The second subsection requires that, whenever reasonably possible, each interrogation of an arrested person, and the warning and advice given him, (1) be monitored by some responsible person who is not a law-enforcement officer, or (2) be reported verbatim, be recorded by a recording device, or be conducted subject to some other means of verification. The third proposed subsection is designed to emphasize that nothing in the title is intended to supersede the requirements of rule 5(a) of the Federal Rules of Criminal Procedure respecting the right of an arrested person to be taken before a committing magistrate "without unnecessary delay."

To interpolate for a moment our views are the views of the Department of Justice, with the exception that we would eliminate that section providing for a ceiling of 6 hours on detention prior to arraignment

If title I of H.R. 7525 be amended as I have suggested, the Commissioners would have no objection to its enactment. However, should the title not be amended along the lines I have set forth, the Commissioners, since they have reservations concerning the protection afforded an arrested person by this section, in the form in which it is set forth in the bill, would be constrained to recommend against it enactment.

Mr. MORSE. Mr. President, as the testimony will show, Commissioner Tobriner favors a modification of the Mallory rule. But I am unalterably opposed to modification of the Mallory rule, because I believe the Mallory rule is essential to the protection of freedom in the District of Columbia, because the District of Columbia Police Department shows evidence of the abusive practices to which it will resort—practices that gave rise, in the first place, to the Mallory rule, which was a unanimous decision of the U.S. Supreme Court, written by the great Justice Felix Frankfurter.

What is wrong with the rule in the Mallory case? All the Supreme Court said was that if one is arrested, he shall be taken without delay before a committing magistrate. Is anything wrong with that?

There are various ways of obtaining authority for investigative arrest. In my judgment, Mr. Tobriner—although he professes to be against investigative arrests—and the Department of Justice and the chief of police are seeking to produce a situation which will add up to investigative arrest, by means of their proposed modification of the Mallory rule. I shall dwell at great length on that point when the Senate comes to debate—if it does—any omnibus crime bill that would bring to the floor of the Senate any such modification of the Mallory rule.

As I said 4 years ago—at about 2 a.m., I believe—in speaking on the floor of the Senate, when an attempt was made during the last night of the session to rush through a modification of the Mallory rule—and an examination of the CONGRESSIONAL RECORD will show that I shall now paraphrase accurately what I said on that occasion: Just let Senators waive their senatorial immunity long enough to be able to appreciate more fully the meaning and effect of that great decision by Associate Justice Frankfurter. Thank God that in that great temple of justice, only about a stone's throw from the Capitol Building where I am now speaking, the Supreme Court, by means of that decision written by Associate Justice Frankfurter, laid down the rule in the Mallory decision—this great protection of human freedom. So on that occasion I said—and I repeat the

statement tonight—that perhaps each Senator would have a better understanding of the importance and meaning of the Mallory rule if, as a Senator, he would be willing to waive his senatorial immunity, and then walk out of the Senate Chamber and proceed with me to Constitution Avenue, and there have a police officer put his hand on his shoulder and say to him, "You are under arrest. Come with me"—and then be taken to Police Headquarters.

We must not forget that Mallory was a high-grade moron; but even Senators—with the intelligence of Senators and the high IQ that I am sure all Senators possess—at least, on the average—would then understand the soundness of the Mallory rule, because even as Senators they would not be happy if they were subjected to the third-degree, cross-examination technique of which police departments are masters.

Let us not forget that we are dealing with human problems and psychological problems and arrested people who are afraid and disturbed and upset. Then the police proceed to "drumbeat" them, hour after hour, with cross-examination, threats, and all the other well-known, age-old techniques of third-degree methods that—although they do not involve the use of rubber hoses or blackjacks or arm twisting or the other physical abuses of third-degree methods—do involve the use of the psychological bludgeon—constant drumming and hammering away, hour after hour, with questions.

Under that technique they got that high grade moron Mallory to sign a confession, which the court recognized contained word after word of language completely beyond his intellectual ability to understand. He signed the confession. A unanimous Supreme Court threw out the conviction because that confession was introduced. There is no question that it carried great weight in producing a conviction.

In cases like the Mallory case there is always a tough factual situation. That statement applies to murder, rape, and other heinous crimes. Yet we would be surprised to learn how fine and well intentioned citizens are willing to accept the argument in such circumstances that, "The end justifies the means. It makes no difference how you prove the defendant's guilt. If you think you are proving his guilt, go ahead and do it."

It is still true in theory, and I think in overwhelming practice in America—though there are some unfortunate exceptions—that every person charged with a crime is entitled to the benefit of the presumption of innocence until proved guilty.

It is still true that State law enforcement officers have the burden of proof of establishing beyond a reasonable doubt the guilt of a defendant. That is a precious right. Out of it has come the old maxim that it is better to allow a large number of guilty men to escape rather than to convict one innocent man. All the Supreme Court did in the Mallory case was to say, "The defendant was not taken before a magistrate without delay; therefore the conviction must be set aside."

It is not difficult to take an arrested person before a magistrate. Every city with a population such as ours has a committing magistrate available day and night. Why do the officials want this period of long examination and questioning? I will tell the Senate why. The trouble is that we are dealing with abstract principles of justice. It is difficult to induce the American people to think in terms of abstract principles of justice. That is hard work. But it happens to be those abstract principles of justice that determine, in the last analysis, all of our substantive rights, and determine, in the last analysis, whether justice will be done. They are vital to the keeping of people free. That is what the Mallory decision means. That is its core and essence.

Why do they want this questioning period? Because—and I ask Senators to listen to this—time and time again they arrest without probable cause. We know the rule. One cannot justify an arrest without probable cause. That is a part of the presumption of innocence, and that is a precious right. This Senator does not propose to stand in silence if an attempt is made later in the present session of the Congress to modify the Mallory rule one iota because a modification of the Mallory rule along the lines that Tobriner, the Chief of Police, and Katzenbach in the Department of Justice desire would weaken the presumption of innocence. It would weaken the rule that there must be probable cause before an arrest can be made. It would open up a way of accomplishing arrest for investigation.

As I shall show in a moment, all the alleged checks, safeguards, and other trappings that they would add to the Mallory rule would not be safeguards at all. The Mallory rule is the only safeguard that we can have so far as giving full protection to the arrested person is concerned. Why do they not want the committing magistrate present? What is wrong with having the committing magistrate present? Why should the police want to delay taking the arrested person before a committing magistrate?

If the police have probable cause for his arrest, they can sit down with the committing magistrate and show it. If they have, he will make the decision as to whether or not the arrested person will give bond, if he decides that he is to be held. But it is at that point that arrested persons who have been arrested without probable cause are entitled to go free. The procedural check that others have of an opportunity to go free if there is not probable cause for their arrest that can be clearly established before a committing magistrate is the committing magistrate himself.

Why does this Chief of Police and this president of the District of Columbia Commissioners want to get around the Mallory rule? Because they want to keep the committing magistrate out of the picture for several hours. I am shocked by it. I shall continue to fight it. I shall stand foursquare in support of a unanimous decision of the U.S. Supreme Court.

This afternoon a high Government official told me of a shocking case in another jurisdiction, where a fine citizen of high standing and great repute was driving through the State late at night. He reached one of those intersections where the roads seemed to go in every direction. He got into the wrong cloverleaf, turned, and really ended up going against the traffic rather than with the traffic. He saw the plight he was in and pulled off the road.

A police car came up to him. I want to make clear that it was not in the District of Columbia, but another jurisdiction. However, the incident illustrates the point I wish to make, and what would happen if the Mallory rule did not exist. The police officers were anything but cooperative. They were abusive. The citizen said: "I am a stranger in this area. This is what happened: I got into the wrong lane. I went the wrong way on the cloverleaf. When I saw what I was doing, I got off the highway."

The police officer said a few more insulting things. The citizen said: "Don't talk to me that way. You have no right to talk to me that way. I made a mistake. If I am subject to a ticket, give me a ticket, but I will tell you what happened."

It did not satisfy this officer. He became more and more abusive. The police officers took him to the police station and beat the tar out of him. They beat him so badly that when the high Government official who told me about it this afternoon was called into the case and rushed to this jurisdiction, when he first saw him he did not even know it was his brother-in-law. That is how badly the brutality of the police inflicted mayhem upon this free citizen.

Mr. President, we should get it out of our heads if we think it is necessary to give such arbitrary, capricious power to policemen. I yield to no one in the Senate—and my voting record in the 20 years I have been in the Senate shows it—in voting for appropriations for the District of Columbia Police Department to carry out their legitimate functions. I shall continue to do so. When I have been shown the need for more policemen, I have voted for such appropriations. When it has been demonstrated that they were entitled to a pay increase, I have voted for it. But I have not fallen for the line of the District of Columbia Police Association in connection with some of their lobbying practices in that field and others.

I shall continue to support the District of Columbia Police Department; but I shall also continue to see to it that there is not a development of abuses, and to help clean out the abuses that I am satisfied exist to too great an extent at the present time.

Mr. President, the Commissioner seeks to support a modification of the Mallory rule because Mr. Katzenbach, of the Department of Justice, testified before the District of Columbia Committee in support of a modification of the Mallory rule.

I may state to the Senator from Nevada [Mr. BIBLE] that this is the last subject matter I shall discuss tonight. I have a good many others, but I can postpone a discussion of them to another

time. I want to discuss Mr. Katzenbach's testimony and Mr. Tobriner's testimony, and then make what I think is a devastating reply to both, which will be found in the RECORD, by a professor of criminal law in the District of Columbia. Then I shall close.

Mr. Katzenbach said:

Obviously, such an interpretation of the Mallory rule changes it from a rule of reason to an absolute prohibition of interrogation following arrest. In my opinion, this goes far beyond the evil against which the Supreme Court spoke out in Mallory.

I shall place in the RECORD later the last decision of the Supreme Court in the Mallory case, which, by a denial of a writ of certiorari a few days ago in effect reaffirmed the Court's position on the Mallory case, and, in my judgment, completely answered Mr. Katzenbach, although I do not know whether or not he fully appreciates it.

Mr. Katzenbach continued:

As I indicated in my written report to the committee, dated September 13, 1963, interrogation itself is not a violation of due process or of other constitutional rights. Free of abuse, interrogation is a valuable investigative tool for arriving at facts.

Interesting language, is it not—"free of abuse"? But it is the time element which gives rise to the opportunity to abuse. That is what the court pointed out. Give the police time to abuse, and there is created the opportunity for abuse. Follow the decision of the court, take the accused to a magistrate, and the possibility of abuse is eliminated.

Mr. Katzenbach did not elaborate, with any care, upon the catchy sentence I just read.

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

The only safeguard in title I is that the arrested person must be advised he is not required to make a statement and that any statement made by him may be used against him.

What kind of protection is that? What kind of protection is that for a high-grade moron? Or what kind of protection is that for a frightened person? What kind of protection is that for an emotionally aroused person? This is what we call a rationalizing of excuses for abuse.

I continue to read:

The dissents of four justices in two Supreme Court cases [citing them] suggest that such a warning is not adequate.

In the view of these justices, compulsory interrogation in camera, without permitting the arrested person to be accompanied by counsel, amounts to a denial of due process of law.

If, therefore, this committee concludes that some corrective legislation is necessary, it is my recommendation that at a minimum, four essential safeguards of defendants' rights must be incorporated in it. In addition to expressly preserving the rule against unnecessary delay, the legislation must provide for—

This is the Justice Department excuse and weak rationalization for scuttling the Mallory rule, in effect:

1. A plain warning to the defendant, immediately in advance of the questioning, that he is not required to make any statement at any time and that any statement made by him may be used against him—

What kind of protection is that, really? He has that right in any case; but that does not stop a brutal police department from browbeating him.

Do not forget, also, that there is involved the question of veracity in dealing with the safeguards. A police officer corroborates what is said by other police officers who are working together in such third-degree tactics. He will swear that the person arrested was told certain things. He says, "But they did not." But if they did, that would not stop the browbeating. We are trying to check the abuses.

Continuing with the reading of the recommendations:

2. The arrested persons being afforded a reasonable opportunity to notify a relative or friend and consult with counsel of his own choosing.

What a weak statement that is.

Time and time again the police will take advantage of the frightened, the timid, and the ignorant. If it is all right to have a lawyer there, if it is all right to have a friend or a member of the family there, what is wrong with just taking the arrested person before a committing magistrate? The court said that should be done.

Mr. President, this is weasel stuff. This is nothing but semantics. This is escape clause-ism. This is really an excuse for justifying or attempting to justify a form of investigative arrest. If the police have probable cause to arrest a person, let him be taken before a magistrate; if they have not, he should not be arrested.

Reading further from the list of recommendations:

3. A maximum of 6 hours elapsed time between arrest and completion of the confession.

It is unbelievable that an Assistant Attorney General of the United States should appear before a congressional committee and recommend such a shocking procedure as that. They want 6 hours to psychologically browbeat him, 6 hours to harass him, 6 hours to confuse him, 6 hours to take advantage of him, 6 hours to coerce out of him a confession which may be true or false.

We may get into a long debate later in the session on the so-called District of Columbia omnibus crime bill, and if we get into it, I intend to read to the Senate, hour after hour, and case after case, the history of law enforcement in this country, of the unreliability of confessions exacted and wormed out of arrested parties under such third-degree circumstances. It will curl the hair of Senators.

Let me say to Mr. Katzenbach that this is an old, old technique for rationalizing and justifying police brutality. All the Court said was that the arrested person must be taken before a magistrate. That is all. They can ask questions of him before the magistrate to clarify the arrest before the magistrate. The proper questions will be permitted by the magistrate. What is wrong with that, I ask Mr. Tobriner, the Chief of Police of the District of Columbia, and Mr. Katzenbach?

The Senator from Nevada [Mr. BIBLE] says that Mr. Tobriner used to be a law professor. So was Mr. Katzenbach. I hold no brief for law professors when they make such colossal blunders and bloopers. They would not teach on my law school faculty, I would fire them, if they did not have a better understanding of the history of criminal procedure and the basic procedure that should exist to protect citizens from the arbitrary, capricious practices of some police, which so often lead to police brutality.

4. A responsible witness, other than a law-enforcement officer, observing the questioning, or a verbatim transcript or recording of the interrogation.

What is wrong with making the committing magistrate a party? As Professor Pye, whom I shall quote in a moment, points out—and I should be delighted to have him on my faculty or staff—what do they mean by "a responsible witness"? I do not know.

The above-mentioned safeguards are contained in legislation which was introduced in the House last April as H.R. 5726. That measure was prepared by the U.S. attorney for the District of Columbia.

Thank you very much. I shall be pleased to respond to any questions you may have.

Some testimony. Pitiful.

Mr. President, Commissioner Tobriner, in effect says, "Me, too," or "Amen," or "I second the motion." In his testimony before the committee, he cites the approval of the safeguards, and says that if these safeguards are put in, he will support the bill.

Mr. President, in the interest of saving time, I ask unanimous consent to have printed in the RECORD Mr. Tobriner's testimony.

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

STATEMENT OF WALTER N. TOBRINER, PRESIDENT OF THE BOARD OF COMMISSIONERS

Mr. TOBRINER. Thank you very much, sir.

Mr. Chairman and members of the committee, the Commissioners appreciate this opportunity to present their views on titles I and III of H.R. 7525, an act relating to crime and criminal procedure in the District of Columbia, passed by the House of Representatives on August 12, 1963.

Title I of H.R. 7525 is intended to overcome for the courts of the District of Columbia the effect of a rule of evidence laid down in a line of cases beginning with the case of *Mallory* v. *United States*, decided in 1957 by the Supreme Court, barring the admissibility in evidence of statements made by arrested persons if such persons are not promptly taken before a committing magistrate in accordance with rule 5(a) of the Federal Rules of Criminal Procedure, requiring arrested persons to be taken before a committing magistrate "without unnecessary delay."

Title I of the bill would change the existing situation in the District of Columbia so as to provide that statements and confessions, otherwise admissible, will not be inadmissible solely because of delay in taking an arrested person before a commissioner or other officer with power to commit persons charged with offenses against the laws of the United States.

The Commissioners naturally favor the admissibility of confessions and statements

which are made freely and voluntarily. However, they believe that title I of H.R. 7525 should be amended in several respects so as to expand its coverage and afford certain safeguards to the persons making confessions or statements.

Accordingly, the Commissioners have recommended a number of changes in this title of the bill, set forth on page 2 of their report to the committee. The first of these changes would make the title applicable in cases of arrests for violations of the laws of the District of Columbia as well as of the laws of the United States.

The second change has the effect of requiring that each person shall immediately prior to being interrogated, be advised that he is not required to make a statement and that any statement made by him may be used against him. The third change proposed by the Commissioners is the addition of three new subsections designed to surround arrested persons with safeguards to protect their constitutional rights.

The first of these subsections requires that, prior to any interrogation, an arrested person shall be plainly advised by the police officer or officers having him in custody of his right to reasonable opportunity to communicate with counsel or with a relative or friend, and requires that the arrested person shall in fact be afforded such opportunity.

The second subsection requires that, whenever reasonably possible, each interrogation of an arrested person, and the warning and advice given him, (1) be monitored by some responsible person who is not a law-enforcement officer, or (2) be reported verbatim, be recorded by a recording device, or be conducted subject to some other means of verification. The third proposed subsection is designed to emphasize that nothing in the title is intended to supersede the requirements of rule 5(a) of the Federal Rules of Criminal Procedure respecting the right of an arrested person to be taken before a committing magistrate "without unnecessary delay."

To interpolate for a moment, our views are the views of the Department of Justice, with the exception that we would eliminate that section providing for a ceiling of 6 hours on detention prior to arraignment

If title I of H.R. 7525 be amended as I have suggested, the Commissioners would have no objection to its enactment. However, should the title not be amended along the lines I have set forth, the Commissioners, since they have reservations concerning the protection afforded an arrested person by this section, in the form in which it is set forth in the bill, would be constrained to recommend against its enactment.

Title III of H.R. 7525 consists of two sections, the first of which, patterned after the so-called Uniform Arrest Act, provides for the detention of suspects for a period not exceeding 6 hours, while the second provides for the detention of certain material witnesses.

The Commissioners are unalterably opposed to the enactment of the first of the two sections contained in title III, on the ground that the section is either unconstitutional or unnecessary, depending on the judicial interpretation of the phrase "reasonable ground to suspect" appearing in line 21 on page 14. This phrase, taken with the balance of the section, has the effect of permitting an officer or member of the Metropolitan Police force to detain, for a period not exceeding 6 hours, any person suspected by the officer or member of committing, or having committed, or being about to commit, a crime, and who has failed to identify himself or explain his actions to the satisfaction of such officer or member.

If the phrase "reasonable ground to suspect" is interpreted as authorizing the detention of an individual on the basis of something less than probable cause, then this section, in its effect, authorizes arrests for investigation—a practice that the Commissioners firmly believe is unconstitutional in that such arrests involve the detention of a person without the requirement of probable cause, in violation of the fourth amendment to the Constitution of the United States.

Obviously, any such arrest denies to the person so detained, for a period of as much as 6 hours, the opportunity to secure his liberty by posting bail or collateral, denies him the right of habeas corpus, deprives him of the assistance of counsel, and tends to impair his right under the fifth amendment not to be compelled in any criminal case to be a witness against himself. The Commissioners note, incidentally, that the U.S. Court of Appeals for the Fifth Circuit, in the case of *Staples* v. *U.S.*, 320 F. 2d 817, decided July 10, 1963, stated, with respect to one of the defendants in the case, that "McNamara was not under lawful arrest, but had been booked for 'investigation of passing counterfeit notes.'" The emphasis in my statement is also in the original.

This statement, the Commissioners believe, supports their view that arrests for investigation are not lawful. In addition, there is a line of cases which you are well aware of in the other Federal courts, and in the Supreme Court of the United States.

The Commissioners are cognizant of the fact that there is some support in the community for statutory authorization of the practice of making arrests for investigations, as an effective means of coping with the crime situation in the District of Columbia. They question, however, whether the "cure" provided by section 301 of title III is not in fact worse than the disease. It should be borne in mind that, if section 301 should be enacted by the Congress and be approved by the President, each of us present in this room today would be subject to being stopped on the street by a police officer merely because he is suspicious of us, and, should we not satisfy him concerning our identity or actions, we could be held incommunicado in a police precinct station house cell for as long as 6 hours, regardless of the pressing and important nature of our business elsewhere. This, the Commissioners strongly believe, is too high a price to pay.

If, however, the phrase "reasonable ground to suspect" in section 301 is construed, as has been the case in two of the three States in which the so-called Uniform Arrest Act is in effect, as meaning nothing more than "reasonable ground to believe"—that is, probable cause—then the Commissioners are of the view that this provision of the bill is unnecessary, since the officers and members of the Metropolitan Police force already possess the power to make arrests on the basis of probable cause.

Accordingly, to sum up my testimony on so much of title III of the bill as would impose on the District of Columbia the so-called Uniform Arrest Act, the Commissioners are strongly opposed to this provision as being either unconstitutional, in that it would authorize "arrests for investigation," or unnecessary, in that if the phrase "reasonable ground to suspect" be interpreted to mean "probable cause," the provision gives the Metropolitan Police no greater authority than they already possess.

With respect to the second of the two sections contained in title III of H.R. 7525, the Commissioners recognize the desirability and practical necessity of securing the appearance of material and necessary witnesses under the particular circumstances outlined in the section. However, they believe that such persons should be subjected to even less restraint on their physical liberty and freedom than those formally charged with crime, and that they should in all cases be permitted to appear immediately at the beginning of their detention before a judge or commissioner for the purpose of determining whether they are in fact necessary and material witnesses and be given an opportunity to post bond or deposit collateral to secure their appearance at trial. Accordingly, the Commissioners have recommended to the Congress certain proposed legislation which has been introduced in the Senate as S. 1148, a bill to amend the law relating to material and necessary witnesses to crimes committed in the District of Columbia.

This bill amends section 401 of the Revised Statutes of the United States relating to the District of Columbia so as to better protect the rights of persons detained as material and necessary witnesses. The Department of Justice has suggested a number of amendments to the legislation proposed by the Commissioners—suggestions with which the Commissioners agree and which they have incorporated in a revision of their proposed amendment of such section 401. This revision appears on pages 9, 10, and 11 of the Commissioners' report to the committee on H.R. 7525.

In summation, I wish to emphasize that the Commissioners strongly believe that whatever action the Congress may take with respect to providing more effective statutory tools to deal with the crime situation in the District of Columbia should not be in disregard of the constitutional rights of the residents of the District of Columbia, both law abiding and non-law-abiding alike. The Commissioners recognize the need for clarifying the situation with respect to the admissibility in evidence of confessions and statements made by arrested persons. They have, however, concern for the constitutional rights of all persons, those accused of crime as well as others.

Accordingly, they strongly recommend that title I incorporate safeguards designed to protect the constitutional rights of such persons while at the same time permitting the use in evidence of confessions and statements voluntarily made by them. With respect to section 301 of title III, it is the view of the Commissioners that it is either constitutionally objectionable or is unnecessary, and therefore should not be enacted by the Congress. As to section 302, relating to the detention of material witnesses, the Commissioners believe that such persons should be given greater consideration than section 302 presently provides and therefore the Commissioners strongly recommend that the Congress consider enacting legislation substantially similar to that suggested in the Commissioners' report on H.R. 7525.

Thank you very much for affording the Commissioners an opportunity to express their views on these two titles of H.R. 7525.

The CHAIRMAN. I certainly appreciate your appearance here, Mr. Tobriner, and the views that you have expressed. I don't think I have any questions on your statement. It was very specific and is easily understood.

The Senator from Colorado?

Senator DOMINICK. No questions, Mr. Chairman.

Senator MCINTYRE. No questions.

Mr. TOBRINER. Thank you very much.

Senator BIBLE. This is a good day for you, Mr. Commissioner.

Mr. TOBRINER. Yes, sir.

Mr. MORSE. Mr. President, although I had many other points I wished to raise I shall close by quoting the reply of a professor of criminal law in the District of Columbia, Prof. A. Kenneth Pye, associate dean of the Georgetown University Law School, a man of outstanding repute in the field of criminal law and criminal procedure teaching. My assertion will be verified in a few minutes as I read his answer to Mr. Tobriner, Mr. Katzenbach, and the Chief of Police.

The March 21, 1964, Washington Post had this to say about Mr. Tobriner's testimony:

Mr Tobriner, appearing before the committee in connection with his renomination as Commissioner, regrettably gave an offhand answer to what seemed to be an offhand question by Chairman BIBLE. He endorsed the Justice Department's bill to modify the Mallory rule. The Justice Department bill is, to be sure, a great deal more reasonable, and rather more consonant with the Constitution, than the meat-ax measure to butcher the Mallory rule passed by the House of Representatives. Nevertheless, it embraces one of those procedural shortcuts more likely to impair civil liberty than to prevent crime.

The Justice Department bill makes an obeisance to constitutional safeguards by providing that a confession elicited after arrest could not be received in evidence unless the defendant had been advised of his right not to make a statement and that any he did make might be used against him. He would also be given an opportunity to notify a relative or friend and consult with counsel, and, when reasonably possible, would be interrogated in the presence of an independent witness or a recording device, and presented to a magistrate no more than 6 hours after arrest.

There is room here for intolerable abuse.

I digress from the editorial for a moment to say that that is my point. Whenever a procedure makes room for intolerable abuse, I say: Change the procedure. The American people are entitled to procedures in the administration of criminal justice that are not subject to intolerable abuse. The editorial continues:

Being advised of one's rights by a policeman is not at all the same thing as being advised of one's rights by a judge. And the insertion of the phrase "when reasonably possible" in connection with the interrogation of a defendant makes the promised protection meaningless. This kind of corner cutting neither curbs crime nor enhances respect for the law.

The Mallory rule is simply a rule of evidence arming trial courts with the means of protecting elementary constitutional rights—the right not to be arrested without probable cause determined by a judicial officer and the right not to be required to be a witness against oneself. Law enforcement agencies no less than courts are meant to be protectors of constitutional rights. And their protection ought to be not grudging but ardent.

I highly endorse the editorial. I ask unanimous consent that there may be inserted in the CONGRESSIONAL RECORD an article published in the Washington Evening Star of March 31, 1964, entitled "Mallory Interpretation Left Standing by Court."

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

MALLORY INTERPRETATION LEFT STANDING BY COURT

The Supreme Court yesterday left standing an appeals court interpretation of the Mallory rule attacked by the Government, which said it has implications for all Federal laws enforcement.

The action came in an unsigned refusal to hear a Government appeal from reversal of the bank robbery conviction of James R. Seals, Jr., by the U.S. Court of Appeals.

Seals, of the 1400 block of Harvard Street NW., was convicted of robbing a Riggs National Bank branch here with another man in September 1961. Both defendants were sentenced to 6- to 18-year prison terms.

"The thrust of the [appellate] opinion is to outlaw official questioning of suspects * * * at police headquarters, no matter how conscientious an effort is made to inform the person of his rights," the Government's appeal said.

WHAT COURT DECIDED

A three-judge panel of the court of appeals ruled unanimously last November that Seals had been under arrest during questioning at the FBI field office here despite statements to him that he was not under arrest and free to leave.

Judge George T. Washington, who delivered the opinion, said the 3 hours that Seals was questioned at the FBI office was an "unnecessary and unreasonable" delay in his arraignment and thereby violated the Mallory rule.

The Supreme Court's 1957 Mallory decision bars use in Federal court trials of incriminating statements given by an arrested person during an unnecessary delay in his arraignment before a judicial officer.

The court of appeals decision, joined in by Chief Judge David L. Bazelon and Judge Carl McGowan, directed that Seals be retried without use of evidence as to a confession that he made at the FBI office.

INTERROGATION CITED

Judge Washington said that from the time Seals entered the office "he was in what was the equivalent of a police station, he was in the constant company of one or more FBI agents, and was subject to almost constant interrogation."

"It seems to us that these circumstances dictate a finding that even without any physical restraint Seals necessarily must have understood that he was in the power and custody of the FBI and that he submitted to questioning in consequence," the judge said.

The Government appeal said that Seals, who already had talked to agents in a parked car and had agreed to a search of his apartment, "said that he did not object" to further questioning at the FBI office.

Police here maintain that decisions under the Mallory rule hinder them in fighting crime. The Senate District Committee now has before it a House-passed measure that would allow police to detain suspects and witnesses for questioning up to 6 hours.

Mr. MORSE. Mr. President, I ask unanimous consent that there may be printed in the RECORD the decision which the Supreme Court left stand by refusing a writ of certiorari. It is the decision of the U.S. Supreme Court in United States against James R. Seals, Jr.

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

[In the Supreme Court of the United States, October Term, 1963, No. —]

UNITED STATES OF AMERICA, PETITIONER *v.* JAMES R. SEALS, JR.

Petition for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit reversing respondent's conviction of bank robbery.

OPINION BELOW

The opinion of the court of appeals (App., infra, pp. 13–19) is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on November 15, 1963. The time to file a petition for a writ of certiorari was extended to and including January 14, 1963. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether a confession given during questioning in an FBI office by a person who came there voluntarily and was told that he was not under arrest and was free to leave was properly held inadmissible in evidence on the authority of *Mallory* v. *United States*, 354 U.S. 449.

STATEMENT

The United States Court of Appeals for the District of Columbia Circuit reversed respondent's conviction of bank robbery on the ground that a confession introduced in evidence at the trial had been obtained during a period of unlawful detention following arrest, in violation of *Mallory* v. *United States*, 354 U.S. 449. The pertinent facts, as they were developed at a hearing (J.A. 9–34) and at the trial (J.A. 39–83), are as follows: [1]

At approximately 3:00 p.m. on September 25, 1961, two FBI agents, who were investigating a bank robbery which had occurred a week earlier, approached respondent as he was walking in the vicinity of the Bell Vocational School (J.A. 9–10, 18, 59). Agent Bernard Buscher, after identifying himself to respondent, asked if he "minded stepping over to the automobile," explaining that they "wanted to talk to him" (J.A. 10, 18, 48, 59). Respondent followed the agents to their car, which was parked across the street, and entered the back seat (J.A. 10, 18, 59).

In order to avoid creating a disturbance among students emerging from the school, the agents drove the car about three or four blocks to a point in front of the telephone company building on Columbia Road, just west of 14th Street (J.A. 10, 18–19, 48–49). There they were joined by another FBI agent, Lawrence Buscher, and an officer of the Metropolitan Police (J.A. 30, 49, 51, 60, 63, 68). Agent Bernard Buscher advised respondent that he was not under arrest,[2] that he did not have to make any statement, but that anything he said could be used against him (J.A. 10–11, 30, 48, 53). Respondent said, "well, I have not done anything. I don't mind talking" (J.A. 11, 48).

Agent Bernard Buscher then questioned respondent as to whether he had been involved in the robbery of the Riggs Bank at Columbia Road (J.A. 11). Respondent was asked whether he had recently purchased a pair of shoes and whether he had a large sum of money in his possession (J.A. 11, 49). Respondent acknowledged buying shoes, but denied having a large sum of money in his possession and emptied his pockets to prove it (J.A. 11). He said that if he had been involved in a bank robbery he would be "foolish to stay around here because I would have the money with me" (J.A. 11, 49–50). When an agent remarked that respondent might have the money at home, respondent invited the agents to search his house (J.A. 11, 50). Respondent executed, in the automobile, a written consent to the search of his house (J.A. 11–13, 50–51). The questioning in the automobile lasted 15 or 20 minutes (J.A. 11, 30, 60).

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[1] Respondent testified at the hearing and at the trial (J.A. 97–107). Insofar as his testimony was in conflict with that of the Government's witnesses, the trial judge indicated that he credited the testimony of the latter (J.A. 38). Since the operative facts for appellate purposes are as reflected in "the testimony of Government witnesses and so much of the petitioners' evidence as is uncontradicted" (*Anderson* v. *United States*, 318 U.S. 350, 351, note 1), the facts set forth above are based on the testimony of the agents.

[2] This was apparently in response to an inquiry by respondent as to whether he was under arrest (J.A. 68).

The officers then drove with respondent to his home, a two-room basement apartment (J.A. 12–13, 61). The search took from 30 to 45 minutes (J.A. 13–14, 61). There were in the apartment at the time, in addition to respondent and the officers, the person with whom respondent lived and a friend (J.A. 19, 27, 30, 51). Respondent was not restrained in any way; he wandered about the apartment and at one point poured himself and drank a "shot" of gin (J.A. 13, 27, 29, 52, 61, 69). He was not questioned during the search (J.A. 61).

Thereafter Agents Bernard and Lawrence Buscher asked respondent if he would accompany them to the FBI Washington Field Office for further questioning and respondent said that he did not object (J.A. 14, 19–20, 52, 61). The other two men in the apartment also agreed to go (J.A. 30–31, 52, 61).[3] One agent drove a car with respondent to the field office located in the old Post Office building on Pennsylvania Avenue (J.A. 19, 22, 52, 63, 65, 72). Respondent was taken to a room on the fifth floor furnished as an ordinary office. To reach it, it was necessary to pass through a railing with a gate, located near the elevator door, at which there was stationed a receptionist whose duty it was to inspect the pass or credentials of the person entering (J.A. 23, 31, 33–34, 62).

At about 4:45 p.m., Agents Bernard and Lawrence Buscher began to question respondent. After they had obtained background facts, at about 5:00 p.m., respondent asked if he was "locked up" and was told that he was not, but was free to leave at any time (J.A. 15, 27–28, 53–54). He was also told that he could have a lawyer and that he did not have to talk, but that anything he said could be used against him (J.A. 15, 53). Respondent was permitted to smoke, was offered food, which he declined, and was given soft drinks (J.A. 15, 29, 32, 54, 64, 74, 75). At approximately 6:00 p.m. Agent Bernard Buscher asked respondent if he would take a lie detector test, and respondent said that he wished to do so (J.A. 16). Respondent was again told that he was not under arrest and that there was no way the agents could make him take the test if he did not volunteer (J.A. 27, 70). Respondent was taken to a room on the fourth floor where Agent Woods, the operator of the polygraph, explained to respondent how it worked, advised him of his right not to take the test, of his right to talk to a lawyer, and of his right not to talk to the agent (J.A. 16, 35, 40, 42, 44, 47, 54). At the conclusion of the explanation, which lasted about 15 minutes, respondent said that he did not wish to take the test (J.A. 16, 35, 42, 44, 54).

Agent Bernard Buscher, with Agent Woods present, then resumed questioning respondent (J.A. 16, 42, 45). When Buscher told respondent that there were witnesses who had implicated him in the robbery, respondent said, "you bring somebody in front of me to tell me that" (J.A. 16). Buscher left to get a witness. Before he returned, respondent began admitting to Woods his participation in the robbery. This was some time between 6:50 and 7:10 p.m. (J.A. 16–17, 35, 45). At about 7:10, respondent was told he was under arrest (J.A. 17, 28, 58, 66, 71, 76). He finished making his confession at about 7:35 p.m. (J.A. 57) and was brought before a commissioner at about 8 p.m. (J.A. 28, 71, 77, 79).

After hearing the evidence outside the presence of the jury, the trial judge ruled that there was no reason to exclude the confession since it was not made during a period of unlawful detention after arrest (J.A. 38–39). The judge said, inter alia (J.A. 38):

"Giving consideration to those who have testified and placing the credibility where the court feels it does properly rest, I am constrained to hold that this man was not arrested, in even the technical sense of arrest, and from the evidence before me, this man was free to go and further that at points which are important, he was advised that he could go."

In reversing respondent's conviction, the court of appeals concluded that respondent "was under arrest at least from the time (about 4:30 p.m.) he was brought to the field office in the company of the agents." In its view, the fact that respondent was in the equivalent of a police station in constant company of one or more FBI agents who were questioning him "dictate[s] a finding that even without any physical restraint Seals necessarily must have understood that he was in the power and custody of the FBI and that he submitted to questioning in consequence." It ruled that the statements to Seals that he was not under arrest would, in the circumstances, hardly have suggested to him that he was in fact free. On the basis of this ruling that respondent was arrested at 4:30 p.m., the court concluded that the confession was the result of an unreasonable delay in arraignment, in violation of the rule laid down by this Court in the *Mallory* case, supra.

REASONS FOR GRANTING THE WRIT

1. The decision of the court of appeals, as we point out below, is in direct conflict with the decision of the second circuit in *United States* v. *Vita*, 294 F. 2d 524 (C.A. 2), certiorari denied, 369 U.S. 823. Moreover, it has profound implications for Federal law enforcement not only in the District of Columbia, but throughout the country.

In *Mallory* v. *United States*, 354 U.S. 449, this Court held that rule 5(a) of the Federal Rules of Criminal Procedure requires Federal officers to arraign an arrested person before a magistrate "without unnecessary delay" and that a confession obtained during interrogation in violation of this rule may not be admitted in evidence. The court below held that interrogation of a suspect at the offices of an investigatory agency or a police station is so inherently coercive that it must be equated with an arrest, even though it was made clear to the suspect that he was not required to accompany the officers to the office, that he had the right to remain silent and to consult counsel, that he was free to leave at any time, and that he was not under arrest. The thrust of the opinion below is to outlaw official questioning of suspects by law enforcement agents, at least at police headquarters, no matter how conscientious an effort is made to inform the person questioned of his rights.

Our disagreement with the decision below is not over the Court's view of the facts. The court of appeals purported to accept the findings of the district court, which were based on witnesses appearing before it. Recognizing that respondent was told three times that he was not under arrest and told once that he could leave at any time, the Court concluded that questioning at FBI offices or at a police station is inherently coercive. In short, the court below has held, as a matter of law, that questioning of suspects in police headquarters is coercive no matter how explicitly they are informed that they are not under arrest and may leave.

That the ruling of the court of appeals is important to all investigative branches of the Federal Government hardly needs elaboration. The importance of interrogation, both of witnesses and suspects, in the detection of crime is universally recognized. The thrust of the Mallory decision, as the Government has understood it, is that, important as that technique may be, a person cannot be deprived of his liberty by an arrest in order to afford police officers an opportunity to question him. This is in large part because an arrest places the suspect within the control of the police and may well coerce him to surrender his constitutional right to remain silent and have counsel. Until the decision below, however, there has been no suggestion, so far as we are aware, that there is anything improper in the mere questioning of a suspect who voluntarily submits to being interviewed, who is informed of his rights, and who is told that he may terminate the interview at any time.

2. The fundamental error of the opinion below is that it equates the psychological problems faced by an accused person with the restraint of an arrest. No doubt, any person guilty of a crime who is invited to talk with investigative agents is presented with a choice which may be difficult. He may well believe that a refusal to talk will cast further suspicion upon him, and he must decide whether to take that path or whether to endeavor, by talking, to allay suspicion. It is only in this sense that the conclusion of the court below that respondent must have felt himself "not free" is consistent with the findings of the district court as supported by the evidence. But that is hardly the same thing as an arrest, whereby a person is kept in actual restraint and has no option to terminate the interview. So long as a person is given a clear choice of talking or not talking, without physical restraint, we submit that it is proper to ask him questions which he is willing to answer.

The record shows that respondent thought that he had covered his tracks so well that he could avert suspicion by talking. While respondent was young, he was obviously not inexperienced.[4] Nor is there any suggestion that he was in any way mentally deficient. He knew enough to invite the agents to his apartment where he believed, correctly, that they would find nothing. He knew enough to ask the agents if he was under arrest. There is no reason to believe that, when the agents thrice told respondent that he was not under arrest (twice at the FBI office), he was confused as to whether he was free to leave. Indeed, he was once specifically told that he could leave the office at any time. In the face of these explicit statements, the presence of a railing and receptionist at the entrance to the office where he was questioned—obviously measures for excluding intruders but facts upon which the court below relied—has no tendency to show that the respondent was under coercion to stay. At most, the only restraining influence upon respondent was his own belief that if he did not submit to an interview or if he left in the middle of the questioning, he might confirm whatever suspicions the agents had about his participation in the robbery. Such apprehensions, nourished by consciousness of guilt, do not, we submit, make out a basis for inferring that petitioner was under arrest.[5]

3. The decision below is in direct conflict with the decision of the Second Circuit in *United States* v. *Vita*, 294 F. 2d 524 (C.A. 2),

[3] The record is silent as to these two men after they reached the FBI office.

[4] The respondent had twice been arrested: Once for housebreaking, when he was convicted of the lesser offense of unlawful entry, and once for robbery.

[5] We believe that the question whether a person is under arrest depends on the objective facts, not what the suspect subjectively believes. However, the distinction is not crucial here. While at one point respondent testified that he believed that he was under arrest from the time he first entered the FBI automobile, at another time he said that he considered himself free to leave at any time. The district court credited this second statement (J.A. 38). Its ruling is supported not only by the conflict in respondent's own testimony, but by the three explicit statements made to him by the officers that he was not under arrest and the one statement that he was free to leave.

certiorari denied, 369 U.S. 823. The opinion below virtually acknowledges this, suggesting only a difference in the fact that respondent, who was 19, was younger than Vita. In the Vita case, the defendant, then 28 years old, and a female companion were driven to the FBI offices in New York at about 10:25 a.m., the defendant confessed at about 6:30 p.m., and he was formerly arrested at 6:52 p.m. He was told that he was not under arrest and could leave at any time. During the more than 8 hours he was at the FBI offices prior to his confession and arrest, the defendant appeared in two lineups, was fingerprinted, and was questioned for considerable periods. He was in a security building where even Government attorneys were not allowed to walk in the halls at will. The court nevertheless found that Vita had not been arrested because he voluntarily accompanied the agents to the office and because he was told that he was not under arrest and that he was free to leave at any time.[6] The Second Circuit said (294 F. 2d at 529):

"Vita was apparently confident of his ability to talk himself clear of whatever suspicions the FBI had of his possible complicity. Surprising as it may seem, the guilty are often as eager as the innocent to explain what they can to law enforcement officials. The very same naive optimism which spurs the criminal on to commit his illegal act in the belief that it will not be detected often leads him to feel that in a face-to-face encounter with the authorities he will be able to beguile them into exculpating him. Having chosen to talk with the FBI agents, Vita cannot now be heard to complain because his calculated risk worked to his disadvantage."

These observations pertain here. Only the age of the suspects differentiates this case from Vita. That factor is obviously not significant since petitioner was knowledgeable enough to ask specifically whether he was under arrest and he was told three times before he confessed that he was not under arrest and once that he was free to leave. The real difference between the decision below and Vita is in the court's concept of what constitutes proper conduct by law enforcement officers. That is an issue of substantial public importance which this court should resolve.

CONCLUSION

In view of the conflict of circuits and the importance of the issue, we respectfully submit that this petition for a writ of certiorari should be granted.

ARCHIBALD COX,
Solicitor General.
HERBERT J. MILLER, Jr.,
Assistant Attorney General.
JANUARY 1964.

[U.S. Court of Appeals for the District of Columbia Circuit, No. 17550]

APPENDIX

JAMES R. SEALS, JR., APPELLANT *v.* UNITED STATES OF AMERICA, APPELLEE

Appeal from the U.S. District Court for the District of Columbia

Decided November 15, 1963

Mr. Peter R. Cella, Jr., with whom Mr. William E. Stewart, Jr. (both appointed by this court), was on the brief, for appellant.

Mr. William C. Weitzel, Jr., Assistant U.S. Attorney, with whom Messrs. David C. Acheson, U.S. Attorney, Frank Q. Nebeker, and Frederick G. Smithson, Assistant U.S. Attorneys, were on the brief, for appellee.

Before Bazelon, chief judge, and Washington and McGowan, circuit judges.

Circuit Judge WASHINGTON: This is yet another case in which the central issue before us is whether the use of a confession in a criminal trial should have been barred because it was allegedly the product of illegal detention by law enforcement officers. See *Mallory* v. *United States*, 354 U.S. 449 (1957).

The bank robbery in which appellant Seals allegedly participated, and for which he was convicted, along with one Harold Greenwell, occurred on September 18, 1961.[1]

On September 25, 1961, at about 3:05 or 3:10 in the afternoon, Seals was walking in the vicinity of Bell Vocational High School, which he attended, in the Northwest section of Washington. He was then 19 years old. According to the Government's evidence, the following occurred: An agent of the Federal Bureau of Investigation approached Seals, identified himself, and showed his credentials. He asked Seals "if he minded stepping over to the automobile, I wanted to talk to him." Seals made no objection, followed the agent, and got in the back seat of the automobile.[2] Another agent took the wheel, drove a few blocks and parked the automobile. Seals was then informed that he was not under arrest, that he need not make any statement, and that anything he said could be used against him. After Seals said "I have not done anything. I don't mind talking," he was questioned about the bank robbery, a large sum of money thought to be in his possession, and the purchase of a pair of shoes. Seals had only about a dollar on his person and offered to go with the agents to his apartment, stating "you can search if you want to." He signed a form of consent for the search. They arrived at Seals' apartment at 3:45. Seals moved about freely while the agents searched the premises. He went to the kitchen for a glass and poured a shot of gin from a bottle. He drank it. Several other people, including one Floyd Davis, with whom Seals lived, were in the apartment at the time. Seals was not touched or questioned at his home.

At about 4:15 p.m. Seals was asked to come to the FBI Field Office in downtown Washington "to talk further"; "he volunteered to go." Floyd Davis and another man also went to the Field Office with the agents in the latter's cars. The group arrived at the building housing the Field Office at about 4:30. They went to the fifth floor of the building and entered the FBI offices through a gate manned by a male "receptionist," whose duty it was to inspect the pass or other credentials of the one entering before he admitted him.[3]

At 4:45 p.m., in one of the offices, the agents resumed their questioning of Seals. They advised him that he had a right to consult an attorney, to keep silent, that anything he said could be used against him, and that he was free to go at any time. The questioning continued for about an hour and forty-five minutes. Twice during the interrogation Seals asked if he was "locked up," and was advised that he was not. Seals was allowed to smoke. He was asked if he wished anything to eat and was offered milk to drink. He refused food and the milk but at his request he was on two occasions given a bottle of soda.

During the questioning Seals was asked to take a lie detector test. He stated that he wanted to take it in order to establish his innocence. He was brought to the fourth floor, where the polygraph operator in the presence of another agent told him that he did not have to talk, and did not have to take the test; that he had a right to consult a lawyer before talking; but that if he talked, what he said could be used against him in court. The operator then explained the complete operation of the lie detector and the test to him. After hearing this explanation, Seals stated that he did not wish to take the test. One agent thereupon told Seals that there were witnesses who could link him to the robbery. Seals asked to be confronted and the agent left to bring such a witness. Before the agent returned to the room, Seals began (about 7:10 p.m.) admitting his participation in the bank robbery. He was then notified that he was under arrest and was taken before a commissioner within the hour.

After a hearing out of the presence of the jury, the trial judge found that the defendant was not under arrest before he confessed, saying in part:

"[F]rom the evidence before me, [I hold] this man was free to go and further that at points which are important, he was advised that he could go.

* * * * *

"This defendant from the stand, himself, stated there was no reason why he couldn't go."[4]

Viewing the evidence in the light most favorable to the Government, and giving the court's finding the great weight to which it is entitled, we must nevertheless conclude that Seals was under arrest at least from the time (about 4:30 p.m.) he was brought to the field office in the company of the agents. Such a conclusion seems to us well nigh irresistible. By that time, Seals "would have been rash indeed to suppose he was not under arrest," *Kelley* v. *United States*, 111 U.S. App. D.C. 396, 398, 298 F. 2d 310, 312 (1961). From that point on he was in what was the equivalent of a police station, he was in the constant company of one or more FBI agents, and was subjected to almost constant interrogation. It seems to us that these circumstances dictate a finding that even without any physical restraint Seals necessarily must have understood that he was in the power and custody of the FBI and that he submitted to questioning in consequence. As

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[6] This is the first of two alternative holdings in the Vita case. The court also stated that, even if the defendant had been arrested when he was first questioned, the Mallory rule was not violated. Judge Waterman, concurring, disagreed with this second holding.

[1] Both were charged under 18 U.S.C., section 2113(a). Both appealed their convictions to this court. Greenwell's appeal came on for hearing separately, and was decided on grounds not relevant here. See *Greenwell* v. *United States*, — U.S. App. D.C. —, 317 F. 2d 108 (1963).

[2] Appellant's account is as follows: "I was walking south on Hiatt Place toward Irving Street and as I got a few yards away from the school building, two men came out of a vehicle and approached me and I had a notebook in one hand and one of them grabbed me by the arm and then they showed me a FBI badge and asked me to come over to the car with them. * * *" He characterized his own impression of this incident in these terms: "I figured it to be under arrest when they first grabbed me in front of the school."

[3] Credentials were not asked for and examined when a person left. But there is nothing to show that Seals knew this.

[4] The reference by the trial judge apparently is to this exchange:

"Question. Was there any reason why you didn't go?

"Answer. Well—No, sir."

As heretofore noted, see footnote 2, appellant had stated his belief to be that he had been under arrest from the beginning. He also denied flatly before the jury that he had ever been told at the Field Office building at any time that he was free to leave, that he had a right to talk to a lawyer, or that he need not make a statement. Such conflicts in testimony concerning what is actually said and done in the privacy of police detention prior to arraignment seem almost inevitable. This is one of the problems which rule 5(a) was intended to obviate.

we held in *Coleman* v. *United States*, 111 U.S. App. D.C. 210, 218, 295 F. 2d 555, 563 (en banc 1961), this would constitute arrest, even though no actual force or visible physical restraint was used, or any formal declaration of arrest made.[5] The fact that Seals was told that he was free to leave and that he was not under arrest would hardly in the circumstances in which he found himself—never left alone and constantly in the company of FBI agents in their offices (observed by him to be difficult of access and presumably thought to be difficult of exit)—suggest to him, a 19-year-old high school student, that he was in fact free.[6]

The Government contends that the arrest did not occur until about 7:10 p.m., just after the appellant confessed. We have decided that the arrest occurred not later than 4:30 p.m. Whether the arrest was made with or without probable cause is not something we can readily determine from the record before us. But either alternative defeats the Government. If the arrest was made on probable cause, Seals should have been taken without delay to a magistrate. If there was no probable cause, he should not have been arrested.

Following his arrest, Seals was subjected to constant questioning and was not taken before the U.S. Commissioner until 7:45 p.m., after his confession had been obtained. This unexplained delay of more than 3 hours was unnecessary and unreasonable within the meaning of *Mallory* v. *United States*, supra. There the Supreme Court said (354 U.S. at 454–55):

"The police may not arrest on mere suspicion but only on 'probable cause.' The next step in proceeding is to arraign the arrested person before a judicial officer as quickly as possible so that he may be advised of his rights and so that the issue of probable cause may be promptly determined. * * *" [H]e is not to be taken to police headquarters in order to carry out a process of inquiry that lends itself even if not so designed, to eliciting damaging statements to support the arrest and ultimately his guilt. * * * [T]he delay must not be of a nature to give opportunity for the extraction of a confession.

It follows that it was error to allow the appellant's confession, obtained as a result of the unnecessary delay in arraigning him, to be put before the jury. Fed. R. Crim. P. 5(a); *Mallory* v. *United States, supra; McNabb* v. *United States*, 318 U.S. 332 (1943).

The case is reversed and remanded for a new trial, with directions to exclude evidence as to the defendant's confession obtained during his detention at the FBI field office.

So ordered.

[Criminal 878–61, filed Nov. 15, 1963, September term, 1963, No. 17550]

JAMES R. SEALS, JR., APPELLANT *v.* UNITED STATES OF AMERICA, APPELLEE

JUDGMENT

This cause came to be heard on the record on appeal from the U.S. District Court for the District of Columbia, and was argued by counsel.

On consideration whereof it is ordered and adjudged by this court that the judgment of the district court appealed from in this cause be, and it is hereby, reversed and that this cause be, and it is hereby, remanded to the district court for a new trial, with directions to exclude evidence as to the defendant's confession obtained during his detention at the Federal Bureau of Investigation Field Office.

Per Circuit Judge Washington.

(Initialed.)

Dated NOVEMBER 15, 1963.

Mr. MORSE. As we read the decision, the Court's action can be summarized as follows: What the lower court did was to apply the Mallory rule. An appeal was taken. The Supreme Court refused to issue a writ of certiorari, which means, in effect, as we lawyers know, that it sustained the lower court and left the lower court's decision on the Mallory rule standing. The date, I may say for the benefit of Mr. Katzenbach, is only a few days ago.

It is the most recent pronouncement of the Supreme Court on the Mallory rule. I thank God for it. A great hullabaloo has been stirred up over the Mallory rule, but it has not moved the Court. It still stands there as the great fortress of civil liberties in this country.

I close by reading the letter I referred to a few moments ago. It is a little long, but it needs to be read. It is a letter from the associate dean of the Georgetown Law School, Prof. A. Kenneth Pye, dated November 27, 1963. The letter is found at page 555 of the hearings of the District of Columbia Committee on the so-called District of Columbia omnibus crime bill. It reads:

GEORGETOWN UNIVERSITY LAW CENTER,
Washington, D.C., November 27, 1963.

Hon. ALAN BIBLE,
Chairman, Committee on the District of Columbia, U.S. Senate, Washington, D.C.

DEAR SENATOR BIBLE: Thank you for providing me with the opportunity of commenting on the proposals contained in H.R. 5726 and the testimony of Deputy Attorney General Katzenbach, U.S. Attorney Acheson, and Chief Murray.

In the first place, I do not think that a need for legislation on the subject has been established. After declining in 1962, the crime rate again rose last year. The crime rates in adjoining counties which have no Mallory rule also has risen.

I digress to say that one of the chief items of the buncombe that Chief Murray has been trying to feed the Congress is that there is some cause-and-effect relationship between the Mallory rule and the crime rates in the District of Columbia. There is no possible justification for alleging such cause-and-effect relationship. Professor Pye knocked that down in one sentence.

Chief Murray has not presented any evidence, other than his own opinion, that the Mallory rule either has been a factor in the increasing crime rate, or that any substantial number of defendants has escaped conviction because of it. Mr. Katzenbach stated that he did not know of any facts that could be cited which would lead to the conclusion that a substantial number of criminals have evaded punishment (R. 712). Mr. Acheson testified that there has been no substantial number of criminals who have evaded punishment although there may be some instances in which they received less punishment than they deserved (R. 713, 714).

I do not think that Congress should legislate in matters of such obvious judicial cognizance as the admissibility of evidence in criminal trials unless a strong case is made for the need for a change and unless legislation is necessary in order to accomplish the change. Apparently neither Mr. Katzenbach nor Mr. Acheson object to the Mallory decision. They object to "extensions of the Mallory rule" in Elsie Jones[1] and the two Coleman[2] cases. In addition, Mr. Katzenbach referred to a dissenting opinion in the Muchette case[3] and a ruling by a trial court in the Jones[4] case. He did not mention that the trial judge who ruled in Jones was the same judge who dissented in Muchette.

If the Department of Justice thinks that the Mallory rule has been interpreted improperly by the court of appeals, it has a remedy in the writ of certiorari.

That was tried in the Seals case, and the court knocked it down.

I do not understand the basis for Mr. Katzenbach's conclusion that "there has been no disposition on the part of the Supreme Court to review any of these cases" (R. 692). I have not checked all of the cases in which the court of appeals has interpreted the Mallory rule. It is clear that the Government did not seek certiorari in Jones or either of the Coleman cases. I do not think they have sought certiorari in any Mallory rule cases during recent years.

That was before the Seals case, the decision of which I have placed in the RECORD tonight. This letter is dated November 27, 1963.

Katzenbach has his answer now.

It is particularly inappropriate at the present time for the Congress to legislate on the subject of pretrial interrogation of defendants in criminal cases. The law is in a state of flux and cases are presently pending before the Supreme Court which may have grave implications on the entire subject of pretrial interrogation.

The Supreme Court has recently granted certiorari in *Escobedo* v. *Illinois*, 32 L.W.

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[5] In finding that Seals was not in fact under arrest before he confessed, the trial judge did not make it clear whether he considered whether or not Seals had reason to believe and did believe that he was under arrest. This was a very pertinent, if not determinative point, as the *Coleman* and *Kelley* cases, cited above, make clear. And *cf. Henry* v. *United States*, 361 U.S. 98 (1959), holding that the defendants there were arrested when FBI agents waved their car to a halt and thus restricted their liberty of movement.

[6] This case is very different from the situation in *Scarbeck* v. *United States*,—U.S. App. D.C. —, 317 F. 2d 546 (1962), cert. denied, 374 U.S. 856 (1963). There Scarbeck, an experienced Foreign Service officer of the State Department, was involved in a matter thought to affect the security of the United States. He was questioned by FBI agents during the course of 3 days in the State Department building and was released to security officers of the State Department for lunch and following the questioning at the end of each day. These were not police officers in the ordinary sense and they had no power to arrest. Following the completion of questioning Scarbeck was suspended by the State Department and was no longer accompanied by the security officers. For the balance of that day and 2 days thereafter he was free to come and go as he liked. On the morning of the 4th day he was arrested on a warrant by the FBI on the street and promptly taken before a U.S. Commissioner.

The situation in *United States* v. *Vita*, 294 F. 2d 524 (2d Cir. 1961), cert. denied, 369 U.S. 823 (1962), though generally similar to the one before us, is distinguishable in at least one important respect. Vita was "a 28-year-old high school graduate who had prior experience with the criminal law * * *" 294 F. 2d at 534. Seals was young and still a student.

[1] *Jones* v. *United States*, 307 F. 2d 397.

[2] *Coleman* v. *United States*, 313 F. 2d 576; *Coleman* v. *United States*, 317 F. 2d 891.

[3] No. 17410, July 25, 1963.

[4] *United States* v. *Jones*, Crim. No. 366–63.

3188; reported in the Supreme Court of Illinois as *People* v. *Escobedo*, 190 N.E. 2d 825.

In the Escobedo case the Court will consider again the issue of whether a defendant has a right to counsel during a period of police interrogation. The prior decisions sustaining the right of the police to interrogate in the absence of requested counsel (*Crooker* v. *California*, 357 U.S. 433; *Cicena* v. *LaGay*, 357 U.S. 504) will be reexamined during the present term in the Escobedo case. The Court has also granted certiorari in *Massiah* v. *United States*, 31 L.W. 3407, reported below at 307 F. 2d 62, to examine the extent of the Federal right to counsel in pretrial police investigations.

It is too early to know whether the Government will seek certiorari in *Lee* v. *United States*, 322 F. 2d 770, in which the Court of Appeals for the Fifth Circuit held that an indicted defendant was deprived of his right to counsel and due process of law when interrogated by Federal agents in his cell, although the record did not show that counsel was requested by the defendant.

It is quite conceivable that the Court may determine that a defendant has a right to counsel during a police interrogation and that counsel must be furnished to the indigent. During the last term the Court stated: "But it is settled that where the assistance of counsel does not depend on a request." *Carnley* v. *Cochran*, 369 U.S. 506.

I respectfully submit that it is wise to delay action on a statute which will permit interrogation by the police in the absence of counsel, until the law is clarified by the Supreme Court.

The study of prearraignment procedures recently undertaken by the American Law Institute is another reason to delay action. I do not agree with Mr. Katzenbach that it is desirable to pass legislation now because Congress "can always consider the recommendations subsequently and amend any laws in the light of anything that they come up with" (R. 720). The institute's research will deal specifically with the Mallory rule as well as other matters. In a letter of November 8, 1963, Prof. Arthur Sutherland, reporter for the institute study, inquired of me concerning the effect of the Mallory rule within the District of Columbia and requested that I provide him with the names of persons knowledgeable in the field. I have suggested that he contact Professor Shadoan, Assistant U.S. Attorney Timothy C. Murphy, Chief Layton, and your staff before beginning his study.

I appreciate that some persons sincerely think that some legislation is desirable in this field. I agree with Messrs. Katzenbach and Acheson that title I of the omnibus bill is undesirable. I cannot agree with them that H.R. 5726 is a satisfying substitute.

In my opinion there are several deficiencies in the bill.

The major deficiency in the bill is that it does not protect a citizen from an unlawful arrest and may, in fact, constitute an inducement to such arrests.

I digress to say that he hit the nail on the head. This is a slippery gimmick which is slipped into the bill in an effort to reestablish a form of investigatory arrest. It has no place in the District of Columbia. It has no place in America. The professor is right in his objection:

The purpose of the Mallory rule is not limited to the prevention of conflicts over the nature of secret interrogations and the minimization of the temptation and opportunity to obtain coerced confessions. Of equal importance is the effectuation and implementation of a citizen's rights to be protected against an unlawful arrest, to be afforded an opportunity for release on bail, to consult counsel and to be informed of his right to remain silent. A citizen is protected against an unlawful arrest by the mandate that he be taken before a magistrate without unnecessary delay and that he be released from custody unless the Government can establish to the satisfaction of the magistrate that there is probable cause for believing that he is guilty.

What is wrong with that? That is what the Supreme Court said. The question, "What is wrong with that?" will be asked over and over before this debate is over, if the Senate gets into a debate on the District of Columbia omnibus crime bill, because there is no answer to the professor.

The proposed act would negate effectively this protection. An individual could be arrested without probable cause, interrogated, and the statement given by him used to establish probable cause. There is every reason to expect that the police will use the statute as a substitute for arrests for investigation, where they suspect that an individual has committed an offense but lack probable cause.

That is the heart of this fight.

I think that is also reasonable to expect that ultimately statements obtained during a 6-hour period of interrogation following an illegal arrest will be suppressed by the courts through the extension of the doctrine of *Wong Sun* v. *United States*, 371 U.S. 471. Such suppression will rest on constitutional grounds rather than the supervisory power of the Supreme Court over the administration of justice in the lower Federal courts. At the least, we can expect considerable litigation on this point if the bill is passed.

The bill poses substantial problems of interpretation and administration. Initially we can expect considerable litigation concerning section 3(a), the requirement that police officers "plainly advise" a defendant "immediately prior to questioning" of his right to remain silent. I respectfully disagree with Chief Murray and Mr. Acheson that this warning by the police is "an absolutely unexceptional practice" which is done in almost every case (R. 702, 742). Some detectives and officers do give the warning. It is contained at the top of written statements signed by a defendant. It frequently—and I suspect usually—is not given before an interrogation begins and before an oral statement is taken. Existing Federal law does not require such a warning and statements obtained in the absence of a warning have uniformly been held to be admissible (*Morton* v. *United States*, 147 F. 2d 28; *United States* v. *Heitner*, 149 F. 2d 105).

Only in the military is such a warning required. The experience under the Uniform Code of Military Justice indicates that no other single provision has resulted in more appellate litigation. After 12 years, the meaning of article 31 of the military code, is still the subject of appellate court decisions. *United States* v. *King*, USCMA (No. 16,794, Nov. 15, 1963). Similar litigation will undoubtedly follow in the courts of the District of Columbia if the bill is passed.

Section 3(b) of the bill provides that a defendant shall be advised that "he would be afforded reasonable opportunity * * * to consult with counsel of his choosing." This is a desirable safeguard but will be meaningless in most cases. Few defendants have retained counsel and few know the name of a lawyer who is willing to represent them in the middle of the night. Over half of the defendants are indigent. The Legal Aid Agency has no statutory authority to represent a defendant prior to preliminary examination. The provision of the bill on its face affords a valuable right to a defendant; in reality it protects only those who need it the least.

Whether the provision is required by the Constitution cannot be determined until the Supreme Court decides the Escobedo case. If the Court holds that a defendant has a right to consult counsel, it may be incumbent upon the Government to provide counsel for the indigent; or at least not interrogate him in the absence of counsel (cf. *Lee* v. *United States, supra*).

I agree with Mr. Acheson that a 6-hour limitation is desirable if interrogation is permitted.

Section 3(d) will provide serious problems of administration. Who constitutes a "responsible person?" What is meant by "whenever reasonably possible" and "comparable means of verification?" These terms pose substantial problems of interpretation. The only fair and effective method of verification is to record all that transpires from the moment the defendant is taken into custody. This seems extremely difficult to accomplish as a practical matter.

I wish to apologize to the committee concerning certain aspects of my testimony which apparently were misleading. I thought that I had made it clear that my testimony concerning the crime rate and the rate of police resignations were based on fiscal 1962, which was the last year the statistics were available. Since my testimony I have received a copy of the hearings conducted by the subcommittee of the Committee on Appropriations on September 28, 1963. The new statistics indicate that the crime rate increased in 1963 and that police resignations declined, although the rate was still considerably higher than in previous years.

I did not intend to suggest that any police officers are specially detailed to the probation service. I intended to indicate that a more effective probation service would relieve the police of the duties of arresting violators and would result in a general reduction of the crime rate.

I am taking the liberty of enclosing two judicial conference committee reports relating to the Mallory rule.

Thank you again for providing me with the opportunity for expressing my views.

Your very truly,

A. KENNETH PYE,
Associate Dean.

Mr. President, I ask unanimous consent to have printed in the RECORD the Judicial Conference of the United States reports referred to by Dean Pye. These reports by the Judicial Conference are in opposition to the proposals to change the Mallory rule.

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

NOVEMBER 15, 1963.

MR. WARREN OLNEY III,
Director, Administrative Office of the U.S. Courts, Supreme Court Building, Washington, D.C.

DEAR MR. OLNEY: This committee has before it for consideration, legislation passed on August 12, 1963, by the House of Representatives which, under title I thereof, would substantially abrogate the McNabb-Mallory rule in the District of Columbia.

This committee has conducted a series of hearings on the above subject and other matters relating to Criminal Justice Code, in the District of Columbia, during the past 2 months. The committee has made every effort to secure a comprehensive view of this subject.

This committee has in its files copies of a purported report of the Advisory Committee on Criminal Rules of its study of provisions of rule 5(a), dated July 2, 1963; and a purported report of the Committee on Rules and Practice and Procedure to the Judicial Conference of the United States, dated August 26, 1963, copies of which are enclosed.

It would be appreciated if you could ascertain if these copies are the actual reports of the two committees because the information contained therein might well be helpful in this committee's examination of the pending legislation. Likewise, if these reports are those of the committees involved, this committee would like to include such in the appendix of the printed hearing record for the benefit of the Members of the Senate considering this subject matter.

A staff member of the District of Columbia Committee spoke with Mr. Joseph F. Spaniol, Jr., over the past several weeks in an effort to arange a date satisfactory for Judge William Smith of the U.S. Court of Appeals, Third Circuit, to testify on the Mallory legislative proposal. However, a conflict with schedules of Judge Smith and the committee precluded his testimony. Therefore, as another means of securing information on the position of the Advisory Committee and the Committee on Rules of Practice and Procedure, I am attempting to secure the inclusion of such reports in the hearing record.

For your general information as to the general subject matter involved I enclose a copy of H.R. 7525 and call your attention to the McNabb-Mallory section designated as title I and commencing on page 1.

I shall await your reply in order that we can proceed with the preparation of the printed hearing record.

Your courtesy is appreciated.

Cordially,

ALAN BIBLE.

ADMINISTRATIVE OFFICE OF THE U.S. COURTS,
Washington, D.C., November 21, 1963.

Hon. ALAN BIBLE,
Chairman, Committee on the District of Columbia, U.S. Senate, Washington, D.C.

DEAR SENATOR BIBLE: I am replying to your letter of November 15, concerning the report of the Advisory Committee on Criminal Rules on its study of the provisions of Rule 5(a): Federal Rules of Criminal Procedure, dated July 2, 1963, and the report of the Committee on Rules of Practice and Procedure to the Judicial Conference of the United States, dated August 26, 1963, copies of which were enclosed with your letter.

We have examined these reports and find them to be identical with the reports submitted to the Judicial Conference at its recent session in September 1963. I should like to inform you further that at that time the recommendations contained in these reports were approved by the Judicial Conference. The copies of the reports which you enclosed with your letter are returned herewith for such use as you may wish to make of them.

Sincerely yours,

WARREN OLNEY III, *Director.*

REPORT OF THE COMMITTEE ON RULES OF PRACTICE AND PROCEDURE TO THE JUDICIAL CONFERENCE OF THE UNITED STATES

Your Committee on Rules of Practice and Procedure has received from the Advisory Committee on Criminal Rules a report of its study of the provisions of rule 5(a) of the Federal Rules of Criminal Procedure. That report, a copy of which is annexed hereto, recommends that the Judicial Conference disapprove S. 1012, 88th Congress, and similar bills which seek to abrogate the McNabb-Mallory rule. Your committee approves the report of the Advisory Committee on Criminal Rules and recommends that it be approved and adopted by the Judicial Conference and that the Bureau of the Budget, which has requested the views of the Conference on S. 1012, 88th Congress, be informed of the action of the Conference.

Our committee has no definitive proposals to present to the Judicial Conference at this time for changes in the rules of practice and procedure. Tentative proposals for the amendment of certain of the Federal rules of criminal procedure have been widely circulated and are now being considered by the bench and bar. All five of the advisory committees now under appointment are actively engaged in the work to which they have been assigned. Progress reports from each of them are annexed hereto for the information of the Conference.

Respectfully submitted.

ALBERT B. MARIS,
Chairman.

REPORT OF THE ADVISORY COMMITTEE ON CRIMINAL RULES OF ITS STUDY OF THE PROVISIONS OF RULE 5(a)

The Advisory Committee on Criminal Rules has spent a considerable amount of time studying and discussing the problems raised by the provisions of rule 5(a) which requires that a person arrested be brought before a commissioner "without unnecessary delay."

The present status of the deliberations of the committee on these problems is as follows:

(1) The committee is agreed that there should be no change in the doctrine enunciated by the Supreme Court in such cases as *McNabb* v. *United States*, 318 U.S. 332 (1943) and *Mallory* v. *United States*, 354 U.S. 449 (1957) under which confessions obtained during a period of delay longer than that permitted by rule 5(a) are excluded from evidence.

(2) The committee has so far been unable to articulate any better standard than "without unnecessary delay" which will fit the wide variety of situations and circumstances which exist in the various Federal districts.

(3) The committee recognizes that special problems may exist in the District of Columbia because of the fact that the police in the District have general law enforcement jurisdiction. However, the committee has felt that special rules for the District should not be incorporated in the rules of criminal procedure. The committee, therefore, has not given special attention to the problems which are peculiar to the District.

However, the committee does recommend to the Judicial Conference that it oppose S. 1012 and similar bills which merely seek to abrogate the McNabb-Mallory rule in the District of Columbia. Such proposals avoid, but do not solve, the fundamental problems of what procedures are appropriate to govern the police in the District. Instead, their thrust appears to be to permit the police to avoid the present procedure in the course of securing confessions subject only to the controls imposed where the violations are so grave as to result in determinations that confessions are involuntary.

Respectfully submitted.

JOHN C. PICKETT,
Chairman.

ADMINISTRATIVE OFFICE OF THE U.S. COURTS,
Washington, D.C., January 10, 1964.

Mr. RICHARD JUDD,
Profesional Staff Member,
District of Columba Committee,
New Senate Office Building,
Washington, D.C.

DEAR MR. JUDD: In accordance with our telephone conversation of this afternoon, I am enclosing a copy of the Report of the Proceedings of the Judicial Conference of the United States at its September 17–18, 1963, meeting. The record of the position taken by the Judicial Conference with respect to the case of *Mallory* v. *United States* and to S. 1012, 88th Congress, you will find beginning at the top of page 80.

Sincerely yours,

WARREN OLNEY III, *Director.*

REPORT OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES, WASHINGTON, D.C., SEPTEMBER 17–18, 1963

ADMINISTRATIVE OFFICE OF THE U.S. COURTS

Warren Olney III, Director

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RULES OF PRACTICE AND PROCEDURE

Senior Judge Albert B. Maris, Chairman of the standing Committee on Rules of Practice and Procedure, presented to the Conference a report of the activities of the standing Committee and the Advisory Committee on Rules of Practice and Procedure.

Judge Maris reported that the Advisory Committee on the Criminal Rules in connection with its study of the provisions of Rule 5(a): Federal Rules of Criminal Procedure, which requires that a person arrested be brought before a commissioner without unnecessary delay, had considered the proposal contained in S. 1012, 88th Congress. The bill seeks to overcome the effect of the decision in the case of *Mallory* v. *United States*, 354 U.S. 449, under which confessions obtained during a period of delay longer than that permitted by rule 5(a) are excluded from evidence. Upon the recommendation of the standing committee, the Conference voted to disapprove S. 1012 and similar bills which seek to abrogate the McNabb-Mallory doctrine.

The Conference was informed that the committee had no definitive proposals to present to the Conference at this time for changes in the rules of practice and procedure. Tentative proposals for the amendment of certain of the Federal Rules of Criminal Procedure have been widely circulated and are now being considered by the bench and bar. All five advisory committees now under appointment are actively engaged in the work to which they have been assigned.

Mr. MORSE. Mr. President, for the reasons I have set forth in this long speech, I am opposed to confirmation of this nomination, because in my judgment the President of the District of Columbia Board of Commissioners has done a very poor job in administering the police force, under his duty as the Commissioner who has the primary jurisdiction over the Metropolitan Police Department.

Second, I believe he is not qualified to hold this position so long as he continues to hold views which, in my judgment, would jeopardize civil liberties in the District of Columbia and encourage the establishment of procedures which could very well lead to police brutality.

So I have reached the conclusion that the nominee is not sufficiently well qualified to serve in this important post.

I am aware of the fact that he has a great interest in eventual appointment to the bench; but let me say that I do not believe he has the judicial temperament for such an appointment.

I am sorry I have to speak out against confirmation of the nomination. I shall vote against confirmation.

I yield the floor.

Mr. BIBLE. Mr. President, I shall not take too long in responding to the senior Senator from Oregon.

The issue before the Senate is the question of confirmation of the nomination of Walter Tobriner. In that connection, we are not concerned with the wisdom or advisability of changing the Mallory rule.

The Mallory rule was before the Senate in 1958, when a change was sought in

respects very similar to those now before our committee. In 1958 the Senate, by a vote of 65 to 12, voted to modify the Mallory rule. Included among the 65 Senators who supported a change in the Mallory rule were a large number—approximately 70 percent of that group—who were both distinguished Members of this body and distinguished lawyers.

I believe this is an area in which there can be great differences of opinion.

The mere fact that Mr. Tobriner, as an eminent lawyer and as a former law professor and as president of the District of Columbia Board of Commissioners, might have a view different from that of the distinguished Senator from Oregon, should not, in my view, disqualify Mr. Tobriner from serving as a member of the District of Columbia Board of Commissioners.

By the same token, I suppose it could be said that those of us who have a different view in regard to the Mallory rule might be considered by some not to be qualified to be Members of the U.S. Senate.

Certainly there are differences of opinion in regard to the Mallory rule.

However, our committee has not even yet held its executive sessions on this subject. The complete 850-page report and hearing record came from the printer only within the last 2 or 3 days. The hearings comprise a voluminous record. They continued for many days. We heard conflicting and contradictory testimony in the very delicate field of amending rule 5(a) of the Federal Rules of Criminal Procedure.

I, too, am very devoted to Dean Pye. I am a graduate of the Georgetown University Law School; and at the present time Dean Pye is my son's professor. Dean Pye is one of the most eminent men in this field, and I respect his opinions highly.

I hope that as we deal with this issue, in the proper forum—in other words, in the executive sessions of the District of Columbia Committee, we shall be able to examine not only title I, which is the Mallory rule, but also title II, which is the Durham rule, and also investigative arrest and, I believe, five titles of the omnibus crime bill, totally.

So we are coming to grips with this problem as soon as we can; and I, too, welcome long and thorough discussion of the matter on the floor of the Senate.

When the Senator from Oregon states that he, to, intends to go into that matter exhaustively, I am sure that he intends to do so; and I believe we should do so.

But, after all, there is also the other side of the coin. I believe in protecting the rights of those who are arrested in the District of Columbia; but careful consideration should also be given to the right of the people of the District of Columbia to walk unafraid both night and day on the streets of the District of Columbia. I believe we must also strengthen the arm of the police, both in the District of Columbia and elsewhere, within the limits of the Constitution, for strict law enforcement.

The record of increasing crime in the District of Columbia simply is not good; one cannot read it and reach any other conclusion. The committee is more acutely aware of this problem day after day, and is attempting to resolve it.

The distinguished senior Senator from Oregon is very much concerned with the Mallory decision. Certainly he has every right to be concerned with it. We are going to come to grips with it as quickly as we can, as I have said.

The Senator from Oregon is also concerned with some problems about the police force and about Chief Murray. The Senator from Oregon has served notice that he is going to investigate this situation thoroughly, and then will make a report on it. Certainly that is his right.

The Senator from Oregon has also mentioned—although I knew nothing of this matter until yesterday—the traffic violations and the adjustments made of some of them. The Police Department furnished him the figures. We could go into the matter exhaustively. I think many of those adjustments are completely justified, although I am not so naive as to believe that somewhere along the way there might have been some adjustments that should not have been made. But all that involves simply the A B C's of the necessary procedure in any large city in the Nation. Perhaps some of the adjustments which were made were not justified. If so, it will be the job of the Senator from Oregon to study that matter and to determine which ones were not justified.

The Senator from Oregon also mentioned the matter of traffic violations. All of us shudder at the injuries and fatalities which occur on the highways, either in the Nation's Capital or elsewhere in the entire Nation. The number of vehicle fatalities is alarming; and all of us wish we could do more about them than we are now doing.

But to attempt to tie in these problems as reasons for opposing confirmation of the nomination of Mr. Tobriner is, it seems to me, to place a little too much responsibility at his doorstep.

I would not depend on only my evaluation of Chief Murray, although I am very fond of him. I believe he has been a very fine police officer, and has fought hard for the principles in which he believes, and has fought hard for more money and more men for the Police Department. He was the first one to say the District of Columbia should have a police force of at least 3,000 men; and Congress gave him the necessary money for 2,900 men while the current budget calls for funds for the full 3,000 men. I must say, too, that the Senator from Oregon has been very helpful in working out these money problems.

I should like simply to quote a very recent editorial. The Senator from Oregon used the Washington Post as his authority in regard to Mr. Tobriner and the Mallory rule; and I would certainly use the same publication—the Washington Post—as the authority on Chief Murray. So I shall read into the CONGRESSIONAL RECORD a very fine, short editorial published on March 16 in the Washington Post, as follows:

CHIEF MURRAY'S DECISION

Decision of Police Chief Robert Murray to stay on the job will be welcomed by a city which has observed the steady improvement of the force under his direction. That his health permits his continuation in office is good news indeed.

He came to his post when the force was demoralized and disorganized and he gained the confidence of the department and of the community by his administration of police affairs. In the last year, he has added to his earlier record a further accomplishment. He has greatly improved the relations between the department and the community and especially those between the police and the nonwhite community. The severest critics of the police have had to concede the chief's fairness and to acknowledge his good intentions.

The Metropolitan Police Department still has its faults and still can be made into an even better department. No one has appeared with better credentials than Chief Murray's for carrying on the work he has begun.

The editorial expresses my sentiments concerning the Chief.

Earlier I expressed my confidence in Walter Tobriner. I reaffirm that confidence. I think he is deserving of a second term as Commissioner. There are many challenging difficulties ahead of him. He will perform well. I know there are instances of police abuse. I believe they are rather isolated now. I do not stand for them any more than the Senator from Oregon does.

The Senator from Oregon mentioned the incident involving the colored lad from his State. That was unfortunate. I certainly am sorry. I told him so. However, I would not have any personal responsibility in that situation.

I assisted in bringing the first Negro lad from the State of Nevada. He came here and first had a job as an elevator boy. He has finished his college here and now is going to law school. He is a boy with whom I visit frequently. He comes into my office and tells me about his problems.

He has told me that he has never been treated better in his life anywhere than he has been treated in the Nation's Capital. That was his experience, and it was an experience as it should be. I cite it, because it shows a little of the other side of the coin.

Mr. President, I believe a good case has been made for the confirmation of the nomination of Walter Tobriner. At this time I move that confirmation.

Mr. MORSE. Mr. President, my reply will not be very long. The policies of the President of the Board of Commissioners in carrying out the functions of his office have the most important bearing upon his qualifications to hold that office. Earlier in my speech tonight I spoke at some length about the policies of Mr. Tobriner in connection with the administration and supervision of the Police Department. I pointed out that the fixing of thousands of police tickets does not represent good administration of the law. He has let it continue year after year. In my judgment, it bears

directly upon his qualifications to serve as a Commissioner.

Certainly the policy position that the President of the Board of Comissioners takes in regard to the administration of criminal law in the District of Columbia, because of the great prestige that goes with his office and because of the influence that automatically flows from his position, bears upon his qualifications to serve in that office.

I say to my good friend from Nevada that I take my stand with the Supreme Court; I take my stand with the Judicial Conference of the United States; I take my stand with what he will find to be the overwhelming opinion of recognized authorities and experts in the field of criminal law administration; namely that the Mallory rule should stand unchanged. Of course, there are others who hold different points of view, and I am speaking about a different point of view. I am pointing out that a different point of view in respect to the Mallory rule jeopardizes the civil liberties of people arrested for crime.

I know the old argument that we must think about the people in the District of Columbia so that they can walk the streets in safety. That is a complete non sequitur. It certainly does not follow that we must have an abolition of the Mallory rule or the kind of modification of the Mallory rule that the Department of Justice is advocating in order to protect the people in the District of Columbia and enable them to walk the streets in safety. The position taken by Tobriner on the Mallory rule is the old, old story of police departments and police administrators trying to justify a police department's not doing its job.

Therefore they want all the extraordinary powers they seek by being granted the power to arrest for investigation, to deny due process, and to endanger arrested persons by reason of their being subjected to police brutality. Those are the problems that we need to keep in mind if we face up to the proposal to modify the Mallory rule. I do not intend to vote for the nomination as Chairman of the Board of Commissioners of the District of Columbia of a leader who used the prestige and influence of that office to advocate procedures which, in my judgment, can very well lead to police brutality and abuses.

Three years after the Mallory decision, Oliver Gasch, the U.S. attorney for the District of Columbia, reported that Mallory questions, that is to say, confessions or admissions, are of controlling importance in probably less than 5 percent of our criminal prosecutions. I do not care whether they are 5 percent or 20 percent. I know that giving such unchecked arbitrary power to a police department is dangerous and must not be allowed.

Of course, we do not prove anything by one speaker quoting a Washington Post editorial on one question and a Washington Post editorial on another question. We had better take a look at the two editorials.

The editorial that I cited deals with a substantive legal problem involved in connection with the Mallory rule. The other editorial merely deals with the subjective influence of the editor of the Washington Post about Chief Murray.

I did not purport to list the cases of abuse in the Washington Police Department in my citation of the abuse connected with the one student whom I mentioned. From time to time as I report on my study of the administration of the Washington Police Department under Chief Murray, I shall cite abuse after abuse. In my judgment this chief of police has been the undeserved beneficiary of a favorable press, but when we dig into the record of this police chief, as I am doing, the image will change.

Mr. President, this police chief does not deserve to continue to be police chief in the District of Columbia. We ought to get rid of him. I intend to present the evidence that I am satisfied is available, which would justify getting rid of him.

Mr. President, I rest my case on the statement that I have made.

The ACTING PRESIDENT pro tempore. The question is, Will the Senate advise and consent to the nomination?

The nomination was confirmed.

Mr. HUMPHREY. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of the nomination.

The ACTING PRESIDENT pro tempore. Without objection, the President will be notified forthwith.

Mr. HUMPHREY subsequently said: Mr. President, I am very pleased that we have been able to complete action on the Tobriner nomination. I want the RECORD to show that I know Mr. Tobriner well and I fully support his nomination. I wish to thank the Senator from Oregon for his cooperation in speaking on this matter at a late hour—as I know he feels very deeply about it—because it facilitated the work of the Senate during the day.

LEGISLATIVE SESSION

Mr. HUMPHREY. Mr. President, I move that the Senate resume the consideration of legislative business.

The motion was agreed to; and the Senate resumed the consideration of legislative business.

FEDERAL AID TO SCHOOLS IN DISASTER STRUCK AREAS

Mr. MORSE. Mr. President, I know you share with me the heartfelt sympathy that all Americans extended immediately to our brothers in Alaska and on the sea-ravaged portions of the west coast as a result of the earthquake and the tidal wave which followed. I shall, of course, support every effort to provide financial assistance to the State of Alaska and the affected communities. This terrible news caused me to think, however, that perhaps we should explore the utility of an automatic standby authority which would release Federal funds for the replacement of schools damaged by such acts of God. Three to four schools a week in this country, I am advised, burn or are destroyed. Flood, windstorm, tornadoes and hurricanes all take their toll of our schools, and as importantly, the local tax base which supports the school. The replacement of these schools in a great many cases, where tragedy has also wiped from the tax rolls the land values in the community, poses a terribly difficult financial problem to the affected local communities.

I send to the desk for appropriate reference a bill designed to meet these contingencies which we all hope will never strike our own home States. It is a standby authority bill which, if enacted, would go far in restoring the damage to the school plant, thus permitting an early resumption of the school operations.

Mr. President, I ask unanimous consent that there be printed at this point in my remarks the text of the bill together with a short section-by-section analysis of the major provisions.

There being no objection, the bill and section-by-section analysis was ordered to be printed in the RECORD, as follows:

PROPOSED MAJOR DISASTER AMENDMENTS TO PUBLIC LAWS 815 AND 874

The sectional analysis of the bill, as introduced, would amend Public Laws 815 and 874 to provide financial assistance in the construction and operation of public elementary and secondary schools in areas affected by a major disaster.

Section 1 would amend Public Law 815 to permit the Commissioner to make school construction and rehabilitation grants to a local public educational agency located in whole or in part in an area which, in the determination of the President, has suffered a major disaster. The grants would be in such amounts as the Commissioner determines to be in the public interest, but they could not exceed the difference between the amounts reasonably available to the local educational agency from other sources and the cost of restoring or replacing the public school facilities destroyed or damaged as a result of the disaster. Assurances would be required that the appropriate State and local governments would also make reasonable expenditures for these purposes. Appropriations would be authorized in such amounts as would be necessary to carry out this provision, and pending such appropriations the Commissioner could use funds appropriated for other sections of Public Law 815.

Section 2 would amend Public Law 874 to permit the Commissioner to make grants for current operating expenses to a local public educational agency located in whole or in part in an area which, in the determination of the President, has suffered a major disaster. The grants, which could be made for the 5 fiscal year period beginning with the fiscal year in which the disaster occurred, could not exceed the difference between the amounts reasonably available to the local educational agency from other sources and the cost of providing a level of education equivalent to that maintained in the agency's schools during the last full fiscal year prior to the disaster. Amounts provided during the last 3 years of the 5 fiscal year period could not exceed 75, 60, and 25 percent, respectively, of the amount provided during the first fiscal year following the disaster. In addition, the Commissioner could provide funds to replace destroyed supplies, equipment and materials and to provide school and cafeteria facilities needed to replace temporarily facilities destroyed as a result

of the disaster. Assurances would be required that the appropriate State and local governments would also make reasonable expenditures for these purposes. Appropriations would be authorized in such amounts as would be necessary to carry out this provision, and pending such appropriations the Commissioner could use funds appropriated for other sections of Public Law 874.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act of September 23, 1950, as amended (20 U.S.C. 631–645), is amended by inserting, immediately after section 15 of that Act, the following new section:

"SCHOOL CONSTRUCTION ASSISTANCE IN MAJOR DISASTER AREAS

"SEC. 16. (a) If the Commissioner determines with respect to any local educational agency that—

"(1)(A) such agency is located in whole or in part within an area which has suffered a major disaster as a result of any flood, drought, fire, hurricane, earthquake, storm, or other catastrophe which, in the determination of the President pursuant to section 2(a) of the Act of September 30, 1950 (42 U.S.C. 1855a(a)), is or threatens to be of sufficient severity and magnitude to warrant disaster assistance by the Federal Government, and

"(B) the Governor of the State in which such agency is located has certified the need for disaster assistance under this section, and has given assurance of expenditure of a reasonable amount of the funds of the government of such State, or of any political subdivision thereof, for the same or similar purposes with respect to such catastrophe;

"(2) public elementary or secondary school facilities of such agency have been destroyed or seriously damaged as a result of this major disaster;

"(3) such agency is making a reasonable tax effort and is exercising due diligence in availing itself of State and other financial assistance available for the replacement or restoration of such school facilities; and

"(4) such agency does not have sufficient funds available to it from State, local, and other Federal sources (including funds available under other provisions of this Act), and from the proceeds of insurance on such school facilities, to provide the minimum school facilities needed for the restoration or replacement of the school facilities so destroyed or seriously damaged,

he may provide the additional assistance necessary to enable such agency to provide such facilities, upon such terms and in such amounts (subject to the provisions of this section) as the Commissioner may consider to be in the public interest; but such additional assistance, plus the amount which the Commissioner determines to be available from State, local, and other Federal sources (including funds available under other provisions of this Act), and from the proceeds of insurance, may not exceed the cost of construction incident to the restoration or replacement of the school facilities destroyed or damaged as a result of the disaster.

"(b) There are hereby authorized to be appropriated for each fiscal year such amounts as may be necessary to carry out the provisions of this section. Pending such appropriation, the Commissioner may expend from any funds heretofore or hereafter appropriated for expenditure in accordance with other sections of this Act such sums as may be necessary for immediately providing assistance under this section, such appropriations to be reimbursed from the appropriations authorized by this subsection when made.

"(c) No payment may be made to any local educational agency under subsection (a) except upon application therefor which is submitted through the appropriate State educational agency and is filed with the Commissioner in accordance with regulations prescribed by him, and which meets the requirements of section 6(b)(1). In determining the order in which such applications shall be approved, the Commissioner shall consider the relative educational and financial needs of the local educational agencies which have submitted approvable applications. No payment may be made under subsection (a) unless the Commissioner finds, after consultation with the State and local educational agencies, that the project or projects with respect to which it is made are not inconsistent with overall State plans for the construction of school facilities. All determinations made by the Commissioner under this section shall be made only after consultation with the appropriate State educational agency and the local educational agency.

"(d) Amounts paid by the Commissioner to local educational agencies under subsection (a) may be paid in advance or by way of reimbursement and in such installments as the Commissioner may determine. Any funds paid to a local educational agency and not expended or otherwise used for the purposes for which paid shall be repaid to the Treasury of the United States.

"(e) None of the provisions of sections 1 to 10, both inclusive, other than section 6(b)(1), shall apply with respect to this section."

SEC. 2. The Act of September 30, 1950, as amended (20 U.S.C. 236–244), is amended by inserting, immediately after section 9 of that Act, the following new section:

"ASSISTANCE FOR CURRENT SCHOOL EXPENDITURES IN MAJOR DISASTER AREAS

"SEC. 10. (a) If the Commissioner determines with respect to any local educational agency that—

"(1)(A) such agency is located in whole or in part within an area which has suffered a major disaster as a result of any flood, drought, fire, hurricane, earthquake, storm, or other catastrophe which, in the determination of the President pursuant to section 2(a) of the Act of September 30, 1950 (42 U.S.C. 1855a(a)), is or threatens to be of sufficient severity and magnitude to warrant disaster assistance by the Federal Government, and

"(B) the Governor of the State in which such agency is located has certified the need for disaster assistance under this section, and has given assurance of expenditure of a reasonable amount of the funds of the government of such State, or of any political subdivision thereof, for the same or similar purposes with respect to such catastrophe; and

"(2) such agency is making a reasonable tax effort and is exercising due diligence in availing itself of State and other financial assistance, but as a result of such major disaster it is unable to secure sufficient funds to meet the cost of providing free public education for the children attending the schools of such agency,

he may provide to such agency the additional assistance necessary to provide free public education to the children attending the schools of such agency, upon such terms and in such amounts (subject to the provisions of this section) as the Commissioner may consider to be in the public interest. Such additional assistance may be provided for a period not greater than a five fiscal year period beginning with the fiscal year in which the President has determined that such area suffered a major disaster. The amount so provided for any fiscal year shall not exceed the amount which the Commissioner determines to be necessary to enable such agency, with the State, local, and other Federal funds available to it for such purpose, to provide a level of education equivalent to that maintained in the schools of such agency during the last full fiscal year prior to the occurrence of such major disaster. The amount, if any, so provided for the second, third, and fourth fiscal years following the fiscal year in which the President determined that such area has suffered a major disaster shall not exceed 75 per centum, 50 per centum, and 25 per centum, respectively, of the amount so provided for the first fiscal year following such determination.

"(b) In addition to and apart from the funds provided under subsection (a), the Commissioner is authorized to provide to such agency an amount which he determines to be necessary to replace instructional and maintenance supplies, equipment, and materials (including textbooks) destroyed or seriously damaged as a result of such major disaster, and to lease or otherwise provide (other than by acquisition of land or erection of facilities) school and cafeteria facilities needed to replace temporarily such facilities which have been made unavailable as a result of the major disaster.

"(c) There is hereby authorized to be appropriated for each fiscal year such amounts as may be necessary to carry out the provisions of this section. Pending such appropriation, the Commissioner may expend from any funds heretofore or hereafter appropriated for expenditure in accordance with other sections of this Act, such sums as may be necessary for immediately providing assistance under this section, such apropriations to be reimbursed from the appropriations authorized by this subsection when made.

"(d) No payment may be made to any local educational agency under this section except upon application therefor which is submitted through the appropriate State educational agency and is filed with the Commissioner in accordance with regulations prescribed by him. In determining the order in which such applications shall be approved, the Commissioner shall consider the relative educational and financial needs of the local educational agencies which have submitted approvable applications.

"(e) Amounts paid by the Commissioner to local educational agencies under this section may be paid in advance or by way of reimbursement and in such installments as the Commissioner may determine. Any funds paid to a local educational agency and not expended or otherwise used for the purposes for which paid shall be repaid to the Treasury of the United States."

Mr. MORSE. Mr. President, earlier in my statement I alluded to the danger of fire destruction of school facilities. In this connection, I have taken from a publication of the Office of Education, entitled "The National Inventory of School Facilities and Personnel, Spring, 1962," certain excerpts from pages 33 through 37 which detail the problems of our combustible school facilities. I am shocked to learn that in our public schools there are some 155,000 public school classrooms in 93,000 public schools which are combustible. Part of this record can be accounted for by the fact that there are some 171,000 public classrooms which have been in use for more than 40 years. Mr. President, I ask unanimous consent that the tables and

excerpts from the publication to which I have alluded be printed at this point in my remarks.

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

COMPLETION DATE AND FIRE RATINGS OF INSTRUCTIONAL ROOMS

Three tables present the statistics on the number and percent of instructional rooms organized by fire ratings and completion date of permanent buildings and additions. Instructional rooms include the designed and remodeled and the improvised and makeshift, but do not include the rooms in nonpermanent and off-site facilities. Table 10A presents the completion date and fire- or non-fire-resistive classification of instructional rooms in permanent structures. Table 10B represents the instructional rooms by organizational level for public school plants. * * *

The following definitions were used in the inventory:

"1. Fire resistive: A building constructed entirely of fire-resistive materials; or a building with fire-resistive walls and partitions, floors, stairways, and ceilings. A building of this type may have wood finish, wood or composition floor surfaces, and wood roof construction over a fire-resistive ceiling.

"2. Semifire resistive: A building with fire-resistive exterior and bearing walls and fire-resistive corridor and stairway walls, floors and ceilings; but with ordinary construction otherwise, such as combustible floors, partitions, roofs, and finish.

"3. Combustible: An all-frame building; a building with fire-resistive veneer on wood frame; or one with fire-resistive bearing walls, but otherwise of combustible construction.

"4. Mixed: A building with one or more sections of one type of construction and one or more sections of another type of construction." [1]

Basic table 10 includes the number of instructional rooms by each of the four fire classifications. The following comments summarize the findings from the tables.

[1] Property Accounting for Local and State School Systems. Op. cit., p. 42.

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The increase in percentages of fire-resistive instructional rooms follows similar patterns among the three organization levels of public school plants (see table 10B). Sharp increases in fire-resistive rooms are noticeable between 1920–29 and again in 1950–59.

Of the three organizational levels, the largest percentage of combustible instructional rooms are in elementary school plants. However, the proportion of fire-resistive construction in elementary school buildings and additions has increased to the point where 4 of every 5 instructional rooms completed since 1949 are fire-resistive.

The combined elementary and secondary public school plants have a greater percentage of instructional rooms that are semifire resistive than either the elementary or secondary school plants. Since 1949, the percentage of fire-resistive instructional rooms constructed for combined elementary and secondary school plants has almost doubled.

Secondary school plants have the greatest percentage of fire-resistive instructional rooms, and are currently attaining a rate of construction where 9 of every 10 secondary rooms are fire resistive.

TABLE 10.—*Number of permanent instructional rooms,[1] by organizational level, completion date, and fire rating for the United States, spring 1962*

A. PUBLIC SCHOOLS

Organizational level and date of construction	Total	Fire resistive	Semifire resistive	Combustible	Mixed	Not reported
Total [2]	1,458,509	866,671	386,637	154,557	39,605	11,039
Before 1920	235,233	65,368	103,707	51,477	13,225	1,456
1920–29	241,357	110,112	92,336	27,483	8,518	2,908
1930–39	160,451	81,331	54,301	19,233	4,684	902
1940–49	103,799	50,525	31,902	17,491	3,234	647
1950–59	512,872	390,154	81,783	33,029	7,613	3,293
After 1959	156,955	130,025	17,547	6,831	1,910	1,092
Under construction	44,383	37,620	4,128	1,851	325	409
No answer	3,459	1,536	883	612	96	332
Elementary (total)	743,394	408,727	204,340	101,852	21,208	7,267
Before 1920	146,064	36,685	62,953	37,840	7,644	942
1920–29	114,289	47,031	43,466	17,278	4,070	2,444
1930–39	65,323	29,351	23,260	10,401	2,111	200
1940–49	53,990	24,748	16,604	10,669	1,617	352
1950–59	272,148	197,993	46,500	20,576	4,739	2,340
After 1959	74,225	59,210	9,455	4,065	902	593
Under construction	15,339	12,754	1,646	632	77	230
No answer	2,016	955	456	391	48	166
Combined elementary and secondary (total)	276,230	145,530	89,843	29,484	9,933	1,440
Before 1920	38,983	7,899	19,772	7,587	3,385	340
1920–29	51,951	18,805	23,794	6,871	2,259	222
1930–39	44,247	17,712	18,254	6,528	1,539	214
1940–49	26,535	11,595	9,053	4,691	1,034	162
1950–59	86,264	65,746	15,738	3,078	1,435	267
After 1959	22,887	19,376	2,649	502	238	122
Under construction	4,908	4,228	454	119	43	64
No answer	455	169	129	108	----------	49
Secondary (total)	429,020	306,057	90,511	22,009	8,259	2,184
Before 1920	49,693	20,711	20,761	5,896	2,151	174
1920–29	74,617	44,129	24,838	3,278	2,171	201
1930–39	50,522	34,069	12,693	2,244	1,028	488
1940–49	22,906	14,080	6,176	2,015	574	61
1950–59	153,469	125,827	19,257	6,280	1,419	686
After 1959	59,002	50,893	5,222	1,773	768	346
Under construction	17,894	15,956	1,284	443	100	111
No answer	917	392	280	80	48	117
Not reported (total)	9,837	6,354	1,943	1,187	205	148
Before 1920	483	73	221	144	45	----------
1920–29	500	147	238	56	18	41
1930–39	356	196	94	60	6	----------
1940–49	368	102	69	116	9	72
1950–59	976	588	288	80	20	----------
After 1959	841	546	221	41	2	31
Under construction	6,242	4,682	794	657	105	4
No answer	71	20	18	33	----------	----------

[1] Includes only those instructional rooms in permanent buildings and additions.

[2] Key punching errors are corrected in this table and represent 3/10 of 1 percent of the total.

TABLE 10A.—*Number and percent of fire-resistive and non-fire-resistive instructional rooms by the completion date of public school buildings and additions for the United States, spring 1962*

Completion date of buildings and additions	Total number of instructional rooms	Fire resistive		Nonfire resistive	
		Number	Percent	Number	Percent
PUBLIC					
Total	1,448,644	860,314	59.4	577,439	39.9
Before 1920	234,740	65,295	27.8	167,989	71.6
1920–29	240,857	109,965	45.7	128,025	53.2
1930–39	160,092	81,132	50.7	78,058	48.8
1940–49	103,431	50,423	48.8	52,433	50.7
1950–59	511,881	389,566	76.1	119,022	23.3
After 1959	156,114	129,479	82.9	25,574	16.4
Under construction	38,141	32,938	86.4	4,798	12.6
No answer	3,388	1,516	44.7	1,540	45.5

TABLE 10B.—*Percent of public instructional rooms by the completion date of permanent buildings and additions, fire ratings, and organizational level for the United States, spring 1962*

Completion date of buildings and additions	Total number of instructional rooms	Percent of instructional rooms by fire rating				
		Fire resistive	Semifire resistive	Combustible	Mixed	Not reported
ELEMENTARY						
Total	743,394	55.0	27.5	13.7	2.9	1.0
Before 1920	146,064	25.1	43.1	25.9	5.2	.6
1920–29	114,289	41.2	38.0	15.1	3.6	2.1
1930–39	65,323	44.9	35.6	15.9	3.2	.3
1940–49	53,990	45.8	30.8	19.8	3.0	.7
1950–59	272,148	72.8	17.1	7.6	1.7	.8
After 1959	74,225	79.8	12.7	5.5	1.2	.6
Under construction	15,339	83.1	10.7	4.1	.5	1.5
No answer	2,016	47.4	22.6	19.4	2.4	8.2
COMBINED						
Total	276,230	52.7	32.5	10.7	3.6	.5
Before 1920	38,983	20.3	50.7	19.5	8.7	.9
1920–29	51,951	36.2	45.8	13.2	4.3	.4
1930–39	44,247	40.0	41.3	14.8	3.5	.5
1940–49	26,535	43.7	34.1	17.7	3.9	.6
1959–59	86,264	76.2	18.2	3.6	1.7	.3
COMBINED—con.						
After 1959	22,887	84.7	11.6	2.2	1.0	.5
Under construction	4,908	86.1	9.3	2.4	.9	1.3
No answer	455	37.1	28.4	23.7	(1)	10.8
SECONDARY						
Total	429,020	71.3	21.1	5.1	1.9	.5
Before 1920	49,693	41.7	41.8	11.9	4.3	.4
1920–29	74,617	59.1	33.3	4.4	2.9	.3
1930–39	50,522	67.4	25.1	4.4	2.0	1.0
1940–49	22,906	61.5	27.0	8.8	2.5	.3
1950–59	153,469	82.0	12.5	4.1	.9	.4
After 1959	59,002	86.3	8.9	3.0	1.3	.6
Under construction	17,894	89.2	7.2	2.5	.6	.6
No answer	917	42.7	30.5	8.7	5.2	12.8
No organization reported	9,865	64.4	19.7	12.3	2.1	1.5

[1] Less than 1/10 of 1 percent.

Mr. MORSE. Mr. President, I shall welcome the support of all Senators who may wish to join with me in sponsoring this legislation, and I therefore ask unanimous consent that the bill be held at the desk until the close of business Freday, April 17, to permit such Senators as may wish to add their names to the bill to do so.

The ACTING PRESIDENT pro tempore. The bill will be received and appropriately referred; and, without objection, the bill will be held at the desk, as requested by the Senator from Oregon.

The bill (S. 2725) to amend Public Laws 815 and 874, 81st Congress, to provide financial assistance in the construction and operation of public elementary and secondary schools in areas affected by a major disaster, introduced by Mr. MORSE, was received, read twice by its title, and referred to the Committee on Labor and Public Welfare.

EUGENE E. LAIRD—REFERENCE OF BILL TO COURT OF CLAIMS

Mr. MORSE. Mr. President, I introduce a bill for appropriate reference, and I ask unanimous consent that it be printed in the RECORD.

The ACTING PRESIDENT pro tempore. The bill will be received and appropriately referred; and, without objection, the bill will be printed in the RECORD.

The bill (S. 2724) conferring jurisdiction upon the U.S. Court of Claims to hear, determine, and render judgment upon the claim of Eugene E. Laird, introduced by Mr. MORSE, was received, read twice by its title, referred to the Committee on the Judiciary, and ordered to be printed in the RECORD, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding any statute of limitations pertaining to suits against the United States, or any lapse of time, or bars of laches or any prior judgment of the United States Court of Claims, jurisdiction is hereby conferred upon the Court of Claims to hear, determine, and render judgment upon any claim of Eugene E. Laird arising out of his service with the United States Armed Forces from November 22, 1940, through October 24, 1946.

SEC. 2. Suit upon any such claim may be instituted at any time within one year after the date of the enactment of this Act. Nothing in this Act shall be construed as an inference of liability on the part of the United States. Except as otherwise provided herein, proceedings for the determination of such claim, and review and payment of any judgment or judgments thereon shall be had in the same manner as in the case of claims over which such Court has jurisdiction under section 1491 of title 28 of the United States Code.

OREGON'S GIFT OF BUILDING MATERIALS FOR ALASKA

Mr. MORSE. Mr. President, on Friday, April 3, I called to the attention of my colleagues the heartwarming response of the people of Oregon to a request for donations of lumber and building materials to assist in the rehabilitation of earthquake-stricken Alaska.

The further response has far exceeded even our most optimistic hopes. The donations of these materials continue to pour in to the shipment point at Terminal 4 in Portland by rail, truck and caravan.

The original sponsor of this remarkable program—Mr. Gerry Pratt, business editor of the Oregonian—supplies the further impressive details in his Oregonian columns of April 2, 4, and 5.

I ask unanimous consent that these newspaper articles be placed in the RECORD at this point in my remarks.

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

[From the Oregonian, Apr. 2, 1964]

SHARING THE DOLLAR: PENTAGON PROVIDES ALASKA GIFT VESSEL

(By Gerry Pratt)

They talk as if they do not care, sometimes, but they really do, when it counts like it counts now for Alaska.

We have a ship now and we have promise of help from many sides; the longshoremen care, the Columbia River pilots care, and the dock commission cares, and so do the stevedores and the mayor, and in a two-fisted way that makes it all go, the lumber industry and the plywood industry care, too.

This is how it happened Wednesday so that you knew they were all involved; this is how it happened that now there is a certainty about our shipload gift of building materials for Alaska where there has been an earthquake.

You could have listened in the West Coast Lumbermen's Association headquarters to the story through the day: Ed Hunter, Pope & Talbot called in the morning: "They will need heavy timbers in Alaska," he said. "We have two carloads of heavy timbers here ready to go, strapped, 50,000 feet. They are yours for Alaska."

Nils Hult of Hult Lumber and Plywood, Eugene, telephoned and pledged a truck and trailerload of dimension lumber; Sid Leiken, L & H Lumber Co., a small stud mill, added a generous truck and trailerload of studs.

Vancouver Plywood came through with a confirmation of 45,000 feet of plywood and Aaron Jones, Seneca Lumber Co., Eugene, called: "You have a carload of number 2s and better from me, strapped for export. It will be there day after tomorrow."

MANY JOIN IN

"Somebody gets kicked in the teeth, no fault of their own, somebody's got to help," he said.

That is how they cared all day. Stanley Bishoprick, Dant & Russell, 30,000 feet of dimension lumber; Crown Zellerbach Corp., 30,000 feet of dimension; Bohemia Lumber Co., a truck and trailerload of dimension—all of these solid, firm commitments. Joining the ship, but still working out their gifts, are Brooks Scanlon, Bend and Marshal Leeper, United States Plywood.

The goal of all this is 3 million feet and with the close to half million pledged for the ship Tuesday, 3 million no longer looks impossible.

It all came with only a whisper, a word through the grapevine: "We are putting together something for those people in Alaska: a gift, no strings. Care to come along?"

That is the way it spread swiftly to the dock commission so that by noon Wednesday, Robert Rickett, commission chairman, announced that Terminal Four had been designated as the staging area, free of charge. Shipments can begin coming in Thursday.

Then the work of Senator WAYNE MORSE and Glenn Jackson, of Pacific Power & Light Co., with the Pentagon began to pay off as

the Army announced our ship, a Pentagon guarantee of a 10,000-ton vessel. Said Maj. Ben Bond, U.S. Army Terminal Command, Pacific, who received the word from California: "We have your guarantee for your ship."

Mayor Terry Schrunk took the story of all this to Carl Anderson, secretary of the Longshoremen's Union, and by 5 p.m. the mayor reported: "Carl has indicated the longshoremen will look on this with great favor. They have a very democratic union, and he has taken the matter to their council. We should know tomorrow if we can have it handled, no charge."

The mayor spoke, too, to Earl Weiss, of Jones Stevedoring, and Weiss now is contacting the other firms for support of free stevedoring for the shipload. "He feels confident their gear will be available," the mayor reported back.

PILOTS VOLUNTEER

John Olsen, president of the Columbia River Pilots Association, called on his own: "When you get yourself a ship, let us know where it is, when she is coming, where you want it. The pilots will bring it in, take it out, move it around. No charge."

That is how they cared, all day long, beginning at 7:30 a.m. in the basement of the Benson Hotel with a loose-knit committee listening to Jack Brandis and Bob Smith and Hillman Lueddeman, Jr., and some others, reviewing the objective and outlining the attack.

Smith announced he was publishing a special appeal to his entire circulation list of all the Crow industry publications. Gordon Brown, of West Coast Lumbermen's, said his association would get out the same deal to its membership.

There was more, but no shouting, no elbowing of ideas or clashes of authority. It worked with the ease of sincerity, and the men spoke confident in their knowledge that the people they are asking for help really care.

The ship to Alaska is now scheduled. They want the materials at terminal 4 by April 10. They want the ship to sail April 14, probably to Whittier or Anchorage. They want the people up there to know these people really care.

John Donne said it once, what makes this work:

"No man is an Iland, Intire of it selfe;

"Every man is a peece of the Continent, a part of the maine; if a Clod bee washed away by the Sea, Europe is lesse, as well as if a Promontorie were, as well as if a Mannor of thy friends or of thine owne were. Any man's death diminishes me, because I am involved in Mankinde."

[From the Oregonian, Apr. 4, 1964]

LUMBER CONVOY PILES UP MATERIALS FOR RAVAGED STATE AT PORTLAND DOCK

(By Gerry Pratt)

In Sitton Grade School they were studying the Alaska earthquake. They wanted to know how much damage an earthquake can do and what it would take to repair.

So they marched the kids from Sitton into the streets of St. Johns and there, rolling past their eyes, was the beginning of the rebuilding of the homes and the businesses of Alaska.

What they saw was a convoy of trucks and trailers loaded to the cab with an estimated 200,000 feet of plywood and 65,000 feet of dimension lumber, the first shipment of a drive to put 3 million feet or more of building materials into Alaska as a gift of Oregon and parts of Washington.

CONVOY GOES TO PORT

The trucks were on the last leg of a journey that had begun at Albany, almost with the breaking of the dawn, and had wound through the heart of Portland and on out to Terminal Four, the staging area for the mercy shipment.

The call to begin shipping had gone to the little mill towns of the Willamette Valley late Thursday afternoon and the mills of Sweet Home, Corvallis, Albany, and Lebanon, responded at once.

Leading Plywood, McKenzie River Plywood, Jones Veneer, Northside Lumber, Mid-Ply, little mills and independent drivers and haulers responded to the call for help with "When do you want it?"

To them, this was sort of a barn-raising. A call from a neighbor came and they nailed their feelings to the sides of their loads with messages such as "Good Luck Alaska," and "To Our Neighbors in Alaska," and "Good Wishes to Alaska."

With breakfast out of the way, the seven-truck convoy hit the Salem Freeway and rolled on into Portland, picking up State and city police escorts on the way.

This was the "action" timbermen have become known for. It was "doing something" while others were still talking.

Almost before they had finished unloading there was a plan to send a second cargo into Portland Saturday morning on another convoy, this time from Willamette Valley and Santiam Lumber, Hult Lumber, Bohemia Lumber at Culp Creek, and from Harold Wolley's Smith River Lumber Co., and Drain Plywood at Drain.

RAIL CARS ON MOVE

Rail cars, which will bring a large part of the 3 million or more feet of building gifts to Portland for loading on a military ship began moving later Friday as Aaron Jones rolled his first shipment out of Seneca Sawmills at 2 p.m.

At dockside, experienced freight handlers and the skeptics on the dock crews shook their heads: "I would never have believed they could put it together this fast," muttered one, as the truckers set about unloading their own cargo and turning back for home.

There was something of the help-thy-neighbor spirit in the drivers as they jockeyed rigs into the dock area. "Save the signs," one quipped, "there are more loads coming." And there are.

Jack Brandis, chairman of the Alaska drive within the industry, estimated Friday's loads represented one-fifteenth of the total commitment to fill the special Pentagon ship due in Portland about April 10.

"But I would say we are chasing 2 million feet now in what we have in commitments, and with these people a commitment is just as good as a delivery," he said.

All the material is being shipped with "no strings" attached.

Brandis disclaimed credit for the timber industry alone. "We are not doing this as an industry nor as individuals," he stressed. "We are doing it, that's all, cement, nails, sweaters, anything we can get up there to help those people. The lumber and plywood we hope will put some of them back into a decent shelter, replace a wall, or rebuild a roof."

ROOF MATERIAL DONATED

Malarkey Roofing in Portland, replying to the need for new roofs, donated a full carload of roofing material Friday to be put with the shipload.

And at Sitton grade school where someone had asked: "What does it take to rebuild after an earthquake?" there was something of an answer in that first convoy Friday morning. There was effort, there was generosity, and there were Americans; and you must never underestimate them.

[From the Oregonian, Apr. 5, 1964]

SHARING THE DOLLAR: CONVOY HEADS STUDY RESULTS

(By Gerry Pratt)

So what do you do when you are in trouble in America? Yell "Help." Then step back out of the way.

It happened this way here last week when the big quake shook the timbers loose and popped the stuffings out of Alaska. We yelled "Help."

Saturday morning in the lower level of the Benson Hotel, 23 men looked over the results. Carl Anderson and Fred Huntsinger from the Longshoremen's Union sitting hip and thigh with Earl Weiss of W. J. Jones, and Neill Whisnant, Brady Hamilton Co., stevedore executives; the West Coast Lumbermen's Association, and American Plywood Association, the mayor, the dock commission people, all out on a Saturday morning listening to a report on the first week's work on the job of putting a shipload of materials into Alaska, a quarter of a million dollar gift from Oregon and parts of Washington.

Traffic manager Ivan Oliver from the WCLA was reading the last daily tally; Nils Hult, 30,000 feet; Dwyer Lumber Co., 30,000 feet, Simpson Timber Co., doors and plywood; Warm Springs, a carload of plywood and a load of lumber * * * and so it went. Finally he shuffled the papers into a pile and announced: "That's about 500,000 feet of plywood, about a million feet altogether in Portland."

UNION DONATES LABOR

Jack Brandis, the chairman of this drive, stood at the head table and added: "Rudy Delatuer and the boys have promised us at least 250,000 feet on the docks at Grays Harbor and we have a commitment from the mills in Coos Bay for a minimum of 300,000 feet and we will probably get 400,000 there.

"Gentlemen," he said calmly, "with what we have today, we are well over 2 million feet, that's two-thirds of what we want to get sailing."

The audience nodded, satisfied at the report until Huntsinger, the ILWU vice president, leaned forward and spoke. The union had not yet committed itself to this campaign and there was quiet for what Huntsinger had to say: "About that loading," he began, "we want to cooperate, and fortunately our union's coastwise council is in session at San Francisco. They have authorized us to go ahead and donate the complete labor costs at any and all ports this ship makes on this west coast run."

For the first time there was applause; the sophisticated miracle workers slipped their calm and openly applauded the union for what must be one of the biggest single donations. And the union executive, with mischievous intent, turned to the stevedoring company executives: "Now we are paying for the loading of this vessel, we want it loaded fast. None of this layover. Let's keep that cost down." And they all laughed and someone added from the end of the table. "Does that mean we work with minimum crews, Fred?"

SUCCESS STIRS LAUGHS

They could afford to relax some now.

"You'd think these things would get tougher as they go down to the wire," Brandis said. "But they don't. In the beginning there were some skeptics; some people said we couldn't do it; said maybe we would be sending something they couldn't use. Now they know better on both counts and they are calling us up instead of our calling them. This day next week, gentlemen, we want to be looking back on 3 million feet, and I am beginning to think we may even be able to go better than that."

The Army's representative, serious at the unions concern over the loading time added: "You don't load one of these ships in 3 days."

And Neill Whisnant of Brady Hamilton, speaking to the union with some mischief of his own, replied: "I got a walkin' boss ready to go to work" and they laughed again in the good will of success.

"How about the other end? What's been done to handle this material when it gets up there in Alaska?" Brandis was asked. "The

last time these longshoremen donated their work on a shipment to Yugoslavia the goods ended up being sold and that made 'em sore. What's the play here?"

Brandis told 'em: "Gov. William Egan's office has appointed Alaska's State Forester Earl Pluerde to handle this entire cargo. He is making a study of where they need the materials most, and need 'em, heck, 3 million they could use 30 million," he told me.

BRANDIS OFFERS PLAN

In closing, Brandis laid out the campaign to wrap up the drive and called for approval of a statewide organization to put this cargo on ice: Rudy De Latuer, chairman Grays Harbor; Stanley Bishoprick, Dant & Russell, chairman Astoria; Ray Gould, Diamond Lumber, Tillamook; Bob Dwyer, chairman Portland; Nils Hult, whose Hult Lumber Co. trucks were rolling into town even as we were talking, chairman Eugene; Glenn Jackson, Pacific Power & Light, chairman southern Oregon; Vern Alvin, mid-Willamette Valley, Willis Smith, Coos Bay and H. J. Broughton, chairman Upper Columbia.

"Now what I want," Brandis told them, "is to go ahead and set a target date for a 30-or-more truck convoy. Railroad shipments will keep us busy Monday and Tuesday and Governor Hatfield is doing a selling job for us at the Plywood Association convention Monday. So let's say Wednesday, these chairmen should be able to put together a convoy big enough to put us over the top. Let's have one to tie up the traffic."

And so that's what happens when you holler "Help!" in America today. May it never happen to you. But knowing there are people such as these listening, is comforting, just the same.

FARMERS UNION TRIBUTE TO JOHN F. KENNEDY

Mr. HUMPHREY. Mr. President, one of the events of the 62d annual convention of National Farmers Union in St. Paul, Minn., March 15–18 was a special program in honor of the memory of our beloved late President John F. Kennedy. Those on the platform who participated in the program were: Rev. Shirley E. Greene, secretary of the church in Town and Country of United Church of Christ, St. Louis, Mo.; Msgr. John G. Weber, executive secretary of National Catholic Rural Life Conference, Des Moines, Iowa; Rabbi Morris Casriel Katz of Beth Israel Congregation, St. Paul; and James G. Patton, president, National Farmers Union.

The words spoken by Mr. Patton were so meaningful and appropriate that I would like to share them with each of my colleagues. I ask unanimous consent that Mr. Patton's memorial address be printed at this point in the RECORD.

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

PATTON TRIBUTE TO JOHN FITZGERALD KENNEDY

A great Nation stood still. First in disbelief and horror—then in anger and shame—then in measured thought and silence. "Our President is dead."

History provides few occasions for all Americans to pause and truly reflect upon the state of our Union. And the price was far too great to pay.

Tonight we again extol John Fitzgerald Kennedy. Let us here determine to mirror his magnetism, to emulate his ideals, and to pursue his vision.

John F. Kennedy brought to the White House insight into the years ahead. He also brought vitality and youth—from a new generation of Americans to whom the torch had been passed. The only young leader on earth, he had jumped a generation. But, his vision of tomorrow's America was not simply the product of youth.

Rather, it sprang from his qualities of mind and spirit: imagination and inquisitiveness, a subtle and keen intelligence, an awareness of the demands and ultimate judgment of history, the courage to affirm life, a hatred of injustice, a love of politics, and a sense of humor that, often as not, sought himself as the target.

John F. Kennedy brought to the Presidency a style and zest that challenged the idealism and won the enthusiasm of our generation.

He placed a premium on intellect, education, and excellence. He brought quiet dignity to his preeminent office. He caused the institution of the Presidency to grow—for himself and for his successors.

President Kennedy changed the mood of American politics. After him, there can be no turning back to old conceptions of the Presidency, nor to old conceptions of America.

And, there can be no turning away from the expectations of greatness and the determination to achieve it that he imparted to all of us. He has not gone.

His heritage of example and inspiration is with us tonight—and for all time.

SERMON BY DR. DUNCAN HOWLETT OPPOSING SENATE FILIBUSTER

Mr. HUMPHREY. Mr. President, several weeks ago the minister of the All Souls Church, Unitarian, Washington, D.C., Dr. Duncan Howlett, delivered a forthright sermon concerning the topic of extended debate in the Senate. Since this is a question which many Senators will have to consider in the coming weeks, Dr. Howlett's remarks are worthy of consideration by each of us. No responsible Senator opposes full and complete debate on any issue but there are many of us that believe at some time or another the Senate should come to a decision on the question of the civil rights bill. This is, in essence, the point which Dr. Howlett is making.

Mr. President, I ask unanimous consent that Dr. Howlett's sermon be printed at this point in the RECORD.

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

INDIGNITY IN THE SENATE

(A sermon by Dr. Duncan Howlett, March 15, 1964, All Souls Church, Unitarian, Washington, D.C.)

During the month of March 1917, the process of democratic government in the United States ground to a halt, while all the world wondered. March 1917, you will remember, was no ordinary period in our history. The First World War was already in its third year and was approaching a crucial phase. The German submarine had broken British control of the sea. The United States was supplying the Allies with food and innumerable other materials without which they could not hope to win the war. American ships were being sunk. American neutrality had been tested to the breaking point.

January 31, 1917, Germany renewed her unrestricted submarine warfare in violation of an earlier treaty. Woodrow Wilson, reelected the previous autumn on the platform, "He kept us out of war," as a retaliatory measure, broke off diplomatic relations with Germany and proposed the arming of U.S. merchantmen for their own protection. The bill came to Congress almost immediately. The House passed it, and it came before the Senate for debate. Sentiment was overwhelmingly in favor of the bill, but a group of southerners and western progressives opposed it.

Then, while American ships went to the bottom, and the Allies wavered on the Western front, all the world watched 11 willful men conduct a filibuster in the U.S. Senate, as a result of which the 64th Congress adjourned on March 4, having failed to pass the bill. Wilson found a way out by issuing an Executive order, but you can gage the sentiment of the Senate as a whole by the fact that it declared war on Germany almost as soon as it was reconvened in special session by the President, as his second term began. The date was April 6, 1917.

You can also gage the sentiments of the Senate on the filibuster as a legislative device and that of the country as a whole by the fact that rule XXII was altered immediately afterward. A second paragraph was added providing for what we today call cloture, according to which debate could be concluded by a vote of two-thirds of those present and voting. There were other provisions of lesser import with which many of you are familiar and which I need not elaborate further.

It was assumed that the filibuster had thereby been eliminated. Wilson had said, "The Senate of the United States is the only legislative body in the world which cannot act when its majority is ready for action." After the provision for cloture was added, it was assumed that the Senate could never again be rendered powerless to act when it wished to.

But human perversity knows no limits and the will of willful men to have their own way knows no limit, either. In practice, rule XXII, even as amended, has proved little more effective in preventing a filibuster than did the pre-1917 form. Since that time, there have been many filibusters and 26 attempts at cloture. Of these, only five have succeeded. Twenty-one have failed. Nine of these 21, or nearly half, have had to do with civil rights. In 1938, cloture failed twice on an antilynching law. In 1942, 1944, and 1946, it failed again on an anti-poll-tax law. In 1946, and twice in 1950, it failed on FEPC law, and in 1960 on a general civil rights bill. Cloture has never yet been voted on a civil rights measure.

Today, we face another filibuster on another civil rights bill. This one, I believe, will prove to be historic, for it perhaps more than any other has raised the issue of the democratic process itself. The present bill was passed by the House by an overwhelming majority. A number of the Democratic majority in the Senate, a group of Republicans, and the President himself are all determined that it shall now be passed by the Senate virtually intact. Eighteen or twenty southern Senators are equally determined that it shall not. The irresistible force has met the immovable object.

The determination on both sides not to give in under any circumstances will alone make this debate historic. The President has virtually risked his reelection on this issue. Furthermore, the civil rights movement in this country can be temporized with no longer. And meanwhile, again all the world is watching: watching to see whether the United States, as a nation, is ready to grant the Negro the citizenship that is his by right, but watching yet more closely to see whether ours is a government of the people, by the people and for the people, or whether, like most governments, it can be bent to the wishes of the few.

Last Friday, I went down to the Capitol to view the process at first hand, taking Mr. Zylman, our ministerial intern, along for his edification in the ways of American democratic government. It was his first visit,

and as you who have been there know, it was not to his edification. There were no surprises. It was a dreary, empty, travesty of free debate in the Government of a free society with which we are all too familiar.

It all made me think of the professor who decided that he could save time if he did not have to deliver in person his lectures to a graduate seminar that gathered weekly around the table in the seminar room. So he recorded his lectures, and one day announced to the students that thereafter a tape recorder would deliver the lectures for him. There would be no loss, he explained. He had bought an excellent hi-fi machine, and it would be exactly as if he himself were present. I don't see why the Senate couldn't do that.

Some weeks later, the professor stopped by the seminar room at the time his lecture was scheduled, just to see how things were going. In his place at the head of the table sat the tape recorder, methodically delivering his lecture as planned, but to a wholly empty room. But not quite—for on the table, at the place where each student should have been sitting, was another tape recorder, busily taking down what the first one was saying. After my experience Friday afternoon, I don't see why this would not be the ideal way for the Senate to conduct its business.

These dilatory proceedings, the wonder of all who behold them, are bad enough under ordinary circumstances. They reach their nadir in the filibuster. And the present filibuster has really not yet begun. We are witnessing now only the preliminary delaying tactics.

We are all dismayed to learn of the deliberation with which this parliamentary obstructionism has been organized. Senator RICHARD RUSSELL of Georgia is field marshal. He apparently thinks of his work in military terms, for he uses military vocabulary to describe it. He has organized what he calls a platoon system of three units, six Senators each, with possibly one or two others. When one platoon is in the field, the members of the other two can count upon complete freedom from responsibility and therefore complete rest. The other side, on the contrary, must be constantly on the alert, ready on short notice to answer a quorum call. President Johnson and the Senate leader of the civil rights group, HUBERT HUMPHREY, can count on about 60 supporters, which provides relatively little leeway, when at least 51 must always be ready to answer a quorum call.

With the cloture rule in force how can 18 or 20 willful men thwart the desires of 80 or more? Because added to the southern Senators who are fighting civil rights legislation, is a group of other Senators who oppose the cloture rule on principle. We must grant every man his principles. But in doing so we need not shut our eyes to the practical considerations at work here. The threat of a filibuster is a club every Senator holds over the head of the entire body. It is a device which places power in the hands of those who come from our less populous States who otherwise might not carry as much weight. This is the reason you often find such Senators voting against cloture, regardless of their feelings about the particular bill under debate.

And this is what arouses the indignation of the American people as they behold the present travesty of the legislative process in an assembly of freemen. The Senate, if it chose, could end this undignified spectacle, debate the bill, and vote it up or down. Probably the necessary two-thirds of the Senators to pass a cloture vote are ready to vote for the civil rights bill now if they had to. But there are enough who won't vote for cloture, when added to the southerners, to make the filibuster possible in spite of the provision for cloture. In effect, by their stand, they, who are but a handful, can thwart the will of two-thirds of our Senators, and this handful represents but a tiny portion of the populace as a whole.

And so, once again, the world looks on in astonishment while the process of democratic government in the United States grinds to a halt. Perhaps there is time for these antics as there was not when American ships were being sent to the bottom of the sea. Adjournment is a long way off. The civil rights problem is acute, to be sure, but perhaps 1 month more won't make any real difference. Perhaps the southerners can be worn down. Perhaps some of those who will not now vote for cloture can be induced to give in eventually. Perhaps all these things are true, and some kind of action will come in the end. But can we then dismiss the filibuster as a necessary evil? Can we shrug it off as an inescapable part of democratic government as its proponents say we must? Is it a part of the price we must pay for the freedom to debate any issue all the way to the end, and to permit everyone to have his say without curtailment?

On the contrary, cloture provides ample opportunity for every man to say his say. But it also is supposed to provide for the working of the democratic process, not to impede it. The two-thirds rule, when added to all the other obstacles a bill must surmount, provides all the safeguards a man might wish against the tyranny of the majority, an evil against which we must of course guard. But the filibuster as a device for delaying action on a bill or for defeating it; the filibuster, defended in the name of democracy, is no part of the democratic process. It is an instrument of tyranny, the device of dictatorship, the very perversion of the principle of free debate.

I need not review for you the refinements that have, one by one, been added to the senatorial talkathon. Delays are now multiplied by rollcalls and efforts to adjourn. Repeated quorum calls are a terrible burden on the majority. One of the saddest spectacles of our American Government is the row of cots that make their appearance from time to time beneath the stately interior columns of the Capitol, so the Senators may get a night's sleep and still be on hand for a sudden rollcall, as sessions are pushed on into the night.

If the rollcall fails of its 51, a new legislative day begins, and the abundance of new delays then available includes everything from reading the Journal of the previous day to permitting Senators who have already spoken at length on the issue to speak twice more. The filibuster in its present stage of development is no longer the mere talkathon it once was. Now it is a fine art, with every conceivable trick of the parliamentary trade brought in to multiply the delays.

And they say the filibuster must be permitted in order to insure freedom of debate. You know what prime time is on television. Do you know what prime time is in a legislative body, specifically the U.S. Senate? It is now, when the preliminary shakedown is over; when the Senators are fresh and there is time to consider the affairs of state at leisure; when there is time and energy to work for the things in which they really believe. This prime time, which God knows our Senate needs, is now to be consumed a whole month of it, some say more, not in meeting arguments, but in resisting a power-play. This prime time, the best the Senate has, is to be given over to a contest not of mind with mind and conscience with conscience, but in physical endurance, as if the U.S. Senate were a nightmare track meet in which the winner does not run faster than the loser, he merely runs longer. The filibuster is a physical contest more primitive than the lowliest athletic contest we know.

And this in order to insure freedom of debate. The filibuster is the very perversion of freedom. To permit such a proceeding is not to guarantee the freedoms our Constitution was designed to establish. It is to use these freedoms in order to deny them. The filibuster is a witches' Sabbath in which the holy light of freedom is replaced by the torch of tyranny, and in the smoke and gloom that remains is somehow made to look like freedom.

When the filibuster is over, the U.S. Senate, having paid homage to this false god, will be physically exhausted and nervously taut. Its Members will have been robbed of the good humor and sense of leisure which are essential to its deliberations. There is danger that the health of some may be impaired In the name of freedom to debate the issues, the Senate will have lost that freedom for this session at least, and with the ever-present threat of a new filibuster on some other bill it will have beclouded its own freedom in every session hereafter. For every filibuster that succeeds invites someone else to try another in the future.

We see today in the U.S. Senate not an exchange of arguments but the inversion of human interchange. Today our national leaders talk, not to present arguments, but to prevent action. In a body created for debate we see the debasement of debate. Men speak to each other, not to persuade but to overpower. Today in our highest legislative body, the open mind is exchanged for the open mouth. The closed mind is conjoined with the closed ear. The whole legislative process is inverted. Men call for adjournment, not that debate may end but that it may continue. They require that the RECORD be read, not that they may know what is in it, but only that they may absent themselves from the reading in order to be able to repeat the repetitions in the RECORD yet again.

I speak this morning as an ordinary citizen of the United States, proud of my country, devoted to her welfare, and grateful for the freedom that is mine because of my citizenship. I speak as one who loves liberty and would, under any circumstances, defend the institutions that keep us a free people. I speak, also, as one who believes in the power of the mind to persuade and be persuaded by reason and conscience, truth and right, and by a genuine concern for my fellow man. I believe that the greatness we have achieved as a people is in no small part due to our acceptance of those principles and our attempt, however faltering, to live by them. I believe that when peace shall at last have come to this poor, war-weary earth, it will be ours because men everywhere have learned to listen to each other, and because, through mutual persuasion, they have begun to move together toward what they believe is right and good and true.

In this movement, the United States has a fundamental role to play, because we have established democratic political institutions on a large scale and have made them work. We are far from achieving our ideal, but we have shown a doubting world, at least so far, that 180 or 190 million people can live in peace with each other, and that they can govern themselves quite effectively. I need not remind you how steadily the new nations of Africa and Asia look to us to see how democracy in their own lands may be made to work. We are, today, a laboratory in democracy for the world. We must be willing to accept the responsibility this involves. By what we do today we show the world that political institutions can be designed to permit the people to govern, or we show the world that every political institution designed to implement the will of the people can be turned from the broad interests of the many to subserve the special interests of the few.

We teach our own children the same thing. By what we do we teach them that democracy

is real or that it is a fraud: that self-government is an actuality that we have achieved, or that it is only a pose under which the tyranny of the ages still prevails. The ability of democracy to survive is one of the most important questions facing the world today. The part the United States of America will play in deciding that question is crucial.

Then let our Senate realize the role it is playing right now in the world's decision for democracy. Let the dignity of the Senate reassert itself before the indignation of the people rises to denounce the indignity in the Senate's abuse of its own freedom. Let the Senate, by its example, teach our people and the world that democracy works by persuasion, not by force; by self-restraint, not by willful self-assertion. Let not the Senate, by this filibuster, demonstrate faith in power politics. Let it show its own faith in the democratic process. It would take but a few of those who now stand against cloture as a matter of policy to come forward and stand for cloture in the name of freedom, even though at some personal sacrifice. It would take only a few.

The issue before us is bigger than civil rights, large and important as that issue is. The issue before the Senate today is freedom of debate and action in a legislative assembly, elected by the people and answerable to the principles of the democratic process. In this hour of crisis with the eyes of all the world upon it and a great issue at stake, the U.S. Senate cannot fail. We, the people, call upon that body to act. It must defeat the filibuster, decide the civil rights issue by argument, vote on the merits, and so demonstrate again to a questioning world that freedom of speech need not end in frustration, that it can end in action, and that government of the people, by the people and for the people can be made to work.

PRAYER

God of the nations, may wisdom, courage, and honor ever possess the leaders of our people. Amen.

ADDRESS BY ABBA P. SCHWARTZ AT ST. OLAF COLLEGE

Mr. HUMPHREY. Mr. President, on Friday, April 3, 1964, the Honorable Abba P. Schwartz, Administrator, Bureau of Security and Consular Affairs, delivered a fascinating and illuminating address on the foreign and domestic implications of U.S. immigration laws.

Mr. Schwartz reviewed the great accomplishments which persons from many foreign lands have in the United States. He noted that as far back as 1644 people speaking 18 different languages were living side by side peacefully in the town of New Amsterdam on Manhattan Island. He noted how in many instances in the past, America has opened its doors as a haven to the oppressed and outcast.

Mr. Schwartz also noted the need to reaffirm this great tradition of American freedom by congressional approval of President Kennedy's recommendations for revision of our immigration laws. This certainly is a stirring and heartening address and I commend it to my colleagues.

I ask unanimous consent that Mr. Schwartz' address delivered at St. Olaf's College in Northfield, Minn., be printed at this point in the RECORD.

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

ADDRESS BY THE HONORABLE ABBA P. SCHWARTZ, ADMINISTRATOR, BUREAU OF SECURITY AND CONSULAR AFFAIRS, BEFORE A CONVOCATION FOR THE STUDENTS OF ST. OLAF COLLEGE, NORTHFIELD, MINN., FRIDAY, APRIL 3, 1964

FOREIGN AND DOMESTIC IMPLICATIONS OF U.S. IMMIGRATION LAWS

It is most gratifying to me to have the opportunity to respond to your invitation to present to you this morning some observations on the foreign and domestic implications of our immigration laws and of our assistance to migrants and refugees abroad.

As I entered this chapel today, I was shown the window which briefly depicts the historical origin of St. Olaf College. As you, and I, and as others who are privileged to attend or visit this college become absorbed in the present beauty of the campus, impressed by the structures which have been built on this hill, aware of the academic standards and the scholarly achievements of those who have studied and taught here, and familiar with the nationally known names of Rolvaag and Christiansen—as all of this confronts us, we cannot help but be overwhelmed by the significance of the contribution a small group of Norwegian immigrants has made to our American way of life. This institution is one more example—and a good example—of what is possible when a country opens its doors to immigrants.

We in the Department of State who have the responsibility for developing and applying U.S. policies in this area feel that the opportunities to discuss these matters with the public come all too infrequently, particularly in communities west of our Eastern seaboard.

President Franklin D. Roosevelt, who was always mindful and proud of his Dutch heritage reminded us on several occasions that "we are all immigrants" and that the contributions which first generation immigrants have made to the cultural and economic life of our country is in no small measure responsible for our greatness.

Because of our heritage and the fact that the United States since the end of the Second World War has been placed in a role of critical leadership in a troubled and constantly changing world, we are concerned to see to it that our immigration laws reflect our real character and objectives and maintain for us the image of ourselves as Americans that we would like to achieve abroad. The nature of this image plays an important role in the achievement of our foreign policies generally.

Some place in American history, Americans, who were immigrants themselves, began to believe that the geographical and national origin of a man determined his suitability as an immigrant. Subsequently, this was codified into law and became our national immigration policy. At the same time in American history, however, Americans themselves learned to judge their fellow Americans on the basis of ability, industriousness, intelligence, integrity, and all the other factors which truly determine a man's value to society. In most laws of our Nation we recognize this, except in our immigration laws where we continue to imply judgment of a man on the basis of his national and geographical origin. It is not hard to imagine, therefore, the implication of this policy when it is interpreted to a man from a geographical area or of a national origin, which is not "favored" by our present laws. Whether an individual wants to come to the United States or not, he is left with the impression that our standards of judgment are not based on the merits of the individual—as we claim to judge men—but rather on an assumption which can be interpreted as bias and prejudice.

Thus, inasmuch as our immigration laws are interpreted as the basis of how we evaluate others around the world, it is not difficult to understand the impact this has on people abroad and its effect on our foreign relations. Therefore, if for no other reason than to tell people around the world the basis on which we actually judge ourselves and others—not to speak of the contributions all immigrant cultures and traditions have made to our way of life—a revision of our immigration laws is fully justified. We have the same concern with respect to reactions to our assistance abroad since World War II to migrants, refugees, displaced persons and uprooted persons generally.

The history of immigration to the United States is really the history of this country.

The foundations of this Nation were laid by people escaping oppression. The Puritans, the Hugenots, the Quakers, the Scotch-Irish and the Spanish-Portuguese Jews were all refugees in their time.

As far back as 1644 people speaking 18 different languages were living side-by-side peacefully in the town of New Amsterdam on Manhattan Island. New York continued to welcome the oppressed of every nation of Europe. This union of diverse cultures and skills helped that State to attain its unique position in manufacturing, commerce, finance and government.

A roster of pioneers in the organization of many of our industries would fill many pages. Among them: John Jacob Astor (German immigrant) was the great pioneer in the fur industry; Andrew Carnegie (Scottish immigrant boy) founded the American steel industry; Joseph Pulitzer (Hungarian immigrant) made a great contribution to journalism; Michael Cudahy (Irish) was one of the most successful figures in the development of the meat-packing industry; Joseph Bulova (Czech), watch industry; David Sarnoff (Russian), radio; Charles L. Fleischmann (Hungarian), yeast industry; Frederick Weyerhaeuser (German), lumber industry; and William S. Knudsen (Dane), the automobile industry.

And behind these eminent names are hundreds of thousands of nameless men and women who brought other important industries to this country. Our clothing industry was developed by German, Austrian, Russian and Italian immigrants and in recent years has been sustained by "migrants" from Puerto Rico and new immigrants from other parts of the world. Our watchmaking industry was developed by French and Swiss immigrants; our pottery and chinaware industry by German immigrants; and the cheese industry by Germans and Swiss.

Equally revealing are the many immigrants whose inventions formed the basis for American-born entrepreneurs to develop our great industrial base. To mention only a few: Ole Evenrude (Norwegian), who invented the outboard motor; John Ericsson (Swedish), the ironclad ship; David Lindquist (Swedish), the electric elevator; Conrad Huber (Russian), the flashlight; Michael Pupin (Serbian), great discoveries in electricity; David Thomas (Welshman), the hot blast furnace; Alexander Graham Bell (Scotsman) who invented the telephone.

Many of these immigrants entered our country as children—young and unknown. They attended our schools and our laboratories. Their drive, their imagination, their desire to prove themselves helped to make U.S. industry the greatest in the world and our standard of living the highest.

Many of the refugees who fled from Hitler's tyranny, such as Albert Einstein, were persons of great distinction who contributed immeasurably to our scientific and cultural development, but others were small children,

who fled with their families to this country for safety. Today they are working with other young scientists in our laboratories, helping to conquer space. The spirit that is so typically American—the welcoming of people of all backgrounds and the freedom of opportunity—has helped the immigrant and the refugee, who in turn, have helped the United States.

The Federal Government at the outset of our history established a liberal immigration policy. The Constitution embodies civil rights provisions and a liberal attitude towards religious and ethnic differences. Ours was the first national state to proclaim the principle that there should be no religious test for office holding. And only the President of the United States must be native born. All other officeholders may be naturalized citizens.

The Federal Government utilized the principle of religious freedom to stimulate immigration. After the adoption of the Federal Constitution in 1789 Congress passed the first Federal legislation on immigration, which included a naturalization and a quarantine law.

During the 1830's there was a large influx of immigrants from famine-stricken Ireland. Between 1841 and 1850 there was substantial refugee emigration from Germany. The combined German and Irish immigration was 1,713,000 for the decade. Immigration for the next decade to 1860 increased to 2,598,000. The Scandinavians began to arrive after the Civil War and settled in the Midwest.

In the 1880's appreciable numbers of immigrants entered for the first time from Eastern and Southern Europe. They were the "new" immigrants. They came from the Balkans, central Europe, from Russia and from Italy. Between 1882 and 1889 large numbers of Jews fled persecution from czarist terrors in Russia and began to enter the United States. Between 1897 and 1914 our average immigration exceeded a million a year. The new immigrants numbered 10 million as against approximately 3 million during the earlier period.

With the development of urban society and huge industries in the cities, sociological changes took place. The problems of unplanned growth were blamed on the immigrant. The new immigrants were represented as unwanted people in contrast with the old who, in retrospect, were glamourized as highly selected, adventurous and specially trained. People forgot that the old were sometimes indentured servants, persons who had been imprisoned for debts. In reality, each new wave of immigrants had created fears in the old. So the Irish and Germans were accused of creating economic problems.

This "fear of the stranger" played an important role in the restrictive immigration policies which developed. Labor itself, fearing for its jobs, was anti-immigration in that period. The immigrants were blamed for the industrial panics.

The restriction against Asiatics began with the barring of Chinese in 1882. It was the beginning of the use of racialism as a basis for restrictive immigration. The Japanese were next, and in 1917 the Asiatic Barred Zone was created. This act was passed despite President Wilson's veto and excluded persons from parts of China, all of India, Burma, Siam, the Malaya States, the Asian part of Russia, part of Arabia, part of Afghanistan, most of the Polynesian Islands and the East Indian Islands. As you can see, this represents a large part of the world. It was the progenitor of the Asia-Pacific triangle, which I shall describe later, and of the 1924 act which used the national origins quota system as the basis for allocating visas.

Under the national origins quota system which is embodied in our current immigration law each country outside of the Western Hemisphere is alloted a specific number (a quota) of immigrants who may be admitted to the United States each year. This allocation is based on a proportion of a total equal to the proportion of the population in the United States in 1920 whose national origins, including ancestry, could be attributed to that particular country. The 1924 Immigration Act limited quota immigration to 150,000 and lessened the possibility of large-scale immigration from eastern and southern Europe because the basic formula resulted in disproportionate quotas to northern European countries.

In 1952, the immigration and nationality laws were codified and revised by Congress and that law governs our basic immigration policies today. The 1952 act retained the national origins principle as the basis for a quota system and instead of the Asiatic Barred Zone substituted the Asia-Pacific triangle. While many of the provisions of this law modernized procedures, and granted important powers to the Attorney General to admit persons in emergent circumstances, it retained many of the late 19th century and early 20th century antagonisms.

Under the current law 157,000 quota visas are authorized annually. But they are never fully utilized because of the manner of the allocation. Thousands upon thousands of persons, otherwise qualified for admission, await their turn on the quota lists.

A mother born in Ireland could join her son in the United States immediately, I am glad to say, because the Irish quota is large and never fully used. But a mother of an American citizen may not be able to join her son in this country if she was born in Greece or Turkey, which have small quotas. Under the present law a parent of an American citizen is entitled to what is known as "second preference" and the law judges the parent's admissibility to join his child upon the place where the parent was born. But if the parent has more than 50-percent Asian blood, he is chargeable to the quota assigned to the Asian area from which he originally derived his Asian origin.

Persons born in Great Britain are permitted 65,361 quota numbers, but only about 40 percent are used. The unused are not available to nationals of other countries who desire to emigrate and whose skills and talents may be highly sought by us. Greece has a quota of 308; Hungary, 865; Italy, 5,666, all of which are oversubscribed.

Persons born in the Western Hemisphere are admitted nonquota. This provision of the law is based on our foreign policy of hemisphere friendship and solidarity. However, it does not apply to persons born in dependent colonies in the Western Hemisphere, or to the inhabitants of former colonies—now independent—of Jamaica, Trinidad and Tobago. Whether by accident or by design, this obviously does not serve U.S. foreign policy interests.

Because the quotas based on national origin severely limit admissibility of persons of certain origins, it has been necessary for Congress to enact special legislation from time to time to take care of displaced persons and refugees from various forms of man's inhumanity to man.

At this point I would like to digress from a discussion of our immigration laws to present a brief summary of what the United States has done since World War II in assisting uprooted persons, not only to come to the United States, but to find places of resettlement in other countries. The United States took the leadership in organizing the United Nations Relief and Rehabilitation Administration (UNRRA), which provided immediate assistance to countries devastated by the Second World War and to several million persons who had been displaced. This organization was followed by the International Refugee Organization (IRO), a specialized agency established by the General Assembly of the United Nations. The IRO moved over 1,400,000 displaced persons principally from Europe to resettlement in countries overseas. Upon the termination of the IRO, the United States took the leadership again in organizing the Intergovernmental Committee for European Migration (ICEM) in 1951. ICEM, with headquarters in Geneva, Switzerland, has moved in the succeeding years 1,260,000 persons, including some 556,000 refugees from Europe and from mainland China through Hong Kong. Supported by our Government and 28 other member governments of the free world, that organization continues today to move and resettle refugees and migrants to new homes overseas.

It is relevant to cite some of the dollar expenditures by the United States in these efforts. In 1945 and 1946 the U.S. Army provided assistance to displaced persons apart from the assistance administered through UNRRA in the amount of $200 million, while UNRRA accounted for some $29 million of U.S. contributions in special assistance to refugees. The U.S. contribution to IRO between 1948 and 1952 totaled $237 million; $93 million was spent through the United Nations Korean Reconstruction Agency (UNKRA) to resettle displaced families who fled from North Korea during the Korean war—$90 million was provided for refugees from North Vietnam. Some $300 million to Palestine refugees has been channeled by us through the United Nations Relief and Works Agency for Palestine; approximately $10 million through the Office of the United Nations High Commissioner for Refugees to assist other refugees; $53 million has been spent through the Intergovernmental Committee for European Migration; $47 million through the U.S. escapee program, a direct unilateral effort by the U.S. Government to assist postwar escapees from communism. With other expenditures in assistance to refugees, including grants of our surplus foods to various areas throughout the world, the total U.S. contribution from the end of World War II to the present for these purposes has been conservatively estimated at over $1.3 billion. Such assistance is continuing currently at a rate of approximately $15 million annually. All of these current and past expenditures were public funds supplied by U.S. citizens. They do not include funds contributed by the American public through the well-organized channels of voluntary effort. It is estimated that the American voluntary agencies themselves have contributed $1.2 billion in cash and commodities to assist refugees abroad since World War II. This is an impressive total and must be recorded in appraising the magnitude of the efforts of the U.S. Government and the American people in assisting those uprooted by economic and political pressures and changes. This is a creditable chapter in our history and speaks well for the sense of responsibility of all our citizens and our Government.

Of equal importance, I believe, is the fact that since World War II, in response to specific refugee situations, the U.S. Government has admitted under different procedures over 1 million refugees from racial, religious, and political oppression; 42,000 were admitted under President Truman's directive of 1945; 405,000 under the Displaced Persons Act of June 1948; 196,000 under the Refugee Relief Act of 1953, including 6,000 orphans; 38,000 Hungarian refugees were admitted on parole, under the discretionary authority granted to the Attorney General in the 1952 immigration law, immediately following the Hungarian uprising in 1956. Some 150,000 refugees have been admitted under quota provisions of the regular immigration law; and since Castro took over Cuba, we have admitted some 200,000 Cuban refugees.

In response to the sudden influx of over 100,000 Chinese refugees in Hong Kong in May 1962, the Attorney General admitted some Chinese refugees on parole. Some 10,000 have arrived, and applications are still being considered. This action promoted our foreign policy interest by demonstrating the humanitarian concern and friendship of the American people toward the Chinese people.

As a result of varied experience under these special legislative acts benefiting refugees, the Congress enacted legislation in 1960, establishing the so-called fair-share principle under which we accept under parole 25 percent of all the refugees accepted collectively by all countries of immigration in a preceding 6-month period. To date some 13,025 refugees have been so accepted.

You are probably much more familiar with the hospitality which the United States has afforded in recent years to over 200,000 refugees from Cuba, most of whom arrived in Florida, but are gradually being relocated throughout the country. This was the first instance in experience in which the United States became a country of first asylum for refugees.

The contributions of the U.S. Government and of the American people in receiving refugees and in providing funds and services for their relief abroad have played an important role in our foreign policies. Our generous and quick responses to refugee situations have characterized our function of leadership in a disturbed world and stimulated similar actions by other governments. The foregoing telescopic treatment of the past, although admittedly incomplete in many details, lays the groundwork for our consideration of the problem at present.

We believe that American immigration policy as expressed in our laws is important both to our foreign policy and the domestic welfare of the United States. The national origin's quota system does not truly reflect the real character of the American people—but it does give a false image of our thinking to the world. Its effect is that a Greek is not as welcome as a Pole, and a Pole is not as welcome as a German. And it is based not on what you may be today, but on where you were born.

The present law grants priorities (preference) to certain family members, and to persons with certain skills. But why should parents of American citizens be given only "second preference" in the quota, if their children want them? Why should there be any "quota" at all for a parent of a U.S. citizen? And why should the parent of a legally resident alien not even be given a preference?

According to present law, a person whose services are determined to be needed in the country because of education, technical training, specialized experience or exceptional ability is entitled to "first preference." This is in the self-interest of the United States, since we benefit from all the education and experience. But even before such a preference is granted an employer must produce a job, often to an unknown person, and without any assurance that a petition for a preference will be granted. This is just one aspect of a complicated system which leaves some quotas filled and others unfilled. Does this add to our image of knowing how to do things well? We should certainly be able to devise something better.

Leaders of religious, civic, labor, and social service agencies have been calling for a change in the present system of allocating visas. They have endorsed strongly the historic step taken by the late President Kennedy in calling for the elimination of the national origins quota system. In a special message to the Congress, President Kennedy on July 23, 1963, said:

"The most urgent and fundamental reform I am recommending relates to the national origins system of selecting immigrants. Since 1924 it has been used to determine the number of quota immigrants permitted to enter the United States each year. Accordingly, although the legislation I am transmitting deals with many problems which require remedial action, it concentrates attention primarily upon revision of our quota immigration system. The enactment of this legislation will not resolve all of our important problems in the field of immigration law. It will, however, provide a sound basis upon which we can build in developing an immigration law that serves the national interest and reflects in every detail the principles of equality and human dignity to which our Nation subscribes."

President Johnson in January 1964 in his remarks at the White House to representatives of organizations interested in immigration and refugee matters, stated:

"We have met for the purpose of pointing up the fact that we have very serious problems in trying to get a fair immigration law. There is now before the Congress a bill that, I hope, can be supported by a majority of the Members of the Congress. This bill applies new tests and new standards which we believe are reasonable and fair and right.

"I refer specifically to: What is the training and qualification of the immigrant who seeks admission? What kind of a citizen would he make, if he were admitted? What is his relationship to persons in the United States? And what is the time of his application? These are rules that are full of commonsense, common decency, which operate for the common good.

"That is why in my state of the Union message last Wednesday I said that I hoped that in establishing preferences a nation that was really built by immigrants, immigrants from all lands, that we could ask those who seek to immigrate now: What can you do for our country? But we ought to never ask, 'In what country were you born?'"

Before I elaborate on the position of the administration on immigration policy as expressed by President Kennedy and President Johnson and on their proposals for a revision of the law, I should like to comment on two other topics at issue in any reconsideration of American immigration policy.

One is the approach to Asian immigration reflected in our immigration laws, which I mentioned earlier. Concern about the effect of the large number of Chinese and Japanese immigrants in the latter part of the 19th century led eventually to the enactment of the so-called Chinese Exclusion Acts and of other laws practically closing our doors to Japanese and other Asian immigrants. A reversal of this policy was initiated by President Franklin D. Roosevelt when he urged the Congress to eliminate the Chinese Exclusion Act and to establish a quota for Chinese persons. Congress complied with the Presidents' request in 1943 and passed a similar law on behalf of Indian immigrants in 1946. These acts, however, permitted only a token immigration of Chinese and Indian immigrants, since the entire volume of immigration from these 2 countries was governed by the small quotas set up for them, 105 for Chinese and 100 for Indians. In other words, no provisions were made to permit Chinese or Indian wives or children of U.S. citizens to join their husbands and parents without quota restrictions as in the case of non-Asian immigrants. The need for a more humane policy toward Asian immigrants became apparent when an increasing number of our servicemen during and after the Second World War married girls of various Asian ancestry. The Congress, after first responding to this situation by the passage of special legislation, placed Asian spouses and children of U.S. citizens on equal footing with non-Asian spouses and children when it enacted the Immigration and Nationality Act in 1952. This was a major development which in the heat of debate about the merits and demerits of our Immigration Act has frequently been overlooked.

While the 1952 law took this step forward, it continued to treat Asian immigrants differently from non-Asians. It requires that an Asian person born outside of the Asian area be charged to the quota of his ethnic origin, rather than to the quota of his place of birth. On the other hand, Asians have benefited from the special displaced persons and refugee legislation and also from the special laws passed by the Congress to remove pressures from heavily oversubscribed quotas.

Another area of concern in our immigration policy is the limitation of our good neighbor policy to those countries of the Western Hemisphere which were independent at the time of the enactment of the Immigration and Nationality Act in 1952. Countries in the Caribbean area which have gained their independence since 1952 are treated as quota areas. They are Jamaica, and Trinidad and Tobago, each having an annual quota of 100. Since Congress first imposed quotas in 1921 on the volume of immigration, it has always exempted persons born in any independent country of this Hemisphere. It is hoped that the Congress will adhere to this policy with respect to newly independent countries when it reconsiders our immigration policy and thus make our hemispheric policy consistent.

What is the outlook for a congressional review of immigration policy and what is the stand the executive branch has taken on this issue?

President Kennedy submitted to the Congress in July of 1963 a request for a revision of our immigration laws, urging specifically that the Congress, over a period of 5 years, eliminate the national origins system, and that it immediately place Asians on the same footing with all other immigrants and give nonquota status to all persons born in independent countries of the Western Hemisphere. Bills reflecting the President's proposals have been introduced in the House by Representative EMANUEL CELLER of New York and in the Senate by PHILIP HART of Michigan. Senators HUBERT H. HUMPHREY and EUGENE MCCARTHY have cosponsored the bill. Earlier this year the Senate held some hearings on the administration bill. After the Congress has taken final action on the pending civil rights bill, it is expected that it will consider President Kennedy's and President Johnson's request for a revision of the immigration laws.

When Congress deliberates the recommendations of the administration, an important factor will be the recognition that the changes proposed which may appear far-reaching to the superficial reader of our laws, are not drastic departures from our present policies. Rather they would reconcile the letter of our general law with the immigration policy of the United States as it has developed during the last 10 years as a result of refugee and other special legislation enacted by the Congress. A recognition of this fact should be a persuasive factor in the considerations of the Congress.

No one in the brief time alloted for this presentation can do justice to the subject. I can only hope that I may have convinced you that it is important that our immigration laws reflect our national character and objectives more accurately. Surely our concern is not for the accident of place of birth but for the inherent moral worth of the individual who seeks to come to our shores.

I also hope that you will be stimulated to help our Government and voluntary groups to do more in meeting the needs of those who must seek new opportunities for dignity and self-dependence through emigration to another country.

MINNESOTA WINNERS IN 22D ANNUAL STATE 4–H RADIO SPEAKING CONTEST

Mr. HUMPHREY. Mr. President, the Minnesota 4–H clubs have just concluded the 22d annual State 4–H radio speaking contest. This year, 1,500 Minnesota 4–H club members wrote and delivered talks on the subject "What Is My Responsibility in Bettering Interracial and Interreligious Understanding?"

I am sure that all Senators would agree that this is a most relevant and timely topic. It is just another example of the outstanding work which the 4–H clubs perform in developing our future leaders of the United States. Indeed it is a heartening indication of the substance of our young people today.

This year the State champion of the 4–H radio speaking contest was Marynell Fresk, of Hadley, Minn., and the reserve champion was Peter Schmidt, of Stephan, Minn. I would like to quote one paragraph from the winning address:

My real faith, then, is in a dream that in spite of daily headlines prophesying man's destruction, we can build a better world, a world of peace and human brotherhood. Yes, even in my lifetime. In my small way I want to share my responsibility in bettering interracial and interreligious understanding.

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

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

WHAT IS MY RESPONSIBILITY IN BETTERING INTERRACIAL AND INTERRELIGIOUS UNDERSTANDING?

(By Marynell Fresk, Murray County)

I wonder why some people don't like me. I like rain and cool woods—I like clouds floating in a blue sky, and birds, and cats, and little puppies. I like the sea when it wears diamonds, and lilacs in the spring, and lambs at play. I like the smell of burning leaves, and the taste of juicy red apples. I like pretty dresses and weddings, and babies. I wonder why some people don't like me. What kind of pathetic talk is this? These words were uttered by a lonely, disillusioned colored girl.

What safer place is there to send your children than to Sunday school? Yet is was while they were having a recess between their lesson on the "Love That Forgives" and the regular worship hour that four negro children were killed in an explosion that ripped a Birmingham church. A dead child's father commented, Even in war we don't bomb hospitals and churches. I guess we should have been uneasy about leaving our children there. But it never occurred to me anyone would bomb a church with anyone in it."

Who better than a policeman can protect one's child? Yet it was a policeman who shot 16-year-old Johnny Robinson in the back. Johnny and his companions were running away after throwing rocks at a carful of white youths who had been tormenting them. Johnny was a Negro.

What can be more enjoyable for a 13-year-old than riding a bicycle? Yet young Virgil Wade was killed by two white youths as they roared past him on a motorcycle.

During the 1960 presidential campaign some people put up signs reading "No Catholic President for Us." Their prejudice arose from the tradition of Protestant Presidents.

In a southern town people splattered a house with black paint after hearing a Jewish family was about to move in.

How terrible, we all say. Whoever is responsible for such happenings? Who did them? If we would only search our own conscience we would see it isn't just the people who committed these crimes that are to blame, but society as a whole. The "who" that would let such things happen is every individual who talks about the Negroes and spreads hate to his neighbor and to his children, the jokester—the crude oaf who jokes about race and religion makes everyone at a party roar with laughter. It is the Governor, Senator, or Representative who says things back home with the Negroes and the minority religious groups aren't as bad as everyone says, when he knows deep down in his heart they are worse. It is the coward in each of us who stands by and lets injustice be done to these people.

"Well," we might say, "maybe I am to blame. But even if I am, what can I do about it?" As a leader who was arrested in Baltimore for leading a civil rights demonstration said, "We come—late we come." Maybe I am just coming to the realization of the urgency of removing a 300-year-old insult to the colored people and minority religious groups in this Nation. But no matter when I come to that realization, I must act.

There are three things I must do to promote better understanding: The first and underlying thing is to study and learn of the different religions and races and to understand their beliefs. I must learn to respect their right to their freedoms and their beliefs which may seem so different from my own.

Next I must support organizations which try to help these people toward a better place in society. One example would be the National Association for the Advancement of Colored People. Also I must urge my Congressmen by my letters to enact laws such as the civil rights bill that would raise Negro standing. I could urge my friends and neighbors to do likewise.

Last but not least I must bring myself into contact with these people. Julian Bryan, a well-known author, stated that if you break bread with people and share their troubles and joys, the barriers of religion and race will soon disappear.

I believe in people—and in their given right to enjoy the freedoms we so cherish in America. I believe in justice and knowledge and decent human values. I believe that any religion in which a man is good is a good religion for him. I believe in listening to what people have to say, and in helping them to achieve what they want and what they need. I believe in each man's right to a job, and food, and shelter.

I sincerely believe that one day all of these things will come to pass; but whether all of these attempts to promote better understanding will succeed or fail only time will tell. One speech, such as mine, will not change the world; but it is a beginning and before there is an end there must be a beginning.

My real faith, then, is in a dream that in spite of daily headlines prophesying man's destruction, we can build a better world, a world of peace and human brotherhood. Yes, even in my lifetime. In my small way I want to share my responsibility in bettering interracial and interreligious understanding.

It is easy for me to say I instead of we. "I" is only one person; "we" is at least two, and may be many more. So it's easy to see that being part of "we" is far bigger than "I" alone could ever do. So let me add "partnership required." Will you join the partnership?

WHAT IS MY RESPONSIBILITY IN BETTERING INTERRACIAL AND INTERRELIGIOUS UNDERSTANDING?

(By Peter Schmidt, Marshall County)

When you think of it, man, one man, is such a very small particle of the entire organization of life. We are born, we grow, we develop ideas and fight for them, and then we die. And the world goes on without us. And all that we have lived and died for remains seemingly unchanged.

All the while that men are living and dying, there exist two great problems on earth: one concerns the relationship between man and God; the other, the relationship between man and his fellow man. Every man that has lived has had a responsibility to better these two great problems which go by the names of "interracial" and "interreligious." Some have found their responsibility and fulfilled it, others have disregarded their responsibility and left it unfulfilled. What am I going to do? If I want to be among the first group, I must answer this question: What is my responsibility in bettering interracial and interreligious understanding?

Although they may seem unrelated, interracial and interreligious problems have at least four things in common. I'd now like to examine the four similarities, and then try to answer the question.

The first similarity between the two topics in question is this: they are both misunderstandings between people. The problems are not a plague or a disease that can be fought physically. They are a mode of living, a conception of life, a belief, and a faith. They come from man's mind and soul, and man's physical body is involved only in outlashes of his central feelings from within. We must remember that better understanding will come not by curtailing man's body by force, but by enlightening his mind with knowledge.

Similarity No. 2: Both interracial and interreligious problems started long ago—much longer than you and I may realize. Interreligious differences started not when Luther, Huss, or Wycliff were preaching reforms, but when Buddha was born, along with Mohammed, and the gods of the Hindus and the Shintoists. These happenings span thousands of years. On the other hand, interracial problems had their birth in the use of slaves in the ancient civilizations of Egypt, Rome, and Peru. The point is this: These two problems are extremely deep-rooted, and as in a tree, the roots are stronger and more vital than the foliage above.

The third similarity is this: Both problems involve prejudice. A definition of this word tells us that prejudice is opinion formed without knowledge, thought, or reason. That means prejudice can be either thinking good or thinking bad about a subject, without knowledge, thought, or reason. This type of thinking is found in both of our problems. Samuel Johnson says: "To be prejudice is always to be weak." Must our Nation impose this weakness upon itself?

A fourth similarity lies in the fact that the opposing factions within each problem have more things in common than those which are different. At first sight, the differences seem innumerable. But upon further examination, we discover that many of the differences are only on the surface, and are practically irrelevant, while the basic differences that form the core of each faction are few.

So we see that interracial and interreligious problems are related. They are both misunderstandings between people, they both started long ago, they both involve prejudice, and they both have more similarities than differences. Another fact is that I do have a responsibility to better these two problems. Now, what is my responsibility?

First, I believe that one of the simplest and best ways to better interracial problems is simply to associate with the Negro, to talk with him and treat him as an equal—not inferior, not superior, but equal. Easier said than done, you say? I say try it first, then judge. Interreligious differences, on the other hand, can be improved with understanding and broadmindedness, two terms which encompass a lot of territory. They

can be achieved only on the elimination of prejudice. Prejudice departs only on the introduction of knowledge.

That's my second responsibility: to obtain more knowledge—first for myself, and then for others. This knowledge comes not of itself, it must be looked for. Reading is the tool that brings it out. Reading news stories to see how peaople act—reading men's opinions to see why they act that way—reading both sides—deciding which is right—these I must do.

My third responsibility is to act. The responsibility is not fulfilled when it is found; it must be carried out. It's up to me to replace prejudice with knowledge; hatred with love; ignorance with understanding; narrowmindedness with liberality. I know I can't do it all, but I can and I will do my part. I can't solve these problems, but I can help to put mankind on the road toward the solution.

If men had fulfilled their responsibilities in the past, we would not have these two great problems today. But optimistically, if I and others of my generation fulfill our responsibilities now, then we can leave to our children a world free from the hatred and the struggling that we have known. To this end I pledge myself.

CIVIL RIGHTS NEWSLETTERS

Mr. HUMPHREY. Mr. President, the supporters of the civil rights bill, on both sides of the aisle, are very proud of our Bipartisan Civil Rights Newsletter. This publication is the joint product of the Senator from California [Mr. KUCHEL], the Senator from Minnesota [Mr. HUMPHREY], other Senators supporting the bill, and their able staffs.

This newsletter is intended to keep Senators and their staffs fully informed on the civil rights debate. It usually includes a report on the record for meeting quorum calls, a statement of the day's schedule, notes on religious and civic groups visiting the Capitol to support the bill, and factual material on civil rights. We have also initiated a new section where, from time to time, an individual title of the bill is explained in a brief and objective manner. The newsletter is prepared at the end of each day's debate and is distributed to the offices of the bill's supporters at the beginning of the next day. It is, however, available to any Senator or any other person who may ask for it.

We originally had very modest hopes for our newsletter and reproduced only a few dozen copies of it. When attention was drawn to it some weeks ago, we had to double and redouble the output, and still had difficulty keeping up with the demand. This little sheet continues to be popular, and now we find that our supply of many back issues is exhausted. Therefore, as a convenience to Senators and other interested persons, I ask that all previous issues be reprinted in the RECORD.

Mr. President, I ask unanimous consent that the 25 back issues of the Bipartisan Civil Rights Newsletters be printed in the RECORD at this point. Again I wish to inform the Congress and the public that copies are available to anyone requesting it. Copies can be obtained by contacting the office of Senator KUCHEL or Senator HUMPHREY.

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

BIPARTISAN CIVIL RIGHTS NEWSLETTER NO. 1, MARCH 10, 1964

The Senate bipartisan leadership supporting the civil rights bill (H.R. 7152), headed by Senator HUBERT HUMPHREY for the Democrats, with Senator THOMAS KUCHEL, representing the Republicans, will circulate among all interested Senators a newsletter outlining principal developments relating to the progress of this legislation. This newsletter will help keep Senators and their staff members fully informed on the civil rights bill and will be prepared whenever the circumstances warrant—daily, if necessary.

1. Current status of H.R. 7152: the House passed civil rights bill is currently on the Senate Calendar, Order No. 854. It is the hope of the bipartisan leadership to motion successfully H.R. 7152 from the calendar this week and make it the pending business.

As expected, the opponents of H.R. 7152 did not want the motion to consider the bill offered during the morning hour when such a motion would have been nondebatable. Instead the seldom-used procedure of reading the Senate Journal in full and offering amendments to the Journal occupied the Senate until the hour of 2 o'clock had passed and the morning hour had terminated. At that point a motion to consider H.R. 7152 became a debatable motion. Since the Senate recessed yesterday, this motion offered by the majority leader is currently before the Senate and will be debated by the opponents of the bill for an undetermined period of time. It is not the intention of the leadership to debate fully the merits of the bill at this juncture but to reserve such discussion until the bill itself is pending before the Senate.

2. Need to maintain quorums during civil rights debate: The principal burden resting with each Senator will be to respond promptly to quorum calls whenever they occur. From now on, every quorum call will be a live quorum. Every Senator should report immediately to the Senate floor when two bells are heard.

Both Democratic and Republican civil rights supporters are establishing a system to maintain quorums throughout the debate. Last week, Senator HUBERT H. HUMPHREY, Democratic floor manager of H.R. 7152, sent a letter to a number of Democratic Senators advising them of the need to maintain quorums and requesting their full cooperation. In order to foresee conflicts as far ahead as possible, it is again requested that these Democratic Senators forward to Senator HUMPHREY a list of out-of-town engagements for the next 2 months, ranked according to priority. These lists should be sent to S–118, Capitol, marked to the attention of Pauline Moore. A master chart listing out-of-town engagements will be maintained in S–118. If the absence of a Senator on a particular day means that a quorum will not be present, that Senator will be asked to secure a replacement for that day. Democrats are committed to produce 36 Senators daily; Republicans have a quota of 15. Additional information on the quorum situation will be included in subsequent newsletters.

3. Telephone call system on quorums: In order to produce a quorum in as short a time as possible, the Democratic leadership has established a special telephone communication system with a number of Democratic offices. Republican leaders are currently setting up a similar arrangement.

The following Democratic staff persons have assumed the responsibility for calling their assigned offices: Jerry Brady (Senator Church), Winston Turner (Senator Kennedy), James Keefe (Senator McIntyre), Edwin Winge (Senator McNamara), Gale Fitzgerald (Senator Muskie), and Warren Sawall (Senator Nelson). The full cooperation of those Democratic offices called by one of these persons is essential in producing quorums quickly and efficiently. It is strongly urged that each office know the precise whereabouts of their Senator so that he or she can be informed immediately of a quorum call. There will be periodic live quorums whenever the Senate is in session.

4. Examination of argument concerning inclusion of private clubs raised by Senator RUSSELL. Senator RUSSELL contends that, because of the "circuitous" language of the bill, practically every private club in the United States will be affected by the public accommodations provisions of the bill and that, therefore, they will no longer have control over the selection of their members or guests. In the opinion of the legislation's supporters, this interpretation of the bill is incorrect. The bill has no effect on the membership of private clubs or the ordinary operation of their rules regarding guests.

Apparently the basis for the Senator's position is that most private clubs feed members and guests of members. Since they do so, he contends, they are restaurants which affect commerce within the meaning of the bill, and that, therefore, all of the provisions of the bill relating to public accommodations are applicable to private clubs. This conclusion is incorrect. The eating facilities of private clubs which serve club members and guests are not places of public accommodation within the meaning of the bill because they do not serve the general public.

This point is established by subsection (e) of section 201 which expressly exempts clubs except to the extent that they make their facilities "available to the customers or patrons of an establishment within the scope of subsection (b)"—i.e., a hotel, motel or similar establishment listed in subsection (b). All this means, for example, is that if a country club makes arrangements with a covered hotel under which club privileges are made available to the patrons of the hotel, the club cannot discriminate among the guests of the hotel on the ground of race, color, religion, or national origin. This is the one and only way private clubs are affected by the public accommodations provisions of the bill.

BIPARTISAN CIVIL RIGHTS NEWSLETTER NO. 2, MARCH 11, 1964

(This newsletter will help to keep Senators and their staff members fully informed on the civil rights bill. It will be prepared and circulated whenever circumstances warrant—daily if necessary.)

1. An excellent start on quorum calls: Senate supporters of civil rights responded speedily to three quorum calls during Tuesday's debate. The average length of time required to assemble a quorum was 13 minutes. Responding promptly to quorum calls will be the principal individual responsibility of each Senator. Tuesday's fine performance demonstrated the effectiveness of the Republican and Democratic communication systems.

The two main principles of success on quorum calls are: (A) Every quorum call will be a live quorum; thus Senators should go to the floor when two bells are heard. (B) Floor leaders should know Senators' plans for out-of-town engagements in the next 2 months. Democratic Senators are asked to send a list of their out-of-town schedule, ranked according to the importance of engagements, to S–118, attention Pauline Moore.

2. Fallacies in Senator STENNIS' discussion of public accommodations: On Tuesday Senator STENNIS attacked the constitutionality of title II. He said that the 14th amendment does not provide a basis for a prohibition of discrimination in public accommodations be-

cause it deals only with State action, and referred to the civil rights cases decision of 1883 to support his contention. There are two fallacies in his argument: (A) The present title II is based on the 14th amendment only when discrimination or segregation by an enumerated establishment is supported by State action. Subsection (b) of section 201 defines State action for the purposes of title II. It covers racial discrimination or segregation which:

(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.

(B) In the second place, the 14th amendment is one of two alternate constitutional bases for title II. The other constitutional base is the commerce clause of the Constitution. The Supreme Court said, in *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation*, that "The fundamental principle is that the power to regulate commerce is the power to enact 'all appropriate legislation for its protection and advancement.'" This clearly gives Congress the power to legislate to remove impediments to interstate commerce.

One of the most important impediments to the free flow of interstate commerce, which includes travel, is the difficulty that Negroes experience in finding places to eat and sleep when they travel. Senator STENNIS claimed that the Howard Johnson case put the regulation of restaurants outside the authority of Congress under the commerce clause. This is incorrect. The only thing decided by the Howard Johnson case is that the commerce clause does not by itself bar discrimination by restaurants. The court in no way passed on the power of Congress to legislate in this field. The case was decided when there was no Federal legislation on racial discrimination in public accommodations, thus it is not a test of Congress' power.

Senator STENNIS objected to applying the commerce clause to a restaurant, hotel, or other establishment which, by itself, does not have a crucial impact on interstate commerce. But obviously the sum total impact of a number of trivial acts will be crucial. For this reason the Supreme Court decided, in *Wickard* v. *Filburn*, that the important test was the cumulative influence of many acts, not the effect, of a single act in isolation. This principle was more recently affirmed in the Reliance Fuel case, and it clearly supports the constitutionality of title II's use of the commerce clause to bar racial discrimination in public accommodations.

BIPARTISAN CIVIL RIGHTS NEWSLETTER NO. 3, MARCH 12, 1964

(This newsletter will help to keep Senators and their staffs fully informed on the civil rights bill. It will be circulated whenever circumstances warrant—daily, if necessary.)

1. A mixed record on quorum calls: Early Wednesday afternoon, civil rights supporters responded so quickly that a quorum call took only 10 minutes. But when a second call was made at 6:25, it took fully an hour to assemble a quorum. This was a very disappointing performance. It had been announced that the Senate would stay in session until 8 p.m. and quorum calls are a favorite tactic of the opposition. They should be expected and therefore it is important that Senators stay in readiness to return to the Chamber as long as the Senate is in session. Long quorum calls do more to lose the civil rights battle than any argument of the opposition.

2. Making a positive case for civil rights: As Senators HUMPHREY, KUCHEL, and JAVITS announced, civil rights Senators plan to make a detailed, title-by-title exposition of the bill. In making this announcement, Senator HUMPHREY remarked that "supporters will not, cannot, and should not content ourselves with merely listening to the opposition. We must state our case as well." It is hoped that this procedure will structure the debate by focusing attention on one title at a time. Each title will be discussed by a Republican and a Democratic Senator. Title I, on voting rights, will be discussed by Senators HART and KEATING. Title II, on public accommodations, by Senators HRUSKA and MAGNUSON; title III, on desegregation of public facilities, by Senators JAVITS and MORSE; title IV, on education, by Senators COOPER and DOUGLAS; title V, on the Civil Rights Commission, by Senators LONG of Missouri, and SCOTT; title VI, on nondiscrimination in federally assisted programs, by Senators COTTON and PASTORE; title VII, on equal employment opportunity, by Senators CASE and CLARK; titles VIII to XI, by Senators DODD and one or more Republicans.

3. Was President Kennedy opposed to title VI? It has been alleged that because the late President Kennedy rejected a suggestion to cut off all Federal aid to Mississippi, he was opposed to title VI, which deals with racial discrimination in federally assisted programs. Title VI is not a departure from President Kennedy's views. He said that he was opposed to "a general wholesale cutoff of Federal expenditures, regardless of the purpose for which they were being spent." Title VI does not take this approach. The only authority under title VI is to cut off Federal assistance, as a last resort, for the specific program in which there is discrimination. Assistance for one program cannot be cut off because there is discrimination in another program.

4. The constitutional basis for title I: Yesterday, it was contended that title I unconstitutionally interferes with the right of States to establish qualifications for voters. It is concerned with the fair administration of whatever qualifications are set by the States. This is to be accomplished by several provisions. First, title I says expressly that voter qualifications are to be administered without discrimination. Second, it precludes disqualification of voters for mistakes that are not relevant to the question of whether the applicant is actually qualified. Third, it provides that if a State uses literacy tests, they must be administered in writing. Finally, the title establishes a rule of evidence: if literacy is a qualification for voting, a person with a sixth-grade education will be presumed to be literate unless the State demonstrates the contrary in court.

The authority of States to set voting qualifications is subject to the provisions of the 14th and 15th amendments. Title I is concerned with covert means of denying the right to vote, and as such is clearly supported by the Supreme Court, which held that "sophisticated as well as simple-minded modes of discrimination" are forbidden. (*Lane* v. *Wilson*, 307 U.S. 268.)

BIPARTISAN CIVIL RIGHTS NEWSLETTER NO. 4—MARCH 13, 1964

(The bipartisan Senate leadership supporting the civil rights bill (H.R. 7152) headed by Senator HUBERT H. HUMPHREY and Senator THOMAS KUCHEL, will distribute this newsletter to the offices of Senators who support this legislation. This newsletter will help to keep Senators and their staffs fully informed on the civil rights bill. It will be circulated whenever circumstances warrant—daily, if necessary.)

1. A good record on quorum calls. Senate supporters of civil rights responded quickly to two quorum calls on Thursday. The first call took only 10 minutes, the second, only 16 minutes. A speedy response to quorum calls is the single most important factor in making steady progress on the bill.

2. Friday's schedule. The Senate will be in session on Friday until at least 7 p.m., and perhaps later. Civil rights supporters are urged to stay in readiness to respond to a quorum call at any time during this period.

3. Has the civil rights bill been considered by committees? Opponents of the civil rights bill have charged that the Senate is being asked to pass on civil rights legislation without the benefit of hearings and scrutiny by committees. In fact, the civil rights bill, in whole and in part, has been considered by four different committees of the Senate or House. The Senate is presently debating a motion to consider H.R. 7152. This bill was introduced in the House of Representatives last year. Subcommittee No. 5 of the House Judiciary Committee held 22 days of public hearings on H.R. 7152 and other civil rights bills. It heard 101 witnesses and received an additional 71 statements. Altogether, this testimony amounts to 2,649 pages of printed record. After the public hearings, the subcommittee studied the bill for 17 days in executive session. Subsequently the full House Judiciary Committee considered the bill in executive session for 7 days. The House Rules Committee then held 9 days of public hearings and took testimony from 39 witnesses that covered 518 pages of printed records. Furthermore, a subcommittee of the House Education and Labor Committee heard 33 witnesses in 10 days of hearings and printed 557 pages of record in connection with a fair employment provision on which title VII is partly based.

In the Senate a public accommodations bill, S. 1732, was referred to the Committee on Commerce, which held 22 days of hearings, heard 47 witnesses, took 81 additional statements, and compiled a printed record of more than 1,500 pages. Furthermore, the Senate Labor and Public Welfare Committee held 7 days of hearings on a bill to prohibit discrimination in employment, heard 55 witnesses and compiled a record of 578 pages.

Far from being unconsidered, the provisions of the civil rights bill have been the subject of lengthy and intensive scrutiny by congressional committees. All in all, 70 days of public hearings have been held, 275 witnesses have testified, an additional 152 statements have been submitted, and 5,792 pages of printed record have been compiled. This is not hasty legislation. In fact, we would like to point out that it is the result of suggestions made to the Congress by President Kennedy last June.

4. Denial of Negro voting rights: Section 1 of the 15th amendment to the Constitution states: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude."

Notwithstanding this provision of the Constitution, Negroes have been denied the right to vote in some States. This discrimination is vividly depicted in the report submitted on H.R. 7152 by seven Republican members of the House Judiciary Committee. The following figures on registered voters in sample counties are taken from page 3 of that report:

	Population over 21	Registered voters	Percent
County D:			
White	2,648	3,500	132.1
Negro	1,255	29	2.3
County E:			
White	4,116	6,130	148.9
Negro	909	56	6.1
County F:			
White	1,974	2,437	125.4
Negro	1,336	3	.2
County G:			
White	6,415	5,212	81.3
Negro	5,032	34	.7

Figures like these leave no doubt about the need for action to give Negroes the right

to vote. The constitutional power of Congress to take such action is granted by section 2 of the 15th amendment: "The Congress shall have power to enforce this article (sec. 1, quoted above) by appropriate legislation."

Under the circumstances, title I is the appropriate legislation, and it is long overdue.

BIPARTISAN CIVIL RIGHTS NEWSLETTER NO. 5—MARCH 14, 1964

(The bipartisan Senate leadership supporting the civil rights bill, H.R. 7152, headed by Senator HUBERT H. HUMPHREY and Senator THOMAS KUCHEL, will distribute this newsletter to the offices of Senators who support this legislation. This newsletter will help to keep Senators and their staffs fully informed on the civil rights bill. It will be circulated whenever circumstances warrant, daily, if necessary.)

1. Box score on quorum calls: Eighteen and 21 were all the minutes required Friday to respond to two quorum calls. All Senators have high expectations for Saturday. Remember our credo: "Every quorum a live quorum," particularly today.

2. Area of controversy narrowed: There were early indications that differences of opinion existed as to the merits of title VI. Apparently these were unfounded. Observe the following colloquy:

Mr. ROBERTSON. I do not know that any Federal money is given to support racial discrimination.

Mr. HART. Then we should cut it off when we find it being practiced. Does the Senator agree?

Mr. ROBERTSON. If it is found that racial discrimination is deliberately practiced by someone in a program which the Federal Government is financing: yes (45 CONGRESSIONAL RECORD, 4911.)

This clarifying exchange well exemplifies the value of positive participation in the floor discussion by civil rights supporters.

3. Schedule for Saturday and Monday: Saturday's schedule calls for the Senate to be in session from 12 until approximately 6. The Senate will begin its session on Monday at 11 a.m.

4. The 1883 civil rights cases and the commerce clause: Friday's discussion on the floor once again amply displayed the assertion that the commerce power granted Congress by the Constitution will not support provisions such as those in title II. Careful reading of the decision of the Court in the civil rights cases indicates that the public accommodations statute of 1875 could have been sustained if based on article 1, section 8, clause 3 (commerce clause) of the Constitution. The majority opinion of the Court in the 1883 decision carefully stated that they were not foreclosing a statute based on the broad powers of Congress such as are found in the commerce clause. Mr. Justice Bradley wrote: "Of course, these remarks do not apply to those cases in which Congress is clothed with direct and plenary powers of legislation over the whole subject, accompanied with an express or implied denial of such power to the States, as in the regulation of commerce with foreign nations, and among the several States and with the Indian tribes, the coining of money, the establishment of post offices and post roads, the declaring of war, etc. In these cases Congress has power to pass laws for regulating the subjects specified in every detail, and the conduct and transactions of individuals in respect thereof" (109 U.S. 3, 18 (1883)).

BIPARTISAN CIVIL RIGHTS NEWSLETTER NO. 6—MARCH 16, 1964

(The bipartisan Senate leadership supporting the civil rights bill, H.R. 7152, headed by Senator HUBERT H. HUMPHREY and Senator THOMAS KUCHEL, will distribute this newsletter to the offices of Senators who support this legislation. This newsletter will help to keep Senators and their staffs fully informed on the civil rights bill. It will be distributed whenever circumstances warrant—daily, if necessary.)

1. Fine record on quorum calls: Civil rights supporters have continued to meet quorum calls successfully. Only 31 minutes were required to meet the quorum called shortly after noon Saturday. The session today will mark the 7th day of the debate on the majority leader's motion that the Senate proceed to consider H.R. 7152.

2. Schedule for Monday: The Senate will begin its session today at 11 a.m. and stay in session until about 8:30. As the week progresses the Senate will convene its sessions earlier each day and continue longer each evening. A Saturday session is planned.

3. Schedules for Senators: Schedules are being drafted that will provide for the presence of at least four civil rights supporters on the floor each day to participate in debate and questioning. This will, of course, be a bipartisan effort and schedules will be distributed as soon as completed—probably early this week.

4. The high cost of racial discrimination to our economy: In September 1962, the Council of Economic Advisers released a statement on the "Economic Costs of Racial Discrimination in Employment." The Council's estimate is that gross national product might rise by 2.5 percent if the present educational achievement of nonwhites were fully utilized by removal of discrimination in employment. If, in addition, nonwhites attained as much education as whites and there were no barriers to their employment, gross national product might rise by 3.2 percent; i.e., $17 billion at today's levels of gross national product. This, of course, in no way measures the heaviest cost of all—the loss of human dignity accompanying racial discrimination.

BIPARTISAN CIVIL RIGHTS NEWSLETTER NO. 7—MARCH 17, 1964

(This bipartisan Senate leadership supporting the civil rights bill, H.R. 7152, headed by Senator HUBERT H. HUMPHREY and Senator THOMAS KUCHEL, will distribute this newsletter to the offices of Senators who support the legislation. This newsletter will help to keep Senators and their staffs fully informed on the civil rights bill. It will be distributed whenever circumstances warrant—daily, if necessary.)

1. Dinner-hour quorum call stretches to 67 minutes: After two afternoon quorum calls where civil rights Senators responded promptly, a quorum call begun at 6:27 p.m. ran until 7:34 p.m. before 51 Senators responded to their names. Senators should expect that quorum calls will take place frequently during the dinner hour, particularly as the evening sessions lengthen. The more promptly that Senators respond to such quorum calls the more efficiently we can proceed with the civil rights legislation. Each Senate office should be fully informed where its Senator can be located for quorum calls in the evening hours.

2. Schedule for Tuesday: The Senate session will begin at 11:00 a.m. and continue until at least 9:00 p.m. Senators should expect live quorums at any time when the Senate is in session.

3. Civil rights groups visit Washington: From time to time during the Senate debate on civil rights bill, civic, religious, and other groups will come to Washington to express their support for the objectives of the bill. The first of these visits is already underway. The Committee for Racial Justice Now and the Council for Christian Social Action, both agencies of the United Church of Christ (Congregational), are here Monday through Wednesday of this week. More than a hundred religious leaders from all parts of the country are meeting at the First Congregational Church of Washington, 10th and G Streets NW. At 7:30 tonight, the Reverend Ben Herbster of Ohio, President of the United Church of Christ, will conduct a worship service on behalf of civil rights.

4. Quote without comment: "This year we've probably added $8 to $10 million of future bookings because we're integrated."—Ray Bennison, convention manager of the Dallas Chamber of Commerce, quoted in the Wall Street Journal, July 15, 1963.

5. Opponents of the civil rights bill have strongly criticized title II, on racial discrimination in public accommodations, as an unprecedented violation of private property rights. As a matter of fact, such measures are not a new departure in American law. They have been adopted in 31 States and dozens of cities, and in many cases have been on the books for 10 years or more. Most of them are far tougher than title II, and are broader in coverage. Many of these laws allow criminal sanctions for violations and permit injured parties to sue for recovery of damages. Furthermore, their constitutionality against claims that they violate due process private property rights has been sustained by Supreme Court decisions. See *Bob-Lo Excursion Company* v. *Michigan*, 333 U.S. 28 (1948); and *District of Columbia* v. *Thompson Company*, 346 U.S. 100 (1953). Following is a list of States with public accommodations laws: Alaska, California, Colorado, Connecticut, Delaware, Idaho, Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Vermont, Washington, Wisconsin, and Wyoming.

BIPARTISAN CIVIL RIGHTS NEWSLETTER NO. 8—MARCH 18, 1964

(The bipartisan Senate leadership supporting the civil rights bill, H.R. 7152, headed by Senator HUBERT H. HUMPHREY and Senator THOMAS KUCHEL, will distribute this newsletter to the offices of Senators who support the legislation. This newsletter will help to keep Senators and their staffs fully informed on the civil rights bill. It will be distributed whenever circumstances warrant—daily, if necessary.)

1. Quorum calls quickly met: on the ninth day of debate on the majority leader's motion that the Senate proceed to consider H.R. 7152, civil rights proponents continued to meet quorum calls successfully. The first was completed in 13 minutes and the second, at 7 p.m., in 25 minutes.

2. Schedule for Senators for balance of week:

WEDNESDAY, MARCH 18

Democrats: HUMPHREY, DOUGLAS, BURDICK, WILLIAMS of New Jersey, CHURCH. Republicans: JAVITS, FONG.

THURSDAY, MARCH 19

Democrats: HUMPHREY, MAGNUSON, MCINTYRE, PELL, KENNEDY. Republicans: HRUSKA, ALLOTT.

FRIDAY, MARCH 20

Democrats: HUMPHREY, DODD, NELSON, KENNEDY, METCALF. Republicans: KEATING, JORDAN.

SATURDAY, MARCH 21

Democrats: HUMPHREY, HART, CHURCH, PELL. Republicans: CASE, PROUTY.

Republican Senators find that any conflicts as to time arise, they are to contact Mark Trice or Bill Brownrigg at extension 3835 or 6191.

Democratic Senators' assignments have been chosen on the basis of information previously submitted by each Senator on dates his services would be available. It is assumed that each Senator will assume the

responsibility for obtaining a replacement if a conflict in schedule subsequently arises. In such a case, they are to notify Jane Low at extension 2424.

3. Another concession on voting right denials: Again there was an indication that differences on the facts about voting rights denials are smaller than one would have expected. In a colloquy on March 16, the following occurred:

Mr. RUSSELL. Mr. President, as I have said, the issue of voting rights has been exaggerated out of all proportion. In some counties in Southern States there has been rank discrimination against Negroes in voting.

Mr. COOPER. I did not intend to get into a debate on the question of voter registration. But I believe the fact that persons do not exercise their right to vote is not an argument for continuing a policy of preventing them for voting.

Mr. RUSSELL. It is no excuse whatever (48 CONGRESSIONAL RECORD 5175).

BIPARTISAN CIVIL RIGHTS NEWSLETTER NO. 9—MARCH 19, 1964

(The bipartisan Senate leadership supporting the civil rights bill (H.R. 7152), headed by Senator HUBERT H. HUMPHREY and Senator THOMAS KUCHEL, will distribute this newsletter to the offices of the Senators who support the legislation. This newsletter will help to keep Senators and their staffs fully informed on the civil rights bill. It will be distributed whenever circumstances warrant—daily, if necessary.)

1. Thursday schedule: The Senate session will begin at 11 a.m. today and will continue until about 5:30 p.m. Senators should expect live quorum calls at any time today.

2. Quote without comment: "That a Federal law prohibiting racial discrimination in retail outlets would be helpful to retailers in localities where segregation is still required by local law or local custom would seem to be rather obvious * * * once the elimination of segregated facilities becomes universal, the great majority of our people may be expected to accept the new conditions even though not everyone will welcome them. In that event, retailers and restaurant operators would no longer be forced to take sides and suffer the consequences in the shape of lost sales as they are in so many areas under present conditions." From the July 1963 issue of Chain Store Age.

3. Defining discrimination: Critics of the civil rights bill have charged that the word "discrimination" is left undefined in the bill and therefore the door is open for interpretation of this term according to "whim or caprice." There is no mystery or vagueness about the word "discrimination" as it is used in the bill. Retired Supreme Court Justice Charles E. Whittaker, in an article which Senator THURMOND has described as "very enlightening" (CONGRESSIONAL RECORD, March 17, p. 5437), observes that "The meaning of the term 'discrimination' in its legal sense, is not different from its dictionary meaning." Webster's New Collegiate Dictionary (2d ed., 1951), says that discrimination is "a distinction, as in treatment; especially, an unfair or injurious distinction."

The term "discrimination" is used in a number of statutes without definition. The Interstate Commerce Act (219 U.S.C. 316d) states that it shall be "unlawful * * * to subject any particular person * * * to any unjust discrimination." Similarly, the Federal Aviation Act (49 U.S.C. 1375b) provides that no air carrier shall "subject any particular person * * * to any unjust discrimination."

There is no sound basis for uncertainty about the meaning of discrimination in the context of the civil rights bill. It means a distinction in treatment given to different individuals because of their different race, religion, or national origin.

4. Separate but equal? The Supreme Court decided in *Brown* v. *Board of Education* that racially segregated public schools are inherently unequal. Opponents of the civil rights bill have continued to defend segregated schools, but have insisted that these systems provide "separate but equal" facilities for white and Negro students. How true is this claim? We have been able to find figures comparing per-pupil expenditures for whites and Negroes in six Southern States. In five of these six States the amounts spent on Negro public schools are markedly less than those spent on white schools. These figures show the extent to which Negro taxpayers are shortchanged when it comes to public education.

Annual expenditure per pupil

	White	Negro
Alabama	$182.68	$161.77
Arkansas	246.68	197.00
(Computed on average daily attendance.)		
Louisiana	234.00	182.00
North Carolina	172.00	165.00
Mississippi	173.42	117.10

BIPARTISAN CIVIL RIGHTS NEWSLETTER, NO. 10—MARCH 20, 1964, THE 11TH DAY OF DEBATE ON THE MANSFIELD MOTION

(The bipartisan Senate leadership supporting the civil rights bill (H.R. 7152), headed by Senator HUBERT H. HUMPHREY and Senator THOMAS KUCHEL, will distribute this newsletter to the offices of Senators who support the legislation. This newsletter will help to keep Senators and their staffs fully informed on the civil rights bill. It will be distributed whenever circumstances warrant—daily, if necessary.)

1. More fast work on quorums: On the 10th day of debate on the majority leader's motion to consider the civil rights bill, the bill's supporters took an average time of only 15 minutes to respond to two quorum calls.

2. "Educational debate" continues: Yesterday morning Senator MANSFIELD propounded a unanimous consent agreement that the Senate vote on Monday on his motion to consider the civil rights bill. He pointed out that the past 10 days' debate has in fact been concerned with the pros and cons of the bill, and that the Senate should acknowledge this reality by proceeding directly to consideration of the proposed legislation. Senator RUSSELL objected.

3. Friday's schedule: The Senate will be in session from 11 this morning until at least 9 this evening. Senators should expect live quorum calls at any time today. There will be a session this Saturday and there will be live quorums.

4. Separate but note quite equal: According to the Virginia Supreme Court, a drugstore in Danville refused to serve Coca-Cola to Negroes. The store was willing to serve Negroes Pepsi-Cola, but not in glasses, only in paper cups, for which there was an additional 1-cent charge. See *Cook* v. *Patterson Drug Co.*, 185 Va. 516, 39 S.E. 2d 304 (1946).

5. Quote without comment: "Simple justice requires that public funds, to which all taxpayers of all races contribute, not be sent in any fashion which encourages, entrenches, subsidizes, or results in racial discrimination." President Kennedy's civil rights message, June 19, 1963.

6. Desegregation isn't so bad after all: El Paso, Tex., was the first city in any Southern State to adopt a comprehensive public accommodations ordinance. Mr. Richard Marshall, an attorney in El Paso, described his city's experience with this new law:

"Our experience has been gratifying. Our four aldermen were all in favor of it, but the mayor vetoed it and the ordinance was passed over his veto. There was no violence, there were no demonstrations, and there was acceptance of the ordinance by the hotels, theaters, and restaurants of El Paso. Many of the theaters and restaurants welcomed with relief the passage of the ordinance, since they had the force of law behind their natural desire to serve all patrons without causing arguments on their business premises.

"I do not think that even the most fervent 1962 opponents of the ordinance among the restaurants and hotel people would today be able to state that this legislation had either harmed their business, taken any of their property or profits from them, deprived them of any of their liberties, or created any super police power in the community."

BIPARTISAN CIVIL RIGHTS NEWSLETTER NO. 11—MARCH 21, 1964, THE 12TH DAY OF DEBATE ON THE MAJORITY LEADER'S MOTION THAT THE SENATE PROCEED TO CONSIDER H.R. 7152

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1. Quorum scoreboard: There were two quorum calls on Friday requiring 19 minutes the first time and 22 minutes the second. Once again optimism runs high for Saturday's session, which will begin at 11 a.m.

2. Schedule for next week: On Monday the session will begin at 10 a.m. pursuant to recess and run later into the evening than during the preceding week. The 10 o'clock starting time and late recesses are expected to be the rule for the whole week through Thursday with an Easter recess anticipated for Friday and Saturday. The Senate will be in session, however, on Monday, March 30.

3. Two public officials comment on need for public accommodations legislation: Opponents of title II contend that voluntary efforts toward desegregation of public accommodations would be peaceful and successful, therefore, Federal legislation not necessary. During the course of the Senate committee hearing on the public accommodations bill, Gov. George Wallace of Alabama disagreed. Governor Wallace made the following reply to a question about the likelihood of voluntary desegregation of public establishments in Alabama:

"No, sir; they can integrate. Let them go ahead and integrate. One or two have talked about integrating in Birmingham, Ala. They have had Negro boycotts, now they have white boycotts."

Another public official who appeared as a witness at the Senate committee hearings, Mayor Ivan Allen, Jr., of Atlanta, Ga., prophesied the possible futility of past progress if Congress fails to enact this measure.

"Surely the Congress realizes that after having failed to take any definite action on this subject in the last 10 years, to fail to pass this bill would amount to an endorsement of private business setting up an entirely new status of discrimination throughout the Nation. Cities like Atlanta might slip backward.

"Hotels and restaurants that have already taken this issue upon themselves and opened their doors might find it convenient to go back to the old status. Failure by Congress to take definite action at this time is by inference an endorsement of the right of the private business to practice racial discrimination, and in my opinion, would start the same old round of squabbles and demonstrations that we have had in the past."

BIPARTISAN CIVIL RIGHTS NEWSLETTER NO. 12—MARCH 23, 1964, THE 13TH DAY OF DEBATE ON THE MOTION OF THE MAJORITY LEADER THAT THE SENATE PROCEED TO CONSIDER H.R. 7152

(The bipartisan Senate leadership supporting the civil rights bill (H.R. 7152), headed

by Senator HUBERT H. HUMPHREY and Senator THOMAS KUCHEL, will distribute this newsletter to the offices of Senators who support the legislation. This newsletter will help to keep Senators and their staffs fully informed on the civil rights bill. It will be distributed whenever circumstances warrant—daily, if necessary.)

1. Quorum scoreboard: The quorum on Saturday was achieved within 24 minutes of the call. This was 7 minutes faster than the preceding Saturday.

2. Schedule for Monday and Tuesday: The session will begin at 10 a.m. today and tomorrow and is expected to recess at or near 10 p.m. each evening. The bipartisan floor managers and captains are as follows:

DEMOCRATIC CAPTAINS

For Monday: All day, Senator HUMPHREY; convene, 1, Senator LONG of Missouri; 1–4, Senator MCINTYRE; 4–7, Senator NELSON; 7–recess, Senator BAYH.

For Tuesday: Senator HUMPHREY, Senator CLARK, Senator BURDICK, Senator KENNEDY, Senator DODD.

REPUBLICAN CAPTAINS

For Monday: Senator COTTON, Senator BOGGS.

For Tuesday: Senator HRUSKA, Senator BENNETT.

3. Easter recess: The Senate will recess Thursday, March 26 and meet again on Monday, March 30. Full sessions are anticipated for Thursday and Monday.

4. The necessity for equal employment opportunity: "The average nonwhite (male) with 4 years of college can expect to earn less over a lifetime than the white (male) who did not go beyond the eighth grade," according to a study made by the Bureau of Census, Department of Commerce. This conclusion was based upon the following figures contained in the study:

Estimated lifetime earnings of males, by color (earnings from age 18 to 64)

Highest grade completed	White	Nonwhite	Nonwhite as percent of white
Total	$241,000	$122,000	51
Elementary school:			
Less than 8 years	157,000	95,000	61
8 years	191,000	123,000	64
High school:			
1 to 3 years	221,000	132,000	60
4 years	253,000	151,000	60
College:			
1 to 3 years	301,000	162,000	54
4 years	395,000	185,000	47
5 years or more	466,000	246,000	53

BIPARTISAN CIVIL RIGHTS NEWSLETTER NO. 13—MARCH 24, 1964

(The bipartisan Senate leadership supporting the civil rights bill, H.R. 7152, headed by Senator HUBERT H. HUMPHREY and Senator THOMAS KUCHEL, will distribute this newsletter to the offices of Senators who support the legislation. This newsletter will help to keep Senators and their staffs fully informed on the civil rights bill. It will be distributed whenever circumstances warrant—daily, if necessary.)

1. Monday's quorum performance: Three quorum calls were answered in an average of 18 minutes.

2. Tuesday's schedule: The Senate session will begin at 10 o'clock this morning and will continue until 10 o'clock this evening. Senators should expect live quorum calls at any time during the session.

3. It's not easy to get the color right: The application form for voter registration in Louisiana includes a blank space in which the applicant must list his color. In Beinville Parish, Negroes were purged from the voting rolls for having answered this question with any of the following words: "Negro," "Brown," "Colored," or "Dark." The registrar of Beinville Parish testified in Federal Court that she would reject Negro applicants who filled in the blank with the word "Negro." Her reason for this position was that Negro is not a color but a race. In adjoining Jackson Parish the registrar testified in Federal Court that she rejected applicants who stated that they were brown; in Jackson Parish "Negro" is the accepted answer. In Orleans Parish it is acceptable to answer the question with either "Negro," or "Colored," but not with "Brown" or "Black." (Incidentally, in many of the courthouses in these parishes where registration occurs there are separate restrooms for Negroes and white labeled "White" and "Colored."

SEC. 101(a)(2)(B) of the civil rights bill prohibits denying "the right of any individual to vote in any Federal election because of an error or omission of such individual on any record or paper relating to any application, registration, payment of poll tax, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election."

4. A closer look at "separate but equal" education in Mississippi: Last week we presented figures showing that the average annual expenditure (computed by dividing the average daily attendance into the total instructional cost) for Negro pupils in the Mississippi school system was $117.10, compared to $173.42 for white pupils. Other data on public education in Mississippi came to light. These figures, all taken from official reports of the State of Mississippi, disclose the extent to which Negro students are given inferior educational opportunities. Negro teachers get lower pay and have larger classes, thus making it more difficult for students to get adequate individual attention. More than half of all Negro elementary schools and almost a quarter of all Negro high schools do not meet even the accreditation standards of the State of Mississippi itself.

Average annual salary of classroom teachers, 1961–62

White	$3,742.39
Negro	3,236.75

Source: Statistical Data, School Session 1961–62, Mississippi State Department of Education (1962), p. 42.

PUPIL-TEACHER RATIO

White: 1 teacher for each 23 pupils.
Negro: 1 teacher for each 28.5 pupils.

Source: Ibid., pp. 1, 39; computed on the average daily attendance.

Percentage of public schools accredited by the State of Mississippi

[Percent]

	White	Negro
Elementary schools	96.9	44.3
Junior high schools	100.0	89.7
High schools	100.0	76.3

Source: Biennial Report and Recommendations of the State Superintendent of Public Education to the Legislature of Mississippi for the Scholastic Years 1959–60 and 1960–61, p. 137.

BIPARTISAN CIVIL RIGHTS NEWSLETTER NO. 14—MARCH 25, 1964, THE 15TH DAY OF DEBATE ON THE MAJORITY LEADER'S MOTION THAT THE SENATE CONSIDER H.R. 7152

(The bipartisan Senate leadership supporting the civil rights bill, H.R. 7152, headed by Senator HUBERT H. HUMPHREY and Senator THOMAS KUCHEL, will distribute this newsletter to the offices of Senators who support this legislation. This newsletter will help to keep Senators and their staffs fully informed on the civil rights bill. It will be distributed whenever circumstances warrant—daily, if necessary.)

1. Quorum scoreboard: Senate supporters of civil rights continued their fast work on quorums, making three calls on Tuesday in the average time of 19 minutes.

2. Schedule for Wednesday: The session will begin at 10 this morning and will continue until late this evening. Senators should expect live quorums at any time during the day.

3. From the UPI ticker: "Senate leaders agreed informally today to vote Thursday on the twin issues of taking up the civil rights bill and referring it to committee for a 10-day study.

"Senator KEATING, Republican, of New York, told the Senate that his mail, which once had run 50–50, now was running 4 to 1 in favor of the rights bill."

4. Quote without comment: "Mr. SMATHERS. I do not deny that there has been infringement of the right to vote." (CONGRESSIONAL RECORD, March 23, p. 5995.)

5. Support for civil rights in Iowa: In a few days in the early part of March citizens of Des Moines wrote over 1,600 letters to their two Senators in support of the civil rights bill.

6. Equal rights in Alabama: Applicants for voter registration in the State of Alabama are required to fill out a lengthy form. One of the trickier questions reads, "Will you give aid and comfort to the enemies of the United States or the government of the State of Alabama?" One white applicant replied, "If hurt would give comfort only if wonded [sic]." He passed. On the other hand, Alabama registrars have "found" Negro professors, scientists, and graduate students to be illiterate.

7. Opponents of the civil rights bill sometimes give listeners the impression that the bill's provisions against racial discrimination in employment are a dangerous and tyrannical departure from all hitherto existing American experience. In fact, laws prohibiting discrimination in employment have been adopted in 25 States. Many of these State laws go a good deal further than title VII of H.R. 7152. They provide criminal penalties for violations, are broader in coverage, and give enforcement powers to administrative or quasi-judicial agencies. On the other hand, H.R. 7152 does not provide for criminal penalties, is restricted to establishments that affect commerce and have 25 or more employees, and give enforcement powers only to the Federal courts. The following 25 States have fair employment practice laws: Alaska, California, Colorado, Connecticut, Delaware, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Massachusetts, Michigan, Minnesota Missouri, New Jersey New Mexico, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Vermont, Washington, Wisconsin.

BIPARTISAN CIVIL RIGHTS NEWSLETTER NO. 15—MARCH 26, 1964, THE 16TH DAY OF DEBATE ON THE MOTION OF THE MAJORITY LEADER THAT THE SENATE PROCEED TO CONSIDER H.R. 7152

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1. Quorum scoreboard: There was one quorum call on Wednesday which required 24 minutes to meet. With full attendance expected today, our record should be even better.

2. Schedule for Thursday: The Senate will meet at 9 a.m. today and there will be no morning hour. The vote on the Mansfield motion to take up the civil rights bill is expected shortly after the Senate convenes, and the vote on the Morse motion to send the bill to the Judiciary Committee will be taken during the afternoon. At the close of business on Thursday, the Senate will recess for the Easter holidays until Monday.

3. Discrimination by ordinance: A number of cities and States require racial segregation in places of public accommodation. For example, in Birmingham, Ala., it is against the law for any restaurant to serve whites and Negroes in the same room unless they are "separated by a solid partition extending from the floor upward to a distance of 7 feet or higher, and unless a separate entrance from the street is provided for each compartment."

In Durham, N.C., the city code requires separate rooms for Negroes and whites in any public eating place which serves both races. "The partition between such rooms shall be constructed of wood, plaster, or brick, or like material, and shall reach from floor to the ceiling."

A State law in Oklahoma requires the telephone company to provide separate phone booths for each race at the request of a particular locality. In Texas, Tennessee, and Oklahoma, coal mine operators must provide separate bath and locker facilities for Negroes. An Arkansas law requires that race tracks must provide segregated seating, and Louisiana and South Carolina both have specific laws requiring separate entrances and seating at circuses.

4. Literacy tests: In an article in the March 26 edition of the Reporter, John and E. W. Kenworthy set forth this example of voter registration procedures in Mississippi. The Reverend James C. Chandler, a Negro minister, failed to qualify to vote in Hattiesburg because he had given the year of his birth on an application, but not his age. John Cecil McMillan, white, of George County, applied and was asked the following questions:

Question. What does the phrase "There shall be no imprisonment for debt" mean?

Answer. I thank that a Neorger shall have 2 years in college before voting, because he don't under stand?

Question. What are the duties and obligations of citizenship?

Answer. Under Standing of pepper and Government ship Bessing.

Mr. McMillan passed the test and is registered to vote.

BIPARTISAN CIVIL RIGHTS NEWSLETTER NO. 16—MARCH 27, 1964, THE 17TH DAY OF DEBATE SINCE THE MAJORITY LEADER MOVED THAT THE SENATE PROCEED TO CONSIDER H.R. 7152

(The bipartisan Senate leadership supporting the civil rights bill (H.R. 7152), headed by Senator HUBERT H. HUMPHREY and Senator THOMAS KUCHEL, will distribute this newsletter to the offices of Senators who support the legislation. This newsletter will help to keep Senators and their staffs fully informed on the civil rights bill. It will be distributed whenever circumstances warrant—daily, if necessary.)

1. Quorum scoreboard: There were three quorum calls on Thursday. The first required 18 minutes to meet, and the second, 12. The third was withdrawn by unanimous consent after 2 minutes.

2. Votes: By a vote of 67 to 17 the motion to take up the bill was passed. By a vote of 50 to 34 the Morse motion to refer the bill to committee was tabled.

3. Schedule for Monday: The Senate will meet at noon and there will be a morning hour.

4. The Motorola case: A recent decision attributed to the Illinois FEPC in the case of *Myart* v. *Motorola, Inc.*, has been repeatedly cited as an example of the lengths to which the proposed Equal Employment Opportunity Commission might be expected to go. In that case, the hearing examiner found that an employment test was "obsolete" because its norm was derived from standardization on advantaged groups, and he ordered Motorola to cease using the test.

The facts: 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, unlike the Illinois commission, the Equal Employment Opportunity Commission established by title VII would have no adjudicative functions and no authority to issue enforcement orders. 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. But it expressly protects the employer's right to insist that any applicant meet the applicable job qualifications.

BIPARTISAN CIVIL RIGHTS NEWSLETTER NO. 17—MARCH 30, 1964

(The bipartisan Senate leadership supporting the civil rights bill (H.R. 7152), headed by Senator HUBERT HUMPHREY and Senator THOMAS KUCHEL, will distribute this newsletter to the offices of Senators who support the legislation. This newsletter will help to keep Senators and their staffs fully informed on the civil rights bill. It will be distributed whenever circumstances warrant—daily, if necessary.)

1. Schedule for the week: Today the Senate will convene at noon and continue until about 9. Tuesday through Thursday the sessions will begin at 11 a.m. and run until approximately 10 p.m. Friday and Saturday the sessions will begin some time earlier than 11 a.m.

2. Presentation of the case for H.R. 7152: As the civil rights bill is now officially before the Senate for consideration, the proponents of this legislation will begin an affirmative presentation of the need for the provisions of the bill. Senators HUMPHREY and KUCHEL will lead off this effort today with an explanation of the considerations requiring enactment of the bill and a description of each title. Subsequently, each title of the bill will be the subject of detailed explanation by the bipartisan leaders assigned to each title. This will encourage an organized consideration of the bill title by title.

3. FLOOR MANAGERS FOR MONDAY AND TUESDAY

For Monday: All day: Senator HUMPHREY.
Convene, 1: Senator DOUGLAS.
1–4: Senator CHURCH.
4–7: Senator RIBICOFF.
7–recess: Senator KENNEDY.
For Tuesday: All day: Senator HUMPHREY.
Convene, 1: Senator LONG of Missouri.
1–4: Senator MCINTYRE.
4–7: Senator MOSS.
7–recess: Senator NELSON.

4. Excerpt from report of Labor and Public Welfare Committee: "The startling fact is that one out of every five of the unemployed and one out of every four of the long-term, hard-core unemployed is nonwhite. Stated somewhat differently, approximately 900,000 of the 7 million nonwhites in the labor force are unemployed, a figure which represents more than 22 percent of the total unemployed figure. Thus although Negro and other nonwhite Americans constitute only 10 percent of the labor force, they make up more than twice that figure in the ranks of the unemployed" (S. Rept. No. 867, p. 6).

BIPARTISAN CIVIL RIGHTS NEWSLETTER NO. 18—MARCH 31, 1964

(The bipartisan Senate leadership supporting the civil rights bill (H.R. 7152), headed by Senator HUBERT H. HUMPHREY and Senator THOMAS KUCHEL, will distribute this newsletter to the offices of Senators who support the legislation. This newsletter will help to keep Senators and their staffs fully informed on the civil rights bill. It will be distributed whenever circumstances warrant—daily, if necessary.)

1. An orderly debate on the bill: Now that the civil rights bill has been made the pending business of the Senate, its proponents intend to discuss the merits of the legislation in an orderly manner, taking up each title in sequence.

Yesterday, general opening statements in support of the bill were made by the two overall bipartisan leaders, Senators HUMPHREY and KUCHEL. No affirmative presentations have been scheduled for today, on the assumption that the opponents of the bill would desire an early opportunity to respond to yesterday's speeches.

It is anticipated that the affirmative case for title I (voting rights) will be made on Wednesday. Senator KEATING, the Republican floor captain in charge of title I, will open the presentation, and Senator HART, his Democratic counterpart will follow. The bipartisan proponents of the bill hope that the ensuing debate will be germane to the provisions of title I, so as to sharpen the issues raised and enhance public understanding of them.

No firm date has yet been set for the presentation of the affirmative case for title II (public accommodations). The schedule of those Senators who have been assigned the responsibility for presenting the case for the various titles follows:

	Democrats	Republicans
Title I (voting rights)	Hart	Keating.
Title II (public accommodations).	Magnuson.	Hruska.
Title III (public facilities)	Morse	Javits.
Title IV (school desegregation)	Douglas	Cooper.
Title V (Civil Rights Commission).	Long of Missouri.	Scott.
Title VI (federally assisted programs).	Pastore	Cotton.
Title VII (equal employment opportunity).	Clark	Case.
Titles VIII through XI	Dodd	

2. Need to maintain quorums continues. The change in the parliamentary situation brought about by the adoption of the motion to take up the civil rights bill and the adjournment of the Senate last week, have not altered the need to keep a quorum continuously available when the Senate is in session. Senators are earnestly requested to continue to abide by the quorum duty schedules, and to procure substitutes for any period when they cannot be present to answer quorum calls.

3. This week's floor manager schedule. Although the proponents of the bill are now making the affirmative case and debating the bill on the merits, Senators who have been

scheduled for floor duties should nevertheless plan to be present on the floor at assigned times. The schedule for the remainder of the week follows:

	Today	Wednesday, Apr. 1	Thursday, Apr. 2	Friday, Apr. 3	Saturday, Apr. 4
DEMOCRATS					
All day	Humphrey	Humphrey	Humphrey	Humphrey	Humphrey
Convene to 1 p.m	Long of Missouri	Clark	Hart	Douglas	Magnuson
1 to 4 p.m.	McIntyre	Bayh	Brewster	Burdick	McCarthy
4 to 7 p.m.	Moss	Kennedy	Muskie	Williams	Dodd
7 p.m. to recess	Nelson	Pell	McCarthy	Clark	McGovern
REPUBLICANS					
All day	Kuchel	Kuchel	Kuchel	Kuchel	Kuchel
	Javits	Cotton	Case	Dominick	(1)
	Jordan	Cooper	Saltonstall	(1)	(1)

[1] To be announced.

BIPARTISAN CIVIL RIGHTS NEWSLETTER NO. 19, APRIL 1, 1964

(The bipartisan Senate leadership supporting the civil rights bill (H.R. 7152), headed by Senator HUBERT H. HUMPHREY and Senator THOMAS KUCHEL, will distribute this newsletter to the offices of Senators who support the legislation. This newsletter will help to keep Senators and their staffs fully informed on the civil rights bill. It will be distributed whenever circumstances warrant—daily, if necessary.)

1. Quorum scoreboard. Senate supporters of civil rights may have gotten rusty after the Easter recess. It took them fully 20 minutes to make the only quorum call on Tuesday. Now that the debate on the bill has actually begun, it is more important than ever to make quorums quickly. All deliberate speed is not fast enough.

2. Wednesday's schedule. The session will begin at 11 this morning and will continue until at least 8 this evening. Senators should expect live quorums at any time while the Senate is in session. Senators KEATING and HART will make a detailed presentation of the positive case for Title I (Voting Rights) today.

3. The schedule for the rest of the week. Senators MORSE and JAVITS will speak in favor of Title III (Desegregation of Public Facilities) on Thursday and Friday whenever discussion of title I is completed.

4. More on "Separate but Equal." Dr. Max Seham, a distinguished doctor in Minneapolis, has written two authoritative articles on racial discrimination in hospitals. Below are some passages from his articles, which make clear the tragic consequences of racial prejudice:

"Infant mortality rates reflect the contrast in available medical services. In Minnesota, in 1960, the infant mortality rate for whites was 21.6 and for nonwhites, 22.6; while in Mississippi, it was 26.6 for white infants and 54.3 for nonwhites.

"There is no question that if the same care were available to Negroes in Mississippi and other Southern States as in Minnesota and other Northern States, Negro morbidity and mortality rates could be sharply reduced and vast human waste and suffering could be prevented. There is no use to belabor the point: Factors responsible for this shocking injustice are poverty, lack of Negro doctors, exclusion of Negroes from first-class 'white' hospitals.

"There is no need to describe in detail the many tragedies attributable to discrimination by 'white' hospitals against Negroes. Women in labor have been compelled to deliver on cold sidewalks outside of 'white hospitals.' Victims of accidents have repeatedly been given first aid for skull fractures or other injuries, only to be sent away from 'white' hospitals to inadequate Negro hospitals where death has often followed.

"The most publicized of such inhuman treatment was that of the father of Walter White, the executive secretary of the National Association for the Advancement of Colored People. The elder White was run over by a white physician's car on the streets of Atlanta, and taken to a 'white' hospital. White was not recognized as a Negro, and he was given the best emergency treatment, but when Walter White, his son, identified him, the father was hustled to a Negro hospital. He died in 24 hours.

"It seems incredible that in the year 1964, in the United States of America, such barbaric treatment of Americans exists. But let the record speak for itself:

"In Atlanta * * * of 4,500 available hospital beds, only 630 are available to Negroes, although 50 percent of the population is Negro.

"In Birmingham, Ala., the city where dogs were unleashed against colored children, area hospitals have allocated 1,762 beds to whites and 574 to Negroes, although about 40 percent of the population is colored."

BIPARTISAN CIVIL RIGHTS NEWSLETTER NO. 20—APRIL 2, 1964

(The bipartisan Senate leadership supporting the civil rights bill, H.R. 7152, headed by Senator HUBERT H. HUMPHREY and Senator THOMAS KUCHEL, will distribute this newsletter to the office of Senators who support the bill. This newsletter will help to keep Senators and their staffs informed on the bill. It will be distributed whenever circumstances warrant—daily, if necessary.)

1. Quorum scoreboard: Something must have happened to civil rights Senators over the Easter recess. They responded to the first quorum call on Wednesday in the mediocre time of 22 minutes, and then disaster struck. It took 1 hour and 2 minutes to make a quorum late in the afternoon. This is the outstanding victory of the week for the opposition.

2. Thursday's schedule: The session will begin at 11 this morning and will continue until at least 9 this evening. Senators should expect live quorums at any time. Senators JAVITS and MORSE will present the affirmative case on title III (desegregation of public facilities).

3. The rest of the week: The Senate will meet at 11 every day for the remainder of the week, including Saturday.

4. Quote without comment: Mr. THURMOND. "It is clear that the 14th amendment was never lawfully submitted or lawfully ratified. Therefore, I deny that the 14th amendment is a lawful amendment." CONGRESSIONAL RECORD, March 31, 1964, page 6662.

A SHORT COURSE ON TITLE I

A. The need for title I: In many States Negroes are not allowed to vote. Even such opponents of the civil rights bill as Senators ELLENDER, RUSSELL, and SMATHERS admit this. There are dozens of counties were less than 5 percent of the adult Negroes are registered to vote; in some counties, no Negroes at all are registered. The Civil Rights Acts of 1957 and 1960 were passed to deal with this denial of constitutional rights. Court action under these laws has given many Negroes the right to vote and has also documented the subterfuges and evasions that are used to prevent Negroes from registering. Title I prohibits the most glaring and unfair of such practices.

B. The major provisions of title I: (1) Negroes and whites who apply for registration must be treated equally and evaluated by the same standards. This is based on the practice, all too common in many places, of approving any application by a white man and imposing ridiculous or impossible requirements on Negro applicants.

(2) Officials cannot reject an application for voting registration for reasons, such as trivial mistakes or omissions on application forms, that have nothing to do with the applicant's actual qualification. It will no longer be legal, for instance, to reject a Negro because he did not give his age correctly in years, months, and days.

(3) If a literacy test is used by a State, it must be given in writing if the applicant so requests; furthermore, if he requests it, he must be given a copy of the questions and his answers whether given in a written or oral test. Orally administered literacy tests are often used, and some officials have exercised complete discretion to reject answers by Negroes. Under such methods, Negro teachers and scientists have failed to pass literacy tests. This provision would permit a court to judge whether the test had been fairly administered.

(4) Furthermore, if literacy is a qualification for voting, a sixth-grade education shall be considered presumptive evidence of literacy, although the State may attempt to rebut this presumption in court.

(5) Finally, voting rights cases may be heard by a three-judge court, from which appeals will go directly to the Supreme Court.

C. Objections to title I. No one claims that Negroes should be prevented from voting, and no Senator has categorically denied that discrimination in voting does exist. The opposition to title I is expressed on constitutional grounds. It is claimed that under the title the Federal Government would establish qualifications for voting, and that this power is given exclusively to the States by the Constitution. In fact, title I does not set any qualifications. What it does is to say that whatever qualifications are imposed by the States must be applied equally to whites and Negroes alike. The sixth-grade presumption applies only where a State has a literacy test and it is merely a rule of evidence requiring proof that a man with such education is illiterate.

These arguments overlook the 14th amendment, which guarantees equal protection of the laws, and the 15th amendment, which prohibits denying the right to vote on account of race or color. Both of these amendments expressly state that Congress may enforce their provisions by appropriate legislation. The Supreme Court has repeatedly held that these amendments provide ample constitutional basis for congressional action to legislate to safeguard democratic elections. One such decision said that the 15th amendment was directed against all "contrivances by a State to thwart equality in the enjoyment of the right to vote by citizens of the United States regardless of race or color" (*Lane* v. *Wilson*, 307 U.S. 268 (1939)).

BIPARTISAN CIVIL RIGHTS NEWSLETTER NO. 21—APRIL 3, 1964, THE 5TH DAY OF DEBATE ON H.R. 7152

(The bipartisan Senate leadership supporting the civil rights bill, H.R. 7152, headed by Senator HUBERT H. HUMPHREY and Senator THOMAS KUCHEL, will distribute this newsletter to the offices of the Senators who support the bill. This newsletter will help to keep Senators and their staffs fully informed on the bill. It will be distributed whenever circumstances warrant—daily, if necessary.)

1. Quorum scoreboard: The civil rights quorum machine continues to creak and sputter along. It took 53 minutes to make one quorum call on Thursday and 44 minutes to make the other one. This doesn't break Wednesday's record for all deliberate speed, but it comes close.

2. Friday's schedule: The Senate will convene at 11 and stay in session until at least 9 p.m. Speakers: Senators DOUGLAS and COOPER. Subject: School Desegregation (title IV). Floor captains: Democrats: DOUGLAS (11 to 1); BURDICK (1 to 4); WILLIAMS (4 to 7); CLARK (7 to closing); Republicans: DOMINICK (all day); SCOTT (all day).

3. From the AP ticker: "President Johnson apparently is giving his legislative lieutenants little room to maneuver toward any compromise that might insure Senate passage of the civil rights bill.

"The President was described by close associates today as being hard-rock firm against any changes in the House-passed measure. They said he has maintained this attitude in private strategy conferences as well as in his public statements."

A SHORT COURSE ON TITLE III

A. The need for title III: In a series of decisions beginning with the Brown case in 1954, the Supreme Court has made it unmistakably clear that public facilities of any kind may not be racially segregated. Despite this clear statement of law, many localities continue to deny Negroes their rights to free and complete access to parks, swimming pools, and similar facilities. In other words, some State and local governments are violating the 14th amendment by denying some of their citizens equal protection of the law. Under present statutes, the only way Negroes can obtain their constitutional rights is to initiate lawsuits and carry them through the courts, matching their financial resources against all the power and wealth of a city or State. It has been estimated that the average cost of a single such lawsuit is about $15,000—a high price for a Negro to pay to enjoy his constitutional right to walk through the public park that his tax money has helped to finance. This is really double taxation with a vengeance. In many places Negroes pay taxes, then have to sue to enjoy the benefits of those taxes.

B. The major provisions of title III: (1) On receipt of a signed complaint that an individual has been deprived of his right to free and complete use of a public facility (other than a public school) on account of race, the Attorney General may bring suit, in the name of the United States, for relief from such discrimination. This authority to sue may be exercised only when the Attorney General certifies that the complainant is unable to bring suit himself and that such a suit would further the orderly progress of desegregation of public facilities. A complainant would be deemed unable to bring suit if there was no private source of funds for the litigation or if the private suit would jeopardize him through economic or other forms of retaliation.

2. Furthermore, the Attorney General is authorized to intervene in any legal action brought by an individual seeking relief from denial of equal protection of the laws on account of race.

C. Objections to title III. The most common objection is that this title would give the Attorney General enormous powers to intrude into local life. In fact, the only "power" given the Attorney General is the authority to bring a lawsuit, and the only "intrusion" would be for the State or local officials to be ordered by a Federal court to obey the law of the land. Such a court order could be issued only after a full trial. The courts have this same power at present. The only change represented by title III would be that the Attorney General would be able to bring such cases before the courts.

We usually rely on public officials to enforce the law and take action to give citizens their rights. The same authorization to sue to enforce the law is granted in numerous other areas. It is about time we gave full meaning to the 14th amendment by extending this same common authority to it.

BIPARTISAN CIVIL RIGHTS NEWSLETTER NO. 22, APRIL 4, 1964—THE SIXTH DAY OF DEBATE ON H.R. 7152

(The bipartisan Senate leadership supporting the civil rights bill, H.R. 7152, headed by Senator HUBERT H. HUMPHREY and Senator THOMAS KUCHEL, will distribute this newsletter to the offices of the Senators who support the bill. This newsletter will help to keep Senators and their staffs fully informed on the bill. It will be distributed whenever circumstances warrant—daily, if necessary.)

1. Quorum scoreboard: Only one quorum was called for on Friday and 41 minutes were required to make that call. While this is a fairly quick response in comparison with quorum efforts on Wednesday and Thursday, the bipartisan leaders have reached a unanimous conclusion that there is much room for improvement.

2. Saturday's schedule: The Senate will convene at 11:00 and stay in session until late evening.

Leadoff Speaker: Senator DODD.

Subject: Titles VIII–XI.

Floor captains: Democrats, MAGNUSON (11–1); MCCARTHY (1–4); DODD (4–7); and MCGOVERN (7–closing). Republicans, KEATING and MORTON.

3. The need for title VI: A dramatic illustration of discrimination among beneficiaries of federally assisted programs on account of race is afforded by Department of Agriculture data concerning the administration of the Federal School Lunch program in Greenwood, Miss. These figures also indicate just how equal separate school facilities for Negro and white students are. Nearly half of the average daily attendance in Greenwood schools are Negro students (43 percent), yet the Negro students receive only one-fifth of the free lunches distributed in the Greenwood district.

	Average daily attendance	White percent of average daily attendance	Negro percent of average daily attendance	White percent of free lunches	Negro percent of free lunches
1960–61	4,943	57	43	79	21
1961–62	5,130	57	43	80	20

BIPARTISAN CIVIL RIGHTS NEWSLETTER, NO. 23, APRIL 6, 1964—THE SIXTH DAY OF DEBATE ON H.R. 7152

(The bipartisan Senate leadership supporting the civil rights bill, H.R. 7152, headed by Senator HUBERT H. HUMPHREY and Senator THOMAS KUCHEL, will distribute this newsletter to the offices of the Senators who support the bill. This newsletter will help to keep Senators and their staffs fully informed on the bill. It will be distributed whenever circumstances warrant, daily, if necessary.)

DEBATE CANCELED DUE TO ABSENCE OF QUORUM

The problem of absenteeism which had grown progressively worse during the week among Senators supporting passage of the civil rights bill reached a grand climax on Saturday when a quorum failed to appear. Terming the situation a "travesty on the legislative process," the majority leader moved to recess until 10 a.m. Monday, thereby bringing the civil rights debate to a dead halt on Saturday.

Despite notice and warning that a Saturday session would be held, only 39 Senators responded to the quorum call (23 Democrats and 16 Republicans). Sixty-one failed to respond (44 Democrats and 17 Republicans). Senator HUMPHREY summed up the situation: "The only way we can lose the civil rights fight is not to have a quorum when we need it." Repeated failures to produce a quorum in the coming weeks will only be interpreted as a staggering setback to the cause of civil rights in America.

1. Monday's schedule: The Senate will convene at 10 a.m. and remain in session until at least 9 p.m. Senators and their staffs should be on the alert for live quorums at any time.

2. Subjects for debate: Titles VIII–XI and title V (Civil Rights Commission).

Speakers: Senator DODD, Senator LONG (Missouri), and Senator SCOTT.

3. Twenty-two outstanding lawyers support constitutionality of public accommodations and equal employment opportunity titles: Senator HUMPHREY and Senator KUCHEL floor managers for H.R. 7152 have received a communication from a panel of the Nation's outstanding lawyers endorsing the constitutionality of titles II and VII of the civil rights bill.

The lawyers included three former Attorneys General of the United States (Francis Biddle, Herbert Brownell, and William P. Rogers), four former presidents of the American Bar Association (David F. Maxwell, John D. Randall, Charles S. Rhyne, and Whitney North Seymour), four law school deans (Erwin N. Griswold of Harvard, Eugene V. Rostow of Yale, John W. Wade of Vanderbilt, and William B. Lockhart of Minnesota), and many other high-ranking members of the legal profession. Members of both political parties are included in the group as well as lawyers generally regarded as being "liberal" and "conservative."

The following are excerpts from the letter addressed to Senators HUMPHREY and KUCHEL:

"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."

This opinion should remove any vestige of doubt concerning the constitutional authority of Congress to enact the provisions of titles II and VII. The full text of the letter, the identification of the signers, and a memorandum reviewing the applicable authorities are expected to be introduced by Senator HUMPHREY in Monday's CONGRESSIONAL RECORD.

BIPARTISAN CIVIL RIGHTS NEWSLETTER NO. 24—APRIL 7, 1964, THE SEVENTH DAY OF DEBATE ON H.R. 7152

(The bipartisan Senate leadership supporting the civil rights bill, H.R. 7152, headed by Senator HUBERT H. HUMPHREY and Senator THOMAS KUCHEL, will distribute this newsletter to the offices of the Senators who support the bill. This newsletter will help to keep Senators and their staffs fully informed on the bill. It will be distributed whenever circumstances warrant—daily, if necessary.)

1. Quorum scoreboard: Civil rights Senators broke out of their quorum slump on Monday, averaging 19 minutes on five quorum calls. This is a fine recovery from Saturday's disaster. We hope that it will be more than a 1-day wonder.

2. Today's schedule: The Senate will convene at 10 this morning and stay in session until least 9 p.m. Live quorums should be expected at any time during the session.

Speakers: Senators COTTON and PASTORE.

Subject: Discrimination in federally assisted programs (title VI).

Floor captains: Democrats: HART (10 to 1), CHURCH (1 to 4), RIBICOFF (4 to 7), PASTORE (7 to recess); Republicans: COOPER (all day), BOGGS (all day).

3. The mystery of racial discrimination: "Mr. HUMPHREY. I would appreciate it if someone would tell me why a colored lady could literally love their children, coddle them, bring them up, put them to bed, wake them in the morning, take care of their every need, feed them, be like a good and loving mother to them, and yet when she goes uptown she is told 'You cannot come in here.'

"Mr. STENNIS. Let me say to the Senator from Minnesota that * * * if he cannot understand some of the basic relations that occur in human nature, I cannot expect, in the few minutes I have remaining to me, to make him understand." (CONGRESSIONAL RECORD, Mar. 20, 1964, p. 5816.)

A SHORT COURSE ON TITLE IV

(a) The need for title IV: Segregated schools by their nature violate the 14th amendment since they deny equal protection of the laws. In addition to this inherent discrimination, segregated school systems usually provide Negro students with inferior educational opportunities, as measured by per pupil expenditures, teachers' pay, accreditation, size of classes, and other objective indicators of educational quality. Although the Brown case categorically stated the principle that segregation in public schools is unconstitutional, 10 years later only 1 percent of Negro pupils in the South attended desegregated schools. This is due to the refusal of local public officials to obey the law, and to the fact that it takes court action to make them comply with the Constitution. Up to now such action can be initiated only by suits brought by private individuals. These suits are very expensive. The Brown case cost the plaintiffs over $200,000, and subsequent cases have cost up to $100,000. It is intolerable that American citizens should have to spend so much money to achieve their constitutional rights—rights that they should be able to enjoy without question.

Furthermore, when court orders to desegregate schools have been issued, the local school officials, even when acting in good faith, often have difficulty in dealing with the problems that follow.

(b) The major provisions of title IV:

1. On receipt of a complaint by one or more parents (or by students, in the case of public colleges) that a school has failed to desegregate, the Attorney General may bring a suit to desegregate the school in question. The Attorney General will have this authority only when he certifies that the complainant is unable to bring suit himself, through lack of private financial support or because of the possibility of retaliation, and also certifies that the suit would further public policy favoring the achievement of desegregation of public schools. This provision recognizes that it is in the public interest to guarantee individuals their constitutional rights.

2. The U.S. Commissioner of Education will make a nationwide survey of the extent of discrimination in education.

3. On application from State or local school authorities, the Commissioner of Education is authorized to give technical advice on planning and implementing school desegregation. The Commissioner is also authorized to conduct training institutes for the same purpose, and to make grants to local school boards to pay for training and expert advice on problems incident to desegregation. In all these instances the Commissioner may act only in response to local application.

(c) Objections to title IV: The most common objection complains about something that is specifically excluded from the bill: Transporting students away from their neighborhoods to overcome de facto segregation. This criticism overlooks section 401(b), which says that desegregation shall not mean the assignment of students to public schools in order to overcome racial imbalance.

Other than this misrepresentation, objections to title IV take the form of complaints about the monstrous Federal power that allegedly will be created. In fact, the Commissioner of Education will have the power only to give advice and technical help, and then only when asked by the locality. The Attorney General is given the power to bring a lawsuit in a Federal court, to give Americans what is indisputably their constitutional right: Equal protection of the laws. If this is a power grab, so is the Bill of Rights.

BIPARTISAN CIVIL RIGHTS NEWSLETTER NO. 25—APRIL 8, 1964, THE EIGHTH DAY OF DEBATE ON H.R. 7152

(The bipartisan Senate leadership supporting the civil rights bill, H.R. 7152, headed by Senator HUBERT H. HUMPHREY and Senator THOMAS KUCHEL, will distribute this newsletter to the offices of the Senators who support the bill. It will help to keep Senators and their staffs fully informed on the bill. It will be distributed whenever circumstances warrant—daily, if necessary.)

1. Quorum scoreboard: Senate supporters of civil rights maintained their current streak of good work on quorum calls. Yesterday they made five quorums in the average time of 22 minutes.

2. Today's schedule: The Senate will convene at 10 this morning and stay in session until at least 10 p.m. Live quorums should be expected at any time during the session.

Speakers: Senators CASE and CLARK.

Subject: Equal Opportunity in Employment (Title VII).

Floor captains: Democrats: LONG (10–1), MCINTYRE (1–4), MCGOVERN (4–7), MOSS (7 to recess); Republicans: CASE (all day), MORTON (all day).

3. Labor groups express support for civil rights: This is the final day of a 3-day Washington legislative conference of more than 200 labor leaders, brought here by the Industrial Union Department of the AFL–CIO. They were briefed on the civil rights bill and visited Senators to voice their support of the legislation.

4. Negro interest in voting: The extent to which Negroes are denied their voting rights can be gaged by comparing Negro and white voting registration in many southern counties. In Dallas County, Ala., for instance, 63 percent of all whites of voting age are registered, compared to 1.7 percent of adult Negroes. Opponents of the civil rights bill "explain" such spectacular examples of inequality by saying that Negroes are indifferent to politics and not really very interested in voting anyway.

This hardly seems to be the case in Dallas County. In Selma, the county seat, hundreds of Negroes waiting to apply for voter registration stood between lines of policemen armed with rifles and shotguns. If they left to eat, get a drink of water, or go to the bathroom, they were not allowed to return to the line. Nevertheless, these Negroes waited in line for 8 hours, hoping, for the most part in vain, that they would be allowed to exercise their Constitutional rights. Given the likelihood that in places like Dallas County, Negroes who try to vote will suffer economic reprisals, this does not sound like political apathy.

One senatorial opponent of the bill, who has admitted that Negroes are systematically excluded from voting in some places, excuses this practice by claiming that Negroes do not care about politics. He tried to prove his claim by pointing to voter registration in Washington where more than half the population is Negro.

In fact, the situation in Washington is a very bad argument for this Senator's point of view. While the final official registration totals for the District of Columbia are not yet available, the unofficial figures were reported in the newspaper articles on March 22. It should be remembered that the situation in Washington hardly encourages high registration, for a variety of reasons:

1. A great many Washington residents are transients who vote in their home States.

2. The District of Columbia has the vote only for national elections.

3. This right was just granted, after a century of disenfranchisement.

4. The recent registration drive, the first one in the District in the 20th century, lasted only a few weeks.

The District of Columbia Board of Elections has estimated that 300,000 people in the District are eligible to vote there. Approximately 170,000 persons, or 57 percent of the eligible residents, are now registered. This compares with 19 percent of the eligible Negroes in Alabama and 7 percent in Mississippi. In fact, there are more registered voters in the District of Columbia than there are registered Negroes in these two States combined. In other words, Negroes have the same political interest as whites, and will express their interest by voting where they are not denied this right by discriminatory voting officials. We will present more statistical proof of this fact in tomorrow's newsletter.

TWENTY-DAY EXTENSION OF NEGOTIATIONS FOR RAILROAD LABOR-MANAGEMENT DISPUTE

Mr. HUMPHREY. Mr. President, I should like to note for the RECORD at this point that I have just been informed—and I am sure the Senator from Oregon [Mr. MORSE] is fully aware of this because during the debate he has had to leave the Chamber to answer important telephone calls from the White House—that a 20-day extension has been arrived at in reference to the labor-management dispute on the rails. This is very reassuring, because an opportunity is given to adjust some of the difficulties.

THE CIVIL RIGHTS DEBATE

Mr. HUMPHREY. Mr. President, I call attention of the Senate and the public to the record of the Senate since March 30, when the civil rights bill, H.R. 7152, came before the Senate and was made the pending business.

Starting with March 30, I have a list of the speakers and the time taken by the speakers on the bill. I ask unanimous consent that the list be printed in the RECORD at this point.

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

MAJOR SPEECHES BY PROPONENTS OF H.R. 7152

Monday, March 30: HUMPHREY and KUCHEL—entire bill.

Wednesday, April 1: KEATING and HART—title I.

Thursday, April 2: JAVITS and MORSE—title III.

Friday, April 3: DOUGLAS and COOPER—title IV.

Monday, April 6: DODD—Titles VIII, IX, X, and XI; SCOTT and LONG of Missouri—title V.

Tuesday, April 7: PASTORE and RIBICOFF—title VI.

Wednesday, April 8: CLARK and CASE—title VII.

Thursday, April 9: MAGNUSON—title II; KENNEDY and YOUNG of Ohio—entire bill.

Mr. HUMPHREY. I particularly wish to take this occasion to thank publicly, in this public RECORD of the Congress, Senators who have actively participated in the presentation of the affirmative case, or the proponents' case, on the civil rights bill.

Today the basic argument for the bill was completed, as was announced by the acting majority leader. I am privileged to be the floor leader for this bill, along with my good colleague from California [Mr. KUCHEL]. We decided to take whatever time was necessary to effectively—and we believe it has been effectively done—present the argument for each of the eleven titles of H.R. 7152, the Civil Rights Act.

The presentation was completed in its main parts today by the excellent presentations of the Senator from Massachusetts [Mr. KENNEDY], the Senator from Ohio [Mr. YOUNG], and the Senator from Washington [Mr. MAGNUSON]. I especially thank the Senators for their lucid, detailed, and convincing presentations.

I deeply regret that at times it has not been possible for all of us to be present. I have been denied the privilege to be present on the floor at all times, although I have kept a good record of attendance on the floor.

I particularly commend the Senator from Washington [Mr. MAGNUSON] on an outstanding address, which I have had the privilege of reviewing this evening. I read the text of the address which was presented in behalf of the so-called public accommodations title of the measure, title II, a most controversial title.

I think anyone who reads the address will find the title is well drawn and the address is fully documented in reference to the law and the court cases.

I also express my admiration for the fine argument presented by the Senator from Pennsylvania [Mr. CLARK] and the Senator from New Jersey [Mr. CASE] on title VII of the bill yesterday, Wednesday. There have been brilliant presentations on this important title of the bill.

On Tuesday, title VI was presented in a most forceful and convincing manner, with literally reams of documentation, by the Senator from Rhode Island [Mr. PASTORE] and the Senator from Connecticut [Mr. RIBICOFF]. Other Senators opposed it; namely, the Senator from Mississippi [Mr. STENNIS] and the Senator from North Carolina [Mr. JORDAN].

On Monday of this week the Senator from Connecticut [Mr. DODD] presented titles VIII, IX, X, and XI—complex and intricate titles relating to legal and technical provisions of the bill, as well as census surveys, and a Community Relations Service.

The Senator from Pennsylvania [Mr. SCOTT] and the Senator from Missouri [Mr. LONG] presented an argument on title V, on that same day, Monday, which relates to the Civil Rights Commission.

I do not think that I have left any of my colleagues out of this list. But the hour is late. If I am in error as to a speech by the proponents of the bill, I will attempt to correct the RECORD later.

Mr. President, we have fulfilled our duty and our responsibility. The bill did not go to committee, and therefore we felt it was incumbent upon the proponents to explain the bill in intricate and minute detail, with every bit of case law which could be brought to support the provisions of the bill, including examples of how the bill would operate and, indeed, the evidence as to why the bill was needed.

Today, the Senator from Massachusetts [Mr. KENNEDY], in a short but powerful and moving address, summarized the moral equation in this measure—the moral responsibility of the Senate.

Tomorrow the debate will be continued. I have been informed by several Senators that they intend to speak on the bill in general.

I am pleased that the measure has engendered such interest. Several Senators have indicated to me that in the next 3 or 4 days they intend to present their arguments in support of the bill.

I should like to indicate that the late hours the Senate has become accustomed to, such as 11:30, will become more customary; that 11:30 will be considered an early hour in the days ahead.

It is our intention to step up the tempo of the debate, in the hope of being able to bring about an orderly disposition of the bill through the legislative process, having amendments submitted, to be voted up or down; and, finally, to be able to bring the bill to a vote.

TRANSACTION OF ROUTINE BUSINESS

By unanimous consent, the following routine business was transacted during the session of the Senate today:

EXECUTIVE COMMUNICATIONS, ETC.

The ACTING PRESIDENT pro tempore laid before the Senate the following letters, which were referred as indicated:

AMENDMENT OF TITLE 10, UNITED STATES CODE, RELATING TO ANNUITIES BASED ON RETIRED OR RETAINER PAY

A letter from the Secretary of the Navy, transmitting a draft of proposed legislation to amend title 10, United States Code, with respect to annuities based on retired or retainer pay (with an accompanying paper); to the Committee on Armed Services.

AMENDMENT OF TITLE 10, UNITED STATES CODE, RELATING TO PROMOTION OF CERTAIN RESERVE OFFICERS OF THE AIR FORCE

A letter from the Assistant Secretary of the Air Force, transmitting a draft of proposed legislation to amend title 10, United States Code, to continue the authorization to promote qualified reserve officers of the Air Force to the reserve grades of brigadier general and major general (with an accompanying paper); to the Committee on Armed Services.

REPORT ON DEFICIENCIES IN CUSTOMS CONTROL OVER UNLOADINGS OF BULK PETROLEUM

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report on deficiencies in customs control over unloadings of bulk petroleum, Bureau of Customs, Treasury Department, dated April 1964 (with an accompanying report); to the Committee on Government Operations.

REPORT ON UNECONOMICAL PRACTICES IN THE MANAGEMENT OF MOBILIZATION RESERVE STOCKS OF CONSTRUCTION EQUIPMENT AND COMMERCIAL-TYPE VEHICLES

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report on uneconomical practices in the management of mobilization reserve stocks of construction equipment and commercial-type vehicles, Department of the Navy, dated April 1964 (with an accompanying report); to the Committee on Government Operations.

REPORT ON UNNECESSARY COSTS INCURRED FOR THE NAVAL RADIO RESEARCH STATION PROJECT AT SUGAR GROVE, W. VA.

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report on unnecessary costs incurred

for the naval radio research station project at Sugar Grove, W. Va., Department of the Navy, dated April 1964 (with an accompanying report); to the Committee on Government Operations.

REPORT ON IMPROPER CHARGES TO GOVERNMENT COST-TYPE AND INCENTIVE-TYPE CONTRACTS HELD BY GRUMMAN AIRCRAFT ENGINEERING CORP.

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report on improper charges to Government cost-type and incentive-type contracts held by Grumman Aircraft Engineering Corp., Bethpage, N.Y., Department of the Navy, dated April 1964 (with an accompanying report); to the Committee on Government Operations.

DISPOSITION OF EXECUTIVE PAPERS

A letter from the Archivist of the United States, transmitting, pursuant to law, a list of papers and documents on the files of several departments and agencies of the Government which are not needed in the conduct of business and have no permanent value or historical interest, and requesting action looking to their disposition (with accompanying papers); to a Joint Select Committee on the Disposition of Papers in the Executive Departments.

The ACTING PRESIDENT pro tempore appointed Mr. JOHNSTON and Mr. CARLSON members of the committee on the part of the Senate.

PETITIONS AND MEMORIALS

Petitions, etc., were laid before the Senate, or presented, and referred as indicated:

By the ACTING PRESIDENT pro tempore:

Resolutions of the General Court of the Commonwealth of Massachusetts; to the Committee on Armed Services:

"RESOLUTION MEMORIALIZING THE CONGRESS OF THE UNITED STATES TO ENACT LEGISLATION REQUIRING THE FORMATION OF AN ARMY SPECIAL FORCES UNIT WITHIN ALL STATE NATIONAL GUARD UNITS

"Resolved, That the General Court of Massachusetts respectfully urges the Congress of the United States to enact legislation requiring that the table of organization of all State national guard units shall provide for the formation of an army special forces unit; and be it further

"Resolved, That a copy of these resolutions be transmitted forthwith by the secretary of the Commonwealth to the Presiding Officer of each branch of the Congress and to the Members thereof from the Commonwealth.

"Adopted by the house of representatives, March 31, 1964.

"WILLIAM C. MAIERS,
"Clerk.

"Adopted by the senate, in concurrence, April 3, 1964.

"THOMAS A. CHADWICK,
"Clerk.

"Attest:

"KEVIN H. WHITE,
"Secretary of the Commonwealth."

Three resolutions of the House of Representatives of the Commonwealth of Massachusetts; to the Committee on the Judiciary:

"RESOLUTION REQUESTING THE CONGRESS OF THE UNITED STATES TO CALL A CONVENTION FOR THE PURPOSE OF PROPOSING AN AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES ALLOWING THE READING OF THE BIBLE IN THE SCHOOLS

"Resolved, That the Massachusetts House of Representatives respectfully petitions the Congress of the United States to call a convention for the purpose of proposing the following article as an amendment to the Constitution of the United States:

" 'ARTICLE —

" 'SECTION 1. No provision of this Constitution, or any amendment thereto, and no provision of any constitution or amendment thereto of the several States, shall deny, restrict, or limit the reading of the Bible in the schools.

" 'SEC. 2. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within 7 years from the date of its submission; and be it further

" '*Resolved,* That if Congress shall have proposed as an amendment to the Constitution identical with that contained in this resolution prior to January 1, 1965, this application for a convention shall no longer be of any force or effect; and be it further

" '*Resolved,* That a copy of these resolutions be transmitted forthwith by the secretary of the Commonwealth to the President of the United States, the Presiding Officer of each branch of Congress and to the Members thereof from this Commonwealth.'

"Adopted by the house of representatives March 18, 1964.

"WILLIAM C. MAIERS,
"Clerk.

"Attest:

"KEVIN H. WHITE,
"Secretary of the Commonwealth."

"RESOLUTION MEMORIALIZING THE CONGRESS OF THE UNITED STATES TO SUPPORT AND ADOPT AN AMENDMENT TO THE U.S. CONSTITUTION PERMITTING BIBLE READING AND PRAYERS IN OUR PUBLIC SCHOOLS

"Whereas these United States and the Commonwealth of Massachusetts were founded and established in and under a belief in Almighty God; and

"Whereas this principle and belief is explicity set forth in the Declaration of Independence adopted by the Thirteen Original States in Congress at Philadelphia, and in the preamble to the Constitution of Massachusetts; and

"Whereas this same principle and belief is recognized by the U.S. Government in the 'Flag Code,' in the 'Pledge of Allegiance to Our Flag,' and in the official coinage of the U.S. Government by having inscribed thereon the words 'In God We Trust'; and

"Whereas this same principle and belief is inherently a part of our American way of life and is the basic belief of the great majority of adult American citizens and their children and grandchildren; and

"Whereas a great majority of our adult American citizens are products of our public school systems and their children and grandchildren are enrolled in the public school systems of these United States; and

"Whereas the majority of the private and parochial school systems likewise hold a firm belief in the principle of 'A nation under Almighty God'; and

"Whereas it is a basic belief of the people of the Commonwealth of Massachusetts and of these United States that reading of the Bible which is "God's Holy Book" and prayer are a basic part of the belief that this State and Nation is a State and Nation under God and that such Bible reading and prayer should be a part of the curriculum of our public school systems; and

"Whereas under the recent United States Supreme Court decision reading of the Bible and recitation of the Lord's Prayer is now unlawful in our public schools; and

"Whereas such Supreme Court decision denies the very great majority of Americans of their fundamental constitutional right to express in our public schools their belief in Almighty God, the reading of the Bible and prayer, and forbids the public school systems of these United States from expressing and teaching that ours is a State and Nation under God; and

"Whereas the said Supreme Court decision has made it possible for a very small minority to suppress the will, desires, and wishes of the great majority of the peoples of these United States; Therefore be it

"Resolved, That the Massachusetts House of Representatives memorialize the Congress of the United States to support and adopt an amendment to the U.S. Constitution permitting Bible reading and prayers in our public schools; and be it further

"Resolved, That a copy of this resolution be transmitted by the secretary of the Commonwealth to the Presiding Officers of each branch of Congress and to each Senator and Representative from Massachusetts in the Congress of the United States.

"Adopted by the house of representatives, March 18, 1964.

"WILLIAM C. MAIERS,
"Clerk.

"Attest:

"KEVIN H. WHITE,
"Secretary of the Commonwealth."

"RESOLUTION REQUESTING THE JUDICIARY COMMITTEE OF THE U.S. CONGRESS TO REPORT OUT THE RESOLUTION WHICH PROPOSES AN AMENDMENT TO THE U.S. CONSTITUTION PERMITTING THE READING OF THE BIBLE IN THE SCHOOLS

"Whereas recently the U.S. Supreme Court outlawed the reading of the Bible in the public schools throughout our Nation and held that it was contrary to the U.S. Constitution; and

"Whereas when this decision was handed down many people thought that the proper thing to do would be to amend the Constitution; and

"Whereas in line with this thinking a resolution was introduced in the House of Representatives proposing an amendment to the U.S. Constitution authorizing the reading of the Bible in the schools and, to date, this resolution is still in the Judiciary Committee in Congress; and

"Whereas the States should be given the right to express their opinions on the merits of such an amendment; therefore be it

"Resolved, That the Massachusetts House of Representatives respectfully requests the Judiciary Committee of the U.S. Congress to report out the resolution which proposes an amendment to the U.S. Constitution permitting the reading of the Bible in the schools; and be it further

"Resolved, That a copy of this resolution be forwarded forthwith by the secretary of the Commonwealth to the chairman of the Judiciary Committee, to the Speaker of the House of Representatives, and to each Member thereof from this Commonwealth.

"Adopted by the house of representatives March 18, 1964.

"WILLIAM C. MAIERS,
"Clerk.

"Attest:

"KEVIN H. WHITE,
"Secretary of the Commonwealth."

The petition of Gentsu Miyagi, mayor of Hanegi-Son, and Masaya Taira, chairman, Municipal Assembly of Hanegi-Son, of the island of Okinawa, praying for a quick solution of the prepeace treaty compensation issue; to the Committee on Armed Services.

A telegram signed by Rafael Paris Steffens, President of the Legislative Assembly of Costa Rica, expressing the Assembly's profound sorrow at the death of Gen. Douglas MacArthur; to the Committee on Foreign Relations.

EXECUTIVE REPORTS OF A COMMITTEE

As in executive session,

The following favorable reports of nominations were submitted:

By Mr. HILL, from the Committee on Labor and Public Welfare:

Mary Dublin Keyserling, of the District of Columbia, to be Director of the Women's Bureau, Department of Labor;

Merlin L. Brubaker, and sundry other persons, for personnel action in the regular corps of the Public Health Service;

Carl R. Merril, and sundry other persons, for personnel action in the regular corps of the Public Health Service; and

Martin Flavin, Jr., and sundry other persons, for personnel action in the regular corps of the Public Health Service.

REPORT ON DISPOSITION OF EXECUTIVE PAPERS

Mr. JOHNSTON, from the Joint Select Committee on the Disposition of Papers in the Executive Departments, to which was referred for examination and recommendation a list of records transmitted to the Senate by the Archivist of the United States, dated March 24, 1964, that appeared to have no permanent value or historical interest, submitted a report thereon, pursuant to law.

BILLS INTRODUCED

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

By Mr. MOSS:

S. 2720. A bill to amend the Atomic Energy Act of 1954, as amended, to eliminate further waiver of fuel use charges and to establish a minimum charge for leasing atomic fuel to producers of power for sale; to the Joint Committee on Atomic Energy.

(See the remarks of Mr. Moss when he introduced the above bill, which appear under a separate heading.)

By Mr. YARBOROUGH:

S. 2721. A bill to increase the amount of domestic beet sugar and mainland cane sugar which may be marketed during 1964, 1965, and 1966; to the Committee on Finance.

By Mr. THURMOND:

S. 2722. A bill to provide for a jury trial in all cases of criminal contempt in the U.S. courts; to the Committee on the Judiciary.

(See the remarks of Mr. THURMOND when he introduced the above bill, which appear under a separate heading.)

By Mr. McCARTHY:

S. 2723. A bill to amend the Internal Revenue Code of 1954 with respect to the constructive ownership of stock; to the Committee on Finance.

By Mr. MORSE:

S. 2724. A bill conferring jurisdiction upon the U.S. Court of Claims to hear, determine, and render judgment upon the claim of Eugene E. Laird; to the Committee on the Judiciary.

(See the remarks of Mr. MORSE when he introduced the above bill, which appear under a separate heading.)

S. 2725. A bill to amend Public Laws 815 and 874, 81st Congress, to provide financial assistance in the construction and operation of public elementary and secondary schools in areas affected by a major disaster; to the Committee on Labor and Public Welfare.

(See the remarks of Mr. MORSE when he introduced the above bill, which appear under a separate heading.)

CONCURRENT RESOLUTIONS

WITHDRAWAL OF SOVIET FORCES FROM CERTAIN CAPTIVE NATIONS

Mr. FONG submitted the following concurrent resolution (S. Con. Res. 76); which was referred to the Committee on Foreign Relations:

Whereas the United States has consistently recognized and upheld the right of the peoples of the Baltic States to national independence and to the enjoyment of all individual rights and freedoms; and

Whereas the Charter of the United Nations declares as one of its purposes the development of friendly relations among nations based "on respect for the principle of equal rights and self-determination of peoples"; and

Whereas the Union of the Soviet Socialist Republics has by force of arms suppressed the freedom of the peoples of Lithuania, Latvia, and Estonia and has continued to deny these peoples the right of self-determination by free elections: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That the President is hereby requested, through the United States delegation to the United Nations, to take such action as may be necessary to bring before the United Nations for its consideration the question of the suppression of freedom in the Baltic States, and to request adoption by the United Nations of a resolution declaring that—

(a) The Soviet Union shall withdraw all Soviet troops, agents, colonists, and controls from Lithuania, Latvia, and Estonia;

(b) The Soviet Union shall return all citizens of the Baltic States to their homelands from places of exile in Siberia, and dispersion in prisons and slave-labor camps throughout the Soviet Union; and

(c) The United Nations should conduct free elections in Lithuania, Latvia, and Estonia under the direct supervision of the United Nations in order to permit the peoples of these countries to make their own choice of government.

DISPOSAL OF A QUANTITY OF PIG TIN FROM NATIONAL STOCKPILE

Mr. SYMINGTON. Mr. President, in response to a request of the Administrator of General Services, I submit, for appropriate reference, a concurrent resolution that would grant congressional approval for the disposal of approximately 98,000 long tons of pig tin from the national stockpile.

This amount of pig tin is in excess of the current stockpile objective for pig tin and authority for this disposal was requested by the Administrator of General Services in a letter dated March 20, 1964.

The ACTING PRESIDENT pro tempore. The concurrent resolution will be received and appropriately referred.

The concurrent resolution (S. Con. Res. 77) approving the disposal from the national stockpile of a quantity of pig tin under regulations of the General Services Administration, submitted by Mr. SYMINGTON, was received and referred to the Committee on Armed Services, as follows:

Resolved by the Senate (the House of Representatives concurring), That the Congress expressly approves, pursuant to section 3(e) of the Strategic and Critical Materials Stock Piling Act (53 Stat. 811, as amended; 50 U.S.C. 98b(e)), the disposal from the national stockpile of approximately ninety-eight thousand long tons of pig tin in accordance with the plan of disposal published by General Services Administration in the Federal Register of March 27, 1964 (29 F.R. 3838).

AMENDMENT OF ATOMIC ENERGY ACT OF 1954

Mr. MOSS. Mr. President, I introduce a bill and ask that it be appropriately referred and that the bill may lie on the table for 5 days so that those who may wish to cosponsor the bill may do so.

The ACTING PRESIDENT pro tempore. The bill will be received and appropriately referred; and, without objection, the bill will lie on the desk as requested.

The bill (S. 2720) to amend the Atomic Energy Act of 1954, as amended, to eliminate further waiver of fuel use charges and to establish a minimum charge for leasing atomic fuel to producers of power for sale, introduced by Mr. Moss, was received, read twice by its title, and referred to the Joint Committee on Atomic Energy.

Mr. MOSS. Mr. President, we live in a time of tremendous change. At no time in history has it been so true, and nowhere is it more evident than in the field of science. Axioms and truisms of yesterday are not even accepted today. Concepts held for centuries give way to new knowledge as we peer deeper and deeper into the heart of the atom, fling missiles into outer space, create marvels of new materials from the most unlikely beginnings and other wonders.

We must hope and believe that these modern-day miracles must ultimately prove a boon to mankind. Surely they will. But we must also see that they are used and developed wisely, that we do not create just for creation's sake if in doing so we cause actual harm to our people. We must call on science to provide for our growing and developing needs in an orderly manner, but not to disrupt and set back our economy unnecessarily merely in support of change for change's sake.

We stand at a crossroads of such a decision today in regard to the development of atomic power to produce electricity. I believe no one doubts that eventually atomic power will prove one of the great peacetime blessings of all time, not only to America but also to the world.

Our modern industrial civilization, and the comforts and conveniences it provides, depend on vast sources of energy. America has been and is blessed with one of the world's great storehouses of fossil fuels, and these have made possible our achieving the greatest standard of living and the most powerful industrial society the world has ever known.

These great treasure troves of oil and gas and coal have amply supplied our needs for 200 years, and we still have reserves—particularly of coal—sufficient to provide for our growing electrical needs for many generations to come.

Some distant day, however, even the hundreds of billions of tons of coal

America possesses will begin to run out, and when that time comes our children's children will need a new source of energy and power. From what we know now, it seems likely that the fission of plutonium and uranium 233, produced from our native reserves of uranium, and of thorium in breeder reactors, or the fusion of hydrogen from the inexhaustible sources in the sea, will provide the power.

We would be remiss if we did not do what is necessary and proper to achieve an orderly development of our skills and techniques to make this nuclear energy available in a form that promises a real and lasting contribution to such future energy needs when it is finally required.

We in the Congress recognized this responsibiltiy when, following World War II after the atom had proved its awesome power as a destructive weapon, we approved multimillion dollar expenditures to see if its new and fascinating energy potentials could be harnessed for practical power to aid—rather than destroy—mankind.

At that time we were all bemused and even swept away by the seeming glamour of a miraculous new and apparently unbounded source of energy. We were told that out of tiny particles of matter so small that millions could sit on the point of a needle and not be visible to the naked eye would come such tremendous forces as to provide energy to replace almost all the work tasks of man—and at virtually no cost. We were painted pictures of a new civilization, the end of most physical labor, deserts blooming and bearing flowers and food grains from water pumped hundreds of miles at practically no cost. In short, we invested in a potential power source that would have been completely revolutionary, if it had proved true. We invested heavily in this dream, and we continue to do so, although the mirage of practically meterless power in our lifetime has long since faded away.

Since Congress created the Atomic Energy Commission in 1946, it has spent about $1.5 billion dollars to bring into being a new source of electric power. It is continuing to spend public money at a rate of some $200 million per year.

Eighteen years later, it is certainly our responsibility as Members of Congress, and as the chosen representatives of the people of America who direct the expenditures of their Federal tax money, to assess what they have received from their financial contributions to this dream.

The answer is: Not very much. Actually, up to this point, not anything at all.

After 18 years the glamour of atomic power has worn off, and we recognize that electricity made from the fission of uranium 235 and thorium is just the same as electricity made from burning coal, oil or gas. Each is simply a fuel to create heat which in turn makes steam to turn turbines. The only question then is: Which method of producing the steam is cheaper?

Coal is not only the traditional fuel for steam generation of electricity, but is also the most widely used today. In fact, coal provides the fuel for 76 percent of all steam-generated power in the United States. Thus, coal also serves as the bellwether of steam-electric generating fuel costs. Other fuels are used only if they can undersell coal. In the case of natural gas, this occurs when pipelines or distributors decide it is worthwhile to maintain or build up a load level in their transmission facilities by dumping excess capacity at cutrate prices for steam boiler use. Residual oil for boiler fuel on the east coast, of course, can be imported at practically no cost because of its cheap value at point of origin, and sold at any price necessary to undercut coal.

So coal, which is by far our most important native fuel for electric energy production, is the measure by which all competitive fuels are judged and chosen.

Up to today, Mr. President, there has not been one single kilowatt-hour of electricity produced from atomic reactors for sale to American consumers at a cheaper price than it could have been produced from our tremendous native reserves of coal.

This is a rather startling fact to contemplate when we realize that, despite the fact that we have coal reserves sufficient for many, many decades, even though the demand for electricity continues to double every 10 years, Congress is continuing to spend $200 million a year to subsidize the development of a commercial atomic electric power industry which, its supporters believe, may shortly be able to equal in cost power generated from coal. I should reemphasize those words, "may shortly be able to equal in cost." For that, Mr. President, is the key to the whole inconsistent and indefensible position we are guilty of maintaining.

I dislike to offer a lot of confusing figures, but let me just include one or two which are pertinent to my point.

A short time ago, the Jersey Central Power Co. announced that it had signed a contract with the General Electric Corp. for the construction of a nuclear power plant just north of Atlantic City which would cost $68 million, and would eventually have a capacity of more than 600,000 kilowatts of power. The two firms estimated that when this plant is fully operating at peak capacity, it will generate electricity at a plant operating cost of less than 4 mills per kilowatt hour. Whether this low cost for producing electricity will actually be realized by this plant, only the future will tell, but if it is, it will be lower than the cost of producing electric power from coal in about half the United States. It would not mean a substantial savings to the individual user of electricity, however. Today, the average electric customer uses about 4,500 kilowatt hours per year, so that a reduction of plant operating costs of one mill only means a cost reduction per customer of about $4.50 per year.

However, on the other side of the coin, if we continue to subsidize converter plants to the point where they can produce electricity cheaper than that generated from coal—even by a mill or two—we can expect much of the vast utility growth market for coal to be wiped out. And that, Mr. President, would be disastrous to the economy of many States of our Nation, including my own, which has tremendous coal reserves, and to the prospects of reviving a great coal industry employing hundreds of people as the electric power demands of the West expand in the next several decades.

Under present mining technology, the production of each million tons of coal provides jobs, on the average, for about 400 mine employees, and the railroads offer employment for another 200 to transport it. The Jersey Central plant I have mentioned will eventually have a capacity of 620,000 kilowatts of power and, if operated at 80 percent of capacity—as its builders anticipate—it will replace a market for about 1,500,000 tons of coal a year, and take away 900 potential jobs from the Appalachian area.

It is true that the Jersey Central people say they are not asking for construction subsidies, and thus there can be no criticism of their willingness to risk the capital required in such a private enterprise venture. Even though the Government has spent $1,500 million to develop the technology and know-how to the point where private enterprise can now take it up, we cannot quarrel with the utilities which are willing to risk their own capital to build these plants from now on.

However, the Atomic Energy Commission is not satisfied with that. It is seeking to encourage further development and experimentation work in converter reactor concepts under additional millions of Government subsidy. I believe this is wrong, and emphatically not in the best national interest.

What is not generally understood is that the plants now being built or operating, and even those which the AEC is now attempting to persuade utilities to build under a subsidy arrangement, are all the so-called converter reactors. That means that they produce heat through the consumption of uranium 235, in the process producing some plutonium, but less in heat value than is consumed. In other words, converter reactors are net consumers of fissionable material.

Dr. Frank Pittman, Director of the Division of Reactor Development of the AEC, is the authority for the statement that if we continue to consume our fissionable material—that is, U^{235}—in converting reactors, the nuclear reserves of this country "cannot have a significant impact on our long-range energy picture."

On the other hand, scientists believe that eventually they will develop what is termed the "breeder reactor," which produces more fissionable byproducts than it consumes. If this ever take place, certainly the atomic power will make a tremendous contribution to our long-range energy needs. In the meantime, however, we would be foolish to continue to encourage the production of power from inefficient converter nuclear reactors at the expense of consuming our limited reserves of fissionable material.

I understand that legislation will be introduced in Congress to prohibit the further expenditure of Government sub-

sidies for any converter reactor, unless there is a clear finding by the AEC that such a converter concept will make a direct and important contribution to the development of fast breeder reactors. Other legislation has been introduced which I am cosponsoring, to provide that future privately owned commercial nuclear power plants must also own their own fuel, rather than leasing it from the Government. I wholeheartedly support both these measures.

The most important, in terms of cost to the taxpayers, of the subsidies which we have been paying to develop converter reactors is the provision of the present law which permits the AEC to waive use charges on Government-owned special nuclear fuel for the first 5 years and then to lease it for the remainder of the life of the plant at a very low charge. Under this authority, the AEC has established an inventory carrying charge of 4¾ percent, compared to the 10- to 12-percent charge which would be a more normal "cost of money" for inventory carrying charges to investor owned utilities operating conventional plants.

Until Congress can take action to make private ownership of nuclear fuel mandatory, and to eliminate entirely subsidies for converter concept reactors, it should immediately move to wipe out the tremendous fuel cost advantage provided by the waiver of fuel use and the low inventory carrying charge to nuclear plants.

To this end, I have today introduced a bill to amend the Atomic Energy Act, to eliminate further waiver of fuel use charge and to establish a minimum charge for leasing atomic fuel to producers of power for sale. The amendment, of course, would not apply to commitments entered into by the Commission with utilities prior to its enactment. It would, however, prevent the AEC from entering into future contracts which would provide this advantage to power plants using nuclear fuel over those using coal or other conventional fuels.

We have no need for nuclear energy to supplement electric power from conventional sources today and will not have for many years in the future. If we continue the Government's program of encouraging the contribution of such inefficient converter powerplants by large Government subsidies, we not only will threaten disaster to the great part of our economy dependent on coal production and transportation, but will wastefully use up the supply of fissionable material which could be of such inestimable value to our children's children in future generations.

I respectfully urge the support of all Senators for the bill which I have introduced today, and which would reduce, at least in substantial part, these unjustified and unwise subsidies.

TRIAL BY JURY IN ALL CASES OF CRIMINAL CONTEMPT IN THE STATES COURTS

Mr. THURMOND. Mr. President, the sixth amendment of the U.S. Constitution provides, and I quote:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

In a decision handed down on Monday of this week, the majority of the U.S. Supreme Court made exception to the explicit words of the sixth amendment which prescribes:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed.

How such confusion can arise, I cannot explain. This provision of the Constitution, Mr. President, provides for a jury trial in all criminal prosecutions, and no exceptions are made. A prosecution for criminal contempt is a criminal prosecution.

By virtue of the enabling clause of the Constitution, Congress has the right to pass such legislation as is necessary to carry out the provisions of the Constitution. In my own opinion, the mandatory jury trial in all criminal prosecutions provided for in the sixth amendment to the Constitution is self-executing, or at least, it should be self-executing. Since the Court has not seen fit to view the sixth amendment as self-executing, the Congress should correct the Court's variance. I, therefore, propose that the Congress enact a law which simply provides:

> In any prosecution for criminal contempt in the courts of the United States, the accused shall upon request be accorded a trial by jury.

I send to the desk a bill for this purpose and ask that it be appropriately referred.

Mr. President, the Washington Evening Star of Tuesday, April 7, contained an editorial on the decision of the Court in the Barnett-Johnson case which points out that no judge should have the power to charge a man with a crime, prosecute him for it, conduct his trial, find him guilty, and then sentence him. I ask unanimous consent that this editorial entitled "Too Much Power" be printed in the body of the RECORD at the conclusion of my remarks.

The ACTING PRESIDENT pro tempore. The bill will be received and appropriately referred; and, without objection, the editorial will be printed in the RECORD.

The bill (S. 2722) to provide for a jury trial in all cases of criminal contempt in the U.S. courts, introduced by Mr. THURMOND, was received, read twice by its title, and referred to the Committee on the Judiciary.

The editorial presented by Mr. THURMOND is as follows:

TOO MUCH POWER

Doubtless there is a certain irony in the fact that it was the liberal members who would have had the Supreme Court rule in favor of Ross Barnett and Paul B. Johnson in their Mississippi criminal contempt case. But there surely is no basis for surprise.

The liberal wing, and especially Justice Black, has long urged that a crime is a crime, and that no amount of legal hairsplitting can justify the denial of a jury trial in a criminal case. Eventually, we believe, this view will prevail.

Justice Clark, writing the majority opinion, split the judicial hairs exceedingly fine. He argued that the courts in contempt matters have the power to proceed summarily unless this is "specifically precluded by statute." This is too much power for any court to have in a criminal case, and the Justices, in fact, differed as to whether there is such a statute now in force. If there isn't, there ought to be.

Justice Clark also seemed to have misgivings when he indicated in a footnote that a severe penalty should not be imposed if the Governor and former Governor are convicted without a jury trial. To us, however, this seems merely to beg the question.

Justice Black stated the issue in the strongest terms. "I think," he declared, "that in denying a jury trial here the Court flies in the face" of the Constitution. For a judge to have power to deny a jury trial, he went on, "means that one person has concentrated in himself the power to charge a man with a crime, prosecute him for it, conduct his trial, and then find him guilty. I do not agree that any such inherent power exists."

The other dissenters were Chief Justice Warren and Justices Goldberg and Douglas. When the Court considered this same question in 1958, two Communists were denied a jury trial for criminal contempt. On that occasion the Court also divided 5 to 4. At that time, however, Justice Brennan, in a concurring opinion, joined the dissenters. This time he sided with the majority, doubtless because of differences in the two cases which he thought were controlling. On some other occasion he may cast his vote with yesterday's dissenters, thereby making a majority for the jury trial advocates.

We hope so. For, as Justice Black has said, the idea that persons charged with criminal offenses such as criminal contempt are not charged with "crimes" is a "judicial fiction." Of course they are charged with crimes, and to argue, as some do, that the defendants in this case should be denied a jury trial because a Mississippi jury might not convict them strikes at the heart of our constitutional safeguards. If this is a valid argument in the Barnett-Johnson case, then it follows that jury trials should be denied in all criminal prosecutions where the prosecutor or judge doesn't trust the jury system. We do not believe anyone would advance such a monstrous proposition.

But the situation, as a result of the Court's ruling, is bad enough as it stands. And we agree with Justice Black that "It is high time * * * to wipe out root and branch the judge-invented and judge-maintained notion that judges can try criminal contempt cases without a jury. It will be a fine day for the constitutional liberties of individuals in this country when that at last is done."

CIVIL RIGHTS ACT OF 1963—AMENDMENTS (AMENDMENT NO. 477)

Mr. ROBERTSON submitted amendments, intended to be proposed by him, to the bill (H.R. 7152) to enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States to provide injunctive relief against discrimination in public accommodations, to authorize the Attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the

Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes, which was ordered to lie on the table and to be printed.

NOTICE OF HEARINGS ON SENATE BILL 2719, RELATING TO EARTHQUAKE INSURANCE IN ALASKA

Mr. ANDERSON. Mr. President, I would like to announce for the information of the Senate that the Committee on Interior and Insular Affairs, sitting as a Special Committee of the Whole on Alaska, has scheduled a hearing for next Tuesday, April 14, at 9 a.m. in room 3110, New Senate Office Building, on S. 2719, a bill introduced by Chairman JACKSON and others to provide for earthquake insurance in Alaska.

Senator JACKSON has appointed me to chair the Special Committee of the Whole on Alaska, and this announcement is made for the purpose of allowing those Senators and others who are interested in this legislation to present their views to the committee.

MESSAGE FROM THE HOUSE—ENROLLED BILL SIGNED

A message from the House of Representatives, by Mr. Hackney, one of its reading clerks, announced that the Speaker had affixed his signature to the enrolled bill (S. 1951) for the relief of George Elias NeJame (Noujaim), and it was signed by the Acting President pro tempore.

RECESS UNTIL 10 O'CLOCK A.M. TOMORROW

Mr. HUMPHREY. Mr. President, if there is no further business to come before the Senate, I move, pursuant to the order previously entered, that the Senate stand in recess until 10 o'clock tomorrow.

The motion was agreed to; and (at 11 o'clock and 31 minutes p.m.) the Senate took a recess, under the order previously entered, until tomorrow, Friday, April 10, 1964, at 10 o'clock a.m.

CONFIRMATION

Executive nomination confirmed by the Senate April 9 (legislative day of March 30), 1964:

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Walter N. Tobriner, of the District of Columbia, to be a Commissioner of the District of Columbia for a term of 3 years, and until his successor is appointed and qualified.

EXTENSIONS OF REMARKS

New Honors for Littleton High School Band

EXTENSION OF REMARKS
OF
HON. PHILIP J. PHILBIN
OF MASSACHUSETTS
IN THE HOUSE OF REPRESENTATIVES
Thursday, April 9, 1964

Mr. PHILBIN. Mr. Speaker, once again the Third Massachusetts Congressional District has been signally honored by the Washington Cherry Blossom Festival by the designation of one of its high school bands for participation in the 1964 festival.

Not long ago the outstanding Fitchburg High School band gained this high recognition and I am pleased to bring to the attention of my colleagues in the House that another high school band from my district has been chosen for this great honor.

This year the 84-member Littleton High School Band, led by eight majorettes and a four-man color guard, is representing Massachusetts at the Cherry Blossom festivities and I take this opportunity to commend this talented musical organization for being selected for this great distinction and to congratulate the band members for the new honors they have brought to their State, their community, and their school.

As the official Massachusetts band, the Littleton musical group is participating in many of the Cherry Blossom activities during their stay in Washington from April 10 to 12, including the Cherry Blossom Festival Parade of Princesses on Saturday.

While members of the Littleton band have little free time during their stay in the Capital, it has been possible for me to arrange a special guided tour of the White House for the group on Friday morning. In addition through the excellent cooperation of officials of the Federal Bureau of Investigation, the group will be given a guided tour of FBI headquarters early Friday afternoon.

Littleton and Massachusetts should be proud of this wonderful musical group which has already won acclaim throughout central Massachusetts. Among the 50 or more bands from across the country selected for participation in the festival this year, Littleton with its 5,800 population is one of the smallest communities in the Nation to be so honored by the festival.

Wearing navy blue military-style uniforms, festooned with gold braiding, the Littleton unit makes a smart and handsome appearance wherever it appears. For the festival parade, the group will lead the open car bearing the Massachusetts cherry blossom princess, Miss Joan Rooks, the daughter of Col. and Mrs. William A. Rooks.

Last December immediately after the invitation to the festival, the townspeople of Littleton joined wholeheartedly in a communitywide fund-raising effort for the some $10,000 in funds required for the trip to Washington. Old-fashioned New England bean suppers, the sale of car bumper strips and chocolate bars, raffles on braided rugs, and a variety of social affairs have helped to raise these funds.

The band's eight majorettes are wearing special new uniforms specially made for the Washington trip by a group of Littleton mothers. In addition, the American Legion Post of Littleton has contributed flags and chrome-plated rifles for the color guard.

The Littleton band is under the able direction of School Music Director John Walker, who has a staff of three to assist him. Musical instruction is started in the fourth grade at Littleton and this early training insures a good selection of capable students for the band by the time the youngsters reach high school.

The Littleton High School Band brings new laurels to the town of Littleton through its participation in the Cherry Blossom Festival of 1964. I take pride in hailing and saluting this superb musical organization for its past achievements and extend best wishes for its continued success in the years to come.

A Tribute to Dr. H. Claude Hudson

EXTENSION OF REMARKS
OF
HON. AUGUSTUS F. HAWKINS
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES
Thursday, April 9, 1964

Mr. HAWKINS. Mr. Speaker, may I take this opportunity to bring to the attention of my colleagues a brief biographical sketch of one of the most distinguished and influential citizens of the city of Los Angeles, Dr. H. Claude Hudson. No history of the civil rights movement in California would be complete without mention of his name.

During his 10-year service as the president of the Los Angeles branch of the National Association for the Advancement of Colored People his leadership provided an impetus that made itself felt throughout the Nation. His unwavering devotion to the cause of human freedom continues today as an inspiring example to all of us in the forefront of the battle for the constitutional rights of our citizens. I am proud to join with the community in paying tribute to Dr. Hudson.

The biographical sketch of H. Claude Hudson is the story of a Louisiana sharecropper's son's rise to the presidency of a $44 million savings and loan association, a successful dental practice, and a position of leadership in the civil rights struggle.

He was born in Marksville, La., and was educated in the schools of Louisiana and Texas. He attended Wiley Univer-